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Agencies in this issue—

Army Department
Civil Aeronautics Board
Civil Service Commission
Coast Guard
Consumer and Marketing Service
Customs Bureau
Federal Aviation Agency
Federal Communications Commission
Federal Maritime Commission
Federal Power Commission
Federal Reserve System
Foreign Assets Control Office
Housing and Home Finance Agency
Immigration and Naturalization
Service
Interstate Commerce Commission
Justice Department
Land Management Bureau
Securities and Exchange Commission
Wage and Hour Division

Detailed list of Contents appears inside.



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Contents

AGRICULTURE DEPARTMENT

See Consumer and Marketing Service.

ARMY DEPARTMENT

Rules and Regulations
Procurement..... 12155

CIVIL AERONAUTICS BOARD

Rules and Regulations
Direct airport-to-airport mileage records..... 12249

CIVIL SERVICE COMMISSION

Rules and Regulations
Career and career-conditional employment; noncompetitive appointment of certain present and former Foreign Service officers and employees..... 12248
Excepted service; Justice Department..... 12248

COAST GUARD

Rules and Regulations
General policies, and procurement by negotiation; competition, and general requirements for negotiation..... 12249

CONSUMER AND MARKETING SERVICE

Proposed Rule Making
Carrots, topped; U.S. standards for grades..... 12254
Notices
St. Louis National Stockyards Co.; petition for modification of rate order..... 12263

CUSTOMS BUREAU

Notices
Steel welded wire mesh from Italy; withholding of appraisement notice..... 12262

DEFENSE DEPARTMENT

See Army Department.

FEDERAL AVIATION AGENCY

Rules and Regulations
Certification; pilot rating requirements; correction..... 12249

FEDERAL COMMUNICATIONS COMMISSION

Notices
Mobile tariffs; notice of policy regarding filing..... 12263

FEDERAL MARITIME COMMISSION

Notices
Agreements filed for approval:
Atlantic & Gulf and West Coast America-Flag Berth Operators Joint Agreement..... 12263
United Kingdom/United States Pacific Freight Association..... 12264

FEDERAL POWER COMMISSION

Notices
Hearings, etc.:
Central Maine Power Co..... 12260
Humble Gas Transmission Co..... 12260
Illinois Power Co..... 12261
Quinault Light Co..... 12262
Texas Oil & Gas Corp. et al..... 12257
Transwestern Pipeline Co..... 12262

FEDERAL RESERVE SYSTEM

Rules and Regulations
Bank holding company and merger applications..... 12248

FOREIGN ASSETS CONTROL OFFICE

Rules and Regulations
Importation of and dealings in certain merchandise..... 12250
Notices
Jade stones; importation directly from Japan; correction..... 12263

HOUSING AND HOME FINANCE AGENCY

Notices
Acting Director, Demonstration Program Branch, Urban Renewal Administration; designation..... 12264

IMMIGRATION AND NATURALIZATION SERVICE

Rules and Regulations
Field officers; powers and duties; proof of official records..... 12248

INTERIOR DEPARTMENT

See Land Management Bureau.

INTERSTATE COMMERCE COMMISSION

Rules and Regulations
Records; destruction:
Carriers by water..... 12252
Electric railway companies..... 12250
Express companies..... 12251
Railroad companies..... 12250
Sleeping car companies..... 12251

Notices

Fourth section applications for relief..... 12269
Motor carrier probability sampling studies; certain Class I and Class II common carriers..... 12270
Motor carrier temporary authority applications..... 12268

JUSTICE DEPARTMENT

See also Immigration and Naturalization Service.
Rules and Regulations
Organization; Criminal Division; general functions..... 12249

LABOR DEPARTMENT

See Wage and Hour Division.

LAND MANAGEMENT BUREAU

Rules and Regulations
Public land orders:
Alaska; withdrawal for FAA facilities..... 12253
Arizona; modification of previous order to permit grant of right-of-way..... 12253
Colorado; partial revocation of stock driveway withdrawal..... 12252

SECURITIES AND EXCHANGE COMMISSION

Notices
Hearings, etc.:
Glen Alden Corp..... 12264
Ten Keys, Inc..... 12264

TREASURY DEPARTMENT

See Coast Guard; Customs Bureau; Foreign Assets Control Office.

WAGE AND HOUR DIVISION

Notices
Certificates authorizing employment:
Full-time students working outside school hours in retail or service establishments at special minimum rates..... 12265
Learners at special minimum rates..... 12267

List of CFR Parts Affected

(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, 1965, and specifies how they are affected.

5 CFR		28 CFR		604.....	12234
213.....	12248	0.....	12249	605.....	12235
315.....	12248			606.....	12235
7 CFR		31 CFR		608.....	12239
PROPOSED RULES:		500.....	12250	610.....	12239
51.....	12254	32 CFR		41 CFR	
8 CFR		591.....	12155	11-1.....	12249
287.....	12248	592.....	12171	11-3.....	12249
12 CFR		593.....	12173	43 CFR	
261.....	12248	594.....	12187	PUBLIC LAND ORDERS:	
262.....	12248	595.....	12191	317 (modified by PLO 3831).....	12253
14 CFR		596.....	12192	922 (see PLO 3831).....	12253
61.....	12249	597.....	12194	3829.....	12252
247.....	12249	598.....	12198	3830.....	12253
		599.....	12199	3831.....	12253
		600.....	12208	49 CFR	
		601.....	12213	110 (4 documents).....	12250, 12251
		602.....	12214	325.....	12252
		603.....	12225		

Rules and Regulations

Title 32—NATIONAL DEFENSE

Chapter V—Department of the Army

SUBCHAPTER G—PROCUREMENT

REVISION OF SUBCHAPTER

Subchapter G, containing the Army Procurement Procedure, is hereby revised; this revision prescribes policies, procedures, and standards governing the procurement of supplies and services by the Department of the Army under Chapter 137, Title 10, United States Code, formerly the Armed Services Procurement Act of 1947, other statutory authority, and the Armed Services Procurement Regulation. Parts 590 through 610 are superseded by this revision, which includes extensive renumbering of parts, sections, and paragraphs, and numerous other changes.

PART 591—GENERAL PROVISIONS

Sec.	Subpart A—Introduction
591.101	Purpose of Procedure.
591.102	Applicability.
591.103	Arrangement of Procedure.
591.105	Amendment of ASPR and APP.
591.106-50	Other Department of the Army procurement publications.
591.107-50	Dissemination of printed procurement publications.
591.108	Departmental procurement instructions and ASPR implementations.
591.109	Deviations from ASPR, APP, and Department of Defense and Department of the Army publications governing procurement.
591.109-2	Deviations affecting one contract or transaction.
591.109-50	Expiration of Deviations.
591.109-51	Control of deviations.
591.113	Standards of conduct.
591.114	Reporting of indential bids.
591.115	Noncollusive bids and proposals.
591.150	Procurement channels and mailing addresses.

Subpart B—Definition of Terms

591.201	Definitions.
591.201-50	Chief officer responsible for procurement.
591.201-51	Ordering Officer.
591.201-52	Breakout procedure.
591.201-53	Purchasing office.
591.201-54	Overseas area.

Subpart C—General Policies

591.302-50	Integration of current procurement with mobilization planning.
591.302-51	Procurement during national emergency.
591.307	Priorities, allocations, and allotments.
591.307-2	Required use of priorities, allocations, and allotments clause.
591.308	Record of contract actions.
591.310	Liquidated damages.
591.314	Contracting Officer's decision under the Disputes Clause.
591.350	Advance procurement planning.
591.351	Advance procurement planning during the research and development phase.

Sec.	
591.352	Public release of long-range procurement estimates.
591.353	Manpower policy in placing procurement.
591.354	Administrative and managerial services.
591.355	Scheduling of production of newly developed items and production from new producers.
591.356	Special factors to be considered in evaluating bids or proposals.
591.357	Extension of contracts.
591.358	[Reserved.]
591.359	Limitations on purchase and maintenance of motor vehicles or aircraft.

Subpart D—Procurement Responsibility and Authority

591.401	Responsibility of each procuring activity.
591.402	General authority of contracting officers.
591.403	Requirements to be met before entering into contracts.
591.403-50	Legal review.
591.450	Selection and appointment of contracting officers.
591.451	Selection and appointment of contracting officer's representatives.
591.452	Selection and appointment of ordering officers.
591.453	Responsibility for contract administration.

Subpart E—Contingent or Other Fees

591.503	Covenant against contingent fees clause.
---------	--

Subpart F—Debarment, Ineligibility, and Suspension

591.601-3	Joint consolidated list.
591.601-6	Inquiries from debarred, ineligible, or suspended individuals and firms.
591.604-50	Restrictions during period of debarment.
591.605-3	Restrictions during period of suspension.
591.608-3	Addresses and copies of reports.
591.608-8	General.
591.650	[Reserved.]
591.651	Responsibilities.
591.652	Provisional withholding of funds.

Subpart G—Small Business Concerns

591.704-3	Small business specialists.
591.704-50	Army Small Business and Labor Surplus Council.
591.752	Presolicitation Data on Proposed Procurement Actions (DA Form 1877).

Subpart H—Labor Surplus Area Concerns

591.801-50	Economic Utilization Program.
591.802-50	General policy.
591.803-50	Identification of labor surplus area concerns.
591.803-51	Techniques of operation.

Subpart I—Responsible Prospective Contractors

591.902	General policy.
---------	-----------------

Subpart J—Publicizing Procurement Actions

591.1002-8	Paid advertisements in newspapers and trade journals.
591.1004	Disclosure of information prior to award.
591.1006-50	Congressional notification of proposed awards.

Subpart L—Specifications, Plans, and Drawings

Sec.	
591.1202-50	Deviations and waivers.
591.1206	Purchase descriptions.

Subpart M—Transportation

591.1302-2	Shipments from the United States for overseas delivery.
591.1302-3	Shipments originating outside the United States.
591.1308	Transit arrangements.
591.1312	Mode of transportation.
591.1313-2	Sources of transportation rates and related costs.
591.1350	Sources of transportation assistance.

Subpart O—Options

591.1506-50	Option to renew.
-------------	------------------

Subpart P—Novation Agreements and Change of Name Agreements

591.1604	Novation agreements and change of name agreements.
591.1650	Novation agreements affecting only Army contracts.

AUTHORITY: The provisions of this Part 591 issued under sec. 3012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

Subpart A—Introduction

§ 591.101 Purpose of procedure.

The Army Procurement Procedure (APP), contained in this subchapter, is issued by the Assistant Secretary of the Army (Installations and Logistics) by direction of the Secretary of the Army. Its purpose is to implement and supplement Subchapter A, Chapter I of this title and other Department of Defense publications, pursuant to § 1.108 of this title, to establish for the Department of the Army uniform policies and procedures relating to the procurement of supplies and services. It is emphasized that ASPR (Armed Services Procurement Regulation, Subchapter A, Chapter I of this title) is the primary Department of Defense regulation containing procurement policies and procedures, and is the first regulatory source to which procurement personnel should make reference.

§ 591.102 Applicability.

This subchapter shall apply to all purchases and contracts made by the Department of the Army for the procurement of supplies or services which obligate appropriated funds (including available contract authorizations), unless otherwise specified herein. ASPR and APP are applicable to procurement in overseas areas, including that for Government and Relief in Occupied Areas (GARIOA) chargeable to annual appropriations for such purposes, and to that for procurement effected by military attachés and foreign missions. ASPR and such additional instructions as may be issued by the Chief of Engineers pursuant to authority granted by the Secretary of the Army are applicable to procurement of supplies and services for civil works by the Corps of Engineers;

APP is not applicable to civil works procurement, except to the extent prescribed by the Chief of Engineers.

§ 591.103 Arrangement of procedure.

The arrangement and numbering of APP are patterned after ASPR (see § 1.103 of this title). In general, corresponding numbered divisions (paragraphs, parts, or sections) of the ASPR and APP relate to identical subjects. Part 610 contains Department of the Army policies and procedures not specifically covered in ASPR. Omission from APP of a numbered division which appears in ASPR denotes that there is no implementation in APP.

§ 591.105 Amendment of ASPR and APP.

(a) APP may be amended on an urgent or temporary basis by DA Circular of the 715-series (Procurement Information) and on a permanent basis by "Changes" comprised of revised pages and filing instructions.

(b) The practice of publishing clarifications and improvements to procurement practices and procedures as amendments to ASPR and APP, rather than as procurement operating instructions at each lower echelon, is encouraged. Proposed amendments should—

(1) Be submitted in a form consistent with the organization of ASPR or APP;

(2) Set forth the language, form, or other change proposed;

(3) And be supported by an explanation of the problems to be resolved;

(4) Be forwarded to the addressee in § 591.150(b) (6).

§ 591.106-50 Other Department of the Army procurement publications.

Additional instructions and information on procurement matters are contained in Army regulations and Department of the Army circulars, primarily the 715- and 718-series (Procurement).

§ 591.107-50 Dissemination of printed procurement publications.

ASPR and Revisions thereof, APP and Changes thereto, and other printed procurement publications of the Department of the Army are distributed by publications centers of The Adjutant General in accordance with requirements submitted on DA Form 12 (Report of Publications Requirements) (AR 310-1). Each Head of Procuring Activity shall insure that copies of these publications are distributed to all interested activities subject to his procurement cognizance. Neither ASPR nor APP is available for distribution by the Army to private firms or individuals. These publications are sold to the public by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

§ 591.108 Departmental procurement instructions and ASPR implementations.

Six copies of each instruction and each change thereto, issued pursuant to § 1.108(a) of this title shall be forwarded at the time of issue to the addressee listed in § 591.150(b) (7) by the cognizant Head of Procuring Activity for processing in

accordance with § 1.108 (c) and (d) of this title.

§ 591.109 Deviations from ASPR, APP, and Department of Defense and Department of the Army publications governing procurement.

Request for approval of any deviation shall be forwarded to the addressee in § 591.150(b) (7), except where the approval authority is at a level below OASA (I&L), as in § 591.109-2 (b) and (c). Each submittal shall contain a full description of the deviation, including a description of the circumstances in which the deviation will be used and, when feasible, the clause, form, or procedure to be used. The request for deviation shall be supported by a complete justification.

§ 591.109-2 Deviations affecting one contract or transaction.

(a) A deviation from ASPR, from a Department of Defense Directive, or from Part 599 of this subchapter, which affects only one contract or transaction will be made only after prior approval by the Director of Procurement, OASA (I&L), except as indicated in paragraph (b) of this section.

(b) The following individuals have been authorized, without power of redelegation, to approve deviations from ASPR which affect only one contract or procurement action:

(1) The Commanding General, U.S. Army Materiel Command.

(2) The Director of Procurement and Production, U.S. Army Materiel Command.

The authority granted has not been extended to Part 9 of this chapter or to other provisions of ASPR as to which the Department of Defense has suspended Departmental deviation authority (e.g., Subpart G, Part 1 and Part 15 of this title) or as to which action or deviation authority is limited to a level higher than Headquarters, U.S. Army Materiel Command. Unless exigency of the situation requires immediate action, written notice of each deviation shall be given to the addressees in § 1.109-2 of this title and § 591.150(b) (7) in advance of the effective date of such deviation.

(c) A Head of Procuring Activity, his deputy, or a principal assistant responsible for procurement, is hereby authorized, without power of redelegation, to approve deviations from this subchapter (except Part 599) which affect only one contract or transaction, providing that any such deviation does not conflict with a statutory requirement or ASPR. Each deviation shall be reported promptly on an after-the-fact basis to the addressee in § 591.150(b) (7).

§ 591.109-50 Expiration of deviations.

Except when this section is inconsistent with a specific provision in the approving document or unless the approval is sooner rescinded, the approval of a deviation which affects more than one contract or transaction shall expire 2 years from the date of approval without prejudice to any action thereunder. Authority to continue use of such deviation may

be requested in accordance with §§ 591.109-50-591.109-51.

§ 591.109-51 Control of deviations.

One register listing all deviations approved within a procuring activity shall be maintained by the approving authority. Each deviation shall be recorded therein by title and shall be assigned a control number which shall include: fiscal year, identifying symbol (approved letter symbols), and an action serial number; e.g., 65-ENG-1. This control number shall also be embodied in the document authorizing the deviation in the following manner: "This deviation has been assigned control No. 65-ENG-1, which will be cited in all references to this deviation."

§ 591.113 Standards of conduct.

Each individual directly or indirectly concerned with any phase of procurement or related activities shall read AR 600-50, and, if appropriate, CPR C 2, shall sign a statement that it has been read and understood, and shall review it at least semiannually. The signed statement shall be retained in the files of the office to which the individual is assigned, and will be subject to inspection at all times.

§ 591.114 Reporting of identical bids (Reports Control Symbol JUST-1007).

Department of Justice Form DJ-1500 is available through Adjutant General publications supply channels. One completed copy of each report submitted in accordance with § 1.114(d) of this title shall be sent to the addressee listed in § 591.150(b) (2).

§ 591.115 Noncollusive bids and proposals.

The authority to make a determination as described in paragraph (d) of the certification in § 1.115 of this title is delegated to the cognizant Head of Procuring Activity with power of redelegation to a member of his headquarters staff.

§ 591.150 Procurement channels and mailing addresses.

(a) Throughout this subchapter are numerous requirements for the submittal of recommendations, reports, findings, data, information, and other documents. Unless otherwise specifically prescribed, such submittals to higher authority shall be through procurement channels. These procurement channels are indicated in paragraph (c) of this section. The addressee in paragraph (b) (12) of this section receives Army documents required to be distributed to and retained by the General Accounting Office.

(b) Addresses which are frequently referred to in APP are set forth below:

(1) Assistant Secretary of the Army (Installations and Logistics), Department of the Army, Washington, D.C., 20310.

(2) Assistant Secretary of the Army (Installations and Logistics) (Assistant Judge Advocate General), ATTN: JAGL, Department of the Army, Washington, D.C., 20310.

(3) Chairman, Armed Services Board of Contract Appeals, Office of the Assistant

Secretary of Defense (Installations and Logistics), Washington, D.C., 20310.

(4) Chief Trial Attorney, Office of The Judge Advocate General, Department of the Army, Washington, D.C., 20310.

(5) Comptroller of the Army, ATTN: Director of Contract Financing, Department of the Army, Washington, D.C., 20310.

(6) Director of Procurement, OASA (I&L), Department of the Army, Washington, D.C., 20310.

(7) Chief, Procurement Policy Division, Directorate of Procurement, OASA (I&L), Department of the Army, Washington, D.C., 20310.

(8) Chief, Contracts Division, Directorate of Procurement, OASA (I&L), Department of the Army, Washington, D.C., 20310.

(9) Chief, Review and Analysis Office, Directorate of Procurement, OASA (I&L), Department of the Army, Washington, D.C., 20310.

(10) and (11) [Reserved]

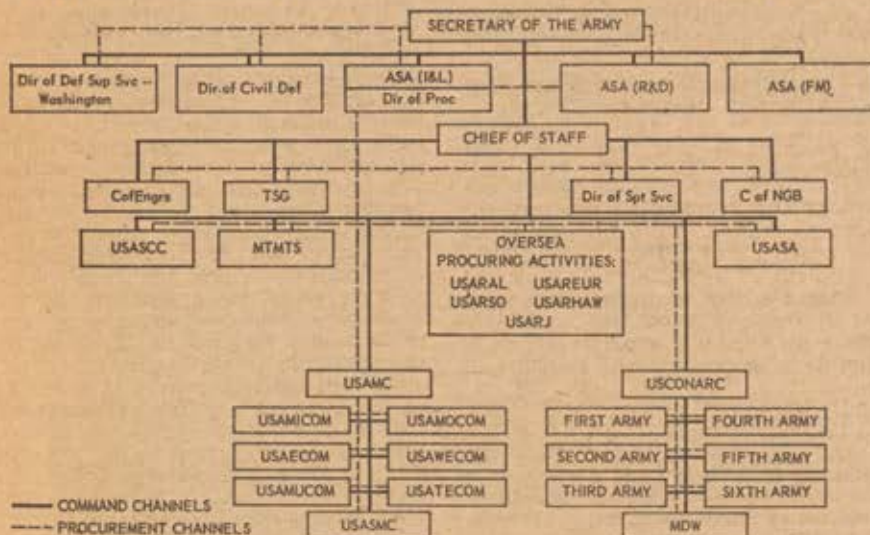
(12) Commanding General, Finance Center, U.S. Army, ATTN: Processing and Disposition Branch, Retained Accounts Division, Indianapolis, Ind., 46249.

(13) Commanding General, Finance Center, U.S. Army, ATTN: FINCY, Fort Benjamin Harrison, Indianapolis, Ind., 46249.

(14) through (16) [Reserved]

(17) Director of Procurement and Production, U.S. Army Materiel Command, Washington, D.C., 20315.

(c) Flow of procurement authority.



Subpart B—Definition of Terms

§ 591.201 Definitions.

As used in connection with Army procurement the words and terms defined in this subpart shall have the meanings set forth below, unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular part, section, or paragraph thereof.

§ 591.201-50 Chief officer responsible for procurement.

The term "chief officer responsible for procurement" means the Head of Procuring Activity (§ 1.201-7 of this title).

§ 591.201-51 Ordering officer.

The term "ordering officer" means an individual (military or civilian) operating under the jurisdiction of the Department of the Army who has been ap-

pointed an ordering officer in accordance with the provisions of § 591.452 and who is thereby granted limited, specific authority to place orders under contracts entered into by others and to effect other minor procurement actions as described in § 591.452(c).

§ 591.201-52 Breakout procedure.

The term "breakout procedure" applies to the process whereby a component, subassembly or suitable element of a weapon system or major item of equipment, initially obtained only from the system or major item prime contractor, is procured under a prime contract separate from that under which it was initially procured and which opens the procurement to competition. Objectives of the breakout procedure include reduction in concentration of procurement, increasing competition, and reduction of costs.

§ 591.201-53 Purchasing office.

The term "purchasing office" means any installation or activity, or any division, office, branch, section, unit, or other organizational element of an installation or activity within the Department of the Army (including post, camp, or station), charged with the functions of buying,

purchasing, or contracting for supplies or services. The term "purchasing activity" shall be interpreted to mean "purchasing office."

§ 591.201-54 Oversea area.

The term "oversea area" when applied to a procuring activity means a procuring activity in Alaska, the Caribbean, Europe, Hawaii, or Japan.

Subpart C—General Policies

§ 591.302-50 Integration of current procurement with mobilization planning.

(a) Defense Mobilization Order DMO VII-7, as amended, contains the following statement of policy with respect to current procurement in maintaining the mobilization base:

a. Procurement agencies shall integrate current procurement with their industrial mobilization plans to the greatest possible

extent with the objective of supporting the mobilization base within authorities and funds available.

b. Data assembled on essential mobilization suppliers by the industrial mobilization planning of these agencies shall be used in planning current procurement. The policy of using contractors and facilities essential to the mobilization base is considered to be in the best interest of the Government. Suppliers that are deemed to be part of the mobilization base normally will be invited to participate in appropriate current procurement.

(b) DOD Directive 3005.3 requires that a review be made of proposed procurement of items meeting the criteria of the Master Urgency Planning List and that responsibility for such review be maintained at the level of the Procurement Secretaries or their authorized designees. The Commanding General, U.S. Army Materiel Command, is designated to monitor the overall review assignment of items for review; each Head of Procuring Activity subordinate to Headquarters, U.S. Army Materiel Command, is appointed an authorized designee of the Assistant Secretary of the Army (Installations and Logistics) for the purpose of reviewing those items meeting the criteria of the Master Urgency Planning List for which his procuring activity has been assigned procurement responsibility, with authority to designate a senior officer of his headquarters staff responsible for procurement or a chief of purchasing office to perform the required review. Such review shall take into consideration the following factors:

- (1) Maintaining multiple sources of supply;
- (2) The geographic dispersal;
- (3) The avoidance of undue concentration of contracts in a few leading suppliers;
- (4) Multiple awards;
- (5) The preservation of essential skilled labor forces;
- (6) The utilization of existing open industrial capacity;
- (7) The preservation of essential management organization and "know-how";
- (8) Maximum subcontracting; and
- (9) Any other factors relevant to maintaining a sound mobilization base, including the utilization of small business concerns to the maximum extent practicable.

§ 591.302-51 Procurement during national emergency.

Department of Defense policies with respect to procurement by formal advertising and by negotiation are set forth in §§ 1.300, 2.102 and 3.102 of this title. All procuring activities and agencies shall give particular attention to the following factors in effecting procurement:

- (a) The placement of contracts with a view to economies in the use of transportation facilities;
- (b) The greatest possible integration of current procurement contracts with the industrial mobilization program and the accepted schedules of production;
- (c) The utilization of manpower in areas of substantial labor surplus and distressed industries;
- (d) The utilization of existing open industrial capacity to the maximum. Expansion of facilities should not be authorized when open capacity can be

found. Whenever time permits, and in order to broaden the production base, additional contractors should be utilized in lieu of multishift or overtime operation;

(e) The equitable distribution of contracts among the maximum number of competent suppliers;

(f) The utilization in negotiation of competition whenever possible and of multiple awards;

(g) The aggressive encouragement or requirement of subcontracting by prime contractors;

(h) The provision of maximum incentive to the producer for the reduction of his costs;

(i) The fullest possible use of small business concerns; and

(j) The reservation of special skills and abilities for the more difficult production tasks.

§ 591.307 Priorities, allocations, and allotments.

See AR 715-5.

§ 591.307-2 Required use of priorities, allocations, and allotments clause.

Reference is made to Priorities and Allocations Manual 2-4.1 pertaining to requirements type contracts. A single rating (either C 3 or C 9) shall be assigned to requirements type contracts.

§ 591.308 Record of contract actions.

(a) *Initiation and maintenance of contract files.* The contract file shall be originated by the contracting officer initiating the procurement and maintained by him unless the contract is transferred to another contracting officer for administration, in which case responsibility for the contract file shall accompany the responsibility for administration. Where multiple contracts arise from a single solicitation, one contract file shall be designated the master contract file for the purpose of containing those pre-award files not necessary for the administration of the other contracts. The contract file for each of the other contracts shall be provided copies of documents from the master contract file necessary for administration of that contract and shall identify the master file and its location.

(b) *Review of contract files.* The contracting officer is responsible for making a continuing review of active contract files to insure that all required contractual actions have been taken and that the contract files contain all required documents. Transfer and disposal of contract files will be in accordance with applicable disposition standards and instructions in AR 345-210.

§ 591.310 Liquidated damages.

(a) Where a contractor has applied for remission of liquidated damages to the Comptroller General, appropriate action will be taken in accordance with the procedures prescribed in § 592.451 of this chapter and in addition—

(1) In the event that all alternative remedial actions available to the contractor under the contract have not been exhausted (e.g., unresolved claims for extensions of delivery schedules), the administrative report and the contract-

ing officer's statement required by § 592.451(a) of this chapter will identify the alternatives and state the actions being taken.

(2) In the event that all alternative remedial actions available to the contractor under the contract have been exhausted, the administrative report and the contracting officer's statement will include information as to the reasonableness of the rate of assessment of liquidated damages, in relation to the total contract price, and a summary of the actions taken to mitigate the assessment of the damages.

(b) Where a contractor has applied only to the Department of the Army for remission of liquidated damages and alternative administrative remedies within the Department which affect such damages (e.g., settlement of a dispute concerning excusable delay) have not been exhausted, action should be taken to the end that such remedies are exhausted before processing the case to the Comptroller General. If liquidated damages remain after exhaustion of such administrative remedies, the administrative report required by § 592.451 of this chapter, together with the information required by paragraph (a)(2) of this section, will be submitted.

(c) In each instance of a transmittal of a request for remission of liquidated damages to be processed to the Comptroller General, the cognizant Head of Procuring Activity shall include a proposed letter to the Comptroller General for signature of the Assistant Secretary of the Army (Installations and Logistics), containing a recommendation concerning the contractor's application.

§ 591.314 Contracting officer's decision under the disputes clause.

When the dispute involves an amount not in excess of \$5,000, the contracting officer shall include a paragraph in his final decision substantially as follows:

If any dispute resulting from the decision hereinabove set forth involves an amount not in excess of \$5,000, there is available an Optional Accelerated Procedure of the Board (Rule 12) for disposition of the appeal. In order to invoke such procedure an appellant must request that the appeal be processed under Rule 12.

§ 591.350 Advance procurement planning.

(a) Advance procurement planning shall be accomplished on all procurements. The scope of such planning will vary with the complexity and dollar value of the item. Such planning shall be coordinated and will consider the following procurement aspects, where applicable: development, production, future requirements, engineering, programming, fiscal, legal, and contracting. This planning must be accomplished in order that procurement actions comply with the policy set forth in § 1.300-1 of this title.

(b) Each Head of Procuring Activity is responsible for the accomplishment of advance procurement planning. One of the primary purposes shall be to achieve competition in procurement whenever feasible. Another basic objective of such planning is to develop Requests for Pro-

posals, Invitations for Bids, and contracts which are expressed in concise, intelligible, and consistent language. Drawings must be consistent with specifications; standards and specifications incorporated by reference must be kept to a minimum; and references to standard specifications having no significance must be eliminated. When a "brand name or equal" specification is necessary, genuine effort will be made to name in the specification several brand names considered to be equal. Requirements personnel shall be directed to accommodate their efforts to the realities of procurement procedures and policies; e.g., they shall not include in special provisions or specifications subject matter or clauses which cover the same ground as prescribed general provisions or conflict therewith; they shall not, without meticulous justification, use restrictive specifications; they shall make every effort to insure that the requirements as described in the contract are complete and unambiguous. Required planning shall include analysis and thinking through all stages of the procurement up to and including contract completion. One important aspect of the "thinking through" process is a tentative determination of the type of contract (Subpart D, Part 3 of this title) which is considered to be most advantageous to the Government. Development contracts shall be examined by qualified technical personnel for feasibility of obtaining definitive specifications on components as to which design is stable and for which future procurement is contemplated. Incentive contracts shall be analyzed for all possible "break-even" points, for ambiguities in terminology, requirements, or target descriptions, and for combinations of possibilities under any multiple incentives which could result in an undesirable end product or an exorbitant profit. Such planning shall provide for the following as appropriate:

(1) The establishment of time-phased objectives in the integrated procurement plan so that periodic review, including a review of each item in the Army Materiel Control Program to determine the adequacy and availability of the procurement data package, is accomplished and appropriate adjustments made;

(2) The review of proprietary items incorporated in the design to substitute wherever practicable standard items or items already in the supply system which will provide adequate performance characteristics consistent with other design requirements;

(3) The inclusion of the following provisions (subject to the provisions of Subpart B, Part 9 of this title) in development contracts or in production contracts that include requirements for production engineering of items for quantity production:

(i) The requirements for preparation of data suitable for competitive procurement in sufficient detail as to kinds, types, and forms; legibility; completeness; and conformance to items actually produced, so as to insure practicability of enforcement;

(ii) The requirements for use of standard components and other components in existence or for which

nonproprietary documentation already exists;

(iii) The requirements that the contractor avoid use of proprietary items or data except when essential for operational safety and reliability of equipment;

(iv) The requirements for submission of newly designed items and proprietary items with appropriate justification for their use to specified locations for screening by the Government;

(v) The quality assurance provisions that require inspection of data for conformance to the data requirements specified, including, as appropriate, sampling plans, acceptable quality levels, and classification of defects;

(vi) The definition of place and time of acceptance of data, including requirements for submission of evidence that unacceptable drawings have been corrected, and certification by the contractor that, to the best of his knowledge and belief, the data accurately depicts the items manufactured;

(vii) The requirements for the contractor to establish and maintain an effective system of control to assure conformance to data requirements, and to submit his plan for accomplishment to the contracting officer for information; and

(viii) When appropriate, provisions for selection of random data for detailed analysis by Government engineering personnel for compliance with specified requirements and comparison with items produced, and provisions for correction by the contractor for inadequacies found;

(4) The provision by the Head of Procuring Activity, for the purpose of assuring adequate and timely preparation of data by contractors for use in competitive procurement, to—

(i) Provide for continuous guidance to contractors and review of data during the period of its development by technical personnel and inspectors to insure understanding and compliance with contract requirements;

(ii) Screen newly developed components and proprietary data submitted by contractors and substitute standard components, components already in existence, or components already documented whenever practicable (items or components claimed by contractors to be proprietary without justification or proof will be challenged with the assistance and guidance of the procuring activity's legal staff);

(iii) Perform timely administrative followup to insure scheduled delivery dates for data are met; and

(iv) When feasible, perform verification inspection prior to final acceptance of data, utilizing inspection records of contractors to the maximum practical extent, to insure compliance with contract requirements;

(5) The establishment of realistic administrative and production leadtime to permit competitive solicitation, negotiation, analysis, and award schedules for orderly and efficient production;

(6) The provision to insure that the first production contract includes a requirement for changes to the engineering

drawings furnished under the research and development contract to reflect production practices and the item actually being produced, unless previously accomplished under advance production engineering. This provision will result in a set of class I or II (MIL-D-70327) production drawings which will include all data developed under the research and development contract and will form the basis for subsequent competitive procurements. To insure the use of these production drawings for manufacture, inspection, and reprourement, a set of the drawings shall be delivered no later than at completion of delivery of production items under the initial production contract, and preferably concurrently with the initial submission of the production items for acceptance;

(7) The breakout and competitive procurement of components of weapon systems and other complex items without compromise of system performance, safety, or reliability, and with due regard to stability of design, density of the item, and any additional facilities required; and

(8) The dissemination of information regarding availability of procurement data adequate for competitive procurement.

§ 591.351 Advance procurement planning during the research and development phase.

The following actions shall be taken in planning during the Research and Development phase:

(a) Review and analysis of items of equipment proposed for development to ascertain density of potential use, estimated dollar value, and degree of complexity shall be made.

(b) Each procuring activity shall screen items of low density, high dollar value, and technical complexity in order to factually establish the necessity or lack thereof for sole source procurement which may be required from either an engineering or supply viewpoint. If the necessity for future sole source procurement because of proprietary considerations appears probable, such basis shall be documented with statements by responsible engineering and supply personnel. Facts established by the review under this paragraph shall be forwarded to the contracting officer when procurement action is initiated.

(c) Low density items of high dollar value and technical complexity shall be screened prior to the first production contract for possible breakout of components. To provide competitive procurement data at the earliest possible time, priority of review of production drawings shall be afforded those items which are deemed susceptible to breakout.

(d) All other end items of equipment shall be deemed candidates for competitive procurement.

(e) Consideration shall be given to the production leadtime necessary to enable subsequent procurements to be effected competitively inasmuch as proposed schedules for submission of the procurement data package may be affected.

§ 591.352 Public release of long-range procurement estimates.

Public announcement of unclassified, long-range (minimum 9 months) procurement estimates on certain items or groups of items or materials may assist industry in planning production better to serve the requirements of the Department of the Army.

(a) Such public release of long-range procurement estimates may be made by a Head of Procuring Activity or a senior officer of his headquarters assigned to procurement upon his determination that—

(1) The information to be released will actually assist industry in its planning and facilitate meeting the procurement requirements of the Department of the Army;

(2) The announcement will not adversely affect procurement of the Department of the Army requirements by encouraging such malpractices as attempts to corner the market or the hoarding of industrial materials; and

(3) The information to be released will not indicate the extent of industrial mobilization of the industry as a whole or its potential mobilization.

(b) The procedures set forth in this paragraph shall be followed in the preparation and issuance of long-range procurement estimates:

(1) The cognizant Head of Procuring Activity will be responsible for the determination of the need for, and the preparation of, the proposed announcements;

(2) Only unclassified information will be released;

(3) The information will be publicized as widely as possible, consistent with the needs of the individual case, and will be so released as to reach all potential suppliers as nearly simultaneously as possible;

(4) In each release a statement will be made that the forecast is based on the best information available at the time of publication, but is always subject to modification;

(5) Each release will contain information as to the names and addresses of the purchasing offices that should be contacted by prospective suppliers regarding the forthcoming procurements;

(6) Major modifications in the original announced estimate will be publicized as expeditiously as possible and in the same manner as the original; and

(7) Proposed announcements will be coordinated with the Chief of Information, Department of the Army.

§ 591.353 Manpower policy in placing procurement.

(a) *Procurement in areas of substantial labor surplus.* To the extent practicable, procurement shall be placed in labor market areas having substantial labor surplus. See Subpart H, Part 1 of this title for applicable policies and procedures.

(b) *Labor market areas.* (1) Contracting officers are responsible for utilizing the Department of Labor list entitled "Areas of Substantial Labor Surplus" and the bimonthly publication "Area Labor Market Trends" to determine classification of labor areas. These

publications may be obtained from the Bureau of Employment Security, U.S. Department of Labor, Washington, D.C., 20210.

(2) Contracting officers shall secure additional detailed manpower information as necessary (e.g., to determine whether there is an adequate labor supply in market areas in addition to the designated areas) direct from the U.S. Department of Labor and from the local State Employment Service Office.

§ 591.354 Administrative and managerial services.

Department of the Army contracts shall not be placed for the performance of clerical, administrative, or managerial functions which are normally performed by regular employees of the Government and which by their nature require the exercise of discretion, independence of judgment, decision, or direction, by an official of the Government.

§ 591.355 Scheduling of production of newly developed items and production from new producers.

When contracting for the production of newly developed items, or when contracting for production from new untried producers, deliveries shall be scheduled so that large quantities will not be produced prior to the completion of essential confirmatory tests. Contracts may specify that the contractor will control his inventories and other commitments during early production stages so as to permit adequate acceptability tests before incurring heavy expenditures. In order to prevent delays in deliveries, the schedule for the testing of the items and the quantity of items to be tested shall be established prior to the placement of the contract.

§ 591.356 Special factors to be considered in evaluating bids or proposals.

Each invitation for bids or request for proposals shall clearly state those factors which the Government will consider in evaluating such bids or proposals.

§ 591.357 Extension of contracts.

(a) *General.* Contracts should not be extended or renewed by option or otherwise for protracted periods of time, thus eliminating competition and perpetuating the use of outmoded clauses, terms, and conditions. Contracts involving successive procurements or continuing services should normally be closed out after not more than two extensions of the basic contract. An entirely new contract should be awarded for subsequent procurement of the item or service if further procurement is justified. Nothing in this section shall be construed as (1) authorizing the negotiation of any contract, (2) eliminating any requirements for approvals, or (3) constituting an exception from any limitation on the use of funds.

(b) *Approval required.*—(1) *First or second extension.* The contracting officer may enter into one or two extensions of a basic contract if he considers the action necessary.

(2) *Third or fourth extension.* A third or fourth extension beyond the term of the basic contract shall be made only with the advance written approval

of the Head of Procuring Activity. To permit timely action, the request must be submitted to reach the Head of Procuring Activity 3 months prior to the expiration date of the contract.

(3) *Extension beyond fourth.* Extension of the basic contract subsequent to the fourth shall be made only with the advance written approval of (i) the Commanding General, Deputy Commanding General, or the Director of Procurement and Production of the U.S. Army Materiel Command for all activities of that Command, or (ii) the Director of Procurement, OASA (I&L), for all other activities. Requests for approval to take such action shall be submitted to reach the appropriate addressee at least 3 months prior to the expiration of the previously approved extension date of the contract.

(c) *Justification.* A complete justification, including specific details, must be shown for each contract extension. Justifications may include but are not limited to such items as—

(1) The excessive burden to renumber Government property records;

(2) The increased costs or delay in production required to establish a new contract;

(3) The increased costs due to elimination of special concessions or other problems peculiar to a new contract;

(4) The substantial financial interests of the Government in severable and non-severable facilities that are not readily transferable to another contractor; and

(5) The relatively small quantity remaining to be produced so that the entire contract can be completed within six months.

(d) *Exceptions.* The approval requirements of paragraph (b) of this section do not apply to the following types of contracts which may normally extend for longer periods of time. The contracting officer shall, however, place written justification in the contract file, fully supporting the continuation of these contracts beyond 5 years.

- (1) Basic Agreements,
- (2) Facilities Contracts,
- (3) Government-Owned Contractor Operated (GOCO) Ammunition Plants,
- (4) Layaway Contracts,
- (5) Leases,
- (6) Production Engineering Contracts,
- (7) Research and Development Contracts,
- (8) Utility Contracts, and
- (9) Corps of Engineers Contracts for Title Evidence.

§ 591.358 [Reserved]

§ 591.359 Limitations on purchase and maintenance of motor vehicles or aircraft.

Section 16 of the Act, approved August 2, 1964, as amended (5 U.S.C. 78, 78a, and 78a-1), restricts the purchase or hire of passenger motor vehicles or aircraft and their maintenance, operation, and repair.

Subpart D—Procurement Responsibility and Authority

§ 591.401 Responsibility of each procuring activity.

(a) Each Head of Procuring Activity is responsible for insuring that purchases

are made in accordance with applicable regulations only by duly authorized contracting officers or by duly designated ordering officers. See §§ 591.402, 591.450 and 591.452.

(b) Authority conferred upon a Head of Procuring Activity under Subchapter A, chapter I of this title and this subchapter, or delegation from higher authority may be withheld or limited to the extent deemed appropriate by the Commanding General, U.S. Army Materiel Command or the Commanding General, U.S. Continental Army Command in the exercise of command prerogatives. When not inconsistent with directives of higher authority, a Head of Procuring Activity may delegate, with or without the power of redelegation, the authority to carry out functions with which he is charged.

(c) The Director of Procurement and Production, U.S. Army Materiel Command shall exercise the functions of a Head of Procuring Activity for the—

- (1) U.S. Army Research Office, and
- (2) U.S. Military Academy.
- (d) Commanding General, Military District of Washington, U.S. Army, shall exercise the functions of Head of Procuring Activity for the—
- (1) Office of The Adjutant General.
- (2) National Board for the Promotion of Rifle Practice,
- (3) Industrial College of the Armed Forces,
- (4) National War College, and
- (5) Office of the Chief of Finance.

(e) The Commanding General, Second U.S. Army shall exercise the functions of Head of Procuring Activity for The Judge Advocate General's School.

(f) The Commanding General, Sixth U.S. Army shall exercise the functions of Head of Procuring Activity for the Armed Forces Radio and Television Service, Los Angeles, Calif., for the sole purpose of designating, and rescinding designations of, contracting officers.

(g) Any purchasing activity not under the jurisdiction of a Head of Procuring Activity shall notify the Director of Procurement, OASA (I&L) (see § 591.150 (b) (6)), who shall designate an appropriate Head of Procuring Activity or take other appropriate action.

§ 591.402 General authority of contracting officers.

(a) Subject to any limitation in the orders or other instrument designating an individual as a contracting officer, a properly designated contracting officer is granted all authority conferred by law, Subchapter A, Chapter I of this title, and this subchapter, and procuring activity instructions.

(b) A contracting officer is responsible for knowing and observing the scope and limitations of his authority and may not exceed such authority.

(c) A contracting officer may enter into, amend, modify, and take other action with respect to contracts, provided (1) approval of award has been obtained if approval is required and the contract embodies the award as approved, (2) the contract is written (on a standard or approved form if such form is prescribed), (3) the contract is authorized by law and complies with the provisions of Sub-

chapter A, Chapter I of this title and this subchapter with respect to the use of contract clauses and does not contain any clause or involve matters in conflict with the established policy of higher authority and, (4) the contract complies with all other requirements of law, Subchapter A, Chapter I of this title, this subchapter, and applicable procuring activity instructions.

(d) A contracting officer shall personally sign all contracts and modifications entered into by him. This authority cannot be delegated except insofar as specifically permitted by § 591.451. The signing of contractual documents may not be accomplished by facsimile stamps or by proxy, except as provided in § 591.403(b).

(e) A contracting officer must assure himself that the contract is authorized by law and that funds are available (§ 591.403(a)).

(f) A contracting officer has primary responsibility for—

(1) The execution and administration of contracts;

(2) Safeguarding the interests of the United States in contractual relationships;

(3) Determining facts relating to contracts, where necessary;

(4) Maintaining vigilance to assure that contractors fully comply with the terms of contracts;

(5) The legal, technical, and administrative sufficiency of any contract which he executes. He should secure legal and other technical advice through established channels.

(g) A contracting officer has authority, when it is in the best interest of the Government to do so, to consider a contract completed even though an inconsequential quantity of items or services called for by the contract has not been delivered. This authority may be exercised only when—

(1) Payment is provided for on a unit price or other severable basis and no further performance is contemplated;

(2) Payment is made only for the performance actually rendered;

(3) The undelivered portion is inconsequential and the cost of effecting a formal contract modification (including but not limited to taking termination action) is excessive in relation to the benefits to the Government from such action; and

(4) The contracting officer makes a statement in writing, setting forth data identifying the contract, describing the circumstances to show clearly that the criteria above have been met, and stating that the contract is considered completed. This statement shall be distributed to the contract files, the contractor, the appropriate finance officer, and to any other appropriate Government office (e.g., consignee, inspector). This statement is not necessary where quantities delivered fall within variations permitted by the contract terms.

§ 591.403 Requirements to be met before entering into contracts.

(a) *Availability of funds.* Prior to the execution of any contract, the contracting officer shall assure that sufficient funds are available to effect the procure-

ment and shall include a citation of the funds to be charged together with such assurance as a part of the contract file. Each contract, purchase order, and delivery order shall reflect the complete accounting classification. (See AR 37-21, 37-42, and 37-102.)

(b) *Contracting officer's signature.* In the case of formal advertising, the personal signature of the contracting officer on the award and communication of a notice of award to the successful bidder creates a binding agreement. In the case of negotiated contracts, the contracting officer shall personally sign on behalf of the United States after the contractor has signed, except where otherwise required by the particular contract form or by the circumstances of the procurement. The contracting officer's rank or title shall be indicated. Proxy and facsimile signatures shall not be used, except in the case of a DD Form 1155 used as a purchase order in an amount not to exceed \$2,500 where reproducible masters are authorized or manifold forms containing interleaved carbon copies are used. In the latter case the contracting officer need sign only the reproducible master or the original of the manifold. Each other copy intended to function as an original shall be marked "Duplicate Original," and the signature thereon shall have the same force and effect as a pen and ink signature.

(c) *Signature by agents of contractors.* Contracts executed on behalf of contractors by agents shall be executed in the name of the principal and must be accompanied by evidence, satisfactory to the contracting officer, of the agents' authority.

(d) *Contracts with corporations.* Contracts with a corporation shall be executed in the official corporate name of the contractor. The amount and type of evidence to be required to determine the authority of a particular corporate officer to bind a corporation is for administrative determination by the contracting officer, who shall obtain legal advice as appropriate. Unless called for on a prescribed form, the contracting officer need not require that corporations execute a certificate provided he obtains other evidence which satisfactorily shows that the agent is empowered to bind the corporation. Where a corporate certificate is not called for on a prescribed form, but is otherwise considered necessary or desirable, it may be executed on a separate sheet, identified by contract number, and placed in the contract file.

(e) *Contracts with partnerships.* Contracts entered into with partnerships shall be executed in the partnership name and shall enumerate the names of all the partners. The contract need be signed by only one partner provided the authority of the particular partner to bind the partnership has been established. The amount and type of evidence required to determine the authority of a particular partner to bind a partnership is for administrative determination by the contracting officer, who shall obtain legal advice as appropriate.

(f) *Contracts and awards subject to approval.* Where a contract or an award of a contract is subject to approval by an

authority at a level higher than the contracting officer, no such contract shall be entered into by a contracting officer until such approval has been obtained. If approval of a contract, modification, or change order by any officer or official of the Department of the Army other than the contracting officer is required, (1) the Approval of Contract clause set forth in § 7.105-2 of this title will be included, (2) all changes and deletions will have been made before such approval is requested, and (3) the contract, modification, or change order is not binding on the Government until so approved, even though signed by the contractor and the contracting officer.

(g) *Date of signature.* Where a signature is required on a contract, agreement, orders requiring acceptance, amendments, or similar instruments to constitute a valid agreement in writing sufficient to support the recording of a fund obligation, the signature shall be affixed prior to the expiration of the period for obligation of the appropriation involved. The actual date of the signing shall be placed adjacent to the signature. However, the date of execution of a notice of award or letter contract shall be the date of obligation notwithstanding that a definitive contract may be issued thereafter. (See AR 37-21.)

§ 591.403-50 Legal review.

Legal advice and assistance of a staff judge advocate or other legal counsel shall be obtained in the preparation and use of clauses other than standard clauses which are to be contained in invitations for bids and requests for proposals. In each solicitation for bids and proposals which will result in a contract exceeding \$100,000, each invitation for bids and request for proposals shall be reviewed for legal sufficiency by a staff judge advocate or other legal counsel prior to issuance by the contracting officer. In addition, each solicitation for bids or proposals, which will result in a contract over \$10,000 but not over \$100,000 also shall be subject to legal review to the maximum extent possible consistent with the availability of legal services. As warranted by the situation, legal advice and assistance shall be obtained from the command judge advocate or other legal counsel as to the legal aspects of contracts. Each Head of Procuring Activity shall insure that such advice and assistance are available to the procurement personnel at the headquarters of the procuring activity when not available at the field level.

§ 591.450 Selection and appointment of contracting officers.

(a) *Appointing authority.* (1) Contracting officers shall be designated by the persons listed below, or by persons who are authorized by the persons listed in subdivisions (i), (ii), or (iii) of this subparagraph to designate contracting officers.

(i) The Secretary of the Army.
(ii) The Under Secretary of the Army or the Assistant Secretary of the Army (Installations and Logistics).

(iii) The Director of Procurement, OASA (I&L).

(iv) The Head of Procuring Activity, his deputy, or a principal assistant in the headquarters office responsible for procurement.

(v) Attachés.

(vi) Chiefs of foreign missions (Army).

(vii) Chiefs of Department of the Army sections of any joint military mission not operating under the jurisdiction of a major overseas command.

(viii) The Superintendent, U.S. Military Academy.

(ix) Such others as may be specifically designated in writing from time to time.

(2) The official designated in subparagraph (1) (iv) through (viii) of this paragraph shall exercise this authority without power of redelegation. The number of contracting officers designated in any purchasing office shall be kept to a minimum essential to efficient operation. Subject to the availability of funds and to compliance with Subchapter A, Chapter I of this title, this subchapter, and other pertinent procurement directives, authority is hereby delegated to the officials set forth in subparagraph (1) (v) through (ix) of this paragraph, to make necessary procurement of supplies and services required to carry out their functions.

(b) *Selection.* The following shall be considered as required qualifications of individuals to be designated as contracting officers:

(1) The successful completion of the Defense Basic Procurement Training Course conducted at Fort Lee, Va., or equivalent training and experience;

(2) Evidence of business acumen and ability to exercise mature judgment;

(3) High standards of character, reputation, and business ethics;

(4) Desirable personality traits; and

(5) Previous on-the-job training in a purchasing office.

(c) *Evaluation.* The following general guidelines shall be used in evaluating equivalent training referred to in paragraph (b) (1) of this section:

(1) The knowledge of Government contract law,

(2) The familiarity with the preparation of contracts and purchase orders,

(3) The thorough knowledge of Subchapter A, Chapter I of this title, this subchapter, and other procurement regulations; and

(4) The ability to analyze, interpret, and evaluate the factors involved in the determination of reasonable price.

In evaluating an individual's training on the basis of the above general guidelines, consideration shall be given to the type of procurements to be made by the individual, i.e., formal advertising or negotiation, and the magnitude and complexity of procurements. For example, satisfactory completion of the basic procurement course, conducted at Fort Lee, Va., or equivalent training, should normally provide an individual sufficient training to qualify him for appointment as a contracting officer at a post, camp, or station, or for similar type duties.

(d) *Surveillance.* In view of the high degree of individual responsibility and authority vested in a contracting officer, care shall be exercised to insure that

only well qualified individuals are appointed and retained in such positions. Performance of duty by a contracting officer shall therefore be kept under close surveillance.

(e) *Appointment.* (1) Each contracting officer shall be designated by name in a written order or instrument signed by the appointing authority, which shall set forth any limitations on his authority. Such designation shall be rescinded in the same manner upon termination of the individual's assignment as contracting officer.

(2) Civilian personnel in grades below GS-12 or military personnel below the grade of major shall not be designated contracting officers with authority to execute a contract in an original amount exceeding \$100,000. Exceptions to this requirement shall be made only in the most unusual cases by an official authorized to appoint a contracting officer. (See paragraph (a) of this section.)

(3) Where a purchasing office does not have a contracting officer of the requisite grade or rank necessary to execute contractual documents involving amounts exceeding \$100,000 such documents should be forwarded to the next higher procurement level for execution by a contracting officer who is qualified and has been designated to execute such documents. The provisions of this section, however, do not prohibit the assignment of administration of such contracts to properly qualified individuals, regardless of their grade or rank.

§ 591.451 Selection and appointment of contracting officers' representatives.

(a) *Designation.* A contracting officer may designate any Government employee (military or civilian), who is appropriately qualified, to act as his authorized representative. A contracting officer's representative may be designated by name and position title; such designation may be by position title only, so long as the designation is unambiguous and understandable to all concerned. A copy of each designation and any change or withdrawal thereof shall be furnished promptly to each contractor concerned. Each designation shall be in writing and shall define the scope and limitations of the authorized representative's authority. Designation of contracting officer's representative will remain in effect throughout the life of the contract unless (1) sooner revoked by the contracting officer having cognizance over the administration of the contract, or (2) revoked by transfer of a contracting officer's representative who has been designated by name and position title. The authority of an individual designated as a representative by position title only is terminated upon his transfer from that position. Copies of designations of contracting officer's representatives shall be placed in appropriate contract files (§ 1.308 of this title). Nothing in this section will be construed to require designation as a contracting officer's representative of each individual of an activity responsible for accomplishment of broad functions of contract administration (e.g., engineering evaluation, testing, inspection).

(b) *Authority.* A contracting officer's representative may, if so designated, represent the contracting officer with respect to one or more contracts and may, to the extent not specifically prohibited by the terms of the contract concerned, be authorized to take any or all action thereunder which could be lawfully taken by the contracting officer. In no event, shall an authorized representative, by virtue only of his designation as such, be empowered to execute or agree to any contract or modification thereof. However, the contracting officer may empower his authorized representatives to issue change orders under the Changes clause, provided such change orders do not involve a change in unit price, total contract price, quantity, quality, or delivery schedule.

§ 591.452 Selection and appointment of ordering officers.

(a) *Selection.* Individuals selected as ordering officers shall possess the following qualifications: (1) evidence of business acumen, (2) ability to exercise mature judgment, (3) high standards of character, reputation, and business ethics, (4) desirable personality traits, and (5) a sound working knowledge of Department of the Army small purchase policies and procedures.

(b) *Appointment.* (1) Ordering officers shall be appointed only by (i) persons authorized to appoint contracting officers (§ 591.450) or by contracting officers when authorized by the appointing authority, (ii) by commanders of class I and class II installations having a procurement mission as part of their function, or (iii) by the U.S. Property and Fiscal Officers of the Army National Guard.

(2) An alternate may be appointed for each ordering officer. He shall have authority to act in the absence of the ordering officer or under other necessary circumstances. Each ordering officer or alternate shall effect purchase actions in his own name, and shall execute documents only under the title "ordering officer."

(3) Letters of appointment substantially in the form set forth in paragraph (f) of this section shall state clearly the limitations and authority of individuals appointed as ordering officers. Department of Army aviators who make purchases as ordering officers in accordance with AR 715-232 do not need letters of appointment as authority to make such purchases but may cite applicable special orders or other authority for flights which make reference to AR 715-232.

(4) The number of ordering officers on class I and class II installations shall be kept to a minimum and shall not exceed (i) one per supply account, (ii) one per commissary, and (iii) one for each major tenant activity on the installation. Ordering officers may also be appointed for isolated, off-post locations and for other military activities or Government agencies satellited on a Department of the Army purchasing office.

(c) *Authority.* (1) Ordering officers shall be limited to making purchases of \$250 or less and to use of the following small purchase procedures: first, Im-

prest Fund, Standard Form 1165 (Receipt for Cash—Subvoucher), if \$100 or less, second, Standard Form 44 (Purchase Order—Invoice—Voucher), third, Blanket Purchase Agreements established by contracting officers, fourth, DD Form 1155 (Order for Supplies or Services), and fifth, DD Form 1164 (Service Order for Household Goods) as set forth in subdivision (iii) of this subparagraph. However, purchases in excess of \$250 may be made by ordering officers in the following circumstances:

(i) Commissary ordering officers may place orders against Brand Name Contracts published in Defense Supply Agency Brand Name Supply Bulletins of the SB 10-500-series, and against Defense Supply Subsistence Center requirements contracts for fresh milk and dairy products, by using DD Form 1155. Subject to the availability of funds and bona fide requirements, such orders may be placed in excess of small purchase monetary limitations. Commissary ordering officers may also place oral calls or informal requests against charge accounts established by contracting officers, in amounts of not more than \$2,500 for each call or request for brand name resale items, and in excess of small purchase monetary limitations for perishable subsistence items; and they may order from those Federal Supply Schedules which are mandatory on commissaries.

(ii) Accountable property officers appointed as ordering officers, may, subject to availability of funds and approval of the cognizant contracting officer, sign and place delivery orders (DD Form 1155) in excess of small purchase monetary limitations against General Services Administration (GSA) Stores Depots, Federal Supply Schedules, Federal Stock Pile items maintained by the Defense Materials System of GSA, and indefinite delivery type contracts (see also § 595.204 of this chapter).

(iii) Transportation officers or Transportation and Traffic Management officers may be appointed as ordering officers at installations or activities having (a) assigned area responsibilities under paragraph 1b and Appendix I, AR 55-42, or (b) local agreements within the scope of the authority established by paragraph 2c, AR 55-42 to issue service orders (DD Form 1164) estimated to cost \$2,500 or less, subject to the criteria and procedure set forth in AR 55-42 and AR 743-455.

(iv) Department of Army aviators may make purchases in accordance with AR 715-232.

(v) Ordering officers of another Military Department or other Government agency satellited on a Department of the Army purchasing office may, with approval of the contracting officer, procure such item as are required to accomplish an assigned mission and may sign and place delivery order against GSA stores depots and Federal Supply Schedules, and against indefinite delivery type contracts.

(vi) Subject to the availability of funds and approval of the cognizant contracting officer, ordering officers may make purchases in excess of small purchase monetary limitations against re-

quirement type contracts let by the Defense Petroleum Supply Center.

(2) Except as provided in subparagraph (1) (i) and (ii) of this paragraph, on-post ordering officers are limited to making purchases of supplies and services for the purpose of emergency repairs, repair of deadlined equipment, and nonstocked "fringe items" (AR 711-16) authorized for purchase by AR 715-30.

(3) An individual may be appointed as both the ordering officer and the imprest fund cashier at an isolated or off-post location if it is not feasible to utilize different individuals in each capacity, provided such appointment has been specifically approved by the cognizant Head of Procuring Activity. (See AR 37-103-1.)

(d) *Reporting requirement.* (1) The ordering officer shall submit at the beginning of each month information concerning individual purchase transactions completed during the preceding calendar month to the purchasing office to which he is responsible. This information is for consolidation into DD Form 1057 (Monthly Procurement Summary by Purchasing Office) (RCS-CSGLD-534(R5)). It shall be submitted in such a manner that it may readily be included on DD Form 1057. Appointing authorities shall insure that ordering officers are properly instructed in the preparation and submission of such information.

(2) The ordering officer shall be responsible for preparation, execution, and submission of DD Form 350 (Individual Procurement Action Report) (RCS-CSGLD-525(R6)). The purchasing office executing the contract under which such orders are placed shall furnish to the ordering officer such information as he will need to complete blocks 10A, 10B, 10C, 15, 16, 17, 18, 19, 20, 21, and 22 and any other information necessary.

(e) *Surveillance.* Installation tenant and on-post ordering officers shall be under the control and technical supervision of the installation purchasing office and will be inspected or reviewed by the contracting officer or his designee at least twice a year. Isolated or off-post ordering officers shall be under the control and technical supervision of the parent installation purchasing office and shall be inspected or reviewed at least annually by personnel designated by the parent installation commander. Copies of the inspection findings shall be retained for 1 year in the file of the ordering office and the supervising purchasing office. Such inspection reports shall include whether ordering officers are—

(1) Purchasing only items authorized to be purchased locally;

(2) Determining reasonableness of price received;

(3) Rotating purchases amounting to \$250 or less among sources of supply;

(4) Maintaining the standards of conduct as prescribed in AR 600-50, in their dealing with vendors;

(5) Purchasing items on the open market which are required to be purchased from prescribed sources;

(6) Splitting purchase transactions to avoid dollar limitations;

(7) Delegating their responsibility to others; and

(8) Complying with all applicable procurement policies and procedures.

(f) *Sample form of suggested letter for appointing ordering officers.*

SUBJECT: Appointment of Ordering Officers.
Date: _____

To: (Address to Individual, indicating rank or grade, and section or location).

1. *Appointment.* In accordance with the authority contained in Army Procurement Procedure 1-452 you are appointed an Ordering Officer for the purchase of (indicate category of supplies) effective (insert effective date). You are responsible to and under the technical supervision of the (insert name of installation) purchasing office for your actions as an ordering officer.

2. *Limitations and Requirements.* Your appointment is subject to the following limitations and requirements, and you will assure that funds have been made available in the estimated amount of the purchase to be made or order to be placed:

a. You may purchase supplies or nonpersonal services of the category stated above by use of Standard Form 44 (Purchase Order—Invoice—Voucher) only when all of the following conditions are satisfied:

(1) The aggregate amount of any one purchase transaction is not in excess of \$_____ (insert dollar limitation). Purchases will not be split to avoid this dollar limitation.

(2) The supplies or services are immediately available from the local trade area. Orders will not be placed for future delivery or performance, except against Federal Supply Schedules, General Services Administration stores depots and indefinite delivery type contracts.

(3) One delivery and one payment will be made.

(4) The use of the Standard Form 44 procedure is determined to be more economical and efficient than other small purchase methods.

b. You may purchase supplies or nonpersonal services of the category stated above by use of Standard Form 1165 (Receipt for Cash—Subvoucher) from Imprest Funds only when all of the following conditions are satisfied:

(1) The aggregate amount of the purchase transaction is not in excess of \$100. Purchases will not be split to avoid this dollar limitation.

(2) The supplies or services are immediately available from the local trade area, with cash payment to be made immediately upon pickup or delivery. Orders will not be placed for future delivery or performance, except for c.o.d. shipments and against Federal Supply Schedules and indefinite delivery type contracts.

(3) The purchase does not require detailed technical specifications or technical inspection.

(4) The use of the imprest fund procedure is administratively more economical and efficient than other small purchase methods.

c. Whenever a purchase transaction is in an aggregate amount of \$250 or less, you will insure that the price is fair and reasonable and will rotate purchases among sources of supply.

d. Whenever a purchase transaction is in excess of \$250 you will obtain competition from at least three sources of supply, where available, and will place the order with that source offering the lowest price, and which otherwise meets the purchase requirements as to delivery, quantity, quality, etc.

e. You will purchase only those supplies and services of the category stated above which are authorized to be purchased on the open market. Any doubtful cases will be referred to the contracting officer for determination prior to purchase. The contracting officer will inform you from time to time of supplies and services which are mandatory purchases from prescribed sources.

f. You will comply with the standards of conduct prescribed in AR 600-50, a copy of which will be furnished you by the contracting officer for your retention.

g. At the end of each month and no later than the ——— working day of the following month, you will furnish the purchasing office named above, information concerning individual purchase transactions which you have made during the month. The format of DD Form 1057 (Monthly Procurement Summary by Purchasing Office) will be used in the submission of such information.

h. You will prepare, execute and submit a DD Form 350 (Individual Procurement Action Report) in accordance with the provisions of Section XVI, Part 9 of ASPR. (See APP 1-452(d).)

NOTE: Paragraph 2 of the letter of appointment should state clearly the forms, i.e., Standard Form 44 (Purchase Order—Invoice—Voucher); Standard Form 1165 (Receipt for Cash—Subvoucher); DD Form 1155 (Order for Supplies or Services); DD Form 1164 (Service Order for Household Goods) and the procedures which the individual is authorized to use in effecting purchases and placing orders.

§ 591.453 Responsibility for contract administration.

(a) Commanders are responsible for administration of contracts under their cognizance in the same manner and to the same degree as any other mission or function assigned to their command. Direct responsibility for execution and administration of a specific contract rests upon the duly appointed contracting officer concerned (§ 591.402(f)). This does not mean that the contracting officer must personally act in each and every matter relating to the administration of contracts although the ultimate responsibility is his. He can properly discharge certain of his responsibilities through designated representatives (§ 591.451, paragraphs 103.1 and 103.2 in § 30.2 of this title, and paragraph 103.2 of § 30.3 of this title).

(b) A contracting officer is responsible for the administration of each contract which he executes until the contract file is closed or the contract is transferred by proper authority to another contracting officer for administration. A contracting officer assigned or attached to a particular installation or activity may be authorized to administer any contract under cognizance of that installation or activity.

(c) When the responsibility for administering a contract is transferred from one installation or activity to another, such transfer shall be accomplished by an official exchange of written communications from the transferring installation or activity to the receiving installation or activity. The contract file shall be forwarded along with data pertinent to the contract such as status of funds, payment, and statement indicating the property administrator who will maintain accountability. Appropriate written notification shall also be furnished promptly to the contractor. Duplication of matter in the contract file shall be avoided.

(d) The commander of an installation or activity receiving a contract for administration shall be responsible for—

(1) Insuring that the receiving contracting officer under his jurisdiction has

coordinated with the transferring contracting officer prior to the actual date of transfer as to the effective date and all significant details;

(2) Insuring prompt review of the contract file and, if acceptable, reply by indorsement to that effect to the transferring activity or installation. In the event that the contract file is not acceptable, prompt action shall be taken by both the receiving and transferring agencies to resolve discrepancies;

(3) Insuring prompt notification to the contractor of details relating to the change in responsibility for administration of the contract, including information as to name, address, and telephone number of the new contracting officer and others who will assist in administration of the contract; and

(4) Insuring that the contract file is fully documented with respect to the transfer.

(e) The transfer of administration of a contract from one installation to another will not relieve the original contracting officer or other contracting officers who have executed amendments or modifications to the contract from full responsibility for all acts performed by them prior to the transfer (§ 591.402).

Subpart E—Contingent or Other Fees

§ 591.503 Covenant against contingent fees clause.

Every contract for the sale or lease of Government-owned real or personal property shall contain the following modification of the clause in § 7.103-20 of this title:

COVENANT AGAINST CONTINGENT FEES (FEBRUARY 1965)

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

Subpart F—Debarment, Ineligibility, and Suspension

§ 591.601-3 Joint consolidated list.

The Assistant Secretary of the Army (Installations and Logistics) (Assistant Judge Advocate General) shall publish the Joint Consolidated List of debarred, ineligible, and suspended contractors (DA Cir 715-1).

§ 591.601-6 Inquiries from debarred, ineligible, or suspended individuals and firms.

(a) *Suspended firms or individuals.* In the event a suspended contractor or his representative makes inquiry as to the reason or cause of any of the prohibitions indicated in § 1.605-3 of this title or for any other reason, the contractor shall be informed only that consideration is being given his contractual

relationship by the Assistant Secretary of the Army (Installations and Logistics) (Assistant Judge Advocate General), and that all inquiries regarding such matters should be addressed in writing direct to the addressee listed in § 591.150(b)(2). All inquiries from other parties shall be forwarded to that addressee.

(b) *Debarred firms and individuals.* All inquiries relating to debarred bidders, including those from a debarred bidder, shall be forwarded to the addressee listed in § 591.150(b)(2).

§ 591.604-50 Restrictions during period of debarment.

(a) A bid or proposal received from a debarred firm shall be received and recorded. If such a bid or proposal is low (or in the case of surplus or salvage sales, the bid or proposal is high), it shall be rejected, and the reason therefor documented in the contract file.

(b) If the Head of Procuring Activity believes that an award to a debarred firm would be in the best interest of the Government, he shall furnish complete information of the contemplated procurement, with the reasons requiring such award, to the addressee in § 591.150(b)(2), for determination.

§ 591.605-3 Restrictions during period of suspension.

(a) *New awards.* (1) A bid or proposal received from a suspended firm shall be received and recorded. If the bid or proposal is low (or in the case of surplus or salvage sales, the bid or proposal is high), it shall be rejected, and the reason therefor documented in the contract file.

(2) If the Head of Procuring Activity believes that an award to a suspended firm would be in the best interest of the Government, he shall furnish complete information of the contemplated procurement, with the reasons requiring such award, to the addressee in § 591.150(b)(2), for determination.

(b) *Current contracts.* Administration of current contracts with suspended contractors may be continued at the discretion of the Head of Procuring Activity unless otherwise directed by the Assistant Secretary of the Army (Installations and Logistics) (Assistant Judge Advocate General). Suspension is a temporary measure pending possible criminal and civil prosecution. Exercise of certain contract rights may have an important effect on the outcome of such prosecution; however, certain rights or duties (e.g., recovery for latent defects, actions under warranty clauses, recovery or other disposition of Government property in the contractor's possession, rejection of nonconforming supplies) must be timely taken. In case of doubt of the advisability or propriety of any such action, the matter should be expeditiously referred, with accompanying recommendations, to the addressee in § 591.150(b)(2).

(c) *Terminations.* Negotiation toward settlement of terminated contracts and subcontracts will cease with the suspension of the contractor. All authorizations granted to such contractor under Part 8 of this title and Part 598 of this

chapter shall be revoked immediately. If the contracting officer believes that settlement of a terminated contract or subcontract would be in the best interest of the Government, he shall recommend such action to the addressee listed in § 591.150(b) (2).

(d) **Payments.** No payments of any type shall be made to any suspended contractor. Contracting officers holding or in receipt of invoices covering amounts due to the suspended firm shall prepare, process, and certify the necessary accompanying vouchers and forward them to the signed disbursing officer. Contracting officers shall insure that, insofar as possible, vouchers are submitted and processed in accordance with these instructions for all completed work. Disbursing officers shall promptly forward all properly certified approved vouchers in favor of suspended contractors to the Finance and Accounts Office, U.S. Army, ATTN: Chief, Accounts Receivable Section, Accounting Branch, Washington, D.C., 20315. Where the contracting officer believes that a complete or partial release of withheld funds to the suspended firm is required, he shall recommend such action by a full statement of particulars through channels to the addressee in § 591.150(b) (2).

§ 591.608-3 Addressees and copies of reports.

(a) When all of the information required by § 1.608-2 of this title is not immediately available, the report shall be prepared and forwarded with the information at hand; failure to include in the initial report any of the items set forth in § 1.608-2 shall be explained. The additional information, any changes to the information furnished, and information on all developments in the matter shall be promptly forwarded.

(b) Three complete copies of each report shall be forwarded to the addressee in § 591.150(b) (2); one copy, without inclosures or exhibits, to the addressee in § 591.150(b) (6); and one copy, without inclosures or exhibits, to The Inspector General, Department of the Army, Washington, D.C., 20310.

§ 591.608-8 General.

The prompt reporting of allegations of fraud or criminal conduct in connection with procurement activities, and of all other irregularities which could lead to debarment or suspension of a contractor is of extreme importance. Notification to the Federal Bureau of Investigation pursuant to paragraph 3, AR 22-160, submission of a "Blue Bell" report pursuant to AR 1-55, or submission of a litigation report pursuant to AR 27-15, does not eliminate the requirement for the report required by this section.

§ 591.650 [Reserved]

§ 591.651 Responsibilities.

(a) The contracting officer is responsible for prompt initiation, complete and accurate preparation and submission of reports.

(b) The Head of Procuring Activity is responsible for supervision of the contracting officer; and for administration of current contracts with contractors

recommended for suspension or debarment, or suspended or debarred contractors.

(c) The Judge Advocate General is responsible for all liaison with the Department of Justice. No officer or employee of the Department of the Army shall correspond with any representative of the Department of Justice or a U.S. Attorney concerning a matter reported pursuant to § 608 of this title without prior approval of The Judge Advocate General. This section in no way affects the requirement of AR 22-160, that certain offenses be reported to the Federal Bureau of Investigation, nor the requirement for cooperation with the FBI during the course of its investigation.

§ 591.652 Provisional withholding of funds.

When the report prepared pursuant to § 1.608 of this title includes a recommendation that the contractor be suspended, all funds becoming due to the contractor shall be withheld pending contrary advice by the Head of Procuring Activity or the Assistant Secretary of the Army (Installations and Logistics) (Assistant Judge Advocate General). All vouchers shall be administratively processed in accordance with § 591.605-3(d).

Subpart G—Small Business Concerns

§ 591.704-3 Small Business Specialists.

Within the Department of the Army, the Small Business Program and the Labor Surplus Area Program are administered jointly and are a concurrent responsibility of Small Business and Labor Surplus Advisors. Because of the dual responsibility for Small Business and Labor Surplus Area Programs within the Department of the Army, Small Business Specialists (as defined in § 1.704-3 of this title) shall be identified as "Small Business and Labor Surplus Advisors" and shall perform the duties and functions required of both Programs.

(a) **Selection and appointment of Small Business and Labor Surplus Advisors.** (1) **Appointing authority.** Small Business and Labor Surplus Advisors as defined above, shall be appointed by the Head of Procuring Activity. Appointments shall be made on a full time or part time basis consistent with the procurement mission of the cognizant installation or activity. Authority to appoint Small Business and Labor Surplus Advisors shall not be redelegated below the level of the Deputy or a principal assistant in the headquarters office responsible for procurement.

(2) **Selection and evaluation.** Comparable requirements and qualifications as set forth in § 591.450 for the selection and evaluation of contracting officers shall be used as a guide in establishing qualifications and determining the responsibilities for each appointment. Only those individuals possessing the necessary business acumen, knowledge of Army procurement policies and procedures, training and background to accomplish effectively the objectives of the Small Business and Labor Surplus Area Programs shall be considered for appointment.

(3) **Surveillance.** In view of the public relations implications inherent in the manner in which the duties are performed, care shall be exercised to insure that only well qualified individuals are appointed and retained in such positions, whether the duty is performed on a full- or part-time basis. Performance of duties as Small Business and Labor Surplus Advisor shall therefore be kept under close surveillance.

(4) **Appointment.** Designation by name of each Small Business and Labor Surplus Advisor shall be by a document, signed by the appointing authority, which shall include a statement of the specific authorities delegated to such appointee. Such designation shall be rescinded in the same manner upon termination of the individual's assignment as Small Business and Labor Surplus Advisor. In any instance where the duty of a Small Business and Labor Surplus Advisor is on a part-time basis, the appointment shall clearly indicate that assignment of such additional duty in no way relieves the individual from full responsibility for effectively accomplishing the Department of the Army Small Business and Labor Surplus Area Program requirements.

§ 591.704-50 Army Small Business and Labor Surplus Council.

(a) **Establishment.** There is established a Department of the Army Small Business and Labor Surplus Council. Chairman of the Council shall be the Department of the Army Small Business Advisor. Membership in the Council shall be composed of representatives of the U.S. Army Materiel Command, the U.S. Army Continental Army Command, and such other commands or procuring activities as may be designated by the Chairman from time to time.

(b) **Purpose and function.** (1) The purpose of the Council is to assist Army Small Business and Labor Surplus Advisors in developing uniform policies and procedures concerning small business and labor surplus area matters.

(2) The Council shall meet at the call of the Chairman to discuss special problems arising within the Department of the Army which have or may have an impact on small business or labor surplus area programs or policies.

(3) The Council shall consider submissions from field activity Small Business and Labor Surplus Advisors made through the advisors at procuring activity level for the purpose of making these programs more effective.

§ 591.752 Presolicitation data on proposed procurement actions (Reports Control Symbol SAOAS-72) (DA Form 1877).

(a) **Purpose.** DA Form 1877 is a management tool for summarizing the screening process of proposed procurements to determine (1) that consideration has been afforded labor surplus area concerns (Subpart H, Part 1 of this title) and (2) that small business concerns receive an equitable opportunity to participate in the proposed procurement (Subpart G, Part 1 of this title). It is not intended that the preparation of this

form or its review, coordination and analysis delay the procurement process at any echelon, but rather that its screening be complete and thorough to preclude delays incident to congressional inquiry or protest after the procurement has been initiated. Requirements for preparation of this form, including justifications as indicated, will not supersede requirements for procurement justifications and determinations and findings as may be required elsewhere in Subchapter A, Chapter I of this title and this subchapter. Reports Control Symbol SAOAS-72 has been assigned to DA Form 1877.

(b) *Preparation.* (1) DA Form 1877 shall be prepared for each invitation for bids (IFB), requests for proposals (RFP), or request for quotations (RFQ) issued in the United States, its possessions or Puerto Rico which may result in an award of a contract over \$10,000 except for proposed procurements indicated in subparagraph (3) of this paragraph. However, Small Business and Labor Surplus Advisors and/or other procurement officials responsible for screening proposed procurements shall review and analyze procurements excepted from DA Form 1877 to insure that these procurements fall within the excepted criteria set forth in subparagraph (3) of this paragraph.

(2) DA Form 1877 shall be prepared when the requirements of a proposed procurement have been amended so as to increase the estimated amount over \$10,000, subject to exceptions listed below.

(3) DA Form 1877 shall not be prepared when the proposed procurement—

(i) Will be solicited by procuring activities outside the United States, its possessions and Puerto Rico;

(ii) Covers personal or professional services, including architect-engineer services;

(iii) Covers electric power or energy, gas (natural or manufactured), water or other utility services;

(iv) Covers perishable subsistence or "customer demand" items for resale;

(v) Is to be placed as an order under an existing contract, under a mandatory Federal Supply Schedule contract, or under a contract of another Military Department or Government agency which is designated as a mandatory source of supply (e.g., Brand Name Contract, prison-made, and blind-made supplies). (Note: A procuring activity shall prepare DA Form 1877 for proposed procurements of an estimated amount over \$10,000 which will result in issuance of an indefinite delivery type contract (§ 3.409 of this title) or other types of agreements (§ 3.410 of this title) notwithstanding that future orders placed against such contracts will not require DA Form 1877 as stated in this section);

(vi) Is for services from educational or nonprofit institutions;

(vii) Is a contract modification pursuant to the terms of the existing contract;

(viii) Is for supplies developed and financed by Canadian sources under the U.S./Canadian Defense Development

Sharing Program (§ 1.706-1(e) of this title) and (§ 1.894-1(c) of this title);

(ix) Is for construction, including maintenance and repairs.

(c) *Responsibility for preparation.* Each contracting officer is responsible for preparation of DA Form 1877 and coordination of his decisions or recommendations relative to a particular procurement with the Small Business and Labor Surplus Advisor at the purchasing office.

(d) *Review after preparation.* Surveillance and inspection of a DA Form 1877 action shall be conducted by a representative of the purchasing office at a level higher than the contracting officer. Such inspections shall be conducted on a periodic basis to insure full compliance with the objectives of the Department of the Army Small Business and Labor Surplus Area Programs. DA Form 1877 shall be reviewed by an authority at a level higher than the contracting officer within the purchasing office when:

(1) The Small Business and Labor Surplus Advisor and the contracting officer are not in agreement and an agreement cannot be reached; or

(2) The contracting officer has a dual responsibility for performing the functions of a Small Business and Labor Surplus Advisor.

(e) *Due date and distribution.* (1) DA Form 1877 shall be prepared with sufficient leadtime to permit review by the Head of Procuring Activity and the Office of the Assistant Secretary of the Army (Installations and Logistics) 10 working days prior to issuance of the IFB's, RFP's, or RFQ's when such review is required.

(2) For proposed procurements with an estimated value over \$300,000, a copy of DA Form 1877 shall be provided through command channels to the following addressee:

Army Small Business Advisor, Department of the Army, Washington, D.C., 20310.

(3) When completed, DA Form 1877 shall be marked "For Official Use Only" until the date of award.

(4) The original DA Form 1877 shall become part of the contract file.

(5) A copy of DA Form 1877 prepared in accordance with these instructions shall be furnished to the Small Business Administration (SBA). Direct delivery shall be made to the resident SBA representative when such an individual is assigned to the purchasing office on a full time basis. Where an SBA representative is assigned on a part time or scheduled visit basis, the forms shall be retained in chronological order available for review or disposition by the SBA representative at the time of his scheduled visit. Procurements shall not be delayed pending visits by a SBA representative. DA Form 1877 shall not be mailed to the SBA representative or Regional Office.

(6) Distribution and utilization of additional copies of each DA Form 1877 covering specific proposed procurements may be established by Heads of Procuring Activities.

(7) A Procurement District of the U.S. Army Materiel Command is exempt

from the preparation of this form except for a specific procurement directed by a major subordinate command of the U.S. Army Materiel Command supported by a fund allocation where the procurement will be initiated and executed by the District. An operating element of the U.S. Army Materiel Command, other than a Procurement District, is not exempt under this subparagraph.

(f) *Specific instruction for preparing DA Form 1877.*

(1) Date Prepared—Self-explanatory.

(2) Identification No.—Each purchasing officer shall number DA Form 1877 consecutively from the beginning of each fiscal year, starting with 1, and followed by the last two digits of the fiscal year; e.g., 1-65, 2-65. If more than one activity in a purchasing office utilizes the same reporting office code, the purchasing office shall assign blocks of numbers to each activity to avoid duplication of report numbers.

(3) Item 1. Purchasing Office and Address—Enter sufficient information to establish the identity and mailing address of the purchasing office submitting the report.

(4) Item 2. Station No.—Enter the symbol and number assigned to the purchasing office by the Department of the Army.

(5) Item 3. Description of Commodity or Service—Check the appropriate block and enter the description of the commodity or service. Specific end use of item and model numbers should be used where possible; e.g., M-14 Rifle, Radio Set AN/PST-65. The description of services should be in sufficient detail to understand the scope and effort to be required.

(6) Item 4. Requisition/Request No.—Enter the identification number of the document requesting the proposed procurement.

(7) Item 5. Date Prepared—Enter the preparation date shown on the document identified in item 4.

(8) Item 6. Date Received—Enter the actual date the procurement request was received in the purchasing office.

(9) Item 7. Quantity—Enter the quantity indicated on the requesting document. If for more than one separate item, the quantity of each may be shown with description under item 3 and this block so footnoted.

(10) Item 8. Estimated Cost—Enter the estimated total price of the procurement. In case of a multiyear procurement, only the first year's price will be shown.

(11) Item 9. IFB/RFP No.—Enter the identifying number assigned to the procurement action, if available, when the DA Form 1877 is prepared.

(12) Item 10. Estimated Date of Release—Enter the date that the IFB/RFP will be released by the purchasing office.

(13) Item 11. Estimated Date of Opening—Enter the date on which bids submitted will be opened or on which proposals are due at the purchasing office.

(14) Item 12. SIC Code—Enter the assigned Standard Industrial Classification Code (§ 1.701-4 of this title).

(15) Item 13. DD Claimant Program—Enter the appropriate DDPC number that identifies the commodity described in item 3 above. Claimant Program numbers are defined in Volume I of the Department of Defense Procurement Coding Manual.

(16) Item 14. PSN—Enter a four-digit Federal Supply Classification number for supply items. EDTR action shall be assigned a code beginning with the letter "A."

(17) Item 15. Has Exact Item/Services Been Procured Previously—Indicate whether the item or service has been previously procured. The degree to which the procurement package; i.e., specifications, drawings, technical requirements, has been revised since

the last procurement will be indicated in item 16.

(18) *Item 16. If Answer to item 15 is "Yes" Is Present Item/Services—Check the appropriate block.*

(i) The proposed procurement will be considered a rebuy (identical) if the same procurement package as previously used is again included as part of the procurement. If this is not the case, the procurement is considered a revision and should be so checked. The degree to which an item has been revised is a matter of judgment.

(ii) To be considered "Minor" the procurement package being used for the proposed procurement should generally be identical to that previously used.

(19) *Item 17. Contract No.—Enter the contract number of the last contract which is considered representative of the proposed procurement.*

(20) *Item 18. Date of Award—Enter the date of award covering the contract listed under item 17.*

(21) *Item 19. Total Quantity—Enter the final total quantity placed under contract listed in item 17.*

(22) *Item 20. Total Price—Enter the final total price covering the contract listed in item 17.*

(23) *Item 21. Number of Bids Received—Enter the total number of bids received as a result of the solicitation.*

(24) *Item 22. Number of Bids Received from Small Business—Enter the number of small business concerns included in the total shown in item 21.*

(25) *Item 23. Previous Method of Procurement—Check the appropriate block to indicate the method of procurement under which the contract shown in item 17 was awarded.*

(26) *Item 24. Contractor and Location—Enter the name and location of the contractor awarded the contract shown in item 17. In addition, check the appropriate block to indicate whether the contractor was large or small at the time of award and whether the place of performance was located in a labor surplus area.*

(27) *Item 25. Proposed Method of Procurement—Check the appropriate block to indicate the proposed method of procurement.*

(28) *Item 26. Small Business and/or Labor Surplus Area Will be Given Opportunity By—Check the appropriate block to indicate the method by which small business and/or labor surplus concerns will be given an opportunity to participate in the proposed procurement.*

(29) *Item 27. Proposed Bidders List—Enter the total number of bidders to be solicited for the proposed procurement and show that part of the total that are small business and/or labor surplus.*

(30) *Item 28. Small Business or Labor Surplus Concerns Will Not be Given Opportunity to Bid Because—Check the appropriate blocks to indicate why small business and labor surplus concerns were not given an opportunity to participate in the proposed procurement.*

(31) *Item 29. Will this Procurement Offer Substantial Subcontracting—Check the appropriate block to indicate whether or not, in the opinion of the contracting officer, the proposed procurement lends itself to small business and/or labor surplus subcontracting opportunities as defined in §§1.707 and 1.805 of this title.*

(32) *Item 30. Remarks—Enter any additional information and explanation which will assist the reviewing authority.*

(33) *Name of Contracting Officer and Name of Small Business and Labor Surplus Advisor—The Contracting Officer and the*

Small Business and Labor Surplus Advisor shall sign their names in the appropriate blocks. Completion of this form represents a certification by the foregoing persons that small business and labor surplus concerns have received maximum consideration within the scope of the mission and urgency of the procurement.

Subpart H—Labor Surplus Area Concerns

§ 591.801-50 Economic utilization program.

This is a program designed to accomplish the objectives of the Labor Surplus Area Program giving full consideration to the activation and development of under-utilized economic resources of the Nation in support of defense procurement and logistics programs.

§ 591.802-50 General policy.

Successful execution of the objectives of the Labor Surplus Area Program is specifically the responsibility of the individuals designated as Small Business and Labor Surplus Advisors within the Department of the Army. However, all Army personnel engaged in procurement and related activities share in the responsibility for conscientiously and effectively carrying out the policies, procedures, and aims of the Program.

§ 591.803-50 Identification of labor surplus area concerns.

(a) For the purpose of identifying and giving appropriate consideration to labor surplus area concerns, contracting officers shall require each prospective contractor to make a written representation in his bid, proposal, or quotation indicating whether he proposes to perform as a labor surplus area concern. This will be accomplished by including substantially the following statement in the schedule accompanying each solicitation issued by Department of the Army purchasing activities in the United States, its possessions and Puerto Rico, except (1) when a set-aside for Labor Surplus Area Concerns is made pursuant to § 1.804 of this title, and (2) construction contracts:

(1) Preference in contract award is given to labor surplus area concerns in the case of labor surplus area set-asides, equal low bids, and the evaluation of bids and proposals in accordance with the Buy American Act;

(2) Bidder, offeror, or quoter represents that he ☐ is, ☐ is not a ☐ persistent, ☐ substantial Labor Surplus Area Concern;

(3) Failure to make an affirmative representation and to submit the additional information concerning areas of performance called for elsewhere in your bid, proposal, or quotation will preclude consideration of your company as a labor surplus area concern. In making such representation, bidders, offerors, or quoters will be guided by the following definition:

(a) The term "labor surplus area" means a geographical area which is a persistent labor surplus area or a substantial labor surplus area, or both, as defined below:

(i) "Persistent labor surplus area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial and Persistent Labor Surplus" (also called "Area of Substantial and Persistent Unemployment") and is listed as such by that Department in conjunction with its publication "Area Labor Market Trends," or (B) is certified as an area of substantial and persistent

Labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

(ii) "Substantial labor surplus area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial Labor Surplus" (also called "Area of Substantial Unemployment") and which is listed as such by that Department in conjunction with its publication "Area Labor Market Trends," or (B) is certified as an area of substantial labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

(b) The term "labor surplus area concern" includes persistent labor surplus area concerns and substantial labor surplus area concerns as defined below:

(i) "Persistent labor surplus area concern" means a concern that agrees to perform, or to cause to be performed, a substantial proportion of a contract in persistent labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in persistent labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in such areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(ii) "Substantial labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in substantial labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in substantial labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in substantial labor surplus areas or in substantial and persistent labor surplus areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(b) The following clause shall be included in all invitations for bids initiated by purchasing activities in the United States, its possessions and Puerto Rico, except for construction contracts. It shall be appropriately modified for similar mandatory use by such activities in solicitations which will result in negotiated fixed price contracts:

AGREEMENT TO PERFORM AS A LABOR AREA SURPLUS CONCERN (JULY 1962)

A bidder desiring to be considered for award as a labor surplus area concern must (a) make an affirmative representation that he is a labor surplus area concern (as defined in and provided for elsewhere in the schedule) and (b) identify in his bid, prior to the time of opening, the geographical areas in which he proposes to perform or cause to be performed a substantial proportion of the production of the contract. If the Department of Labor classification of any such area changes after the bidder has submitted his bid, the bidder may change the areas in which he proposed to perform, provided that he so notifies the contracting officer before contract award. Any preference for award will be based upon the labor surplus classification of the designated production areas as of the time of the proposed award.

The bidder agrees that if awarded a contract for which he would not have qualified had he not been a persistent labor surplus area concern, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award or at the time of performance of the contract, as persistent labor surplus areas; further, that if awarded a contract as a substantial labor surplus area concern, he will perform or cause to be performed a substantial proportion of the production in areas classified at the time of award or at

the time of performance of the contract as substantial or persistent labor surplus areas.

§ 591.803-51 Techniques of operation.

The philosophy and policy objectives of the Economic Utilization Program require that individuals assigned program responsibility shall promote the policy objectives set forth in § 1.802 of this title and with vigor and imagination search out, test and promote Army-wide application of those practices which will assure placing contracts with labor surplus area concerns to the maximum extent feasible. To this end Small Business and Labor Surplus Advisors normally shall—

(a) Maintain and disseminate current information on areas, industries and specific facilities which are or may become economically distressed, and which have a significant potential to participate in Defense procurement and logistics programs;

(b) In connection with specific major procurements or other logistics actions, serve as advisor and consultant to those responsible for final decisions in order to assure that a full awareness of underutilized economic resources is known and taken into consideration in making such decisions;

(c) Cooperate with State, regional, local, and industry leaders upon request by advising them on how to prepare and make known to appropriate Defense officials information regarding underutilized plants and other resources which can be employed in support of defense procurement;

(d) Study procurement policies and practices in order to recommend revisions in policies and to identify opportunities for more effective implementation of Subpart H, Part 1 of this title; and

(e) Assist contracting officers in assuring full application of the distressed labor area policy by prime contractors and major subcontractors.

Subpart I—Responsible Prospective Contractors

§ 591.902 General policy.

(a) When a preaward survey is not made and there is no evidence to the contrary, the contracting officer may determine, on the basis of any other suitable information, that a prospective contractor can conform to the requirements of the Equal Opportunity clause, as required by § 1.903-1(e) of this title. When a prospective contractor is considered to be not responsible solely because he appears to be unable to conform to the requirements of the nondiscrimination clause, the facts and circumstances together with the recommendation of the Head of Procuring Activity shall be forwarded to the addressee in § 591.150(b) (6) for review and appropriate action.

(b) Where a prospective contractor cannot be determined to be responsible (regardless of the reason), even though there is evidence to the effect that a future event would probably justify such a determination, an award contingent on such a future event is prohibited.

Subpart J—Publicizing Procurement Actions

§ 591.1002-6 Paid advertisements in newspapers and trade journals.

(a) *Authority and delegation.* Secretarial delegation to specified Army officials is contained in a Department of the Army circular of the 715-2-series.

(b) *Request for authority to place advertisement.* Requests for authority to place advertisements in newspapers shall be submitted on DA Form 192 (Request for Authority to Advertise), in quadruplicate, through channels, to the appropriate official delegated authority by the Secretary to authorize such advertising. The original of the approved DA Form 192 shall be filed with the first voucher making payment thereunder and a copy thereof shall be filed with the duplicate voucher. A reference to the DA Form 192 shall be made in the space provided for that purpose on all subsequent advertising orders placed during the period embraced in the authorization.

§ 591.1004 Disclosure of information prior to award.

For proposed unclassified procurements which are estimated to exceed \$100,000 and which involve competition, a marking of "For Official Use Only" shall be applied in accordance with AR 345-15 to (a) quotations or proposals and related working papers, and (b) requests for award approvals of negotiated contracts. This protective marking will remain in effect until negotiations are completed and the successful offeror has been awarded the contract. Procuring activities should consider utilizing the marking for other sensitive types of information associated with unclassified procurement actions, giving due consideration to the magnitude of workload involved. The marking of certain information received in confidence from private industry, regardless of the dollar value of the procurement involved is governed by AR 345-15.

§ 591.1006-50 Congressional notification of proposed awards.

(a) This section sets forth procedures for furnishing advance information on proposed contract awards in the United States in the amount of \$1,000,000 or more. These procedures apply to—

(1) All contracts of \$1,000,000 or more including letter contracts when the amount being obligated at the time of letter contract placement or definitization is \$1,000,000 or more and work placed by means of an approved project or expenditure order in a Government-owned installation or activity when the amount is \$1,000,000 or more.

(2) Modifications to existing contracts, when the amount being obligated is \$1,000,000 or more which increase the scope of work to be performed, viz: additional quantities being added, engineering changes which require additional future work to be performed. Modifications shall be clearly identified as opposed to new contracts.

(3) In multiyear procurements the total multiyear quantity and dollar amount, together with the quantities and dollar amounts related to the several fiscal years involved will be included in the initial announcement. (NOTE: An initial announcement will be made when the aggregate amount of the contract exceeds \$1,000,000, even though the first year increment may be less than \$1,000,000.) Announcement of subsequent yearly increments shall be related to previous announcement(s) and shall include pertinent total information for the previous, current and future fiscal year quantities and dollar amounts. (NOTE: Announcements of increments subsequent to the initial announcement shall be made only if the current increment is in excess of \$1,000,000.)

(4) Contract awards under \$1,000,000 that are of significant local community or congressional interest, or have public relations aspects shall be controlled at the local installation (or District) level with the information being reported by mail directly to Department of the Army, ATTN: SACIL, Washington, D.C., 20310.

(5) All announcements will include information as to—

(i) The type of fund(s) utilized. When multiple funds are involved, the dollar amount for each type will be given (e.g., PEMA \$1,200,000; O&M \$100,000).

(ii) The type of contract utilized (e.g., firm fixed-price, cost-plus-a-fixed fee).

(iii) The extent of competition achieved. This will normally consist of number of solicitations mailed and the number of bids received; sole source; in house or directed procurement; and other items as pertinent.

(b) In CONUS, the required contract information shall be telephoned to the Deputy Chief of Staff for Logistics (Chief, Procurement Statistics Office, Data Processing Center, OXFORD 5-3032, or OXFORD 7-3080, Washington, D.C.) providing data in the following format, at least 20 working hours prior to time of award:

(1) The (name and address of purchasing office) is awarding a contract for (dollar value and type of funds) to the (small business) (large business) firm of (name and address of contractor to include number and street) at (Washington, D.C., time and date). (NOTE: No award shall be made prior to 1600 hours Washington, D.C., time without prior authority through ODCSLOG, Procurement Statistics Office.)

(2) The contract is for (quantity and description of supplies or services). (NOTE: This description must be in adequate detail including the end use or background of the supplies or services described in layman's terminology, as opposed to technical terms, so that the purpose may be readily understood by persons not associated with the military. This should be presented as in news media press release form giving sufficient background information to properly describe the procurement. If the award is for a classified item it should be so indicated with no further description.)

(3) The contract is to be performed by (the contractor)/(name and address of

firm if other than the listed contractor) at (location where work will be performed) which (is) (is not) in a labor surplus area. (Note: If the work is to be performed in more than one location—list the name and address of the other plant(s) and/or contractors along with the number of dollars or percentage of work involved at each location.)

(c) To preclude premature release of contractual information, awards shall not be made before the Washington, D.C. time established in paragraph (b) of this section. National or local releases to the wire services or contractors similarly shall not be made prior to the established award time even on a "hold for release time" basis. Time of release of replies to congressional inquiries on proposed contracts pertaining to the award which have been received directly by addressees shall be coordinated with the Office, Chief of Legislative Liaison prior to dispatch.

Subpart L—Specifications, Plans, and Drawings

§ 591.1202-50 Deviations and waivers.

All deviations from and waivers of Federal and Military Specifications shall be subjected to review in accordance with instructions of the Head of Procuring Activity exercising supervision over the contracting officer. Such instructions must provide for—

(a) Adequate surveillance to minimize the use of deviations and waivers;

(b) The expeditious routing of data pertinent to waiver, amendment, or revision of the specifications to the activity responsible for requirements and standards therefor; and

(c) If the Head of Procuring Activity exercises jurisdiction over the requirements and standards of a specification, prompt correction or revision so that the specification accurately reflects the essential needs of the Government. If the Head of Procuring Activity does not exercise jurisdiction over the requirements and standards of a specification which needs revision, his instructions shall provide for frequent followup action to the responsible activity.

§ 591.1206 Purchase descriptions.

(a) The phrase "or equal" shall not be used to procure a particular "brand name" product under the guise of competitive procurement procedures to the exclusion of similar products of at least equal quality and performance that meet the actual needs. Use of a purchase description with the phrase "or equal" is not intended as a device to grant an advantage to particular manufacturers by favoring one product over other products or to substantiate a determination that no other manufacturer's products are equal in quality and performance to the products specifically named. Rejection of a low bid offering products as equal to the product named in the purchase description will be based on a determination that the products are in fact not the equal of the named product and do not meet the actual needs of the Government. Where a proper determination has been made that only one supplier can furnish the required item or items, the procurement must be accomplished by

negotiation in accordance with Part 3 of this title and Part 593 of this chapter.

(b) In a competitive procurement, before a contracting officer uses a purchase description containing an "or equal" standard, he shall either include the brand names of all products known to be "equal" or include a statement in the contract file, prior to solicitation of offers, describing efforts made to ascertain such brands and explaining the failure to name more than a single brand name in the purchase description. The cognizant Head of Procuring Activity is responsible for assuring that each competitive procurement incorporating a "brand name or equal" standard be reviewed prior to solicitation with particular emphasis upon the following items:

(1) Eliminating the use of the "or equal" standard when it is not necessary (e.g., when the invitation for bid calls for a service which the contractor must provide in part by use of a tractor capable of performing a certain function, requiring use of a brand name tractor or equal is improper—instead, the function which the tractor must be capable of performing should be described; or when a specification is used together with a brand name reference, and the specification itself, without reference to the brand name, adequately describes the Government's needs, the brand name reference should be omitted as being a requirement which serves no material purpose);

(2) Naming several acceptable brand name products and insuring that each is reasonably comparable with the other from the standpoint of quality and suitability for the Government's needs;

(3) Utilizing proper clauses and procedures as provided in § 1.1026 of this title;

(4) Amplifying the requirement for furnishing with the bid descriptive material needed (i) to determine equality of an offered "or equal" product, and (ii) to determine exactly what the bidder proposes to furnish, to make abundantly clear the information which said material must disclose (taking into account that where a bidder has previously furnished an acceptable equal item and offers to do so again the circumstances may justify omission of detailed descriptive data (40 Comp. Gen. 435)); and

(5) Insuring that the characteristics described in § 1.1206-2(b) of this title are stated in unambiguous terms, that they are generally descriptive of factors the Government considers essential, and that they are not so restrictive as to amount to a requirement for a single brand name product.

(c) Queries and requests to the contracting officer for clarification of brand name or equal standards from prospective offerors shall be coordinated with the appropriate technical and requirements personnel before reply. If an ambiguity exists in the solicitation, an appropriate clarifying amendment will be issued.

Subpart M—Transportation

§ 591.1302-2 Shipments from the United States for overseas delivery.

When items to be procured in the United States are specified for delivery at

destinations such that ocean transportation and port handling will be involved, available ports or points of exit shall be determined after appropriate coordination between the contracting officer and the sources of transportation assistance listed in § 591.1350. Unless the purchase is to be made other than f.o.b. origin under one of the conditions listed in § 1.1302-2(c) of this title on a basis which does not provide for Government election relating to port handling or ocean transportation, the solicitation shall provide either for an option by the Government to select the port or the ocean transportation or both; for delivery f.o.b. origin; or for delivery f.o.b. at a point within the United States. In such cases, the solicitation shall list the following:

(a) Available ports or points of exit where timely ocean shipping is available;

(b) Ocean transportation rates and port handling charges applicable to each port or point of exit, taken from the publication listed in § 591.1313-2; and

(c) An explanation of the basis upon which the Government will utilize the cost of shipment computed from such rates and charges in the evaluation of offers.

When transportation costs are to be used in the evaluation of offers, the difference in such costs (ocean, port handling, and inland transportation costs as appropriate) shall be considered so that the award will reflect the most advantageous price to the United States of the items landed at the overseas port. Information pertaining to ocean transportation rates, port handling charges, and inland transportation costs can be obtained from the sources of transportation assistance listed in § 591.1350.

§ 591.1302-3 Shipments originating outside the United States.

When more than one U.S. port of entry may be appropriate for shipments of items originating from outside the United States destined for delivery within the United States, the selection of the place of delivery shall be based upon consideration of differences in transportation costs (ocean, port handling, and inland transportation costs) which will reflect the lowest landed cost in accordance with § 1.1313 of this title.

§ 591.1308 Transit arrangements.

When it is considered that application of transit privileges will be advantageous to the Government, the procedures in chapter 210, AR 55-355 shall be followed.

§ 591.1312 Mode of transportation.

(a) General. Contracts and purchase orders normally shall not specify a particular method or mode of transportation or a particular carrier for delivery of contract items. When special types of transportation equipment or limited facilities for delivery and receipt of material at destination permit the use of only one mode of transportation, such special delivery requirements may, after referral to appropriate military traffic management offices, be (1) the basis for establishing the requirement for controlling the method or mode of transportation

by specifying f.o.b. origin or (2) included in f.o.b. destination purchase documents.

(b) *Parcel post.* Parcel post in many instances will provide a reliable, economical, and expeditious means of movement of supplies. Use of this service permits direct movement from the source of supply to the user, without the intermediate documentation that is required when supplies are transported through depots, air or water terminals. However, in using this service the provisions of Parts 124 and 125 Postal Manual, Post Office Department, must be strictly adhered to in regard to nonmailable matter and matter mailable under special rules. When items to be procured fall within the category of mailable material, reference shall be made to AR 55-16 and to the Postal Manual, Post Office Department, to assure compliance with policy, procedure, and attendant postal limitations, both domestic and international.

(c) *Mail service.* When contractors use their own labels for making shipments to APO's or post offices serving military consignees outside CONUS, parcels shall be stamped or printed "Army Official Mail—Contents for Official Use—Exempt from Customs Requirements" in 1/4-inch block letters immediately above the label to permit identification and expedite handling within the postal system. Use of this marking does not obviate the requirement for payment of postage by the contractor or vendor when so required by the terms of the purchase document, or when the contractor is to be reimbursed for the cost of postage.

(d) *Mailing indicia.* (1) When parcels are entered into the postal service under "Postage and Fees Paid" indicia, the contracting officer normally shall provide the contractor with official mailing labels printed "Postage and Fees Paid, Department of the Army," and preaddressed to the consignee. Labels furnished to contractors must, in every case, bear the typed, printed, or hand stamped return address of an activity of the Department of the Army below the printed words "Department of the Army" and over the printed words "Official Business." Name and address of a private person or firm may not be shown.

(2) When contractors are not furnished official mailing labels, they must use their own labels and postage. When reimbursement for postage is to be made, the contractors must agree to show the postage charge as a separate item on the invoice for the supplies shipped. Except when the charge is less than \$25 under the principle established by paragraph 3-11, AR 37-107, the postage charge must be supported by a statement of mailing, prepared by the contractor and signed by a postal employee, for each individual shipment (Part 141, Postal Manual, Post Office Department).

(e) *Freight and express shipments on commercial bills of lading to domestic destinations where contract provides f.o.b. origin.* Freight or express shipments may be made on commercial bills of lading to domestic destinations, including U.S. military air terminals and water terminals, where the contract provides for f.o.b. origin shipment as au-

thorized and under the conditions set forth hereafter:

(1) *Authority for shipment.* Where the contract provides for delivery f.o.b. origin with shipment to be made on a Government bill of lading the contracting officer or his designated representative may authorize the supplier, when justified or economical, to make the following shipments under prepaid commercial bill of lading, subject to reimbursement:

(i) Unclassified shipments not exceeding 150 pounds by any form of commercial air transportation. In view of the weight and size restrictions imposed by air carriers, a package weighing more than 100 pounds or measuring more than 44 x 24 x 20 inches should not be tendered to a commercial air carrier until it is known that the package will be accepted by the carrier;

(ii) Unclassified shipments not exceeding 250 pounds by railway express or bus express. In view of the weight and size restriction imposed by bus express carriers, a package weighing more than 100 pounds or measuring more than 45 x 24 x 24 inches should not be tendered to the bus express carrier until it is known that the package will be accepted by the carrier; and

(iii) Unclassified shipments not exceeding 1,000 pounds except wheeled vehicles or trailers by other common carriers.

(2) *Contract provisions.* When shipment is made under prepaid commercial bill of lading, as stated in subparagraph (1) of this paragraph, no contract amendment is required. The supplies move for the account of and at the risk of the Government, and become Government property when loaded on the carrier's equipment, unless otherwise provided in the contract. The contractor prepays the transportation charges as an accommodation to the Government. When the contractor will not agree to ship at his expense, subject to reimbursement, a Government bill of lading shall be prepared.

(3) *Invoice requirements.* When the contractor is authorized to ship under prepaid commercial bill of lading in lieu of a Government bill of lading, the contractor must agree to show the transportation charges as a separate item on the invoice for each individual shipment of supplies, unless otherwise permitted by the contract. The applicable inspection and receiving report (DD Form 250, DD Form 1155, SF 44, or contractor's packing list) must include a notation that prepaid freight, express, or commercial air, as applicable, was authorized. The amount shown on the contractor's invoice for the transportation costs must be supported with either the original or a copy of the carrier's receipt, except when the amount of the transportation charge is less than \$25 (par. 3-11, AR 37-107). Receipts, when required, shall be in the form of a carrier's bill which shall be—

(i) Marked "Prepaid"; or

(ii) Stamped "Paid";

(iii) Signed by the carrier's agent in the space for acknowledgment of payment; or

(iv) Bear a notation by the contractor of the check number and date paid.

§ 591.1313-2 Sources of transportation rates and related costs.

(a) Ocean rates and port handling costs shall be determined in accordance with Transportation Corps publication (TCFRT-CT) subject: World-Wide Costs and Capabilities Guide, dated 1 June 1962.

(b) Rates between points outside the United States shall be obtained from the Office of the Chief of Transportation.

§ 591.1350 Sources of transportation assistance.

Transportation advice and assistance shall be obtained from the transportation officer of the local or supporting military activity, the Regional Commander, Defense Traffic Management Service (DTMS), for domestic shipments, and from the Army Transportation Officer or Chief of Transportation as appropriate for other shipments. Requests for such advice or assistance addressed to the Chief of Transportation shall be submitted through channels.

Subpart O—Options

§ 591.1506-50 Option to renew.

(a) *Conditions for use.*

The clause set forth in paragraph (b) of this section is authorized for use in negotiated contracts for services for which all of the following conditions apply:

(1) The initial contract period ends at the end of the fiscal year;

(2) Any renewal will likewise be for a period ending at the end of the fiscal year then current;

(3) There is a continuing need to meet the operational requirements of the installation or activity;

(4) Annual funds are consistently appropriated; and

(5) It will be necessary to initiate negotiations for any extension or renewal of the original contract prior to the availability of funds therefor.

If the original contract is negotiated and signed prior to availability of funds, the provisions of § 1.318 of this title will be followed.

(b) *Clause.*

OPTION TO RENEW CONTRACT FOR ADDITIONAL PERIOD (FEBRUARY 1965)

(a) At the option of the Government, the Contractor agrees to negotiate for the continuance of services of the general type hereunder: *Provided*, That the Government notifies the Contractor in writing of the intention to negotiate for such continuation at least sixty (60) days prior to the 30th day of June each year, except that in no event will services be continued beyond 30 June 19____. In the event that performance of services is to be continued through the exercise of this option, the Government agrees to notify the Contractor of the date on which such performance will begin.

(b) The Contractor may refuse annual continuance of the services of the general type hereunder at the end of any fiscal year (30 June) by giving the Contracting Officer a written notice to the effect that such continuance will not be accepted, and the Contractor agrees to give such notice at least

one hundred and twenty (120) days prior to the end of the current contract period.

(c) The Contractor further agrees to give the Government an option to extend this contract under the terms thereof for 1 month for final contract administration and simultaneous cooperation with any Contractor who may be awarded a contract for any subsequent period.

(c) **Instructions.** (1) Before exercising the right of the Government to call for negotiation of a renewal or extension of the contract pursuant to the clause in (b) above, the contracting officer shall—

(i) Assure himself that funds may reasonably be expected to be available to continue the work for the new period;

(ii) Determine that authority to negotiate the renewal or extension exists; and

(iii) Determine that, price and other factors considered, no useful purpose would be served by competitive negotiation.

(2) Before the negotiated supplemental agreement evidencing renewal or extension of the contract is executed, the contracting officer shall—

(i) Make certain that the contractor understands that any work performed prior to receiving notice of availability of funds is at the contractor's risk; and

(ii) Insure that the supplemental agreement contains language to the following effect:

Funds are not presently available for the procurement represented by this Modification No. _____ to Contract _____. The Government's obligation under this Modification No. _____ is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the Government for payment of any monies shall arise unless and until funds are made available to the Contracting Officer for this Modification No. _____ and notice of such availability, to be confirmed in writing by the Contracting Officer, is given to the Contractor.

(3) Paragraph (c) of the clause in paragraph (b) of this section may be omitted when the contracting officer considers that its use would be inappropriate.

Subpart P—Novation Agreements and Change of Name Agreements

§ 591.1604 Novation agreements and change of name.

If authorized by the Director of Procurement, OASA (I&L) upon his referral of a novation agreement matter affecting more than one Department to a Head of Procurement Activity, such Head of Procurement Activity may coordinate directly with the other cognizant Departments and act for the Department of the Army in consummating any such agreement. When a disagreement cannot be resolved, the matter shall be forwarded promptly to the addressee listed in § 591.150(b)(6) together with the pertinent files and a recommended solution. If the cognizant Head of Procurement Activity is not authorized to coordinate directly with other Departments and to act for the Department of the Army in consummating the novation agreement, the procuring activity to which the matter is referred shall furnish an analysis of required actions and a recommended novation

agreement to the addressee listed in § 591.150(b)(6).

§ 591.1650 Novation agreements affecting only Army contracts.

(a) When, pursuant to § 1.1602 or § 1.1603 of this title, it becomes necessary to execute a novation agreement affecting only Army contracts, each cognizant contractor shall be advised that three copies of the novation agreement and one copy of each of the documents required by § 1.1602 or § 1.1603 of this title are required to be submitted to the Army procuring activity having the largest unsettled (unbilled plus billed but unpaid) dollar balance with the contractor. The Head of Procurement Activity, or his designee as otherwise provided for in this section, is authorized to execute the agreement on behalf of the Department of the Army.

(b) A Head of Procurement Activity may delegate the authority to execute novation agreements referred to in paragraph (a) of this section:

(1) To a duly authorized representative who is a member of his headquarters staff; or

(2) To a contracting officer, provided such contracting officer has a legal advisor available and is administering all of the contracts which will be affected by the proposed novation agreement.

(c) A contracting officer learning of a proposed change of name, merger, incorporation of a hitherto noncorporate contractor, or any other situation calling for execution of a novation agreement shall—

(1) Refer the contractor to the provisions of Subpart P, Part 1 of this title;

(2) Advise the contractor to notify all cognizant Army contracting officers of the proposed change at least 30 days before completion of actions which will accomplish the change; and

(3) Encourage the contractor to confer with the appropriate legal office with respect to questions concerning required documentation and terms and conditions of the novation agreement.

(d) Any necessary coordination shall be effected directly between procuring activities concerned and shall normally be initiated by the procuring activity which has responsibility for executing the novation agreement. If the Head of Procurement Activity responsible for effecting a novation agreement and the contractor concerned cannot resolve their differences with respect to a novation agreement, including the sufficiency of the evidence submitted in support thereof, the file together with a recommendation for disposition shall be submitted promptly to the addressee listed in § 591.150(b)(6).

(e) The following distribution of novation agreements shall be made by the official executing the agreement:

(1) The original signed number shall be sent to the addressee listed in § 591.150(b)(12) for the General Accounting Office;

(2) The duplicate signed number shall be furnished to the contractor;

(3) The triplicate signed number shall be retained by the procuring activity which executes the agreement; and

(4) An authenticated copy shall be furnished to each contracting officer who is administering a contract affected by the agreement (through the appropriate Head of Procurement Activity) and to the cognizant audit office.

(f) Maximum use shall be made of an administrative notice in lieu of a copy of the agreement to inform those activities which must have knowledge of such an agreement but have no requirement for the full agreement (e.g., cognizant disbursing offices). Such notice shall reflect the effective date of the agreement; a brief statement of the change effected; the name, title, and office of the individual executing the agreement; and the designation of each guarantor of performance under the agreement.

PART 592—PROCUREMENT BY FORMAL ADVERTISING

Subpart B—Solicitation of Bids

Sec.	
592.201	Preparation of invitation for bids.
592.250	Assistance in preparing bids.

Subpart D—Opening of Bids and Award of Contracts

592.403	Recording of bids.
592.406-3	Other mistakes.
592.406-4	Disclosure of mistakes after award.
592.406-50	Distribution of administrative determinations and Comptroller General decisions.
592.407-5	Other factors to be considered.
592.407-9	Protests against award.
592.450	[Reserved.]
592.451	Requests for decision by the Comptroller General.

AUTHORITY: The provisions of this Part 592 issued under sec. 3012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

Subpart B—Solicitation of Bids

§ 592.201 Preparation of invitation for bids.

Invitation for bids number. See § 610.102-3(g) of this chapter.

§ 592.250 Assistance in preparing bids.

Persons employed by or serving with the Department of the Army shall not provide assistance to bidders in the preparation of their bids other than providing general information which would not be prejudicial to other bidders; e.g., explanation of a general provision, and information as to where a document incorporated by reference may be found.

Subpart D—Opening of Bids and Award of Contracts

§ 592.403 Recording of bids.

Only approved abstract of bids forms shall be used for the recording of bids.

§ 592.406-3 Other mistakes.

(a) Authority is hereby delegated for making determinations described in § 2.406-3(a)(1) of this title to each Head of Procurement Activity, with authority to redelegate to purchasing activities having legal counsel available. Authority is hereby delegated for making determinations described in § 2.406-3(a)(2),

(3), and (4) of this title to the individuals listed in § 2.406-3(b)(1) of this title.

(b) Where a mistake in bid alleged prior to award requires a determination by the Comptroller General, the matter shall be processed in accordance with § 592.451. The required file shall include, in addition to the data specified in § 2.406-3(e)(3) of this title, a statement "that an award has not been made."

§ 592.406-4 Disclosure of mistakes after award.

In processing a mistake pursuant to Part 17 of this title where a contractor has specifically requested, in writing, that a decision be made by the Comptroller General or in a case where cognizance of the matter has been taken by that official, the matter shall be processed in accordance with § 592.451. See § 17.205-2(a) of this title.

§ 592.406-50 Distribution of administrative determination and Comptroller General decisions.

(a) *To Head of Procuring Activity.* Each Head of Procuring Activity shall monitor and maintain records of administrative determinations made under the delegated authority referred to in § 592.406-3(a) and § 2.406-4(c) of this title. Chiefs of purchasing offices authorized to make administrative determinations set forth in § 2.406-3(a)(1) of this title, shall forward to the Head of Procuring Activity, by the 10th day of each month, a record of each determination made during the preceding month, containing the following information:

(1) The data listed in § 2.406-3(e)(3) (i) through (v) of this title together with a copy of the administrative determination referred to in § 2.406-3(a), where the action was taken under the authority stated in § 2.406-3(b) of this title and § 592.406-3(a); and

(2) The data listed in § 2.406-4(d)(2) of this title together with a copy of the administrative determination where the action was taken under the authority stated in § 2.406-4(c) and (e) of this title.

(b) *To finance and accounting officer.* The contracting officer shall furnish a copy of the administrative determination, or a copy of the decision of the Comptroller General, if any, respecting each mistake in bid case, to the finance and accounting officer to support any payment made or to be made by him.

(c) *To General Accounting Office with Standard Form 1036.* See § 610.103 of this chapter and § 2.407-7 of this title.

(d) *To contract files.* (§ 1.308 of this title.)

§ 592.407-5 Other factors to be considered.

In the evaluation of bids, and prior to making an award, contracting officers shall insure that the prices to be accepted are fair and reasonable on the basis of valid criteria such as, but not limited to, prices paid on past procurements, price trend information from trade or Government publications or the daily press, current market prices for comparable quantities, extent of competitive pricing, analysis of Government

cost estimates for similar procurements, and current prices being paid by other purchasing offices for the same or similar items. The contract file shall be documented to reflect the actions taken to determine the reasonableness of the bid prices.

§ 592.407-9 Protests against award.

(a) Where a protest affects another bidder, contractor, or any other party having a legitimate interest, the contracting officer normally shall give prompt notice of the protest to such parties in order that they may take appropriate action on their own behalf. The extent of the information to be furnished to the affected parties will require the exercise of judgment on a case-by-case basis with due weight given the salient aspects of the particular case. These aspects may include, but are not limited to, legal considerations, interests of the Government, equitable consideration of the interests of the affected parties, and mitigation of losses or other injuries to any and all cognizant parties. It must be emphasized to the recipients of such notice of protest that the notice in no way relieves them of any obligations, under a contract or otherwise, but is primarily intended to afford them a fair opportunity to be heard by and to present evidence for the consideration of the agency which will render a decision in the case.

(b) Every effort shall be made to resolve protests at the lowest possible echelon. However, if in the opinion of the contracting officer, or higher echelons, it is considered desirable and in the best interest of the Government, the protest may be submitted to higher authority for resolution, or where the person making the protest has indicated he intends to carry the protest to a certain higher level of authority, the contracting officer shall submit the protest, through channels, to the indicated higher level of authority for final resolution.

(c) Except as provided in § 592.451(b) a protest case emanating in the U.S. Army Materiel Command, which is submitted for final resolution to a level of authority higher than the cognizant subordinate activity, shall be forwarded to the addressee in § 591.150(b)(17). A protest case occurring in a purchasing office not under the jurisdiction of the U.S. Army Materiel Command which is submitted for final resolution to a level of authority higher than the Head of Procuring Activity shall be forwarded to the addressee in § 591.150(b)(9). Protests submitted to higher authority shall be documented completely, including—

(1) A signed statement from the person making the protest setting forth the complete facts on which the protest is based together with any additional supporting evidence;

(2) A signed statement, when relevant, from other persons or bidders affected by or involved in the protest, setting forth the complete facts with respect to their position in the matter, together with any additional supporting evidence;

(3) A copy of the bid submitted by the protesting bidder and a copy of the bid of the bidder to whom the award has been

made or who is being considered for the award, if relevant to the protest;

(4) A copy of the invitation for bids including, where practicable, pertinent specifications, if relevant to the protest;

(5) A copy of the abstract of bids;

(6) Any other documents which are relevant to the protest, and

(7) A statement signed by the contracting officer setting forth his findings, actions, and recommendations in the matter, together with any additional information and evidence deemed to be necessary in determining the validity of the protest. If the award of a contract was made pending resolution of the protest, the contracting officer's statement will include the determination prescribed in § 2.407-9(b)(3) of this title.

(d) A protest case submitted by a contracting officer pursuant to § 592.407-9(c), shall contain the recommendation of each intervening level of authority through which the protest is transmitted.

(e) A protest filed with an echelon of a procuring activity other than the contracting officer shall be promptly forwarded to the contracting officer for processing.

(f) Where a protest is received prior to award of the contract, the contracting officer shall withhold such award pending instructions from the cognizant Head of Procuring Activity. Where considered appropriate by the Head of Procuring Activity, the award shall be withheld and the protest submitted in accordance with paragraphs (c) and (d) of this section. See § 2.407-9(b) of this title.

(g) Where a protest is received after the award of the contract, the following action shall be taken:

(1) Where it reasonably appears that the award of the contract may be held to be invalid, and a delay in receiving the supplies or services is not prejudicial to the Government's interest, the contracting officer should, subject to such instructions as the Head of Procuring Activity deems appropriate, seek a mutual agreement with the successful bidder to "stop work" on a no cost basis.

(2) If, in connection with subparagraph (1) of this paragraph, the contractor refuses to enter into such a mutual agreement, the Head of Procuring Activity may direct the contracting officer, in writing, to issue a "stop work" order, unless the Head of Procuring Activity determines that receipt of the supplies or services is so urgent that a "stop work" order would be prejudicial to the interest of the Government.

(3) Where a Head of Procuring Activity subordinate to Headquarters, U.S. Army Materiel Command, considers that guidance from higher authority is necessary, the matter of withholding contractor performance shall be submitted by the most expeditious means to the addressee in § 591.150(b)(17). Any other Head of Procuring Activity shall submit such request to the addressee in § 591.150(b)(9).

§ 592.450 [Reserved]

§ 592.451 Requests for decision by the Comptroller General.

(a) *Administrative report.* Each case submitted for a decision by the Comp-

troller General shall be accompanied by an administrative report signed by the contracting officer. This report shall (1) summarize the matter at issue, (2) state the findings and recommendation of the contracting officer, (3) indicate the actions taken, and (4) provide any additional information or evidence deemed necessary, including any documentation specifically requested by the Comptroller General or required by Subchapter A, Chapter I of this title or this subchapter. After review of the report by the cognizant Head of Procuring Activity, his deputy, or principal assistant responsible for procurement, it shall be forwarded as prescribed in paragraph (b) of this section, together with any additional appropriate information and with a statement of the position and recommendation of the reviewer.

(b) *Submission of requests.* Procurement matters shall be submitted to the Comptroller General for decision as follows:

(1) Procuring activities subordinate to Headquarters, U.S. Army Materiel Command, shall forward matters to that Headquarters.

(2) Headquarters, U.S. Army Materiel Command and the Office Chief of Engineers shall forward cases other than those involving requests for remission of liquidated damages direct to the Comptroller General in accordance with special procedures which have been prescribed. Cases pertaining to remission of liquidated damages (See § 591.310) shall be forwarded to the addressee in § 591.150(b)(1) for processing to the Comptroller General.

(3) Procuring activities other than in subparagraphs (1) and (2) of this paragraph shall forward matters by a covering letter inclosing the administrative report to the addressee in § 591.150(b)(6).

PART 593—PROCUREMENT BY NEGOTIATION

Subpart A—Use of Negotiation

Sec. 593.102 General requirements for negotiation.

Subpart B—Circumstances Permitting Negotiation

593.202 Public exigency.
593.202-2 Application.
593.207 Medicines or medical supplies.
593.207-2 Application.
593.207-3 Limitation.
593.208 Supplies purchased for authorized resale.
593.208-2 Application.
593.208-3 Limitation.
593.209 Perishable or nonperishable subsistence supplies.
593.209-3 Limitation.
593.210 Supplies or services for which it is impracticable to secure competition by formal advertising.
593.210-2 Application.
593.210-3 Limitation.
593.211 Experimental, developmental, or research work.
593.211-3 Limitation.
593.212 Classified purchases.
593.212-2 Application.
593.213 Technical equipment requiring standardization and interchangeability of parts.
593.213-2 Application.

Sec. 593.213-3 Limitation.
593.214 Technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture.
593.214-2 Application.
593.215 Negotiation after advertising.
593.215-50 Application.
593.216 Purchases in the interest of National Defense or Industrial Mobilization.
593.216-2 Application.
593.216-3 Limitation.
593.217 Otherwise authorized by law.
593.217-2 Application.
593.217-50 Limitation.

Subpart C—Determinations and Findings

593.301 Nature of determinations and findings.
593.302 Determinations and findings by the Secretary of a Department.
593.303 Determinations and findings below the Secretarial level.
593.305 Forms of determinations and findings.
593.306 Procedure with respect to determinations and findings.
593.307 Distribution of copies of determinations and findings.

Subpart D—Types of Contracts

593.408 Letter contract.

Subpart F—Small Purchases

593.605-6 Receipt of material.
593.605-50 Billing procedures.
593.607 Imprest fund method.
593.607-3 Conditions for use.
593.608-2 Order for Supplies or Services (DD Form 1155, 1155r, 1155c, 1155e-1, and 1155e).
593.608-6 Use of DD Form 1155 as a delivery order.
593.608-7 Use of DD Form 1155 as a public voucher.
593.608-8 Order—Invoice—Voucher method.
593.608-50 Use of DD Form 1155 as a receiving and inspection report.
593.608-51 Use of DD Form 1155 for shipments to Army attachés.

Subpart G—Negotiated Overhead Rates

593.703 Applicability.
593.705 Procedure.
593.706 Coordination.

Subpart H—Price Negotiation Policies and Techniques

593.809 Audit as a pricing aid.
593.850 Procedures relating to negotiation of independent research and development costs.
593.850-1 Negotiation cognizance.
593.850-2 Prenegotiation review and evaluation.
593.850-3 Technical and scientific review and evaluation.
593.850-4 Use of audit services.
593.850-5 Conduct of negotiations.
593.850-6 Recognition in contracts.

AUTHORITY: The provisions of this Part 593 issued under sec. 3012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

Subpart A—Use of Negotiation

§ 593.102 General requirements for negotiation.

(a) It is normally not consistent with the nature and requirements of a contract for personal services or for certain types of professional services to secure competition. See, for example, § 610-

204-4 of this chapter relating to selection of architect-engineers.

(b) When Standard Form 18 (Request for Quotations) is used to solicit responses from prospective contractors, the responses thereto are not offers; they cannot be "accepted" to form a contract. Accordingly, the terms "bid," "bidder," "offer," "offeror," "proposal," and "proposer" are not appropriate to describe the relationship created by a Request for Quotations and a response thereto. DD Form 746 (Request for Proposals and Proposal), with related forms as set forth in § 16.203 of this title, is also used in negotiated procurement to solicit responses from prospective contractors. DD Form 746 seeks responses which are offers, subject to acceptance, to form the intended contract. Accordingly, a solicitation on DD Form 746 should contain (by reference or otherwise) all of the definitive terms and conditions anticipated to be contained in the resulting contract, including all required clauses. Whether a solicitation is made on Standard Form 18 or DD Form 746, the "Instructions to and Information for Prospective Contractors" (however captioned) should be kept to a separate portion of the solicitation package; its terminology should be consistent with the form of solicitation; it should contain nothing inconsistent with the substantive provisions of the intended contract, and accordingly should not restate in different words provisions of the intended contract which are also a part of the solicitation package; and finally, it should be logically organized with divisions and subdivisions appropriately marked with numbers or letters for identification and cross-reference purposes.

Subpart B—Circumstances Permitting Negotiation

§ 593.202 Public exigency.

§ 593.202-2 Application.

In connection with the application of § 3.202-2(f) of this title see AR 725-50 as it relates to The Materiel Issue Priority System.

§ 593.207 Medicines or medical supplies.

§ 593.207-2 Application.

The requirements for "suitable advance publicity" is met when written solicitations have been sent to concerns engaged in the manufacture or sale of the supplies involved, including qualified dealers known or reasonably believed to be interested in selling such supplies to the Government.

§ 593.207-3 Limitation.

Procurement shall not be effected under this authority unless consistent with pertinent provisions of Subpart L, Part 5 of this title; AR 715-30; and DA Supply Manual 8-1-C3-series.

§ 593.208 Supplies purchased for authorized resale.

§ 593.208-2 Application.

The requirements for "suitable advance publicity" is met when written solicitations have been sent to concerns engaged in the manufacture or sale of the supplies involved, including qualified

dealers known or reasonably believed to be interested in selling such supplies to the Government.

§ 593.208-3 Limitation.

Procurement shall not be effected under this authority unless consistent with the pertinent provisions of Subpart L, Part 5 of this title.

§ 593.209 Perishable or nonperishable subsistence supplies.

§ 593.209-3 Limitation.

Procurement shall not be effected under this authority unless consistent with the pertinent provisions of Subpart L, Part 5 of this title.

§ 593.210 Supplies or services for which it is impracticable to secure competition by formal advertising.

§ 593.210-2 Application.

Although 10 U.S.C. 2304(a) (10) refers only to the impracticability of obtaining competition, Subchapter A, Chapter I of this title, implementation, provides that the authority to negotiate under this exception is appropriate, subject to stated limitations, for supplies or services for which it is impracticable to secure competition by formal advertising. The term "formal advertising" includes two-step formal advertising (Subpart E, Part 2 of this title). Accordingly, when 10 U.S.C. 2304(a) (10) is properly cited for authority to negotiate, competition shall be obtained when more than one source is available.

§ 593.210-3 Limitation.

The written determination to justify negotiation under this authority must be that the procurement is "for property (or services or both) for which it is impracticable to obtain competition by formal advertising."

§ 593.211 Experimental, developmental, or research work.

§ 593.211-3 Limitation.

As to whether the written determination and findings must be made at Secretarial level or may be made below that level, see §§ 3.302 and 3.303 of this title and § 593.303.

§ 593.212 Classified purchases.

§ 593.212-2 Application.

Although §§ 7.104-12 and 16.811 of this title contain guidance applicable to a procurement subject to negotiation under this exception, consideration shall also be given to pertinent provisions of the Armed Forces Industrial Security Regulation (AR 380-130), such as those relating to DD Form 254 (Security Requirements Check List) and to responsibilities relating to classified contracts as contained in AR 380-131.

§ 593.213 Technical equipment requiring standardization and interchangeability of parts.

§ 593.213-2 Application.

(a) *Definition.* The term "standardization" as used herein includes the concept of uniformity to a degree which will accomplish maximum interchangeability of parts. In order to effect a procurement under this section there must have

been executed at Secretarial level: (1) a determination to standardize and (2) a determination and findings to support the negotiation of each proposed individual procurement or class of procurements. The period of standardization, not to exceed 6 years, shall be commensurate with the useful life of the property proposed for standardization and the anticipated rate of changes in design and interchangeability of components.

(b) *Responsibility.* Responsibility within the Army for action under § 3.213-4 of this title, including maintenance of records of standardization actions and files concerning candidate items for standardization and monitoring the standardization program under 10 U.S.C. 2304(a) (13), is vested in the Commanding General, U.S. Army Materiel Command, who has assigned such responsibility to the Director of Procurement and Production. The Director of Procurement and Production assigns responsibility for initiating standardization action, according to groups or categories of candidate items, to a Head of Procuring Activity who is responsible within the assigned category for—

(1) Initiating requests for standardization approval.

(2) Initiating determinations and findings for authority to negotiate after (or simultaneous with) standardization approval.

(3) The biennial review required under § 3.213-2(d) of this title, and

(4) Reporting the results of such review with data supporting any determination made that the standardization should be continued, revised, or canceled, as the case may be.

(c) *Procedure.* The Head of Procuring Activity who has been assigned, by the Director of Procurement and Production, a category of candidate items for standardization may select any item in the category which he believes will meet the criteria contained in § 3.213 of this title and §§ 593.213-593.213-3 and initiate a request for approval of standardization in accordance with the provisions of § 593.306(f). If the facts appear to justify standardization, he shall accumulate data concerning the makes and models of the item in the Army supply system and due in from procurement. Stocks on hand and due in from procurement of any make or model proposed for standardization must constitute a significant portion of the assets of the item in the Army supply system; i.e., approximately 15 percent or more. With respect to an item for which the Army provides maintenance and repair parts in support of the Air Force, the combined assets of the two Departments may be considered; however, assets for the Military Assistance Program and for use exclusively at CONUS installations (such as installation Repairs and Utilities use) will not be considered in selection of makes and models for initial standardization action.

(d) *Military Assistance Program requirements.* Requirements for the Military Assistance Program may be included in a purchase under this authority when the Army's responsibility with respect to the Military Assistance Program equipment extends to replacement of

parts; when the Military Assistance Program requirements alone do not comprise a sufficient quantity for economical procurement; or when other circumstances, set forth in the data supporting the determination to negotiate, demonstrate the impracticability of advertising such requirement.

(e) *Cancellation considerations.* The redesign or redesignation of a model which has been standardized will not require cancellation of standardization approval if interchangeability of parts of the new model with those of the model standardized is not substantially affected and the capability and function of the item is not adversely affected. However, the standardization file of the cognizant Head of Procuring Activity and the Director of Procurement and Production shall reflect a revision to the original standardization approval, supported by a determination of the Head of Procuring Activity that cancellation of standardization is not warranted. When, for any reason, the Head of Procuring Activity or the Director of Procurement and Production concludes that an approved standardization should be canceled, written notification shall be given promptly to the addressees shown in § 3.213-4 of this title and § 591.150(b) (6). Consideration shall be given to cancellation when, after standardization, the quantity in the Army supply system of one or more of the selected suppliers falls below 15 percent, but cancellation is not required unless it reasonably appears that in future negotiated procurements such supplier will not be able to offer effective competition. Nevertheless, when the quantity of one or more of the selected supplies falls below 15 percent, standardization should not be continued beyond one procurement except for the most compelling reasons.

§ 593.213-3 Limitation.

(a) *Negotiation.* Approval of standardization does not constitute authority to negotiate a contract for procurement of the equipment or its parts. In this connection, see § 593.305(p) (1) and (2).

(b) *Competition.* In negotiating procurements under this authority, effective competition shall be established between the selected suppliers (where more than one has been selected), and award shall be made to the firm submitting the lowest responsive proposal or quotation. Any contract for a standardized item shall contain a clause that the prices charged do not exceed the prices charged the contractor's most favored customer for similar quantities.

(c) *Standardization period.* The authority of a Head of Procuring Activity to continue standardization following the required biennial review does not extend to continuation of standardization beyond the period of standardization approved by the Secretary.

§ 593.214 Technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture.

§ 593.214-2 Application.

When avoidance of duplication of private investment is relied upon as a factor justifying negotiation under this

authority, the supporting data submitted with the proposed determination and findings for Secretarial action shall contain convincing factual information that such duplication would be likely to result in additional cost to the Government. With respect to furnishing Government-owned industrial facilities, see §§ 593.305(h) and 593.306(h).

§ 593.215 Negotiation after advertising.

§ 593.215-50 Application.

Subject to the limitations prescribed in ASPR 3-215.2, this authority may also be utilized for the procurement of an amount less than the entire portion of the procurement originally advertised if it is possible to determine unequivocally that the negotiated price of such portion is lower than the lowest rejected bid price applicable to such portion.

§ 593.216 Purchase in the interest of National Defense or Industrial Mobilization.

§ 593.216-2 Application.

(a) *General.* The implementation of 10 U.S.C. 2304(a)(16) in Subchapter A, Chapter I of this title must be read with emphasis upon the necessity for negotiation either to have a particular prospective contractor, or a particular plant or facility, available, and such necessity must arise from genuine considerations of national defense or industrial mobilization in event of a national emergency. Both the supporting data and the determination and findings must name the particular prospective contractor(s) with whom negotiation will be undertaken. Moreover, the supporting data must clearly demonstrate that industrial mobilization, or national defense considerations in event of a national emergency, form the basis for the procurement with the particular prospective contractor(s) named. Even though industrial mobilization, including production in completely separate plants, is a necessary consideration in placing a procurement, if competition is feasible, the use of formal advertising (including two-step procedures) must be considered, especially for the initial contract(s). Examples of procurements which might properly be negotiated under 10 U.S.C. 2304(a)(16): a contract for maintaining a facility in standby or layaway so as to have it available for production in event of national emergency; a contract the primary purpose of which is to keep the existing lines and personnel of a mobilization base supplier active and current for national defense or industrial mobilization reasons; a contract to train a particular contractor as a second or additional mobilization base producer.

(b) *Industrial mobilization projects.* Procedures pertaining to approval of industrial mobilization projects are set forth in part in AR 37-40. However, the fact that a project falls under the Army Production Base Support Program does not necessarily justify use of negotiation authority under 10 U.S.C. 2304(a)(16). If the work to be performed under a production engineering measure is virtually all design, development and test (i.e., design and test of a new, untried pilot line and of new production engineering

solutions, development of production type specifications, design of new special tooling or of new special test equipment), the negotiation exception under § 3.211 of this title might be appropriate, notwithstanding that PEMA funds are to be used. For example, that exception might be appropriate when the contract effort is to modernize an existing Government owned facility by the application of new techniques to the equipment, processes and specifications, or to develop a procurement package suitable for competitive procurement from "raw" technical data and test results. If the authority in § 3.211 of this title is sought in a case where PEMA funds are to be used, the request for Secretarial approval of the determination and findings shall be forwarded to the addressee listed in § 591.150(b)(1).

§ 593.216-3 Limitation.

The authority under 10 U.S.C. 2304(a)(16) shall be used in preference to using the authority under 10 U.S.C. 2304(a)(12) but shall not be used when any other negotiation exception requiring Secretarial approval is appropriate.

§ 593.217 Otherwise authorized by law.

§ 593.217-2 Application.

The contract shall cite as authority to negotiate in addition to 10 U.S.C. 2304(a)(17), the applicable statute or United States Code reference. In addition to Section 15 of the Small Business Act (15 U.S.C. 644) mentioned in § 3.217-2 of this title, the following United States Code references are illustrative of statutes which may be cited in appropriate cases in conjunction with § 3.217 of this title:

- (a) 41 U.S.C. 48, blind-made supplies (Subpart E, Part 5 of this title).
- (b) 18 U.S.C. 4124, prison-made supplies (Subpart D, Part 5 of this title).
- (c) 5 U.S.C. 2308, training of civilian employees;
- (d) 49 U.S.C. 65, transportation services procured from any common carrier lawfully operating in the territory where such services are to be performed;
- (e) 10 U.S.C. 1079, hospital and physicians contracts relating to dependent medical care.

§ 593.217-50 Limitation.

Except as provided in § 3.217-2 of this title and § 593.217-2, this authority shall not be used to negotiate a contract without the prior approval of the cognizant Head of Procuring Activity or higher authority, and the contract file should contain, or cross-reference, information indicating the necessary approval.

Subpart C—Determinations and Findings

§ 593.301 Nature of determinations and findings.

(a) *General.* A "Determination and Findings" constitutes a special form of approval required by statute or regulation as a predicate to the taking of certain action. The findings are statements of fact essential to support the determination logically and must, therefore, both cover each fact required by the statute or regulation as a prerequisite

to the determination and be consistent with the determination. The determination is a conclusion based on the findings and stated in precise conformity with the statute or regulation. Normally, a determination will not be stated in the alternative (see Example 1 below); however, cases exist where such a statement may be proper (see Example 2). When the facts adequately support alternatives, these may properly be stated conjunctively (see Example 3).

Example 1. (Illustrating with a portion of ASPR 3-214.3): It is normally improper for the determination to state "that procurement by formal advertising either would be likely to result in additional cost to the Government by reason of duplication of investment, or would result in duplication of necessary preparation which would unduly delay the procurement." Instead, the alternative most responsive to the facts set forth in the findings should be used alone.

Example 2. A statement in the alternative may be used in an appropriate class determination; e.g., where some of the procurement actions proposed would duplicate investment and others would unduly delay the procurement.

Example 3. When both alternatives are supported by fact, the determination can properly state "that procurement by formal advertising would be likely to result in additional cost to the Government by reason of duplication of investment and would result in duplication of necessary preparation which would unduly delay the procurement."

(b) *Types of action supported.* In addition to the types of action enumerated in § 3.301 of this title, determinations and findings are also used to support actions such as those set forth in §§ 593.302(a) and 593.303. Negotiating authority under an exception in §§ 3.201 to 3.217 of this title is required to support the making of a supplemental agreement which effects a change in the scope of the original contract; for example, authority to negotiate must exist in order to make a new procurement by supplemental agreement. However, negotiating authority under Subpart B, Part 3 of this title is not required to effect contract modifications which are inherent to the administration of such contract. For example, authority to negotiate under one of the exceptions in §§ 3.201 to 3.217 of this title is not required to support execution of a modification resulting from action taken under an ASPR-prescribed Changes clause, or to execute a supplemental agreement settling all or part of a termination claim under a proper Termination for Convenience clause or to negotiate a price adjustment under an authorized contract clause which calls for price revision under stated circumstances.

(c) *Changes in requirements.* (1) When a determination and findings has been approved to authorize negotiation and new requirements for which negotiation is justified on the same basis as the approved determination and findings become known before award, a new determination and findings covering the total known requirements will be obtained rather than an amendment to the existing determination and findings; the new determination and findings shall provide for supersession of the original without prejudice to any action taken thereunder.

(2) When such new requirements not covered by the original determination and findings, become known after award, a separate determination and findings should be obtained to cover the additional requirements.

(3) The authority to negotiate granted by a determination and findings covers that procurement which is reasonably and fairly contemplated and described at the time of execution of the determination and findings. Within this context, if negotiations reveal that increased quantities can be procured under the approved program and available funds, and if the factual basis for the determination remains valid, the estimated dollar amount and related estimated quantities as stated in the determination and findings are not in themselves to be regarded as a limitation upon the authority granted.

(d) *Class determinations and findings.* The use of a class determination and findings to support negotiation of more than one contract or purchase is appropriate when the proposed procurements are in a logical and distinct class, are to be made at or near the same time, and all require essentially identical justification under the same negotiation exception. The identity of the property, items, or services to be procured must be sufficiently known and presented to the determination and findings approving authority so as fairly to apprise him of the procurement actions to which his approval would apply. Such identification is required to avoid an unlawful delegation of authority under 10 U.S.C. 2311.

(e) *Premature disclosure of information.* Premature disclosure of information contained in a determination and findings and its supporting data might have the effect of providing an unfair advantage to one prospective contractor over another or of creating the impression that fair treatment is not being accorded to all concerned. Accordingly, determinations and findings and supporting data not classified for other reasons shall be marked "FOR OFFICIAL USE ONLY," such marking to remain in effect until award of a contract thereunder or until other circumstances justify removal; provided, that this requirement need not be applied to proposed determinations and findings and supporting data when the contracting officer or higher authority determines that there is no fair risk of prejudice to cognizant prospective contractors.

(f) *Expiration.* The authority to act under a determination and findings expires on exercise of the authority granted or on the arrival of a specified expiration date, whichever first occurs. Authority to negotiate which has been granted by a determination and findings and has not been exercised expires (1) as specified in the determination and findings or its supporting data, or (2) at the end of the fiscal year in which the determination and findings was signed, if no expiration date is specified; provided, however, that in either case where the solicitation has been initiated prior to the expiration of the authority under the determination and findings, such authority is considered

to continue until award of the contract(s) resulting from that solicitation.

§ 593.302 Determinations and findings by the Secretary of a Department.

(a) In addition to the listing set forth in § 3.302 of this title, determinations, and written findings in support thereof, may be required at Secretarial level in relation to—

(1) Section 3.404-7 of this title. This provision is concerned with use of a contract providing for retroactive price redetermination after completion. See also § 593.305(c).

(2) 10 U.S.C. 2353. This statute relates to the acquisition or construction by, or the furnishing to, a contractor of research, developmental, or test facilities and equipment and specialized housing therefor under a research or development contract. See also §§ 593.305(d) and 593.306(d).

(3) 10 U.S.C. 2354. See also §§ 593.305(e) and 593.306(e) relating to use of an indemnification provision in a research and development contract.

(4) Section 3.213 of this title. See also §§ 593.213 and 593.306(f) relating to approval of standardization.

(5) Section 3.807-3(b) of this title. This provision is concerned with a Secretarial waiver in exceptional cases of requirements for submission by contractors of cost and pricing data and certificates relating thereto.

(6) [Reserved]

(7) Part 17 of this title (Public Law 85-804). An action in the nature of a determination and findings required to be taken at Secretarial level is designated either as a Memorandum of Decision or a Memorandum of Approval (e.g., see §§ 17.208 and 17.303 of this title).

(8) Contracts for personal services of certain experts or consultants and for stenographic reporting services. An annual Secretarial determination covering the making of such contracts, combined with specific delegations of authority in this category, is made by the Secretary as described in Subpart J, Part 594 of this chapter. A separate Secretarial determination and findings is required to support such a contract not covered by the annual delegation. The delegation of authority applicable to DEFSIP-A and DEFSIP-B personnel is limited by 10 U.S.C. 1584 and 2356.

(9) Architect-engineer services under 10 U.S.C. 4540 and other pertinent statutes. An annual determination is made pertaining to contracts for architect-engineer services, together with specific delegations of authority as described in § 610.204-4 of this chapter.

(b) A Secretarial determination and findings does not authorize the negotiation of a contract which it is feasible and practicable to make by formal advertising (10 U.S.C. 2304(a) and 2310(b)) nor does it authorize the making of a contract which is otherwise precluded by law or regulation. Language in a determination and findings that "property (services) may be procured by negotiation subject to the availability of funds and providing that the property (services) has otherwise been authorized for procurement" in effect limits the authority

granted to the proper use of the negotiation method of making the procurement.

§ 593.303 Determinations and findings below the Secretarial level.

(a) Each Head of Procuring Activity may, if otherwise proper, make class determinations and findings with respect to authority to negotiate pursuant to §§ 3.202, 3.207, 3.208, and 3.210 of this title.

(b) A contract in an amount of \$100,000 or less properly negotiated under the provisions of 10 U.S.C. 2304(a)(11) may be modified by negotiation under the authority of the original determination and findings even though the modification causes the total contract price to exceed \$100,000 provided (1) the modification is within the scope of the original contract and itself does not exceed \$100,000, and (2) the need for the modification arises out of the necessities of contract administration and was not known or contemplated at the time of negotiation of the original contract. A proposed procurement shall not be divided into installments or phases of \$100,000 or less to avoid the requirement for a Secretarial determination and findings authorizing negotiations under 10 U.S.C. 2304(a)(11).

(c) Determinations of estimated cost, as referred to in § 3.405-5(c)(2) of this title, for the purpose of measuring the maximum fixed fee (see 10 U.S.C. 2306(d)) or maximum total fee under § 3.405-4(c) of this title may be made by the cognizant Head of Procuring Activity or his authorized representative. Each such determination of estimated cost for fee measurement purposes shall be made a matter of record in the contract file. It is particularly important that such determination be recorded at the time of award of any cost-reimbursement type contract which contains provisions both for cost incentives and for excluding certain estimated costs from the target cost, or which contains a firm-fixed price or cost sharing element. The determination and findings described in § 593.305(p)(3) is not suitable for the purpose cited above.

(d) The authority to make determinations and findings set forth in § 3.303(a)(3) of this title is limited to the cognizant Head of Procuring Activity and his designees.

§ 593.305 Forms of determinations and findings.

(a) *General.* A determination findings should be succinctly stated and usually should not exceed 1½ pages in length. Descriptions and examples of individual formats for various types of determinations and findings are set forth in the following portions of this paragraph. See § 593.306 for description of supporting data which shall accompany a determination and findings submitted for Secretarial approval.

(b) *Authority to negotiate.* The written determination and findings authorizing negotiation as required under §§ 3.202, 3.207, 3.208, and 3.210 through 3.216 of this title, shall be prepared substantially in the form set forth in paragraph (p)(1) of this section. A written

determination and findings to authorize negotiation is not required under §§ 3.201, 3.203, 3.204 (see, however, Subpart J, Part 594 of this chapter), 3.205, 3.206, 3.209, or 3.217 of this title (see, however, § 593.217-50).

(c) *Method of contracting.* The format set forth in paragraph (p)(3) of this section has been prepared to illustrate a proper form of determination and findings to authorize use of a cost-plus-a-fixed-fee contract. Adaptation of this format shall be made to justify and set forth whatever determination is required and appropriate for any other method of contracting in accordance with Subpart D, Part 3 of this title.

(d) *Specialized research and development facilities.* (1) A determination and findings to authorize use in a contract for research, development, or both, of a provision for acquisition or construction by, or furnishing to, the contractor of research, developmental, or test facilities and equipment under 10 U.S.C. 2353 shall contain findings which—

(i) Identify the contract and state that it is a contract for research, development, or both;

(ii) Describe the research, developmental, or test facilities and equipment and any specialized housing therefor;

(iii) Include information concerning ownership of the realty on which any nonseverable facility is to be installed or constructed;

(iv) State that any new construction or improvement involved does not have general utility;

(v) Describe the basis upon which the property is to be provided to the contractor;

(vi) Describe (or refer to an inclosure describing) the contract provisions relating to the items in subdivision (ii) of this subparagraph; and

(vii) State that such facilities and equipment are necessary for performance of the contract because (giving reasons).

(2) The determination shall state that—

(i) It is necessary for performance of the contract for the Department of the Army to provide the described property;

(ii) The provisions proposed to be incorporated into the contract concerning such property are adequate to protect the interests of the United States; and

(iii) Subject to availability of funds and pursuant to the provisions of 10 U.S.C. 2353, the proposed provisions are authorized for use in said contract.

(e) *Indemnification.*—(1) *Under 10 U.S.C. 2354.* (i) A determination and findings to authorize use of an indemnification provision under 10 U.S.C. 2354 shall contain findings that—

(a) The contract in which the proposed clause is to be used (such contract to be adequately identified) is a Department of the Army contract for research or development, or both;

(b) The performance of the contract will subject the contractor (and his subcontractors, if appropriate) to unusually hazardous risk(s);

(c) Such unusually hazardous risk(s) is (are) defined in the proposed clause (or will be defined in the proposed contract) as follows: (Set forth the definition or refer to it as an inclosure.); and

(d) It will be in the best interests of the United States to indemnify the contractor pursuant to the provisions of 10 U.S.C. 2354 because: (Set forth the reasons.)

(ii) The determination shall be worded substantially as follows, adapted to the situation involved:

I therefore approve the use in (the proposed contract, or contract DA _____) of a clause indemnifying the contractor against claims, losses and damages from the unusually hazardous risk as described above, provided such clause contains all of the provisions required by 10 U.S.C. 2354.

(2) *Under Public Law 85-804.* A Memorandum of Approval to authorize use of an indemnification clause under authority of Public Law 85-804 shall, as provided in § 17.303 of this title, contain the information called for in § 17.208-2(a) of this title. It shall also contain a statement that the contract which is to contain the indemnification clause shall comply with the provisions of § 17.206 of this title.

(f) *Approval of standardization.* See paragraph (p)(1) of this section for sample format.

(g) *Waiver of requirement for submission of cost or pricing data and certification thereof.* The format set forth in paragraph (p)(4) of this section shall be used as a guide for Secretarial waiver pursuant to § 3.807-3(b) of this title.

(h) *Furnishing existing Government-owned facilities under § 13.301(b) of this title.* The format in paragraph (p)(5) of this section shall be used as a guide in documenting the contract file concerning a determination to use existing Government-owned facilities under criteria set forth in § 13.301(b) of this title.

(i) [Reserved]

(j) *Contracts for personal services of experts and consultants and for stenographic reporting services.*

(1) The document submitted for Secretarial approval to authorize a contract for the personal services of an expert or consultant shall generally conform to that set forth in paragraph (p)(6) of this section.

(2) The format in paragraph (p)(6) of this section shall be adapted for use in connection with Secretarial approval of authority to contract for stenographic reporting services. It should be noted that 5 U.S.C. 55a (see § 594.1001(a)(1) of this chapter) does not authorize negotiation of a stenographic reporting services contract. Stenographic reporting services may be obtained under a Federal Supply Schedule only when authority to contract for such services has been either granted under the annual Secretarial delegation (Subpart J, Part 594 of this chapter), or under Secretarial authority granted in a determination and findings as prescribed by this section.

(k)-(o) [Reserved]

(p) *Sample formats for determinations and findings.*—(1) *For authority*

to negotiate. The following format pertains to authority to negotiate an individual contract; appropriate modification shall be made to adapt its use for authority to negotiate a class of contracts.

DEPARTMENT OF THE ARMY

DETERMINATION AND FINDINGS

Authority to Negotiate an Individual Contract

1. I hereby find that:

a. The (name of procuring activity) proposes to procure [by negotiation (describe the scope of work or nature of property)]¹.

b. The estimated cost of the proposed procurement is \$_____.

c. Procurement by negotiation of the above described property² is justified because [_____].³

d. Use of formal advertising for procurement of the above described property² is impracticable because [_____].⁴

[e. The proposed procurement will not call for quantity production within the meaning of ASPR 3-211.3.]⁵

2. Upon the basis of the findings set forth above, I hereby determine that [_____].⁶

3. Subject to the availability of funds and providing that the above property¹ has otherwise been authorized for procurement, it may, therefore, be procured by negotiation for a period of _____ from the date hereof pursuant to 10 U.S.C. 2304(a) (_____) and paragraph _____ of the Armed Services Procurement Regulation.

4. The above determination applies to an approved program for fiscal year _____ (and to planned programs for fiscal years _____ and _____).⁷

¹ If for "services," adapt the form appropriately, to include auxiliary verbs and other syntax.

² For ASPR 3-213 substitute:

[(quantity to be procured and description of the equipment) after competitive negotiation with the following suppliers:

Manufacturer	Model No.
ABC Co.	XM267
XYZ Co.	B12A6J

³ See pertinent "Application" paragraph of ASPR; e.g., for ASPR 3-213 use: [the property to be procured is equipment used for (describe what functions the equipment performs) and it is necessary to procure such equipment from selected suppliers in order to limit the variety and quantity of parts that must be carried in stock (or one of the statements in ASPR 3-213.2(a) (ii) or (iii), as appropriate). The factors set forth in ASPR 3-213.2(b) have been considered and support negotiation of the proposed procurement.]

⁴ State reasons; e.g., for ASPR 3-213 substitute: [such method would defeat the objectives of the approved standardization of the equipment and would not insure procurement from the selected suppliers whose product has been approved for standardization.]

⁵ Use for ASPR 3-211; otherwise omit.

⁶ Use the determination required under the pertinent paragraph of ASPR; e.g., for ASPR 3-213 use: [(i) the equipment constitutes technical equipment; (ii) standardization of such equipment and interchangeability of its parts are necessary in the public interest; and (iii) procurement of such equipment and of its parts by negotiation is necessary to assure that standardization and interchangeability].

⁷ Parenthetical language is normally appropriate only for research and development procurement to be incrementally funded in planned future program years.

(2) For approval of standardization.

DEPARTMENT OF THE ARMY
APPROVAL OF STANDARDIZATION

1. Pursuant to ASPR and APP 3-213 the (name of procuring activity) has proposed in a letter, dated _____, which has been forwarded with approval by Headquarters, U.S. Army Materiel Command, to limit for a period of _____ years the procurement of (description of items) to the following makes and models:

Make Model

2. The foregoing item is used for _____ and is subject to a recurring procurement requirement. The proposal is based upon facts showing that standardization of such equipment, for purposes of Army procurement, to meet tactical requirements and requirements in Alaska, Hawaii and in other areas outside the remainder of the United States will be in the public interest, taking into consideration the factors enumerated in ASPR 3-213.2(b). The other Military Departments do not object to the proposed standardization.

3. Accordingly, pursuant to 10 U.S.C. 2304 (a) (13), I hereby determine that the equipment described above is technical equipment whose standardization and the interchangeability of whose parts are necessary in the public interest; provided, that the Head of Procuring Activity having standardization cognizance of the foregoing item shall review the facts supporting the foregoing standardization approval at least once every 2 years and the foregoing determination shall remain in effect for a period of _____ years unless the said Head of Procuring Activity or the Director of Procurement and Production (USAMC) shall find that a material change in the supporting facts necessitates a cancellation of such standardization.

(3) For method of contracting. See paragraph (c) of this section.

DEPARTMENT OF THE ARMY
DETERMINATION AND FINDINGS
Method of Contracting

1. I hereby find that:

a. The (name of procuring activity) proposes to procure (describe the scope of work, or the nature of the property¹ called for).

b. The estimated total cost of the proposed procurement is \$_____, chargeable to _____ funds.

c. [No reliable design or performance specifications exist and the precise method of accomplishing the work cannot be established in advance but is subject to improvisation and change during contract performance. The nature and magnitude of various significant cost elements will depend upon factors to be developed during performance. As to essential features of performance, the most that can fairly be bargained for is the contractor's best effort, and control over incurrence of costs, within a significant range of flexibility, should remain with the Government. The actual cost of performance cannot be estimated within a range of values sufficiently exact to permit establishment of a reliable firm price, of an acceptable target price, or of a realistic cost ceiling.]²

2. Upon the basis of the findings set forth above, I hereby determine that pursuant to [10 U.S.C. 2306(c)]³ and paragraph [3-405.1 (c)]⁴ of the Armed Services Procurement Regulation that the use of a [cost-plus-a-fixed-fee]⁵ contract [is likely to be less costly than other methods of contracting]⁶ and [that it is impracticable to secure supplies⁷ of the kind or quality required without the use of a cost-plus-a-fixed-fee contract].⁸

3. A [cost-plus-a-fixed-fee]⁹ contract may therefore be used for this procurement provided [it is first established that the proposed contractor's accounting system is adequate

for the determination of costs applicable to the proposed contract and that suitable arrangements are made for appropriate surveillance by Government personnel during performance to give reasonable assurance that inefficient and wasteful methods will not be used.]¹⁰

¹ If for "services" adapt the form appropriately, to include auxiliary verbs and other syntax.

² Insert a summary of such pertinent facts as are available and relevant to support the determination to be made in paragraph 2, e.g., as in the bracketed illustration shown.

³ Insert the appropriate statutory or ASPR reference.

⁴ Cite the appropriate contract type.

⁵ In this illustration, either of the bracketed determinations alone would be satisfactory if most responsive to the facts. The language used should set forth the determination required by the paragraph (here it is from ASPR 3-405.1(c)) appropriate to the type of contract involved.

⁶ This bracketed illustration is taken from the "Application" paragraph pertaining to cost-reimbursement type contracts; such provision should conform to similar requirements in Part 4 of ASPR Section III when another type of contract is involved.

(4) For waiver relating to requirement for submission of cost or pricing data and certificate. Use the following guide in the preparation of an appropriate letter.

Subject: Waiver Relating to Requirement for Submission of Cost or Pricing Data and Certificate.

To: (Head of Procuring Activity).

1. I hereby find that:

a. The (name of procuring activity) proposes to enter into (identify the contract)¹ with (identify the contractor) for the procurement of (identify the supplies or work). Performance of the contract is intended to take place at (identify place of performance).

b. Pursuant to ASPR 3-807.3(b) [(1)]² the [proposed]³ contractor [would be]⁴ [is]⁵ required to submit [cost]⁶ [pricing]⁷ data together with the appropriate certificate called for under ASPR 3-807.4. However the following reasons justify a [partial]⁸ waiver of these requirements: [_____].⁹

2. In consideration of the foregoing reasons and pursuant to authority vested in me under 10 U.S.C. 2306(f) and ASPR 3-807.3(b), I hereby authorize to be waived in connection with the foregoing procurement the requirement for submission by the contractor of [_____].¹⁰

¹ Adapt format as necessary for "class of contracts."

² Use [(i)] or [(iii)] if appropriate.

³ Select the appropriate words.

⁴ Set forth reasons which make the proposed procurement an exceptional case. The following factors are not intended to be all inclusive, but suggest areas wherein cogent facts should be presented: succinct description of efforts made to avoid the need for waiver; sources for the required supplies or work other than the proposed contractor and reasons why the proposed procurement is necessary; available methods for determining reasonableness of price; measures which will be taken to protect the Government's interest; if waiver is to be partial, a description of the actual waiver required and assessment of reliability of that cost and pricing information which will be available if waiver is granted.

⁵ Set forth the requirements to be waived. Note that waiver may be partial; e.g., a waiver might be limited only to the certificate, only to a certain portion of the cost data, etc.

(5) For authority to furnish Government-owned facilities (§ 13.301(b) of this title). Use the following as a guide:

Subject: Government-owned facilities.

1. In connection with the [proposed]¹ procurement of [_____]² existing Government-owned facilities having an estimated acquisition cost of \$_____ will be [made]³ [offered to prospective contractors as being]⁴ available for use in performance of the contract.

2. These facilities may be provided since to do so [is necessary to obtain contract performance]⁵ [will most likely result in substantially lower cost to the Government of the items to be produced considering all costs involved such as costs of transportation, installing, maintaining, and reactivating such facilities in comparison with the cost to the Government of the contractor's use of privately owned facilities].⁶

¹ Describe the supplies and services, the proposed contract, and (if applicable) the proposed determination and findings for negotiation authority.

(6) For authority to procure personal services by contract. Use the following guide in preparation of an appropriate letter.

Subject: Contract for Personal Services of (name of contractor).

To: (Head of Procuring Activity).

1. To the extent that the personal services to be performed for the Army by [_____]¹ as a [_____]² during Fiscal Year _____ are of the type described in 5 U.S.C. 55a and [Section 501, Public Law 88-446],³ I find and determine on the basis of information presented to me by the (procuring activity) that:

a. The procurement by contract of such services [is]⁴ advantageous to the National Defense; and

b. The existing facilities of the Department of the Army [are]⁵ inadequate for the performance of such services.

2. Subject to the availability of funds and provided the contract complies with the applicable provisions of ASPR and of APP Section IV, Part 10, you are authorized to approve such contract and the award thereof if the compensation payable thereunder is reasonable and does not exceed that permitted by law.

3. You are further authorized to delegate the authority above granted.

4. The authority granted herein is subject to the enactment of a Department of Defense Appropriation Act for Fiscal Year _____ and inclusion therein of an authorization substantially the same as that provided by Section 501 of the Department of Defense Appropriation Act, 1965 (Public Law 88-446). However, since the Department of Defense Appropriation Act, _____, has not yet been approved, any such contract shall be made subject to the limitations contained in the pertinent Joint Resolution, providing for temporary continuation of appropriations pending enactment of the Department of Defense Appropriation Act, _____, until such time as said Appropriation Act is enacted.]⁶

¹ Insert contractor's name and address, or other identification.

² Enter profession or field of expertise; e.g., [consulting geologist].

³ A more recent reference to the corresponding recurring provision in the annual DOD Appropriation Act may be used when available.

⁴ Use "will be" when paragraph 4 is appropriate.

⁵ This paragraph 4 should be used only in cases where Secretarial approval is sought prior to enactment of the DOD Appropriation Act for the fiscal year in which the services will be rendered.

§ 593.306 Procedure with respect to determinations and findings.

(a) *General.* (1) The basic procedure for obtaining approval of a determination and findings requiring Secretarial action consists of: (i) preparation and submission to the appropriate Secretarial office (see paragraph (p) (1) of this section) of the document to be signed (e.g., see § 593.305(p)), (ii) a request for its approval containing supporting data, and (iii) the necessary transmittal. The submission shall be made in an original and five copies in sufficient time to allow a minimum of 15 working days within Headquarters, Department of the Army.

(2) The originating office is responsible for such care in the preparation of the submission as to make corrections unnecessary at higher echelons except on the basis of changes occurring after the file has been forwarded for review and approval. However, each echelon which reviews the transmittal has responsibility for the accuracy and completeness of the supporting data and conformity of the documents submitted with prescribed format. A higher procurement echelon should not hesitate to correct, retype, or otherwise modify the determination and findings or part or all of the supporting data, after coordination with the originating office, when such modification is necessary to eliminate critical delay.

(b) *Authority to negotiate.* Each request for Secretarial determination under 10 U.S.C. 2304(a) (11) through (16) shall consist of—

(1) The letter of transmittal in paragraph (p) (1) of this section;

(2) The Request for Approval of Determination and Findings in paragraph (p) (2) of this section; and

(3) The Determination and Findings in § 593.305(p) (1).

(c) [Reserved]

(d) *Specialized research and development facilities.* Each request for Secretarial determination under 10 U.S.C. 2353 shall contain—

(1) A description of the procurement to include contract type, funds used, property or services being procured, contractor, any urgency considerations, and any explanation necessary to apprise the approving authority of unique or unusual aspects. Factual information shall be given in sufficient detail to sustain a finding that the contract is for research, development, or both.

(2) A description of the research, developmental, or test facilities and equipment and specialized housing therefor which are to be provided for in the contract at the expense of the United States. This information shall include estimated cost, details concerning ownership of land on which they are to be affixed; severability; statement as to whether any of the proposed facilities have general utility; details which show that the property is of a special character useful primarily for research, developmental, or test purposes (see AR 415-25); and an explanation of why such property is necessary for the performance of the contract.

(3) An explanation of the basis upon which the facilities and equipment are to

be provided to the contractor (e.g., loan, lease, other); whether they are readily removable or separable without unreasonable expense or unreasonable loss of value; and a description of the provisions which are to be included in the contract either for—

(i) Reimbursing the United States for the fair value of the property at or near the completion or termination of the contract.

(ii) Options afforded the United States to acquire any underlying land, or

(iii) Alternative provisions together with an explanation of why such alternatives are adequate to protect the interest of the Government.

(e) *Indemnification.* (1) Each request for Secretarial action authorizing use of a provision indemnifying the contractor against an unusually hazardous risk should contain—

(i) A description of the proposed or existing contract (e.g., contractor, nature of procurement, type of contract), urgency considerations, if any, and any explanation necessary to apprise the Secretary of any unique or unusual aspects of the procurement.

(ii) An analysis of the elements of the contract which are considered to be unusually hazardous, with justification as to why such elements are so considered, including information concerning possible extent of loss (e.g., geographical areas involved, population density).

(iii) Information as to any prior experience indicating demand or absence of demand for indemnification by the same contractor or other contractors in similar situations, and indicating the likelihood of loss occurring as a result of performance of the contract, to include an appropriate statement concerning efficacy of preventive measures.

(iv) Information concerning the availability of commercial insurance at a reasonable rate. This information must be current, factual, and complete, and must show that a bona fide effort has been made to explore feasible commercial insurance coverage.

(v) A copy of the proposed indemnification clause, or an ASPR reference thereto. See Subpart G, Part 10 of this title.

(2) If the Secretarial action is to be a determination and findings under 10 U.S.C. 2354, the request must also contain—

(i) Factual information showing that the contract, in which the proposed clause is to be used, is for research or development or both;

(ii) A statement that the proposed indemnification clause complies fully with the requirements of 10 U.S.C. 2354, and

(iii) The reasons why the use of such indemnification clause would be to the interest of the Government.

(3) If the Secretarial action is to be a Memorandum of Approval under Part 17 of this title (Public Law 85-804), the request shall contain a statement that the proposed action will facilitate the national defense, and the request shall contain factual information supporting such a finding.

(f) *Approval of standardization.* Each request for Secretarial approval of standardization (§ 593.213) shall be sub-

mitted through the addressee listed in § 591.150(b) (17) and shall contain—

(1) A description of the item proposed for standardization and what it is used for;

(2) A designation of two makes and models which are recommended for standardization; provided, however, that if the circumstances clearly justify more or less than two, the recommendation may conform to the circumstances stated;

(3) A statement showing distribution of assets on hand and due in from procurement which will indicate—

(i) The total of the quantities for tactical use, for use in Alaska and Hawaii, and for use outside the remainder of the United States, and

(ii) The quantity for use at installations in CONUS;

(4) A statement of number of years for which standardization is proposed, with supporting facts;

(5) A statement of whether there will be a continuing need for the item;

(6) A statement expressing the conclusions reached with respect to each factor enumerated in ASPR 3-213.2(b), together with facts supporting each conclusion (see para. (p) (2) of this section, Note 19c);

(7) The written comments, including any objections, of the Department of the Navy, the Department of the Air Force, and the Defense Supply Agency concerning the proposed standardization action. The request for comments of those agencies shall cite as the subject, "Requirements for Technical Equipment Proposed for Procurement Without Advertising (RCS OSD-1022)," and

(8) The proposed determination for Secretarial approval (see § 593.305(p) (2) for sample format).

(g) *Waiver of requirement for submission of cost or pricing data and certificate thereof.* Each request for Secretarial waiver shall contain an elaboration of the facts stated in the Secretarial letter (see § 593.305(p) (4)). Since the requirement for cost or pricing data and for a certificate concerning the current status thereof is imposed by statute (10 U.S.C. 2306(f)), any request to the Secretary for approval of a waiver shall include a statement that the contractor has been advised of the statutory basis for such requirement. Also, such request shall contain facts which demonstrate that the case is of an unusual, unique, or extraordinary character such that the granting of the waiver would not establish a precedent which would tend to diminish the intended broad application of the statute.

(h) *Furnishing existing Government-owned facilities under § 13.301(b) of this title.* When existing Government-owned facilities are to be furnished a contractor, a determination using the format in § 593.305(p) (5) as a guide is suitable for documenting the contract file that the ASPR criteria have been met.

(i) [Reserved]

(j) *Contracts for personal services of experts and consultants and for stenographic reporting services.* Requests for Secretarial approval of a determination and findings related to personal services of experts and consultants shall comply

with the provisions of § 594.1003-3(a); for stenographic reporting services, with § 594.1006.

(k) **Architect-engineer services.** Normally architect-engineer services will be procured only by those procuring activities to which such authority is annually delegated as described in § 610.204-4. If a procuring activity to which such annual authority has not been delegated is required to obtain such services, arrangements for effecting the procurements should be made with the appropriate Corps of Engineers District.

(l)-(o) [Reserved]

(p) **Sample formats for requesting Secretarial determinations and findings—(1) Letter of transmittal.** Use the following format as a guide.

Subject: Request for Approval of Determination and Findings.

Through: []¹

To: Assistant Secretary of the Army (), Washington, D.C., 20310.

Inclosed is a Request for Approval of a Determination and Findings under [10 U.S.C. 2304(a) ()]² in the estimated amount of \$, with appropriate supporting data.

(Signature)

Inclosure as:

¹ Here show any intermediate headquarters in procurement channels which is required to review the submission. In addition, if RDTE funded, show [Chief, Research and Development]; if funded otherwise, show [Director of Procurement].

² If 10 U.S.C. 2304(a) (11) is considered applicable, show (Research and Development) except as provided in APP 3-216; show (Installations and Logistics) when required in APP 3-216 and in other cases where 10 U.S.C. 2304(a) (11) is not applicable.

³ Enter the appropriate subparagraph for negotiation authority in the parentheses. For determinations relating to other than negotiation authority this form is permissive; if used, enter the correct authority in lieu of the bracketed language.

(2) **Request for approval of authority to negotiate.**

REQUEST FOR APPROVAL OF DETERMINATION AND FINDINGS¹

AUTHORITY TO NEGOTIATE [A CLASS OF APPROXIMATELY CONTRACTS]²

1. **Description of proposed procurement.**
a. [Describe what is to be procured.]³
b. The proposed procurement is supported by valid requirements and the required program approvals [have been]⁴ obtained.
c. [The proposed procurement will not call for quantity production within the meaning of ASPR 3-211.3.]⁵

2. **Planned actions for [class of contracts].**⁶ Approximately procurement actions (purchases, contracts, supplemental agreements) will be negotiated as follows:

Item Est. No. of Actions	Quantity (est) Types of Actions	\$Value (est) Remarks

3. **Urgency of requirements.** [Requirements and delivery dates are critical, because]⁷

4. **Funds.**

a. The estimated cost of this procurement is \$ chargeable to [PEMA NO YEAR FUNDS. Current Material Program Annex VI— Procurement Schedules Data: Date— Page No. , Item No.]⁸

b. [Explain need for and advantages of contracting beyond the period for which funds are currently available.]⁹

5. **History of procurement.**

a. A brief history of this procurement follows:¹⁰

- (1) Amount obligated to date: \$.
- (2) Prior contractors: .
- (3) Prior contract types: .
- (4) Method of previous procurement: .
- b. Status of the procurement package is []¹¹

6. **Details of proposed contract(s).** Type(s) of contract(s) proposed to be negotiated [follow(s)].¹²

7. **Status of competition.**

a. There will (will not) be competition in the proposed procurement.

b. []¹³

c. Actions being taken to avoid future non-competitive procurement are []¹⁴

8. **Publicizing the proposed procurement.** The proposed procurement [will be synopsized].¹⁵

9. **Planned extensions of this procurement.**

[Contemplated extensions of the proposed procurement and estimated cost thereof are]¹⁶

10. **Justification of negotiation.** Procurement by negotiation under 10 U.S.C. 2304 (a) () and ASPR 3- is justified because:

a. []¹⁷

b. Details showing why the justification set forth in a above applies are []¹⁸

11. **Impracticability of advertising.** Procurement by formal advertising, including two-step advertising, is not feasible or practicable because []¹⁹

12. **Explanation of the class to which determination and findings will apply.** The justification for negotiation of each of the proposed procurements is based upon essentially the same facts; the same exception under 10 U.S.C. 2304(a) is applicable to each of the proposed procurements; and the supplies and/or services to be procured are related in the following manner: []²⁰

13. **Duration of negotiating authority.** Proposed expiration date of the attached determination and findings is months from date of its approval.

14. **Remarks.** Additional pertinent remarks are []²¹

15. **Recommendation.** It is recommended that the Assistant Secretary of the Army [(Installations and Logistics)]²² approve and sign the attached determination and findings.

Coordination:

Certification: The statements made herein and in the attachments hereto are correct to the best of my knowledge and belief.

(Originating Office)²³

(Project Manager)²⁴

(Legal Counsel, Procuring Activity)

(Head of Procuring Activity, his Deputy or Chief of Staff)

(General Counsel, Hq. USAMC)²⁵

(Director of Procurement and Production Hq. USAMC, or his Deputy)²⁶

Foregoing has been reviewed and approval of Determination and Findings is recommended.

(The Judge Advocate General, Chief, Procurement Law Division)

(Director of Procurement = OASA (I&L))

¹ This format is prescribed as a guide in preparation of supporting data. Applicable paragraph headings (capitalized and under-

scored as shown) shall be utilized. The content of each paragraph must be responsive to the heading and not duplicative of other paragraphs. These notes furnish instructions and illustrations to be used as a guide for the negotiation authorities but are not exhaustive in this respect. The examples given are merely explanatory; the pertinent details of each procurement should be stated rather than a mere recital of general language which, although it may be true, is not informative, factual, or specific.

² Use [an Individual Contract], if appropriate.

³ In this description, use specific but non-technical terms. If the procurement is—

(i) For services, give illustrative examples.

(ii) Under ASPR 3-216.2, describe the type of measure or activity and the property item(s) to which related.

(iii) Under ASPR 3-211, describe the work accomplished to date and identify the additional work to be procured.

(iv) Under ASPR 3-211 and is one of a series of related procurements, show the relationship of each procurement, and, unless a class determination and findings is to be used, include appropriate cross references. To illustrate—

(A) In one of a series of procurements to improve the efficiency of internal combustion engines, describe for a class determination and findings (or cross reference for an individual determination and findings), the fact that one is for, say, the improvement of piston configuration, another is for the improvement of fuel metering, and a third is for the improvement of valve operation.

(B) If a determination and findings has been approved for the instrumentation of a missile range and a subsequent request for the design of an integrated instrumentation of the same range is submitted, cross reference the later submission to the prior determination and findings and explain the relationship between the two procurements sufficiently so as to permit an informed judgment whether there is any duplication of effort.

⁴ Use [are being], if appropriate.

⁵ Include this paragraph only if ASPR 3-211 is applicable.

⁶ Insert [INDIVIDUAL CONTRACT], if appropriate. In that case, replace bracket 7 with the following text:

Proposed date of:

- a. Award of contract
- b. Contract completion
- c. Delivery

When delivery date is related to the justification for negotiation or otherwise has an important bearing on the procurement plan to be followed, show quantities, if any, opposite dates. In the case of a class determination and findings, include under "Remarks" information concerning the time(s) of planned completion of performance under the proposed contracts.

⁷ Under "Types of Actions" indicate FFP, FPIF, CPFF. Under "Remarks" state whether competitive or sole source and include any other explanatory information.

⁸ If the requirement and delivery dates are not critical, so indicate but add any desired explanation or comment.

⁹ When other than PEMA funded, use the following, as appropriate: [MAP funds. Common items order number , quantity , and country]

[Annual FY O&MA funds, justification for use of such funds being as follows:]

[Army RDTE NO YEAR FUNDS, Army Project Number is]

[NO YEAR FUNDS of the (requiring DOD Agency).]

[ARMY STOCK FUNDS.]

When a procurement is to be funded from more than one type of fund, e.g., PEMA for the main items, ASF for certain spares, and O&MA for maintenance items, the specimen

language above shall be modified accordingly, but the required information applicable to each type of fund shall be furnished.

"This explanation is normally required only in connection with a research and development procurement which is to be made subject to availability of appropriations to cover periods beyond that for which current funds will provide, as authorized in 10 U.S.C. 2352. Also, it may be required in case of other than a research and development procurement where a negotiated multiyear contract (ASPR 1-322) is proposed.

"Under 'Method of previous procurement,' indicate such facts as relate to sole source, competitive negotiation, negotiation exception used, formal advertising. If there has been no previous procurement, so state. The term 'previous procurement' means a procurement either for essentially the same item or for accomplishment of the same general objective. For example, in an R&D or services procurement, a proposed procurement would not be for the identical work which was previously performed; yet an earlier procurement may be a 'previous procurement' in the sense that it represents an effort toward the same goal or services to accomplish the same general purpose. If an earlier procurement called for a feasibility study on a method of approach to development of an item, and the proposed procurement is for exploratory development of that item, the feasibility study is a 'previous procurement.' Likewise, if an earlier procurement was for development of a prototype and the proposed procurement is for services to support testing and evaluation of the prototype, the earlier procurement is a 'previous procurement.'

"As applicable, show (i) whether available now; (ii) why not available if it is not; (iii) whether being obtained in this procurement; (iv) what representations, if any, were made to the Secretary in past procurements that it would be obtained; (v) why it is not being obtained in this procurement if it is not. The term 'procurement package' means that combination of drawings, specifications, models, purchase descriptions, performance or testing standards, which is adequate for procurement by formal advertising, either regular or two-step. Other terms such as 'technical data package' have been used by procuring activities to mean the same thing as 'procurement package' as described above, or to mean something less, such as a package of data sufficient only for the developer or for one or two firms with prior experience in production of the same or similar items. The intent here is to require a description of the condition of the procurement data available to permit the Secretary to make an informed judgment regarding one of the important elements of whether formal advertising is practicable, as well as whether competitive negotiation is feasible. Hence, the information to be shown in this subparagraph should indicate whether the procurement data available is adequate for formal advertising, or if not, the degree of competition, if any, which can reasonably be anticipated.

"Follow here with a listing unless the following language is pertinent for substitution in the brackets [are shown in par. 2 above]. Explain any proposal for other than firm fixed-price or incentive type contract. When ASPR contains a restriction on the type of contract proposed to be used as applied to the circumstances of the procurement (e.g., when a proposed contract might likely be considered to be for engineering development and it is proposed to use a CPFF contract, which under ASPR 3-405.5(c) would be a deviation) explain whether a deviation will be sought or reasons why a deviation is unnecessary.

"In this subparagraph either indicate that competition will be obtained from all known qualified sources as to those procurements

in which there are more than 10 qualified sources for competitive negotiation or identify by name the firm or firms with which negotiations will be undertaken. If the information is already shown under another paragraph (e.g., par. 10 when the negotiation is to be under ASPR 3-216), use a cross-reference to avoid repetition. Show also whether the firms to be solicited include all Planned Emergency Producers (ASPR 1-302.5), if any; and identify all current producers and all firms which are Planned Emergency Producers when the procurement is to be negotiated under ASPR 3-216. It is recognized that the situations giving rise to sole source negotiation tend to be similar; i.e., first production of a newly developed item where a procurement package is not available; Advance Production Engineering measure to be procured from the developer; where elaborate Government tooling, etc., is involved and is available to only one prospective contractor. Similarity of situations should not result in stereotyped language, used repetitively in all similar cases. The request for D&F authority must be factual; specific facts, typical of the necessity for sole source negotiation in the particular procurement at hand should be given.

"Describe the actions which will be taken, or explain that such actions are not applicable to the procurement, giving reasons. In case of a class determination and findings where there will be both competitive and sole source procurement there should be set forth (i) an explanation of the major procurements which will be made on a sole source basis and the reason therefor (e.g., that the described procurements are a part of the closed loop and necessary to be made with the systems prime contractor to preserve his responsibility for the reliability and integrity of the system), (ii) an identification of the proposed procurements which will probably be competitively negotiated, and (iii) a statement to the effect that, consistent with APP 1-350, items will be broken out for competitive procurement (by formal advertising when feasible) and that no procurements will be negotiated under the proposed determination and findings unless clearly within the scope thereof. Make cross reference to paragraph 2 to avoid repetition.

"Alternate language is [will not be synthesized for the following reasons: (include in this statement a citation of the appropriate exemption under ASPR 1-1003.1).]

"Another alternate is [there are no present plans for extension of the proposed procurement]. These two alternates are applicable to procurements under ASPR 3-211. The information to be furnished under this paragraph 9, when the procurement is under ASPR 3-211, should reflect the gist of advance procurement planning required under APP 1-350 in the aspects either of further RDTE effort to achieve the desired end result or of transition from the RDTE stage to the production stage. A statement that no plans exist for extension of the proposed procurement should be used only when the proposed contract is the last RDTE effort and no production effort is anticipated. If the procurement is not under ASPR 3-211 show under this paragraph, as appropriate: estimated quantity of follow-on procurement, if known; anticipated increases in requirements prior to completion of proposed contract, if any; whether the proposed procurement is the last planned purchase of the item(s) involved; other information concerning future requirements which has a direct bearing upon, and should be considered in connection with, the proposed procurement.

"Here, when applicable, enter the reasons given under the pertinent 'Application' paragraph of ASPR (e.g., ASPR 3-211.2, 3-212.2, 3-213.2, 3-214.2, and 3-216.2).

"Illustrations for the various negotiation exceptions are set forth below:

a. If under ASPR 3-211.2, the features of the property or services which demonstrate

that they involve either theoretical analyses, exploratory studies, practical application of investigative findings and theories, or quantities and kinds of property or services necessary for experiment, research or development shall be explained. For example: If the proposed procurement is for research work on a new type of ammunition, having a code name PSST it is not enough to say that the proposed contract will call for theoretical analysis, exploratory studies and experiment in the field of physics and chemistry in that "it calls for effort under project PSST." It should say for example, "... in that it calls for work necessary to release and control the latent energy in XYZ compounds. This work represents new and untried methods; will involve an attempt to prove certain chemical and electromagnetic hypotheses heretofore suggested only by mathematical calculations." Another example: If the proposed procurement is for services, tests, and reports necessary to experimental and developmental work, this paragraph might state: "There is presently available a wide variety of electronic measuring devices which, when used alone and in favorable environments, are capable of measuring within acceptable accuracy limits the ----- of ----- These devices are widely used in the substantial research and development effort being carried out by the Army in the field of -----, and it is necessary to obtain from them reliable data which will show the characteristics and defects of newly developed items and components in that field. When these measuring devices are used in conjunction with each other or under extreme environmental conditions, it is believed that substantial but relatively constant errors are introduced into the measurements which they provide. The proposed work will call for computer analyses of mathematically predicted behavior of such devices and for selective verification of the computer results by actual measurements. From the data produced the contractor will compile a handbook of reliable correction factors applicable to these measuring devices under stated combinations of circumstances. This handbook will be used in numerous research and development projects in the mentioned field of endeavor as a necessary adjunct of the instruments to which it pertains."

b. If under ASPR 3-212.2, the justification for negotiation will have been either that the contract has been classified by proper authority as Confidential or higher, or that because of security considerations the contract should not be publicly disclosed. The supporting data in this subparagraph should contain sufficient facts to explain either the basis for the classification of the contract or the security considerations which the Secretary should know in order to determine that the property or services to be procured should not be publicly disclosed. In this connection, reference may be made to sources of information readily available in the Secretary's office which furnish such explanation. Further, this statement should appear in this subparagraph: "No other negotiating authority set forth in ASPR 3-201 through 3-217, except as provided in ASPR 3-204.3, is available for the proposed procurement."

c. If under ASPR 3-213, include the following after current verification of their accuracy:

(i) Standardization of [show supplies and pertinent makes and models] received Secretarial approval on (date). [Add, if the date was more than two years ago; Standardization was reviewed as required by APP 3-213.2 (b) and was continued on (date).]

(ii) The proposed procurement is for technical equipment which is (for tactical use) (for use outside the United States).

(iii) The proposed procurement may reasonably be expected to result in substantial savings because it will limit the number and

variety of items in the supply system from an estimated ----- to approximately -----; it will reduce the expense of training personnel and publishing literature on a variety of major items; it will permit cannibalization and interchangeability of parts so as to reduce down-time and crash requisitions; and it will facilitate support in combat.

(iv) There are approximately ----- producers of this type of equipment and without procurement by negotiation of the makes and models approved for standardization it would not be feasible to achieve the results of standardization by geographical deployment of procurements made by formal advertising.

(v) The proposed procurement will not adversely affect the capability of industry to meet mobilization requirements of all Departments, nor will it adversely affect coordinated military specifications and standards.

(vi) The proposed procurement can be effected at a reasonable price. Prices of prior procurements are available for comparison; the item or a near equivalent is sold to purchasers outside the Government and a most favored customer clause will be included in the contract. Submission of pricing data will be required during negotiation.

(vii) The current design of the items to be procured and interchangeability of the parts with those on hand has not changed appreciably from the date on which standardization was approved.

d. If under ASPR 3-214.2, and if the reason in paragraph a above, is stated to be that preliminary engineering and development work have already been performed by the proposed contractor which would not be usable by any other supplier; that substantial time and effort have already been expended in developing an initial production model and that important design changes will continue to be developed during production, this paragraph b must give substantiating and illustrative facts in support. In the example these facts might be that "approximately \$5 million and 18 months of engineering and development work were performed by the proposed contractor from August 1960 to February 1962 to produce a prototype from which, 6 months later, the first production model evolved; that the production model incorporates significant changes such as -----, resulting from laboratory and user tests; no procurement package exists (as explained in paragraph 5b above) and no producer who has not performed the development and participated in the tests could produce the item from the model without duplicating at least \$2 million dollars of the development effort already performed, particularly in terms of the fabrication of special test equipment and special tooling used for the ----- title to which is either not in the Government or which is committed to use in current production and cannot be made available to other prospective contractors. Further, recent development of the XYZ amplifier and the ABC long-life miniature power source dictate their incorporation into the item as soon as possible and as a result there will continue to be important changes in design during production which can be reasonably accomplished only by technical personnel who are familiar in detail with development to date." If the basis for negotiation is or includes undue delay, the facts in paragraph 3 must show the urgency of the requirement and this subparagraph must explain the factors which would cause the delay. For example: "A critical assembly integral to this equipment is a unique type of universal joint which provides articulation for the frame, certain axles and the operator's compartment. The drawings specify that manufacturing processes be in accordance with specific standards. However, the standards cover requirements only and the means of meeting the requirements must be learned from ex-

perience with the particular technique of fabrication utilized by each manufacturer. The individual components of this joint cannot be manufactured by taking full advantages of all tolerances. Even the sequence of lathe operations is critical in relation to subsequent required heat treating so that the particular sequence is different for each manufacturer, depending upon the sum and nature of the processes he follows. A failure to follow a sequence dictated by experience will result in unpredictable distortion in the finished component, rejection of an inordinate number of this highly expensive item, and elaborate testing, requiring at least 3 months delay. At least \$5,000 per test would be required to determine acceptability from an inexperienced producer. Essentially the same considerations apply to a substantial number of other critical assemblies and apart from the added expense, the cumulative delay would preclude delivery of the end item in time for it to be furnished as GFP by ----- under other contracts on which the Government is already committed."

e. If under ASPR 3-215, it will be noted that there is no "Application" paragraph. However, in such case, this paragraph 10 of the supporting data must contain or refer to an attached abstract of bids, must set forth the reasons for the contracting officer's belief that the prices bid are unreasonable, including an explanation of the range of prices which the contracting officer considers to be within reason, and must explain why the procurement should not or cannot be readvertised. Moreover, this paragraph must contain a statement that, "If negotiation as requested is authorized, nevertheless no contract will be awarded under this authority unless the three conditions enumerated in ASPR 3-215.2 are met."

f. If the proposed procurement is under APP 3-216.2 (b) or (c) and if the circumstances justifying negotiation are to make a particular producer available in the event of a national emergency, the facts should explain why the particular producer would not otherwise be available in such event. If the proposed procurement is under APP 3-216.2, include the following:

(i) [The supplies appear in the DA Master Urgency Planning List] or [Action has been taken to include the supplies in the DA Master Urgency Planning List.];

(ii) [Lead time for initial production is -----; reorder lead time is -----]. The minimum quantity for an economical production run is estimated to be -----;

(iii) [Current producers and planned mobilization suppliers are:]; unless shown under paragraph 7;

(iv) [Government investment in facilities and tooling in plants of planned mobilization suppliers is:]; and

(v) Unless set forth under paragraph 7 above, describe any production or mobilization characteristics of the property or services which require negotiation with a particular, named supplier.

"It is often the case that formal advertising is impracticable because it is impossible to describe the work to be done in sufficient detail to permit evaluation of bids under criteria applicable to formal advertising, or because negotiation is necessary in order to permit the Government before award to analyze cost and pricing data and to select the contractor best able to perform. These reasons may be cited when applicable; however, it is essential that any additional significant reasons be given. For example, if the proposed procurement is not an economical production run and is proposed to be added to an existing contract, the impracticability of advertising the small quantity should be given. Other examples illustrative of the impracticability of formal advertising might be: (1) That elaborate special tooling having an acquisition cost of approximately \$----- is, and will continue to be, in use by the development contractor and his subcon-

tractors during a substantial period of production under the proposed procurement; that such tooling cannot be offered to other producers who would have to acquire its approximate equivalent either at their own expense, which would result in excessively high proposals, or at the Government's expense and the Government has no need for such additional tooling; (2) That elaborate special tooling having an acquisition cost of approximately \$----- has been acquired by the Government and is in the hands of current producers; that although such tooling can be offered to other producers, it would require approximately \$----- and ----- months to effect the transfer, neither of which would apply to the current producers; that this cost differential would preclude parity among bidders in formal advertising; and that the time required for the transfer of the tooling and for it to be set up in the plant of a new producer would delay deliveries by at least ----- months; (3) That no procurement package exists which contains sufficiently definitive descriptions and performance characteristics of components to permit suppliers other than the development contractor either to produce the (vehicle, etc.) or to submit a realistic bid thereon and that significant design changes resulting from (user tests not yet completed, etc.) are expected to be incorporated into the (vehicle, etc.) during production which will materially affect price, dictating that the Government be in a position from the outset of having access to the contractor's cost data in order to insure realistic contract prices; (4) That a complete procurement package suitable for advertised procurement does not exist; that only producers having proven experience can perform the special processes required to produce such critical components as -----, without an elaborate and time-consuming training and testing program requiring at least ----- months; that definite criteria do not exist for evaluation of technical proposals under two-step advertising procedures; and that it is necessary, in order to obtain competition to be able to select the successful offeror from among those proven producers who will be able to understand what is wanted and how to produce it from the limited information available; (v) that the use of formal advertising would defeat the objectives of the approved standardization of the items above described by introducing different makes, models, component parts, technical literature, and maintenance procedures into the supply system and would not insure procurement from the selected suppliers whose product has been approved for standardization.

"Explain the relationship between the proposed procurements which justifies their being grouped into a class. The entire paragraph should be omitted if the determination and findings is for an individual contract.

"Explain any related matter, controversial issue, or accompanying papers—e.g., authority to furnish facilities, necessity for ASPR deviation, etc. If the procurement is under APP 3-216.2(c) and not elsewhere shown, estimate the amount of special tooling and plant equipment to be acquired for the Government's account, the necessity for its acquisition, the impact on future competitive procurement, and any further approvals which will or may be required incident to its acquisition. If the procurement is under ASPR 3-213, show by make and model the assets on hand and due in from procurement. In the case of class determinations and findings for ammunition the "Remarks" section should identify an attachment to the Request showing (1) Planned Emergency Producers and other known qualified producers; (2) the amount of Government-owned facilities and tooling for each item in the class, and the feasibility of offering this property to producers other than

those presently possessing it; (iii) the active or inactive status of each qualified producer, including Planned Emergency Producers; and (iv) adequacy of the procurement package for formal advertising. The information called for under paragraph 5b, Note 12, to the extent shown in the attachment referred to above, should not be shown under paragraph 5b except by a cross-reference to the attachment. Where a proposed procurement will result in the contractor becoming a "SE/TD" contractor within the meaning of ASPR Appendix G, or will likely involve a potential conflict of interest situation, there should be a statement to the effect that the contract will contain an appropriate clause to insure adherence to policies against organizational conflicts of interest.

• If RDTE funded, enter [(Research and Development)].

• Use when applicable.

• Use when action is originated by U.S. Army Materiel Command.

• If RDTE funded and action is processed through U.S. Army Materiel Command, use here the signature block of Director of R&D, USAMC.

• If RDTE funded, substitute [Office, Chief of Research and Development].

§ 593.307 Distribution of copies of determinations and findings.

(a) The original of a determination and findings shall be filed with the signed copy of the contract retained in the official files of the purchasing office or cognizant procuring activity. Additional copies shall be distributed so as to comply with § 1.308(b)(2) of this title and may be further distributed in accordance with procuring activity instructions.

(b) An authenticated copy of the determination and findings required to be forwarded by § 3.307 of this title shall accompany a copy of each relevant contract upon its submission to the General Accounting Office (see § 591.150(a)); except that, in lieu of submitting an additional copy of a class determination and findings known to be already on file with the General Accounting Office, it is permissible to make reference on the face of the contract copy to the applicable determination and findings, provided the number of the prior contract which it accompanied is also cited.

Subpart D—Types of Contracts

§ 593.408 Letter contract.

(a) The cognizant Head of Procuring Activity, his deputy, and the principal assistant of his headquarters staff responsible for procurement are authorized, without authority of further redelegation, to make the written determination required by § 3.408(c)(1) of this title, and to approve letter contracts, provided preaward clearance has been obtained from the appropriate Secretary for a letter contract involving a selected item or project (see § 610.202).

(b) The authority in paragraph (a) of this section extends to approving a letter contract in excess of 180 days or 40 percent of the work and in excess of 50 percent of the total estimated cost of the contemplated definitive contract as provided by § 3.408(c)(3) and (4) of this title.

(c) AR 37-22 provides for commitment of the estimated amount of the definitive contract over and above the amount obligated for performance of the

letter contract; it also precludes authorizing or creating a commitment in excess of the balances of uncommitted funds available in the appropriate allotment account. That regulation also defines a commitment as a firm reservation of funds based upon a firm procurement directive which authorizes the creation of an obligation without recourse to the official responsible for assuring that funds are available. Accordingly, when it is necessary to enter into a letter contract under the criteria set forth in § 3.408 of this title and this section and no year funds available for obligation and commitment are less than the sum estimated to be necessary for an ultimate definitive contract which may be entered into when additional funds become available, § 3.408(c)(4) and (5) of this title require that the letter contract (including the Exhibit or other portion thereof describing the supplies to be delivered or the work to be performed) shall not describe, refer to, or otherwise commit the Government to a definitive contract in excess of the funds available for obligation and commitment at the time the letter contract is consummated. Nevertheless, before definitization, a letter contract may be amended to add additional work and funds at such time as funds and any other required approvals have become available, so as to describe a definitive contract different (usually in the sense of longer duration of effort and greater quantity of supplies or services of the same character) from the one initially provided for.

(d) See, in addition to Subpart H, Part 7 of this title, §§ 3.903-1 and 3.903-2 of this title and § 597.150-3. A letter contract shall also contain a description of the work to be performed. See also § 606.551. The fee in any cost-reimbursement type letter contract and in the resulting definitive contract, and the price negotiation policies and techniques shall be consistent with §§ 3.405 and 3.800 of this title, respectively.

Subpart F—Small Purchases

§ 593.605-6 Receipt of material.

(a) In the event that a vendor does not furnish a sales slip or delivery ticket, the individual who receives the supplies or services shall prepare DD Form 250 (Material Inspection and Receiving Report).

(b) Where supplies are involved copies of the document evidencing receipt shall be distributed as follows:

(1) The original to the accountable property officer.

(2) A copy to the contracting officer.

(3) A copy to the vendor, and

(4) If required, a copy will be furnished the finance and accounting office.

§ 593.605-50 Billing procedures.

At the end of each billing period the contracting officer shall prepare one purchase order (DD Form 1155) for the supplies or services furnished by each vendor under a blanket purchase agreement during the billing period. The vendor will be instructed to submit one invoice in four copies for the period involved. The signed copies of the sales slips, delivery tickets, or receiving re-

ports shall be the basis for preparing such purchase order as follows:

(a) It is not necessary to list the items, quantity, or other similar information. It is sufficient to show the general description or category of the items purchased.

(b) The total dollar value as reflected on the documents evidencing receipt shall be inserted in the "Amounts" column.

(c) The following statement shall be inserted: "Authority—Individual requests made against Blanket Purchase Agreement (not exceeding \$2,500 per request) were negotiated in accordance with the provisions of 10 U.S.C. 2304(a)(3)."

(d) Insert the words "Blanket Purchase Agreement" in the block entitled "Type of Order—Purchase."

(e) The receiving report (i.e., the inspection and acceptance certification on the face of DD Form 1155) shall be completed by the contracting officer on the basis of properly executed sales slips, delivery tickets, or completed DD Forms 250. This certificate is normally accomplished on Copy No. 1. The supporting documents evidencing receipt shall be retained in the contract file.

(f) The finance and accounting officer will sign the administrative certificate on the face of Copy No. 1.

§ 593.607 Imprest fund method.

Instructions for use. See, in addition to § 3.607 of this title, AR 37-103, and AR 37-103-1.

§ 593.607-3 Conditions for use.

The imprest fund may be used to pay for items ordered from requirements type contracts including the Federal Supply Schedules, provided the vendor consents.

§ 593.608-2 Order for Supplies or Services (DD Forms 1155, 1155r, 1155c, 1155c-1, and 1155s).

(a) Under the Payments clause on the reverse side of DD Form 1155, payments on partial deliveries accepted by the Government may be made when the amount due on such deliveries warrants payment. See Chapter 3, AR 37-107 concerning the maximum number of partial payments. In order to reduce administrative costs in preparing separate Standard Forms 1034 and issuing checks, where multiple deliveries are involved, the purchase order may specify that the discount period is to commence after final delivery and/or receipt of invoices (whichever is later) on the entire order, and that payment will be made upon the submission of an invoice or voucher covering the entire order at the prices stipulated therein for supplies delivered and accepted, less deductions, if any, provided therein. If a contractor is reluctant to wait until final delivery and it is considered necessary to pay on partial deliveries rather than on each delivery or on final delivery, the purchase order may provide for partial payment when invoices for deliveries received equal or exceed the specified dollar amount.

(b) Where reproducible masters are available, the purchasing office may furnish the consignee additional copies of

DD Form 1155 to be used as receiving reports, or the consignee may prepare DD Form 250 for each delivery.

§ 593.608-6 Use of DD Form 1155 as a delivery order.

DD Form 1155 may be used in a manner similar to that set forth in § 593.605-50 to consolidate deliveries for payment under indefinite delivery type contracts and Brand Name contracts. This may be done at the end of a month (or more often) in order to effect payment to the vendor when the following conditions are present:

(a) Such action is more practical and economical than processing separate orders, and

(b) The procedure is acceptable to the vendor.

§ 593.608-7 Use of DD Form 1155 as a public voucher.

See AR 37-107.

§ 593.608-8 Order—Invoice—Voucher method.

(a) *Instructions for use of Standard Form 44.* (1) Each contracting officer and ordering officer shall be responsible for assuring that funds have been made available in the estimated amount of the purchase contemplated and for entering the proper accounting classification in the appropriate space on Standard Form 44. The signature of the contracting officer or the ordering officer on Standard Form 44 constitutes certification that funds are available under the appropriation and allotment cited. Where the "bulk funding" concept §§ 3.602(a) and 3.603-1(c) of this title is used, the contracting officer or the ordering officer, as appropriate, shall inform the finance and accounting officer at the close of each accounting month of the amount of all purchases made on Standard Form 44 from such "bulk funding" account.

(2) Receiving procedures are as follows:

(i) The receipt of supplies shall be accomplished by the individual authorized to accept the supplies (see AR 37-107) by signing in the block entitled "Received By" on the face of Copy No. 3 and executing a similar receipt on the reverse side of Copy No. 4.

(ii) The receipt of nonpersonal services shall be accomplished by the individual authorized to accept the services (see AR 37-107) by signing in the block entitled "Received By" on the face of Copy No. 3.

(iii) After the supplies or services have been received, the "Received By" block has been executed and all other entries have been made, the authorized certifying officer shall sign the appropriate block on the face of Copy No. 1.

(3) The cognizant purchasing office shall request the finance and accounting officer to enter the order number of the completed Standard Form 44 on the check for payment so that the vendor may identify the transaction.

(b) *Use of Standard Form 1034 (Public Voucher for Purchases and Services Other Than Personal) in conjunction with Standard Form 44.* (1) For conditions of use, see AR 37-107.

(2) The signature of the contracting officer or the ordering officer on Standard Form 1034 will be sufficient in lieu of such signature on each Standard Form 44 attached as a subvoucher.

(3) If the contracting officer or the ordering officer anticipates making more than one purchase from the same vendor during a month and holding the completed copies of Standard Form 44 until the end of the month for consolidating the invoices and preparing one voucher on Standard Form 1034 for payment, he should assure that such practice is satisfactory to the vendor in order to avoid complaints on delayed payments. When a "time payment" discount is applicable, appropriate copies will be processed for payment without delay in order to obtain the benefits of the discount.

§ 593.608-50 Use of DD Form 1155 as a receiving and inspection report.

(a) When inspection and/or acceptance is to be other than at destination, the place of such inspection and/or acceptance shall be shown in the "Schedule of Supplies or Services" column on the form. (See clause 1 on the reverse side of DD Form 1155.)

(b) Upon receipt of the supplies provided for in the order, the accountable property officer or his authorized representative is responsible for completion of the following:

(1) The quantity accepted (enter any report of rejections on reverse side of form).

(2) The place of receipt.

(3) The date received (date shipment is made available by the carrier).

(4) That the in-checker's signature or initials are timely entered in the "Received By" block.

(5) The gross weight (check accuracy of gross weight and show by check mark).

(6) The location of the supplies (optional for local use).

(7) The shipment number.

(8) The number of containers received.

(9) The Government bill of lading number, if any.

(10) The stock record account voucher number.

(11) The account number under which the shipment will be reflected on stock accounting control records, and

(12) The date, signature, grade and designation of the acceptor.

NOTE: The block entitled "Authorized U.S. Government Representative" contains a certification that the supplies or services were inspected and accepted. This certification may be executed by an individual listed in Chapter 3, AR 37-107, an ordering officer, or a commissary officer. When veterinarian personnel are required to inspect food supplies, they will sign either the "tally in" or DD Form 1155 (Copy No. 7) retained by the commissary officer. The commissary officer shall sign the original receiving report (Copy No. 8).

(c) The accountable property officer shall request disposition instructions from the contracting officer for nonacceptable supplies and overages. Errors such as nomenclature, stock number, may be corrected manually.

(d) If inspection is made other than at destination, appropriate copies of DD Form 1155 will be furnished to the inspection office. Completed inspection reports shall be sent to the consignee unless otherwise indicated in each specific case by the contracting officer.

(e) A receiving report shall be completed within the time specified in AR 715-29.

§ 593.608-51 Use of DD Form 1155 for shipments to Army attachés.

(a) Certain small purchases made for Army attachés may be shipped direct from a vendor to the Assistant Chief of Staff, Intelligence, Department of the Army, for transmittal by surface pouch to the cognizant Army attaché.

(b) *Limitations:*

(1) The maximum weight of each parcel shall not exceed 40 pounds;

(2) The maximum dimensions for each—

(i) Box—12 by 16 by 18 inches,

(ii) Flat package—4 by 18 by 18 inches,

(iii) Cylindrical package—5 inches in diameter by 24 inches long, and

(3) A parcel shall not contain—

(i) Perishable, fragile, liquid, explosive, or flammable articles,

(ii) Firearms, or

(iii) Glass containers.

(c) The shipment shall be addressed as follows:

U.S. Army Attaché (City—Country), c/o Assistant Chief of Staff, Intelligence, Department of the Army, Washington, D.C., 20315.

The shipment shall be further identified by requisition and purchase order number, if available.

(d) Copies No. 7 and 8 shall be mailed by the contracting officer at the time the order is placed to the—

Assistant Chief of Staff, Intelligence, ATTN: Property Officer, Department of the Army, Washington, D.C., 20315.

(1) The addressee(s) to whom the copies will be returned shall be clearly indicated thereon.

(2) Payment shall be made on the basis of a signed acceptance certificate of the Property Officer, Office of the Assistant Chief of Staff, Intelligence, on Copy No. 8.

Subpart G—Negotiated Overhead Rates

§ 593.703 Applicability.

(a) The appropriate Negotiated Overhead Rates clause (§ 3.704 of this title) is authorized for use in all cost-reimbursement type contracts (except facilities contracts) with the contractors listed for overhead negotiation in the Master List of Contractors for Negotiated Overhead Rates and Advance Agreements for Independent Research and Development. The responsibility within the Army for the administration and maintenance of this Master List is vested in the Commanding General, U.S. Army Materiel Command, who has assigned such responsibility to his Director of Procurement and Production. The Master List and revisions thereto are published in DA Circulars 715-2-series.

(b) The appropriate Negotiated Overhead Rates clause (§ 3.704 of this title) is authorized for use in cost-reimbursement type contracts (except facilities contracts) with any contractor not listed for overhead negotiation in the Master List of Contractors, when—

(1) Such use will accomplish any or all of the purposes stated in § 3.702 of this title, or will be otherwise advantageous to the Government;

(2) The initial use of the particular Negotiated Overhead Rates clause involved has been coordinated with other Department of the Army procuring activities having a contractual interest with the particular contractor. Where a procuring activity of the Departments of the Navy or the Air Force has a contractual interest with the particular contractor, coordination with such activity will be effected through the addressee listed in § 591.150(b) (17); and

(3) Clearance by the Head of Procuring Activity has been obtained.

(c) To assure uniformity in the manner of overhead settlement with each contractor to whom paragraph (a) or (b) of this section is applicable—

(1) Notification of the clearance by the Head of Procuring Activity shall be furnished immediately upon issuance to the addressee listed in § 591.150(b) (17), ATTN: AMCPP-SC for appropriate action to have the Master List amended;

(2) Each cognizant contracting officer shall include suitable safeguards to insure that no other provision is used in any subsequent cost-reimbursement type contract (except a facilities contract) with the contractor while the authorization in paragraph (b) of this section is in force or while the contractor is listed for overhead negotiations in the Master List.

(d) Prior to discontinuing use of the Negotiated Overhead Rates clause with any contractor, clearance shall be obtained from the addressee listed in § 591.150(b) (17), ATTN: AMCPP-SC. The request for clearance shall—

(1) Set forth all the circumstances bearing on the proposed discontinuance;

(2) Include the recommendation of the cognizant Head of Procuring Activity; and

(3) Be coordinated in advance with any other interested Army procuring activity and the cognizant audit office.

§ 593.705 Procedure.

(a) Where the Department of the Army is the sponsor of coordinated negotiations pursuant to § 3.706 of this title or where the contractor has contracts with more than one procuring activity of the Department of the Army, negotiation cognizance will be assigned to the procuring activity having the preponderance of contract interest (§ 593.706). The conduct of negotiations may be assigned by the designated Head of Procuring Activity to a field command or purchasing office, except where such reassignment is restricted by specific instructions from Headquarters, U.S. Army Materiel Command.

(b) Upon notification by the Departments of the Navy or the Air Force that coordinated overhead rate negotiations have been scheduled with a contractor,

Headquarters, U.S. Army Materiel Command, will designate a procuring activity to represent the Department of the Army in the negotiations.

(c) The procuring activity assigned negotiation cognizance under paragraph (a) or (b) of this section shall furnish a principal representative of the Department of the Army for the purpose of (1) conducting negotiations where the Department of the Army is the sponsor, or (2) representing the Department of the Army in negotiations sponsored by the Departments of the Navy or the Air Force if the extent of Department of the Army interest warrants participation. Extreme care must be exercised in the selection of the principal representative since his skill, tact, perseverance, experience, knowledge of procurement regulations, and familiarity with business practices will materially affect the results of the negotiations.

(d) The designated principal Department of the Army representative is authorized to act for and on behalf of all Department of the Army procuring activities affected by the negotiation. Procuring activities which do not have negotiation cognizance may designate personnel to attend the negotiation conference as observers, as technical advisors, or for training purposes.

(e) The designated principal Department of the Army representative shall—

(1) Before the negotiation conference, solicit the comments and recommendations of other procuring activities as to the proposals made by the contractor and the related advisory audit report;

(2) Before the negotiation conference, obtain the advisory comment and analyses of legal, pricing, audit and technical personnel as to the rate or rates of overhead, application of cost principles, treatment of particular items of cost, and other pertinent issues;

(3) Before the negotiation conference, develop the Department of the Army position in coordination with other interested Department of the Army procuring activities, with consideration given to the limitations, special provisions, and cost-sharing arrangements of the affected contracts. Any case in which agreement as to the Department of the Army position cannot be reached shall be referred to the addressee listed in § 591.150(b) (17), ATTN: AMCPP-SC.

(4) Represent the Department of the Army in negotiations sponsored by the Departments of the Navy or the Air Force, or conduct the negotiations on behalf of the Government if the Department of the Army is the sponsor;

(5) Before the negotiation conference, notify all interested procuring activities, the Departments of the Navy and the Air Force, and the cognizant audit office of the date established for the negotiation conference in sufficient time to permit their participation in negotiations; and

(6) Prepare and distribute the negotiation report in accordance with paragraph (h) of this section where the Department of the Army is the sponsor.

(f) The procuring activity having negotiation cognizance shall provide legal, pricing, and technical assistance to the designated principal representative in the preparation for and conduct of the

negotiation conference and of any preliminary meetings.

(g) The negotiation report shall provide the following minimum information:

(1) The name, position, and organization of conferees representing the contractor and the Government;

(2) The purpose of the negotiation and period covered;

(3) A summary of the contractor's proposal, the pertinent advisory audit report comments and recommendations of legal, pricing, and technical advisors;

(4) The various rates of overhead resulting from the negotiation, with a discussion of the treatment given to cost factors requiring specific attention;

(5) A list of the contracts affected by the negotiation, showing identification number, total dollar value, and uninvoiced dollar amount, or a statement that such information is provided in the advisory audit report;

(6) Any special treatment agreed upon for contracts containing limitations, special provisions, or cost-sharing arrangements; and

(7) A specific comment as to the amounts allowed for costs of the contractor's independent research and development programs and the effect of such allowance on rates and total amounts of overhead and general and administrative expense.

(h) The negotiation report shall be signed by the designated principal representative and approved by an official responsible for procurement in the office which conducted the negotiations. Copies of negotiation reports shall be distributed as set forth below, except that distribution will not be made to the Air Force or the Navy when the contractor has no contracts with those Departments:

(1)—	
Hq. U.S. Army Materiel Command*	
ATTN: AMCPP-SC	3
Each subordinate command, installation, and activity having contractual interest	3
Each other Department of the Army procuring activity having contractual interest	3
Office of Naval Materiel, Department of the Navy (M-37) Washington, D.C., 20360	90
Hq. Air Force Systems Command (SCKPF) Andrews Air Force Base, Washington, D.C., 20331	60
Hq. cognizant audit office	3
Hq. Defense Supply Agency (DSA) (PP03) Washington, D.C., 22314	1

*With one copy of distribution list of report.

(2) Where the advisory audit report indicates that purchasing offices of Government agencies outside the Department of Defense have a contractual interest, one copy of the negotiation report shall be forwarded to the purchasing office concerned.

§ 593.706 Coordination.

Revisions to the Master List of Contractors will be made upon a showing that a significant shift of a long term nature has affected the preponderance of contract interest, and after agreement has been reached between the Military Departments or the Department of the

Army procuring activities, as the case may be. Such revisions will be published as changes to DA Circulars, as indicated in § 593.703(a).

Subpart H—Price Negotiation Policies and Techniques

§ 593.809 Audit as a pricing aid.

[Reserved]

§ 593.850 Procedures relating to negotiation of independent research and development costs.

(a) *Applicability.* This section applies to all negotiations concerning the extent of acceptability or nonacceptability of costs of independent research and development (IR&D) (see § 15.205-35 of this title) under, or relating to, a contract to which Subpart B or Subpart F of Part 15 of this title applies. These procedures are intended to result in a uniform application throughout the Army of ASPR cost principles relating to IR&D. IR&D costs are often an element in a contractor's overhead and hence may be considered in connection with overhead rate negotiations (see Subpart G, Part 3 of this title and Subpart G of this part).

(b) *Responsibility.* Headquarters, U.S. Army Materiel Command is responsible for administration within the Army of the program of coordinated negotiation of IR&D costs encompassed in the procedures set forth in this subpart. This responsibility includes maintenance of the Master List of Contractors for Negotiated Overhead Rates and Advance Agreements for Independent Research and Development Costs (see Subpart G of this part). Information required in this subpart to be sent to the addressee at § 591.150(b)(17) shall be addressed, ATTN: AMCP-SC.

§ 593.850-1 Negotiation cognizance.

Where a procuring activity has been assigned negotiation cognizance for purposes of overhead rate negotiations under § 593.705, the same procuring activity shall be assigned negotiation cognizance for IR&D negotiation, whether such IR&D negotiation arises in conjunction with an advance agreement or with determination of a final overhead rate. Where no procuring activity has been assigned negotiation cognizance under § 593.705 and where it is desired to undertake IR&D negotiations with a contractor who is doing business with more than one Military Department, negotiation cognizance shall be assigned by USAMC according to the criteria and procedures set forth in § 593.705. Where the contractor is doing business only with the Department of the Army, negotiation cognizance shall be exercised by the procuring activity having the preponderant dollar interest after coordination with other purchasing offices concerned (see also § 593.850-4(a)) and notification of the assumption of such cognizance shall be given promptly to the addressee at § 591.150(b)(17).

§ 593.850-2 Prenegotiation review and evaluation.

(a) Before negotiation is undertaken, the Department of Army purchasing of-

fice having negotiation cognizance shall inform the contractor of the provisions of § 15.205-35 of this title and shall request the contractor to submit his proposal of amounts he considers to be allowable, supported by information sufficient to permit evaluation. The following are guidelines as to the supporting information considered necessary:

(1) A summary for the contractor's fiscal year for which allowance is sought, separately stated as to the total independent research program and as to the total independent development program, of the cost elements and amounts experienced (or forecast, if appropriate);

(2) An analysis of net sales for at least three years immediately preceding the year being negotiated, showing separately the sales attributed to Department of Defense contracts and to other customers, together with the amount of independent research costs allocated to each of these sales categories for each year and the amount of independent development costs so allocated;

(3) A statement of the extent and scope of the contractor's IR&D programs for at least 3 years preceding the year being negotiated, and a comparison with the programs for the year under negotiation, including a summary of any significant changes in science and technology affecting these programs;

(4) A list of contracts currently in force with Department of Defense agencies, showing agency contract number, total dollar value, uninvoiced dollar value, type of contract, and any cost-sharing provisions;

(5) A statement of the broad plan of each program as distinguished from individual projects, indicating its scope, its relationship to the income producing activities of the contractor, the methods by which the programs are managed, and the accounting procedures employed for equitably distributing the total costs; and

(6) A list of product lines to which the costs of each independent development project are to be distributed, the extent to which Department of Defense agencies have contracts within each product line, and the proposed basis for distribution of such costs.

(b) In any case where the acceptability of the proposed or claimed costs of IR&D cannot be established by review, analysis, and discussion of financial and historical information submitted in paragraph (a) of this section, the contractor shall be requested to submit a more detailed statement prepared in accordance with the following guidelines.

(1) *Format.* The detailed statement should be divided into two sections. One section should describe the contractor's independent research program, as defined in § 15.205-35(a) of this title for which allowance is requested under the terms of § 15.205-35(d). The other section should describe the contractor's independent development program, as defined in § 15.205-35(b), for which allowance is requested under the terms of § 15.205-35(c). Each section should contain information on each project; i.e., the smallest administratively recognizable unit of task assignment in the reporting activity. Each project descrip-

tion shall include the following minimum information:

- (i) The title of the project;
- (ii) The budgeted or actual annual expenditure;
- (iii) The length of time the project has been running, and total expenditures to date;
- (iv) The estimated date of completion of project;
- (v) The estimated total effort in terms of professional man-hours and the professional grade or classification of the various personnel to be utilized;
- (vi) A summary of past technical achievements under this and related projects in the same field; and
- (vii) A concise statement of the project objectives and a narrative description of the technical approach.

(2) *Content.* The technical portions of the individual project descriptions should be concisely stated in appropriate technical terminology such as is customarily used in reporting the subjects in scientific journals. The projects are to be described, but should not include obvious justifications of the work required by internal management. Reports or reprints resulting from past activity under the reported projects may accompany the submission. In the case of an independent development project, the contractor shall indicate the product lines for which he has contracts with the Government and under which the indirect costs of the project are claimed to be allowable.

(3) *Additional information.* In addition to the written descriptions, the procuring activity having negotiation cognizance may elicit further information about specific projects in direct discussions. Accordingly, each detailed statement should also contain the name, title, and address of two or three of the contractor's officers with overall responsibility and supervision of the IR&D programs who have knowledge of other individuals with specialized engineering and financial background information about these programs.

(c) Heads of purchasing offices having negotiation cognizance shall establish the number of copies of proposals, supporting information, and detailed statements to be submitted by contractors. At least one copy shall be distributed to the head of each interested purchasing office, and in any case where technical and scientific review will be performed by the Armed Services Research Specialist Committee (see § 593.850-3), 15 additional copies shall be obtained and forwarded to the addressee at § 591.150(b)(17) for appropriate distribution.

(d) The reporting requirements required by the Federal Reports Act of 1942 for the information required by this paragraph have been approved by the Bureau of the Budget. Approval number 22-R237 has been assigned effective through October 31, 1967.

§ 593.850-3 Technical and scientific review and evaluation.

(a) Normally, a technical and scientific review shall be accomplished, in accordance with paragraph (b) or (c) of this section as appropriate, but may be dispensed with when, in the opinion of

the procurement official responsible for the conduct of negotiation, the extent of acceptability or nonacceptability of the estimated or claimed costs can be clearly and convincingly established without such review and evaluation. This review and evaluation shall (1) determine whether the projects comprising each program are properly classified as either research or as development; (2) as to research, provide recommendations concerning scientific factors considered to affect the basis or extent to which the contractor's program is or is not appropriate for support; and (3) as to development, provide recommendation as to the portion of the independent development program, if any, which is appropriate and the product lines to which such program costs should be allocated. Where a contractor's normal course of business does not involve production work, the recommendation regarding a contractor's independent development program shall discuss the extent to which such development is related and allocable to the field of effort of the contractor's Government research and development contracts (§ 15.205-35(e) of this title). When a contractor's work is predominantly or substantially with the Government, the recommendation shall discuss in particular the relevance of the various IR&D projects to the Government's interest, and shall indicate those projects the anticipated benefits of which are primarily commercial in nature or for other reasons have little relevance to the Government's interest.

(b) Where a contractor is doing business with more than one Military Department and negotiation cognizance has been established in accordance with § 593.850-1, the Military Department which has negotiation cognizance shall be responsible for the technical and scientific review and evaluation. The program information submitted by contractors listed in the Master List, will, unless indicated otherwise in such list, be reviewed and evaluated by the Armed Services Research Specialists Committee established by DOD Instruction 4105.52.

(c) Where a contractor is doing business only with the Department of the Army, the purchasing office having negotiation cognizance is responsible for the necessary technical and scientific review and evaluation. Assistance of the Army member of the Armed Services Research Specialists Committee should be requested from Headquarters, U.S. Army Materiel Command, ATTN: AMCRD-RS.

(d) The results of the technical and scientific review and evaluation shall be provided by written advice to the requesting agency in the minimum number of copies necessary. Four copies shall be furnished by the purchasing office having negotiation cognizance to the addressee at § 591.150(b) (17).

§ 593.850-4 Use of audit services.

(a) An advisory report of the cognizant audit office shall be obtained where necessary to assist in establishing negotiation cognizance.

(b) Subject to the criteria in § 3.809 of this title, information obtained from

contractors pursuant to § 593.850-2 will be referred to the cognizant audit office for advisory report as to (1) reliability of contractors' estimating and costing procedures; (2) methods used in identifying, segregating, and allocating costs of independent research and independent development programs; (3) acceptability or nonacceptability of costs within the criteria of § 15.205-35 of this title, and (4) other observations to provide the cognizant purchasing office with cost guidance.

§ 593.850-5 Conduct of negotiations.

(a) *Responsibility of sponsor.* The Department of the Army purchasing office having negotiation cognizance, as sponsor, shall insure that negotiations are fully coordinated with all other interested purchasing offices, and shall give timely notification of the time and place for the negotiation conference. Additionally, that office shall furnish such interested offices copies of pertinent data obtained pursuant to §§ 593.850-2 and 593.850-3. It is the responsibility of the cognizant purchasing office, in the conduct of negotiations, to apply pertinent cost principles relating to IR&D programs as set forth in Part 15 of this title.

(b) *Responsibility of other interested purchasing offices.* It is the responsibility of each purchasing office administering a contract which will be affected by the negotiations to advise the sponsoring purchasing office of any limitations, special provisions, or cost-sharing arrangements contained in any such contract. In addition, each purchasing office which sends a representative to participate in a negotiation conference shall assure that the representative is prepared for such participation by possession of a thorough knowledge of pertinent contract provisions, information submitted by the contractor, any audit report, and any review and evaluation submitted by the Armed Services Research Specialists Committee or other reviewing group.

(c) (1) *Negotiation summary.* Upon completion of negotiations, the purchasing office having negotiation cognizance will prepare a negotiation summary which will include, in addition to the minimum information required by § 593.705(g) (1), (2), (5), and (6):

(i) A summary of the contractor's IR&D proposal and submitted information; the scientific and technical review and evaluation, if any; pertinent audit comments; and the advisory comments of technical, pricing, and legal personnel of the purchasing office having negotiation cognizance;

(ii) Special details of any negotiated cost allowance, including ceilings, if any, and the effect on overhead rates and general and administrative expenses;

(iii) An estimate of the total cost, if any, to the Department of the Army resulting from agreements reached concerning the contractor's IR&D program. The cost estimate should take into account both direct and indirect expenditure allocable to IR&D.

(2) The negotiation summary shall be signed and approved by the officials des-

ignated in § 593.705(h), and will be distributed as indicated in § 3.705(h) (1), subject to the following variations:

Office of Naval Material, Department of the Navy (M-37), Washington, D.C., 20360.....	115
Hq. Air Force Systems Command (SCKPF), Andrews Air Force Base, Washington, D.C., 20331.....	177
Armed Services Research Specialists Committee, % Addressee at § 591-150 (b) (17).....	5
Hq. Defense Supply Agency (DSAH-PP), Washington, D.C., 22314.....	1

§ 593.850-6 Recognition in contracts.

Agreements reached as a result of negotiations described in this subpart shall be incorporated in contracts affected thereby, and any limitations, ceilings, or cost-sharing arrangements relating to a particular contract shall be clearly described.

PART 594—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart B—Procurement of Research and Development

Sec.	
594.205-1	Selection of sources.
594.211-50	Scientific and technical reports clause.

Subpart J—Procurement of Expert, Consultant, and Stenographic Reporting Services

594.1001	Experts, consultants, and stenographic reporters.
594.1002	Employment by appointment.
594.1003	Employment by contract.
594.1003-1	General.
594.1003-2	Applicability.
594.1003-3	Award approval requirements.
594.1003-4	Incidents of temporary or intermittent employment by contract.
594.1003-5	Limitations.
594.1004	Contracts with organizations for expert or consultant services.
594.1005	Criteria for submission for secretarial consideration of proposed contracts for nonpersonal expert or consultant services.
594.1006	Contracts for stenographic reporting services.

AUTHORITY: The provisions of this Part 594 issued under sec. 3012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

Subpart B—Procurement of Research and Development

§ 594.205-1 Selection of sources.

In unclassified research contracts in which security matters are not likely to be encountered, the major consideration regarding the contract with respect to the personnel involved should be their professional integrity and ability. Considerations relating to the loyalty of individual researchers engaged in work under Government contracts should recognize the principle that it would be contrary to the national interest to give aid and comfort to a person disloyal to the United States. In conformance with this principle, the following policy has been adopted:

(a) A procuring activity, in appraising the merit of a proposal for a contract for unclassified research not involving security considerations, will assure that the experience, competence, and integrity of

the researcher are always taken carefully into account. A procuring activity shall not knowingly award or continue a contract for research under which any significant role is performed by a person who—

(1) Is an acknowledged Communist, or

(2) Has been established as being a Communist by a judicial proceeding, or

(3) Advocates change in the U.S. Government by other than constitutional means, or

(4) Has been convicted of sabotage, espionage, sedition, subversive activity, or of a similar crime involving the Nation's security.

(b) Where a procuring activity receives information indicating that a researcher under Government contract or a prospective researcher may have violated a Federal statute relating to the national security, such information shall be forwarded on a priority basis to the addressee in § 591.150(b) (6).

§ 594.211-50 Scientific and technical reports clause.

Each contract requiring performance of a research study may contain a provision similar to that set forth below. The purpose of the provision is to cause the contractor, in cases where the nature of the research is such that the contractor will normally publish or disseminate the results outside of military channels, to submit, in draft form, a copy of the report of the study to the contracting officer, prior to any publication or dissemination by the contractor. The contracting officer shall determine the security classification, if any, and insure that the report is factually accurate and complete.

REPORT (APRIL 1965)

The contractor shall submit, in draft form, a copy of the report of the study called for in this contract prior to any publication or dissemination of the information contained therein. The draft report shall contain either a completed DD Form 1473 (Document Control Data—R&D), or a draft of such form with pertinent comments. Thirty days shall be allowed for the Contracting Officer's approval unless a longer period is agreed upon.

Subpart J—Procurement of Expert, Consultant, and Stenographic Reporting Services

§ 594.1001 Experts, consultants, and stenographic reporters.

(a) Generally, the temporary or intermittent employment by contract (as distinguished from appointment) of experts, consultants or stenographic reporters is authorized by statutory authority contained in two enactments.

(1) One such authority is permanent legislation. Section 15 of the Act of 2 August 1946 (P.L. 600, 79th Cong.; 60 Stat. 810; 5 U.S.C. 55a) provides:

The head of any department, when authorized in an appropriation or other Act, may procure the temporary (not in excess of 1 year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract, and in such cases such service shall be without regard to the civil-service and classification laws (but as to agencies subject

to the Classification Act [see 5 U.S.C. 661-663, 664-669, 670-672, 673, and 674] at rates not in excess of the per diem equivalent of the highest rate payable under said sections, unless other rates are specifically provided in the appropriation or other law) and, except in the case of stenographic reporting services by organizations, without regard to section 3709, Revised Statutes, as amended by this Act [See 41 U.S.C. 5].

(2) The other authority is annual legislation found as a recurring provision in the Department of Defense Appropriation Act. Supplementary authority may also be found in other appropriation acts, such as that for the Civil Functions of the Department of the Army. The annual Department of Defense Appropriation Act language is essentially the same as Section 501 of Public Law 88-446 (78 Stat. 465, 474), which provides:

During the current fiscal year, the Secretary of Defense and the Secretaries of the Army, Navy, and Air Force, respectively, if they should deem it advantageous to the national defense, and if in their opinions the existing facilities of the Department of Defense are inadequate, are authorized to procure services in accordance with section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), under regulations prescribed by the Secretary of Defense, and to pay in connection therewith travel expenses of individuals, including actual transportation and per diem in lieu of subsistence while traveling from their homes or places of business to official duty station and return as may be authorized by law; *Provided*, that such contracts may be renewed annually.

(b) As used in this subpart, a contract for personal services is one under which the relationship of employer-employee is created between the parties. Ordinarily this relationship exists when the Government has the right, whether or not such right is exercised, to control and direct the individual, not only as to the results to be accomplished by the work, but also as to the details and means by which the results are to be accomplished. If the contractor is subject to the control or direction of the Government only as to the result to be accomplished but not as to the means and methods for accomplishing such result, he is normally an independent contractor and not an employee. When the contract calls for the delivery by the contractor of an end product or end result which is described in the contract in reasonably specific terms, without providing for Government supervision of the methods or means by which such end product is to be produced or end result is to be achieved, the relationship of employer-employee is normally not created by the contract. Notwithstanding the foregoing general criteria, the Comptroller General has held in effect that when the services to be performed, by their nature, represent the discharge of a Governmental function (e.g., performance of services which are regularly performed by Government employees, such as inspection services and functions which call for exercise of personal judgment and discretion on behalf of the Government) such services are personal in character. For procurement purposes, the significance of a thorough understanding of the criteria which distinguish personal

services from nonpersonal services lies in the fact that the Comptroller General has held in numerous instances that, as a general rule, purely personal services to be rendered to the Government may not be obtained on a contractual basis, but are required to be performed by regular employees. Exceptions to this general rule are found in a few statutes, such as those cited in paragraph (a) of this section; the Comptroller General has also recognized certain unusual circumstances (see § 594.1005) as justifying an exception. It is not always easy to determine whether a contract is one for personal services, but when the Government is to furnish all of the necessary equipment, supplies, and working space and the services are of a continuing rather than temporary nature, to be paid for on the basis of time worked by the contractor, the contract would, in the absence of unusual circumstances, be considered as one for personal services.

§ 594.1002 Employment by appointment.

The authorities set forth in § 594.1001 (a) permit the temporary or intermittent employment by appointment of individuals as experts and consultants. Such appointments are processed by the civilian personnel office in accordance with the instructions set forth in Civilian Personnel Regulations (CPR) A-9. The temporary or intermittent personal services of an expert or consultant shall be obtained by the appointment method, rather than by contract, except as follows:

(a) Where the services are included in the categories set forth in § 610.204-2(b) (1), (2), (4) and (5);

(b) Where the services will be performed by foreign nationals;

(c) Where the services will be performed outside the United States in fields other than those covered by § 610.204-2(b) (2) and (5);

(d) Where architect-engineer services of a personal services nature will be performed § 610.204-4; or

(e) Where special circumstances preclude use of the appointment method, as where services of a particular expert or consultant are necessary and the individual is willing to serve only under a contract.

§ 594.1003 Employment by contract.

§ 594.1003-1 General.

(a) If the funds for a contract of the type described in 5 U.S.C. 55a are not contained in the annual DOD Appropriation Act, a submission for Secretarial action shall identify the appropriation act involved; shall to the extent practicable follow the procedures set forth in this subpart and shall contain information necessary to demonstrate compliance with the particular appropriation act provision relied upon as being complementary to 5 U.S.C. 55a.

(b) Before a contract to which the statutory provision contained in the annual DOD Appropriation Act (see § 594.1001(a) (2)) is applicable may be entered into, the Assistant Secretary of the Army (Installations and Logistics) or the Assistant Secretary of the Army

(Research and Development), as the case may be, is required personally to determine (1) that to do so is advantageous to the national defense and (2) that the existing facilities of the Department of the Army are inadequate. Except as provided in § 610.204-2(b) such determinations are made on a case-by-case basis, after submission of the information called for in § 594.1003-3 to the appropriate Assistant Secretary.

§ 594.1003-2 Applicability.

The procedures set forth in §§ 594.1003-5 apply to any contract for temporary or intermittent personal services if the contract is for (a) stenographic reporting services or (b) services of an expert or consultant. (See § 610.204-4 concerning architect-engineer contracts for personal services.) The procedures set forth in §§ 594.1003-5 do not apply to contracts for the services of teachers in schools for military dependents (see AR 350-295), the services of contract surgeons (see AR 40-1), the services of technical representatives or for management engineering services where there is no direct Government supervision or control over contractor personnel and such services are obtained on an end product basis (see AR 750-22 and AR 1-110 respectively), or the employment of counsel for Army personnel tried before a foreign tribunal (see AR 633-55).

§ 594.1003-3 Award approval requirements.

(a) Any proposed award as to which the cognizant Head of Procuring Activity has not been delegated award approval authority (§ 610.204-2(b)) shall be submitted to the Assistant Secretary of the Army (Installations and Logistics) or (Research and Development) as appropriate. The file submitted shall include the following:

(i) A narrative request that the Assistant Secretary make the required determinations and approved the proposed award, explaining in separate paragraphs:

(i) Why the services are needed and for what period,

(ii) The reasons the proposed contract would be advantageous to the national defense,

(iii) An analysis of the proposed compensation in relation to the work to be performed and the Classification Act rate of pay for a regular employee performing similar or comparable services, and

(iv) The basis for certifying that the existing facilities of the Department of the Army are inadequate, to include an explanation of why such services cannot be performed by regular Department of the Army personnel;

(2) Applicable information called for by § 610.203(b) to the extent not duplicated by the information called for under subparagraph (1) of this paragraph; and

(3) A certificate, signed by the cognizant Head of Procuring Activity as follows:

The employment of _____ will not be in excess of the civilian personnel authoriza-

tion established by the Department of the Army for the (Army agency in which the individual is to work); the proposed contract is advantageous to and necessary for the national defense; existing facilities of the Department of the Army are inadequate; and the proposed compensation is considered reasonable.

(b) If a proposed contract is in one of the categories described in § 610.204-2(b) and the cognizant Head of Procuring Activity has been delegated award approval authority, it shall be submitted to the Head of Procuring Activity for such award approval. Accompanying the request for award approval, and notwithstanding the annual Secretarial determinations described in § 610.204-2(b), the request for award approval shall be accompanied by (1) an explanation of why the services are needed and for what period, (2) a statement of the reasons the proposed contract would be advantageous to the national defense, (3) a justification of the proposed compensation, and (4) except for "DEFSIP-B" personnel, a statement of the basis for certifying that the facilities of the Department of the Army are inadequate. Additionally, except for contracts covering DEFSIP-B personnel, the certificate set forth in paragraph (a) (3) of this section shall accompany the file and be executed by the head of the requesting procurement office.

(c) Unless the criteria in § 594.1005 apply, Secretarial determinations as required by the statutes described in § 594.1001(a) are not required for non-personal service contracts with an individual, except such a contract for stenographic reporting services.

§ 594.1003-4 Incidents of temporary or intermittent employment by contract.

(a) *Federal Social Security taxes.* Individuals (other than aliens performing services outside the United States, the Virgin Islands, and Puerto Rico, and alien specialists retained to meet the requirements of "DEFSIP-B") who perform personal services on a temporary or intermittent basis under contracts are generally eligible for old age and survivors insurance coverage under Social Security statutes. A contracting officer administering a personal services contract under which the individual is eligible for such coverage shall, before performance begins under such contract, take steps necessary to cause the appropriate finance and accounting office to make deductions as required (see AR 37-105).

(b) *Income tax withholding.* Individuals employed under personal services contracts are generally subject to withholding of Federal income tax. It may also be necessary to report or withhold the contractor's income for State income tax purposes (see 5 U.S.C. 84b). Accordingly, the contracting officer administering a contract under which payments to the contractor are subject to income tax withholding shall, before performance begins under such contract, take steps necessary to cause the appropriate finance and accounting office to make the necessary deductions and reports (see AR 37-105).

(c) *Annual and sick leave.* (1) An individual employed on a part-time basis under a personal services contract, for whom there is not established in the contract a regular tour of duty during each administrative workweek, is not entitled to annual or sick leave.

(2) A personal services contract employing an alien outside the United States will provide for leave in accordance with CPR L1 (see 1-6) as implemented by the appropriate unified or other command (see § 1.108(a)(5) of this title).

(3) Except as provided in subparagraphs (1) and (2) of this paragraph, an individual employed under a personal services contract (including any extension thereof) in which there has been established in the contract a regular tour of duty during each administrative workweek is entitled to accrue and use sick leave, and, where the contract (including any extension thereof) also provides for a continuous performance period in excess of 90 calendar days, is also entitled to accrue and use annual leave. Such individual, if employed on a part-time basis, shall be in accordance with CPR L1, implementing the Annual and Sick Leave Act of 1951, as amended.

(i) In preparing the schedule of the contract it is essential that the contracting officer, in coordination with the civilian personnel officer, determine the amount of sick and annual leave, if any, which a particular contractor may have to his credit and to specify in the contract a correct statement of the contractor's sick and annual leave entitlements. Prior Government service may affect a contractor's sick and annual leave credits as well as the rate at which he will accrue annual leave. Thus, while the contract with any individual who is entitled to accrue and use annual and sick leave will provide that leave entitlements and benefits will be administered pursuant to the pertinent provisions of CPR L1, which will be incorporated into the contract by reference it should also contain a statement concerning the contractor's leave entitlements (credits as well as rates of accrual) in sufficient detail to permit an audit of the contract by reference only to the contract terms and CPR L1, without necessity of referring to the contractor's personnel folder (see paragraph (d) of this section).

(ii) A contractor who is entitled to leave benefits may not take leave after the end of the contract performance period. While leave credits may be carried over in certain instances as specified in CPR L1, if the contractor has not become entitled to use all or any part of his sick leave at the end of the contract period, he is not entitled to payment therefor. A contractor may be paid under the contract in a lump sum for his unused annual leave at the end of the contract period, provided he is not re-employed in an annual leave earning status within a period equal to that of his unused annual leave. If he is re-employed, after the end of the contract period, in a status under which he is entitled to accrue annual leave, his unused annual leave is carried forward to the new contract (or appointment).

These illustrative situations suggest the difficulties which may be encountered in obligating funds to cover performance under a personal services contract wherein the contractor is entitled to leave, as well as possible difficulties which may be encountered whether or not the contract or employment is continued without a break in service. Since a contractor may be required to take annual leave it is Army policy to recite this fact in the contract and to so administer performance and leave benefits that, at the end of the contract period, the contractor will have used his accrued annual leave. When, for compelling reasons, it is not possible for the contractor to use his annual leave during the period of performance, and he becomes otherwise entitled to a lump sum payment for unused leave, action must be taken a sufficient period before the end of the contract period to obligate funds necessary to liquidate the lump sum annual leave payment (see AR 37-20). Also, when a lump sum annual leave payment is made, followup action is required to insure that, if by virtue of unanticipated reemployment the contractor becomes obligated to refund the lump sum payment, prompt collection action is taken and leave credit is carried forward.

(iii) Holidays and nonwork days.

(a) An individual employed under a personal services contract who is not entitled to leave will not be paid for holidays on which he does not work or for other nonwork days. This policy must be reflected in the contract terms and shall be taken into account in establishing the contract price as well as the payments made thereunder.

(b) An individual employed under a personal services contract who is entitled to leave will be paid for holidays or nonwork days established by Federal statute or Executive or administrative orders.

(d) *Coordination with Civilian Personnel Office.* It is necessary that authorized manpower ceilings not be exceeded (except that such ceilings are not applicable to individuals obtained to meet the requirements of the DEFSIP-B program) and that the cognizant civilian personnel office establish certain records and files on individuals employed to render personal services under contracts (see CPR A9.3-5). Accordingly, the contracting officer administering such contract shall effect necessary coordination with the civilian personnel office before award of the contract. The contracting officer may also designate the appropriate civilian personnel officer as his representative for the purpose of administering provisions relating to annual and sick leave, obtaining from the contractor necessary data for FICA and income tax withholdings, administering conflict of interest provisions applicable to the contractor, and within-grade increases in connection with DEFSIP-A contractors (see CPR P8.2).

§ 594.1003-5 Limitations.

(a) The following limitations set forth in paragraphs (b) through (f) of this section are applicable to any contract within the coverage of § 594.1003-2.

(b) Prior to award of a contract for services under the DEFSIP program, appropriate security clearance shall be obtained from the Assistant Chief of Staff for Intelligence except in cases where the individual concerned is brought to the United States under waiver of documentation procedures.

(c) No contract shall provide for the performance of services beyond the close of the fiscal year during which it is executed. However, a contract may provide for renewal at the beginning of the succeeding fiscal year upon written notification to the contractor by the contracting officer. Such notification shall be given only after the required determinations (§ 594.1003-1(b)) have been made by the Secretary and funds have been made available to the contracting officer for continuation of the contract. If the funds used are NO YEAR funds and are available, the renewal may be made contingent only upon the making of the required determinations by the Secretary.

(d) Compensation of the individual shall, to the maximum extent practicable, be substantially equivalent to that for the Civil Service grade corresponding to the services to be performed by such individual; provided, however, that the contract may provide for travel expenses, including actual transportation and per diem in lieu of subsistence while the individual is traveling from his home or place of business to official station and return, as may be authorized by law (5 U.S.C. 73b-2 and CPR T3).

(e) Compensation of the individual shall not exceed the maximum rate set by the Classification Act pay schedules for grade GS-15, except that the following may be compensated at rates not in excess of the maximum rate for grade GS-18:

(1) Professional engineering positions primarily concerned with research and development; and

(2) Professional positions in the physical and natural sciences and in medicine.

In accordance with DOD policy, contracts under the DEFSIP-A program will provide for periodic within-grade salary increases in the same amounts and at the same time intervals as applicable to employees in corresponding Classification Act pay grades (see CPR P8.2).

(f) In procuring personal services by contract, the conflict of interest and other applicable provisions of CPR A9, "Employment of Experts and Consultants," must be observed. The pertinent provisions of CPR A9 relating to conflicts of interest shall be specifically incorporated into the contract by reference.

§ 594.1004 Contracts with organizations for expert or consultant services.

(a) *General.* A contract for personal services to be rendered to the Government should not be made with an organization; e.g., it is improper for a contract with an organization to call for the contractor to supply personnel to work alongside and under the direct supervision of regular Government employees. Moreover, even though the contract may

be prepared on a nonpersonal services basis (e.g., call for an end product), if it is one which calls for the contractor or his employee to exercise for, or on behalf of, the Government that type of discretion or decision which is proper only for exercise by regular personnel of the Government, the contract should not be entered into. Subject to the foregoing, a contract may be entered into with an organization for expert or consultant services if:

(1) The obligation of the contract is that of the organization itself and not of its employee(s) who will actually perform the services and the specific object of the work is set forth clearly in the contract (a contract with a proper scope of work defining the end result, which envisages the issuance of specific task or delivery orders wherein the object of a particular task is more definitely described is not precluded);

(2) Both the terms of the contract and the intended method under which the services will be performed are such that the services are nonpersonal in character (e.g., the relationship resulting is not that of employer-employee; see § 594.1001(b)).

(b) *Compensation.* The limitations on compensation (see § 594.1003-5(d)) do not apply to a proper nonpersonal services contract with an organization, nor are the services to be counted against civilian personnel authorizations.

(c) *Leave and taxes.* In case of a proper nonpersonal services contract for expert or consultant services with an organization, the matters of leave, Social Security taxes, and income tax withholdings applicable to the contractor's employees are the responsibility of the contractor.

(d) *Procedures.* Unless the criteria set forth in § 594.1005 apply, Secretarial determinations as required by the statutes described in § 594.1001(a) are not required for nonpersonal services contracts with an organization.

§ 594.1005 Criteria for submission for Secretarial consideration of proposed contracts for nonpersonal expert or consultant services.

(a) A proposed contract in which expert or consultant services will be furnished by either an organization or an individual, shall be submitted to the addressee in § 591.150(b)(8) for any necessary approval or other action (notwithstanding that the contract describes such services as nonpersonal) if three or more of the following factors exist:

(1) The equipment and supplies necessary to perform the services are to be supplied by the Government;

(2) The office or working space is to be furnished by the Government;

(3) The services will not require the use of special knowledge or equipment possessed by the contractor;

(4) Qualified Government employees are reasonably available to perform the services or can be obtained through normal Civil Service employment procedures, considering availability by transfer, detail, temporary duty, and temporary appointment;

(5) The services are of a continuing rather than a temporary or intermittent character;

(6) The rendition of the services will not result in an end product which is adequately described in the contract;

(7) The fee or price will be based on the time actually worked rather than the results to be accomplished;

(8) The fee or price will not be based on the use of the contractor's facilities, staff or equipment.

(b) When submission to Secretarial level is required pursuant to paragraph (a) of this section, the file submitted shall contain the following:

(1) In the case of an organization, the information required by § 594.1003-3(a) (1) and (2), except that in lieu of the information under paragraph (a) (1) (iii), the file shall set forth an analysis which the procuring activity considers adequate to demonstrate that it is necessary or substantially more economical or feasible to obtain the services by contract;

(2) In the case of an individual, the information required by § 594.1003-3(a), except that in lieu of the certificate there shall be a statement that if the contract is considered to be for personal services the proposed employment of the contractor will or will not, as the case may be, exceed the civilian personnel authorization established for the Army agency in which the individual is to work. In addition, the file shall describe the unusual circumstances which the procuring activity considers to be adequate to demonstrate either the infeasibility of obtaining the services by means other than contract or the necessity of obtaining the services by contract;

(3) Where the procuring activity considers that the services are nonpersonal, a legal opinion in support thereof which takes into consideration the criteria set forth in § 594.1001(b) and pertinent decisions of the Comptroller General.

§ 594.1006 Contracts for stenographic reporting services.

Stenographic services are normally provided by regular civilian employees who are appointed under the usual Civil Service procedures. However, there are circumstances involving variable requirements, unavailability of suitably qualified personnel, or economies to the Government where a contract for stenographic reporting services with an individual or organization may be justified; e.g., for furnishing verbatim transcripts of proceedings at irregular intervals where regular employees are not available to perform the services. Such contract shall normally be written on an end product basis; payment should be predicated on the results delivered; e.g., number of copies of transcript, words per page, and the like; and the contractor should be required to furnish the necessary typewriter, paper, bindings, and other supplies. Such contract shall normally be awarded only after formal advertising. Before any such contract is entered into it is necessary that it be authorized under a Secretarial determination. If such determination has not been made the approval requirements of § 593.1003-3(a) (1) and (2) shall

apply, except that in lieu of the information called for under paragraph (a) (1) (iii) an analysis shall be set forth which the procuring activity considers adequate to demonstrate that it is either necessary or substantially more economical or feasible to obtain the services by contract.

PART 595—INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

Subpart A—Procurement Under Federal Supply Schedule Contracts

- Sec.
595.101 Federal Supply Schedule contracts.
595.106 Federal Supply Schedules with multiple source provisions.

Subpart B—Procurement of Supplies From General Services Administration Stores Depots and of Services for Repair and Refinishing From General Services Administration Sources

- 595.204 Order for supplies.

Subpart F—Procurement of Printing and Related Supplies

- 595.601 Printing and related supplies.

Subpart K—Coordinated Procurement

- 595.1102-1 Single department procurement.
595.1103-4 Emergency.
595.1103-6 Purchase of decentralized items.
595.1104 Items in short supply.
595.1118 Procurement agreements.

AUTHORITY: The provisions of this Part 595 issued under sec. 3012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

Subpart A—Procurement Under Federal Supply Schedule Contracts

§ 595.101 Federal Supply Schedule contracts.

(a) In the case of service station deliveries of gasoline and lubricating oil under Federal Supply Schedule (classes 7 and 14) where an identification card is used, the delivery ticket prepared by the service station and signed by the identification card holder at the time of delivery constitutes a "delivery order" consistent with paragraph 3-5, AR 37-107.

(b) When purchase of an item of foreign origin is necessary, the using activity requesting the item shall furnish adequate justification to enable the making of appropriate determinations under current statutes and directives pertaining to the purchase of foreign supplies.

§ 595.106 Federal Supply Schedules with multiple source provisions.

Each purchase from a multiple award schedule must be made at the lowest delivered price available unless the purchase of a higher priced item is fully justified and is based on objective reasons (not personal preferences), such as: (a) special features of the ordered item, not available on other items, which are necessary to fulfill using agency's requirements; (b) necessity for compatibility with existing facilities; (c) trade-in considerations produce the lowest net contract price; (d) necessary delivery requirements cannot be met by lower priced item. If the justification is based on such apparently intangible features of

the higher priced item as longer useful life, more favorable warranty, more favorable maintenance considerations, or other long-run advantages, there must be included sufficient historical data, objective analysis, and factual information to support the higher priced purchase.

Subpart B—Procurement of Supplies From General Services Administration Stores Depots and of Services for Repair and Refinishing From General Services Administration Sources

§ 595.204 Order for supplies.

In ordering supplies under MILSTRIP (see AR 725-50) from GSA Stores Depots, the ordering officer shall use the DD Form 1348 series in lieu of DD Form 1155 (see § 591.452(c) (1) (ii)). This ordering officer shall be the consolidated property officer; or, if there is no consolidated property officer, the accountable property officer authorized to requisition on the DSA and Army supply systems.

Subpart F—Procurement of Printing and Related Supplies

§ 595.601 Printing and related supplies.

Departmental procedures applicable to the procurement of printing and related supplies or references thereto are indicated hereafter:

(a) *Printing.* (AR 310-1.)

(b) *Envelopes.* (Group 75, Federal Supply Schedules.) Procurement procedure pertaining to mailing envelopes and related provisions applying to use of penalty markings are published in AR 341-10.

(c) *Related supplies.* Blank paper, ink, glues, and other related supplies carried in stock by the Government Printing Office shall be purchased from that office if required for use within the District of Columbia.

Subpart K—Coordinated Procurement

§ 595.1102-1 Single department procurement.

When the Department of the Army has received a procurement assignment under the DOD Commodity Assignment Program, assignment of procurement responsibilities to a particular procuring activity shall be made by the Commanding General, U.S. Army Materiel Command. The procuring activity assigned procurement responsibility shall be responsible for (a) collecting and coordinating the requirements of the Department of the Army, or the arrangement therefor, and (b) submitting to DOD via the addressees in § 591.150(b) (6) and (17).

§ 595.1103-4 Emergency.

Waivers of single procurement assignment procedures under the emergency provision of § 5.1103-4 of this title shall be limited to circumstances and conditions comparable to those described in § 3.202-2 of this title.

§ 595.1103-6 Purchase of decentralized items.

The provisions of § 5.1103-6 of this title shall not be invoked to permit local

purchase of assigned items until the Procuring Department has been properly advised of the decision to use local purchase as the normal means for obtaining Department of the Army supply requirements.

§ 595.1104 Items in short supply.

Shortages of supplies and services requiring coordination with other Departments shall be reported, with complete information thereon, to the addressee in § 591.150(b) (17) for resolution.

§ 595.1118 Procurement agreements.

To the extent that any interservice support agreement involves procurement, it may be executed under authority of, and at the level indicated in AR 1-35.

PART 596—FOREIGN PURCHASES

Subpart A—Buy American Act—Supply and Service Contracts

- Sec.
596.103-2 Nonavailability in the United States.
596.103-5 Canadian supplies.
596.104-4 Evaluation of bids and proposals.

Subpart B—Buy American Act—Construction Contracts

- 596.204-3 Evaluation of bids and proposals.
596.205-50 Report of violation.

Subpart C—Appropriation Act Restrictions on Procurement of Foreign Supplies

- 596.304-1 Procurement of food, clothing, woven silk and woven silk blends, spun silk yarn for cartridge cloth, or items containing mohair or cotton.

Subpart D—Purchases From Soviet-Controlled Areas

- 596.402 Exceptions.

Subpart E—Canadian Purchases

- 596.501 Purchases from Canadian suppliers.
596.501-50 Solicitation of Canadian firms.
596.501-51 Submission of bids and proposals.
596.501-52 Presurvey requirements of Canadian firms.
596.501-54 Security.
596.501-55 Accredited Canadian representatives for procurement purposes.
596.503-50 Agreements with the Canadian Army and the Department of Defence Production (Canada).
596.504 Mutual Canadian-American interests.

AUTHORITY: The provisions of this Part 596 issued under sec. 3012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

Subpart A—Buy American Act—Supply and Service Contracts

§ 596.103-2 Nonavailability in the United States.

(a) The authority to make additional determinations applicable to individual procurements under § 6.103-2 of this title relative to the Buy American Act only is hereby delegated to each Head of Procuring Activity. The Head of Procuring Activity may delegate this authority only to his deputy or a principal assistant responsible for procurement, without power of redelegation. Additionally, he may delegate this authority

to such contracting officers under his command as he may deem appropriate when the aggregate amount of the purchase does not exceed \$10,000. Determinations made by a contracting officer shall be reviewed by the cognizant Head of Procuring Activity, his deputy or his principal assistant responsible for procurement within 30 days of issuance. Each determination made pursuant to this subparagraph shall be in writing.

(b) A request to the appropriate authority for a determination of nonavailability under the Act shall contain the following information:

(1) A description of the item or items, including unit and quantity;

(2) The estimated cost, including transportation costs to destination and any applicable duty;

(3) The country of origin (see Subpart D, Part 6 of this title regarding restrictions on purchases from Soviet-controlled areas);

(4) The name and address of the proposed contractor;

(5) A brief statement of the necessity for the procurement; and

(6) A statement of facts establishing the nonavailability of items of domestic origin which are similar or which can be used as an acceptable substitute.

(c) The required determination shall be prepared in substantially the form set forth hereafter, with a signed copy to accompany the payment voucher.

DETERMINATION

Date: _____

Pursuant to the authority contained in Section 2, Title III of the Act of 3 March 1933, popularly called the Buy American Act (41 U.S.C. 101 a-d), and authority delegated to me by _____

I hereby find:

a. (Description of the item or items to be procured, including unit, quantity and estimated cost inclusive of duty and transportation costs to destination.)

b. (Brief statement of the necessity for the procurement.)

c. (Statement of facts establishing the nonavailability of a similar item or items of domestic origin.)

Based upon the above showing of fact, it is determined that the above described item(s) is (are) not mined, produced, or manufactured, or the articles, materials, or supplies from which it (they) is (are) manufactured, are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Accordingly, the requirement of the Buy American Act that procurement be made from domestic sources and that it be of domestic origin is not applicable to the above described procurement, since said procurement is within the nonavailability exception stated in the Act. Authority is granted to procure the above described item(s) of foreign origin (country of origin) at an estimated total cost of \$_____, including duty and transportation costs to destination.

(Signature)

[NOTE: Where a foreign end product is to be acquired on the basis of a "nonavailability" determination, and ASPR 6-103.2 requires an approval in accordance with the Balance of Payments Program the following paragraph shall be added:

In accordance with the Balance of Payments Program, the feasibility of foregoing

the requirement or providing a U.S. substitute has been considered, and approval of (appropriate official described in ASPR 6-103.2), as required by ASPR 6-103.2 (has been obtained) (is hereby granted).]

§ 596.103-5 Canadian supplies.

The Assistant Secretary of the Army (Installations and Logistics) has determined that the following supplies are of a military character or are involved in programs of mutual interest to the United States and Canada:

(a) All items purchased under contracts for experimental, developmental and research work; and

(b) The following listed supplies identified by Federal Classification Groups and Classes:

- Group 10; Weapons (all classes).
Class 1135*; Fuzing and Firing Devices, Atomic Ordnance.
Class 1190*; Specialized Test and Handling Equipment, Atomic Ordnance.
Group 12; Fire Control Equipment (all classes).
Group 13; Ammunition and Explosives (all classes).
Class 1410; Guided Missiles.
Class 1420; Guided Missile Components.
Class 1430; Guided Missile Remote Control Systems.
Class 1440; Launchers, Guided Missiles.
Class 1450; Guided Missile Handling and Servicing Equipment.
Group 15; Aircraft and Airframe Structural Components (all classes).
Group 16; Aircraft Components and Accessories (all classes).
Group 17; Aircraft Launching, Landing and Ground Handling Equipment (all classes).
Class 1930; Barges and Lighters, Cargo.
Class 1935; Barges and Lighters, Special Purpose.
Class 1940; Small Craft.
Class 1945; Pontoon and Floating Docks.
Group 20; Ship and Marine Equipment (all classes).
Group 22; Railway Equipment (all classes).
Group 23; Motor Vehicles, Trailers, Cycles (all classes).
Group 24; Tractors (all classes).
Group 25; Vehicular Equipment Components (all classes).
Group 26; Tire and Tubes (all classes).
Group 28; Engines, Turbines and Components (all classes).
Group 29; Engine Accessories (all classes).
Group 30; Mechanical Power Transmission Equipment (all classes).
Group 31; Bearings (all classes).
Group 34; Metal Working Machinery.
Class 3615; Pulp and Paper Industries Machinery.
Class 3625; Textile Industries Machinery.
Class 3695; Miscellaneous Special Industry Machinery.
Group 38; Construction, Mining, Excavating (all classes).
Group 39; Materials Handling Equipment (all classes).
Group 41; Refrigeration and Air Conditioning Equipment (all classes).
Class 4210; Fire Fighting Equipment (all classes).
Class 4240; Safety and Rescue Equipment.
Group 43; Pumps and Compressors (all classes).
Class 4410; Industrial Boilers.
Class 4420; Heat Exchangers and Steam Condensers.
Class 4470; Nuclear Reactors.
Class 4520; Space Heating Equipment and Domestic Water Heaters.
Group 46; Water Purification and Sewage Treatment Equipment (all classes).

*Subject to Atomic Energy Act restrictions.

Group 47: Pipe, Tubing, Hose and Fittings (all classes).
 Group 48: Valves (all classes).
 Group 49: Maintenance and Repair Shop Equipment (all classes).
 Class 5220: Inspection Gages and Precision Layout Tools.
 Group 53: Hardware and Abrasives (all classes).
 Group 54: Prefabricated Structures and Scaffolding (all classes).
 Group 55: Lumber, Millwork, Plywood and Veneer (all classes).
 Group 56: Construction and Building Materials (all classes).
 Group 58: Communication Equipment (all classes).
 Group 59: Electrical and Electronic Equipment Components (all classes).
 Group 61: Electric Wire and Power Distribution Equipment (all classes).
 Class 6210: Indoor and Outdoor Electric Lighting Fixtures.
 Class 6220: Electric Vehicular Lights and Fixtures.
 Class 6340: Aircraft Alarms and Signal Systems.
 Group 66: Instruments and Laboratory Equipment (all classes).
 Class 6710: Cameras, Motion Picture.
 Class 6720: Cameras, Still Picture.
 Class 6730: Photographic Projection Equipment.
 Class 6770: Film, Processed.
 Group 68: Chemicals and Chemical Products (all classes).
 Group 69: Training Aids and Devices (all classes).
 Class 7440: Automatic Data Processing Systems: Industrial Scientific and Office Types.
 Class 7610: Books and Pamphlets.
 Class 7650: Drawings and Specifications.
 Class 8010: Paints, Dopes, Varnishes and Related Products.
 Class 8020: Paint and Artists Brushes.
 Class 8030: Preservatives and Sealing Compounds.
 Class 8115: Boxes, Cartons and Crates.
 Class 8140: Ammunition Boxes, Packages and Special Containers.
 Class 9320: Rubber Fabricated Materials.
 Class 9330: Plastic Fabricated Materials.
 Class 9350: Refractories and Fire Surfacing Materials.
 Group 95: Metal Bars, Sheets and Shapes (all classes).

End equipment parts (repair parts) for the above listed supplies are considered to be included in the above list, even though not separately listed, when they are procured under a contract that also calls for listed supplies.

§ 596.104-4 Evaluation of bids and proposals.

Proposed awards submitted for Secretarial decision in accordance with § 6.104-4 (b) and (d) of this title shall include complete documentation on all factors pertinent to the required Secretarial action and a proposed award recommendation. Provision with respect to extending acceptance dates of bids or proposals shall be made by purchasing offices, as appropriate.

Subpart B—Buy American Act—Construction Contracts

§ 596.201-3 Evaluation of bids and proposals.

Proposed awards submitted for Secretarial decision shall include complete documentation on the conditions which are the bases of the proposed award, and a proposed award recommendation.

Provision with respect to extending acceptance dates of bids or proposals shall be made by purchasing offices, as appropriate.

§ 596.205-50 Report of violation.

When a contractor has failed to comply with or is suspected of having failed to comply with the terms of the required Buy American Act clause, the contracting officer shall prepare and forward a report thereof in accordance with § 1.608 of this title.

Subpart C—Appropriation Act Restrictions on Procurement of Foreign Supplies

§ 596.304-1 Procurement of food, clothing, woven silk and woven silk blends, spun silk yarn for cartridge cloth, or items containing mohair or cotton.

If the contracting officer finds that the price for any domestic supply included in § 6.304-1 of this title is unreasonable, he shall forward, through channels, to the addressee in § 591.150(b)(6) a request for Secretarial determination with respect to § 6.303(g) of this title. Such request shall be accompanied by—

(a) A proposed Secretarial determination in the format set forth in § 596.103-2(c), with appropriate changes in text to include statutory references and to conform to a determination that a satisfactory quality and sufficient quantity grown or produced in the United States cannot be procured as and when needed at U.S. market prices; and

(b) Complete documentation to support the requested determination.

Subpart D—Purchases From Soviet-Controlled Areas

§ 596.402 Exceptions.

(a) The term "United States," as used in this subpart, is as defined in § 6.101(c) of this title.

(b) With respect to an exception pursuant to § 6.402(b)(1) of this title, the procedures set forth herein govern.

(1) When the supplies are to be used in the United States, the exception may be granted only after a determination has been made pursuant to § 596.103-2. Such determination shall include a finding that there is no known item from sources other than Soviet-controlled areas which can be used as a reasonable substitute. Attention is invited to the Note in the format at § 596.103-2(c) which may, notwithstanding § 6.402(b)(1) of this title, require approval above the contracting officer's level.

(2) When the supplies are to be used outside the United States, the contracting officer shall include in the contract file a justification for the exception.

(c) With respect to an exception pursuant to § 6.402(b)(2) of this title, the procedures set forth herein govern.

(1) When the supplies are to be used in the United States, the request shall be accompanied by (i) a proposed Secretarial determination in the format set forth in § 596.103-2(c), modified appropriately to include a finding that there is no known acceptable substitute available from any other source, and (ii) by complete documentation to support each

element of the requested determination (§ 596.103-2(b)).

(2) When the supplies are to be used outside the United States, the request shall be accompanied by a complete justification for the exception.

Subpart E—Canadian Purchases

§ 596.501 Purchases from Canadian suppliers.

See AR 1-25 for information concerning the United States-Canadian Development Defense Sharing Program. Contracts for supplies or services from sources in the Dominion of Canada shall be made with, and administered through, the Canadian Commercial Corporation through its Washington office, except:

(a) Under circumstances of public exigency as described in § 3.202-2 of this title, procuring activities are authorized to negotiate directly with suppliers or contractors domiciled in the Dominion of Canada without reference to the Canadian Commercial Corporation;

(b) Subject to applicable restrictions of Subpart B, Part 3 of this title and Subpart B, Part 593 of this chapter, procuring activities are authorized to negotiate directly for research services with any university, college, or educational institution located in the Dominion of Canada without reference to the Canadian Commercial Corporation; or

(c) When the Canadian Commercial Corporation requests that the procurement be placed directly with Canadian suppliers or contractors.

(d) When authorized pursuant to applicable provisions of AR 1-25.

§ 596.501-50 Solicitation of Canadian firms.

(a) In the procurement of research and development, whether or not requests for proposals have been furnished to known Canadian sources, three copies of the request for proposal or notice of prenegotiation briefing shall be furnished the Washington office of the Canadian Commercial Corporation by cover letter which specifically refers to the inclosure and includes one of the following statements, as appropriate: (1) "Copies of the inclosure have been addressed to these Canadian sources: (Here insert list)." (2) "Copies of the inclosure have not been addressed to any Canadian source. The inclosed copies are furnished to the Canadian Commercial Corporation for distribution to such Canadian sources considered capable of and possibly interested in competing for this research and development work. Reproduction of the inclosure is authorized." Canadian sources have been authorized to communicate directly with the installation or activity initiating the procurement when unclassified questions arise regarding solicitations. Direct replies shall be made to the requesting source. Two copies of the replies shall be furnished to the Canadian Commercial Corporation. Classified replies shall be made to the Canadian source through the Canadian Commercial Corporation.

(b) Canadian firms should be included on bidders' mailing lists and comparable source lists only upon request by the Canadian Commercial Corporation.

Such requests should be directed to the activity having procurement responsibility for the supplies or services involved. Invitations for bids and requests for proposals shall be sent directly to the Canadian firms appearing on the appropriate bidders' mailing list. A copy of the invitation for bids or request for proposals and a listing of all Canadian firms solicited shall be sent to the Canadian Commercial Corporation, 2450 Massachusetts Avenue NW., Washington, D.C. Invitations for bids and requests for proposals also shall be furnished to the Canadian Commercial Corporation, if requested by the Corporation for its own account, even though not furnished to Canadian firms.

§ 596.501-51 Submission of bids and proposals.

(a) Except as provided in § 596.501 (a) through (d) bids and proposals received directly from Canadian firms shall not be accepted, but shall be referred to the Canadian Commercial Corporation for appropriate action.

(b) Bids of the Canadian Commercial Corporation normally will be subject to the same consideration with respect to determining responsiveness as is applied to domestic bids.

§ 596.501-52 Preaward survey requirements of Canadian firms.

(a) Except as provided in § 596.501, prime contracts for supplies or services procured from sources in the Dominion of Canada shall be awarded to the Canadian Commercial Corporation and further subcontracted to sources selected by the Canadian Commercial Corporation.

(b) In determining the responsibility of the contractor where procurements are placed with Canadian sources, the contracting officer shall document the file as required by § 1.904 of this title with a record of his determinations as to the responsibility of the first tier subcontractor selected by the Canadian Commercial Corporation to perform the contract.

(c) The preaward qualification check or survey information required by the contracting officer as the basis for the determination referred to in paragraph (b) of this section, may be obtained by direct request to the Canadian Commercial Corporation. To the extent deemed necessary, surveys may be performed by the contracting officer or by his representative in lieu of or in addition to preaward qualification survey information furnished by the Canadian Commercial Corporation.

§ 596.501-54 Security.

(a) The furnishing of classified information to the Canadian Commercial Corporation shall be governed by current security regulations, including:

(1) DOD Industrial Security Manual for Safeguarding Classified Information;

(2) Disclosure of Classified Military Information to Foreign Governments;

(3) AR 1-25, United States-Canadian Defense Development Sharing Program;

(4) AR 1-70, Standardization Among Armies of United States-United Kingdom-Canada;

(5) AR 380-5, Safeguarding Defense Information;

(6) AR 380-14, Industrial Personnel Access Authorization Review;

(7) AR 380-19, International Interchange of Patent Rights and Technical Information;

(8) AR 380-25, Visitors;

(9) AR 380-130, Armed Forces Industrial Security Regulations;

(10) AR 380-131, Industrial Security;

(11) (S) AR 580-10, Policy and Procedure Governing the Disclosure and/or Exchange of Atomic Information under Agreements for Cooperation Regarding Atomic Information for Mutual Defense Purposes (U);

(12) (C) AR 580-12, Release of Information Concerning Guided Missiles and Vulnerability of Weapons Systems to Electronic Countermeasures (U);

(13) AR 580-20, Armed Forces Industrial Defense Regulation;

(14) DA-DCMT(A); and

(15) Basic Standardization Agreement, United States-United Kingdom-Canada-Australia.

(b) Classified military information which may not be released under authority of the references cited in paragraph (a) of this section may be released only upon the prior approval of the Assistant Chief of Staff for Intelligence.

(c) All visits by Canadian nationals to Army installations or activities and to contractors' or subcontractors' plants will be cleared on a government-to-government basis in conformance with the procedures of AR 380-25, AR 380-130, and AR 380-131.

§ 596.501-55 Accredited Canadian representatives for procurement purposes.

Accreditation to a procuring activity of Canadian representatives may be established for performance of a procurement function for Canada after appropriate coordination among the Head of Procuring Activity, the Canadian Department of Defence Production, and the Canadian Commercial Corporation. A procuring activity is authorized to release to duly accredited representatives of the Canadian Government classified military information necessary for procurement by prime contract to Canadian contractors or by subcontract to Canadian sources from Canadian contractors, within the terms of their procurement accreditation and provided the classified information is releasable under the criteria set forth in the references contained in § 596.501-54(a).

§ 596.503-50 Agreements with the Canadian Army and the Department of Defence Production (Canada).

The agreement set forth in § 6.503 of this title is a part of the overall United States-Canadian defense production and development sharing programs. The United States-Canadian Development Sharing Program is set forth in AR 1-25.

§ 596.504 Mutual Canadian-American interests.

(a) General. In implementing the Department of Defense policy of seeking the best possible coordination of the

materiel programs of Canada and the United States, the Assistant Secretary of the Army (Installations and Logistics) has made determinations concerning listed supplies and instructions with respect to bids and proposals offering Canadian end products, as set forth in Subparts A and E of this part.

(b) *Applicability.* The alleviation of the restrictions of the Buy American Act with respect to Canadian supplies as prescribed in this part applies to the evaluation of bids or proposals in solicitations involving competitive bidding on (1) supply contracts, (2) research and development contracts, and (3) contracts for services involving articles, materials and supplies. See also § 6.103-2 of this title.

(c) *Limitations.* The authority contained in this part, with respect to Canadian supplies, shall not be used in instances where a solicitation and award must be limited to, or placed with, a domestic source in accordance with one or more of the following:

(1) A requirement for U.S. Mobilization Base;

(2) The Small Business Set-Aside program;

(3) The Labor Surplus Area Set-Aside program;

(4) The Disaster Area program;

(5) A negotiated procurement in the interests of standardization (§ 3.213 of this title);

(6) Appropriation acts restrictions; or

(7) Other specific requirements in the interests of the United States in individual cases as approved by the addressee in § 591.150(b) (6).

PART 597—CONTRACT CLAUSES

Subpart A—Clauses for Fixed-Price Supply Contracts

Sec.	
597.103-2	Changes.
597.103-5	Inspection.
597.103-8	Assignment of claims.
597.103-12	Disputes.
597.103-13	Renegotiation.
597.105	Additional clauses.
597.107	Price escalation clause (labor and material).
597.150	Department of the Army clauses.
597.150-1	Plant protection.
597.150-2	Rental of gas cylinders.
597.150-3	Cost-plus-a-percentage-of-cost subcontracting.

Subpart B—Clauses for Cost-Reimbursement Type Supply Contracts

597.203-5	Inspection of supplies and correction of defects.
597.204-50	Medical services at Government-owned contractor-operated installations.
597.204-51	Cost-plus-a-percentage-of-cost subcontracting.

Subpart C—Clauses for Fixed-Price Research and Development Contracts

597.303-50	Care of experimental animals.
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Subpart D—Clauses for Cost-Reimbursement Type Research and Development Contracts

597.403-50	Medical services at Government-owned contractor-operated installations.
597.403-51	Cost-plus-a-percentage-of-cost subcontracting.
597.403-52	Care of experimental animals.

Subpart O—Clauses for Services Contracts

Sec. 597.1501	Clauses to be used when applicable.
597.1501-1	Examination of records.
597.1501-2	Marine risk.
597.1501-3	Option to renew.

AUTHORITY: The provisions of this Part 597 issued under sec. 3012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

Subpart A—Clauses for Fixed-Price Supply Contracts

§ 597.103-2 Changes.

When reasonable and practicable under the circumstances of a particular procurement, the contracting officer may substitute in the Changes clause a longer or shorter period than "30 days." This substitution would be made either before solicitation, during negotiations if appropriate, or as a supplemental agreement if made after award.

§ 597.103-5 Inspection.

(a) Specifications which do not contain complete and definite quality assurance provisions shall be supplemented to the extent necessary to clearly define the inspections required to be performed by the contractor.

(b) When it will be necessary under a proposed procurement for the contractor to establish an inspection system pursuant to paragraph (e) of the Inspection clause (§ 7.103-5 of this title) which is likely to represent a departure from customary industry procedures, which is of a nature not normally found among the prospective contractors who may be expected to participate in the procurement, or which may reasonably be expected to have a significant impact on the cost or other aspect of the procurement, the solicitation shall so inform prospective contractors. In such cases there shall be included in the contract reasonably definitive descriptions of the inspection system to be maintained by the contractor.

§ 597.103-8 Assignment of claims.

(a) *Setoff as against assignee.* (1) A Head of Procuring Activity may authorize deletion of the last sentence of subparagraph (a) of the Assignment of Claims clause in conformance with § 7.103-8 of this title.

(2) Reduction of or setoff from payments to be made to an assignee shall be effected in accordance with §§ 163.108-7 and 163.108-8 of this title as appropriate.

(b) *Refunds of payments received by assignee.* In any case in which monies due or to become due under any contract are or have been assigned pursuant to section 1 of the Assignment of Claims Act of 1940, as amended, no liability of any nature of the assignor to the United States or any department or agency thereof, whether arising from or independently of such contract, shall create or impose any liability on the part of the assignee to make restitution, refund, or repayment to the United States of any amount received since May 15, 1951, under the assignment. However, in a case where the contracting officer believes that an assignee has received payments in excess of its beneficial interest and

that a refund is to the advantage of the Government, after receipt of legal advice the contracting officer may seek to have the assignee release monies in excess of such beneficial interest.

(c) *Acknowledgment of notice of assignment.* A contracting officer shall acknowledge notices of assignment filed by assignees. Where a notice of assignment of monies due under a definitive contract, which supersedes a letter contract, is received pursuant to the Assignment of Claims Act of 1940, as amended, such notice should be acknowledged regardless of the fact that a notice of assignment of monies due under the letter contract had been previously acknowledged. The two notices of assignment should be considered as one and filed accordingly.

(d) *Assignor's statement.* Where direct payment is made to an assignee, the contractor shall furnish on each voucher, invoice, or other supporting paper, a statement to the effect that he recognizes the assignment, its validity, and the right of the assignee to receive payment.

(e) *Information to be furnished to assignees.* A contracting officer shall upon request of the contractor, furnish proposed assignees information regarding the status of the contract at the time of the assignment. The contracting officer shall advise the assignee that the information is furnished only for privileged purposes restricted to use in connection with the assignment.

§ 597.103-12 Disputes.

(a) *Overseas area.* In the case of contracts to be performed outside the continental limits of the United States (i.e., outside that part of the United States located within the North American continent between Canada and Mexico), a Head of Procuring Activity in an overseas area may modify the Disputes clauses contained in Subchapter A, chapter I of this title as set forth in paragraph (b) of this section: *Provided, however,* That the Commander in Chief, United States Army, Europe, may reserve to his headquarters the legal functions relating to appeals from disputes and to litigation arising from such contracts which are effected by the procuring activity in Europe and may take the action of the Head of Procuring Activity as set forth in paragraphs (c) and (d) of this section and in § 610.304.

(b) *Disputes clause.*

DISPUTES (APRIL 1963)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days of the receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to ----- [*] ----- The decision of the ----- [*] -----, or his duly authorized representative (other than the Contracting Officer under this contract) for the determination of such appeals shall be final and conclusive if the amount involved in the appeal is \$50,000 or less. If the

amount involved exceeds \$50,000 such decision shall be final and conclusive unless, within 30 days after receipt by the Contractor thereof, the Contractor furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals, or of the ----- [*] ----- in the case of appeals involving amounts of \$50,000 or less, shall be final and conclusive [1. unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence.] [2. to the extent permitted by U.S. law.] In connection with any appeal proceeding under this clause, the contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

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

(c) *Instructions for use of clause.* The space indicated "-----[*]-----" in the clause above should be completed to show the proper title of the Head of Procuring Activity who has established an appropriate board of contract appeals, in accordance with paragraph (d) of this section. The bracketed language numbered [1] in the clause should be used in all contracts except those in which it is anticipated that the contractor will be a foreign entity; the language in [2] should be used in all contracts in which it is anticipated that the contractor will be a foreign entity.

(d) *Overseas Board of Contract Appeals.* (1) Each Head of Procuring Activity in an overseas area who uses the Disputes clause above shall appoint a Board to be known as "The ----- Board of Contract Appeals." The Board shall consist of three or more members who shall be persons trained in the law, one of whom shall be designated by the appointing authority as President of the Board. There shall also be appointed a Recorder of the Board who will perform such duties as the Board may prescribe. The Recorder of the Board may also be a member thereof.

(2) The Board created pursuant to subparagraph (1) of this paragraph shall be designated by the Head of Procuring Activity as his duly authorized representative to hear, consider, and decide as fully as he himself might do, all appeals under contracts providing for such appeals. The Board shall be granted all powers necessary and incident to the proper performance of its duties and, with the approval of the appointing authority shall adopt and promulgate its own methods of procedure, rules, and regulation for its conduct and for the preparation and presentation of appeals and the issuance of decisions.

(3) Each Head of Procuring Activity appointing a Board in an overseas area shall designate one or more trial attorneys, who shall be qualified attorneys-at-law, for the preparation and pres-

entation of the contentions of the Government in relation to appeals before the Board.

§ 597.103-13 Renegotiation.

Contracts placed with the Canadian Commercial Corporation are exempted from compliance with the requirements of § 7.103-13 of this title.

§ 597.105 Additional clauses.

The clauses set forth in § 7.105 of this title shall be inserted in fixed-price supply contracts in accordance with the instructions of each procuring activity where necessary or desirable to cover the subject matter contained in such clauses.

§ 597.107 Price escalation clause (labor and material).

(a) The clause set forth in § 7.107(c) of this title shall not be used where it is desired to adjust contract prices upon the basis of quantitative changes in the original estimates of labor hours or materials. When the criteria in § 7.107(a) of this title are met, the clause may be used in the procurement of items other than those of a standard commercial nature where adequate cost experience has been obtained on previous contracts and where the design of the supplies has been stabilized.

(b) Considerable latitude is permitted and encouraged in the selection of types of labor and material and rates of pay or price per unit to be negotiated under § 7.107(b) of this title. Wherever possible and practicable, costs selected for escalation should be reduced to a type of material price or rate of pay agreement that will require little if any audit review if a price adjustment is called for by either of the contracting parties.

§ 597.150 Department of the Army clauses.

The following clauses shall be included in fixed-price contracts when applicable.

§ 597.150-1 Plant protection.

In those cases where another Military Department or agency does not have plant cognizance and the contracting officer deems it necessary to retain some control as to the plant protective devices in a particular plant, the contract shall contain one of the following clauses:

(a) PLANT PROTECTION (FEBRUARY 1965)

The contractor shall maintain in and about his plant adequate plant protective devices and shall employ such watchmen, guards and other personnel as the Contracting Officer may deem necessary to prevent espionage, sabotage, and other malicious destruction or damage.

(b) PLANT PROTECTION (FEBRUARY 1965)

(1) The Contractor shall maintain in and about his plant adequate plant protective devices and shall employ such watchmen, guards and other personnel as the Contracting Officer may deem necessary to prevent espionage, sabotage, and other malicious destruction or damage. If after commencement of performance of this contract, the Contracting Officer shall require and authorize in writing the installation of additional plant protective devices or the employment of additional watchmen, guards, or other personnel, the cost of any such devices installed or the pay or any such personnel employed, or both shall be reimbursed to the Contractor upon submission of vouchers approved by the Contracting Officer, provided that no reimbursement for any such installation or pay

shall be made in excess of the cost thereof, as estimated in advance and approved in writing by the Contracting Officer.*

(2) Title to all plant protective devices and equipment installed under paragraph (1) of this clause shall be in the Government, and shall not be affected by incorporation or attachment of such devices and equipment to any property not owned by the Government, nor shall any such device or equipment become a fixture or lose its identity as personalty by reason of affixation to any realty. After completion or termination of the contract, the Government may, (i) allow the contractor to acquire any such devices and equipment under the conditions prescribed by and at a price or prices approved by the Contracting Officer, (ii) require the Contractor to comply, at Government expense, with directions of the Contracting Officer with respect to removal and shipment of such devices and equipment, or (iii) abandon all such devices and equipment in place, and thereupon all obligations of the Government regarding such abandoned devices and equipment shall cease.

(c) PLANT PROTECTION (GOVERNMENT-OWNED CONTRACTOR-OPERATED PLANTS) (FEBRUARY 1965)

(1) The Contractor shall at all times during the performance of the work under this Contract comply with all applicable Federal, State and local statutes, and with such rules and regulations as are furnished to the Contractor by the Contracting Officer, governing the manufacture, storage, loading, handling, or transporting of military explosives, pyrotechnic, and inert materials. The Contractor shall maintain such additional safety precautions for its personnel, for facilities staffed and operated by it, and for work in process, as are customary in the industry or in the Contractor's private operations. All personnel having access to the plant, including Government personnel, shall comply with all instructions issued by the Contractor in furtherance of the safety precautions. The Contractor shall install and maintain in and about the plant such plant protective devices and shall employ such guards and other personnel as the Contracting Officer may approve, including such personnel and protective devices for the prevention of espionage, sabotage, and other malicious destruction or damage. The Contractor shall make available such information with respect thereto as the Contracting Officer may request. The use by the Contractor of such Government-owned safety or plant protective equipment as may be located at the plant site is authorized subject to approval by the Contracting Officer.

(2) The Contractor agrees to furnish the authorized Security and Safety personnel of the Department of the Army a survey of the existing internal security system and explosion-and-fire-prevention system in the portions of the plant staffed and operated by the Contractor. The Contractor agrees to make any changes necessary to cause the existing internal security system and explosion-and-fire-prevention system to comply with all applicable local, State, and Federal laws, rules, and regulations, including such Department of the Army regulations or

(Procuring Activity)

Instructions as are furnished to the Contractor by the Contracting Officer, governing the manufacture, storage, loading, handling or transporting of military explosives, pyrotechnic, and inert materials.

(3) At any time during the term of this contract, the Contracting Officer may re-

*If desired an additional proviso may be added, reading substantially as follows:

Provided further that no reimbursement of the cost of any such installation or pay or any such personnel is being made to the Contractor by other means.

quire the Contractor to install and maintain in and about the plant additional protective devices, equipment and personnel. The Contractor shall submit promptly to the Contracting Officer for prior approval as to estimated cost, detailed inventories, including the estimated cost of each item of protective devices or equipment so required to be installed and of installing the same, and a detailed estimate of the cost of maintaining any such additional protective devices or equipment and personnel.

(4) Title to all plant protective devices and equipment added under paragraph (c) of this clause shall be in the Government. The Contractor, during the term of this contract or any extension thereof, shall maintain and keep in good condition and repair all such protective devices and equipment.

(5) The Contracting Officer and authorized Security and Safety personnel of the Department of the Army, at all times during the performance of this contract or any extension thereof, shall have access to the portions of the plant staffed and operated by the Contractor in order to inspect, inventory, or remove any of said plant protective devices or equipment, and to inspect the premises with respect to compliance with all regulations and requirements concerning plant protection, safety, and security including any recommendations made by the appropriate Department of the Army personnel.

§ 597.150-2 Rental of gas cylinders.

Every contract for the rental of gas cylinders shall contain a clause similar to one of the following:

(a) RENTAL OF GAS CYLINDERS (INDIVIDUAL BASIS) (FEBRUARY 1965)

Cylinders shall remain the property of the Contractor and will be loaned, without charge, to the Government for a period of 30 days after the date of shipment of cylinders from the Contractor's plant. Beginning with the first day after the expiration of the 30-day free loan period to and including the day the cylinders are released to the transportation company for return to the Contractor, there will be charged and the Government agrees to pay the Contractor a rental at the rate of \$----- per cylinder per day for the use of cylinders not returned to the Contractor.

(b) RENTAL OF GAS CYLINDERS (QUANTITY BASIS) (FEBRUARY 1965)

Cylinders shall remain the property of the Contractor and will be loaned, without charge, to the Government for a period of 30 days after the date of shipment of cylinders from the Contractor's plant. Beginning with the first day after the expiration of the 30-day free loan period to and including the day the cylinders are released to the transportation company for return to the Contractor, there will be charged and the Government agrees to pay the Contractor a rental at the rate of \$----- per cylinder per day, computed on a quantity basis, as indicated below, for the use of cylinders not returned to the Contractor. This rental charge will be computed separately for oxygen and acetylene cylinders and for each point of delivery named in the contract. A credit of 30 cylinder days will accrue for each cylinder shipped by the Contractor. A debit of 1 cylinder day will accrue for each cylinder for each day beginning with the day after date of shipment from Contractor's plant to and including the day the cylinder is released to the transportation company for return to the Contractor. At the end of the contract period, in the event the total number of debits exceeds the total number of credits, rental will be charged for the difference. If the total number of credits equals or exceeds the total number debits, no charge will be made for the use of the cylinders.

All cylinders not returned to the Contractor on or before the expiration of a 90-day

rental period or lost or damaged beyond repair while in the possession of the Government shall be paid for by the Government to the Contractor at a replacement value of \$----- for each oxygen cylinder of 100 to 110 cubic feet capacity, \$----- for each oxygen cylinder of 200 to 220 cubic feet capacity, \$----- for each acetylene cylinder of 100 to 150 cubic feet capacity, and \$----- for each acetylene cylinder of 250 to 300 cubic feet capacity.

Cylinders retained or lost and so paid for shall be considered the property of the Government; but if and when located they may, at the option of the Government, be returned to the Contractor, and, in such event credit shall be allowed to the Government at the replacement value paid, less rental at the rate of \$----- per day beginning at the expiration of the 30-day period as aforesaid to the date upon which cylinders are turned over to carrier for return to Contractor's plant.

§ 597.150-3 Cost-plus-a-percentage-of-cost subcontracting.

The following clause shall be included in all negotiated contracts other than firm fixed-price contracts, unless the provisions of this clause are otherwise substantially incorporated in the contract pursuant to a clause prescribed by Subchapter A, Chapter I of this title.

COST-PLUS-A-PERCENTAGE-OF-COST SUBCONTRACTING (FEBRUARY 1965)

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

Subpart B—Clauses for Cost-Reimbursement Type Supply Contracts

§ 597.203-5 Inspection of supplies and correction of defects.

In addition to the Inspection of Supplies and Correction of Defects clause required by § 7.203-5 of this title, appropriate language to accomplish the requirements set forth in § 597.103-5 shall be included in requests for proposals and the resulting contracts.

§ 597.204-50 Medical services at Government-owned contractor-operated installations.

The following clause shall be included in all new and current Government-owned contractor-operated contracts entered into or amended:

MEDICAL SERVICES (FEBRUARY 1965)

The Contractor shall provide medical services, as a minimum, of a scope which shall include (i) treatment of on-the-job illnesses and dental conditions requiring emergency attention, (ii) preemployment examinations, and (iii) preventive programs related to health.

§ 597.204-51 Cost-plus-a-percentage-of-cost subcontracting.

See APP § 597.150-3.

Subpart C—Clauses for Fixed-Price Research and Development Contracts

§ 597.303-50 Care of experimental animals.

In furtherance of the Department of the Army policy that all aspects of the

use of experimental or laboratory animals in activities performed and sponsored by Department of the Army agencies be in accordance with the Principles of Laboratory Animal Care as promulgated by the National Society for Medical Research, the following clause shall be included in all contracts which may involve the use of experimental animals:

CARE OF EXPERIMENTAL ANIMALS (DECEMBER 1961)

The Contractor agrees to adhere to the following principles in the care of any experimental animals utilized in the performance of this contract:

(i) The acquisition and use of all animals for experimental purposes shall be in compliance with Federal, State, and local laws.

(ii) Research projects involving live animals must be performed by, or under the immediate supervision of, a qualified biological scientist.

(iii) The housing, care, and feeding of all experimental animals shall be supervised by a properly qualified veterinarian or other biological scientist competent in such matters.

(iv) All laboratory animals must receive every consideration for their comfort; they must be kindly treated, properly fed, and their surroundings kept in a sanitary condition.

(v) Rooms in which animals are to be housed shall be provided with a floor which can be kept clean, and the room shall be lighted and ventilated. The temperature shall be held within reasonable limits. Cages should be of sufficient size to permit the animals used to stand or lie in a normal position. It is generally conceded that animals maintained for long periods are in better physiological condition if they exercise regularly. Species housed out-of-doors should be given adequate protection from direct sunlight or inclement weather.

(vi) The food and water supplied to all experimental animals, subject to the nature of the research, must be palatable, and of sufficient quantity and proper quality to maintain the animals in good health.

(vii) In any operation likely to cause greater discomfort than that attending anesthetization, the animals shall first be rendered incapable of perceiving pain and be maintained in that condition until the operation is ended.

(A) Whenever anesthetization would defeat the purpose of the experiment the experiment must be approved by the head of the Contractor's research department or directly supervised by the head of his laboratory.

(B) If an acute study does not require survival, the animal must be killed in a humane manner at the conclusion of the experiment.

(C) If the nature of the study is such as to require survival of the animal, then acceptable techniques must be followed throughout the operation.

(viii) The post-operative care of animals must be such as to minimize discomfort during convalescence in accordance with acceptable hospital practice.

(ix) The care and housing of individual species will be in accordance with the recommendations of the Institute of Laboratory Animal Resources, National Academy of Sciences, Washington, D.C., in effect on the date of this contract and in accordance with such supplements and amendments thereto as may be agreed upon by the Contractor and the Government.

Subpart D—Clauses for Cost-Reimbursement Type Research and Development Contracts

§ 597.403-50 Medical services at Government-owned contractor-operated installations.

See § 597.204-50.

§ 597.403-51 Cost-plus-a-percentage-of-cost subcontracting.

See § 597.150-3.

§ 597.403-52 Care of experimental animals.

See § 597.303-50.

Subpart O—Clauses for Service Contracts

NOTE: This subpart contains selected miscellaneous clauses only. It does not attempt to cross-reference all required or permissive clauses.

§ 597.1501 Clauses to be used when applicable.

§ 597.1501-1 Examination of records.

See § 3.113 of this title.

§ 597.1501-2 Marine risk.

The following clause may be used in contracts for chartering vessels for coastal, harbor, inland water, or similar services.

MARINE RISK (FEBRUARY 1965)

The owner shall assume all marine risks of whatever nature or kind, including all risks or liability for breach of law or statutes or for damage caused to other vessels, persons or property, except as otherwise provided herein. When official storm warnings have been issued or weather and water or other conditions render an operation unusually hazardous and the owner or master protests in writing to the Contracting Officer against undertaking the operation but thereafter the Contracting Officer orders him to perform the operation and he undertakes to do so and the vessel is damaged or lost as the proximate result of the unusual hazard protested against and not of the negligence of the owner, master or crew, the Government shall, at its discretion, repair the damage to the vessel or reimburse the owner for the cost of such repairs or for the loss of the vessel, to the extent not covered by insurance and within the limit of funds against which indemnification by the Government to the Contractor for such loss or damage may lawfully be charged, but in no case in excess of the value of the vessel immediately preceding the incident causing the damage or loss; and shall, for a period not to exceed ----- days (insert the number of days estimated to repair or replace the vessel), reimburse the owner, within the funds limitation as indicated above, for the actual expenses of stand-by time, as determined by the Contracting Officer. The Contractor shall file a report of such damage or loss within 3 working days after the date of the incident or the date of the vessel's return to port, whichever is the later date. Failure to file such a report within the time specified shall constitute a waiver of the right to indemnification based on liability of the Government for the damage to or loss of the vessel. Failure to agree to any findings or determinations made by the Contracting Officer hereunder shall be a dispute concern-

ing a question of fact within the meaning of the clause of this contract entitled "Disputes."

§ 597.1501-3 Option to renew.

See § 591.1506-50.

PART 598—TERMINATION

Subpart B—General Principles Applicable to the Settlement of Fixed-Price Type Contracts Terminated for Convenience and to the Settlement of All Terminated Cost-Reimbursement Type Contracts

- Sec.
598.201 Authority of contracting officers.
598.206 Fraud or other criminal conduct.
598.208-6 Delay in settlement of subcontractor claims.
598.208-8 Assignment of rights under subcontracts.
598.209-2 Excepted items.
598.211-4 Action by board.
598.250 Status of terminations.

Subpart C—Additional Principles Applicable to the Settlement of Terminated Fixed-Price Contracts

- 598.307-2 Bases for settlement proposals.

Subpart E—Disposition of Termination Inventory

- 598.504-2 Scrap warranty.

Subpart F—Termination for Default

- 598.602-3 Procedure for default.

AUTHORITY: The provisions of this Part 598 issued under sec. 3012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

Subpart B—General Principles Applicable to the Settlement of Fixed-Price Type Contracts Terminated for Convenience and to the Settlement of All Terminated Cost-Reimbursement Type Contracts

§ 598.201 Authority of contracting officers.

Each Head of Procuring Activity shall insure proper supervisory control over terminations for default of cost-reimbursement type contracts and over terminations for the convenience of the Government of all types of contracts. No contract shall be terminated for convenience if the contractor is in unexcusable default and the Government has a legal right to terminate such contract for default, even though the Government's requirement for performance no longer exists; *Provided, however*, That this prohibition does not preclude a termination for convenience at no cost to the Government as provided in § 8.602-4(c) of this title.

§ 598.206 Fraud or other criminal conduct.

Reports required by § 8.206 of this title shall be in accordance with § 1.608 of this title.

§ 598.208-6 Delay in settlement of subcontractor claims.

Where it is necessary to exclude the claim of a subcontractor from a settlement with a prime contractor, the settlement agreement shall be clearly marked "This settlement agreement contains an unassumed exclusion." The contract file shall be retained until such exclusion is removed.

§ 598.208-8 Assignment of rights under subcontracts.

The approval required by § 8.208-8 of this title shall be obtained from the cognizant Head of Procuring Activity.

§ 598.209-2 Excepted items.

Where any rights or claims of the Government or of the contractor are excepted from a settlement, the settlement agreement shall be clearly marked "This settlement agreement contains an unassumed exclusion." The contract file shall be retained until such exclusion is removed.

§ 598.211-4 Action by Board.

All actions by a Settlement Review Board shall be taken at duly constituted meetings of such Board, and the written opinion of the Board setting forth its approval or disapproval of the proposed settlement shall be signed by each Board member present. Such written opinion shall not be a repetition of the contracting officer's memorandum, but shall contain all pertinent facts which prompted the Board's approval or disapproval. A proposed settlement which was reached by mutual agreement, if disapproved by the Board, shall be returned to the cognizant contracting officer for further negotiation within the framework of the Board's opinion. Upon conclusion of such negotiation, the new proposed settlement shall be submitted to the Board. A proposed settlement which resulted from the contracting officer's redetermination, if disapproved by the Board, shall be returned to the contracting officer for redetermination or negotiation and submission to the Board. Except as provided in § 8.211-4 of this title, the contracting officer may not proceed with a proposed settlement until approval of the Settlement Review Board has been obtained.

§ 598.250 Status of terminations.

The Head of Procuring Activity shall maintain a record of the status of each termination until such action has been completed.

Subpart C—Additional Principles Applicable to the Settlement of Terminated Fixed-Price Contracts

§ 598.307-2 Bases for settlement proposals.

(a) A contracting officer may authorize use of the total cost basis of settlement under a complete termination where any one of the following conditions exists:

(1) The only costs incurred are in the nature of initial costs;

(2) The contractor's accounting system does not lend itself to a segregation of costs as between the completed and the terminated portions of the contract;

(3) The contract has been completely terminated and is a construction contract or a letter contract; or

(4) The contract is for a lump sum amount.

(b) The total cost basis of settlement may be used under a partial termination only when considered by the cognizant Head of Procuring Activity to be the most feasible method under the circum-

stances. An example of a circumstance in which the total cost basis may be authorized under a partial termination is one where the contractor's accounting system does not lend itself to a segregation of costs as between the completed, continued, and terminated portions of the contract, and control can be exercised over the costs to be incurred on the continued portion. The settlement of a partial termination on the basis of "total costs applicable to the terminated portions of the contract" is not a settlement on the total cost basis as in the case of paragraph (a) of this section.

Subpart E—Disposition of Termination Inventory

§ 598.504-2 Scrap warranty.

An adequate identification and description of the material to which the scrap warranty is applicable shall be incorporated into the scrap warranty by appropriate language. Where advisable for brevity or for other reasons, the identification may be accomplished by reference to appended schedules or to properly identified inventory schedules.

Subpart F—Termination for Default

§ 598.602-3 Procedure for default.

(a) Termination for default of contracts which involve outstanding guaranteed loans, program payments, or advance payments shall be accomplished only after the procuring activity has coordinated with the U.S. Army Materiel Command, the U.S. Continental Army Command, or OASA (I&L), as applicable. In addition, prior to termination all such cases shall be coordinated with the Director of Contract Financing, Office of the Comptroller of the Army who shall further coordinate, when necessary, with the contract financing offices of other Military Departments. See also § 610.401(c).

(b) Contracts involving a contractor to whom a certificate of competency was issued by the Small Business Administration, or to whom loans were made with that agency's participation, shall not be terminated for default without prior approval of the Head of Procuring Activity. Copies of notices of intent to terminate such a contract for default shall be sent to the nearest Regional Office of the Small Business Administration after coordination with the Small Business and Labor Surplus Advisor at the purchasing office has been accomplished.

(c) The following procedures, conforming to the General Services Administration regulations, shall be followed in terminating for default delivery orders placed against Federal Supply Schedule contracts.

(1) **Ordering office.** Before declaring a contractor in default, an ordering office should ordinarily notify the contractor in writing that unless satisfactory performance occurs by a specified date, his right to proceed further under the delivery order will be considered terminated and he will be held liable for any excess costs resulting from purchasing the supplies or services elsewhere. The date specified should allow a reasonable time for performance. This step shall

not be taken when the default involves an attempted fraud on the United States, or when it obviously would be futile (e.g., when the contractor has already declined to perform). Where excess costs are anticipated, the ordering office may withhold sufficient funds due the contractor as security for later offset against such costs. The ordering office shall endeavor to minimize excess costs; it shall also, when possible, collect excess costs owed to the United States.

(2) *Federal Supply Service.* Where an ordering office is notified that the Federal Supply Service has declared the contractor in default, the ordering office shall thereafter refuse to accept further performance by or place any further delivery order against the contractor. If any delivery order remains unfulfilled as a result of the default and the supplies or services continue to be required, the ordering office shall thereafter either purchase against the account of the defaulted contractor from other contractors designated by the Federal Supply Service or effect the repurchase in such a manner as directed by the Federal Supply Service. In the absence of designation of another source or receipt of appropriate directions from the Federal Supply Service, and after coordination with the Federal Supply Service office which defaulted the contract, the supplies or services may be obtained under an Army contract when necessary to meet delivery requirements and to discharge properly the obligation to mitigate excess costs.

(3) *Notification.* The ordering office shall furnish to the Federal Supply Service office which executed the contract the details concerning all material instances of unsatisfactory performance by the contractor, whether or not properly adjusted and settled. The ordering office shall also report, as may be directed by the Federal Supply Service, all purchases made against the account of a contractor defaulted by the Federal Supply Service. The address of the Federal Supply Service office which has executed the particular contract can be obtained by referring to the applicable schedule.

PART 599—PATENTS, DATA, AND COPYRIGHTS

Sec.	
599.050	Definitions.
Subpart A—Patents	
599.103-4	Waiver of indemnity by the Government.
599.105	Processing of infringement claims.
599.105-50	Authority.
599.105-51	Patent claims received in Department of the Army.
599.105-52	Requirements for an administrative claim for patent infringement.
599.105-53	Failure to meet requirements.
599.105-54	Indirect notice of claim.
599.105-55	Duties of designees.
599.105-56	Action by representative.
599.105-57	Correspondence with claimant.
599.105-58	Clearance to investigate.
599.105-59	Action by referred designees.
599.105-60	Final report where no settlement of claim is made.

Sec.	
599.105-61	Action and authority of the Chief, Patents Division.
599.105-62	Settlement of claims and procurement of invention and patent rights by designee.
599.105-63	Settlement of indemnified claims.
599.105-64	Settlement of foreign claims.
599.105-65	Fiscal procedures.
599.105-66	Approval of agreements.
599.105-67	Contract distribution.
599.105-68	Disclosure of information to claimants and their representatives.
599.105-69	Mandatory contract clauses.
599.105-70	Suggested clauses—contracts except running royalty contracts.
599.105-71	Suggested clauses—contracts providing for payment of a running royalty.
599.105-72	Assignments.
599.105-73	Suggested contract form.
599.105-74	Gratuitous grants.
599.106	Classified contracts.
599.106-1	Classified contracts to be performed outside the United States.
599.109	Followup of patent rights.
599.110	Reporting of royalties.
599.111	Adjustment of royalties.

Subpart B—Data and Copyrights

599.202-1	Acquisition of data.
599.202-3	Multiple sources of supplies.
599.202-6	Data furnished on a restricted basis in support of a proposal.
599.203-1	Basic data clause.
599.203-3	Limited rights provision for addition to basic data clause.
599.204-2	Production of motion pictures.
599.205-2	Contracts for existing motion pictures.

Subpart C—Foreign License and Technical Assistance Agreements

599.302	Foreign license and technical assistance contracts between the Government and domestic concerns.
599.303	Supply contracts between the Government and second sources.
599.304-2	Review of agreements.

Subpart O—Procurement of Invention and Patent Rights

599.1501	Policy.
599.1502	Action by representative.
599.1503	Reporting of proposed licenses and assignments.
599.1504	Correspondence with invention owner or his representative.
599.1505	Clearance to consider and procure licenses and assignments.
599.1506	[Reserved]
599.1507	Final report by designee where no license or assignment is procured.
599.1508	Procedures applicable to procurement of invention and patent rights.
599.1509	Gratuitous grants.

AUTHORITY: The provisions of this Part 599 issued under sec. 3012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

§ 599.050 Definitions.

As used in this part the following terms have the meanings assigned:

(a) *Chief, Patents Division.* The term "Chief, Patents Division" means of the Chief, Patents Division, Office of The Judge Advocate General, Department of the Army, Washington, D.C., 20310.

(b) *Designee.* The term "designee" means any office or person delegated or

designed to exercise powers and authorities under any of the "applicable statutes" listed in § 599.105(b).

(c) *Claim.* The term "claim" means an administrative claim for compensation which has in fact been asserted against the United States (based upon actual past procurement and not contemplated procurement) under any of the "applicable statutes" listed in § 599.105(b). The requirements for a claim are listed in detail in § 599.105-52.

Subpart A—Patents

§ 599.103-4 Waiver of indemnity by the Government.

Specific patents may be excluded in accordance with § 9.193-4 of this title only with the prior approval of the Chief, Patents Division, except that approval may be exercised for the U.S. Army Materiel Command by the Commanding General thereof and by any designee of the Commanding General, U.S. Army Materiel Command, having patent counsel.

§ 599.105 Processing of infringement claims.

(a) *Policy.* In order to maintain the goodwill of industry, and to encourage invention and the development of scientific arts related to national defense, it is the policy of the Department of the Army to avoid, whenever practicable, the infringement of privately owned rights in inventions and copyrighted works. For this reason, necessary rights with respect to such inventions and copyrighted works should be acquired in accordance with contemplated procurement, where it is in the Government's interest to do so and when such rights can be obtained at a fair value. When infringement of such rights does occur, it is the policy of the Department to take all necessary steps to investigate, and, if appropriate, settle or otherwise dispose of claims of infringement asserted against the Department. To this end, an investigation of each claim shall be made in accordance with the instructions and procedures set forth below. If any patent or copyright upon which a claim is based is found to be infringed, valid, and enforceable, efforts to settle the claim before suit against the United States has been instituted shall be made in accordance with this part. Coordination with the Departments of the Navy and the Air Force, the Defense Supply Agency, and with other interested departments or agencies of the Government in the processing and final disposition of each claim shall be effected by the Chief, Patents Division.

(b) *Statutes applicable to processing of administrative claims of infringement.*

(1) The Foreign Assistance Act of 1961, as amended September 4, 1961 (22 U.S.C. 2356, formerly the Mutual Security Acts of 1951 and 1954) provides that whenever in connection with the furnishing of foreign assistance under this Act (i) an invention or discovery covered by a patent issued by the U.S. Government is practiced within the United States without authorization of the owner, or (ii) information which is protected by law and held by the U.S. Government subject to restrictions imposed by the owner is dis-

closed by the U.S. Government or any of its officers, employees, or agents in violation of such restrictions, the exclusive remedy of the owner shall be suit against the U.S. Government for reasonable and entire compensation for such practice or disclosure in the Court of Claims or appropriate District Court within 6 years after the cause of action arises. The head of the Government agency concerned is authorized, before suit is instituted, to settle and pay any claim arising under the circumstances described above. However, no claim may be paid unless the amount tendered is accepted by the claimant in full satisfaction. The period during which the U.S. Government is in possession of a written claim before mailing of a notice of denial of that claim does not count in computing the 6-year period.

(2) The Invention Secrecy Act (Title 35, United States Code, section 181-188) provides for the withholding of the grant of a patent through the issuance of a secrecy order, for such time as the national interest requires, in those cases where the patent application discloses an invention the publication of which would be detrimental to the national security of the United States. The Government agency or department which caused the issuance of the secrecy order is authorized to enter into an agreement with the owner of an application, which except for the secrecy order would issue as a patent, in full settlement for the damage caused by the secrecy order and/or the use of the invention by the Government resulting from his disclosure. If full settlement cannot be effected, the head of the department or agency concerned may award and pay a sum not exceeding 75 percent of the sum considered to be just compensation for the damage and/or use. The Invention Secrecy Act also provides for suit by the owner of the application for an amount which when added to the award would constitute just compensation for the damage and/or use. The Act further provides that a patent owner who does not apply administratively for compensation is given the right to sue in the Court of Claims for just compensation for the damage caused by reason of the secrecy order and/or by the Government of the invention resulting from his disclosure.

(3) Title 10, United States Code, section 2386 provides that funds appropriated for Military Department available for making or procuring supplies may be used to acquire any of the following if the acquisition relates to supplies or processes produced or used by or for, or useful to, that department.

(i) Copyrights, patents, and applications for patents;

(ii) Licenses under copyrights, patents, and applications for patents;

(iii) Designs, processes, and manufacturing data; and

(iv) Releases, before suit is brought, for past infringement of patents or copyrights.

In connection with the acquisition of releases for past infringement of patents and copyrights, the basic statutory pro-

vision dealing with infringement by or for the Government is 28 U.S.C. 1498. This Act provides that whenever an invention covered by a patent of the United States is infringed by the Government, or by any person, firm, or corporation on behalf of and with the authorization or consent of the United States, the owner's remedy shall be by suit against the United States in the Court of Claims for the recovery of his reasonable and entire compensation for such infringement. Similar rights are provided whenever the copyright in any work protected under the copyright laws of the United States is infringed by or on behalf of the Government. The statute also provides that a Government employee shall have the right to bring such a suit against the Government except where he was in a position to order, influence, or induce use of the invention or copyright by the Government. No right of action is conferred on any patentee, copyright owner or his assignee with respect to any invention discovered or invented, or copyrighted work prepared by a person while in the employment or service of the United States, where the invention or copyrighted work was related to the official functions of the employee, in cases in which such functions included research and development, or in the making of which Government time, materials, or facilities were used.

§ 599.105-50 Authority.

(a) *Acquisition of licenses and releases of past infringement.* By virtue of 10 U.S.C. 2386, the Department of the Army is authorized to acquire rights in patents, copyrights, and other similar rights, as specified. The Commanding General, U.S. Army Materiel Command; the Chief of Engineers; The Surgeon General; and the designees of any of the foregoing are authorized, subject to the limitations of the remainder of § 599.105 to acquire the items and rights described in 10 U.S.C. 2386 and to enter into agreements in settlement of claims thereunder. Other procuring activities will request authority from the addressee in § 591.150(b) (1) through the Chief, Patents Division.

(b) *Claims under Foreign Assistance Act.* The Commanding General, U.S. Army Materiel Command; the Chief of Engineers; and The Surgeon General have been delegated authority to enter into agreements in settlement of claims asserted under section 606(b) of the Foreign Assistance Act of 1961 and predecessors (sec. 506 of Mutual Security Act of 1954 and sec. 517 of Mutual Security Act of 1951).

§ 599.105-51 Patent claims received in Department of the Army.

Any communication received by any activity of the Department of the Army in which claim is made that the manufacture, use, or disposition of any article, material, or process by or for that agency or any other agency or component of the Army, involves the use of any invention whether patented or unpatented, and making a claim for compensation on account or offering to grant a license therefor, will be transmitted to the Head of

Procuring Activity which has ordered the manufacture, use, or disposition of the subject matter in question. Such Head of Procuring Activity shall thereafter cause the claim to be processed in accordance with this subchapter.

§ 599.105-52 Requirements for an administrative claim for patent infringement.

The following minimum requirements should be met to constitute a claim for patent infringement:

(a) There must be a communication in writing to either the Department of Defense, the Department of the Army, or any organization, office, or field establishment of the Department of the Army;

(b) The communication must allege infringement;

(c) The communication must include a request for compensation, either expressed or implied;

(d) There must be a citation of the patent or patents alleged to be infringed;

(e) The communication must designate the alleged infringing item or process sufficiently to permit identification with certainty, giving the military or commercial designation if known to claimant;

(f) The claimant must designate at least one claim of each patent alleged to be infringed; or

(g) In exceptional cases, as an alternative to paragraphs (e) and (f) of this section, the claimant must certify that he has made a bona fide attempt to determine the item or process which is infringing, but was unable to do so, giving reasons, and also a reasonable basis for his belief that the Department of the Army is infringing his patent or patents.

§ 599.105-53 Failure to meet requirements.

(a) Any communication alleging patent infringement which does not meet the requirements set forth above shall be acknowledged, and the writer advised that no claim for infringement has been established. In such case the writer shall be advised as to the elements necessary to establish a claim.

(b) A communication to the Department of the Army making proffer of a license in which no infringement is alleged (merely making a statement that the patent owner is willing to license the Government), shall not be considered as a claim for infringement.

§ 599.105-54 Indirect notice of claim.

(a) A communication to a Department of the Army contractor alleging that the contractor has committed acts of infringement in performance of a Government contract having a Notice and Assistance clause shall be considered as a communication to said Department as of the date received by the Department of the Army.

(b) A communication alleging infringement addressed to another Military Department shall be considered as alleging infringement by the Department of the Army;

(1) Where infringing use of the invention by the Department of the Army is

specifically asserted in such communication;

(2) Where the Department of the Army is either the purchaser or user of the identified alleged infringing item or process;

(3) Where such communication cites as an alleged infringing item or process, an item or process of the Department of the Army.

(c) Upon receipt of a communication alleging patent infringement, the Chief, Patents Division, will supply the other Military Departments with a copy of such communication.

§ 599.105-55 Duties of designees.

Each designee is charged with taking appropriate action on behalf of the Department of the Army with respect to each claim pertaining to his procurement responsibility promptly after the claim is brought to his attention and as a minimum shall—

(a) Examine the claimant's title or other right to assert the claim (To prevent expenditure of time and effort in investigation of an administrative claim presented by a party not legally entitled to make such claim, the question of title to the patents involved in the claim should be examined at the outset of the investigation. Accordingly, in any claim received by a procuring activity having a patent counsel, a title search should be made before clearance is requested and a statement of the results thereof shall be included in such clearance request. In cases where the title search indicates that some question may be resolved by direct correspondence with claimant, Where claimant does not satisfactorily establish such right, the matter should be referred to the Chief, Patents Division, with recommendations for review and necessary action. The Chief, Patents Division, will conduct the necessary title search before granting clearance to procuring activities not having patent counsel, and in those cases in which the claim is initially received by the Chief, Patents Division, and clearance is granted without the request of the procuring activity.);

(b) Acknowledge in writing receipt of the communication in which the claim is asserted (A suggested form of acknowledgment is set forth in § 599.105-57.);

(c) Require the representative of the claimant to file in duplicate a Notice of Appearance in the form prescribed by paragraph 1, AR 632-35 (A Notice of Appearance is not required in those instances where it is within the knowledge of the designee that the representative of the claimant is not and has not been within the past 2 years, an officer or employee (civilian or military) of the U.S. Government or is not a retired officer of a regular component of the Armed Forces.);

(d) Request clearance within 30 days from the Chief, Patents Division, to investigate and settle each claim, inclosing a copy of the communication in which the claim was asserted or reported;

(e) Investigate each claim upon clearance from the Chief, Patents Division;

(f) Request contractors who have agreed to provide "notice and assistance" (§ 9.104 of this title) to furnish evidence and information in their possession which is necessary for proper disposition of such claims. (When such evidence and information is to be furnished at the expense of the Government, the expense may be charged against the funds under which the contract was initially executed or funds available for the purchase of similar items.);

(g) Prepare and transmit to the Chief, Patents Division, appropriate reports as listed in § 599.105-60;

(h) Settle the claim pursuant to those instructions; and

(i) Make the required distribution of each contract of settlement pursuant to § 599.105-67.

§ 599.105-56 Action by representative.

The duties indicated in § 599.105-55, and others referred to elsewhere in this subchapter, may be performed by an authorized representative of the designee, except for the execution of contracts pursuant to § 599.105-55(h).

§ 599.105-57 Correspondence with claimant.

No designee shall concede in writing addressed to any claimant, potential claimant, or the representative of either, the merit or value of any claim, except so far as such concession may be advisable in the course of negotiations leading to a settlement of the claim or be embodied in an agreement executed in settlement of the claim (AR 345-20). Upon receipt of a notice of infringement, the designee shall promptly acknowledge such receipt and request, when applicable, the information requested in the following form letter which is suggested for this purpose:

(LETTERHEAD OF DESIGNEE)

John Doe (Date)
Title Guaranty Building
Miami, Florida
Dear Sir:

Your letter to _____ dated _____ 19____, stating that United States Letters Patent No. _____, granted to (patentee's full name), for "(title of invention)," is (are) infringed by the Department of the Army, has been referred to this office for necessary action and direct reply.

The matter presented in your letter will be investigated and you will be informed of the Department's conclusions upon completion of the investigation.

To aid in the investigation, it is requested that you furnish this office the following:

(1) The name and address of licensees, if any.

(2) Copies of license agreements and releases for past infringement.

(3) Brief statement of any litigation in which the patent(s) have been or are now involved, and the present status thereof.

(4) List of all notices of infringement which you have sent to alleged infringers of the patent (except the alleged infringers included in your statement of litigation), including but not limited to any other departments and agencies of the Government.

(5) Brief statement of any employment of the patentee by the U.S. Government including the name of the agency or department and period of employment.

(6) Identification of any Government contracts under which the patentee, his employer

and/or the patent owner performed any work relating to the patented subject matter during the conception or reduction to practice of the invention in question.

(7) Evidence of title or other right to assert a claim.

(8) Two executed copies of the inclosed Notice of Appearance, requested of any person appearing in a representative capacity before the Department of the Army in a matter involving a claim against the United States.*

(9) An identification of the equipment or operation alleged to constitute infringement and, if available, name and address of the manufacturer of that equipment.**

Sincerely yours,

(Signature of Designee or representative).

§ 599.105-58 Clearance to investigate.

(a) Within 30 days after receipt of a written notice of a claim the designee shall make written request of the Chief, Patents Division for clearance to investigate and settle the claim. The Chief, Patents Division, however, may grant clearance to a designee to investigate and settle a claim even though clearance was not requested by that designee. Insofar as practicable one designee shall represent the Department of the Army in the investigation and settlement of each claim.

(b) Each request for clearance together with inclosures (except Notice of Appearance) shall be submitted in quadruplicate and shall include the following:

(1) The name and address of each claimant;

(2) The name and address of claimant's representative, if any;

(3) The name and address of each contractor and subcontractor who is believed, to the extent disclosed by a cursory search in the headquarters of the designee, to have performed possibly infringing acts;

(4) The number and date of each patent, and the serial number and filing date of each patent application involved;

(5) A brief description of the patented subject matter;

(6) A description of the alleged infringing subject matter in sufficient detail to permit other procuring activities to determine whether they have an interest in the matter;

(7) A copy of the communication from the claimant, if any;

(8) A copy of the Notice of Appearance when required; and

(9) The names of any other procuring activities of the Department of the Army which might have an interest in the claim.

(c) Upon receipt of the request for clearance, the Chief, Patents Division, shall determine, so far as indicated by (1) his files, (2) the Government Register of Patent Rights, and (3) the Department of Justice, whether the Department of the Army or any other department or agency has investigated or settled, or received a notice of a claim pertaining to the same subject matter and whether a Government license may

*For use where claim is asserted by a representative of the claimant in accordance with the requirements of AR 632-35.

**For use where this information has not previously been furnished.

be involved, and shall then grant such clearance in writing as appears proper.

(d) When clearance has been granted, the designee shall proceed with the investigation of the claim.

(e) The Chief, Patents Division shall refer copies of the request for clearance and copies of the clearance to each Head of Procuring Activity (referred designee) having a probable interest in the matter. The Chief, Patents Division also shall notify the Departments of the Navy and the Air Force and the Defense Supply Agency of each claim in which those Departments might have an interest and request those Departments to notify the designee (with informational copies to the Chief, Patents Division) of any pertinent information available to them.

§ 599.105-59 Action by referred designee.*

The chief patent or legal officer of each procuring activity to which the Chief, Patents Division has referred a claim pursuant to § 599.105-58(e) shall promptly investigate the procurement in his activity and report to the primary designee any past, present, or possible future interest of his activity in the matter, together with any other pertinent information available. Such reports shall contain any and all information which may be of assistance to the primary designee in the preparation of the reports required by § 599.105-60. Negative reports should be made if applicable. The referred designee shall submit to the primary designee interim reports describing the status of the case in sufficient detail to acquaint the recipient with the course of investigation of the case and prospective defenses, if any, together with an estimate of the date of completion of the investigation by the referred designee. These reports shall be submitted at intervals not to exceed six months. No claim shall be settled or final report submitted pursuant to § 599.105-60 until final reports are received by the primary designee from each referred designee. If any such report is not received and receipt cannot be arranged for by coordination, the designee shall withhold action and report the pertinent facts to the Chief, Patents Division with a request for instructions. The Chief, Patents Division after investigating the matter shall issue appropriate instructions to all parties concerned.

§ 599.105-60 Final report where no settlement of claim is made.

A final report (in duplicate) of the results of the investigation made on behalf of the Department of the Army including recommendations and conclusions of the designee, shall be made by him to the Chief, Patents Division with respect to each claim (whether or not the claim is covered by an indemnity agreement) in which settlement is believed to be inadvisable or the designee has been unable to settle upon terms deemed reasonable by him. A copy of the final report shall be forwarded by the designee to each interested Head of

Procuring Activity at this time. Each such report shall be dated and clearly marked "FINAL REPORT," and shall include so far as applicable and practicable the following information:

(a) Numbers and dates of all contracts and subcontracts for procurement of the item in question and for all other possibly infringing items and including contracts of any other procuring activity concerned;

(b) The name and address of each contractor and subcontractor concerned;

(c) The text of each contractor's agreement, if any, to indemnify the Government against liability for infringement, or a statement that there is no such indemnity agreement;

(d) The extent and dates of alleged infringement, or when no dates are alleged, the period over which infringement has been investigated;

(e) The text of any contract clause granting (or if there is no such clause any other information relating to) authorization and consent by the Government to the manufacture or use of the article, material, design, or process upon which such claim is based;

(f) Copies of patents alleged to be infringed;

(g) The result of title search in the Patent Office Assignment Records;

(h) A full and complete disclosure of any device, material, design or process which is alleged to infringe or which is sufficiently close to the patented item to raise a possible inference of infringement (including detailed description thereof, together with drawings, sketches, photographs, and specimens in proper cases) sufficient to determine whether infringement is present. An analysis of the patent claims and a comparison with the alleged infringing items or items which might raise an inference of infringement should be included in this disclosure;

(i) A report of date and extent of searches, if any, in each of the following categories:

(1) Prior art patents and publications;

(2) Pending applications filed by the procuring activity conducting the investigation; and

(3) Prior public uses;

(j) Copies of any prior art patents and publications, and full and complete description (and where practicable, a drawing, sketch, photograph, or specimen) of any prior uses relied upon by the designee;

(k) A statement of the extent to which royalties, if any, have been adjusted by the Department of the Army;

(l) A statement as to whether or not the inventor or patent owner was a Government employee in a position to order, influence, or induce use of the invention by the Government;

(m) A statement as to whether or not the invention was made during the time the inventor was in the employment or service of the Government, and if so, a description of the inventor's official functions at the time and a statement as to whether Government time, materials, or facilities were used;

(n) Names and addresses of prospective witnesses (fact and expert) and,

where pertinent to validity or infringement, signed statements of witnesses. Where a witness refuses to sign a statement, the interviewing officer shall submit a statement setting forth the facts which the witness may be expected to state if called to testify;

(o) Conclusions regarding infringement with respect to all departmental procurements involved and reasons therefor;

(p) Conclusions regarding validity and reasons therefor, unless the designee's conclusions given under paragraph (o) of this section are that in his opinion there is no infringement, in which case the only information required pertaining to validity is that which concerns possible statutory bars;

(q) Conclusions regarding the Government's liability, the estimated money value of the claim, and an estimate of future procurement involving possible increase of the claim;

(r) A summary of unsuccessful negotiations for settlement, if any; and

(s) Recommendations.

§ 599.105-61 Action and authority of the Chief, Patents Division.

(a) *Coordination of claims investigation.* The Chief, Patents Division, shall coordinate and expedite the processing of claims and may request status reports from the primary and referred designees for this purpose in addition to reports otherwise required under this part.

(b) *Review and action on final reports of designees.* (1) The Chief, Patents Division, shall review each final report and (i) if the report is approved shall deny the claim on behalf of the Department of the Army, or take other appropriate action leading to disposal of the claim, with copies of correspondence to the designee, each interested Head of Procuring Activity, and the other Military Departments; (ii) prepare a concurring supplementary report if appropriate; and (iii) if the report is not approved, return the report to the designee with a supplemental nonconcurring report, if appropriate, stating any conclusions which differ with the report of the designee and appropriate instructions for further actions.

(2) When final action has been taken on behalf of the Department of the Army, the Chief, Patents Division, shall so advise The Attorney General.

§ 599.105-62 Settlement of claims and procurement of invention and patent rights by designee.

The designee to whom the claim has been cleared may, subject to the availability of appropriations and allotments of funds in his activity, settle such claims in accordance with the sections of this part by execution of a contract of release and license or release and assignment.

§ 599.105-63 Settlement of indemnified claims.

Claims involving procurement made under a contract containing a patent indemnity clause (§ 9.103 of this title) shall not be settled without the written concurrence of the Chief, Patents Division, unless appropriate arrangements are made with the indemnifying contrac-

*Reports control Symbols are not required for reports submitted in accordance with this section.

for whereby the contractor contributes to the settlement in the proportion that his indemnified procurement bears to the total procurement.

§ 599.105-64 Settlement of foreign claims.

(a) *Foreign patents and copyrights.* No contract in settlement of patent or copyright infringement liability for use of foreign patents or copyrights shall be made without first obtaining the written approval of the Chief, Patents Division.

(b) *Foreign claimants.* No contract in settlement of patent or copyright infringement liability for the use of patents or copyrights issued in the United States shall be made with a government or a national of a government which is within the scope of any Foreign Assistance Program without first obtaining the written approval of the Chief, Patents Division.

§ 599.105-65 Fiscal procedures.

(a) An agreement to pay a fixed amount for the purchase of a paid up license and release or an assignment and release, or a release either by way of lump-sum payment or an amount determinable at the time of execution of the contract, is subject to the provision that allotment of funds available for the purpose will not be exceeded. Officers charged with making such agreements shall submit, prior to incurring any obligation, the proposed agreements to the cognizant finance and accounting officer for verification as to sufficiency of funds for that purpose. The following statement shall be included on the face of the contract:

The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to the following allotments, the available balances of which are sufficient to cover the cost of the same:—

(b) An agreement to pay running royalties on future procurement proportioned to use is not subject to the provision mentioned in paragraph (a) of this section.

(c) Any fiscal questions involving patent matters may be referred to the Chief, Patents Division for opinion and/or resolution.

§ 599.105-66 Approval of agreements.

(a) *Agreements requiring approval.* Approval by or on behalf of the Assistant Judge Advocate General for Civil Law is required of all agreements authorized by the Foreign Assistance Act of 1961 (22 U.S.C. 2356), (formerly the Mutual Security Act of 1954), the Invention Secrecy Act (35 U.S.C. 181-188), or 10 U.S.C. 2386 where the agreement—

(1) Provides for total payment by the Government, including reasonably anticipated royalties of \$100,000 or more;

(2) Includes a license—

(i) Limited to less than all Government agencies on the same terms; or

(ii) Not providing for disposition in accordance with law of any article or material embodying the subject of the license;

(3) Provides for compensation for damages other than for infringement of patents or copyrights; e.g., claims un-

der the Foreign Assistance Act or the Invention Secrecy Act (§ 599.105(b) (1) and (2));

(4) Contains a release or license which may operate to release a contractor from an obligation to indemnify the Government;

(5) Is in settlement of patent or copyright infringement liability for the use of foreign patents or copyrights;

(6) Is with a government or a national of a government within the scope of a Foreign Assistance Program;

(7) Contains a deviation from the requirements of Subchapter A, Chapter I of this title or this subchapter.

(8) Requires the signature of or concurrence on behalf of another agency of the Government.

(b) *Submission for approval.* Where approval of an agreement is required by paragraph (a) of this section, the designee shall submit the executed agreement in the number of copies required to be approved (plus an unexecuted copy) to the Chief, Patents Division. The agreement shall be accompanied by a memorandum of facts signed by or on behalf of the designee setting forth, where pertinent—

(1) The identification and brief description of the subject matter of the patent application, or invention involved in the claim being settled;

(2) The date of clearance granted pursuant to § 599.105-58;

(3) A brief statement of the designee's conclusions regarding validity and infringement and the reasons therefor;

(4) A statement of the extent of Government use of the invention, including the estimated money value of the claim, if any, and an estimate of future procurement, if any, involving possible increase of the amount of the claim;

(5) A statement of the interest of any other Department in the matter with a summary of extent to which coordination has been effected and/or should be effected;

(6) A specific reference to the reasons the requested approval is necessary as cited in paragraph (a) of this section;

(7) The reasons for any deviation from any prescribed contract clause, and a precise statement of such deviation;

(8) A recommendation, with supporting reasons, that the contract be approved;

(9) A recommendation that the instrument, if approved, be filed in the public register, departmental register, or the secret register of the U.S. Patent Office; and

(10) A statement that the instrument effects settlement of the claim for which clearance was granted.

(c) *Recordation.* Upon approval of the instrument by or on behalf of the Assistant Judge Advocate General for Civil Law, the Chief, Patents Division will forward one executed copy of the instrument directly to the U.S. Patent Office for recordation in the recommended register. The remaining executed and approved copies will be returned to the designee for distribution.

§ 599.105-67 Contract distribution.

(a) *General.* The designee shall obtain the original and at least one

executed copy of each release, license, and assignment made in accordance with the sections of this part. The original shall be forwarded by the designee (unless the contract does not involve the payment of money to the contractor) to the addressee in § 599.150(b) (12) for the General Accounting Office. The executed copy, together with a second copy which may be unexecuted (photostatic preferred), shall be transmitted without delay by the designee to the Chief, Patents Division for recording in the U.S. Patent Office. The memorandum of transmittal shall include the designee's recommendation whether the instrument should be filed in the public register, departmental register, or the secret register. This memorandum shall also set forth: (1) The name of the claimant; name of the releasor, licensor, or assignor; and name of the patentee or inventor; (2) the patent number or patent application serial number; and (3) a statement that the instrument effects settlement of the claim for which clearance was granted.

(b) *Contracts providing for payment of a running royalty.* A copy of each license which provides for the payment of a running royalty shall be transmitted by the designee to each interested Head of Procuring Activity. Receipt of such copy shall constitute notice that future procurement of the licensed subject matter requires the payment of royalties to the licensor. Where necessary, such interested Head of Procuring Activity shall notify procurement and price analysis offices affected.

§ 599.105-68 Disclosure of information to claimants and their representatives.

In order that settlements advantageous to the Government may be secured, the Chief, Patents Division; any designee; or a representative of either may (subject to the provisions of § 599.105-57 and considerations of military security) in the performance of his official duties and when he has reason to believe that such action would be to the advantages of the United States, disclose to the claimant or his authorized representative any facts or matters of evidence which appear to bear upon his claim or its value. The facts concerning such a disclosure and the extent of the disclosure shall be made of record in the case.

§ 599.105-69 Mandatory contract clauses.

The following clauses are required in every release or license agreement except on the written concurrence of the Chief, Patents Division. Minor modifications of language (e.g., pluralization of "Secretary" or "Contracting Officer") in multidepartmental agreements may be made on the basis of a written justification that the modification is necessary to carry out the intent of clause in a particular situation, without such concurrence.

(a) *Assignment of claims.* Section 7.103-8 of this title—Assignment of Claims clause shall be included in every contract which calls for payments by

the Government aggregating \$1,000 or more.

(b) *Disputes.* Section 7.103-12 of this title—Disputes clause shall be included in every contract which calls for payment by the Government.

(c) *Other ASPR clauses.* Section 7.103-19 of this title—Officials Not to Benefit, § 7.103-20 of this title—Covenant Against Contingent Fees, and § 7.104-16 of this title—Gratuities clauses shall be included in every release, license, and assignment executed by the Government.

(d) *Release of past infringement.* The following clause shall be included in every contract made in accordance with the sections of this part which grants rights to the Government under an issue patent:

**RELEASE OF PAST INFRINGEMENT
(FEBRUARY 1965)**

The Contractor agrees to and does hereby release each and every claim and demand which the Contractor now has or may hereafter have against the Government, its officers, agents, servants and employees, for infringement by or for the Government, prior to the effective date of this contract, of (1) any of the patents and applications for patent specifically identified in this contract (2) and any other patent or application for patent owned or hereafter acquired by the Contractor, insofar as and to the extent only as such other patent or patent application covers the manufacture, use or disposition of (description of subject matter).

Note: Bracketed portions of the foregoing clause may be omitted when not appropriate or not encompassed by the release as negotiated.

(e) *Nonestoppel.* The following clause shall be included in every contract made in accordance with the sections of this part:

NONESTOPPEL (FEBRUARY 1955)

The Contractor agrees that the Government shall not be estopped at any time to contest the enforceability, validity or scope of, or the title to, any patent or patent application herein licensed, [but this provision shall not be deemed to modify or avoid the obligation of the Government to pay royalties except as elsewhere herein provided].

(f) *Protection against unjust payments.* The following clause shall be included in every contract providing for payment of a running royalty:

**PROTECTION AGAINST UNJUST PAYMENTS
(FEBRUARY 1965)**

(1) If any license has been or shall hereafter be granted under substantially the same patents and authorizing substantially the same acts which are authorized under this contract within the United States, or royalty terms which are in any respect more favorable to the licensee than those contained herein, the Government shall be entitled to the benefit of such more favorable terms with respect to all royalties accruing under this license after the date such more favorable terms become effective, and the Contractor shall promptly notify the Secretary of the Army in writing of the granting of such more favorable terms.

(2) In the event any claim of any patent hereby licensed is construed or held invalid

by decision of a court of competent jurisdiction, the requirement to pay royalties under this contract insofar as it arises solely by reason of such claim, and any other claim not materially different therefrom, shall be interpreted in conformity with the court's decision as to the scope or validity of such claims: *Provided, however,* That in the event such decision is modified or reversed on appeal, the requirement to pay royalties under this license shall be interpreted in conformity with the final decision rendered on such appeal.

(g) *Termination.* The following clause shall be included in every contract providing for the payment of a running royalty:

TERMINATION OF LICENSE (FEBRUARY 1965)

The Government shall have the right, notwithstanding any other provision of this contract, to terminate the within license, in whole or in part, by giving notice in writing to the Contractor specifying a date when such termination is to be effective.

§ 599.105-70 Suggested clauses—contracts except running royalty contracts.

(a) *License grant.* The following clause is a suggested form for expressing the license grant in all contracts except those providing for payment of a running royalty:

LICENSE (FEBRUARY 1965)

The Contractor agrees to and does hereby grant and convey to the Government, as irrevocable, nonexclusive, nontransferable and paid up license under the following patent(s) (and application(s) for patent) to practice and cause to be practiced for the Government any and all of the inventions thereof in the manufacture, use and disposition of any article or material, and in the use of any method, in accordance with law:

U.S. Patent No.: _____ Date: _____
Application Serial No.: _____ Filing date: _____
(together with corresponding foreign patents and applications for patent, insofar as the Contractor has the right to grant licenses thereunder).

Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(b) *License term.* Either of the following clauses is suggested as a form for expressing the license term in any contract not providing for payment of a running royalty:

(ALTERNATE A)

TERM (FEBRUARY 1965)

The license hereby granted shall remain in full force and effect for the full term of the patent(s) referred to above (and any and all patents hereafter issued on applications for patent referred to above).

(ALTERNATE B.)

TERM (FEBRUARY 1965)

The license hereby granted shall terminate on the _____ day of _____ 19____: *Provided, however,* That said termination shall be without prejudice to the completion of any contract entered into by the Government prior to said date of termination or to the use or disposition thereafter of any articles or materials manufactured by or for the Government under this license.

§ 599.105-71 Suggested clauses—contracts providing for payment of a running royalty.

In addition to any clauses required in accordance with § 599.105-69, the follow-

ing clauses are suggested for use, where appropriate, in contracts providing for payment of a running royalty:

(a) *License grant.* No department other than the Department of the Army shall be obligated to pay royalties unless the contract is signed on behalf of such other department. Accordingly, the following license grant clause, limited to the practice of the invention by or for the Department of the Army, is suggested for use:

LICENSE (FEBRUARY 1965)

(1) The Contractor agrees to and does hereby grant and convey to the Government, as represented by the Secretary of the Army, an irrevocable, nonexclusive, nontransferable license under the following patent(s) (and application(s) for patent) to practice by the Department of the Army and cause to be practiced for the Department of the Army any and all of the inventions thereof in the manufacture, use and disposition of any article or material, and in the use of any method, in accordance with law:

U.S. Patent No.: _____ Date: _____
Application Serial No.: _____ Filing Date: _____
(together with corresponding foreign patents and applications for patent so far as Contractor has the right to grant licenses thereunder).

(2) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(b) *License term.* The following clause is a suggested form for expressing the license term:

TERM (FEBRUARY 1965)

The License hereby granted shall remain in full force and effect for the full term(s) of the patent(s) referred to above (and any and all patents hereafter issued on applications for patent referred to above) unless sooner terminated as elsewhere herein provided.

(c) *Computation of royalties.* The contract clause providing for the computation of royalties may be of varying scope. The following alternative clauses are suggested. (Alternate A is based upon a percentage of cost of the articles or materials; alternate B is based upon a fixed amount per item):

COMPUTATION OF ROYALTIES (FEBRUARY 1965)

(ALTERNATE A)

Royalties shall accrue under this contract in favor of the Contractor, subject to the limitations hereinafter stated, on all articles or materials embodying or manufactured by the use of any or all of the inventions licensed herein, upon acceptance thereof by the Department of the Army (whether made by or for the Department of the Army), at the rate of _____ percent of the Cost of such articles or materials to the Government. "Cost," as used in this paragraph means (1) in respect of articles or materials purchased by or for the Department of the Army, the purchase price of such articles or materials, except that in cost-plus-a-fixed-fee contracts it means the estimated cost as defined in such contract, and (2) in respect of articles or materials made by the Department of the Army, the actual cost of direct labor and materials without allowance for overhead or supervision.

(ALTERNATE B)

Royalties shall accrue under this contract in favor of Licensor, subject to the limitations hereinafter stated, on all articles and materials embodying or made by the use of any or all of the inventions licensed herein, upon acceptance thereof by the Depart-

¹ The bracketed part is to be omitted except in contracts for payment of running royalties.

ment of the Army (whether made by or for the Department of the Army), at the rate of (amount) per (name of item).

(d) **Reporting and payment of royalties.** (1) The contract must contain a provision specifying the Head of Procuring Activity of the designee as the officer designated to make any necessary reports to the contractor of the extent of use of the licensed subject matter by the entire Department of the Army, and such officer shall be charged with the responsibility of obtaining from all procuring activities the information necessary to make the required reports and corresponding vouchers to make the required payments. The following clause is suggested for this purpose:

REPORTING AND PAYMENT OF ROYALTIES
(FEBRUARY 1965)

(1) The (Head of Procuring Activity) shall, on or before the 60th day next following the end of each half yearly* period ending June 30 and December 31 during which royalties have accrued under this license, deliver to the Contractor a report in writing stating the number of articles and the amounts of materials accepted by the Department of the Army during said half yearly period on which royalties have accrued under this contract, and the cost thereof.

(2) Royalties which have accrued under this contract during each half yearly period ending June 30 and December 31 shall be paid to the Contractor, provided appropriations therefor are available, within 60 days next following the receipt of a voucher from the Contractor, submitted in accordance with the report referred to in (a) of this clause; provided, however, that the Government shall not be obligated to pay, in respect of any such half yearly period, an amount greater than ----- (\$-----) Dollars.

(2) In the event military security prohibits the disclosure of the quantity of production, the designee may negotiate an appropriate substitute for the above clauses.

(e) **License to other Government agencies.** When it is desired not to limit the practice of the invention to the Department of the Army the following clause is suggested for use:

LICENSE TO OTHER GOVERNMENT AGENCIES
(FEBRUARY 1965)

(1) The Contractor hereby agrees to grant a separate license under the patents, applications for patents, and improvements referred to in Article 1 hereof, on the same terms and conditions as appear in this license, to any department or agency of the Government other than the Department of the Army at any time on receipt of written request for such a license from such department or agency, provided, however, that as to royalties which accrue under such separate licenses, reports and payments will be made by such department or agency directly to the Contractor and not by the (Designee). The Contractor shall notify the (Designee) promptly upon receipt of any request for license hereunder.

(2) When two or more departments or agencies shall have subscribed to this license, such agencies shall jointly make the report of royalties called for by subparagraph (a) of Article ----- The royalties payable by such departments or agencies shall be combined for the purpose of computing the Government's total half yearly* obligation

as set forth in subparagraph (b) of Article ----- When such combined royalties exceed the said total half yearly obligation, each department or agency shall pay the pro rata share of the said total half yearly obligation as determined by the proportion its accrued royalties bear to the combined total of accrued royalties.

§ 599.105-72 Assignments.

(a) The following clause is suggested for use in contracts of assignment of patent rights to the Government:

ASSIGNMENT (FEB. 1965)

The Contractor agrees to and does hereby sell, assign, and transfer to the Government and its assigns, as represented by the Secretary of the Army, the entire right, title and interest in and to the following patent(s) (and application(s) for patent), in and to the invention(s) thereof, and in and to all claims and demands whatsoever for infringement thereof heretofore occurred, the same to be held and enjoyed by the Government through its duly appointed representatives the full end of the term of said patent(s) (and to the full end of the term(s) of all patents which may be granted upon said application(s) for patent or upon any division, renewal or continuation thereof):

U.S. Patent No.	Date	Name of Inventor
-----	-----	-----
U.S. Application Serial No.	Filing Date	Name of Inventor
-----	-----	-----

(together with corresponding foreign patents and applications for patent, insofar as the contractor has the right to assign the same).

(b) To facilitate proof of contracts of assignment, the acknowledgment of the contractor should be executed before a notary public or other officer authorized to administer oaths. (35 U.S.C. 261.)

§ 599.105-73 Suggested contract form.

The following contract form is suggested for use for contracts of release, license or assignment:

Contract No. -----

DEPARTMENT OF THE ARMY

PATENT LICENSE AND RELEASE CONTRACT

This Contract, effective as of the ----- day of ----- 19-----, between the United States of America (hereinafter called the Government), and ----- (hereinafter called the Contractor), [(a corporation organized and existing under the laws of the State of -----)] [(a partnership consisting of -----)] [(an individual trading as -----)] of the City of ----- in the State of ----- witnesseth that

Whereas, the Contractor warrants that it has the right to grant the within license and release, and the Government desires to procure the same, and

Whereas, this contract is authorized by law, including 10 U.S.C. 2386,

Now, therefore, in consideration of the grant, release and agreements hereinafter recited the parties have agreed as follows:

Article 1. License.²

(Use the clause set forth in APP 9-105.70 (a) for a paid up license, or APP 9-105.71 (a) for a license on a running royalty basis.)

Article 2. Terms.³

(Use the appropriate alternative clause set forth in APP 9-105.70(b) for a paid up li-

cence, or the clause set forth in APP 9-105.71 (b) for a license on a running royalty basis.)

Article 3. Release of Past Infringement.

(Use the clause set forth in APP 9-105.69 (d).)

Article 4. Nonestoppel.

(Use the clause set forth in APP 9-105.69 (e).)

Article 5. Payment.

The Contractor shall be paid the sum of ----- Dollars (\$-----) in full compensation for the rights herein granted and agreed to be granted. (For a license on a running royalty basis, use the appropriate alternative clause set forth in APP 9-105.71(c) and also the clause as specified in APP 9-105.69(f) and APP 9-105.71 (d) and (e).)

Article 6. Officials Not to Benefit. (ASPR 7-103.19)

Article 7. Covenant Against Contingent Fees. (ASPR 7-103.20)

Article 8. Assignment of Claim. (ASPR 7-103.8)

Article 9. Gratuities. (ASPR 7-104.16)

Article 10. Disputes. (ASPR 7-103.12)

Article 11. Successor and Assigns.

This Agreement shall be binding upon the Contractor, its successors² and assigns, but nothing contained in this Article shall authorize an assignment of any claim upon the Government otherwise than as permitted by law.

Article 12. Approval of Contract.⁴

This contract shall be subject to approval for the Secretary of the Army by or in behalf of the Assistant Judge Advocate General for Civil Law, Department of the Army, and shall not be binding until so approved.

In witness whereof, the parties hereto have executed this contract.

THE UNITED STATES OF AMERICA.

By -----
(Signature and Title of the Designee)

Date -----
By -----
(Signature and Title of the Contractor)

Date -----
(Corporate Seal)

Two witnesses:

(Address)

(Address)

Pursuant to Army Procurement Procedure 9-105.66, the foregoing contract is hereby approved.⁴

(Assistant Judge Advocate General for Civil Law, Department of the Army)

Date -----

§ 599.105-74 Gratuitous grants.

For a suggested unilateral contract form for use where a patent owner voluntarily grants a royalty-free license, assignment, or release to the Government, see § 599.1508.

§ 599.106 Classified contracts.

(a) Upon receipt from the contractor of a patent application not yet filed which has been submitted by the contractor in compliance with § 9.106(a) of this title, the contracting officer shall immediately refer the application to the competent authority within his activity for assistance in determining, within the

²When the contractor is an individual, change "successors" to "heirs"; if a partnership, modify appropriately.

⁴To be used only where required by APP 9-105.66.

*The frequency, date and length of reporting periods should be selected as appropriate to the particular circumstances of the contract.

¹Select appropriate clause.

³If only a release is procured, delete this article; if an assignment is procured, use clause set forth in APP 9-105.72.

30-day period referred to in § 9.106(a) of this title, the proper security classification of the patent application. Upon such a determination, the contracting officer or his representative shall inform the contractor of any instructions deemed necessary or advisable relating to transmittal of the application to the U.S. Patent Office in accordance with procedures set forth in the Department of Defense Industrial Security Manual for Safeguarding Classified Security Information.

(b) In the case of all applications filed under the provisions of §§ 9.106 and 9.106-1 of this title, the contracting officer or his representative shall obtain the application serial number and filing date from the contractor and submit that information to a proper Department of the Army representative promptly after the filing of the application in order that necessary steps may be taken to place the application under a Secrecy Order pursuant to 35 U.S.C. 181, if such action appears to be advisable.

§ 599.106-1 Classified contracts to be performed outside the United States.

A request for the approval referred to in § 9.106-1 of this title, must be considered and acted upon promptly in order to avoid the loss of valuable patent rights of the contractor.

§ 599.109 Followup of patent rights.

Headquarters, U.S. Army Materiel Command, and each Head of Procuring Activity not subordinate to that Headquarters issuing contracts for experimental, developmental, or research work, shall establish a followup system as required by § 9.109 of this title. In this connection, see the withholding provisions set forth in paragraph (g) of clause in § 9.107-5(a) of this title and paragraph (f) of clause in § 9.107-5(b).

§ 599.110 Reporting of royalties.

(a) The following clause shall be included in negotiated contracts in excess of \$10,000 where the work is to be performed in the United States, its possessions, or Puerto Rico.

REFUND OF ROYALTIES (FEBRUARY 1965)

(1) The term "royalties," as used in this clause, refers to any payment or charge such as royalties, license fees, rental fees, amortization costs and the like, for the use of, or rights in copyrights, patents, and patent applications.

(2) If in connection with the performance of this contract or any contract hereunder containing this clause, the amount of royalties paid or required to be paid is less than the amount reported during the negotiation of the contract or subcontract, or any modification of either, the Contractor, and the subcontractor through the prime contractor, shall so inform the Contracting Officer and the contract price shall be reduced to the extent of the decrease in royalties. Payment or credit to the Government shall be made as the Contracting Officer may direct.

(3) This clause, including this subparagraph (3) shall be included in those subcontracts which require the approval of the Contracting Officer and in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

(b) The contracting officer shall furnish the Head of Procuring Activity for transmittal to the Chief, Patents Division,

a copy of each positive royalty report received in accordance with § 9.110(b) of this title.

§ 599.111 Adjustment of royalties.

Personnel having cognizance of patent matters shall report, through channels, to the Chief, Patents Division, the final results of any action taken in compliance with § 9.111 of this title, as well as any actions initiated by such personnel themselves.

Subpart B—Data and Copyrights

§ 599.202-1 Acquisition of data.

(a) *General.* Where data is to be required under a contract, invitations for bids, requests for proposals and requests for quotation shall include the following clause:

DATA PRICING (FEBRUARY 1965)

Where data is specified for delivery, bidders are requested to insert opposite the data items the price of such data. If the price of the data is included in the price of the end items the statement "data price is included in the price of the end items" may be used. If the bidder does not insert the price as requested above, or inserts the words "No Charge For Data," or similar language, the Government will consider and the bidder agrees that the data price is included in the cost of the appropriate end items.

(b) *Supply contracts and subcontracts thereunder.* (1) In determining initially whether data required in supply contracts and subcontracts thereunder is "proprietary data" or "other data" the definitions of § 9.201 of this title may be applied with the assumption that "the contractor has protected such information from unrestricted use by others." (§ 9.201(b) of this title.)

(2) When it has been determined that "other data" only is involved and required, such "other data" shall be specified in the contract schedule. This "other data" may be specified by setting forth in the schedule a general description of the required data and a reference to a suitable document.

(3) In connection with the negotiation and pricing of data to be acquired under a negotiated supply contract in accordance with § 9.202-1(b) of this title the mere assertion that data is "proprietary data" by a prospective contractor does not itself establish that fact. The burden rests on the prospective contractor to show that the data is "proprietary data." This burden might be satisfied by furnishing the contracting officer information requested by procurement personnel and cognizant patent personnel. In arriving at a determination whether data is "proprietary data" and in assessing the weight to be given a claim that data is "proprietary data," the contracting officer, as required by the Head of Procuring Activity, shall consult with either or both (i) appropriate scientific and technical personnel, or (ii) cognizant patent personnel, who, on the basis of available information and technical advice, shall make recommendations to the contracting officer.

(4) When, in accordance with § 9.202-2(b) (1) of this title, "proprietary data" is being obtained subject to limitations as to its use, the price to be paid for such

data shall reflect consideration of such limitations. If the cost of the data includes any factor relating to the cost of developing the information contained in the data, this factor should be given only limited value. Care should also be taken to avoid any duplication of cost between this factor and any element of cost in the price of any other end item called for by the contract.

(c) *Contracts for experimental, developmental or research work and subcontracts thereunder—(1) Consideration of effects of "Proprietary Data."* Whenever, in negotiating a contract which has as one of its principal purposes experimental, developmental, or research work and also calls for models of equipment or practical processes, the contracting officer shall, before awarding the contract to a contractor whose "proprietary data" is to be excluded in accordance with § 9.202-1(c) (2) of this title, consider the impact of the exclusion of the proprietary data upon the Government's future use of the results of the contract in (i) connection with such programs as standardization, cataloging, supply, inventory control of repair and ancillary parts, (ii) the desirability of competition for production contracts, and (iii) the manufacture of the equipment or practicing of the process by or for a co-operating foreign government. If the impact is found to be serious, he shall consider the possibility of having the contractor use a design which eliminates or greatly reduces the impact of awarding the contract to a different contractor.

(2) *Identification of exceptions to requirement for delivery of data.* Whenever, in accordance with the exceptions of § 9.202-1(c) (1) or (2) of this title, it is known that certain portions of an item of data are not required to be delivered under the contract, these exceptions shall be identified by a note immediately after the description of the item in the Schedule substantially as follows:

NOTE: The following portions of this item, which come within the exceptions stated in ASPR 9-202.1(c) (1) and 9-202.1(c) (2), are not required to be delivered under this contract:

[Here insert the identification of those portions of the item which come within these exceptions, but with the specific one of these two exceptions indicated as to each portion.]

(3) *Screening of proprietary data.* In a contract which has as one of its principal purposes experimental, developmental or research work and also calls for models of equipment or practical processes, at least the substance of the following clause shall be included in the contract:

Consideration shall be given by the Contractor to the performance of the work called for by this contract in such manner as to produce end results that are susceptible of reproduction by or for the Government by equipment which is readily available through Government or commercial channels and by standard or proven production techniques, methods and processes. Unless approved by the Contracting Officer, the Contractor shall not knowingly, in the performance of the work called for by this contract, produce an end result requiring the details of secrets

of manufacture, such as may be contained in but not limited to manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not disclosed by inspection or analysis of the product itself.

§ 599.202-3 Multiple sources of supplies.

Where arrangements for licensing and technical assistance appear to be required in establishing multiple sources of supplies for domestic or foreign procurement under the provisions of § 9.202-3(a) of this title, the contracting officer shall obtain the advice of cognizant patent personnel.

§ 599.202-6 Data furnished on a restricted basis in support of a proposal.

Where it is desired to acquire the rights to use all or part of the data furnished on a restricted basis, with the proposal on which a contract is to be awarded, the contracting officer should, in his evaluation of the data alleged to be "proprietary," and in his negotiations, follow the policies and procedures set forth § 599.202-1 (a) (1) and (b) (3).

§ 599.203-1 Basic data clause.

The following paragraph shall be added to the basic data clause (§ 9.203-1 of this title) in all cases:

The rights obtained by the Government in data furnished under this contract are set forth in this clause and nothing elsewhere in this contract or in any documents incorporated by reference shall be construed as in any way altering such rights.

§ 599.203-3 Limited rights provision for addition to basic data clause.

Where, in accordance with § 9.202-2(b) (1) of this title, "proprietary data" is being obtained under a supply contract subject to limitation as to its use, each item of the data which is subject to such limitation shall be identified by a note immediately after the description of the item in the schedule substantially as follows:

Note: The following portions of this item are subject to the limitations stated in Article _____ "Data" of this contract: [Here insert the identification of those portions of the item which are subject to the limitations, except that if the entire item is so subject, the words "The entire item" should be inserted.]

§ 599.204-2 Production of motion pictures.

The clause set forth in § 9.204-2 of this title shall be used in all contracts for the production of motion pictures, with or without accompanying sound, and in all contracts for the preparation for use in connection with motion pictures of scripts, musical compositions, sound tracks, translations, adaptations and the like.

§ 599.205-2 Contracts for existing motion pictures.

(a) The clause set forth in § 9.204-2 of this title shall be used in all contracts for the procurement of existing motion pictures, except that the following instructions apply to the use of this clause—

(1) Paragraph (b) may be modified or omitted by the procuring activity;

(2) Paragraph (c) may be modified by the procuring activity only to the extent of limiting the scope of the license granted by this paragraph to that scope which is consistent with the purposes for which the motion picture covered by the contract is being procured. Examples of such restricted rights are—

(i) Limitation as to the type of audience;

(ii) Limitation as to the geographic location; and

(iii) Limitation as to time;

(3) Paragraph (d) may be modified by the procuring activity to make the coverage of the indemnity coextensive with the rights acquired under the modification permitted by the preceding subparagraph.

If paragraph (b) of the clause is omitted, the reference to "(c)" and "(d)" in line 1 of paragraph (f), of the clause shall be changed to read "(b)" and "(c)", respectively.

(b) The clause set forth in § 9.204-2 of this title shall be used in all contracts for the procurement of a modification (through the addition of subject matter specified by the contract and not already in existence) of an existing motion picture, except that the instructions given in paragraph (a) (2) and (3) of this section apply in this situation also.

Subpart C—Foreign License and Technical Assistance Agreements

§ 599.302 Foreign license and technical assistance contracts between the Government and domestic concerns.

In addition to the requirements of § 9.302(a) (1) and (2) of this title each contract shall provide that in any separate agreement between the primary source (or any of this subcontractors) and the second source (or any of his subcontractors) there shall be included a statement referring to the contract between the Government and the domestic concern.

§ 599.303 Supply contracts between the Government and Second sources.

The detailed statement required by § 9.303(a) of this title shall include the Royalty Information clause set forth under § 9.110(a) (2) (i) of this title.

§ 599.304-2 Review of agreements.

Proposed foreign license and technical assistance agreements between domestic concerns and foreign governments or concerns forwarded to the Department of the Army under the provisions of § 9.304-1 of this title shall be referred to the cognizant procuring activity for review in accordance with § 9.304-2 of this title by appropriate patent and technical personnel. The comments and recommendations of the reviewing procuring activity shall be forwarded to the Deputy Chief of Staff for Logistics, ATTN: Chief, Production Facilities Branch, PEPA Execution Division, Department of the Army, Washington, D.C., 20310.

Subpart O—Procurement of Invention and Patent Rights

§ 599.1501 Policy.

It is the policy of the Department of the Army to obtain necessary rights under patents and applications for patents which are pertinent to contemplate procurement activities, in cases where it is in the interest of the Government to do so and the desired rights can be obtained at their fair value. In furtherance of this policy, statutory basis for which may be found in 10 U.S.C. 2386, each proposed license or assignment of rights under patents or application for patents shall be processed in accordance with the instructions set forth in this subpart.

§ 599.1502 Action by representative.

Any actions required by this subpart to be performed by a designee may be performed by his authorized representative, except for the execution of contracts made in accordance herewith.

§ 599.1503 Reporting of proposed licenses and assignments.

Any officer or employee of a procuring activity shall promptly submit to the chief patent or legal officer of his activity any communications received by him relating to proposed licenses or assignments. Any other person receiving such communications shall transmit them to the Chief, Patents Division, for proper action.

§ 599.1504 Correspondence with invention owner or his representative.

Upon receipt of a communication from an invention owner or his representative proposing a license or an assignment, the designee promptly shall acknowledge receipt thereof. The following form letter is suggested for this purpose:

[LETTERHEAD OF DESIGNEE]

John Doe,
Title Guarantee Building,
Miami, Fla.
Dear Sir:

[Date]

Your letter to _____ dated _____ 19____, offering [to grant a nonexclusive license to (the Department of the Army) under] [to assign to the Government the entire right, title and interest in] U.S. Letters Patent No. _____ granted (date of the patent), to (patentee's full name), for "(Title of invention)," has been referred to this office for necessary action and direct reply.

Your offer will be carefully considered and you will be notified of the Department of the Army's conclusion in this connection upon completion of such consideration.

Sincerely yours,

[Signature of Designee]

§ 599.1505 Clearance to consider and procure licenses and assignments.

(a) Promptly after receipt of a communication proposing a license or an assignment (or after a determination has been made to endeavor to obtain a license or assignment) the designee shall request in writing from the Chief, Patents Division, clearance to consider

¹ The applicable bracketed part should be used.

and procure the license or assignment on behalf of the Department of the Army.

(b) Each request for clearance shall be submitted in quadruplicate and shall include—

(1) The name and address of the invention owner;

(2) The number and date of each patent and the serial number and filing date of each patent application involved, and the inventor's name;

(3) A copy of the communication from the patent owner (or his representative) making the offer, if any;

(4) A description of the subject matter of the patent (or application) in sufficient detail to permit other procuring activities to determine whether they have an interest in the matter;

(5) A résumé of the nature and terms of the proposed license or assignment (including a copy of the instrument if available);

(6) The names of any other procuring activities of the Department of the Army which might have an interest, and a statement as to the probable interest of the Departments of the Navy and the Air Force; and

(7) Any other pertinent information.

(c) The Chief, Patents Division, upon receipt of the request for clearance, shall determine, so far as his files and the Government Register of Patent Rights indicate, whether the Government has any license or other interest in any patent or patent application involved and shall then grant such clearance in writing as appears proper.

(d) Upon receipt of such clearance, the designee shall proceed to consider the proposed license or assignment on behalf of the Department of the Army and, if deemed advisable by him, following coordination with any other interested Department of Defense agencies, to procure the same in accordance with § 599.1507.

(e) The Chief, Patents Division, shall send copies of the request for clearance and of the clearance to the chief patent or legal officer of each procuring activity having a probable interest in the matter. Each such officer promptly shall inform the designee to whom clearance has been granted of the interest, if any, of his service in the matter and of any pertinent information available. (Negative reports should be made if applicable.) The Chief, Patents Division, also shall request the Departments of the Navy and the Air Force promptly to notify the designee of the interest, if any, of such departments in the matter. No proposed license or assignment shall be procured until reports are received by the designee from each chief patent or legal officer notified of the clearance, unless adequate explanation is presented.

§ 599.1506 [Reserved]

§ 599.1507 Final report by designee where no license or assignment is procured.

A final report (in duplicate) of the results of the consideration on behalf of the Department of the Army shall be made by the designee to the Chief, Patents Division, with respect to each proposed license or assignment the procure-

ment of which is believed to be inadvisable, or the designee has been unable to accomplish upon terms deemed reasonable by him. (A copy of the final report shall be forwarded by the designee to each interested Head of Procuring Activity at this time.) The Chief, Patents Division, if he concurs in the conclusions of the designee, shall write a letter to the invention owner or his representative (with copies to the designee and interested Head of Procuring Activity) stating the final conclusions of the Department of the Army.

§ 599.1508 Procedures applicable to procurement of invention and patent rights.

The requirements and procedures of § 599.105 for the investigation and settlement of administrative claims of infringement, § 599.105-65 "Fiscal Procedures", § 599.105-66 "Approval of Agreements", § 599.105-67 "Contract Distribution", and §§ 599.105-69-599.105-73 "Contract Clauses and Forms", are generally applicable to the procurement of licenses and assignments in accordance with this part, with the following modifications:

(a) Items (1), (2), (3), and (4) of § 599.105-66(b) are changed to read as follows:

(1) An identification and brief description of the subject matter of the patent or patent application involved in the license or assignment;

(2) The date of clearance granted pursuant to § 599.1505;

(3) A brief statement of the designee's conclusions regarding potential infringement of the patent by contemplated procurement and validity of the patent, and the reasons therefor;

(4) A statement of the estimated extent of contemplated procurement, including the estimated money value of a potential claim for infringement of the patent based upon such procurement;

(b) Item (3) of § 599.105-67(a) is changed to read "a statement that the instrument procured constitutes the license or assignment for which clearance was granted."

§ 599.1509 Gratuitous grants.

Various patent owners, for the purpose of assisting national defense, have voluntarily granted royalty-free licenses, assignments, and releases, to the Government to practice the inventions covered by their patents and applications for patent. In order to provide a simple standardized form for such gratuitous grants, the unilateral contract form set forth below is suggested for use. If the contract is to be executed by the Government, the appropriate mandatory clauses (§ 599.105-69) must be included unless approval of the Chief, Patents Division is obtained.

DEPARTMENT OF THE ARMY

PATENT LICENSE AND RELEASE CONTRACT

This Contract, made this _____ day of _____ 196____, by _____ (hereinafter called the Contractor), [a corporation organized and existing under the laws of _____] [a partnership consisting of _____] [an individual trading as _____] of the City of _____ in the State of _____ in favor of the United

Do not use if inapplicable.

States of America (hereinafter called the Government), witnesseth that

Whereas, to aid the national defense and promote the common welfare various patent owners have granted and are continuing to grant royalty-free licenses and releases to the Government to practice the inventions secured by their patents and applications for patents,

Whereas, the Government has utilized many such inventions for the purposes aforesaid, and is desirous of obtaining further royalty-free licenses and releases including this license and release, and

Whereas, this contract is authorized by law, including 10 U.S.C. 2386,

Now, therefore, in consideration of the premises and of the grant by other patent owners of like licenses and releases to the Government, the Contractor has agreed as follows:

Article 1. [License] [Assignment]
[Use the clause set forth in APP 9-105.70 (a) for a license; or the clause set forth in APP 9-105.72(a) for an assignment.]

Article 2. Term.
[Use the clause set forth in APP 9-105.70 (b) for a license; a separate "Term" clause is not required if the "Assignment" clause of APP 9-105.72(a) is used.]

Article 3. Release of Past Infringement.
[Use the clause set forth in APP 9-105.69 (d).]

Article 4. Nonestoppel.
[Use the clause set forth in APP 9-105.69 (e).]

Successors and Assigns.² This contract shall be binding upon the Contractor, its successors and assigns.

In witness whereof, the Contractor has executed this contract as of the day and year above written.

(Name of the Contractor)
By _____
(Signature and Title)

(Business Address)
(Corporate Seal)

Two witnesses:

(Address)

(Address)

PART 600—BONDS, INSURANCE, AND INDEMNIFICATION

Subpart A—Bonds

Sec.
600.105-1 Advance payment bonds.
600.105-50 Fidelity and forgery bonds.
600.110 Execution of bonds.

Subpart B—Sureties

600.201-1 Corporate sureties.
600.201-50 Termination of authority to qualify as surety.
600.202 Options in lieu of surety.

Subpart C—Insurance—General

600.301 General.
600.303 Responsibility for loss of or damage to Government property.
600.350 Overseas.
600.351 Boiler inspection service.
600.352 Coordination.

Subpart D—Insurance Under Fixed-Price Contracts

600.403 Workmen's compensation insurance overseas.

² When the contractor is an individual, change "successors" to "heirs"; if a partnership, modify appropriately.

Sec.	
600.450	[Reserved].
600.451	Insurance in negotiated, fixed-price contracts.
600.452	Accident and disability insurance for extra-hazardous occupations.

Subpart E—Insurance Under Cost-Reimbursement Type Contracts

600.501	Policy.
600.501-1	Workmen's compensation and employers' liability insurance.
600.501-2	General liability insurance.
600.501-4	Aircraft public and passenger liability insurance.
600.502	Self-insurance.
600.503	Government property.
600.503-50	Liability for loss.
600.550	[Reserved].
600.551	Accident and disability insurance for extra hazardous occupations.
600.552	Insurance carrier.
600.553	Review and approval of contractor's insurance programs.
600.554	Action on termination or completion of contract.

Subpart F—Special Casualty Insurance Rating Plans

600.650	Application of National Defense Projects Rating Plan.
600.651	Insurance advisors.

AUTHORITY: The provisions of this Part 600 issued under sec. 3012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

Subpart A—Bonds

§ 600.105-1 Advance payment bonds.

A requirement for a bond relating to advance payments shall be established only in the most exceptional circumstances. When a Head of Procuring Activity considers that an advance payment bond is desirable, recommendation to that effect with justification as to the penal sum thereof shall be forwarded to the Director of Contract Financing, Office of The Comptroller of the Army (see § 163.63 of this title).

§ 600.105-50 Fidelity and forgery bonds.

A fidelity bond shall be required in connection with cost-reimbursement type contracts (e.g., a contract for operation of a Government-owned plant involving substantial income-producing activities where the income is eventually credited to the Government and is handled by contractor employees) only in those cases where the cognizant Head of Procuring Activity, or his designee, considers such bond is necessary for protection of the Government. When a fidelity bond is required, a Primary Commercial Blanket Bond or a Blanket Position Bond in the penal sum of \$10,000 will normally be sufficient, and the contractor shall be cautioned to obtain all appropriate discounts. The bond form, as standardized by the Surety Association of America, or its equivalent is the approved bond form. A forgery bond or policy shall be required in connection with cost-reimbursement type contracts only in those cases where the cognizant Head of Procuring Activity, or his designee, considers such coverage necessary to protect the Government or to obtain the investigative and claim services of a surety company. When a forgery bond or policy is required, a penal

sum or policy coverage in the amount of \$10,000 will normally be sufficient. The depositor's form of forgery bond or policy, as standardized by the Surety Association of America, or its equivalent is the approved form. A fidelity or forgery bond or policy shall contain in a rider or endorsement, unless included as a part of the form, provisions to require that—

(a) A pro-rata refund of the premium shall be made in the event of cancellation by the insured due to completion of the work;

(b) The contracting officer shall be given notice prior to the making of any material change in or cancellation of the bond or policy;

(c) After a loss has been sustained, and with respect to undiscovered or future losses, restoration shall be made of the full amount of the bond (or policy) without additional premium charge;

(d) The surety waives all rights to be subrogated, on payments of losses otherwise, to any claim against the Government arising out of performance of a cost-reimbursement type contract.

The surety shall agree, either by rider or endorsement attached to the bond or policy, or by written assurance to the contractor, to investigate all claims and investigate under the fidelity bond all Class A employees as reported by the contractor.

§ 600.110 Execution of bonds.

(a) *Execution, examination, and distribution of bonds and consents of surety.*

(1) All bonds shall be executed in duplicate except, (i) fidelity and forgery bonds unless a copy is to be retained by the contractor and another by the contracting officer and (ii) bid bonds which are not annual bid bonds. Immediately after execution the original of all surety bonds required by procuring activities (except as hereinafter provided in subparagraph (3) of this paragraph) shall be forwarded direct to The Judge Advocate General, ATTN: Bonds Branch, Department of the Army, Washington, D.C., 20310. If such bond was required in support of a contract or modification thereof, the original signed bond should be attached to the original signed contract or modification thereof, as the case may be, and forwarded to The Judge Advocate General. In the event it is not practicable to forward the original contract or modification, a signed duplicate or an authenticated copy thereof should be attached to the original bond and forwarded to The Judge Advocate General. The Judge Advocate General shall examine bonds as to legal sufficiency, including proper form and execution, the authority of corporate officials who execute bonds on behalf of corporate principles or sureties, and compliance by individual sureties with § 10.201-2 of this title. The Judge Advocate General then shall forward the bond, together with any contract or modification thereof which it supports, to the proper office for filing. The duplicate bond shall be retained and filed in the office to which it pertains or which authorized its acceptance. In case of use of an option in lieu of surety see § 600.202.

(2) Consents of surety shall be handled in the same manner as bonds, except that, for more expeditious handling, they may be forwarded, without the surety's signature, to The Judge Advocate General for execution under the Expediter Plan and for approval.

(3) The following bonds shall not be forwarded to The Judge Advocate General:

(i) Blanket fidelity and forgery bonds.

(ii) Bid bonds (except annual bid bonds). The original and duplicate numbers shall be retained in the office to which they pertain or which authorized their acceptance.

(b) *Authority of The Judge Advocate General as to substitute surety bonds.* The Judge Advocate General is authorized to act for the Secretary in accepting a new surety bond in substitution for a bond previously approved covering part or all of the same obligation, and in authorizing the notification of the principal and surety on the bond originally furnished that it will not be considered as security for any default occurring subsequent to the date of approval of the new bond. The Judge Advocate General is authorized to delegate such function to personnel within his office.

Subpart B—Sureties

§ 600.201-1 Corporate sureties.

(a) *Distribution of Treasury Department list.* Each Head of Procuring Activity is responsible for distribution within his jurisdiction of the list of acceptable corporate sureties, Treasury Department List (TD Circular 570). Requisitions for copies of this list shall be submitted to The Judge Advocate General, ATTN: Bonds Branch, Department of the Army, Washington, D.C., 20310, annually on or before April 1.

(b) *Qualifications of agents of corporate sureties.* Corporate sureties should forward to The Judge Advocate General, ATTN: Bonds Branch, Department of the Army, Washington, D.C., 20310, the following documents for filing:

(1) Powers of attorney (on forms which may be obtained from The Judge Advocate General) or certified copies of resolutions of their Boards of Directors or Trustees, which authorize their officers or agents to execute bonds, and

(2) Certificates evidencing revocation of previously granted authority to execute bonds.

(c) *Corporate cosureties.* More than one corporate surety may be accepted as cosurety upon any recognizance, stipulation, bond, or undertaking in connection with contracts for supplies, services, or construction; provided, that in no case shall the liability of any such cosurety exceed the maximum penal sum which it is qualified to underwrite on any one obligation. On bonds covering supply or service contracts where the amount of the bond is greater than the underwriting limitation of the corporate surety, the latter may reinsure with a corporation on the acceptable list of corporate sureties having the required reinsurance underwriting capacity. Reinsurance agreements are not acceptable in connection with construction contracts. It is not necessary that each corporate

surety obligate itself for the full amount of the bond. Each corporate surety may limit its liability in the bond to a specified sum. The sureties must bind themselves "jointly and separately" for the purpose of allowing a joint action or actions against any or all of them. Where the bond is to be executed by two or more corporate sureties, approved standard bid forms shall be used.

§ 600.201-50 Termination of authority to qualify as surety.

(a) From time to time the Treasury Department issues supplements to TD Circular 570, notifying all Federal agencies of the termination of authority of a specified corporate surety company to qualify as a surety on Federal bonds. Procuring activities will be notified of these supplements through the medium of the DA Circular 715-2-series. Upon receipt of notification of termination of a company's authority to qualify as surety on Federal bonds, each contracting officer concerned shall examine each uncompleted bonded contract and require the affected contractor, if any, to secure new bonds with acceptable surety in lieu of bonds executed by the surety company whose authority has been terminated. New bonds so obtained should be at once forwarded direct to The Judge Advocate General in accordance with § 600.110. The obtaining of new bonds in such case shall not relieve the original surety of liability, but is necessary to assure adequate bond protection.

(b) If the surety whose authority is terminated is bankrupt or insolvent or has made an assignment for the benefit of creditors, or is involved in any other type of insolvency proceedings, the fact that the Government may have a claim against the surety will be reported immediately in accordance with the applicable provisions of AR 37-103. While it is contemplated that contracting personnel will be advised of the insolvency of surety companies through the medium of a DA Circular of the 715-2-series, contracting personnel learning of such insolvency through other media should also make the required report, and in addition take action to require new bonds as set forth in paragraph (a) of this section. When these are forwarded to The Judge Advocate General for review they should be accompanied by a statement of the reason for obtaining them.

§ 600.202 Options in lieu of surety.

When a U.S. bond or note, certified or cashier's check, bank draft, money order, or currency is deposited by a contractor with a contracting officer in lieu of surety (§ 10.202 of this title), the contracting officer shall forward to The Judge Advocate General with the surety bond a certified copy of any required power of attorney and agreement, and of the receipt received by the contracting officer for the deposited security.

Subpart C—Insurance—General

§ 600.301 General.

A Head of Procuring Activity may authorize or require the purchase of insurance where commingling of property or the conditions of the contract make the carrying of insurance reasonably

necessary for the protection of the several interests concerned. The term "insurance" includes, but is not limited to, the following forms of coverage, whether provided under an insurance policy issued by privately-operated insurance companies or underwriters, or under a state operated insurance fund, or under an approved self-insurance plan:

- (a) Workmen's compensation and employers' liability;
- (b) General liability;
- (c) Automobile;
- (d) Aircraft;
- (e) Physical damage (property);
- (f) Bonds;
- (g) Employees group insurance (life, hospitalization, accident and health, surgical); and
- (h) Extra-hazardous accident.

§ 600.303 Responsibility for loss of or damage to Government property.

See also § 13.102-1 of this title. Where, due to the commingling of the Government's and the contractor's property, or for other reasons, relief of the contractor from liability will not result in a reduction of the contract price or contract to the Government, the contractor may be held fully responsible for loss of or damage to Government property. (See § 15.205-16 of this title.) The policy governing the responsibility and liability of subcontractors for Government property is set forth in § 13.102-2 of this title.

§ 600.350 Overseas.

Where insurance coverages are not available outside the United States, its possessions, and Puerto Rico because of the absence of competent or financially responsible insurance carriers, a Head of Procuring Activity is authorized to waive the insurance coverages not mandatory under Subchapter A, Chapter I of this title.

§ 600.351 Boiler inspection service.

Boiler inspection service shall be provided as required by AR 420-49. The purchase of boiler insurance to cover Government-owned boilers is not authorized, but inspection services may be procured, as necessary, to meet the requirements of AR 420-49.

§ 600.352 Coordination.

Where the Departments of the Navy or the Air Force have an interest in the contractor's insurance program, coordination shall be effected with the Contract Insurance Branch, Office of Naval Material, Washington, D.C., or the Bond and Insurance Section, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, as appropriate. Prior approval of a contractor's insurance program by another Military Department shall be considered by a Head of Procuring Activity in determining the adequacy of the contractor's program and shall be accepted, subject to whatever modification may be appropriate.

Subpart D—Insurance Under Fixed-Price Contracts

§ 600.403 Workmen's compensation insurance overseas.

Request for waiver of the applicability of the Defense Base Act as amended (42

U.S.C. 1651 et seq.), shall be forwarded through channels to the addressee in § 602.050.

§ 600.450 [Reserved]

§ 600.451 Insurance in negotiated fixed-price contracts.

In negotiating fixed-price type contracts, consideration should be given to evaluating that portion of the contract price attributable to the contractor's insurance program to establish as accurately as possible the insurance costs applicable to the contract.

§ 600.452 Accident and disability insurance for extra-hazardous occupations.

The insurance described in § 600.551 is available for use in fixed-price type contracts as well as in cost-reimbursement type contracts.

Subpart E—Insurance Under Cost-Reimbursement Type Contracts

§ 600.501 Policy.

(a) [Reserved]

(b) Where the cost of insurance coverage is included in the overhead rate, the contract schedule shall specifically provide that the insurance cost included therein shall not be an item for separate reimbursement under the contract. The contracting officer, in establishing insurance costs for overhead rate negotiations, shall ascertain to the extent possible that such costs are net after anticipated dividends or other credits, or shall provide for proportionate recovery for the benefit of the Government of any dividends or credits not anticipated in the overhead rate calculations.

§ 600.501-1 Workmen's compensation and employers' liability insurance.

(a) In jurisdictions where the workmen's compensation law does not cover all occupational diseases, occupational disease coverage of at least \$100,000 for any 1 policy year will be required in the employer's liability section of the insurance policy. Where the workmen's compensation law of the jurisdiction involved is not the exclusive remedy of employees against employers for all injuries or diseases relating to the employment, employer's liability insurance shall be purchased in the following amounts: Accidental injury \$50,000, \$110,000 per accident; occupational disease \$100,000 aggregate per year.

(b) Requests for waivers of the applicability of the Defense Base Act, as amended (42 U.S.C. 1651 et seq.) shall be submitted through channels to the addressee in § 602.050.

(c) The States of California, New Jersey, New York, and Rhode Island have imposed upon employers the obligation to afford benefits for nonoccupational disability as well as for disability in the course of and arising out of employment. Employers may, under State law, be given the option of insuring with companies or underwriters or of self-insuring this obligation.

§ 600.501-2 General liability insurance.

(a) General liability insurance for bodily injury protects the insured against

loss due to claims for bodily injury arising from its business premises or operations (except those arising from motor vehicles away from the premises, those covered by any workmen's compensation law, and other exclusions stated in the policy).

(b) General liability insurance for damage to property of others may be purchased under the general liability policy where, in the opinion of the contracting officer, the exposure under the contract operations is such as to warrant obtaining the claims and investigating services of the insurance carrier. This form of coverage will be necessary only for contractors engaged in the handling of high explosives or in extra-hazardous research and development activities undertaken in populated areas. Prior approval for purchase of this type of insurance shall be obtained from the Head of Procuring Activity. However, where a commingling of operations permits property damage coverage at a nominal cost to the Department of the Army under insurance carried by the contractor in the course of his commercial operations, the participation in such insurance shall be deemed in the best interest of the Government.

(c) Products liability insurance protects the insured for damages to third persons arising out of the consumption, handling, or use of a product. This insurance shall be required only where a contractor under the authority of his contract operates a commissary or other similar facility for dispensing food. Such insurance, when necessary, will be added by endorsement to the general liability policy. Aircraft products liability insurance is described in § 600.501-4(c).

(d) Contractual liability insurance protects the contractor against loss arising under assumption of liability by agreement. This insurance is provided by the comprehensive general liability policy where a contractor has assumed liability in writing under any of the following:

- (1) A lease of premises,
- (2) An easement agreement,
- (3) An agreement required by municipal ordinance,
- (4) A sidetrack agreement, or
- (5) An elevator or escalator maintenance agreement.

The purchase of insurance for other assumed liability may be approved where assumption of such liability by the contractor has been authorized and the Head of Procuring Activity determines that the purchase of such insurance is necessary.

§ 600.501-4 Aircraft public and passenger liability insurance.

(a) If the operation of an airport is required in connection with the performance of the contract, airport liability insurance with bodily injury limits of \$50,000 per person, \$100,000 per accident shall be required; property damage coverage shall not be required or approved by the contracting officer without the specific approval of the cognizant Head of Procuring Activity. Where the contractor's operations under Department of the Army cost-reimbursement type

contracts are commingled with his commercial operations or with his performance under Government fixed-price type contracts, the higher limits normally carried by the contractor may be approved in excess of the limits indicated in this paragraph.

(b) Since the contractor is relieved of liability under the Government Property clause in the contract, aircraft hull and aircraft in the open insurance shall not be purchased under cost-reimbursement type contracts for manufacture, modification, or servicing of Government-owned aircraft; however, a contractor may be authorized to purchase this insurance to insure aircraft not owned by the Government but used in connection with performance under the contract.

(c) Aircraft products liability insurance may be authorized in contracts for the manufacture, modification, or repair of aircraft, subject to approval of the terms, limits, and rates by the cognizant Head of Procuring Activity. Prior approval of the Assistant Secretary of the Army (Installations and Logistics) is required if reimbursement to, or indemnification of, a contractor on account of liability to third persons for loss or damage to property, death, or bodily injury where the liability arises out of a "products hazard" (as that term is defined in the usual type of aircraft products liability insurance policy) is involved.

§ 600.502 Self-insurance.

When there is mandatory insurance coverage prescribed by § 10.501 of this title and § 600.501, self-insurance may be approved by the contracting officer, provided—

(a) The contractor has maintained the practice of self-insurance in respect to such coverage or risk for a period of not less than 3 years;

(b) Adequate safety inspection and engineering programs are carried on by the contractor;

(c) The contractor has an effective and established policy for claims investigation;

(d) The contractor has established a plan of funding so that the annual cost of "loss payments" remains reasonably constant;

(e) The charges to be made against the contract for the cost of the self-insurance program may reasonably be expected to be less than the charge for an equivalent program of insurance; and

(f) The Government contracts will share equitably in any release of reserve funds.

Self-insurance programs which do not in all respects meet the foregoing conditions shall be submitted to the addressee in § 591.150(b)(17) prior to acceptance by the contracting officer.

§ 600.503 Government property.

The Government property clause § 13.703 of this title generally relieves the contractor for loss of or damage to Government property in his care, custody, or control and therefore there is no requirement for such coverage except in limited instances (see § 600.303).

The loss and salvage organizations referred to in the contract clause (§ 13.703 of this title) will be found listed in the local telephone directory of the larger cities. They are known as "General Adjustment Bureau, Inc.," and "Underwriters Adjusting Company."

§ 600.503-50 Liability for loss.

The contractor's relief from liability for loss of or damage to Government property in his care, custody, or control is intended to place the contractor in the same position he would occupy if commercial insurance policies providing broad protection were procured by him against the named perils.

§ 600.550 [Reserved]

§ 600.551 Accident and disability insurance for extra-hazardous occupations.

Insurance for risks of disability or death due to extra-hazardous occupations of contractor employees is available under Blanket Policy FD-711, Insurance Company of North America. The rate under this blanket policy, effective 1 October 1961, is \$1.50 per month per \$10,000 per covered employee. Such coverage is available in units of \$10,000 per person covered, to a maximum of \$50,000 per person. Details of insurance coverage may be obtained from the Insurance Company of North America, 2133 Wisconsin Avenue NW., Washington, D.C. Similar coverage may be available from other reputable carriers, but reimbursement to the contractor for the cost of such coverage will not exceed \$1.50 per month per \$10,000 unit per covered employee. When the cost of the insurance is an item for reimbursement under a Department of the Army contract, the contractor may procure such insurance at the expense of the Government only with the approval of the contracting officer.

§ 600.552 Insurance carrier.

A contractor performing a cost-reimbursement type contract will select his own insurance carrier. However, such carriers must satisfy the minimum standards set forth below:

(a) The carrier must have an unobligated minimum surplus of \$350,000.

(b) In the case of a contract for casualty insurance, other than workmen's compensation insurance, the financial responsibility of the insurance carrier must be such that the policy will not expose the carrier in a single accident or occurrence to a loss of more than 10 percent of (1) its total capital stock and surplus, in the case of a fixed-premium carrier, or (2) its net assets in the case of a dividend-paying carrier.

(c) In the case of workmen's compensation insurance, the insurance carrier shall have (1) a total capital and surplus of at least \$1,000,000, in the case of a fixed-premium carrier, or (2) at least \$1,000,000 of net assets in the case of a dividend-paying carrier.

Deviations from these standards may be made by a Head of Procuring Activity in the case of a foreign insurance carrier operating outside the United States if the

financial responsibility of such carrier has been established.

§ 600.553 Review and approval of contractors' insurance programs.

(a) Affirmative approval of insurance plans, policies, endorsements, rates, and premiums must be given, in accordance with the operating instructions of the procuring activity, when a cost-reimbursement type contract provides for reimbursement of such insurance costs as may be approved or required by the contracting officer. A Head of Procuring Activity may require a change of plan or policy form if the type selected by the contractor is not deemed to be the most advantageous to the Government. Prior to approval of a contractor's insurance program, the extent of the contractor's cost-reimbursement type contracts with other agencies of the Department of Defense at or adjacent to the proposed location shall be considered. Determination shall be made as to whether insurance pertaining to the contract should be combined with insurance pertaining to the contractor's other Department of Defense contracts to effect savings in reimbursable insurance premium costs. (See § 600.352.) Where the contract operations are at a location at which the work is exclusively or almost exclusively for the Department of Defense, consideration should be given to establishing a special insurance arrangement for all work performed at this location.

(1) The criteria for application of the National Defense Projects Rating Plan is set forth in § 10.603 of this title, here a location does not qualify for this Plan and the estimated annual premiums are substantial, a commercial retrospective rating plan may be appropriate. If the estimated annual premiums are small, joint insurance with the contractor's commercial operations or special guaranteed cost policies may be advisable.

(2) Where special insurance arrangements are made, the exact coverages and limits required by § 10.501 of this title and § 600.501 shall be provided. The purpose of such an insurance program is not primarily to protect the Government or the contractor against financial loss but is to obtain the experienced services of the insurance industry in such technical areas as claims settlement and safety engineering; therefore, the higher limits of liability insurance normally carried by contractors in their commercial operations are not acceptable. The risk of excessive losses is normally assumed by the Government by the use of the Insurance—Liability to Third Persons clause (§ 7.203-22 of this title) or a similar clause.

(3) It is the policy of the Department of the Army not to interfere with the contractor's established commercial insurance program. However, where cost-reimbursement type contract operations are commingled with the contractor's commercial operations, all operations should normally be insured together. In such a case, the proportionate share of Department of Defense contracts and the amount of premium in-

volved shall be the governing factors in determining the extent of Government participation in the contractor's program. Unless both of these factors are substantial, review of the contractor's insurance program should be limited to assuring that the contractor complies with the requirements contained in the sections of the 10.501 series of this title and the sections of the 600.501 series of this chapter. Higher limits than those prescribed may be approved where joint insurance coverage exists. Particular attention should be given to the time period and any geographical limits of the policies as well as to provisions excluding any phase of contract operations from coverage. Policy endorsements set forth in § 10.302 of this title should be attached to the policies.

(b) The submission by a Head of Procuring Activity to higher authority of a question involving a contractor's insurance program shall include (1) a copy of the related contract, (2) a copy of the contractor's proposed insurance policies, and (3) the recommendations of the procuring activity.

(c) Where contract operations are separately insured under a policy which incorporates a retrospective plan (National Defense Projects Rating Plan, War Department Comprehensive Insurance Rating Plan, or commercial plans, A, B, C, or D), incurred losses and final premium costs will be reviewed at the home office of the insurer prior to payment of the final additional premium or receipt of final return premium. This review will include (1) an examination of closed claims to assure that losses have been properly charged and expenses correctly allocated; (2) an inspection of open claims to negotiate the allowable reserves; and (3) such other matters as the reviewing officer may deem appropriate.

(d) Where more than one Department of the Army procuring activity is involved in approval, negotiation, or review of a contractor's insurance program or policies, to the extent possible coordination shall be effected among the procuring activities involved. When feasible, the procuring activity whose contracts bear the predominant amount of premiums should be responsible for the negotiation or review. However, other arrangements may be made if concurred in by all procuring activities involved.

§ 600.554 Action on termination or completion of contract.

(a) Generally, settlements of cost-reimbursement type contracts will have been completed prior to the required lapse of time for final settlement under any form of retrospective rating plan of insurance. Therefore, where a retrospective plan of insurance is involved, the contracting officer shall take action, at the time of contract settlement, to insure that any appropriate remaining credits due the contractor in connection with the insurance will be paid to the Government and any appropriate outstanding obligations of the contractor with respect to insurance will be assumed by the Government. This action shall be accom-

plished through execution of one of the two types of assignment form set forth in paragraph (d) of this section, or in § 10.604 of this title, as appropriate.

(b) In the event the Government has less than a 100 percent interest in premium refunds or dividends, the assignment shall be appropriately modified to reflect the percentage of the Government's interest in premium refunds or dividends and the extent of the Government's assumption of additional premium obligation. Assignments to the Government shall be executed in sufficient copies to serve the purposes of the cognizant procuring activity. After the original and all copies have been executed by the contractor and the Government, the contracting officer shall dispatch them by registered mail, return receipt requested, to the home office of the insurance company involved for signature by an officer of the company. The letter accompanying the forms shall specify that all checks to cover return premiums and dividends are to be made payable to the Treasurer of the United States and forwarded to the contracting officer with advice as to the contract to which it applies.

(c) [Reserved]

(d) The form set forth below shall be used in connection with insurance policies not issued under the National Defense Projects Rating Plan or War Department Insurance Rating Plan when the Government has assumed the contractor's obligations for further premium payments under the policies.

ASSIGNMENT TO GOVERNMENT

It is agreed that the return premium and dividend¹ due or to become due the insured under Policy No. _____ are hereby assigned to and shall be paid to the United States of America, and the Contractor directs the company to make such payments to the Treasurer of the United States acting for and on account of the United States of America.

The United States of America hereby assumes and agrees to fulfill all present and future obligations of the Contractor with respect to the payment of the premiums due under said policy.

This agreement, upon acceptance by the Contractor, the United States of America and the company, shall be effective from _____

Accepted _____
(Date)

(Name of Insurance Company)

By _____
(Title of Official Signing)

Accepted _____
(Date)

UNITED STATES OF AMERICA

By _____
(Authorized Representative)

Accepted _____
(Date)

(Prime Contractor—Insured)

By _____

¹ Omit "and dividend," if non-dividend paying company.

Subpart F—Special Casualty Insurance Rating Plans

§ 600.650 Application of National Defense Projects Rating Plan.

(a) The procedures applicable to the operations of this Plan are set forth in detail in Bulletins issued by the Conference Committee on the National Defense Projects Rating Plan, 10th Floor, 200 East 42d Street, New York 17, N.Y. The documents required and procedures normally followed are outlined below.

(b) It is often advantageous to the Government to combine the insurance for several cost-reimbursement type contracts under one National Defense Projects Rating Plan project for premium settlement purposes. The contracts involved may have been negotiated by different procuring activities or by the Departments of the Navy and the Air Force, in which case §§ 600.352 and 600.553(d) apply. Situations where combinations of contracts may be advisable are where work under several contracts is performed:

(1) At the same location at the same time by different contractors, such as an architect-engineer and a construction contractor;

(2) At the same location at different times by the same or different contractors, such as construction and operation contracts at a Government-Owned Contractor-Operated plant or aircraft maintenance contracts which are replaced periodically by new contracts; or

(3) At different locations by the same contractor, such as one division of a contractor performing mostly cost-reimbursement type contracts.

§ 600.651 Insurance advisors.

(a) When the insurance program is administered under the National Defense Projects Rating Plan for contracts within the United States, the contractor may select a licensed insurance agent or broker as insurance advisor to represent him in connection with the insurance coverages under the Plan. If a contractor selects an insurance advisor, the advisor shall submit a statement of his qualifications through the contractor to the contracting officer for approval. The statement should include a description of the experience of the firmer individual, location of the office from which the risk will be serviced, and a list of other Government contracts which the advisor has serviced or is presently servicing. After the individual or firm has been approved by the contracting officer, the contractor may enter into the service agreement in paragraph (b) of this section with his insurance advisor.

(b) *Insurance advisor's quarterly statement of earned fee.* The insurance advisor shall bill the contractor each quarter for his fee in accordance with the schedule of percentages outlined in the insurance service agreement. The following format shall be used in the preparation of the fee statement:

INSURANCE ADVISOR'S QUARTERLY STATEMENT OF EARNED FEE

Advisor _____
Address _____
Date _____
Contractor _____
Contract No. _____
Project _____
Location _____
Insurance Carrier _____
Policy Period: From _____ To _____
Effective date of insurance service agreement _____

Aggregate
earned
standard
premium

Period _____ to _____
Workmen's Compensation and O.D. _____
Policy _____ \$
Comprehensive Public Liability _____
Policy _____ \$
Comprehensive Auto Liability Policy _____ \$
Total _____ \$

COMPUTATION OF ADVISOR'S FEE

(c) *Insurance advisor's quarterly report of services rendered.* Each quarter the insurance advisor shall submit a written report to the contractor stating services rendered during the period. The following outline shall be followed in preparing the report: (The Insurance Advisor's Quarterly Report of Services Rendered should follow the following topical outline and should be complete, clear and concise.)

INSURANCE ADVISOR'S QUARTERLY REPORT OF SERVICES RENDERED

- Period _____ to _____
1. Insurance Placed and Policies Procured.
 2. Policies, Binders, Endorsements, etc., Examined—Conditions Found and Action Taken.
 3. Rating Procedures and Records Established.
 4. Audit Statements and Premium Invoices Reviewed—Conditions Found and Action Taken.
 5. Other Data Procured From Carriers—Comments.
 6. Visits to Projects:
 - (a) Date.
 - (b) Report of Safety Engineering Service and Facilities.
 - (c) Report of Claims Service and Facilities.
 - (d) Report of Hospital and Medical Service and Facilities.
 - (e) Other Visits—Date, Purpose and Results.
 7. Other Services Rendered.
 8. Recommendations: (List and Be Specific).

(Insurance Advisor)
By _____
Title _____

PART 601—TAXES

- Sec.
601.000 Resolution of tax problems.
601.050 Implementation of part.

Subpart E—Tax Exemption Forms

- 601.500-50 Use of Standard Form 1094.
601.500-51 Persons authorized to furnish evidence of exemption.

AUTHORITY: The provisions of this Part 601 issued under sec. 3012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

§ 601.000 Resolution of tax problems.

Actual or anticipated tax problems which cannot readily be solved by reference to Part II of this title shall be forwarded, through channels, to The Judge Advocate General, ATTN: Chief, Procurement Law Division, Department of the Army, Washington, D.C., 20310. Direct communication with The Judge Advocate General is authorized if the time by which a solution to a tax problem is required is so short that communication through channels would be clearly inadequate. In this case, copies of the reference and copies of the reply of The Judge Advocate General will be dispatched through normal channels. Tax problems forwarded to The Judge Advocate General shall be accompanied by—

(a) A comprehensive statement of pertinent facts, including documents and correspondence.

(b) A copy of the contract or pertinent portions thereof.

(c) A review of the legal and factual issues involved, and recommendations on action to be taken.

(d) If appropriate, a statement of the effect of the tax problem on procurement policies and procedures, and

(e) The comments and recommendations of each successive echelon of command through which the correspondence passes.

§ 601.050 Implementation of part.

No directive, regulation, instruction, or procedure concerning Federal, State, or local taxes in relation to Army procurement functions shall be published by any agency, command, or office of the Department of the Army without prior approval of the Assistant Secretary of the Army (Installations and Logistics).

Subpart E—Tax Exemption Forms

§ 601.500-50 Use of Standard Form 1094.

(a) *General.* Unless a different type of evidence of exemption is required by the taxing jurisdiction, SF 1094 shall be used where exemptions, adjustment, or refunds of State and local taxes are allowed on commodities or services purchased for the exclusive use of the United States.

(b) *Tax inclusive purchases.* (1) When a State or local tax attaches at the time of sale to the United States and the legal incidence of the tax appears to be on the United States, if the vendor refuses to sell at a price exclusive of the tax, SF 1094 shall be used to obtain a record of the transaction for use by the Government in billing the taxing authority for refund of the tax.

(2) SF 1094 shall be executed and delivered to the finance and accounting officer to whose accounts the vouchers in the transaction pertain. The certificate of the vendor should be obtained on each SF 1094 or receipt issued for the transaction. The voucher number of the payment voucher shall be noted on the SF 1094 and the serial number of the SF 1094 shall be shown on the payment voucher.

(3) The SF 1094 shall be forwarded through channels to the Finance and Accounts Office, U.S. Army, ATTN: Accounting Branch, Washington, D.C., 20310, which shall bill the State or local taxing authority for refund of the tax paid. The amount collected shall be credited to the appropriation from which the voucher was paid, or, if the appropriation cannot be readily identified, to "Account 213099—Miscellaneous recoveries and refunds, not otherwise classified."

(4) If the Finance and Accounts Office is unable to obtain a refund of the tax, it shall refer the matter to The Judge Advocate General pursuant to § 601.000, for determination whether it is appropriate to forward the file to the General Accounting Office for collection.

§ 601.500-51 Persons authorized to furnish evidence of exemption.

Each cognizant Head of Procuring Activity and each contracting officer and his representatives, are authorized to furnish evidence of exemption from taxes.

PART 602—LABOR

Sec.	Definition.
602.050	Implementation.

Subpart A—Basic Labor Policies

602.101-1	General.
602.101-3	Reporting of labor disputes.
602.101-5	Movement and removal of items from facilities affected by work stoppage.
602.101-50	Request from union representatives to enter Department of the Army installations.
602.102-4	Approvals.
602.103-1	General.
602.103-2	Applications for relaxation of requirement.
602.105-3	Procedures.

Subpart B—Convict Labor

602.202	Applicability.
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Subpart D—Labor Standards in Construction Contracts

602.401	Statutes, regulations and determination.
602.404-1	General.
602.404-2	Wage determinations.
602.404-3	Additional classifications.
602.404-6	Payrolls and statements.
602.404-7	Investigations.
602.404-8	Enforcement reports.
602.404-9	Suspensions and deductions of contract payments.
602.404-10	Restitution.
602.404-11	Contract terminations.
602.404-12	Cooperation with Department of Labor.
602.404-50	Adjustment or nonassessment of Contract Work Hours Standards Act liquidated damages.
602.450	Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors.
602.451	Construction Labor Standards Report (Reports Control Symbol SAOAS-41).

Subpart F—Walsh-Healey Public Contracts Act

602.604	Responsibilities of contracting officers.
602.606	Procedure for obtaining exemptions with respect to stipulations required by the Act.

Sec.	Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors.
602.650	

Subpart G—Fair Labor Standards Act of 1938

602.701	Basic statute.
602.702	Suits against Government contractors.
602.750	Regulations of the Administrator.
602.751	Reimbursement under cost-reimbursement type contracts for payments in accordance with the Act.
602.752	Investigations and inspections.

Subpart H—Equal Opportunity

602.804	Requests for exemptions.
602.806-1	General.
602.806-2	Educational responsibility.
602.806-3	Posting of notices.
602.806-5	Compliance review.
602.806-7	Processing of complaints.
602.806-50	Investigation of complaints.

AUTHORITY: The provisions of this Part 602 issued under sec. 3012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

§ 602.050 Definition.

As used in this part the term "Labor Advisor" means the Labor Advisor, Office of the Assistant Secretary of the Army (Installations and Logistics), Department of the Army, Washington, D.C., 20310.

§ 602.051 Implementation.

In order to provide maximum uniformity in application, implementation of this part shall not be issued. In the event need exists for more detailed coverage of the subject matter, appropriate recommendation may be submitted to the Labor Advisor.

Subpart A—Basic Labor Policies

§ 602.101-1 General.

(a) All problems arising out of the labor relations of Government contractors vitally affect procurement and are an essential part of procurement responsibility. Heads of Procuring Activities are encouraged to seek the assistance of the Labor Advisor in the disposition of these problems.

(b) Inquiries to the Federal Mediation and Conciliation Service for information regarding the status of mediation proceedings, the nature of the dispute, and related matters shall be directed only to that agency, and then only when there has been prior clearance from the Labor Advisor.

(c) Department of the Army representatives will not volunteer information to or answer requests from representatives of labor, management, or Federal agencies relevant to work stoppages or disputes without prior clearance from the Labor Advisor. When necessary such clearance may be obtained by telephone or other informal means and written confirmation of all informally reported facts shall be made as soon as possible thereafter.

(d) Sections 12.101-1 and 12.101-3 of this title, this section, and § 602.101-3 are applicable only within the United States and its possessions.

§ 602.101-3 Reporting of labor disputes. (Report Control Symbol SAOAS-40).

(a) The addressee shown in § 12.101-3(b)(1) of this title as the "Chief, Industrial Division" is now the "PEMA Execution Division."

(b) In situations of extreme urgency contracting officers shall make initial and supplemental reports by telephone or other informal means to the Labor Advisor. In all such cases the information informally submitted shall be confirmed in writing as soon as possible thereafter. Further, in situations where possible serious impact may ensue, direct communication is authorized between procuring activity representatives and the Labor Advisor.

§ 602.101-5 Movement and removal of items from facilities affected by work stoppage.

Where two or more procuring activities are, or may become, involved in the removal of urgent items from a facility affected by a work stoppage, efforts will be made by the cognizant procuring activities to agree on a single procuring activity, where practicable, to effectuate removal arrangements.

§ 602.101-50 Request from union representatives to enter Department of the Army installations.

Whenever labor representatives request permission to enter Department of the Army installations on which private contractor employees are engaged in contract work, to conduct union business during working hours in connection with the contract between the Government and the contractor on which which union members are employed, the installation commander may admit such representatives: *Provided*, (a) The presence and activities of the labor representatives will not interfere with the progress of the contract work involved, and (b) the entry of such representatives to the installation will not violate pertinent safety or security regulations. Labor representatives are not authorized to engage in organizing activities, collective bargaining discussions or other matters not directly connected with the Government contract, on military installations. The determination as to who is an appropriate labor representative should be made by the installation commander on recommendation of his labor advisor after consultation with local union officials. Business offices or desk space for labor organizations for solicitation of membership, collection of dues, or other business of the labor organization, not directly connected with the contract work, shall not be permitted on the installation, except for the routine functions of the working steward whose union duties are incidental to his assigned job. In the event an installation commander or a contracting officer denies entry to a labor representative for any reason, such officer shall notify the Labor Advisor. Such notification shall include the reasons for denial, including names and addresses of representatives denied

entry, and union affiliation of such representatives if known.

§ 602.102-4 Approvals.

The following individuals are hereby authorized to make the determinations and approvals described in § 12.102-4 of this title:

(a) Each Head of Procuring Activity, his deputy, and his principal assistant in the headquarters responsible for procurement;

(b) Each Project Manager;

(c) Chief of Research and Development;

(d) Director of Research and Development, U.S. Army Materiel Command;

(e) Director of Army Research and Chief Research Support Division, Office of the Director of Army Research; and

(f) Such others as may be specifically designated from time to time by the Director of Procurement, OASA (I&L).

§ 602.103-1 General.

(a) *Application.* This subpart is applicable to all Government contractors within the United States and its possessions (including contractors operating Government-owned facilities, irrespective of whether such facilities are located on private or Government property).

(b) *Definition.* The term "State" as used in this subpart includes the District of Columbia and all political subdivisions of States.

§ 602.103-2 Applications for relaxation of requirement.

A Head of Procuring Activity may, consistent with limitations of security, furnish information to the appropriate State official, upon request, as to the fact that an application for relaxation of State labor standards filed with him relates to the execution of a contract with such agency in pursuance of a military procurement program. Such information shall not extend to support of such application unless proper authorization under § 12.103-2(b) of this title has been obtained.

§ 602.105-3 Procedures.

(a) Reasonable and allocable payments of location allowances may be approved by the contracting officer provided (1) that the payments are reasonable in the light of criteria for the extent of payments as set forth in § 12.105-2 of this title, and (2) that a written determination establishes that current conditions at the location permit such allowances, as required by paragraph (c) of this section.

(b) When approval of location allowances is requested, either as experienced costs or as an advance agreement (§ 15.107 of this title), the cognizant contracting officer shall determine the reasonableness of such payments in light of the criteria in § 12.105-2 of this title. Before the contracting officer approves such costs he should obtain full coordination with other affected contracting activities.

(c) Determinations in writing that conditions at a site justify location allowances will be made by individuals

appointed and authorized to make determinations and approvals for the use of overtime premiums and shift premiums under § 602.102-4.

(d) The review required by § 12.105-3 (a) of this title will be scheduled and accomplished by the cognizant contracting activity (§ 12.105-3(b) of this title) whenever warranted by changes in conditions and circumstances, but in any case at least once each year. Reviews at locations where one or more activity is located shall be made as prescribed in paragraph (e) of this section.

(e) The cognizant contracting activity (§ 12.105-3(b) of this title) shall maintain continuing surveillance over conditions at work sites where location allowances are being paid by contractors, and shall schedule the review required by § 12.105-3(a) of this title. Each review shall be coordinated and processed in accordance with the procedures governing original determinations and requests.

(f) Copies of the written determination as required by paragraph (c) of this section shall be furnished to each cognizant contracting activity and to the cognizant audit office.

(g) When disagreements on matters involved in this section occur between two or more purchasing offices under the jurisdiction of the Commanding General, U.S. Army Materiel Command, authority to resolve the dispute is vested in the Commanding General, U.S. Army Materiel Command. In the event a purchasing office of the U.S. Army Materiel Command is involved in a disagreement with a purchasing office outside the jurisdiction of the Commanding General, U.S. Army Materiel Command, and a local agreement cannot be accomplished, and in cases of disagreements between two or more offices not under the jurisdiction of the U.S. Army Materiel Command, the matter shall be forwarded for resolution to the addressee in § 591.150 (b) (6).

(h) Where two or more purchasing offices, one or more of which is not within the Department of the Army, have concurrent contracts at a single facility and the approval of location allowances by one such purchasing office is likely to affect the performance of, or payments in connection with, contracts of another such purchasing office, the purchasing office exercising jurisdiction over the facility shall coordinate with the other interested purchasing office in applying the policy in § 12.105-2 of this title. Where the purchasing offices do not agree locally within a reasonable time on the application of the policy in § 12.105-2 of this title and the matter can not be resolved by the cognizant Head of Procuring Activity, the matter shall be forwarded for resolution to the addressee in § 591.150(b) (6).

(i) Where two or more facilities are so geographically located that determinations as to location allowances at one may affect the other, the purchasing offices involved shall coordinate in applying the policy in § 12.105-2 of this title. Where agreement on application of policy cannot be resolved locally within a reasonable time, the procedure set forth

in paragraph (f) or (g) of this section shall be utilized.

Subpart B—Convict Labor

§ 602.202 Applicability.

The prohibition contained in Executive Order 325A does not apply to contracts entered into between the Government and State prisons for the purchase of manufactured items, subject to all of the limitations enumerated below:

(a) That such contracts are not prohibited by the law of the State in which the prison is located;

(b) That exemption from the Walsh-Healey Public Contracts Act be obtained, in accordance with procedures prescribed in § 602.606, in cases of contracts exceeding \$10,000; and

(c) That no purchase contrary to the provisions of § 5.401 of this title will be made from a State prison or other correctional institution.

The Convict Labor clause contained in § 12.203 of this title is not applicable to such contracts.

Subpart D—Labor Standards in Construction Contracts

§ 602.401 Statutes, regulations and termination.

To supplement Department of Labor Regulations, Part 5, Title 29, Subtitle A, Code of Federal Regulations (16 F.R. 4430 as amended), the Department of Labor has published an "Investigation and Enforcement Manual With Respect to Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction." This Investigation and Enforcement Manual should be used as a guide in the enforcement of labor standards on construction contracts.

§ 602.404-1 General.

(a) All matters that will involve contact between a Head of Procuring Activity and departmental headquarters of other Government agencies as authorized by this subpart shall be coordinated with the Labor Advisor.

(b) It is the responsibility of the Head of Procuring Activity to establish internal procedures in conformity with this part and to insure that contracting officers require compliance with labor standards provisions of Federal statutes applicable to and incorporated in Department of the Army contracts. Timely application of these internal procedures after the award of the contract and in the early stages of construction will save time and money and tend to eliminate complaints and the need for extensive full-scale investigations. The Head of Procuring Activity shall indoctrinate and train contracting officers and their representatives, and shall review and appraise their internal procedures. The Comptroller General has established the principle that detection of labor law violations must be accomplished at the project level by the administering agency. It is important that contracting officers, contractors, and their subcontractors, be fully conversant with the labor standards provisions in their contracts. Where all cognizant parties are

aware of their responsibilities relating to these standards, little difficulty should be experienced in obtaining compliance through administrative processes. Two methods of conveying pertinent information to contractors are discussed in paragraph (c) of this section.

(c) *Preliminary.*—(1) *Early conference.* In order to insure that the contractor fully understands the labor standards provisions in his contract, the contracting officer should arrange for a conference with the contractor and his subcontractors as soon as possible after award of the contract, to apprise them of their obligations under the contract. The following matters should be fully discussed:

(i) Obligations of the contractor and subcontractors under the Contract Work Hours Standards Act including the difference in overtime computation under that law and the Fair Labor Standards Act;

(ii) Requirements of the Copeland ("Anti-Kickback") Act and regulations;

(iii) Responsibilities under the Davis-Bacon Act and the Department of Labor Regulations, Part 5, relating to (a) apprenticeship registration requirement, (b) limitations on use of apprentices, (c) historical trade practices, (d) area practice—special explanation should be given contractors and subcontractors that should workmen be doing work which under area practice is journeyman's work of a particular trade, the workman must be paid the journeyman's rate unless he is a regularly registered apprentice, (e) payrolls and statements—their requirement and the need for current addresses of all employees therein being kept up to date, (f) subcontractors, (g) additional classifications—it is important that contractors and subcontractors are made aware of the requirements that complete work records concerning workmen's activities be maintained. Contractors should be warned that failure to keep full records for workmen working in more than one classification may require the contractor to pay the rate of the highest paid classification for all work done, and (h) penalties and sanctions for violation of labor standards provisions.

(2) *Labor relations letter.* Where a contractor and his subcontractors have within the past 12 months engaged in work covered by the labor standards provisions and have conferred on the subject as prescribed in subparagraph (1) of this paragraph with the contracting officer, the requirement for a full discussion of labor standards matters may be waived for additional contracts during the current fiscal year. In lieu of the conference prescribed by subparagraph (1) of this paragraph, a labor relations letter reviewing the contractor's obligations may be forwarded to the contractor after award of the contract together with a request that copies of the letter be sent by him to each of his subcontractors. Also the contractor shall be reminded of the discussions in the previous conference on the subject.

§ 602.404-2 Wage determinations.

(a) *General.* Specifications for construction contracts in excess of \$2000

shall include a current wage determination. If the wage determination is not available when the solicitation is issued, the solicitation shall contain a statement that wage rates will be supplied by addendum. Contracting officers shall not open bids or proposals on proposed contracts subject to the provisions of the Davis-Bacon Act until the appropriate wage determination has been incorporated in the specifications. No such contract, including a letter contract, shall be awarded until the applicable wage determinations have been obtained and incorporated therein. If, after a timely request for a wage determination has been made, and the Secretary of Labor has not established a wage rate for a particular classification which is to be used in the performance of a contract, the contracting officer may proceed with award of the contract and establish a wage rate in accordance with § 602.404-3.

(b) *Types of wage determinations.*

(1) A General Wage Determination is issued for use by more than one Government agency and provides wage rates for all construction contracts which may be awarded within a given geographic area during the 120-day life of the determination. This is the only type of determination which is reissued automatically.

(2) An Area or Installation (54A) Determination provides wage rates for all construction contracts which may be awarded at an installation or within a given geographic area during the 120-day life of the determination. This type of determination (which is not issued for an area for which a General Wage Determination has been issued) may be obtained for installations or areas where continuing construction activity is anticipated.

(3) An Individual Determination is issued for use in a construction contract which is not covered by either of the above types of determinations.

(c) *Responsibility for requesting and obtaining determinations.* A request shall be initiated by the office responsible for preparation of specifications and award of the contract. General Wage Determinations shall be requested from the Chief of Engineers, ATTN: ENGGC-L. A request for an Area or Installation (54A) Determination, or for an Individual Determination, shall be forwarded in quadruplicate on Department of Labor Form DB-11 to the appropriate District Engineer, Corps of Engineers, except in the New England Division where the request shall be forwarded to the Division Engineer. The original of Form DB-11 shall be sent by the District Engineer (or the New England Division Engineer) to the Solicitor of Labor, Department of Labor, 14th Street and Constitution Avenue, Washington, D.C., 20210, and one copy shall be sent to the Chief of Engineers, ATTN: ENGGC-L. The wage determination will be returned to the requesting office by the Chief of Engineers, through the above channels.

(d) *Manner of requesting determinations.* A request for determination of wage rates shall be made as follows:

(1) Form DB-11 shall be prepared in full and signed by the contracting offi-

cer. Under "Department, Agency, or Bureau" insert only "Department of the Army." If the project is not located within a city or village, the distance and direction from the nearest city or village will be indicated.

(2) If the entire schedule of crafts is desired, insert a statement to that effect after "check crafts." If only a part of the classification is needed, so indicate by placing an (X) on the checkline prefixing the requiring classification.

(3) Should classifications not listed on the Form DB-11 be required, forward a duplicate list of such classifications as an attachment to the Form DB-11.

(4) All requests for "installation" or "area" determinations must be indicated by specifying "contract or contracts" in the space for "Description of work" on the Form DB-11.

(5) Requests for wage determinations must be furnished to the appropriate District Engineer in sufficient time for the transmittal to reach the Department of Labor at least 30 days in advance of the date selected for advertising for bids.

(6) In the event emergency conditions arise before receipt of the determination, the work may be advertised with a notice in the invitation for bids that the schedule of minimum wage rates to be paid under the contract will be published as an addendum to the specification. Under no circumstances may bids be opened until the wage rates have been furnished to all bidders.

(7) In cases of extreme urgency, requests for wage determinations may be forwarded to the District Engineer, by telephone or telegraph, so that immediate steps are taken to obtain the necessary wage rates. Reasons for requesting special or priority action must be fully explained. Such requests must include the classifications needed, cost of the work, a brief description thereof, and its location and must be confirmed by submission of Form DB-11.

§ 602.404-3 Additional classifications.

When the contracting officer determines that it is necessary during the performance of a contract to establish a classification and wage rate for a class of workers not listed in the decision of the Secretary of Labor applicable to the contract, the contracting officer shall seek to establish such a classification and wage rate conformable to the decision of the Secretary of Labor by agreement among the interested parties. The contracting officer in considering the necessity for an additional classification should satisfy himself that the class of workers concerned cannot be fitted into any of the classifications listed in the contract. Where the contractor seeks an additional classification for "helpers" of any class of workers, care should be exercised to observe area practice on use of "helpers" in the particular class of work. This is important because in most areas the practices do not permit the use of "helpers." The classification is sometimes used as a device to substitute for apprentices when a contractor does not participate in an apprenticeship program. Whenever the contracting officer determines that an additional classification

tion is warranted, whether he succeeds in securing agreement among the parties and himself or not, he shall forward a report as hereinafter described, in the same manner as a request for a wage determination. This report shall contain the following information:

(a) The date on which bids were opened;

(b) The contract number, description, dollar amount, and date of prime contract involved;

(c) A copy of portion of the contract setting forth classifications and wage rates;

(d) The identification of wage determination decision of the Secretary of Labor which is used with this contract;

(e) A description of job to be classified;

(f) A discussion, citing examples, of the area practice concerning the job to be classified—(The wage minimum for such a classification should be based on information showing the rate prevailing for this classification ten days prior to the opening of bids for the contract in question);

(g) A copy of the payroll records of the employee showing the classification and wage rate used in his case, and the hours worked (distinguishing regular time from overtime) in said classification and at said wage rate, when, prior to the establishment of a new classification as herein outlined, any employee has been used on the contract in a classification not established by decision of the Secretary of Labor;

(h) Written and signed statements containing opinions of management and labor as to proper classification and wage rate—(When the interested parties have agreed to a new classification, these opinions will be put in the form of an agreement by the interested parties to an additional classification. Such statements or agreement may be signed for the employees by an official of a union representing them, in which case the union's and the official's connection with it should be identified; otherwise signatures of all the affected employees should be obtained);

(i) A determination when an apprentice classification is proposed that the employees involved are employed either (1) in a bona fide apprenticeship program registered with a State Apprenticeship Council which is recognized by the Federal Committee on Apprenticeship, or (2) in a program registered with the Bureau of Apprenticeship (including identification of the program) if a properly recognized State Apprenticeship Council does not exist.

(j) A statement of the area practice in the use of "helpers," including statements from union, nonunion, and management, where it is proposed to establish a "helpers" classification.

Where agreement cannot be reached, this report will be accompanied by a request for final determination by the Secretary of Labor as well as recommendations by the contracting officer.

§ 602.404-6 Payrolls and statements.

(a) The payrolls and statements required by § 12.404-6(a) of this title shall be submitted to the contracting officer, or such other official as may be designated by the Head of Procuring Activity. The contracting officer or other such official shall examine and retain them as provided in § 12.404-6 (b) and (c) of this title.

(b) The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be in the form set forth in § 16.803-1(c) of this title.

(c) Upon a written finding by the Secretary of the Army, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements set forth in paragraph (a) of this section, subject to such conditions as the Secretary of Labor may specify. A request for such finding, accompanied by all necessary supporting documents, will be submitted by the cognizant Head of Procuring Activity through the Labor Advisor to the Secretary of the Army for action and submission to the Secretary of Labor.

(d) Each weekly statement and copy of certified weekly payroll shall be delivered by the contractor or subcontractor, within 7 days after the regular payment date of the payroll period, to the contracting officer or such other official as may be designated for such purpose by the cognizant Head of Procuring Activity. Each contractor or subcontractor shall preserve his weekly payroll records for a period of 3 years from date of final payment of the contract. The payroll records shall set out accurately and completely the name, occupation, and hourly wage rate of each employee, hours worked by him during the payroll period, the full weekly wages earned by him, any deductions made from such weekly wages, and the actual weekly wages paid to him. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative.

(e) Deductions are permissible: Where required by Federal, State, or local statutes or ordinances to be made by the employer from the wages earned by the employee; for bona fide prepayment of wages without discount or interest; and where required by court process, except that the contractor or subcontractor will not be permitted to make such a deduction in favor of the contractor, subcontractor, or any affiliated person where collusion or collaboration exists.

(1) A deduction is also permissible if it in fact meets the following standards and the contractor or subcontractor has made written application by registered mail to the Secretary of Labor, and provided a copy of the contracting agency. This application shall set forth all the pertinent facts indicating that such deductions will meet the following standards:

(i) That such deduction is not prohibited by law;

(ii) That such deduction is (a) voluntarily consented to by the employee in writing and in advance of the period of work performance and that consent to the deduction is not a condition either for the obtaining of or for the continuance of employment; or (b) that such deduction is for the benefit of the employees or their labor organization through which they are represented and is provided for in a bona fide collective bargaining agreement;

(iii) That from such deduction no payment is made to, nor profit or benefit is obtained directly or indirectly by the contractor or subcontractor or any affiliated person, and that no portion of the funds whether in the form of a commission or otherwise, will be returned to the contractor or subcontractor or to any affiliated person; and

(iv) That the convenience and interest of the employees are served thereby, and that such deductions or similar ones have been customary in this or comparable situations.

(2) After application in good faith, the deduction may be made in accordance with the foregoing standards, provided, however, that if the Secretary of Labor, on his own motion, or on the application of any person or agency affected by the granting of the application, shall conclude at any time, after written notice to the applicant and an opportunity for him to present his views in support of the deduction, that the deduction has not met the foregoing standards, such deduction shall cease to be "permissible" 7 days after the applicant and the cognizant Government agency have been notified of the Secretary's decision.

(3) Upon application for permission from the Secretary of Labor, and subject to the standards set forth in subparagraph (1) (i), (ii), and (iv) of this paragraph, deductions may be made by a contractor or subcontractor or any affiliated person, for membership fees in group benefit or retirement associations; for board and lodging; or for other purposes where the Secretary of Labor concludes the deduction is required by compelling circumstances; *Provided, however*, the contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction. A copy of the Secretary's decision shall be sent to the applicant and the cognizant Government agency.

(4) In accordance with and subject to the standards set forth in subparagraph (1) (i) through (iv) of this paragraph, general permission is hereby granted to make payroll deductions for—

(i) The payment of the purchase price of U.S. Defense Stamps and Bonds and U.S. Tax Savings Notes;

(ii) The repayment of loans to or the purchase of shares in credit unions organized and operated in accordance with District of Columbia, Federal, or State credit union statutes;

(iii) Contributions to a Federal governmental or quasi-governmental agency; and

(iv) The payment of dues or premiums to unaffiliated insurance companies or associations for medical or hospitalization insurance where the employer is not required by Federal, State, or local laws to supply such insurance or benefits.

(v) Contributions to the American Red Cross and to Community Chests; and

(vi) Regular union initiation fees and membership dues where a collective bargaining agreement provides for such deductions. This does not include fees and payments for work permits or special assessments.

(5) In any case in which the employee does not have full and actual freedom of disposition of his wage payment (whether made in cash or by check), any restricted payment made to the employee is considered a deduction under the regulations in this subpart.

(6) Nothing herein shall be construed to permit any deduction which the contractor or subcontractor knew, or in the exercise of good faith should have known, did not meet the foregoing standards. In order to insure compliance with this part, the Secretary of Labor may notify the contractor or subcontractor that the deduction will be permitted only if certain conditions with respect thereto are observed. The contractor or subcontractor or any affiliated person shall comply also with such general rules and regulations concerning the deductions as the Secretary of Labor shall make from time to time, notice of which shall have been given to the contractor or subcontractor or any affiliated person making the deduction and to the cognizant Government agency either directly or through publication in the FEDERAL REGISTER.

§ 602.404-7 Investigations.

(a) *Routine*—(1) *On-the-site investigations*. During the course of performance of the contract the contracting officer shall cause regular routine investigations to be made in addition to the investigations prescribed by § 12.404-7 of this title.

(i) *On-the-site investigations*, in addition to checking posting requirements and the names of subcontractors working on the site, as of the day of investigation, should observe and inquire into the work that one or more individual workmen are doing, the amount of overtime they are working daily, and the classification under which they are working. Information obtained through these investigations should be checked against weekly payrolls of the contractor and his subcontractors. The contractor shall be notified by the contracting officer that these routine checks will be made by representatives of the contracting officer.

(ii) The following is a suggested interview questionnaire:

LABOR RELATIONS INTERVIEW FOR ON-THE-SITE INVESTIGATION

Contract No. _____
Contractor _____
Investigator _____
Date _____ Time: _____
Employee's name _____
Address: _____
What is your classification? _____
What is your rate of pay? _____
Are you acquainted with the minimum rates established by the Department of Labor for this contract? _____
Are you paid time and one-half for all hours worked in excess of 8 hours in one day and/or 40 hours in one week? _____
Are you paid your full wages each week without any deductions other than Social Security and Income Tax? _____
What is your regular shift? _____
Have you paid anyone to secure or retain your job? _____
Are you required to perform work outside of your classification? _____

(2) *Payroll investigations*. Weekly payrolls submitted by contractors or subcontractors shall be reviewed promptly by contracting officers, for the following items—

(i) That classification of workers set forth in the payroll submitted are those normally required for performance of the type of work being accomplished during the workweek reported;

(ii) That classifications, rates, and overtime payments conform with data discovered by on-the-site investigations;

(iii) That registration of apprentices in their respective steps is carefully checked;

(iv) That arithmetic calculations are checked; and

(v) That in the event violations other than minor clerical errors are found, the contracting officer schedules a full scale investigation of the contractor or subcontractor found to have violated the labor standards provisions. This investigation shall inquire into the matters set forth in paragraph (c) of this section and shall be reported and acted upon in conformity with §§ 602.404-8 and 602.404-11. Care should be taken to assure completion of checking prior to final payment.

(b) *Complaints*. When a complaint is received by the Department of Labor, it may be transmitted through the Department of Labor Regional Attorney to the command (ATTN: Contracting Officer) where the violation is alleged to have occurred. If the complaint is received elsewhere within the Department of the Army, it shall be forwarded to the appropriate command or such other addressee as shall be designated by the cognizant Head of Procuring Activity and the Department of Labor Regional Attorney shall be so notified. Upon request of Department of Labor representatives for Department of the Army participation in a joint investigation of a particular Army contractor, Department of the Army representatives will participate, but will not reveal the recommendations of the Army.

(c) *Full-scale investigations*. A full-scale investigation of an alleged violation of labor standards shall include the following items when applicable:

(1) *All investigations*. (i) Names and addresses of contractor, subcontractors, and of workers involved;

(ii) The number, date, dollar amount, and nature of contract involved and a copy of the portion of the contract showing classifications and wage rate determinations;

(iii) Copies of certified payroll records and statements as described in § 12.404-6 of this title;

(iv) A statement that posters were or were not displayed as required by § 12.404-2(d) of this title;

(v) Conclusions as to whether a violation has been committed, and (if it is concluded that a violation has been committed) findings as to whether the violation was caused by willfulness, negligence, or other cause; what steps have been taken to cure the violation; and what sanctions, if any, are recommended;

(vi) Such other information as required by the Head of Procuring Activity.

The following suggested interview form may be used by investigating officers in connection with full scale investigations conducted pursuant to this section:

INTERVIEW STATEMENT

(1) Date _____
(2) Place of statement _____
(3) Name and address of Prime Contractor _____
(4) Contract No. _____
Location _____
(5) Name of project involved _____
(6) What was the contract work? _____
(7) Work of subcontractor _____
(8) Portion of work involved in investigation _____
(9) Name _____
(10) Present address _____
(11) Permanent address _____
(12) Name of employer (if subcontractor) _____
(13) Address _____
(14) Name and address of supervisors _____
(15) Date employment began _____
(16) Date employment ended _____
(17) Kind of work performed and tools used by witness: (give date and hours, if known) _____
(18) Job classifications and rates of pay for each classification worked (give dates) _____
(19) Rate paid for work over 8 hours per day and/or 40 hours per week _____
(20) How paid? (Check, cash) _____
(21) Do you have record of payments (check stubs, etc.)? (These should be furnished to the Investigator, if available) _____
(22) Any deductions made from payments? (except Social Security and Income Tax) _____
(23) Names and addresses of other employees doing same work—give dates _____
(24) Names and addresses of other employees who witnessed work done (include dates witnessed) _____

- (35) Names and addresses of employees who may not have been properly paid....
- (36) Name of person directing employee to work out of classification. Explain misclassification.....
- (37) If apprentice, give program and place.....
- (38) Who kept employer's time and pay records? How were they kept and turned in?.....
- (39) Where were wage rates posted on the job?.....
- (40) Were you ever questioned as to duties and pay by a Government representative?.....
- (41) Describe occasions and what was said.....
- (42) Was any action taken?.....
- (43) Did you ever complain to anyone about underpayments? (34) To whom?.....
- (44) What action was taken?.....
- (45) Were you ever advised not to report all facts if questioned by a Government representative? If so, explain.....
- (46) My identity (may) (may not) be disclosed to the employer. Information contained herein (may) (may not) be disclosed to the employer.....
- (47) I also wish to furnish the following additional information (For additional facts, to clarify any of above answers or to add narrative account; indicate by reference to box number). Attach additional sheets, if necessary, each of which should be referred to here, and signed.....

The statements in items (9) through (38) are true to the best of my knowledge and belief.

Signed.....

Name.....

(Print name as signed)

Statement witnessed by:

(Signed).....

Name.....

(Print name as signed)

(If the Interview Statement is to be notarized, insert required wording and signatures.)

(2) *Where a Davis-Bacon Act violation is alleged—(i) In all cases, (a) Kind of work performed by each worker involved, and (b) the classification of worker which customarily performs such work on contracts in the area.*

(ii) *In cases where a worker is alleged to have been classified in a manner contrary to the area practice. (a) The number of hours worked in the wrong classification (distinguishing regular time and overtime hours), (b) the wage rate actually paid, (c) the wage rate required by the determination for the proper classification, (d) the amount paid the worker, (e) the amount he should have been paid if properly classified, and (f) the amount of restitution due.*

(iii) *In cases where the worker is alleged to have been placed in a classification not listed in the wage determination. (a) The classification and wage rate used, (b) the nature of the work performed and conclusions reached as to the proper classification and its wage rate, (c) whether a reclassification has been made or a request made for supplemental determination of classification in accord-*

ance with § 602.404-3, and (d) total hours worked in the improper classification (distinguishing regular time from overtime).

(iv) *In cases where a worker is alleged to have been properly classified but paid a rate below the determination for his classification. (a) Hours worked at the incorrect rate (distinguishing regular time and overtime hours), (b) the wage rate actually paid, (c) the wage rate required by the classification, (d) the amount he should have been paid at the proper rate, (e) the amount he actually was paid, and (f) the amount of restitution due.*

(v) *In cases where an apprentice is involved. (a) Proof that the apprentice is registered under a bona fide apprenticeship program which is registered with a State Apprenticeship Council recognized by the Federal Committee on Apprenticeship, Department of Labor, or, if no such recognized Council exists in a State, that he is registered under a program registered with the Bureau of Apprenticeship, Department of Labor; (b) If the apprentice is not so registered, the same information as is required for an incorrect classification (subdivision (i) of this subparagraph); if the apprentice is so registered, the nature of the work being performed by the apprentice as compared with the area practice in the employment of apprentices, and the ratio of apprentices to journeymen on the job as compared with the permissible ratio of apprentices to journeymen, which may be found in the standards under which the registered apprenticeship program operates.*

(3) *Where a Contract Work Hours Standard Act violation is alleged for each worker. (i) A list of each workweek involved in the alleged violation, showing the number of hours worked each day of the workweek, and the hourly rate of pay therefor;*

(ii) *The total hours for which the worker was improperly compensated;*

(iii) *The rate actually paid for said hours;*

(iv) *The rate which should have been paid for said hours;*

(v) *The amount of restitution due; and*

(vi) *The total number of violations under § 12.403-1(2) of this title and total amount of liquidated damages due the United States.*

(4) *Where a Copeland Act violation is alleged. (i) The nature of violation alleged;*

(ii) *Facts concerning the alleged violation, including: (a) The full weekly wages earned by each employee concerned, (b) the nature and amount of each deduction made from said weekly wages, (c) the actual weekly wages paid to the employee concerned, (d) any limitation, variation, tolerance, and/or exemption from the provisions of § 602.404-6 permitted by the Secretary of Labor, and any conditions attached by the Secretary of Labor to said permission, and (e) any*

rulings by the Secretary of Labor as provided in § 602.404-6(e).

§ 602.404-3 Enforcement reports.

(a) Where the case investigated can be closed satisfactorily without formal correspondence with the Department of Labor, the Department of Justice, or the General Accounting Office (correspondence to ascertain whether an apprentice is properly registered shall not constitute formal correspondence for the purpose of this paragraph), it may be closed by the contracting officer.

(b) Where formal correspondence with the Departments of Labor or Justice is required (e.g., when the case was initiated by correspondence from the Department of Labor; involves more than \$500 restitution; or may warrant criminal prosecution, litigation, or placing the contractor on the Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors, see Subpart F, Part 1 of this title), the contracting officer shall forward a clear, concise, factual report of the investigation through channels to the Labor Advisor. This report shall contain the information, findings and conclusions set forth in § 602.404-7(c) including all supporting evidence and the recommendation of the Head of Procuring Activity with respect to the elements required of the investigating officer by § 602.404-7(c) (1) (v).

(c) When the report required in paragraph (b) of this section concerns a Corps of Engineers contract not involving (1) recommendations of criminal or civil action against the contractor, (2) placing the contractor on the debarred or ineligible list, or (3) facts supporting any such recommendations, it shall not be sent to the Labor Advisor, but shall be processed in accordance with the procedure established by the Office of Chief of Engineers.

(d) The findings and recommendations included in an enforcement report shall not be communicated by the investigating officer to the Regional Attorney, Department of Labor.

§ 602.404-9 Suspensions and deductions of contract payments.

(a) When he learns of a possible violation, the contracting officer shall withhold from payments due the contractor an amount equal to the estimated restitution due the contractor's employees, as well as any estimated liquidated damages due the United States under the Contract Work Hours Standards Act. If the investigation reveals that there was no violation, the funds may be released. If the investigation reveals violations, the amount shall continue to be withheld until the contractor voluntarily pays the liquidated damages and makes restitution of the full amount that is allegedly due his employees or until the actions set forth in paragraphs (b) and (c) of this section are taken.

(b) If the contractor does not make voluntary restitution of funds found to be due an employee, the contracting of-

ficer shall forward Standard Form 1093 to the finance and accounting officer who normally makes disbursements to the contractor. This form shall be prepared and processed in accordance with 7 GAO 3530 and 4 GAO 550. These provisions of the GAO Manual require in part that Standard Form 1093 be accompanied by a schedule showing as to each employee: (1) Name, (2) current address, (3) social security number, (4) dates and hours of work, (5) classification and rate at which actually paid, and (6) classification and rate at which required to be paid. If any claim has been received from an employee, it should also be attached to Standard Form 1093. The funds withheld for payment of monies due the employees shall be transferred by the finance and accounting officer along with Standard Form 1093 and attachments to the General Accounting Office without waiting for the final processing of any report of investigation by the Department of Labor. Employees to whom restitution is due shall be advised that, upon approval of the withholding by the Department of Labor, they will be paid on application to the General Accounting Office. Withholding must be accomplished even though an employee cannot be located.

(c) When the investigation discloses that liquidated damages are due the United States under the Contract Work Hours Standard Act and the contractor fails to make voluntary payment, the contracting officer shall forward a voucher to the finance and accounting officer who normally makes disbursement to the contractor. This voucher shall indicate the amount due the contractor, the amount to be paid to the United States as liquidated damages and sufficient information to make clear the purpose of the withholding. The voucher used should be separate from that used to withhold any restitution that may be due the contractor's employees. The contracting officer should retain complete information concerning the liquidated damages including justification therefor and the method of calculation. If requested, this information shall be furnished to the finance and accounting officer.

§ 602.404-10 Restitution.

(a) When it appears that restitution may be due employees of a contractor or subcontractor, the contracting officer and the investigating officer shall seek to have the contractor or subcontractor make restitution voluntarily. Computation of back wages may be made by the contracting officer, or the contractor may be requested to do so, subject to verification by the contracting officer. Upon completion of computations, a summary sheet listing names, addresses, and the unpaid amounts payable to the employees involved should be prepared by the contractor and a copy furnished the

contracting officer. The contracting officer shall advise the contractor of the procedure which will satisfy him conclusively that proper restitution has been made, particularly the witnessing of cash payments or the furnishing of canceled checks.

(b) When a contractor wishes to make voluntary restitution but some worker or workers to whom such restitution is due cannot be located, the contracting officer shall collect the amount of restitution due and forward it to the disbursing officer for forwarding to the General Accounting Office, accompanied by a list of such workers, their last known addresses, and the amount due each employee and a brief statement of reason for restitution. Voluntary restitution cannot be considered completed as to workers who cannot be located until this procedure has been followed.

§ 602.404-11 Contract terminations.

Whenever a contract is terminated for violation of labor standards provisions, a report containing the information set forth in § 12.404-11 of this title shall be forwarded by the contracting officer, through channels, to the Labor Advisor. This report shall be accompanied by a report of the investigation of the violations resulting in termination setting forth the information required by § 602.404-7(c). If such investigation has not been completed, an interim report setting forth as much of the information required by § 602.404-7(c) as is currently available shall accompany the report of termination. The complete report shall be forwarded when available.

§ 602.404-12 Cooperation with Department of Labor.

In connection with the enforcement of labor standards, either the contracting officer or an officer conducting an investigation is free to call upon the Department of Labor Regional Attorney for informal opinions, advice, or assistance, except as otherwise set forth in this part. The addresses of the Regional Attorneys and their geographical jurisdictions are the same as those set forth for the Regional Offices in § 12.607 of this title.

§ 602.404-50 Adjustment or nonassessment of Contract Work Hours Standards Act liquidated damages.

(a) When the contracting officer finds that the sum of liquidated damages owed the United States is either incorrect or that the violations by the contractor or subcontractor were inadvertent, notwithstanding the exercise of due care, he may transmit to the Labor Advisor (except that the Corps of Engineers cases shall be processed in accordance with procedures established by the Office of Chief of Engineers), the report called for by § 602.404-8, together with a recommendation as to the adjustment

or nonassessment of the liquidated damages.

(b) When the sum of liquidated damages is \$100 or less, the Secretary of the Army or his designee may make an appropriate adjustment in, or relieve the contractor or subcontractor from liability for, such liquidated damages without submitting recommendations to this effect to the Secretary of Labor. The Chief of Engineers, or his designated representatives, may act for the Secretary of the Army in Corps of Engineers contracts.

§ 602.450 Joint consolidated list of debarred, ineligible, and suspended contractors.

The list of persons and firms found by the Comptroller General to have violated the requirements of the statutes relating to labor standards is incorporated by the Office of the Assistant Secretary of the Army (Installations and Logistics) (Assistant Judge Advocate General) in the consolidated list (DA Cir. 715-1) issued in accordance with § 1.601-3 of this title. The list is for the use and guidance of all interested agencies of the Department of the Army. Contracting officers shall comply with the prohibitions contained in the list of such persons and firms published by the Comptroller General prior to incorporation of such information in the Joint Consolidated List.

§ 602.451 Construction Labor Standards Report (Reports Control Symbol SAOAS-41).

(a) *Contracting officers.* Each contracting officer with the United States shall submit semiannually to the Head of Procuring Activity, on DA Form 1762-R a report on the enforcement of labor standards applicable to contracts in excess of \$2,000 involving construction, alteration or repair of public buildings or public works. Contracting officers will complete only items 1 through 6 of the DA Form 1762-R. Until the requirement for reporting is consolidated in ASPR items e b and c shall reflect the Work Hours Act in lieu of the Eight-Hour Law. Reports shall cover the 6-month periods ending June 30 and December 31 and will be dispatched by July 25 and January 25 respectively.

(b) *Heads of Procuring Activities.* Each Head of Procuring Activity shall submit semiannually to the Labor Advisor a consolidation of the individual reports received pursuant to paragraph (a) of this section. The consolidated report shall be submitted on DA Form 1762-R and shall include completion of items 7, 8, and 9. The reports will be dispatched by August 10 and February 10, respectively. Negative reports will be submitted when applicable.

(c) *Reproduction of form.* DA Form 1762-R shall be reproduced locally on 8- by 10½-inch paper.

(d) Construction Labor Standards Report (DA Form 1762-R (8 x 10 1/2)).

CONSTRUCTION LABOR STANDARDS REPORT (APP 12-451)		PERIOD COVERED (Dates)		REPORTS CONTROL SYMBOL SAOAS-41
FROM:		TO:		
TO:		FROM:		
ITEM	NUMBER	ITEM	NUMBER	
1. NUMBER OF CONSTRUCTION, ALTERATION & REPAIR CONTRACTS AWARDED IN EXCESS OF \$2,000		c. Dept of Labor		
2. METHODS OF ADVISING CONTRACTORS OF LABOR STANDARDS OBLIGATIONS:	XXXXXXXXXX	d. Other (Including Congressional)		
a. Preconstruction Conferences		5. SPECIAL INVESTIGATIONS CONDUCTED		
b. Preconstruction Letters		a. Violations revealed from special investigations		
3. INSPECTIONS CONDUCTED	XXXXXXXXXX	6. MONEY WITHHELD AND VOLUNTARY PAYMENTS	XXXXXXXXXX	
a. Payroll		a. Davis-Bacon Act		
b. On-the-site		\$ _____		
c. Violations revealed as result of inspections		b. Eight-Hour Law		
4. COMPLAINTS RECEIVED FROM:	XXXXXXXXXX	\$ _____		
a. Labor unions		c. Eight-Hour Law Penalties		
b. Individual workmen		\$ _____		
		d. Copeland Act		
		\$ _____		
TO BE COMPLETED BY HEAD OF PROCURING ACTIVITY ONLY				
7. NUMBER OF THE CONFERENCES HELD WITH SUBORDINATE OFFICERS & CIVILIAN PERSONNEL RESPONSIBLE FOR ENFORCEMENT OF LABOR LAWS AND REGULATIONS.				
8. NUMBER OF FIELD ACTIVITIES VISITED TO REVIEW MEASURES EMPLOYED TO INSURE COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.				
9. REMARKS				
10. TYPED NAME AND TITLE OF PREPARING INDIVIDUAL				
TYPED NAME, GRADE AND TITLE OF AUTHENTICATING OFFICIAL				SIGNATURE

DA Form 1762-R, 1 Apr 59

Edition of 1 Jun 56 is obsolete.

Subpart F—Walsh-Healey Public Contracts Act

§ 602.604 Responsibilities of contracting officers.

A request for determination by the Department of Labor may be made through the Head of Procuring Activity. A determination by the Department of Labor that a bidder is a "manufacturer" or "regular dealer" is conclusive. Such qualification, however, does not relieve the contracting officer of the duty to determine the responsibility of the bidder.

§ 602.606 Procedure for obtaining exemptions with respect to stipulations required by the Act.

(a) *Published exceptions.* Certain of the exceptions stated in the publications furnished contracting officers which contain no specific expiration date may have been rescinded by the Secretary of Labor

since date of publication. In case of doubt inquiry may be directed to the appropriate Regional Director, Wage and Hour and Public Contracts Divisions, Department of Labor indicated in § 12.607 of this title or to the Labor Advisor.

(b) *Requests for exceptions and review thereof.* All requests of present or prospective contractors for exceptions under section 6 of the Act shall be addressed to the cognizant Head of Procuring Activity. Such request shall be in writing, shall be transmitted through the appropriate contracting officer, and shall set forth all pertinent information (including the nature of the requested exception, the need therefor, and any action already taken by the contractor to avoid the necessity for the exception). The contracting officer shall review each request received from a contractor for—

(1) The urgency of the particular procurement;

(2) The relation of existing production schedules to Department of the Army requirements;

(3) The relation of present and past deliveries to production schedules;

(4) The extent to which labor supply is a limiting factor in production and the reasons therefor;

(5) The steps, if any, which have been taken either by the contractor or by any Government agency to resolve the labor supply problem;

(6) The extent to which factors inherent in the production processes involved necessitate the requested exception;

(7) The extent to which the productive capacity of the facility or facilities in question is being utilized for Army procurement; and

(8) Any other pertinent data.

(c) *Consultation with Regional Directors, Department of Labor, and forwarding of requests to Heads of Procuring Activities.* (1) If the contracting officer believes that the requested exception is appropriate under the circumstances and necessary to meet vital procurement schedules, he will—

(i) Inform the appropriate regional director of the Wage and Hour and Public Contracts Division, Department of Labor, of the request for exception and the necessity therefor; and

(ii) After joint consideration with such regional director, if still of the opinion that the requested exception is appropriate, transmit the request, together with (a) his written recommendation relative thereto, (b) a statement of all the information upon which the recommendation is based and (c) a recital of the steps taken in compliance with the procedure set forth in paragraph (b) of this section and this paragraph to the cognizant Head of Procuring Activity.

(2) This procedure of consulting with such regional directors shall be complied with unless such compliance would result in undue delay. The contracting officer, in consulting with the appropriate regional director, furnish the Director any pertinent information in his possession which the Director may require for rendering a report in connection with the need for the exception to the Administrator of the Wage and Hour and Public Contracts Divisions.

(d) *Review and processing of requests by Head of Procuring Activity.* If the Head of Procuring Activity concurs in the recommendation of the contracting officer, after review of the request and consideration as to whether the need for an exception can be avoided by utilization of alternative facilities, he will forward the request to the Labor Advisor, together with—

(1) A statement of pertinent data;

(2) His recommendation;

(3) A draft of a letter setting forth the need for the exception, addressed to the Secretary of Labor and prepared for the signature of the Secretary of the Army; and

(4) Accompanying draft of a Findings of Fact as required by section 6 of the Act, prepared for the signature of the Secretary of the Army.

§ 602.650 Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors (DA Cir 715-1).

(a) The Joint Consolidated List issued in accordance with § 591.601-3 will include the following:

(1) Persons or firms found by the Secretary of Labor to have breached or violated contractual representations and stipulations required by the Walsh-Healey Act, issued by the Comptroller General; and

(2) Persons and firms which have been held ineligible to be awarded contracts subject to the Walsh-Healey Act, published by the Department of Labor.

(b) This information is published for the use and guidance of all interested agencies of the Department of the Army. Contracting officers shall comply with the prohibitions contained in the list published by the Comptroller General relating to firms and individuals disqualified for the reason stated in paragraph (a)(1) of this section, and the restrictions contained in the Department of Labor Circular Letters relating to firms and individuals disqualified for the reasons stated in paragraph (a)(2) of this section, prior to incorporation of such information in the Joint Consolidated List.

Subpart G—Fair Labor Standards Act of 1938

§ 602.701 Basic statute.

Section 6(a) of the Act, as amended, requires every employer to pay to each of his employees "who in any workweek is engaged in commerce or in the production of goods for commerce" not less than \$1.25 per hour. Section 7(a) of the Act, as amended, prohibits every employer from employing any of his employees "who is engaged in commerce or in the production of goods for commerce" for a workweek longer than 40 hours, unless such employee receives compensation for his employment in excess of such 40-hour workweek at a rate not less than one and one-half times the regular rate at which he is employed. The Act is applicable within the United States, its Territories and possessions. The U.S. Supreme Court has ruled that the Act is applicable to the Bermuda defense area leased to this country in 1940. The provisions of sections 6 and 7 of the Act, however, do not apply with respect to certain categories of employees enumerated in the Act, nor under certain circumstances also enumerated in the Act.

§ 602.702 Suits against Government contractors.

Contractors, under cost-reimbursement type contracts, should be advised that immediately upon receipt of process in any legal action under the contract based on the Act, which may result in claims for increased allowable costs against the United States, they must furnish a copy of all papers to the contracting officer. The contracting officer shall make immediate report of the legal action direct to The Judge Advocate General, ATTN: JAGL, Department of the Army, Washington, D.C., 20310. See AR 27-5.

§ 602.750 Regulations of the Administrator.

The Act provides that the Administrator shall by regulation define certain terms used in the Act and may grant certain exemptions from its provisions. Regulations issued by the Administrator, as revised from time to time, should be consulted in these respects.

§ 602.751 Under cost-reimbursement type contracts for payments in accordance with the Act.

(a) Any employer who violates the provisions of section 6 or 7 of the Act is liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, and may be liable in an additional equal amount as liquidated damages; and in the event the employee institutes suit therefor, the costs of the action and a reasonable attorney's fee as allowed by the court. Violations also may be restrained by injunction and may subject the employer to criminal penalties. In this connection, however, attention is invited to the Portal-to-Portal Act of 1947 (Act of May 14, 1947; 29 U.S.C. 251) which limits the liability of an employer under certain circumstances.

(b) Determination by the contracting officer of the liability of the Government to reimburse contractors for any amounts paid in settlement of claims under the Act will be subject to prior approval by the cognizant Head of Procuring Activity, who shall obtain legal advice in the premises. Attention is invited to Comptroller General decision of December 15, 1943 (B-38642, 23 Comp. Gen. 439), to the effect that amounts paid in settlement of such claims may be reimbursed even though the settlements necessitated a compromise of disputed questions of law or fact, provided that such settlements are in amounts less than the total amounts (including liquidated damages, court costs, and attorneys' fees) which would be required to be paid in the event the employee sued and obtained judgment and that it is administratively determined that the settlement in each instance was fully warranted as being in the best interest of the Government. Vouchers covering such payments shall be supported by evidence setting forth the basis for such administrative determination and any questions of law with respect to the application of the Act shall be determined only after thorough consideration has been given the matter by competent Government attorneys, and a showing to that effect should also be made a part of the evidence submitted with the vouchers.

§ 602.752 Investigations and inspections.

(a) The Act provides that each employer subject to the Act must make and preserve certain records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him. The Act also provides that the Administrator, or his designated representatives, may investigate and gather data regarding the wages, hours, and other conditions

and practices of employment in any industry subject to the Act, and may enter and inspect such places and such records, question such employees and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of the Act, or which may aid in the enforcement of the Act.

(b) With respect to cost-reimbursement type contractors, to the extent consistent with security and other regulations governing admission of visitors to plants and projects, representatives of the Administrator should be accorded access to the facilities and records of Department of the Army contractors for the purpose of making investigations to determine applicability of and compliance with the Act. Investigations will be conducted at such time and in such manner as to interrupt or interfere least with operations. They should be confined whenever possible to the inspection of records in the office of the contractor. Inspections of the areas in the facility where construction or production is in progress will be held to a minimum. Necessary interviewing of employees should, whenever possible, be conducted outside work hours or at such other times as will interfere least with construction or production operations. The Administrator has stated that his investigators will advise cost-reimbursement type contractors approximately 1 week before they plan to arrive at the project to make an investigation under the Act.

Subpart H—Equal Opportunity

§ 602.804 Requests for exemptions.

Requests for authority to modify or omit the Equal Opportunity clause shall be transmitted in duplicate to the Labor Advisor in a form suitable for transmission to the President's Committee on Equal Employment Opportunity. Such requests shall set forth in detail the facts concerning the procurement in question, the need for the exemption or modification, and the efforts made by the contracting officer and the procuring activity to effect the procurement without an exemption. The request should also set forth facts concerning the general impact which would result from failure to secure contracts with the contractor for whom the request is made.

§ 602.806-1 General.

(a) *Compliance officers.* The Head of Procuring Activity shall appoint a compliance officer to supervise the equal employment opportunity program. A field compliance officer shall be appointed at each major field purchasing office to handle all investigations of alleged violations of the Equal Opportunity clause.

(b) Reports required by this Subpart are exempt from reports control (par. 39f, AR 335-15) except the report required by § 602.806-5(a) which is exempt under paragraph 39n, AR 335-15.

§ 602.806-2 Educational responsibility.

(a) It is the responsibility of a field compliance officer to apprise contracting officers and other personnel concerned with procurement of his responsibility in

obtaining compliance with the Equal Opportunity clause.

(b) Contracting officers are responsible for notifying prospective contractors of the equal employment opportunity program. Particular emphasis should be placed on the requirement that contractors take action to insure that applicants are employed and treated during employment without regard to their race, religion, color, or national origin.

§ 602.806-3 Posting of notices.

Contracting officers shall transmit to contractors the posters and the notices on equal employment opportunity by a letter substantially as follows:

In accordance with Executive Order No. 10925, dated March 6, 1961, as amended, your contract with the Department of the Army contains a provision in which you agree not to discriminate against any employee, or applicant for employment, because of race, religion, color, or national origin. Further, you have agreed to insert this provision in appropriate subcontracts.

Your contract also requires you to display in conspicuous places, available to employees and applicants for employment, "Posters" setting forth the provisions of the Equal Opportunity clause. It also requires that a "Notice" be sent to all labor unions or other organizations of workers with which you have a collective bargaining agreement.

I have enclosed copies of the poster which you have agreed to display and of the notice. Upon request, I shall supply additional copies of both forms for subcontractors who are subject to these requirements.

If you have any questions concerning the display of the posters or your obligations under the Equal Opportunity clause, please do not hesitate to call on me.

Posters and notices are available through normal publication supply channels.

§ 602.806-5 Compliance review.

(a) *Routine compliance reviews.* (1) Routine compliance reviews are not necessarily required to be conducted as to every contract or subcontract, or as to every contractor or subcontractor. If the contractor's or subcontractor's plant, facility, or site of work is visited by procurement personnel in the course of normal contract administration, a check should be made for compliance with the Equal Opportunity clause using the routine compliance review procedures. In the event that a particular contractor or subcontractor receives contracts from time to time, or firms in particular industries or areas are not subject to plant visitation, special compliance reviews on a selective basis may be made at the discretion of the contracting officer in lieu of the routine compliance review.

(2) Routine compliance reviews shall include the following:

(i) A verification that equal employment opportunity posters are appropriately displayed and that the notice to labor organizations has been given;

(ii) An ascertainment that the Equal Opportunity clause is included in all subcontracts not exempted by the clause and that such subcontractors have been supplied with the equal employment opportunity posters and compliance report forms;

(iii) An examination of employment application forms and referral forms

from employment agencies to insure that they do not contain questions, the answers to which might give rise to suspicion of discriminatory action;

(iv) An examination of the contractor's published policy against discrimination in employment by reason of race, color, creed or national origin, and assuring that such policy has been communicated to all echelons of management;

(v) A brief visual or other survey to determine that minority group personnel are actually employed or that there is an acceptable explanation for their absence.

(3) The contracting officer shall require correction of any deficiencies found as a result of routine compliance reviews which, standing alone, do not indicate a violation (e.g., inadvertent failure to post the required equal employment opportunity poster). A report is not required in such a case. However, if deficiencies found as a result of routine compliance reviews suggest the existence of serious violations of the Equal Opportunity clause, a report of review should be referred to the compliance officer of the procuring activity (§ 602.806-1(a)) for complete investigation in accordance with § 12.806-7 of this title. The review in these cases shall be considered the "complaint" to which reference is made in §§ 12.806-6 and 12.806-7 of this title.

(b) *Special compliance reviews.* (1) A special compliance review shall cover all items of a routine compliance review and, in addition, shall include the following:

(i) Visits to local employment offices of the U.S. Employment Service to determine the type of requests the contractor files with them and their experience as to contractor hiring of members of minority groups;

(ii) A check of any advertisements for employees to ascertain whether they contain a notice identifying the contractor as being "An Equal Opportunity Employer";

(iii) A discussion with the contractor or his personnel officers to ascertain his participation and experience under the equal employment opportunity program (which includes employment, training, promotion, grades of jobs open to members of known minority groups, any changes or proposed changes in policy by the contractor, and contractor suggestions for furtherance of the equal employment opportunity program);

(iv) Discussions with representatives of at least one local known minority group organization concerning degree of participation in the equal employment opportunity program in the community, including participation of the company being surveyed. (In the event any organization has a complaint, it should be explained that complaints must be submitted by individuals, who may file their complaints with either the President's Committee on Equal Employment Opportunity or the contracting agency (§ 12.806-6 of this title); and

(v) If there is a State or local equal employment opportunity authority, discussions with officials of such authority

concerning the contractor's participation in the non-discrimination program. Reports of special compliance reviews will be transmitted to the Labor Advisor. Such reports shall contain a statement by the officer making the report as to whether the contractor or subcontractor is considered to be in compliance with the contract clause and if not, what corrective action is contemplated to bring the contractor or subcontractor into compliance.

(2) *Special compliance review reports.* The following is a checklist of items which should be included in the field compliance officer's special compliance review report where applicable. This list is not to be considered as limiting the report to the items enumerated.

I. CONTRACT DATA

1. Name of contractor.
2. Term of contract.
3. Nature of contract.
4. Location of plant under survey.

II. EQUAL OPPORTUNITY CLAUSE AND POSTER

1. Was the contractor advised of his obligation under the Equal Opportunity clause at the time of the contract?
2. Was the contractor furnished posters and pertinent literature relating to the Equal Opportunity clause?
3. Are posters displayed in conspicuous places throughout the contractor's plant?
4. Have subcontracts been let for any work covered by the Government contract?
5. If the answer to the above question is "Yes," is the Equal Opportunity clause included in such subcontracts?
6. Have posters been distributed to the appropriate subcontractors?

III. COLLECTIVE BARGAINING AGREEMENTS

1. Identify union or unions with which contractor has collective bargaining agreements.
2. Has the contractor furnished each union with which it has such an agreement a notice advising the labor union of its commitments under the Equal Opportunity clause?

IV. EMPLOYMENT POLICY

1. If the plant is one of several owned or operated by the contractor, has the contractor established a company-wide equal employment opportunity policy?
2. Has such policy been communicated to all supervisory personnel and plants in writing?
3. If not in writing, by what means?
4. Is the employment policy of the plant under survey consistent with that established by the contractor?
5. If it is not consistent with such policy, explain.
6. What steps has the contractor taken to implement his equal employment opportunity policy? Describe briefly.
7. What are the contractor's policies with respect to promotion, layoff, transfer, and recall of employees not governed by collective bargaining agreements?

V. PREEMPLOYMENT APPLICATION FORMS, JOB ORDERS, AND ADVERTISING

1. Are codes or other references pertaining to race, color, religion or national origin included in preemployment forms for—
a. Office and salaried workers?
b. Hourly workers?
2. Are such references included in—
a. Job orders to public and private employment agencies?
b. Advertising?

VI. RECRUITMENT SOURCES

1. What is the contractor's major recruitment source?

2. What other sources are used by the contractor (e.g., public employment offices, company employment offices, labor unions, schools)?

3. In recruiting employees from any of these sources, has the contractor specifically requested individuals of one race, color, religion or national origin?

4. Has the contractor specifically informed all of his recruitment sources of his equal employment opportunity policy in writing or otherwise?

5. Does the contractor recruit any of his employees from—

a. Predominately minority group schools?

b. Minority group agencies, e.g., Urban League?

6. Have any minority group agencies referred minority group applicants to the contractor?

a. Have any such applicants been hired?

b. If "No," explain.

VII. APPRENTICESHIP AND ON-THE-JOB TRAINING

1. Does the plant offer an apprenticeship training program registered with the U.S. Department of Labor?

2. If the answer to the above question is "Yes," report—

a. Total number of apprentices, and

b. Number of nonwhite apprentices.

3. Does the plant offer on-the-job training?

4. If the answer to the above question is "Yes," report—

a. Total number of trainees, and

b. Number of minority group trainees.

5. How are the applicants selected for apprenticeship and on-the-job training? Describe briefly.

6. If the plant has an apprenticeship or on-the-job training program and there are no minority group trainees enrolled, what are the reasons offered by the contractor?

7. If there is no formal apprenticeship training program, what method is used by the contractor to train employees for higher work classifications?

VIII. EVALUATION OF COMPLIANCE

The contractor (is) or (is not) in compliance with the equal opportunity provisions because: (Cite briefly the reasons for such evaluation.)

IX. PERSONS INTERVIEWED

Date _____ Name _____ Title _____
Company or Agency _____
Place _____

§ 602.806-7 Processing of complaints.

Any complaint or request for investigation as a result of compliance reviews § 12.806-5(a) shall be referred to the compliance officer of the appropriate procuring activity. If there is doubt as to the agency with primary interests, the case will be transmitted to the Labor Advisor. If it appears that a complaint cannot be disposed of by education and where appropriate by mediation, conciliation, or persuasion, such compliance officer will direct an investigation of the case. However, throughout the investigation, he should be alert to opportunities for settling the matter by conciliatory means. If the case is thus adjusted, a report describing the understanding reached shall be submitted to the Labor Advisor. This report shall include copies of any pertinent documents (e.g., memorandum of agreement, exchange of letters).

§ 602.806-50 Investigation of complaints.

In many respects, the techniques for the investigation of a complaint are

identical with those employed for conducting a compliance review. The investigation of a complaint, however, must be made in greater detail. Since each complaint will involve different people and different facts, the methods of the investigator may differ from situation to situation.

(a) *Attitude of the investigator.* The field compliance officer shall inform all parties involved that he is acting on behalf of the Department of the Army in carrying out the President's equal employment opportunity program. In conducting the investigation, the investigator will avoid giving any indication of his personal views or feelings; impartiality and objectivity should be the guiding principles of the investigator.

(b) *Personal interviews.* The complainant should be personally interviewed before any visit is made to the contractor. This enables the investigator to obtain information from the complainant with respect to any details of the complaint which appear to be vague and uncertain. In some cases it may be desirable to obtain from the complainant a signed statement specifically setting forth the allegations involved. It would be preferable for the complainant to write out or to dictate such statement to the investigator. If the statement is developed by the investigator, the language should approximate that of the complainant. He should be requested to indicate that he has read the statement and understands it. This instruction also applies to interviews of witnesses or other individuals named by the complainant who may furnish supplementary information.

(c) *Privacy of interviews.* Interviews, when possible, should be held in complete privacy. If the complainant is an employee of the contractor against whom the complaint has been filed, the interview should be held away from the premises of the contractor, preferably at the home of the complainant or an appropriate place mutually convenient to the complainant and the investigator. This instruction also applies to interviews with witnesses or other individuals whose names have been furnished to the investigator by the complainant. Interviews should be scheduled at the convenience of the complainant, the contractor, and of any other individuals involved.

(d) *Interviewing the complainant.* In interviewing the complainant, the investigator should develop information such as the following:

(1) The name and address of employer or employment agency, if any, and name of interviewer, date and time interviewed;

(2) How complainant learned about the job;

(3) The title of position involved;

(4) A description of job; e.g., nature and duty of job and job qualifications as understood by the complainant;

(5) The salary sought or salary specified;

(6) The marital status, religion, and personal background of complainant where relevant;

(7) The complainant's educational background;

(8) The employment experience of complainant, including salaries, titles, duties, names and addresses, and description of former employment where relevant;

(9) The chronological sequence of events involved in the alleged discriminatory action, including names and positions (where known) of all persons who interviewed complainant, their attitudes toward complainant where significant, and complainant's answers (correct dates of events may be of the utmost importance);

(10) Names and addresses of witnesses and participants in all relevant conversations and events; and

(11) Such additional data as may be pertinent.

(e) *Disclosure of complainant's identity.* In order for a complaint to be thoroughly investigated, the identity of the complainant must necessarily be disclosed. Consent to disclose identity should therefore be secured by the investigating officer.

(f) *Interviewing the contractor.* The contractor or his designated representative should be interviewed personally by the investigator. The investigator should outline to the contractor or his representative the nature of the complaint, the facts as alleged, and describe the information which will be required in order that a just determination of the complaint may be made. Using the complaint as a basis, the investigator should develop lines of inquiry which will either substantiate or disprove the allegations involved. The investigator, however, should not limit himself to the particular act of discrimination alleged in the complaint, but include within the scope of his inquiry an examination of the contractor's overall employment policies, patterns and practices.

(g) *Reports of investigation.* The investigator should carefully arrange the material of his report to present a clear chronological picture of the facts disclosed. The reports must be accurate, clear and concise, and everything relevant to the substantiation or disproof of the complaint must be included. Details are desired, not summarized versions of the investigation. An investigation shall be normally accompanied by a special compliance review. Reports of investigation shall include, but not be limited to, the following:

(1) Name and address of the complainant, name and address of the contractor, and location of plant or site of the alleged discrimination.

(2) Nature and facts of the alleged discrimination as determined from the complaint and the interview with the complainant (see paragraph (d) of this section).

(3) Summary of the interviews with the contractor, supervisors, other employees, and any other persons involved.

(4) Statement of findings.

(5) Conclusions. If a violation is found, specify any corrective action taken by the contractor.

(6) Recommendations for disposition of the case, of sanctions to be imposed,

or of future action or reviews to be made by the investigating agency.

(h) *Reinvestigation.* Cases returned to the procuring activity for additional information should be reinvestigated in accordance with the requirements set forth by the Labor Advisor. The reinvestigation procedures and report should otherwise comply with the above provisions governing the original investigation.

(i) *Reporting channels.* Reports shall be prepared by the investigating officer to reach the field compliance officer in quadruplicate. The reports shall be suitable and proper for transmission to the President's Committee. In cases of noncompliance with a provision of the Equal Opportunity clause, the report shall include a summary of all efforts made by the field compliance officer and the office of the Head of Procuring Activity to effect compliance. The report shall be forwarded by the field compliance officer in triplicate to the Labor Advisor.

PART 603—GOVERNMENT PROPERTY

Subpart C—Providing Government Production and Research Property to Contractors

Sec. 603.301 Providing facilities.

Subpart D—Use and Rental of Government Production and Research Property

603.406 Rent-free use of Government production and research property on work for foreign governments.

Subpart G—Contract Clauses

603.702-51 Liability for Government property furnished for repair or other services.
603.703 Government property clause for cost-reimbursement contracts.
603.704 Special tooling clause for fixed-price contracts.

Subpart N—Exchange or Sale of Personal Property for Replacement Purposes

603.1400 Applicability.
603.1401 Authorization.
603.1402 Mandatory use of the exchange/sale authority.
603.1403 Permissive use of exchange/sale authority.
603.1404 Limitations.
603.1405 Screening.
603.1406 Procedure for exchange or sale.
603.1407 Books and periodicals.
603.1408 Mandatory exchange/sale category list.

Subpart O—Sale, Loan, Gift of Property

603.1501 Sale of uniforms, safety items, and unserviceable ammunition components.
603.1502 Sale, loan, or gift of certain property (10 U.S.C. 4506).
603.1503 Loan of equipment—research and development.

Subpart P—Audit of Industrial Property Records

603.1601 Responsibility for audits.
603.1602 Reports of audit.
603.1603 Records in unsatisfactory condition.

Subpart Q—Manuals for Control of Government Property in Possession of Contractors

603.1700 General.
603.1701 Definitions (B-103).

Sec. 603.1701-1 Special tooling (B-103.14).
603.1701-2 Custodial records (B-304.1(c)).
603.1702 Duties and responsibilities of the contract administrator (B and C-201).
603.1703 Designation of property administrator (B and C-202(a)).
603.1704 Property administration interchange agreements (B and C-202(b)).
603.1705 Duties and responsibilities of the property administrator (B and C-203(b)).
603.1706 Sources from which Government property may be furnished or acquired (B and C-205).
603.1706-1 Military installations or other contractor's plants (B and C-205.1).
603.1707 Segregation or commingling of Government property and contractor's property (B-206 and C-210).
603.1708 General (B-301(a) and C-207.1).
603.1708-1 Accounting for items bearing registration numbers.
603.1708-2 Exceptions.
603.1709 Contractor's property control records (B-301(b) and C-207.2).
603.1710 Pricing (B-302 and C-207.10).
603.1711 Records to be maintained by Government Personnel (B-303 and C-213).
603.1711-1 Records of specific contracts where property is involved (B-303.1 and C-213.1).
603.1712 Records to be maintained by the contractor (B-304 and C-207).
603.1712-1 Records of material—custodial records (B-304.1(c)).
603.1712-2 Records of plant equipment (B-304.3 and C-207.5).
603.1712-3 Records of scrap (B-304.5 and C-212).
603.1712-4 Financial control accounts (B-304.7).
603.1713 Numbering property accounts (B-305 and C-214).
603.1714 Identification of Government property (B-401 and C-307).
603.1714-1 Identification marking of Government property.
603.1715 Contractor's responsibility and liability (B-402, C-303 and C-304).
603.1715-1 Contractor liability (B-402.2 and C-303(e)).
603.1715-2 Shipment and receipt of Government-furnished property (B-402.3 and C-204).
603.1716 Selective examinations of contractor records and property.
603.1717 Transfers of property accounts between property administrators.
603.1718 Transfer of property from military to contractor (industrial) property accounts.

AUTHORITY: The provisions of this Part 603 issued under sec. 3012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

Subpart C—Providing Government Production and Research Property to Contractors

§ 603.301 Providing facilities.

A determination under § 13.301(b) of this title to provide existing Government-owned industrial facilities may be made by the cognizant Head of Procuring Activity or his authorized representatives when consistent with AR 37-40 and AR 700-34. See §§ 603.305(h) and 3.306(h). The acquisition of industrial

facilities involving PEMA funds is governed by AR 37-40.

Subpart D—Use and Rental of Government Production and Research Property

§ 603.406 Rent-free use of Government production and research property on work for foreign governments.

Subject to the provisions of § 13.406 of this title, a cognizant Head of Procuring Activity and his deputy or his principal assistant for procurement are authorized on behalf of the Secretary to approve requests for use of facilities and special tooling.

Subpart G—Contract Clauses

§ 603.702-51 Liability for Government property furnished for repair or other services.

Subject to the following instruction, insert the clause set forth below in contracts for repair or other servicing (e.g., laundering, cleaning, dyeing) of Government property when such property is furnished to the contractor for that purpose; provided, however, that this clause shall not be used when the Ground and Flight clause (§ 10.404 of this title) is required or when the clause at §§ 13.702 or 13.710 of this title is required under § 3.608-2(b)(1)(viii) of this title. The following clause may be used instead of the clause at § 13.710 of this title when the use of § 13.710 of this title is optional under § 3.608-2(b)(1)(viii) of this title if the contracting officer considers that the use of a property clause is necessary to protect the Government. If either a substantial quantity of parts or materials will be furnished to the contractor, or a significant amount of scrap will result from the repair or servicing, the contract shall also contain the appropriate Government property clause (Part 13 of this title), and the schedule of the contract shall provide that such parts, material and scrap shall be governed by the terms of that clause. See § 603.1708-2. A contracting officer shall not require additional insurance under the clause unless the circumstances clearly indicate advantages to the Government which justify a departure from the general policy expressed in § 600.303.

LIABILITY FOR GOVERNMENT PROPERTY FURNISHED FOR REPAIR OR OTHER SERVICES (MAY 1963).

(a) The provisions of this clause shall govern with respect to any Government property turned over to the Contractor to be repaired or to have services performed on it (referred to in this clause as "Government property furnished for servicing"), and such property shall not be considered "Government furnished property" within the meaning of any clause of the contract entitled "Government Property" or "Government Furnished Property." The Contractor shall maintain adequate records and procedures to insure that Government property furnished for servicing may be readily accounted for and identified at all times while in his custody or possession or the custody or possession of a subcontractor.

(b) The Contractor shall be liable for any loss or destruction of or damage to the Government property furnished for servicing caused by the Contractor's failure to exercise such care and diligence as a reasonably

prudent owner of similar property would exercise under similar circumstances. The Contractor shall not be liable for loss or destruction of, or damage to, Government property furnished for servicing resulting from any other cause except to the extent that such loss, destruction, or damage is covered by insurance (including self-insurance funds or reserves).

(c) In addition to any insurance (including self-insurance funds or reserves), affording protection in whole or in part against loss or destruction of, or damage to, such Government property carried by the Contractor on the date of this contract, the amount and coverage of which the Contractor hereby agrees to maintain, the Contractor agrees to obtain such additional insurance covering loss or destruction of or damage to Government property furnished to the Contractor for servicing as may, from time to time, be required by the Contracting Officer. The requirements for such additional insurance shall be effected under procedures established by the Changes clause of this contract.

(d) The Contractor shall hold the Government harmless and shall indemnify the Government 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 Government property furnished for servicing or arising from the presence of said property on the premises or property of the Contractor.

§ 603.703 Government property clause for cost-reimbursement type contracts.

The clause in § 13.703 of this title shall be used in construction contracts under which the Department of the Army is to furnish the contractor material, special tooling, or such facilities as are authorized under § 13.303 of this title to the contractor.

§ 603.704 Special tooling clause for fixed-price type contracts.

The clause in § 13.704 of this title shall be used in negotiated construction contracts in accordance with § 13.305-2(c) (3) of this title.

Subpart N—Exchange or Sale of Personal Property for Replacement Purposes

§ 603.1400 Applicability.

This subpart does not apply to property owned by Stock or Industrial Funds.

§ 603.1401 Authorization.

Pursuant to section 201(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(c)), the Department of the Army is authorized, in acquiring replacement personal property, to exchange or sell similar items in personal property and apply the exchange allowance or proceeds of sale in whole or part payment for the property acquired. Each Head of Procuring Activity is authorized, with power to make such successive redelegations as he deems appropriate, to exercise this authority in accordance with this subpart.

§ 603.1402 Mandatory use of the exchange/sale authority.

Use of the exchange/sale authority in accordance with the procedures prescribed herein is mandatory with respect to the categories of personal property listed in § 603.1408; provided that, use of

this authority shall not apply to property which is in a new and unused condition and to property in scrap condition.

§ 603.1403 Permissive use of exchange/sale authority.

(a) Subject to the limitations of § 603.1404, use of exchange/sale authority in accordance with the procedures prescribed herein is permissive with respect to personal property not included in the categories set forth in § 603.1408, provided that—

(1) The items of personal property sold or exchanged are similar to the items acquired;

(2) The items exchanged or sold are not excess and the items acquired are needed in the conduct of an approved program;

(3) If other than containers or parts, the items acquired are to be used (whether or not there are intended additional uses) in the performance of substantially all of the tasks or operations in which the items exchanged or sold would be used. The items acquired need not be the same in number nor used in the same location as the items exchanged or sold. Detailed cross-reference between old and new items is not required in the absence of specific requirements of law; however, in the absence of such cross-reference, there shall be available for use of the General Accounting Office sufficient data to establish that the items acquired were similar to the items exchanged or sold, that any exchange allowance or proceeds of sale applied in whole or part payment for property acquired were in fact available for such application, and that the transaction was otherwise in accordance with the provisions of this subpart;

(4) Prior to the time of exchange or sale (or acquisition if it precedes the sale) there has been a written administrative determination by the Head of Procuring Activity or his designee (which may be a class determination or otherwise) to apply the exchange allowance or proceeds of sale to acquiring property in accordance with this subpart; and

(5) The transaction will foster the economical and efficient accomplishment of an approved program.

(b) As used in this subpart, "similar" means that—

(1) The item to be acquired is designed and constructed for the same specific purpose as the item sold or exchanged;

(2) Both constitute containers for items which are similar within the meaning of subparagraph (1) of this paragraph, or

(3) Both constitute parts either for items which are similar within the meaning of subparagraph (1) of this paragraph or for items within any one of the categories set forth in Chapter III, Part 2, AR 755-20.

§ 603.1404 Limitations.

(a) Items in the following categories (excepting those as specifically set forth in Chapter III, Part 2, AR 755-20) shall not be eligible for exchange or sale pursuant to the exchange/sale authority:

- (1) Handtools;
- (2) Hardware, general purpose;

(3) Lumber, millwork, plywood, and veneer;

(4) Furniture (office, household and quarters, hospital, shipboard and cafeteria) located in the United States, its Territories and possessions;

(5) Office supplies;

(6) Textiles; and

(7) Wearing apparel.

(b) This subpart shall not be construed to authorize—

(1) The acquisition of personal property when such acquisition is not otherwise authorized by law;

(2) The acquisition of personal property in contravention of any restriction upon the procurement of a commodity or commodities or of any replacement policy or standard prescribed by the President, the Congress, or by the Administrator of General Services;

(3) The purchase or acquisition of personal property other than under a consolidated purchasing or stores program or Federal Supply Schedule contract where the procurement under such program or contract is required by Part 5 of this title and Part 595 of this chapter; provided, that a procuring activity acquiring an item or items under and in accordance with such program or contract may exchange or sell similar items and apply the exchange allowance or proceeds of sale as provided herein;

(4) The transfer, sale or exchange of excess or surplus property in connection with the purchase or acquisition of personal property; provided, that a procuring activity may exchange or sell items originally acquired as excess or surplus property from another agency and apply the exchange allowance or proceeds of sale as provided herein;

(5) The transfer, sale or exchange of strategic, critical, or reserved materials;

(6) The exchange or sale of narcotics except in accordance with the criteria for sale of narcotics as set forth in AR 755-7;

(7) The transfer, sale or exchange of scrap in connection with the purchase or acquisition of personal property;

(8) The exchange or sale of personal property in new or unused condition in connection with the purchase or acquisition of personal property; or

(9) The exchange or sale of dangerous property and combat material (see AR 755-20 for disposal provisions).

§ 603.1405 Screening.

(a) Personal property which will be disposed of in accordance with §§ 603.1402 or 603.1403 shall be reported for screening pursuant to Chapter III, Part 2, Paragraph B 11, AR 755-20, except that property which will be disposed of in accordance with § 603.1403 need not be so reported if either of the following conditions prevails:

(1) The property is to be exchanged for property which may be acquired without solicitation of bids pursuant to Subchapter A, Chapter I of this title and this subchapter, and the need for action will not permit the waiting period required for screening; or

(2) The items concerned are certified by the holding activity as eligible for replacement under standards prescribed in

appropriate regulations; e.g., AR 750-3900-1.

(b) Property to be screened shall be reported on Standard Form 120 (Report of Excess Personal Property) with the following statement entered in block 18b: "This property is designated as eligible for exchange/sale." This property shall thereupon be immediately available for transfer to a requisitioning activity, subject to the above prescribed screening periods.

(c) Property selected for utilization or donation shall be declared excess or surplus at the time of such selection; property not selected for utilization or donation shall be disposed of in accordance with § 603.1406.

§ 603.1406 Procedure for exchange or sale.

(a) In exercising the exchange/sale authority, the objective shall be to obtain the maximum return to the Government from the property exchanged or sold. To achieve this objective the principles set forth in paragraphs (b) and (c) of this section shall be utilized.

(b) Property in the categories set forth in Chapter III, Part 2, AR 755-20 shall be sold unless the responsible procuring activity determines that exchange (trade-in) would be more advantageous to the Government. This determination may be based upon the business practices in the industry concerned, upon utilization of procedures set forth in paragraph (c) of this section (if appropriate to the industry concerned) or upon the results of prior use of those procedures.

(c) Property not in one of the categories set forth in Chapter III, Part 2, AR 755-20 shall be processed as follows:

(1) The procurement solicitation shall request both cash and trade-in bids, except that—

(i) Property may be exchanged without solicitation of bids when the property to be acquired may be procured without solicitation of bids under applicable laws and regulations;

(ii) Cash bids need not be solicited when property to be sold or exchanged may be disposed of without solicitation of bids under applicable laws and regulations;

(iii) Only one type of bid (cash or trade-in) need be solicited when recent solicitations for identical items have produced only that type of offer under circumstances indicating the futility of further advertising for any other type of offer. Since market conditions frequently change, tests at reasonable intervals should be made to determine whether this section may be properly utilized;

(iv) Only one type of bid (cash or trade-in) need be solicited when solicitation for the other type has proven clearly ineffective in reducing the cost of the acquisition; e.g., by reason of the commercial practices with respect to exchange or sale of such items. Tests should be made at reasonable intervals to determine whether this section may be properly utilized.

(2) For purposes of this paragraph such a solicitation is one designed to

attract the maximum number of interested buyers and sellers by allowing offerors to bid on one or more of the following bases:

(i) To furnish the replacement item for cash, but not take in trade the item offered for exchange (cash bid);

(ii) To furnish the replacement item, take in trade the item offered for exchange, and apply the trade-in value to the purchase price of the replacement item (trade-in bid);

(iii) To purchase the item offered for exchange but not furnish the replacement item (cash bid).

(3) Invitations for bids for property being offered in accordance with this subpart shall include the notation "This property is being offered in accordance with the exchange/sale provisions of the Federal Property and Administrative Services Act and APP Section XIII, Part 14."

(4) Award shall be made on the bid or combination of bids most advantageous to the Government.

§ 603.1407 Books and periodicals.

Notwithstanding any other provision of this subpart, books and periodicals may be sold or exchanged without monetary appraisal, detailed listing, or screening.

§ 603.1408 Mandatory exchange/sale category list.

See Chapter III, Part 2, Attachment 3 of AR 755-20 for listing.

Subpart O—Sale, Loan, Gift of Property

§ 603.1501 Sale of uniforms, safety items, and unserviceable ammunition components.

(a) Each Head of Procuring Activity is authorized to approve, and to delegate to a principal assistant the authority to approve, contracts for—

(1) The sale of uniforms, safety clothing, safety equipment, and other such special safety and protective articles to contractors under military contracts, to employees of such contractors, and to Government employees, at prices determined in accordance with applicable pricing regulations; and

(2) The sale of Government-owned unserviceable ammunition components, or scrap generated in the production of ammunition components, to selected metal processors at current market prices and on condition that quantities of raw materials equivalent to that processed from the unserviceable components be made available by them to Army contractors participating in approved ammunition programs.

(b) A contract, or amendment or modification thereof, shall be entered into under paragraph (a) (1) of this section only upon a written finding that the sale is made in connection with and will facilitate or expedite performance of a specific contract or work order for military procurement.

(c) The authority set forth in paragraph (a) of this section does not apply to the sale of property subject to priorities or allocation under the Defense Production Act, except where such sale

is authorized under that Act or applicable regulations or orders thereunder.

(d) A contract, or amendment or modification thereof, shall be entered into under this section only if (1) the approving authority (i) finds that the action will facilitate the national defense, (ii) deems that other legal authority in the Department to accomplish the sale is lacking or inadequate, and (iii) deems that the use of the authority herein delegated is necessary and appropriate under all the circumstances; and (2) the contract is made under the authority cited in Part 17 of this title and the requirements of Subpart C, Part 17 of this title, are otherwise met.

§ 603.1502 Sale, loan, or gift of certain property (10 U.S.C. 4506).

(a) Each Head of Procuring Activity is authorized to sell, lend, or give such samples, drawings, and manufacturing or other information as he considers best for the national defense to any contractor for Army supplies under approved production plans, and to any person likely to manufacture or supply Army supplies under such plans.

(b) Such samples, drawings, and information shall be sold, loaned, or given by appropriate written agreement.

(c) As a general rule classified material will not be sold or given pursuant to this section. In determining whether to sell or give any property the contracting officer should consider (1) the current or probable future need of the Government for the property, (2) the residual value of the property, (3) expenses incident to handling and storage of the property, and (4) the probable cost of reproduction of the property in the event of future procurement.

§ 603.1503 Loan of equipment—research and development.

A Head of Procuring Activity may authorize the loan of Government property acquired for research and development to a private industrial firm or educational institution for use in privately financed research and development programs; provided that (a) such programs are of interest to the Government, (b) the results of the research will be furnished to the Government without additional cost and (c) the loan shall be reflected in a written agreement which sets forth the terms of the loan and the benefits to be derived by the Government.

Subpart P—Audit of Industrial Property Records

§ 603.1601 Responsibility for audits.

Government and contractor-maintained records pertaining to Government property in possession of contractors are subject to audit in accordance with AR 36-5.

§ 603.1602 Reports of audit.

(a) Audit findings and recommendations pertaining to the administration of Government property in possession of contractors will be reported in the internal audit report covering the audit of the activity administering the contracts involved. A Head of Procuring Activity shall establish such controls and proce-

dures as are necessary to insure that deficiencies recorded in reports of audit are corrected and that due consideration is given to any recommendation contained in the reports.

(b) Informal advisory reports of the results of audit of contractors' property records shall be furnished the activity from time to time. Such reports may be in the form of separate letter reports or by comments contained in advisory audit reports pertaining to system surveys or to individual contracts. Unless specifically requested no reply to such report is required. The action taken on such reports shall be reviewed by the cognizant audit office, and reported in the activity internal audit report.

§ 603.1603 Records in unsatisfactory condition.

(a) If the Government or contractor-maintained records of Government property in possession of contractors are in such condition that the status of Government property cannot be ascertained without undue expenditure of time, a special report shall be submitted by the cognizant audit office through the addressee in § 591.150(b) (6) to the Head of Procuring Activity with an information copy to The Inspector General, Department of the Army, Washington, D.C., 20310.

(b) Upon receipt of the report, the Head of Procuring Activity shall direct the activity commander to take the necessary corrective action and shall maintain a close followup to insure that such action is taken promptly. The Head of Procuring Activity is responsible for insuring that the cognizant audit office is notified when corrective action has been taken.

(c) If the circumstances are such as to justify a waiver of accounting requirements, the case shall be prepared and submitted in accordance with AR 735-79.

Subpart Q—Manuals for Control of Government Property in Possession of Contractors

§ 603.1700 General.

(a) This subpart implements §§ 30.2 and 30.3 of this title. It provides a single, detailed, uniform industrial property accounting procedure to use throughout the Department of the Army to enable contracting officers and property administrators to perform effectively the functions assigned to them without undue or inconsistent demands being placed on the accounting and control systems of contractors. Throughout this subpart the letters "B" and "C" followed by a number have been used to refer to specific paragraphs in §§ 30.2 and 30.3 of this title.

(b) It is recognized that local situations may in certain instances demand accounting for Government property by methods which differ from the instructions in this subpart. Where it can clearly be shown that such different accounting methods adequately and fully protect the interest of the Government and do not place undue burden on the contractor, a request for approval to deviate from these instructions should be

submitted in accordance with § 591.109 and AR 735-79 to the addressee in § 591.150(b) (8).

§ 603.1701 Definitions (B-103).

§ 603.1701-1 Special tooling (B-103.14).

Special tooling may be classified for accounting purposes into three categories:

(a) The Government-furnished category embraces special tooling to which the Government has title. Accounting shall be in accordance with paragraph B-304.2, § 30.2 of this title, except where the contract or purchase order does not exceed \$5,000 (§ 603.1708-2(c)).

(b) The end-item category includes special tooling produced by the contractor as an end item under the contract. Initial accounting shall be as specified for end items in § 30.2 of this title.

(c) Title to special tooling manufactured or acquired by a contractor under the provisions of § 13.704 of this title is vested in the Government only if an option to acquire the special tooling is exercised at the time of contract completion or termination. Accounting and control of use prior to taking title to the property requires assurance that the contractor observes "normal industrial practice" in his use of and accounting for the property (see paragraph (h) of the clause in § 13.704 of this title). After title has been assumed by the Government accounting shall be in accordance with B-304.2, § 30.2 of this title.

§ 603.1701-2 Custodial records (B-304.1(c)).

These are memoranda of any description or type used for the purpose of accounting for items issued to plant employees from sources such as tool cribs, tool rooms, or stock rooms (e.g., requisitions, issue slips, receipts, tool receipts, tool checks, stock record books).

§ 603.1702 Duties and responsibilities of the contract administrator (B and C-201).

Where a single property administrator, other than a Department of the Army property administrator, has been designated under B and C-202(b) for all Department of Defense contracts at one contractor location, the contracting officer or his designated representative for property matters is responsible for the additional duties prescribed in § 603.1704.

§ 603.1703 Designation of property administrator (B and C-202(a)).

(a) A property administrator shall be designated for each Department of the Army contract involving Government property. The property administrator shall serve as an authorized representative of the contracting officer and shall be designated as prescribed in § 591.451. Normally, neither the contracting officer nor the contract administrator shall be assigned the additional duty of property administration; in unusual circumstances, however, such assignment may be approved by a Head of Procuring Activity or a member of his immediate staff authorized by him to make such assignments.

(b) In appropriate cases where a post, camp or station supply officer is assigned responsibility for property administration as an additional duty, he shall become familiar with industrial property control policies and procedures contained in Subchapter A Chapter I of this title and this subchapter, and as part of the contracting officer's staff shall devote the necessary time to industrial property matters.

(c) The property administrator for a prime contract is responsible for maintaining the control records required in connection with all related subcontracts under which Government property has been provided to the subcontractor, unless separate property administrators have been specifically designated for subcontracts.

(d) The designation of more than one property administrator for a particular contract or for a particular subcontract may be authorized by the chief of the purchasing office if special property accounting problems are involved (e.g., plants located in territories of more than one procurement district).

(e) In order to minimize travel requirements and to utilize to the maximum extent possible other Government personnel (such as inspectors, engineers) located at a contractor's plant or located in the same geographical area, it may be necessary either to appoint an assistant property administrator or to designate such other Government personnel located at the installation or plant to perform certain functions for the property administrator. Such appointments are subject to the following limitations:

(1) An assistant property administrator acts in his own name and maintains records required by § 30.2 of this title independent of the property administrator, except that he shall be subject to the property administrator's policy and general procedural direction. The assistant is an authorized representative of the contracting officer and must be so designated in writing by the contracting officer (§ 591.451).

(2) Installation personnel may be designated by the property administrator to perform specific duties in his name (e.g., signing vouchers, making and preparing report of selective checks). The signature of such designated personnel must be signed, "For the Property Administrator by—John Doe (Title)".

§ 603.1704 Property administration interchange agreements (B and C-202(b)).

(a) Department of the Army responsibility for interchange of property administration is assigned to the Chief, Contracts Division, Office of the Assistant Secretary of the Army (Installation and Logistics). Each cognizant Head of Procuring Activity shall assure that property administration interchange agreements are effected in accordance with the policies and procedures set forth in §§ 30.2 and 30.3 of this title.

(b) Under a property administration interchange agreement with Single Department Property Administration assigned to a Military Department other than the Army, contracting officers will

look to the assigned property administrator for the discharge of all property administration functions (B and C-203) pertinent to Army contracts; no residual property administrator functions will be retained by an Army property administrator. When the Single Department Property Administration function is assigned to an Army property administrator, he shall assume all property administration functions for the participating Military Departments.

(c) A contracting officer may designate an authorized representative for property matters to advise or represent him in negotiation, execution and discharge of property administration agreements with other Military Departments. His duties may include—

(1) Negotiation and execution of property administration agreements.

(2) Maintenance of the property section of the contract file (§ 1.308 of this title), and

(3) Assignment of property administrators (initially designated under § 603.1703) to duty on individual contracts.

(d) Where more than one Army purchasing office of one (or more) procuring activity, along with a purchasing office of at least one other Military Department, has contracts at a single contract location, a single Army purchasing office will be designated in accordance with the criteria in B and C-202(c), to represent the Department of Army in negotiating and executing the property administration interchange agreement. Where the Department of the Army has been designated to perform the Single Department Property Administration function, the selected purchasing office shall provide the property administrator.

(e) The provisions of B and C-202(c) are equally applicable to contractor locations where Government property is provided by more than one procuring activity under the Department of the Army, but where other Military Departments are not involved.

(f) Department of the Army personnel will follow the procedures set forth in §§ 30.2 and 30.3 of this title and this subpart in administering property under a property administration interchange agreement.

§ 603.1705 Duties and responsibilities of the property administrator (B and C-203(b)).

Department of the Army property administrators under property administration interchange agreements are responsible for providing the cognizant Departments with the management data, documentation, and other information required for compliance with both ASPR and Departmental procedures. In order to provide this information with the least impact on the contractor's accounting system, Departmental requirements will be obtained, analyzed, and summarized at the earliest possible date after execution of the interchange agreement and prior to survey of the contractor's accounting system for approval under B and C-203(b). One of the objectives of the interchange program is to relieve contractors of the need to change their accounting systems to accommodate

varying requirements of the Military Departments and procuring activities; this objective will be accomplished by the Single Department Property Administrator presenting, to the maximum extent possible, all Departmental requirements at the initial accounting conference with the contractor prior to approval of the contractor's accounting system. Department of the Army property administrators will cooperate fully in meeting the needs of the contracting officers of other Military Departments.

§ 603.1706 Sources from which Government property may be furnished or acquired (B and C-205).

§ 603.1706-1 Military installations or other contractor's plants (B and C-205.1).

(a) Government property in the form of new facility construction may be acquired by a producing contractor directly from the construction contractor.

(b) If property is received at a contractor's plant on any basis except a requisition or other proper approval of the contracting officer or property administrator, the case shall be promptly reported to the cognizant Head of Procuring Activity. Purchases of material by the contractor for rehabilitation of this plant, at cost, and used immediately will not be subject to the provisions of these instructions. Any such materials, for which the contractor is reimbursed for stock purposes and later issue, must be accounted for under the provisions of these instructions.

§ 603.1707 Segregation or commingling of Government property and contractor's property (B-206 and C-210).

Where a production line is solely engaged in Government work, contractor-owned and Government-owned plant equipment, special tooling, and items under tool room control may be commingled upon the approval of the property administrator. Such approval will be based upon assurance that the procedures of the contractor and the property administrator provide protection through inspection; and that the items will be used solely for Government work. Approval to place Government-furnished production equipment in a contractor's production line, equipped with both Government-owned and contractor-owned production equipment, is considered an inherent part of the authorization to provide such equipment to the contractor.

§ 603.1708 General (B-301(a) and C-207.1).

(a) Exceptions to policy stated in B-301(a) and C-207.1 may be necessary (1) on small dollar value contracts of short duration, (2) on contracts where few items of property are furnished to or acquired by the contractor, or (3) where the administrative expense of maintaining Government personnel at the contractor's plant or providing frequent official visits to the plant would exceed the cost of maintaining records at the purchasing office administering the contract. In such cases, and where for other cogent reasons it would not be

in the best interest of the Government for the contractor to maintain the official records, a determination shall be made that the official records will be maintained by the Government. This determination shall be made in writing in accordance with paragraph (b) of this section and shall be made a part of the contract file; it shall take into consideration the findings and recommendations of the property administrator; and it may also be considered an adequate basis for determining that there would be no advantage accruing to the Government or to the contractor through execution of a property administration interchange agreement.

(b) Exceptions to the policy of using the contractor's Government property control records as the official contract records may be authorized by a Head of Procuring Activity with respect to, first, a specific contract, invitation for bids, or request for proposals or, second, a class or group of contracts which are short-term or which involve providing only a few items of Government property. This authority may be redelegated to chiefs and acting chiefs of purchasing offices, without authority of further redelegation; when such exceptions are authorized, the contracts involved shall be modified as follows:

(1) Add the following to the Government Property clause:

Notwithstanding the provisions of () * above, the Government will maintain the official control records for Government Property provided pursuant to this clause and the Contractor is not required to maintain property control records for such property in accordance with the requirements of the "Manual for Control of Government Property in Possession of Contractors."

(2) Add the following to the Alterations in Contract clause:

Sub-clause () *, modifying sub-clause () * has been added to the Government Property clause.

(c) Accounting for identical items of plant equipment valued at less than \$500 on individual stock record cards or historical record forms in accordance with B-304.3 is not required. Individual item accounting is not required for identical items of furniture, office, medical, and cafeteria equipment, regardless of price.

§ 603.1708-1 Accounting for items bearing registration numbers.

Individual item accounting is required for those items which are included in a standard departmental registration numbering system as indicated in § 603.1714-1(a)(2), regardless of price.

§ 603.1708-2 Exceptions.

(a) Property turned over to a contractor for repairs or servicing may be accounted for as a suspense item in the Military Property Account from which shipped, provided that (1) no parts or material is furnished and (2) no significant scrap will result from the repair. Accounting for property under § 30.2 of this title is not required of contractors for property turned over for repair or servicing under the provisions of § 603.

* Insert appropriate sub-clause.

702-51. This exception is also applicable to repairs and utilities "off-post" work as prescribed in AR 735-28.

(b) (1) Parts or material furnished to a contractor on a contract under § 603.702-51 (other than time-and-materials contracts) shall be considered as expended at the time of shipment from military accounts, provided such shipments are made only on the basis of specific job requirements. Shipping documents shall be used as credit vouchers to the military accounts and shall show the name of the contract administrator and the contract number in the consignee space. Copies of such documents shall be furnished the contract administrator. Determination of the amount of any item to constitute a "specific job requirement" and what quantities should be furnished in any single shipment, shall be the responsibility of the contracting officer.

(2) The contracting officer shall establish such controls as he determines expedient, considering the value of such expended items, to insure the proper consumption of the articles furnished. Any residual quantities of Government-furnished parts and materials shall be returned to stock. Any consequential scrap shall be handled under appropriate disposal procedures. The contracting officer shall maintain in the contract file such record of actions taken as is considered by him to be necessary to protect the interests of the Government. This exception is also applicable to repair and utilities "on-post" and "off-post" work as prescribed in AR 735-28.

(c) When a purchase order or contract does not exceed \$5,000, jigs, patterns, fixtures, gages, and other manufacturing aids which are furnished to a contractor from stocks to aid in the performance of work may, at the option of the contracting officer, be accounted for as a suspense item in the military account from which shipped, provided that the total cost thereof does not exceed \$1,000. Accounting for such property under § 30.2 of this title is not required.

§ 603.1709 Contractor's property control records (B-301(b) and C-207.2).

(a) Where the contractor's property control records and procedures have been approved by the Department of the Army or by another Military Department for a particular type or types of contract (e.g. fixed-price, CPFF), a statement from the contractor that he will continue to use the approved procedure will constitute approval of his system on new contracts of the same types. In the event that additional or successor contracts differ in type from those on which the initial approval was issued, a review of the contractor's records and procedures will be required as a basis for approval.

(b) In conducting the review of the contractor's accounting control records and procedures, the property administrator should prepare a program covering substantially the areas and the methods prescribed in § 603.1716. The scope of the review should assure that all receipts of Government property are adequately

documented, that they are properly recorded, and that use of the property is confined to the purpose for which it was procured. The program should also provide similar controls over disposition of Government property, but the magnitude, number, and detail of test checks scheduled should be governed by type and size of the contractor's operation. As one of the criteria in his review, the property administrator should require that (1) all documents or types of documents affecting accountability run in one or more unbroken numbered series and (2) all unused numbers are accounted for or that equivalent controls exist which will assure that all documents pertinent to a single contract are included in the property records of that contract.

(c) The official contract records shall be maintained current so that at any state of completion of the work under a contract the status of Government property may be readily ascertained.

§ 603.1710 Pricing (B-302 and C-207.10).

The unit price of Government-furnished property shall be determined by the property administrator and furnished to the contractor. To determine realistic unit prices, the property administrator will utilize Department of the Army pricing guides and bulletins, and whenever necessary, secure the required pricing information from supplying depots or installations. Unit prices of production equipment, as defined in AR 700-34, shall reflect the acquisition cost computed as specified therein. In the event that unit prices are not available or obtainable after contact with all known sources of information, reasonable estimates shall be employed.

§ 603.1711 Records to be maintained by Government personnel (B-303 and C-213).

§ 603.1711-1 Records of specific contracts where property is involved (B-303.1 and C-213.1).

(a) The property administrator shall maintain control records separately filed for each contract which provides for the use of Government property. The minimum control records specified in §§ 30.2 and 30.3 of this title shall be maintained by the property administrator regardless of the determination of who shall maintain the official contract property records. Where the determination is made that the Government will maintain the official records, the property administrator shall maintain such records specified in B-304 or C-207, as may be required to maintain effective property control.

(b) Each file shall be identified by the contractor's name and the contract number, and shall contain the following:

(1) *Copy of contract.* Where the property section of the contract file is to be maintained at a separate location, or where access to the contract file is not readily available to the property administrator, the contracting officer shall furnish the property administrator a copy of the contract or an extract of the contract provisions relating to Government property.

(2) *Control sheet.* An informational control sheet containing the information set forth in B-303.1(b) will be maintained.

(3) *Written receipts.* Written receipts for Government property shall be required of the contractor and shall be maintained in the property administrator's file only in the following instances:

(i) Where the official property records of the contract are maintained by the Government as an exception authorized under the provisions of B-301(a), or C-207.1; and

(ii) Where such action is considered essential to the maintenance of minimum acceptable property controls (e.g., where property is being furnished by the Government or is being acquired by the contractor prior to approval of the contractor's property control system; where difficulty is being experienced in locating receipt documents in the contractor's accounting system; where it is apparent that the interest of the Government would be jeopardized through reliance on the contractor's files of receiving documents).

The relaxation in § 30.2 of this title accounting requirements for acknowledgment-of-receipt documents in the jacket file of the property administrator, shall not be construed as eliminating the necessity for submission by the contractor of documents or data covering plant equipment or other property set forth in Department of the Army directives such as those governing Production Equipment Records at PEQUA (AR 700-34), the Army Stock Fund (AR 37-111), and the Army Industrial Fund (AR 37-71).

(4) *Record of receipt and shipment of Government-furnished or contractor-acquired property.* Where the Government maintains the official records for Government property under the exception authorized in B-301(a) or C-207.1, the contractor shall be required to provide the property administrator with such documentation of receipts and shipments of Government-furnished and contractor-acquired property as necessary to permit full compliance with the procedures prescribed in B-304. A separate register shall be maintained for each file (separate property account) to control and to permit prompt location of all property vouchers. A consecutive series of voucher numbers shall be used from inception of the contract until its completion or termination. Contractor issue slips need not be included in the record.

§ 603.1712 Records to be maintained by the Contractor (B-304 and C-207).

§ 603.1712-1 Records of material-custodial records (B-304.1(c)).

Custodial records shall normally include as a minimum (a) the totals of each line item for which the toolroom, tool crib or stockroom has custody, and (b) hand receipts, tool checks, tool slips or other evidence of issue to the individuals who use the property. Care shall be exercised to avoid imposition of unreasonable controls (inconsistent with B-304.1(d) and C-207.4) upon contractors

for minor items of office supplies such as staplers, rulers and punches.

§ 603.1712-2 Records of plant equipment (B-304.3 and C-207.5).

(a) The form and distribution of property records maintained for plant equipment will be accomplished in accordance with the provisions of B-304.3 and AR 700-34. Where a property administration interchange agreement exists and the property administrator is a member of a Department other than the Department of the Army, copies of the records required by AR 700-34 for other than property administration purposes will be obtained from the Single Department Property Administrator.

(b) In addition to the exceptions provided in B-304.3 (a) and (b), exempting the requirement for maintaining individual property records, the following exceptions shall also apply:

(1) Items of plant equipment of identical nomenclature and operating performance for which individual item accounting is not required because of a unit price of less than \$500 (§ 603.1708 (c)) may be recorded on a single record. This record should reflect quantities received and issued, balance on hand, posting references, and unit price. In the event such items listed on a single record have serial numbers or manufacturer's numbers, these numbers shall be listed on the inventory record or on a single supporting list. Such inventory accounting shall not be construed as permitting such items to be considered as "materials."

(2) The description of accessory and auxiliary equipment to be entered on the plant equipment record of the item on which they are being used should not be construed as requiring records of motor serial numbers to be maintained during the life of a contract, where the motors are changed between machines for maintenance purposes. The procedures of the property administrator and the contractor shall, however, upon receipt and inspection of equipment at contract completion or termination, account for all accessory and auxiliary equipment which is attached to or otherwise a part of an item of plant equipment and which is required for its normal operation.

(3) Master and production gages and minor plant equipment with a unit value of \$200 or less may be accounted for on inventory records described in subparagraph (1) of this paragraph.

(c) The duty of maintaining the purchasing office files of production equipment record forms (DA Form 804, Production Equipment Record, or equivalent prior to July 1, 1961, with DD Form 1342 required for transactions after July 1, 1961) in compliance with AR 700-34 may be assigned to the property administrator or to the authorized representative of the contracting officer for property matters by the chief of the purchasing office or by the contracting officer. These files are maintained for management purposes and for industrial mobilization planning, and not as "acknowledgment of receipt" as provided in B-303.1(c).

(d) Information recorded on DA Form 804 prior to July 1961 need not be trans-

ferred to DD Form 1342 retroactively. Copies of DD Form 1342 delivered to the property administrator by the contractor will be distributed in accordance with AR 700-34. Copies of the DD Form 1342 will be retained by the property administrator in those cases where distribution of copies to PEQUA is not specified in AR 700-34.

§ 603.1712-3 Records of scrap (B-304.5 and C-212).

Separate records shall be maintained for the different categories of scrap or salvage generated. The records shall be such as to reflect the following minimum information:

- (a) Scrap classification;
- (b) Quantities on hand;
- (c) Unit of measure;
- (d) Record of all disposals;
- (e) Date and voucher number; and
- (f) Contract identification, including name and location of contractor and contract number.

§ 603.1712-4 Financial control accounts (B-304.7).

(a) In order to conform to the Financial Management Plan of the Army (AR 37-5 and AR 37-108), dollar amounts for each contract of Government-owned facilities and materials of the classes of property specified in paragraph B-304.7 will be secured by the property administrator from Department of the Army contractors. Detailed procedures for use of this information by property administrators and finance and accounting officers are contained in AR 735-20 and AR 735-72. Financial information required in connection with property which is part of the corpus of the Army Stock Fund or the Army Industrial Fund, or is governed by the Army Command Management System, will be secured from the accounting records of the contractor when required. The criteria set forth in paragraphs (b) and (c) of this section shall be applied when classifying equipment for this purpose.

(b) Production equipment includes equipment and machinery valued at \$500 and more per unit as defined in AR 700-34. It includes such property in actual use, stored in place as standby, placed in proximity storage, or maintained in reserve in central storage when such equipment is in possession or control of a contractor under the terms of a contract.

(c) Plant equipment includes property of a capital nature with unit acquisition cost of \$200 and more per unit and production equipment with unit acquisition cost of \$200 to \$500 (B-304.3).

§ 603.1713 Numbering property accounts (B-305 and C-214).

Property accounts serial numbers specified in paragraph 125, AR 735-5, need not be obtained from Army commanders for accounts established under contracts to which §§ 30.2 and 30.3 of this title, or Part 13 of this title are applicable, but rather the property account shall be identified by the contract number, and the appropriate regional office of the cognizant audit office shall be advised. For the purposes of B-401.1, the digits which represent the Army Fiscal Station

Number in the property identification number set forth in § 603.1714-1(a)(3) shall be used.

§ 603.1714 Identification of Government property (B-401 and C-307).

Identification of Government property shall be accomplished prior to delivery as part of the purchase agreement, by the contractor, or by the procuring service, as applicable. Government property on hand or on order shall be identified as prescribed herein when the equipment is prepared for storage, reactivated, or at any other convenient occasion.

§ 603.1714-1 Identification marking of Government property.

(a) The identification marking of Government property shall be physically affixed to the item in accordance with B-401. The identification markings shall consist of the following as may be applicable for the particular item being identified:

(1) *Department of the Army Control.* The identification symbol "USA" is applicable to all Government property except as may be exempted in accordance with B-401. The letters "USA" will be permanently affixed to the item to indicate Government ownership of property under control of the Department of the Army. For marking of motor vehicles, see AR 58-1.

(2) *Registration number.* This number is applicable to those items included within a standard military registration numbering system such as motor vehicles (AR 58-1), materials handling equipment (AR 700-3900-5), railroad equipment (AR 55-255), and any other applicable items. Assigned registration numbers shall be physically affixed to the item in accordance with applicable instructions.

(3) *Government tag number.* This number is applicable to those items for which individual item accounting is required as stipulated in § 603.1712-2, except those items having a registration number as prescribed in subparagraph (2) of this paragraph. This number shall be the Government property identification number assigned in accordance with B-401.1, which is as follows for the Department of the Army:

(i) The first part shall be the letters "USA" to indicate Government ownership as prescribed in subparagraph (1) of this paragraph;

(ii) The second part shall consist of the Army fiscal station number assigned the installation or office administering the contract under which the property is acquired for the first item for the account of the Government (fiscal station numbers are listed in AR 37-102-1); and

(iii) The third part shall consist of a six-digit serial number. The assignment of serial numbers shall be in numerical sequence commencing with "000001" for each installation or office (to which a fiscal station number is assigned) that administers contracts under which property is acquired for the account of the Government.

(b) Under the provisions of § 30.2 of this title, property acquired by a contractor for the account of the Government becomes Government property for the

purpose of property accountability upon receipt thereof by the contractor. For purposes of property accountability and control, the contracting officer and property administrator shall take action to assure that such property is immediately marked as Government property and properly accounted for at the time of receipt. This action will not be delayed pending evidence of inspection and acceptance being reflected on DD Form 250 (Material Inspection and Receiving Report). The contracting officer or property administrator shall instruct the contractor that immediately upon receipt of any item or property procured for the account of the Government the contractor shall—

(1) Advise the contracting officer, by the most expeditious means, of the receipt of such property and request an inspection; and

(2) If the item is not already identified, immediately affix securely to each item of such property or equipment an appropriate temporary tag identifying the property as Government property and indicating the number of the contract for which the property or equipment was procured.

(c) Upon notification by the contractor of receipt of property, the contracting officer shall notify the property administrator and shall arrange for prompt final inspection and acceptance by responsible Government personnel. After completion of the final inspection and acceptance, evidenced by DD Form 250 (Material Inspection and Receiving Report), the property administrator shall insure that the temporary tag is replaced by the contractor with a permanent identification tag containing the required information.

§ 603.1715 Contractor's responsibility and liability (B-402, C-303, and C-304).

§ 603.1715-1 Contractor liability (B-402.2 and C-303(e)).

(a) No separate file of letters of advice shall be maintained for the property auditors although copies of such letters may be furnished upon request when questions are raised by auditors. Channels through which such letters are reviewed by audit personnel lie within the scope of audit instructions. If such letters, however, are submitted to the cognizant audit office for review and that office concludes that further action is desirable, it will so state in writing to the cognizant Head of Procuring Activity. Upon review of the above communication, the Head of Procuring Activity shall initiate such further action as he considers is warranted by the facts. In all cases, he shall advise the cognizant audit office as to the decision reached.

(b) The written advice of a contracting officer in a contractor property account serves the same purpose as a Report of Survey in a military property account even though the contractor is the responsible party and his liability is for determination only under the terms of the contract. The report of the facts surrounding the loss or damage must be accurate and complete; the findings of the contracting officer must make refer-

ence to specific terms of the contract supporting his determination; and the file, in order to be accepted as valid, must constitute a full report of the case without reference to other documents. It is the personal responsibility of the contracting officer to insure that the interests of the Government are protected at all times; approval of the contractor's case for relief from property accountability based on an inadequately documented case constitutes failure to dispatch that responsibility.

§ 603.1715-2 Shipment and receipt of Government-furnished property (B-402.3 and C-204).

(a) When Government property is shipped to a Department of the Army contractor for use under a contract, the shipping accountable officer, in addition to furnishing a copy of the shipping document to the property administrator, will forward two copies to the contractor with instructions to acknowledge receipt of the property on one copy and to furnish it to the designated property administrator for the contract. Copies of shipping documents will reflect unit cost and estimated transportation costs. The second copy will be retained by the contractor. When it is the regular practice to obtain the contractor's acknowledgment of receipt on copies of the shipping document and copies of such documents have not been received, the property administrator will request that acknowledgment of receipt of the property be furnished on the contractor's receiving report, tally, or equivalent form.

(b) It shall be considered adequate for property control purposes, and within the scope of § 30.2 of this title, for operating contractors to acknowledge receipt for new facilities constructed under separate construction contracts, direct with construction contractors, on DD Form 1354, if accompanied by supporting documents. These transactions may be considered as shipment and receipt of Government property.

(c) In the absence of a transportation officer or agent, the property administrator must initiate and follow to conclusion necessary action with respect to any discrepancies incident to shipment or receipt of property made on a Government bill of lading or on a commercial bill of lading for conversion to a Government bill of lading at destination. (See AR 735-11.)

(d) Where the property administrator is a member of a Department other than the Department of the Army and is acting under a property administration interchange agreement, Reports of Survey (DD Form 46) covering discrepancies incident to incoming shipments of Department of the Army property will be secured from the Single Department Property Administrator with all spaces on the front of the form executed and in the number of copies required for compliance with AR 735-11. Where a Department of the Air Force property administrator, acting as the Single Department Property Administrator, considers the services of a surveying officer necessary, Air Force Plant Representatives and Chiefs of Air Procurement Districts

are authorized to appoint Department of the Air Force personnel to serve as surveying officers. Under such circumstances, the action required in space 43, 44, or 47 of DD Form 46 is reserved by statute to the Department of the Army installation commander responsible for administering the contract. If the Department of the Army installation commander considers that the report of the surveying officer and appointing authority does not constitute a firm basis for completing his action, he may obtain additional evidence on which to base a decision from the appointing authority or he may investigate directly. Further action will be taken by the chief of the purchasing office and by the Chief of Finance in accordance with AR 735-11.

§ 603.1716 Selective examinations of contractor records and property.

(a) To discharge the duties of the property administrator effectively and satisfactorily as prescribed in B and C-202, the property administrator shall conduct or cause to be conducted periodic inspections of the physical condition of Government property in possession of the contractor to determine the adequacy of maintenance, repair, protection, and preservation. He shall report promptly, in writing, to the contracting officer any failure of the contractor to maintain, repair, protect, or preserve any of the Government property in the contractor's possession.

(b) The property administrator's program must include, on a continuing basis, the following:

(1) Verification of the accuracy of the contractor's property records except where Government records have been designated as the official contract records;

(2) Physical checks of representative portions of all classes of property connected with the contract; and

(3) Review of the contractor's issue and consumption of materials.

(c) It is recognized that the method for physical and accounting control of Government property may vary between contractors as well as between individual contracts; therefore it is impractical to prescribe a detailed program for selective examinations of Government property to be followed without variation. These instructions are intended to represent the general rule for property administrators in establishing programs to meet the peculiarities of the contract or contracts to which he is assigned, based upon his study and clear understanding of the contract provisions.

(d) The selective checks made by the property administrator shall encompass representative amounts of all classes of Government property, to the extent deemed necessary, to determine the adequacy of the contractor's records and his controls over usage, consumption, and maintenance of production equipment and materials.

(1) The first step in checking the materials will be to determine that all quantities received have been appropriately recorded on the records maintained for such property (e.g., inventory records or receipt-issue documents). A

number of debit property documents will be selected from the contractor (or Government) control files and compared with the records to determine that appropriate recording has been effected. Emphasis will be placed on items of relatively high unit cost, large-dollar value of consumption, and sensitive nature. Test inventories and test of credit postings of a sufficient number of items will be made to establish the credibility of the records and encourage accuracy on the part of the recordkeeping personnel.

(2) When special tooling is supplied to the contractor as Government-furnished property, the selective check procedures for plant equipment set forth in subparagraph (3) of this paragraph shall be used as a guide. In the case of special tooling manufactured by the contractor as an end item under the contract or manufactured or acquired by the contractor under § 13.704 of this title the selective check will be only to assure that the contractor is following the provisions of the contract.

(3) The requirements of § 30.2 of this title for accounting for individual items of plant equipment make possible a relatively simple and exact procedure for selective check of this type of property.

(i) The property administrator shall select from his control files a representative number of debit property documents which include items of plant equipment. A comparison of these documents with the records of plant equipment shall then be made to determine whether adequate records have been established for all items of plant equipment included on the documents selected. In this connection, all credit entries on the records shall be examined and the credit documents supporting such entries reviewed to determine their propriety.

(ii) The two methods of physical checks prescribed below shall be used to verify the existence of the property, to check the completeness of the property records, and to test the efficiency of the contractor's marking of Government property.

(a) *From records to property.* The property administrator shall select a number of items of plant equipment as recorded on the property records, and by means of property identification numbers and location shown upon such records, inspect the property involved to verify its existence.

(b) *From property to records.* A number of items of plant equipment shall be selected by the property administrator by physical inspection in the plant and a notation made of property identification numbers and description of such items. The property records shall then be reviewed to determine whether the property involved is properly recorded.

(iii) The selective checks of real property records shall include verification of the records including assurance that physical changes to buildings, utility plants and systems, roads, fences, etc., observed by the property administrator are properly reflected on maps, drawings, plans, specifications or DD Form 1354 (Transfer and Acceptance of Military Real Property). At such intervals as the property administrator deems neces-

sary, he shall select records of a number of units of real property and by physical inspection of such units determine whether the records are complete and properly reflect any additions, extensions, or alterations.

(c) The contractor's documents which support inventory adjustments shall be reviewed with a view to selecting for investigation all adjustments which, after consideration of unit value, volume of transactions, previous adjustments, and sensitive nature of items, appear to be unreasonable. Detailed investigation will be made to determine as far as possible whether such adjustments represent actual losses of Government property or are due to errors in recordkeeping. If the number of adjustments is large, consideration will be given to requesting that adjustments to specific line items over a period of time be summarized by the contractor in a manner which will reveal offsetting and net adjustments. If, in the opinion of the property administrator, adjustments represent unreasonable losses of Government property, they will be reported to the contracting officer with a statement describing the circumstances and a request for his written advice.

(f) Normally, the contractor's organization shall include a production planning department responsible for the orderly flow of work through the plant. One of the functions of such a department is to control the flow of productive materials from stores to the plant floor. The material control system employed by the contractor will often provide the property administrator a means for an overall test of the contractor's use of items of productive materials. It is essential that the property administrator have a clear understanding of such system.

(1) Where quantities of certain productive materials are not excessively large or are not readily susceptible to count, a current reconciliation of total quantities furnished with quantities incorporated in delivered products, plus work in process, quantities in stores, and materials scrapped can be accomplished.

(2) Where a reconciliation as outlined above is not feasible, withdrawals of a representative number of productive materials from stores for a given period, as shown on the contractor's stores inventory cards, shall be reviewed to determine whether such withdrawals are in excess of established requirements for the manufacture of the items produced. In this connection, investigation shall be made to determine the allowances which have been established under the contract for normal losses in the process of manufacture, and the nature of any factors resulting in consumption in excess of such requirements.

(g) The property administrator shall be responsible to the contracting officer for checking the accuracy of documents covering receipts of property by the contractor. The property administrator shall likewise assure himself that all items fabricated by the contractor, or withdrawn from contractor stores for charge to the contract are properly supported by sound documentation.

(h) Working papers outlining the scope of the check and items covered, shall be prepared by the property administrator and maintained by him as a permanent record of his work. Working papers shall be designed to show the steps taken in making the required checks with regard to each class of property, the nature and frequency of errors corrected by the contractor as a result of the checks, and cross-reference to any written advices of contracting officer resulting therefrom. The file of working papers shall be relied upon as one of the most important indications of the condition of the accounting records, the proper usage of property furnished under the contract, and efficient and consistent performance of duty on the part of the property administrator and personnel assigned to duty under him.

(i) There shall be included in the property administrator's control plan for each contract a provision for check of evidence on the following points at contract completion or termination:

(1) Stock record cards have been reduced to zero;

(2) Any required adjustments have been properly processed and recorded;

(3) Any required collections from the contractor on property transactions have been made and properly recorded;

(4) Inventories have been taken in agreement with contract provisions and directions of the contracting officer;

(5) Residual inventories, if any, have been properly disposed of;

(6) Scrap, if any, has been disposed of; and

(7) Disposition of special tooling has been accomplished as required by the contracting officer.

§ 603.1717 Transfers of property accounts between property administrators.

(a) When transfer of contract property accounts occurs within the same installation and a property administrator is relieved from such duty by the appointing authority, the newly designated property administrator shall automatically assume all the control and accounting functions outlined in these instructions, and maintain all the required records which were established by his predecessor. The newly designated property administrator shall be responsible for any corrective action which may be required to insure that the established records conform in every respect to the requirements contained herein. The use of certificates to effect the transfer of industrial contract property accounts is not required.

(b) Where the property administrator is directed to transfer an established contract property account to a property administrator of a different Army installation or purchasing office, the official contract records shall be forwarded with a letter of transmittal showing the date and voucher number, where applicable, at which the transfer is effected and requesting that the receiving property administrator acknowledge receipt of the records by endorsement thereon. A copy of the letter of transmittal shall be furnished the cognizant audit office.

The copy of the letter of transmittal bearing the receipt of the receiving property administrator shall be retained in the files of the transferring property administrator for informational and control purposes.

(c) Where property administration interchange agreements (B and C-202 (b)) are established during the period of performance on contracts affected by the agreement, the property administration control files and other necessary documents and correspondence will be transferred substantially as prescribed in paragraph (b) of this section, as of the effective date of the interchange agreement. Acknowledgment of receipt of the files will be held in the jacket file of the contract.

§ 603.1718 Transfer of property from military to contractor (industrial) property accounts.

Policies and procedures governing the transfer of military property to contractors and the accounting for such property in instances where §§ 30.2 and 30.3 of this title are not applicable are contained in AR 735-71. These regulations include provisions that, where Government property is lost or damaged and the property administrator is unable to exhibit conclusive proof of receipt of the items by a contractor, the property must be accounted for on a Report of Survey (DD Form 200 or DD Form 46) in accordance with AR 735-11.

PART 604—INSPECTION AND ACCEPTANCE

Subpart A—Inspection

- Sec.
604.102 Activities responsible for inspection.
604.105 Places of inspection.
604.150 Inspection requirements.
604.151 Marketing and shipping.

Subpart B—Acceptance

- 604.201 General.
604.204 Responsibility for acceptance.
604.205 Acceptance of supplies or services not conforming with contract requirements.

AUTHORITY: The provisions of this Part 604 issued under sec. 3012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

Subpart A—Inspection

§ 604.102 Activities responsible for inspection.

(a) *Compliance with requirements of specifications.* An inspector assigned to perform inspection services under a given contract shall be guided by the provisions of the contract, instructions issued by the procuring activity and the following:

(1) The Government inspector shall make optimum use of the records of inspections and tests performed by or for the contractor in accordance with the quality assurance provisions of commodity specifications and other pertinent inspection records, in determining acceptability of supplies.

(2) Government inspections shall be planned and carried out in a manner which will provide adequate assurance of quality and efficient use of the inspection resources of the Military Departments.

(3) Where the specification or contract requires the contractor to conduct particularly expensive tests involving destruction of supplies, extended periods of time for conducting the tests, or other factors contributing to high testing costs, these tests shall be coordinated for simultaneous contractor and Government accomplishment to the maximum extent practicable to preclude the needs for subsequent independent Government verification testing.

(b) *Inspector functions in Government-owned or operated facilities.* Inspectors in Government-owned or operated manufacturing installations shall not be assigned the dual functions of process inspection for the purpose of controlling production and final inspection for the purposes of accepting the product for military use.

§ 604.105 Places of inspection.

In instances where inspection is to be performed at destination, arrangements shall normally be made to have the receiving activity perform necessary inspection.

§ 604.150 Inspection requirements.

(a) Inspection shall be conducted in accordance with (1) provisions of the contract, (2) Subchapter A, Chapter I of this title, (3) this subchapter, (4) AR 715-20, and (5) instructions issued by the procuring activity. The requirements for inspection (including testing), as provided for in the preceding sentence, may not be waived because an item is included in a Qualified Products List.

(b) The nature and manner of performance of an inspection may vary according to the importance of an item, the importance of individual characteristics, and the known quality of the contractors' performance.

(c) Sampling procedures may be used when such method is adequate to protect the interest of the Government.

(d) A contracting officer shall normally rely only on inspections and tests performed by the Government, in the following situations: (1) test requirements which necessitate the use of specialized test equipment or facilities not ordinarily available in contractor's plants or commercial laboratories (e.g., ballistic testing of ammunition, environmental tests, simulated service tests) and (2) preproduction, pilot-lot, or pilot model examination and testing, whether at a Government installation or at the contractor's plant.

§ 604.151 Marking and shipping.

Each procuring activity shall insure that subordinate inspecting organizations thoroughly understand authorized procedures covering (a) proper handling of shipments at Government expense (i.e., Government bill of lading, prepaid commercial bill of lading, shipments through the mail, Government-owned transportation, and emergency shipments), (b) guarding of shipments containing classified supplies and services (AR 380-5), (c) shipments at contractor's expense, and (d) all other necessary instructions. Marking to indicate inspection status shall be accomplished with Department of Defense inspection

stamps in accordance with procedures established in AR 715-20.

Subpart B—Acceptance

§ 604.201 General.

Acceptance shall be made as promptly as practicable. Affirmative action in accordance with provisions of the contract and instructions of higher procurement authority shall be taken with respect to acceptance or rejection of all supplies and services procured by the Department of the Army (including those manufactured in the Government-owned and operated plants).

§ 604.204 Responsibility for acceptance.

(a) Consideration shall be given to use of a supplier's certificate of conformance, as provided for in § 14.204(b) of this title, with respect to (1) items or components and constituent materials which are commercially available or are of low functional importance; (2) packing and packaging materials, when not of critical importance, and (3) general housekeeping or service items, books, periodicals, and items of like character. In connection with such items or materials the use of a supplier's certificate substantially as set forth below is authorized:

The undersigned, individually and as the authorized representative of the Contractor, warrants and represents that: All of the information supplied above is true and accurate; the material covered by this certificate conforms to all the contract requirements (including but not limited to the drawings and specifications); the analysis appearing herein is a true and accurate analysis; and this certificate is made for the purpose of inducing payment and with knowledge that the information and certification may be used as a basis for such payment.

(b) A clause, as set forth below, shall be used in contracts where acceptance precedes inspection (§ 14.204(c) of this title).

CERTIFICATION ACCEPTANCE (FEBRUARY 1965)

Notwithstanding any other provision of the contract, if the supplies for which the Contractor has furnished a certificate of conformance required by the contract are found not to conform to the contract requirements, the Government may, upon notice furnished within a reasonable time after discovery of such nonconformity, reject the supplies and require replacement thereof. Use by the Government of the Contractor's certificate of conformance does not preclude inspection or test or both by the Government. Where a certificate has been furnished by the Contractor and the Government rejects the supplies, the Contractor shall have the right to request that a reinspection or retest be performed at the Contractor's expense.

(c) Certificates of conformance shall normally be accepted only from prime contractors. However, certificates may be accepted from a subcontractor if countersigned by a responsible official of the prime contractor. The certificate may be for full performance or any portion thereof. The following are to be included, as a minimum, in the certificate presented by the contractor:

(1) A complete nomenclature of supplies together with lot numbers or other identification, including quantity in each lot or shipment;

(2) The contract number and purchase order number;

(3) For each lot or shipment, analytical results for each test or inspection prescribed by contract together with required specification limits;

(4) The name of the company and date of the test or inspection; and

(5) The signature and title of the certifying official.

(d) See § 3.606 of this title for fast payment procedure involving small purchases where receipt for purpose of payment precedes inspection.

§ 604.205 Acceptance of supplies or services not conforming with contract requirements.

Subject to the requirement of § 14.205 of this title regarding approval of the requiring agency each procuring activity shall clearly define the organizational level and the extent to which this level may approve deviations from contract requirements for guidance of contracting officers in the application of the provision in the Inspection clause (§ 7.103-5 of this title) to the effect that the contracting officer may require delivery of uncorrected supplies at reduced price. Such level for approval should be such that the least delay consistent with the best interest of the Government may result. Such deviation may not normally be applied except when cogent reasons of urgency, practicality, or economy dictate, and such action is in the best interest of the Government, taking into account an equitable reduction of price or other benefit to the Government.

PART 605—CONTRACT COST PRINCIPLES AND PROCEDURES

§ 605.050 Uniform application.

Directives, regulations, instructions, or procedures which interpret, expand, or limit the substantive provisions of Part 15 of this title shall not be published by any agency, command, or office of the Department of the Army without prior approval of the Assistant Secretary of the Army (Installations and Logistics). Procedural guidance considered necessary for the orderly conduct of procurement shall be submitted by the Head of Procuring Activity for review and approval by the addressee in § 591.150(b) (6) prior to issuance.

(Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314)

PART 606—PROCUREMENT FORMS

Subpart A—Forms for Advertised Supply Contracts

Sec.	
606.101-2	Conditions for use.
606.102-2	Conditions for use.

Subpart B—Forms for Negotiated Procurement

606.203-2	Conditions for use.
606.206	Cost and Price Analysis Forms (DD Forms 633, 633-1, 633-2, 633-3, and 633-4).

Subpart D—Construction and Architect-Engineer Contract Forms and Formats

606.401	Advertised construction contract forms.
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Subpart E—Special Contract and Order Forms

Sec.	
606.501	Negotiated utility service contract forms.
606.504	Order for paid advertisements (Standard Forms 1143 and 1143a).
606.550	Lease agreement—Government personal property.
606.551	Letter contract.
606.552	Government's Order and Contractor's Acceptance (DA Form 47).
606.553	Academic instruction contracts.
606.553-1	Basic Agreement for Academic Instruction (DA Form 357).
606.553-2	Order Form To Enter Into Contract for Academic Instruction (DA Form 358).
606.553-3	Basic Agreement for Off-Duty Academic Instruction (DA Form 588).
606.553-4	Order Form To Enter Into Contract for Off-Duty Academic Instruction (DA Form 589).
606.554	Service Order for Household Goods (DD Form 1164).

Subpart O—General Policy

606.1501	Deviations from approved forms.
606.1501-1	General.
606.1501-2	Translations.
606.1502	Supply of forms.
606.1502-1	Forms stocked by Adjutant General publications centers.
606.1502-2	Out sheet forms.
606.1502-3	Multiple part manifold forms.
606.1502-4	Forms not stocked by Adjutant General publications centers.
606.1502-5	Reproducible masters.
606.1502-6	Preprinted backs.

AUTHORITY: The provisions of this Part 606 issued under sec. 3012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

Subpart A—Forms for Advertised Supply Contracts

§ 606.101-2 Conditions for use.

(a) To facilitate bidding and to eliminate unnecessary distribution of Standard Form 32 and appropriate additional general provisions, their incorporation by reference in a solicitation in accordance with the following procedure is authorized.

(1) Standard Form 32 and additional general provisions shall be combined in a single set of clauses. Such set of clauses shall be identified by title (e.g., "Standard Supply Contract Provisions") and shall show the agency responsible for issuance, its effective date, and the date of latest amendment. The provisions of Standard Form 32 incorporated in the set shall be identified as such. Superseded clauses shall be crossed out in all copies of the set and appropriate reference made to the paragraphs in the set which contain the amended clauses. Language substantially as follows shall be set forth in the Schedule:

Standard Supply Contract Provisions (properly identified by agency title, and date), receipt of a copy of which is acknowledged by the bidder, are incorporated herein and made a part hereof with such deletions, additions, and amendments, if any, as are set forth below.

(2) Before a set of clauses can be incorporated by reference it is essential

that the purchasing activity distribute copies to each prospective bidder on the mailing list, requesting that these contract provisions be retained for future reference. Additional copies of the set must be made available promptly to bidders and prospective bidders upon request.

(b) If incorporation of the set by reference has not been accomplished in a solicitation, then the set shall be furnished to each prospective bidder with the solicitation.

§ 606.102 Conditions for use.

Standard Form 32 and any additional general provisions may be incorporated by reference under the same procedures as set forth in § 606.101-2.

Subpart B—Forms for Negotiated Procurement

§ 606.203-2 Conditions for use.

Standard Form 32 and any additional general provisions may be incorporated by reference under the same procedures as set forth in § 606.101-2.

§ 606.206 Cost and Price Analysis Forms (DD Forms 633, 633-1, 633-2, 633-3, and 633-4).

Where the contractor's accounting system makes the use of DD Form 633 impracticable and the contractor submits necessary data in a format acceptable to the contracting officer pursuant to § 16.206-2(a) of this title, the information furnished shall include pertinent details as to cost elements, with the specific statements and authentications required by DD Form 633 or by the special cost and price analysis forms listed in § 16.206-3 of this title.

Subpart D—Construction and Architect-Engineer Contract Forms and Formats

§ 606.401 Advertised construction contract forms.

When using Standard Form 19 in an advertised procurement, the contracting officer shall make the following provision a part of the invitation for bids:

Unless a different acceptance period is specified in the bid, it is understood that a period of 60 days after bid opening is intended by the bidder.

If the bidder fails to insert the number of calendar days for completion on the face of Standard Form 19, and if the Special Conditions of the Invitation, Bid and Award provide for a definite period of performance, such special condition governs and the omission of this information on the face of Standard Form 19 by the bidder does not make the bid non-responsive. Prior to the issuance of the invitation for bids and for the purpose of insuring that a bidder does not inadvertently insert a performance period greater than that specified elsewhere in the invitation, the contracting officer may insert such period in the Standard Form 19 space providing for the completion of performance, provided it is consistent with any performance period stated elsewhere in the invitation.

Subpart E—Special Contract and Order Forms

§ 606.501 Negotiated utility service contract forms.

Additional instructions for the use of DD Form 671 (Negotiated Utility Service Contract) (Short Form) are published in AR 420-62, AR 420-41 and AR 420-80.

§ 606.504 Order for paid advertisements (Standard Forms 1143 and 1143a).

DA Form 192 (Request for Authority to Advertise) shall be used in requesting authority to place advertisements in newspapers (see § 591.1002-6(b)).

§ 606.550 Lease agreement—Government personal property.

The sample form set forth below is prescribed for any lease of Government personal property under the authority of 10 U.S.C. 2667 in cases where Subpart G, Part 7 of this title is not applicable. Variations in the terms and conditions set forth in this lease form may be approved by a Head of Procuring Activity to whom the authority to approve leases of Government personal property has been delegated, but only to the extent that such approval complies with all the limitations contained in such delegated authority (§ 610.204-8). General authority is granted in effecting leases outside the United States, its possessions, and Puerto Rico to modify the form as indicated:

Paragraph 18—Disputes. To substitute the Disputes clause prescribed in ASPR 7-103.12(b) or in APP 7-103.12, as appropriate.

Contract No. _____

LEASE AGREEMENT—GOVERNMENT PERSONAL PROPERTY

DEPARTMENT OF THE ARMY

Lessee and address:
Property to be used at:
Payment:

To be made to _____
United States Army, at _____

This lease is authorized by 10 U.S.C. 2667. This lease agreement, entered into this _____ day of _____ 19____ by and between the United States of America, hereinafter called the Government, represented by the Contracting Officer executing this agreement, and _____

*a corporation organized and existing under the laws of the State of _____

*joint venture consisting of _____

*a partnership consisting of _____

*an individual trading as _____

of the City of _____ in the State of _____, hereinafter called the Lessee, Witnesseth That,

1. The Government hereby leases to the Lessee and the Lessee hereby hires from the Government, upon the terms and conditions hereinafter set forth, the personal property listed in Schedule A which is attached hereto and made a part hereof.

2. This lease is subject to the approval of _____ and shall not be binding until so approved. The term of this lease shall commence on the _____ day following the mailing of written notice to the Lessee that the lease has been so approved and that the property is ready for delivery, and shall continue

for a period of _____ [days, months or years]** or until sooner terminated or revoked in accordance with the provisions hereof.

3. At any time during the term, either party may terminate this lease in whole or in part effective not less than 90 days after receipt by the other party of written notice thereof without further liability to either party. However, the Secretary of the Army may revoke this lease in whole or in part at any time.

4. Upon commencement of the term of this lease, the Lessee shall take possession of the leased property at _____ as is, without warranty, express or implied, on the part of the Government as to condition or fitness for any purpose.

5. The Lessee shall pay rent during the term of this lease at the rate prescribed in Schedule A. The rental accrued at the end of any calendar month, or at the expiration, termination or revocation of this lease, shall be paid to the Government on or before the 10th day thereafter.

6. The Lessee at its own expense shall maintain the property in good condition and repair and make all necessary replacements of components and parts during the term of this lease. All fuel and lubricants shall be furnished by the Lessee. The Lessee shall make no changes or alterations in the property except with the consent of the Contracting Officer.

7. The Lessee shall not mortgage, pledge, assign, transfer, sublet, or part with possession of any of the property in any manner to any third party either directly or indirectly, except that this provision shall not preclude the Lessee from permitting the use of the property by a third party with the prior written approval of the Contracting Officer; and the Lessee shall not do or suffer anything whereby any of the property shall or may be encumbered, seized, taken in execution, attached, destroyed, or injured.

8. After taking possession as provided in clause 4, the Lessee shall be solely responsible for the property until it is returned to the Government as provided for in this lease. The property shall be returned in as good condition as when received, reasonable wear and tear excepted. If the Lessee fails to return the property, the Lessee shall pay to the Government the amount specified in Schedule A as the value of the property less the amount determined by the Contracting Officer to represent reasonable wear and tear for the period during which the property was usable. If the Lessee returns the property in other than as good condition as when received, reasonable wear and tear excepted, the Lessee shall pay to the Government the amount necessary to place the property in such condition, or if it is determined by the Contracting Officer that the property cannot be placed in such condition, the Lessee shall pay to the Government the amount specified in Schedule A as the value of the property less both the amount determined by the Contracting Officer to represent reasonable wear and tear for the period during which the property was usable and the scrap value of the property.

9. The Lessee shall take all steps necessary to protect the interest of the Government in the property, and the Contracting Officer may require the Lessee, at its own expense, to take such specific measure, including but not limited to the procurement of insurance, as may be necessary to protect such interest.

10. On or before the last day of the term of this lease the Lessee shall return the property to the Government at _____ or such other place as the Contracting Officer may designate, except that in the event of revocation of this lease the Lessee shall return the property to the Government at

the designated place as soon after such revocation as the same can be accomplished. The Lessee shall reimburse the Government immediately, upon presentation of a statement thereof, for all packing and handling costs incurred by the Government in performance of this lease. The Lessee shall also pay all other packing, handling, and transportation charges, including the expenses of reinstalling the property or processing it for extended storage, except that the Lessee's responsibility for return transportation charges shall not exceed the amount required to return the property to the place specifically named above. Further, if the Contracting Officer designates a place to which the property is to be returned other than that specifically named above and if the time required to return the property to such other place exceeds the time required to return the property to the place specifically named above, then the time for which the Lessee must pay rent under clause 5 shall be reduced by the amount of such excess.

11. The property is leased without operators. Any operator deemed incompetent by the Contracting Officer shall be removed from the property.

12. Upon request of the Lessee, the Contracting Officer shall furnish without charge, copies of such drawings, specifications or instructions as the Lessee may require for the operation or repair of the property and as may be in the discretion of the Contracting Officer be reasonably available.

13. The Government shall not be responsible for damages to property of the Lessee or property of others, or for personal injuries to the Lessee's officers, agents, servants, or employees, or to other persons, arising from or incident to the use of the property herein leased, and the Lessee shall save the Government harmless from any and all such claims: *Provided*, That nothing contained in this clause 13 shall be deemed to affect any liability of the Government to its own employees.

14. At all times the Contracting Officer shall have access to the job site whereon any of the property is situated, for the purposes of inspecting or inventorying the same, or for the purpose of removing the same in the event of the termination of this lease.

15. Control of Government Property. The Manual for Control of Government Property in Possession of Contractors set forth in Appendix B of the Armed Services Procurement Regulation is incorporated by reference and made a part hereof.

16. Officials Not to Benefit. No member or delegate to Congress, or resident commissioner, shall be admitted to any share or part of the contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract, if made with a corporation for its general benefit.

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

18. Disputes. Except as otherwise provided in this lease, any dispute concerning a question of fact arising under this lease which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or

*Delete all lines which do not apply.

**Term shall in no event exceed five years unless approved by the Secretary.

otherwise furnish a copy thereof to the Lessee. Within 30 days from the date of receipt of such copy, the Lessee may appeal by mailing or otherwise furnishing to the Contracting Officer a written appeal addressed to the Secretary, and the decision of the Secretary or his duly authorized representative for the hearings of such appeals shall, unless determined by a court of competent jurisdiction to have been fraudulent or capricious or arbitrary or so grossly erroneous as to imply bad faith, or not supported by substantial evidence, be final and conclusive. Provided, That if no such appeal is taken, the decision of the Contracting Officer shall be final and conclusive. In connection with any appeal proceeding under this clause, the Lessee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Lessee shall proceed diligently with the performance of the lease and in accordance with the Contracting Officer's decision.

19. Adjustment of Rentals—State or Local Taxation. Except as may be otherwise provided, the rental rates established in this lease do not include any State or local tax on the property herein leased. If and to the extent that such property is hereafter made taxable by State and local governments by Act of Congress, then in such event the lease shall be renegotiated.

20. Except as otherwise specified in this lease, all notices to either of the parties to this lease shall be sufficient if mailed in a sealed postpaid envelope addressed as follows:

To the Lessee—

(Name)

(Address)

To the Government—

(Name)

(Title)

(Address)

21. Definitions. As used throughout this lease, the following terms shall have the meanings set forth below:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department and the head or any assistant head of the executive agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this lease on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this lease, the authorized representative of a Contracting Officer acting within the limits of his authority.

22. This agreement shall be subject to the written approval of the Secretary of the Army or his duly authorized representative and shall not be binding until so approved.

23. Alterations. The following changes were made in this lease before it was signed by the parties hereto:

In witness whereof, the parties hereto have executed this lease as of the day and year first above written.

THE UNITED STATES OF AMERICA

By _____

(Official Title)

(Lessee)

By _____

(Business Address)

Two witnesses:

(Address)

(Address)

I _____ certify that I am the Secretary of the Corporation named as Lessee herein, that _____

who signed this lease on behalf of the Lessee was then _____ of said corporation; that said lease was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporation powers.

In witness whereof, I have hereunto affixed my hand and the seal of said corporation this _____ day of _____, 196____.

[Corporate Seal]

(Secretary)

§ 606.551 Letter contract.

(a) *Cost-reimbursement type.* Set forth below is a sample form of preliminary contract looking to the execution of a formal cost-reimbursement type contract. The appropriate clauses required by Subpart H, Part 7 of this title should be inserted in Exhibit "A" and attached to the form as an inclosure. See also § 3.903-2 of this title and § 597.150-3 of this chapter.

(LETTERHEAD)

(Date)

Gentlemen:

1. This letter constitutes a contract on the terms set forth herein and signifies the intention of the Department to execute a formal cost-reimbursement type contract with you for the delivery of the supplies and the performance of the services as set forth in the attached enclosure, marked Exhibit "A," upon the terms and conditions therein stated. Exhibit "A," including the clauses set forth therein, is also made a part hereof.

2. You are directed, in accordance with the clause entitled, "Execution, Commencement of Work and Priority Rating," to proceed immediately to commence performance of the work, and to pursue such work with all diligence to the end that the supplies may be delivered or services performed within the time specified in Exhibit "A," or if no time is so specified, at the earliest practicable date. You shall, in addition, obtain such approvals in respect of commitments hereunder as may be specified in Exhibit "A."

3. In accordance with the clause entitled "Definitization," you shall submit a quotation of the estimated cost to the Government, including fee, for the articles and services covered by this letter. Such quotation shall be supported by a cost breakdown reflecting the factors outlined in the suggested form enclosed herewith, a Certificate of Current Cost or Pricing Data (ASPR 3-8074), and such other information as may be specified herein.

4. In the event of a termination of performance of the work or any part thereof under this letter pursuant to the Termination clause incorporated herein by reference, or in the event that the formal contract is not executed you shall be paid in accordance with the provisions of such Termination clause. Your failure to execute a formal contract by reason of unexcusable delay may justify a termination. Your attention is specifically invited to the clause entitled "Limitation of Government Liability."

5. Please indicate your acceptance of the foregoing by signing this letter and returning three executed copies to this office.

6. This contract is entered into pursuant to the provisions of 10 U.S.C. 2304(a) ()

and any required determination and findings have been made.

Sincerely yours,

Contracting Officer.

Executed as of the date shown below:

By _____
(Type above, name and position of officer executing this acceptance)

Date _____

(b) *Fixed-price type.* Set forth below is a sample form of preliminary contract looking to the execution of a fixed-price formal contract. The appropriate clauses required by Subpart H, Part 7 of this title should be inserted in Exhibit "A" and attached to the form as an inclosure. See also § 3.903-1(a) and § 597.150-3 of this chapter.

(LETTERHEAD)

(Date)

Gentlemen:

1. This letter constitutes a contract on the terms set forth herein and signifies the intention of the Department to execute a formal fixed-price contract with you for the delivery of the supplies and the performance of the services as set forth in the attached enclosure, marked Exhibit "A," upon the terms and conditions therein stated. Exhibit "A," including the clauses set forth therein, is also made a part hereof.

2. You are directed in accordance with the clause entitled "Executive Commencement of Work, and Priority Rating," to proceed immediately to commence performance of the work, and to pursue such work with all diligence to the end that the supplies may be delivered or services performed within the time specified in Exhibit "A," or if no time is so specified, at the earliest practicable date.

3. In accordance with the clause entitled "Definitization," you shall submit a firm quotation for the articles and services covered by this letter. Such quotation shall be supported by a cost breakdown reflecting the price factors outlined in the suggested form enclosed herewith, together with a Certificate of Current Cost and Pricing Data (ASPR 3-8074), if required, and any other information specified herein.

4. In the event of termination of performance of the work or any part thereof under this letter pursuant to an appropriate clause incorporated herein by reference, or in the event that the formal contract is not executed, you shall be paid in accordance with the provisions of such clause. Your failure to execute a formal contract by reason of unexcusable delay may justify a termination. Your attention is specifically invited to the clause entitled "Limitation of Government Liability."

5. Please indicate your acceptance of the foregoing by signing this letter and returning three executed copies to this office.

6. This contract is entered into pursuant to the provisions of 10 U.S.C. 2304(a) () and any required determination and findings have been made.

Sincerely yours,

Contracting Officer.

Executed, as of the date shown below:

By _____
(Type above, name and position of officer executing this acceptance)

Date _____

§ 606.552 Government's Order and Contractor's Acceptance (DA Form 47).

(a) *General.* The following are authorized for use under the conditions

set forth in paragraph (b) of this section for negotiated purchases:

(1) Government's Order and Contractor's Acceptance (DA Form 47);

(2) Continuation Sheet (Supply Contract) (Standard Form 36);

(3) General Provisions (Supply Contract) (Standard Form 32), only when procuring supplies; and

(4) Any other form containing contract provisions prescribed by Subchapter A, Chapter I of this title and this subchapter.

(b) *Conditions for use.* (1) DA Form 47 and Standard Form 36 (together with authorized contract provisions) may be used for negotiated purchases of supplies wherein (i) price quotations are subject to daily fluctuation, (ii) the amount of the purchase is less than \$100,000, and (iii) no special contract provisions are required which in the particular case would make use of the form inappropriate.

(2) DA Form 47 calls for execution by both the contracting officer and the contractor. When so executed, it should be a complete contract in itself; that is, without reference to separate documents such as proposals or quotation forms.

(3) When completed and signed by the contracting officer, and forwarded to the contractor, DA Form 47 constitutes an offer by the Government to contract on the terms set forth therein. All applicable blanks should be completed at the time the form is forwarded to the contractor. Where a particular item is not known at the time the form is forwarded to the contractor (for example, "Ship To" or "Schedule of Deliveries"), the blanks should be filled in with appropriate language indicating how such information will be subsequently furnished.

(4) When signed by the contractor in the space marked "Contractor's Acceptance" and returned to the Government within the time allowed, the form becomes a binding contract if the contractor has made no changes in the form by way of deletion, interlineation, or addition (thus departing from the terms of the offer). Contractors should be instructed to inform the contracting officer of any changes which appear to be required so that amendments may be made and initialed by both parties, or a corrected DA Form 47 issued.

(5) Methods of presenting invoices or vouchers, and of packing, marking, and shipping shall be as specified in any space on the face of the form, or on a continuation sheet.

(6) Standard Form 32 (General Provisions) and additional general provisions shall be incorporated in accordance with the conditions of § 16.101-2 of this title and § 606.101-2.

§ 606.553 Academic instruction contracts.

§ 606.553-1 Basic Agreement for Academic Instruction (DA Form 357).

(AR 350-200.)

§ 606.553-2 Order Form To Enter Into Contract for Academic Instruction (DA Form 358).

(AR 350-200.)

§ 606.553-3 Basic Agreement for Off-Duty Academic Instruction (DA Form 588).

(AR 621-5.)

§ 606.553-4 Order Form To Enter Into Contract for Off-Duty Academic Instruction (DA Form 589).

(AR 621-5.)

§ 606.554 Service Order for Household Goods (DD Form 1164).

(See AR 743-455.)

Subpart O—General Policy

§ 606.1501 Deviations from approved forms.

§ 606.1501-1 General.

A change in the size of a Standard, DD or DA Form constitutes a deviation.

§ 606.1501-2 Translations.

To facilitate procurement in foreign countries, authority is granted to reproduce a translation of any form. Either a bilingual form may be utilized, or the translation may be printed as a separate form. When the foreign language translation is printed as a separate form it shall be attached to its corresponding approved form. In either instance both the foreign language translation and the approved English text shall contain a statement that in the event of a disagreement in the text of the English and foreign translations, the English text shall govern.

§ 606.1502 Supply of Forms.

§ 606.1502-1 Forms stocked by Adjutant General publications centers.

Unless otherwise stated, the procurement forms listed in this subchapter are procured by The Adjutant General and are stocked in Adjutant General publications centers. Requisitions for forms shall be submitted through normal publications supply channels (AR 310-1). Most procurement forms are printed either as cut sheet forms or as multiple part manifold forms. Department of the Army Pamphlet 310-2 lists by category and number all blank forms prescribed for use throughout the Department of the Army. When both cut sheets and reproducible masters are stocked, to distinguish requisitions for the master from cut sheet forms, the word "Stencil," "Hecto," or other appropriate word shall be used. For example, Standard Form 21 (Stencil).

§ 606.1502-2 Cut sheet forms.

An example of a cut sheet is Standard Form 30 (Invitation and Bid) which is printed on tissue paper. This weight of paper permits the preparation of an original and nine carbon copies at one time. Another example is Standard Form 32 (General Provisions), which also is printed as a cut sheet. In this case, however, because no typing is required and because the form is printed on both sides of the paper, a heavier weight paper is used.

§ 606.1502-3 Multiple part manifold forms.

An example of a multiple part form is DD Form 1155 (Order for Supplies or

Services). This form is a 10-part, carbon interleaved, manifold form of snap-out construction.

§ 606.1502-4 Forms not stocked by Adjutant General publications centers.

Certain forms of limited application are not printed or stocked by The Adjutant General and local reproduction is authorized in Department of the Army Pamphlet 310-2.

§ 606.1502-5 Reproducible masters.

(a) *General.* The Adjutant General generally does not stock reproducible masters of procurement forms. He may, however, authorize local procurement of reproducible masters where the Head of Procuring Activity has approved their use.

(b) *Excessive duplication and distribution of contractual documents prohibited.* It is the policy of the Department of the Army that the number of copies of contractual documents for any particular procurement be kept to a minimum. Copies shall be limited to those required for essential administration and transmission of contractual information. Excessive duplication and distribution is prohibited. It is the responsibility of all echelons of command to insure that this policy is enforced.

(c) *When required.* Some installations may be unable to utilize the multiple part forms or may require more than 10 copies, including the original, of cut sheet forms. When authorized as prescribed in this section, reproducible masters (holograph, stencil, offset) may be utilized to produce multiple copies.

(d) *Requests and justification.* Requests for the use and local procurement of reproducible masters shall be submitted by letter to the cognizant Head of Procuring Activity. Requests shall include the proposed distribution list of the form together with the number of copies required for each addressee. The requesting installation must justify the requirement for each copy. The requesting installation shall state also the number of procurements for which the form is used in a particular period.

(e) *Approval of requests.* Blanket approval for the use of reproducible masters shall not be given. Requests shall be approved on an installation basis. When the cognizant Head of Procuring Activity is satisfied that the requirements of this section have been met, he may approve the use of reproducible masters. Such approvals shall be forwarded to The Adjutant General, ATTN: Chief, Army Publications Division, Department of the Army, Washington, D.C., 20315; for authority to locally procure reproducible masters in compliance with AR 310-1. Except where the reverse side of a form is stocked (i.e., Standard Forms 30, 33, and DD Form 1155), approval for local procurement of reproducible masters of a form also includes approval of authority to procure reproducible masters of the reverse of the form. Where General Provisions or other information is preprinted on the back of a form and the back of the form is not stocked by Adjutant General publications centers, reproducible masters of the back of the form shall be procured and used as run-

off paper for reproducing multiple copies of the face of the form from reproducible masters.

(f) *Use.* The contracting officer at installations authorized to procure and use reproducible masters shall insure that such masters do not deviate from the approved format.

(g) *Quantities procured.* Factors to be considered by contracting officers in determining quantities of reproducible masters to be procured shall include current operational needs and economical procurement. As a guide, installation stocks normally should not exceed a 6-month supply level.

§ 606.1502-6 Preprinted backs.

The terms and conditions of the Invitation for Bids which appear as the back of Standard Forms 30 and 33 are identical and have been printed as one standard back. The standard backs shall be used as runoff paper when reproducing multiple copies of the face of the forms from reproducible masters. Supplies of the backs of Standard Forms 30, 33, and DD Form 1155 are available from Adjutant General publications centers.

PART 608—PROCUREMENT OF CONSTRUCTION AND CONTRACTING FOR ARCHITECT-ENGINEER SERVICES

Subpart A—General Provisions

Sec.	
608.101-50	New construction.
608.150	Responsibility.
608.151	Authorization.

Subpart C—Negotiations

608.301	Limitation on authority to negotiate contracts.
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AUTHORITY: The provisions of this Part 608 issued under sec. 3012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

Subpart A—General Provisions

§ 608.101-50 New construction.

The term "new construction" as used in this subchapter includes the advance planning, preparation of plans, specifications and estimates, design, erection, budgeting and allocation of funds, issuance of directives and provisions of necessary labor, material, equipment, supplies and transportation necessary for initial erection or installation of any building structure, plant, ground facility, utility system, wharf, airfield, etc., or other real property for the Department of the Army built separately or apart from existing facilities.

§ 608.150 Responsibility.

The Chief of Engineers is charged with the direction of all work pertaining to new construction for the Department of the Army except as otherwise directed. In the execution of new construction he is charged with the application of Department of the Army construction policies including conformance with construction standards, suitability of the project and for technical and engineering accuracy.

§ 608.151 Authorization.

All work under the supervision of the Corps of Engineers, including new work and modifications to work previously authorized shall be accomplished by formal directive issued by the Chief of Engineers. The following officials, however, are authorized to accomplish emergency construction and necessary repair work for all activities under their jurisdiction (see AR 415-25, AR 415-35, AR 420-10, and other regulations in the 415- and 420-series):

- (a) Major overseas commanders;
- (b) Major commanders in the United States, its Territories and possessions;
- (c) Attachés;
- (d) Chiefs of foreign missions (Army); and
- (e) Chiefs of Army sections of any joint military missions not operating under the jurisdiction of a major overseas command.

Subpart C—Negotiations

§ 608.301 Limitation on authority to negotiate contracts.

Title 10 U.S.C. 2304(c) in its entirety states:

(c) This section [referring to 10 U.S.C. 2304 which contains the preceding 17 negotiation exceptions] does not authorize—

- (1) the negotiation of a contract to construct or repair any building, road, sidewalk, sewer main, or similar item, unless—
 - (A) it is made under clauses (1)-(3), (10)-(12), or (15) of subsection (a); or
 - (B) it is to be performed outside the United States; or
- (2) the erection, repair, or furnishing of any public building or improvement.

PART 610—SUPPLEMENTAL PROVISIONS

Subpart A—Numbering and Distribution of Contracts

Sec.	
610.101	Documentary evidence of purchases.
610.102	Prescribed contract numbering system.
610.102-1	Applicability.
610.102-2	Numbering requirements.
610.102-3	Numbering system.
610.103	Distribution of contracts and other documents.
610.103-1	Definitions.
610.103-2	Secret and Confidential contracts.
610.103-3	Distribution instructions.

Subpart B—Contract Award Approvals

610.201	Review of contracts and modifications.
610.202	Secretarial preaward review and notation.
610.203	Preaward submissions.
610.204	Approval of awards of contracts.
610.204-1	General.
610.204-2	Personal and professional services.
610.204-3	Construction or rehabilitation of facilities and repairs and utilities.
610.204-4	Architect-engineer services.
610.204-5	Utility services.
610.204-6	Government-owned contractor-operated plants (GOCO).
610.204-7	Management engineering services.
610.204-8	Leases of Government personal property.
610.204-9	Automatic data processing equipment (ADPE).

Subpart C—Disputes Procedure

Sec.	
610.301	Decisions under the "Disputes" clause.
610.302	Procedural instructions keyed to rules of § 30.1 of this title.
610.303	Responsibility of Head of Procuring Activity.
610.304	Appeals before intermediate boards in overseas area.

Subpart D—Contract Financing Policies and Procedures

610.401	Surveillance of contract financing and reports of adverse developments.
610.402	Advance approval.
610.403	Contract debts—Interest—deferred payments.

Subpart E—DA Circular 718-Series

610.501	Open end contract information circulars (OECIC).
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Subpart G—Treatment of Depreciation on Emergency Facilities Covered by Certificates of Necessity for Contract Pricing Purposes

610.701	Procedure.
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Subpart H—Procedures Under the Gratuities Clause

610.801	Purpose.
610.802	Reporting requirements.
610.803	Referral for hearing.
610.804	Delegation of authority and hearing procedures.
610.805	Post-hearing actions.

AUTHORITY: The provisions of this Part 610 issued under sec. 3012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

Subpart A—Numbering and Distribution of Contracts

§ 610.101 Documentary evidence of purchases.

Each purchase transaction made by a contracting officer, except one under the imprest fund procedure, shall be evidenced by a written contract on approved forms. (See §§ 1.201-4 and 3.607 of this title, § 593.607 of this subchapter, Part 16 of this title and Part 606 of this chapter).

§ 610.102 Prescribed contract numbering system.

§ 610.102-1 Applicability.

(a) Set forth in §§ 610.102-1 to 610.102-3 is a contract numbering system which conforms to the requirements of the General Accounting Office. It shall be applied according to the requirements set forth in § 610.102-2.

(b) A numbering system, other than the one set forth in § 610.102-3, may be established by a procuring activity or purchasing office for identification and control of documents but care shall be exercised to avoid confusion or conflict between two systems of numbering. For the purpose of §§ 610.102-1 to 610.102-3 a contract shall be considered to be "numbered" only if it is numbered in accordance with § 610.102-3.

(c) The contract numbering set forth applies to contracts as defined in § 1.201-4 of this title, leases, and easements. It also applies to sales contracts; provided, "receipt" shall be substituted for "payment" in the requirements hereafter. It does not apply to DD Form 1155 when

used to establish a blanket purchase agreement as provided in § 3.605 of this title.

§ 610.102-2 Numbering requirements.

(a) A contract shall be numbered if—
(1) It involves a payment of \$20,000 or more in a single payment, or

(2) It involves multiple payments or the issuance of any delivery order thereunder (see, however, (b) below), or

(3) There is doubt as to whether the amount to be paid is more or less than \$20,000 or whether more than one payment may be necessary.

(b) When a contract, originally issued unnumbered because it does not fall within the criteria of paragraph (a) (2) of this section, becomes subject to more than one payment, payments not to exceed five in number may be made thereunder without removing the contract from the unnumbered category; provided, the original signed contract is attached to the first payment voucher, and on each succeeding payment voucher (partial and final) cross reference is made to each preceding payment. Such cross reference shall consist of the (1) name of disbursing officer, (2) period of account, (3) voucher number, and (4) amount paid.

(c) When a contract, originally issued unnumbered, is modified so as to require numbering, the number shall be shown on the instrument (e.g., contract modification or voucher) which serves to remove the contract from the unnumbered category. In addition there shall be shown on such instrument a citation to any voucher covering a payment already made under the contract. (See, however, paragraph (b) of this section.)

(d) A contract may be numbered in accordance with § 610.102-3 if it involves the payment of less than \$20,000 on a single payment and such numbering serves the needs of the procuring activity.

(e) Each modification (whether supplemental agreement, change order, or other instrument) shall bear the same identification as the contract which is modified or amended thereby. The same series of consecutive numbers shall be used for all modifications. Example: Modification No. 1—Supplemental Agreement to Contract DA 09-200-AIII-1; Modification No. 2—Change Order to Contract DA 09-200-AIII-1.

§ 610.102-3 Numbering system.

(a) *Placement.* The contract number shall be placed either in a space provided therefor on the contract form or in the upper right-hand corner.

(b) *Composition of number.* The contract number shall consist of four groups of symbols (e.g., DA 09-200-AIII-1)—

(1) The symbol "DA" which indicates "Department of the Army,"

(2) A compound numerical symbol which indicates the fiscal station (e.g., 09-200) (see paragraph (c) of this section),

(3) A letter symbol which indicates the organization with fund cognizance (e.g., AIII) (see paragraph (d) of this section),

(4) A contract serial number (see paragraph (e) of this section).

(c) *Fiscal station number.* Fiscal station numbers are listed in AR 37-102-1. Requests for assignment, cancellation, or alteration of such number shall be submitted in accordance therewith.

(d) *Letter symbols.* Requests for assignment, cancellation, or alteration of letter symbols shall be submitted to the Office, Chief of Finance, ATTN: Financial Services Division, Washington, D.C., 20315, which office shall secure the necessary approval of the Comptroller General. Currently approved letter symbols include the following:

Activity	Symbol
Finance Corps	FD
Office of the Chief Communications-Electronics	SC
U.S. Army Materiel Command	AMC
Office of the Chief Support Services	SS
Department of Defense Household Goods Commercial Storage Office	SS (HHG)
Adjutant General's Corps	AG
Chief of Staff	CSA
Chief, Army Research and Development	ARO
Army Research Office, Durham	ARO-D
Judge Advocate General's Corps	JAG
National Guard Bureau	NG
Military Attaché	ID
Secretary of the Army	OSA
Budget Office, Department of the Army	BUD
Military District of Washington	MDW
Army Medical Service	MD
Corps of Engineers	ENG
National Aeronautics and Space Administration	ENG (NASA)
U.S. Military Academy	MA
National Board for the Promotion of Rifle Practice	N
Provost Marshal General	PMG
Chief of Chaplains	OH
Information and Education Division, DOD	IE
First U.S. Army	AI
Second U.S. Army	AII
Third U.S. Army	AIII
Fourth U.S. Army	AIV
Fifth U.S. Army	AV
Sixth U.S. Army	AVI
U.S. Army, Alaska	ASK
U.S. Army Forces, Southern Command	CAR
Military Assistance Advisory Group, China	AGC
U.S. Army, Japan (U.S. dollar appropriated funds)	FEC
U.S. Army, Japan (monies to U.S. by Japanese Government)	YEN
U.S. European Command	EC
U.S. Army, Europe	EUC
U.S. Army, Pacific	PAC
South European Task Force	SETF
Joint Brazil-U.S. Military Commission	BMG
Joint U.S. Military Mission for Aid to Turkey	ATK
U.S. Military Mission, Iranian Army	MMI
U.S. Army Security Agency	AS

(e) *Contract serial number.* Each series of contracts bearing the same fiscal station number shall be numbered serially commencing with the number 1. The serial shall ordinarily continue without reference to fiscal year until number 99,999 has been utilized. The next succeeding serial shall commence with

the number 1 suffixed with the capital letter A and suffix to subsequent series shall continue alphabetically.

(f) *Subcontracts.* Contracting officers shall request contractors holding prime contracts with the Department of the Army to (1) include in their subcontracts a reference to the contract number of the appropriate prime contract and (2) ask their subcontractors to include a reference to the same contract number in their own subcontracts, so that each tier of subcontracts refers to the original contract number. This practice is to assist in accounting and auditing, particularly in settlement of terminated subcontracts of all tiers.

(g) *Invitation for bids number.* Each invitation for bids shall bear an assigned number comprised of the following elements separated by dashes:

(1) The letter symbol of the procuring activity;

(2) The station number of the issuing office;

(3) The last two numerals of the fiscal year in which issued; and

(4) The serial number of the invitation which, for each issuing office, shall be a number in a consecutive series commencing with the number 1 at the beginning of each fiscal year.

§ 610.103 Distribution of contracts and other documents.

Required distribution of contracts and certain other documents is summarized in §§ 606.103-606.103-3. Release of a contract or information concerning the award shall not be made until the contract has been properly signed by all parties and approved by higher authority when such approval is required. Either this required approval or a statement by the contracting officer to the effect that the award of the contract has been approved shall accompany the contract. Such statement shall contain the name, title, and office of the approving official, and a reference to the date of approval and to the administrative file containing the approval. For distribution of Standard Form 1036 (Statement and Certificate of Award), see §§ 2.407-7 and 16.801 of this title. Documents distributed to the General Accounting Office shall be mailed to the addressee in § 591.150(b) (12).

§ 610.103-1 Definitions.

The following terms are used in connection with the distribution of contracts:

(a) A "signed number" is the contractual instrument with all required signatures.

(b) An "authenticated copy" is a copy of the contractual instrument shown to be authentic by (1) certification as a true copy, or (2) photostatic process. The signatures may be facsimile, stamped, or typed.

(c) A "copy" includes the complete contractual instrument with the names of the contracting parties, but lacks authentication.

(d) A "numbered contract" is one numbered in accordance with §§ 610.102-2 and 610.102-3.

§ 610.103-2 Secret and confidential contracts.

Distribution of classified contracts is subject to the provisions of AR 380-5 and to all other current instructions governing the safeguarding, transmittal, and disclosure of information affecting the national security of the United States. Copies of Secret or Confidential contracts submitted to the addressee in § 591.150 (b) (12) shall be transmitted under two covers, each containing the mailing address. The inner cover only shall bear the security classification.

§ 610.103-3 Distribution instructions.

(a) *Contracts.* The minimum distribution of contracts to be accomplished is set forth hereafter. Supplemental agreements and change orders shall be distributed in the same manner as is prescribed for the contracts to which they pertain and the contracting officer shall note on his retained copy of the supplemental agreement or change order the date on which the contractor's copy was delivered or mailed to him.

(1) *Signed number.* The original signed number of each numbered contract shall be forwarded without delay to the addressee in § 591.150(b) (12). However, where a surety bond was required in support of the contract, see § 600.110 for required routing through The Judge Advocate General. The original signed number of each unnumbered contract shall be forwarded to the finance and accounting officer as an attachment to the first voucher on which payment is made and shall accompany such voucher to the addressee in § 591.150 (b) (12); notation (e.g., "Performance Bond Executed"; "Payment Bond Executed") shall be placed on this number if a surety bond was required in support of the contract. The duplicate signed number shall be forwarded to the contractor. The triplicate signed number shall be filed with the contract file.

(2) *Authenticated copy.* (i) An authenticated copy shall be forwarded to the finance and accounting officer for his files where the type contract involved is an indefinite delivery type other than a definite quantity type, a comprehensive summary of pertinent contract information and ordering instructions relating to such contract (supply schedule) may be used instead of an authenticated copy. In lieu of copying the signatures of the parties signing the contract or supplemental agreement and of the witnesses thereto, and the corporate certification or certificate, if any, as to the authority of the persons who signed the original for a corporate contractor, the contracting officer or his authorized representative may execute the following certificate on the copies furnished the finance and accounting officer for his use:

I certify that this is a true copy of a document properly signed and, if required, witnessed on _____ and that the corporate certificate (therein), if any, was properly executed.

(ii) An authenticated copy of each unnumbered contract shall be forwarded to The Judge Advocate General in con-

formance with § 600.110 if a surety bond was required in support of the contract.

(iii) An authenticated copy of a contract involving the purchase by or for the account of the Government of metal working machinery and production and capital (plant) equipment (as listed in appendixes II and III, AR 700-34) shall be forwarded to the Production Equipment Agency (PEQUA), Rock Island Arsenal, Rock Island, Ill. This copy shall be annotated by the forwarding activity to reflect, for each item being purchased, the requisition number and the date of the DD Form 1149 previously submitted to PEQUA for screening.

(iv) An authenticated copy shall be distributed to the cognizant audit office within 20 days after execution of each contract enumerated hereafter. Contracts not so enumerated shall not be distributed to an audit office.

(a) A fixed-price type contract involving price redetermination, escalation, or incentive features;

(b) A fixed-price type contract containing cost reimbursement provisions applicable to portions thereof;

(c) A cost-reimbursement type contract;

(d) A time-and-materials contract;

(e) A labor-hour contract;

(f) A negotiated contract where the compensation to be paid the contractor varies on the basis of the actual cost incurred, the quantity of work or service performed, the time element in performing the work or service, or on other similar variable factors;

(g) A contract which provides for advance payment, or progress payments based on costs;

(h) A letter contract;

(i) A change, amendment, and supplement to a contract listed above; and

(j) A contract which has been terminated for convenience of the Government (not previously forwarded under above requirements of this paragraph).

(v) Authenticated copies of the contract in a number equal to the number of receiving Military Departments shall be forwarded with the original signed number when the contract covers purchases made for one or more of the other Military Departments and payment to the contractor is to be made by the Department receiving the supplies or services.

(3) *Copy.* Distribution of any additional copy shall be as directed in appropriate Department of the Army publications or by the cognizant Head of Procuring Activity. It may be furnished for official use within the Department of the Army prior to the distribution of the signed numbers, provided it is plainly marked "Advance Copy," and other safeguards are taken to avoid premature release of award information and to insure that no improper fiscal charges arise.

(b) *Other documents for audit offices.*

(1) An authenticated copy of each instrument enumerated hereafter shall be distributed to the cognizant audit office within 20 days after execution—

(i) The advance agreement negotiated pursuant to § 15.107 of this title, and

(ii) The record of negotiations (attached to the contract supplement which

it supports); provided, the supplement reflects (a) a final negotiated overhead rate under a cost-reimbursement type contract; (b) redetermined prices under a contract involving price redetermination, price escalation, or incentive features; or (c) termination settlement of a contract forwarded pursuant to paragraph (a) (2) (iv) of this section. The record may consist of a copy of the summary of negotiations.

(2) Within 5 days after receipt from the contractor, the contracting officer shall forward an original and one copy of all documents enumerated hereafter which are either required by the contract, if of the type referred to in paragraph (a) (2) (iv) of this section, or which are acquired by the contracting officer (see § 3.807-3 of this title). The original shall be returned by the audit office at the time of submission of the audit report or when it is determined that an audit is not to be initiated; the duplicate shall be retained for audit office files. These documents include—

(i) Cost and pricing data (see §§ 3.807-2 and 3.807-3 of this title);

(ii) Settlement proposals relating to prime contract and subcontract terminations as provided in § 8.207 of this title (including inventory and accounting information). Termination settlement proposals in connection with lump sum or unit price architect-engineer contracts which provide for settlement on a percentage-of-completion basis and which are terminated for the convenience of the Government shall not be distributed; and

(iii) Other related information necessary for an understanding of the foregoing.

(3) Contracting officers may submit contractual documents specified in paragraph (a) (2) (iv) of this section and this paragraph direct to the cognizant audit office.

(4) For contracts involving Government-owned industrial property in possession of contractors, contracting officers shall furnish to the cognizant audit office a letter notification showing contract number, name and address of contractor, address of office administering the property records, and location of the property records. Notifications may be consolidated and furnished weekly or monthly, depending on volume, but separate letters shall be furnished for each location of records. This letter notification is exempt from reports control under paragraph 390, AR 335-15.

(5) Within the United States, distribution of the above indicated contractual documents, supplementary information, and notifications shall be made by the purchasing office to the cognizant audit office of the area in which the records subject to audit are located and shall include one extra copy when contracts administered from within the United States are performed outside the United States.

(c) *Other documents involving acquisition of production and capital (plant) equipment.* When contractors have been authorized to purchase equipment listed in Appendixes II and III, AR 700-34, for the account of the Department of the Army, a copy of the contractor's purchase order shall be forwarded,

within five days of receipt, to PEQUA. This document shall be annotated to reflect, for each item being purchased, the requisition number and date of the DD Form 1149 previously submitted to PEQUA for screening.

(d) *Delivery orders.* (1) Delivery orders under contracts of other Military Departments and other Government agencies shall be distributed in the same manner as provided in (a) above for the distribution of signed numbers.

(2) The cognizant Head of Procuring Activity shall comply with all special instructions of the agency which entered into the contract.

(3) Vouchers distributed to the addressee in § 591.150(b)(12) may relate to less than all of the items covered by the delivery order. If the original signed number of the delivery order has not already been so distributed, it will be submitted with the first voucher; and when vouchers are submitted covering subsequent payments, a reference shall be made to the first voucher. The reference shall contain the date on which the invoice covered by the first voucher was paid and the name of the finance and accounting officer by whom such payment was made.

Subpart B—Contract Award Approvals

§ 610.201 Review of contracts and modifications.

(a) To insure (1) that applicable provisions of this title and other procedural requirements are satisfied and (2) that the proposed action represents a good "business" judgment from the Government's viewpoint, each proposed contract or modification of \$10,000 or more shall receive an independent advisory review by at least one competent person other than the contracting officer. This review applies to both advertised and negotiated procurements, and shall be conducted prior to seeking approval at a level above the contracting officer if such higher level approval is required in the particular case.

(b) Sound judgment and the characteristics of the proposed contract or modification will govern the scope of the review to be conducted in each case, provided that in any event the review shall comply with any other specifically applicable regulation, such as § 3.102(c) of this title. As a guide, a review should take into account the following four major aspects: (1) the procurement documents themselves (e.g., clarity, consistency, completeness, use of required forms, clauses and specifications); (2) the procurement method (e.g., advertising, negotiation, competition, sole source, suitability for set-aside, adherence to procurement plan or specific guidance from higher authority); (3) support for actions to be taken (e.g., existence of proper authority for use of negotiation or type of contract if applicable, existence of Government estimate of price, preaward survey, adequacy of any justifications or determinations required of contracting officer, need for technical data, adequacy of pricing data, inputs from members of contracting officer's "team," necessity for deviations) and

(4) comparison with alternatives (e.g., how else could the procurement objective be accomplished and what are the relative advantages and disadvantages?).

§ 610.202 Secretarial preaward review and notation.

Information relative to proposed procurements for certain supplies, services, equipment, research and development projects, or for certain classes thereof shall be submitted for Secretarial preaward review and notation in accordance with § 610.203.

(a) *Proposed awards to be reviewed by the Assistant Secretary of the Army (Installations and Logistics).* (1) All sole source procurements valued at \$3 million or more which are funded by other than RDTE appropriations except: (i) Government-owned contractor-operated procurements, (ii) missile system prime procurements, (iii) procurements of exclusively proprietary items, and (iv) procurements of labor and maritime services from foreign governments. Sole source procurements negotiated under § 3.202 of this title, "Public Exigency," may be submitted on and after-the-fact basis with particular reference being made to the reason for use of this exception.

(2) Procurements determined by a Head of Procuring Activity to be of such an intricate and complex nature that the proposed procurement should be reviewed by the Secretary.

(3) Procurements determined by the Commanding General, U.S. Army Materiel Command (or his designees) to be of such importance as to warrant review by the Secretary.

(4) Individual procurements which, from time to time, the Secretary may specifically request to be submitted for review.

(b) *Proposed awards to be reviewed by the Assistant Secretary of the Army (Research and Development).* (1) Procurements funded by RDTE appropriations which are determined by the Head of Procuring Activity to be of such an intricate and complex nature that the proposed procurement should be reviewed by the Secretary.

(2) Procurements determined by the Commanding General, U.S. Army Materiel Command (or his designees) to be of such importance as to warrant review by the Secretary.

(3) Individual procurements which, from time to time, the Secretary may specifically request to be submitted for review.

§ 610.203 Preaward submissions.

(a) Requests for preaward review and notation shall—

(1) Be accompanied by five copies of the information required in the following appropriate subparagraphs;

(2) Be submitted so as to normally allow a minimum of 15 days for review at the Secretarial level;

(3) Bear appropriate security classification; submission (other than for formal advertising) which are not otherwise classified shall be marked "For Official Use Only" (AR 345-15; and

(4) Be concise, complete, and specific. Ordinarily, bulky contract file docu-

mentation such as copies of complete contracts, requests for proposals, and elaborately detailed reports by price analysts and technical personnel or auditors shall not be submitted.

(b) Preaward review information to be submitted for negotiated procurements is outlined below; any item not applicable to a specific procurement shall so state. Submissions for formally advertised procurements shall adhere to this outline to the extent feasible.

OUTLINE

(1) Description of supplies, work or services being procured.

a. Material Program Procurement Schedule item number (if PEMA) or Approved Project Title and number (if RDTE).

b. Where services are to be procured, give illustrations and examples of what the contractor will be required to do.

c. Quantity or term of contract, indicating briefly the proposed delivery schedule.

d. Type and source of funds. If O&MA funds are to be used, show applicable fiscal year, justify their use, and explain controls to be used.

(ii) Name and address of proposed contractor.

a. Large or small business (indicate amount of any set-aside).

b. Labor surplus area classification (indicate amount of any set-aside).

c. Location of work performance.

(iii) Negotiations conducted under authority of 10 U.S.C. 2304(a) (), authorized by D&F dated _____, signed by _____. If negotiated under a D&F not signed by a Secretary, give a short résumé of facts supporting use of the exception used.

(iv) Type of contract; include justification if other than firm fixed-price.

(v) Method of source selection.

a. Number of sources solicited.

b. Number of bids or proposals received, with summary of each, including names of firms or individuals.

c. Justification for sole source solicitation. Use cross reference to (iii) above, if appropriate.

d. Basis for selection of proposed contractor, including discussion of evaluation factors as stated in solicitation and as applied in selection.

(vi) Unit price, total price, and profit; or total cost and fee (target (with fee swing), or fixed).

a. Statement whether Certificate of Current Cost and Pricing Data was obtained.

b. If for services, show average man-year cost.

c. Brief statement of comparison of proposed price (term "price" being used to include estimated cost and fee) with those of competing offerors, if applicable, with Government estimate, and, if possible, with historical price experience. Include an analysis and justification for acceptance of the proposed price.

d. If award is proposed to other than low offeror, explain (to extent not covered in c above) apparent basis for difference in price of low offeror and next low offeror.

e. Explain the relationship of the fee to estimated cost in light of limitations stated in ASPR 3-405.4(c) or 3-405.5(e)(2).

(vii) Make or buy considerations.

a. Major subcontractors, location, items, value and types of contracts.

b. Percentage of subcontract value to total price.

(viii) Summary of extent of Government-furnished facilities and special tooling.

(ix) Discussion of any ASPR or APP deviations approved or requested.

(x) Comment on the following, as appropriate:

a. Was the procurement synopsized?

b. Were all planned producers given an opportunity to participate?

c. Were maximum number of qualified sources solicited and were written or oral discussions conducted with responsible offerors who submitted proposals within a competitive range?

d. Are all required ASPR clauses to be included in the contract?

e. Are there any significant obligations or limitations, besides payment of the agreed price (contingent or otherwise) imposed on the Government with respect to this or any future contract?

f. Does the contract provide for options?

g. Does the contract provide for price escalations?

h. Are there any Buy American Act or Balance of Payments Program implications?

(xi) Summary of all sensitive or controversial aspects of award. (Include comments concerning any inconsistency between the proposed award and the basis on which negotiation was first authorized. For example, if undue delay was a principal factor for negotiation under ASPR 3-214, and the award as now proposed calls for delivery dates previously represented to the Secretary as unacceptable, mention the fact and explain the implications of taking any action other than that proposed. If sole source negotiation was authorized because of unavailability of a procurement package, and at the time of award such a package is available, call attention to the fact and explain why the proposed award should be made, including an explanation of any alternative courses of action.)

(xii) Attachments, as applicable:

a. A report of cost and price analysis.

b. A statement of contractor responsibility (ASPR 1-903, 1-904).

c. A complete description and discussion of proposed incentive provisions.

d. An analysis of the weighted guidelines factors used, as follows:

i. a summary showing for each profit factor (ASPR 3-808.4(a) the permissible range, and the Government profit objective (in percentages assigned and dollar values). Show also the final negotiated profit as a percentage and as a dollar figure; and

ii. an explanation of the rationale for the Government's profit objective in relation to the final negotiated profit.

e. Additional comments, if any, which support the proposed action.

(c) Where the proposed procurement is to be placed as a letter contract the following information shall be submitted in addition to that in (b) above:

(1) A statement as to the necessity for the use of a letter contract;

(2) The duration of the letter contract in number of days from date of execution;

(3) The amount of the letter contract;

(4) The total estimated definitive contract amount, including the estimated cost of (i) new facilities, (ii) special tooling (iii) activation, or reactivation, (iv) Government-furnished property, and (v) subcontracting; and

(5) The type of definitive contract proposed (fixed-price, cost-plus-a-fixed-fee).

§ 610.204 Approval of awards of contracts.

§ 610.204-1 General.

Subject to any further instructions which may be issued by the Head of Procuring Activity, awards of contracts (including modifications) may be made by contracting officers without the approval of the award by higher authority, except as set forth in the following subparagraphs and in § 610.202.

§ 610.204-2 Personal and professional services.

(a) Statutory provisions (see § 594.1001) require Secretarial action before an award may be made of certain contracts (see §§ 594.1003-2 and 594.1006) for the temporary or intermittent services of experts, consultants, or stenographic reporters. Procedures for submission for Secretarial action are set forth in Subpart J, Part 594 of this chapter. If the Secretary considers the proposed action proper he may either make the necessary determinations and approve the proposed award, or he may make the necessary determinations and authorize the cognizant Head of Procuring Activity to approve the award in the submitted case. A submission for Secretarial action, however, shall be presented on the basis that the Secretary may desire to make the necessary determinations and approve the proposed award at the same time.

(b) As to certain categories of services, the Secretary makes the determinations required by statute as of the beginning of each fiscal year and delegates the authority to approve awards of contracts for such services. This delegated authority to approve awards of contracts in the specified categories is given annually to certain Heads of Procuring Activities. See § 594.1003-3(b) for procedure for submittal to the Head of Procuring Activity. Thus, when a Head of Procuring Activity has been authorized to approve an award of a contract for one or more of such categories, submission to the Secretary before award, as described in paragraph (a) of this section, is not required. The categories of services for which the Secretary normally makes annual determinations are set forth below:

(1) Contracts for personal services of alien specialists necessary to meet the requirements of the Defense Scientists Immigration Program—A (DEFSIP-A), (formerly "Project Paperclip"), and the Defense Scientists Immigration Program—B (DEFSIP-B); (formerly "Project 63");

(2) Contracts for personal services to be performed outside the United States of experts and consultants in the field of radio announcing in Asian languages, geodetics, anthropology and chemical analysis;

(3) Contracts for stenographic reporting services, where the services of qualified Government personnel are not available, in connection with hearings before the New York Industrial Personnel Security Hearing Board, the functions, of the Inspectors General, and hearings before claims and appeals boards of procuring activities;

(4) Contracts for the personal services of actors, narrators, and other technical and professional personnel (excluding organizations thereof) necessary in connection with motion picture or television production; and

(5) Contracts for personal services outside the United States of experts or consultants in the field of law.

(c) See § 594.1005 for procedure for submittal to the addressee in § 591.150 (b) (8) of certain contracts which may involve personal services aspects.

§ 610.204-3 Construction or rehabilitation of facilities, and repairs and utilities.

Awards of contracts and modifications of contracts for construction or rehabilitation of facilities, and repairs and utilities do not require approval by higher authority, unless otherwise required by the Head of Procuring Activity. See, however, AR 15-20, AR 415-25, AR 415-35, AR 420-10 and related DA Circulars and directives.

§ 610.204-4 Architect-engineer services.

(a) General. An architect-engineer (A-E) contract for the production and delivery of designs, plans, drawings, and specifications is referred to as one for Title I services; an A-E contract for the supervision and inspection of construction is referred to as one for Title II services. Authority to contract for Title I and Title II services in the Department of the Army is limited to such procuring activities as have been specifically delegated authority to do so in an annual delegation from the Assistant Secretary of the Army (Installations and Logistics). Responsibility for Army implementation of DOD Directives pertaining to uniform standards for the selection of A-E firms for professional services and uniform standards for the employment and payment of A-E services has been assigned to the U.S. Army Corps of Engineers.

(b) Selection of contractors. The selection of a prospective A-E contractor is governed by the procedures set forth in § 18.402 of this title. See also the OCE publication entitled "Uniform Standards for the Employment and Payment of Architect-Engineer Services." Submittals for approval at a level above the Chief of Engineers pursuant to § 18.402-3 of this title shall be made, through the Office, Chief of Engineers to the addressee at § 591.150(b) (1). A submittal shall contain a statement of the selection proposed together with information in support thereof and sufficient facts to show compliance with Subchapter A, Chapter I of this title and other DOD requirements.

(c) Approval of awards. If the Secretarial delegation imposes a dollar limitation upon award approval authority, the cognizant Head of Procuring Activity who is subject to such limitation shall submit any proposed award of A-E contract for either Title I or Title II services, or both, to the addressee in § 591.150(b) (6), through the Office, Chief of Engineers, in the following instances:

(1) When the contract price for either Title I or Title II services, or both, exceeds the dollar limitation; or

(2) Prior to increasing an existing A-E contract price from an amount equal to or less than the dollar limitation to more than such limitation; provided, however, that award approval of a modification at Secretarial level is not required, regardless of amount, if the proposed modification pertains to either (i) a contract previously approved at such level or (ii) a contract having a previous modification which has been so approved and in either case contains no

material deviation from provisions previously approved.

(d) *Coordination.* In order to provide for uniform application of criteria for A-E contracts within the Department of the Army, any procuring activity (except the Corps of Engineers) granted authority to contract for A-E services shall coordinate plans for entering into such contracts with the appropriate U.S. Army Engineer Division or District prior to selection of the prospective contractor and to negotiation of the proposed contract.

(e) *Master planning.* Authority to negotiate and award A-E contracts relating to Master Planning is restricted and is subject to the specific limitations and exclusions set forth in the annual delegation of authority referred to in paragraph (a) of this section.

(f) *Pricing of A-E contract for non-personal services.* Compensation for A-E services is subject to the following:

(1) The consideration paid to an A-E under any fixed-price type contract for Title I services may not be more than 6 percent of the estimated cost of the public work or utilities project (or portion thereof) for which the A-E undertakes to perform such services. The consideration which may be paid under a cost-reimbursement type contract for Title I services is subject to the limitations set forth in §§ 3.405-4(c) and 3.405-5(c)(2) of this title, whichever is applicable. When an A-E contract calls for both Title I services and Title II services, the consideration to be paid the contractor for Title I services shall be separately stated therein.

(2) The A-E contract price shall be negotiated in accordance with the applicable parts and related exhibits of the publication "Uniform Standards for the Employment and Payment of Architect-Engineer Services" issued by the U.S. Army Corps of Engineers.

(g) *A-E contract for personal services.* A personal services contract with an individual for A-E services (see § 594.1004(a)) is subject to the requirements set forth in §§ 594.1003-4 and 594.1003-5 (c), (e), and (f). Award approval by the Head of Procuring Activity shall be obtained in the same manner as provided in § 594.1003-3(b).

§ 610.204-5 Utility services.

(a) *Procurement of power, gas, water.* The Chief of Engineers, acting for the Secretary of the Army, is the Department of the Army Power Procurement Officer and in this capacity is responsible for the administration of the purchase and sale of utilities services, and for policies, engineering, rates, and legal sufficiency in connection with all utility services transactions and contracts relating thereto in which the Department of the Army has a monetary interest. The purchase of utility services is governed by AR 420-41 and AR 420-62, which define the term "utilities services" and prescribe the required approvals for utilities services contracts and modifications. All contracts and modifications which, under the provisions of the above regulations, are subject to the approval of the Army Power Procurement Officer or his authorized

representative, shall be submitted to the Chief of Engineers, ATTN: Army Power Procurement Officer, together with the following information:

- (1) The complete load data;
- (2) The estimated maximum demand in kilowatts;
- (3) The estimated average monthly demand in kilowatts;
- (4) The estimated average monthly usage in kilowatt-hours;
- (5) The estimated power factor;
- (6) Similar applicable information for the estimated usage of water, gas, sewage disposal, and steam contracts; and
- (7) Any other available pertinent information that will facilitate review, including but not limited to, analysis of available rates and charges, supporting data for estimates of demand and use, and difficulties experienced in negotiation.

(b) *Procurement of communications services.* The Commanding General, U.S. Army Strategic Communications Command and the Commanding General, U.S. Continental Army Command, have been delegated authority to enter into contracts for communications services for periods extending beyond a current fiscal year, but not exceeding 10 years. Although this authority may be redelegated, a contracting officer who has not been delegated such authority may not procure communications services with annual funds for periods beyond the end of the current fiscal year. Procurement of leased communication circuits, of telephone and telegraph communication facilities and services, and of certain other communication services is normally accomplished by the issuance of a Communication Service Authorization (CSA), DD Form 428. CSA's are issued against outstanding basic agreements, or indefinite quantity, indefinite delivery type contracts entered into by the Defense Communications Agency, the U.S. Army Strategic Communications Command, or other central agency. Limitations on procurements accomplished by issuance of CSA's are as follows:

- (1) The CSA will not call for communication services beyond the end of the fiscal year applicable to the annual funds available for obligation unless it is approved by one of the Secretarial designees referred to above or unless the appropriate authority has been redelegated to the cognizant contracting officer;
- (2) The CSA will not call for communication services beyond the expiration date of the contract or agreement under which it is issued;
- (3) The CSA will not call for communication services for a period greater than 10 years or such lesser period as may have been specified in the redelegation to the contracting officer; and
- (4) Each CSA will contain a specific date within subparagraphs (1), (2), or (3) of this paragraph, as appropriate, upon the happening of which the CSA expires by its own terms.

§ 610.204-6 Government-owned contractor-operated plants (GOCO).

A Head of Procuring Activity is authorized to approve awards of contracts and modifications to contracts for the

maintenance or operation of, or for manufacture in, GOCO plants. This authority may be redelegated to the extent deemed necessary without authority of further redelegation.

§ 610.204-7 Management engineering services.

(a) Management engineering services and activities are explained in paragraph 2, AR 1-110. A contracting officer shall not execute a contract (or modification) for management engineering services prior to receipt, through channels, of Secretarial approval of the project. In the event that proposed contracts and modifications to contracts for such services are forwarded to higher authority in connection with obtaining Secretarial approval of the project as required by paragraph 7, AR 1-110, such proposed contracts or modifications to contracts shall be submitted through the Comptroller of the Army to the Secretary.

(b) In the event that proposed contracts and modifications to contracts for management engineering services are forwarded to the Secretary for contract award approval because (1) the services being procured are of a personal services nature (§ 610.204-2), or (2) Secretarial approval of award is required or desired for other reasons, such proposed contracts or modifications to contracts shall be submitted to the addressee in § 591.150 (b) (8).

(c) AR 1-110 is not applicable to the employment of experts or consultants on a per diem basis (§ 610.204-2).

§ 610.204-8 Leases of Government personal property.

Proposed leases and modifications to leases of Government personal property, except as otherwise provided by specific delegation of the Secretary, shall be submitted for approval to the addressee listed in § 591.150(b) (8).

§ 610.204-9 Automatic data processing equipment.

In connection with the award of contracts for acquisition or use of ADPE, see AR 1-251.

Subpart C—Disputes Procedure

§ 610.301 Decisions under the "Disputes" clause.

(a) Each decision or determination required by a contractual provision to be made by the contracting officer shall be given his personal and independent consideration. He shall use the aid of such technical and legal advisors as may be available to him.

(b) The contracting officer shall screen disputes arising under contracts to insure that decisions appealable under the Disputes clause are rendered only on disputes subject to that clause. For example, where a mistake in bid is alleged by a contractor after award, the procedure outlined in § 2.406-4 of this title and § 592.406-4 of this chapter should be followed. Similarly, where a dispute concerning the offering or giving of a gratuity arises under the Gratuities clause (§ 7.104-16 of this title), the Disputes clause does not apply (see § 30.4 of this title and Subpart H of this part).

When a contracting officer is doubtful as to whether a decision should be made pursuant to the Disputes clause, he should obtain legal advice.

(c) When it becomes necessary to render a decision under the Disputes clause, the contracting officer shall prepare findings of fact and his decision (which may be incorporated in a single document). The decision (and a copy of the findings, if separate) shall be promptly furnished to the contractor (see § 1.314 of this title and § 591.314 of this chapter). It is important that the contract file accurately reflect the date on which the decision was furnished to the contractor.

§ 610.302 Procedural instructions keyed to rules of § 30.1 of this title.

(a) *Rule 3.* A notice of appeal received by any Department of the Army agency shall be transmitted direct to the addressee listed in § 591.150(b)(3). In addition to endorsing thereon the date of mailing (or date of receipt, if otherwise conveyed), the original recipient shall preserve and forward any envelope showing the postmark.

(b) *Rule 4.* (1) The contracting officer shall include with the compilation of documents enumerated in Rule 4 a listing of its contents and shall submit the compilation and listing direct to the Board.

(2) At the time of submission of the compilation referred to in subparagraph (1) of this paragraph, the contracting officer shall transmit direct to the Chief Trial Attorney (whose address is listed in § 591.150(b)(4)) with a copy to the Head of Procuring Activity, the following documents:

Note: The comprehensive report described in subdivision (ii) of this subparagraph shall not be transmitted to the Board or to the contractor.

(i) A copy of the listing and compilation referred to in subparagraph (1) of this paragraph; and

(ii) A comprehensive report which includes the following:

(a) The names and addresses of all potential witnesses, including those of the contractor, if known, having information concerning the facts in dispute;

(b) A signed statement by each Government witness reflecting the facts to which he will be able to testify (or a summary thereof if it is impossible to obtain the signed statement), and a statement as to the expected availability of each Government witness at the hearing;

(c) An analysis of the contractor's position and a discussion of the validity thereof;

(d) A memorandum by the legal adviser of the official making the decision, setting forth an analysis of the legal issues involved in the dispute and comments upon the adequacy of the finding of fact and the legal sufficiency of the decision; and

(e) The advisory report, if any, of the Contract Settlement Review Board.

(3) A copy of the listing referred to in subparagraph (1) of this paragraph shall be provided the appellant in satisfaction of the listing requirement of Rule 4. The contracting officer shall

notify the appellant that if the appellant desires to furnish any additional documentation, the contractor should (i) identify such documentation with the appeal and transmit it direct to the Board, (ii) notify the contracting officer by furnishing him with a list of the documents so transmitted, and (iii) maintain a copy of such documentation for examination by the contracting officer or his representative. If the appellant suggests any additional documentation to be provided by the contracting officer, the contracting officer shall notify the Chief Trial Attorney and shall withhold action with respect to the suggestion until advice of the Chief Trial Attorney has been considered; provided that, this provision does not apply to obvious unintended omission of documentation on the part of the contracting officer.

(4) A copy of all correspondence and all other data and information pertinent to the dispute received by the contracting officer after the comprehensive report has been submitted shall be forwarded promptly direct to the Chief Trial Attorney, with a copy to the Head of Procuring Activity.

(c) *Rule 6.* (1) If the complaint is received by the contracting officer subsequent to transmittal of the comprehensive report (paragraph (b)(2)(ii) of this section), the contracting officer shall, as promptly as possible but in not more than 15 days after receipt thereof, forward directly to the Chief Trial Attorney with a copy to the cognizant Head of Procuring Activity, supplementary information covering any issues raised by the complaint which were not sufficiently covered in the comprehensive report, including specific admissions or denials of each allegation of fact contained in the complaint and a statement of any affirmative defenses or counterclaims applicable.

(2) The Chief Trial Attorney and the attorneys assigned to his office are authorized to communicate directly by telephone or otherwise with any person or organization to secure any witnesses, documents, or information considered necessary in connection with representing the Government in matters before the Board. The contracting officer will be informed of any actions taken in connection with the above matters.

(d) *Rule 27.* (1) Upon discovery of new facts or circumstances, the Chief Trial Attorney is authorized, in appropriate cases, to return appeals to the Head of Procuring Activity for reconsideration in the light of additional facts or circumstances disclosed.

(2) An agreement on matters as to which there is no substantial controversy and which will not have the effect of disposing of an appeal may be entered into by the Chief Trial Attorney or by an individual trial attorney; provided that, in the case of a prehearing written stipulation or agreement, authority therefor shall have been granted in advance by the Chief Trial Attorney.

(3) In appropriate cases, such as those where time-consuming delays would occur by returning the appeal to the contracting officer, the Chief Trial Attorney (or an individual trial attorney acting with the prior approval of the Chief Trial

Attorney) may enter into an agreement with an appellant which will have the effect of disposing of an appeal after concurrence has been obtained from a representative of the Head of Procuring Activity. Such agreement may then become the basis of a Board decision disposing of the appeal.

(e) *Rule 29.* (1) The Chief Trial Attorney shall independently review all Board decisions involving Army contracts. If he determines that any such decision should be reconsidered, he shall file with the Board a motion for reconsideration. If, in connection with § 610.303(b), he does not concur with a request of the Head of Procuring Activity that a motion for reconsideration is appropriate, he shall forward the request together with his reasons in opposition, within 5 days, to the Assistant Secretary of the Army (Installations and Logistics) for decision.

(2) At a hearing on a motion for reconsideration, the Government's case normally shall be presented by the Chief Trial Attorney, assisted by the trial attorney who argued the Government's case on the appeal and an attorney designated by the Head of Procuring Activity.

§ 610.303 Responsibility of Head of Procuring Activity.

(a) When an appeal to the Secretary under the Disputes clause has been filed, the Head of Procuring Activity, in addition to furnishing appropriate technical and legal assistance to the contracting officer, shall—

(1) Review the findings of fact for completeness as to all issues bearing on the matter in dispute and for the consistency therewith of the decision from which the appeal is taken;

(2) Review for completeness the contracting officer's comprehensive report, including the evidence submitted in support of his decision;

(3) Advise the contracting officer either to furnish additional support for any decision from which a timely appeal has been taken or to withdraw it, when it is clear from the contract provisions or the applicable law that the decision is not sufficiently supported by available and competent evidence or is erroneous;

(4) Not more than 10 days after taking the action prescribed in subparagraph (3) of this paragraph, notify the Chief Trial Attorney of the nature of the action taken and of an estimate as to when either additional support will be furnished or the decision will be withdrawn;

(5) Not more than 10 days after receiving the comprehensive report, forward to the Chief Trial Attorney—

(i) Such evaluations, conclusions, and recommendations as he deems appropriate, and

(ii) Any additional evidence considered essential to enable the Chief Trial Attorney properly to protect the interests of the Government before the Board; and

(6) Insure that assistance is rendered to the Chief Trial Attorney in obtaining additional evidence or in making other necessary preparations for presenting the Government's position before the Board.

(b) Decisions of the Board shall be reviewed by the procuring activity and, if the Head of Procuring Activity is of the opinion that a decision should be reconsidered, he may within 10 days of the receipt of the decision, request the Chief Trial Attorney to file a motion for reconsideration, giving the grounds relied upon to sustain such motion.

(c) The Chief Trial Attorney shall present to the Board all Army cases (except that Corps of Engineers attorneys will act as trial attorneys in connection with Corps of Engineers contract cases). When it has been determined by the Commanding General, U.S. Army Materiel Command that an appeal before the Board has particular significance to his activity and it involves difficult operational and technical facts, he may, on the filing of the comprehensive report and after consultation with The Judge Advocate General, detail to the Chief Trial Attorney an attorney of his procuring activity who will be an attorney of record.

§ 610.304 Appeals before intermediate boards in overseas areas.

(a) When contracts of a procuring activity in an overseas area provide for an intermediate appeal (see § 597.103-12), the cognizant Head of Procuring Activity shall issue necessary instructions covering the processing of such appeals. An appeal to the Secretary taken from the decision of the Head of Procuring Activity is processed in accordance with paragraph (b) of this section.

(b) Upon receipt of a notice of appeal from the decision of an overseas Head of Procuring Activity, or advice that an appeal has been filed, the contracting officer shall immediately transmit to the Head of Procuring Activity such notice or advice. Thereupon the Head of Procuring Activity shall perform the duties of the contracting officer as set forth in Rule 4 and in § 610.302(b). Signed statements or summaries of expected testimony are not required with the comprehensive report when the substance of expected testimony is set forth in the transcript of proceedings.

Subpart D—Contract Financing Policies and Procedures

§ 610.401 Surveillance of contract financing and reports of adverse developments.

(a) Surveillance shall be maintained over all contractors who have been authorized guaranteed loans, progress payments, or advance payments. The degree of surveillance required depends upon the nature of the procurement, the type and amount of Government financing involved, and the character and financial ability of the contractor. Such surveillance should include but not necessarily be limited to—

- (1) Frequent or periodic visits to the contractor's plant;
- (2) Securing information concerning the contractor's backlog of unfilled contractual commitments;
- (3) Obtaining current financial statements from the contractor as often as deemed necessary; and

(4) Having the contracting officer's resident or traveling representative submit to the contracting officer not less frequently than monthly or more often if deemed necessary, his appraisal of the operations of the contractor. The appraisal should include such information as the quality of production or performance, rejection rate, contractor's ability to meet delivery schedules, and other pertinent information regarding the contractor's operations.

(b) Wherever a contractor appears to be in financial or production difficulties which might impair the security or liquidation of Government-furnished financial assistance, the services of the cognizant audit office may be utilized to conduct an analysis of the contractor's accounts and financial operations.

(c) If at any time the contracting officer or the Head of Procuring Activity determines or has reason to believe that a contractor who has been authorized a guaranteed loan, progress payment or advance payment is (1) experiencing financial problems which are becoming sufficiently serious to prevent the purchase of materials necessary for production under Government contracts; (2) approaching insolvency or possible bankruptcy; or (3) experiencing production problems or other adverse conditions which may seriously delay performance or cause the contractor to default on Government contracts, a complete report of such situation shall be prepared and forwarded on a priority basis to the addressee at § 591.150(b) (5). The original shall be transmitted through channels; however, one copy shall be transmitted direct to the addressee above. The Head of Procuring Activity shall transmit with the report recommendations as to the action which should be taken. This report, "Contractors in difficulty authorized guaranteed loans, progress payments or advance payments" is assigned Reports Control Symbol CSCAC-6.

(d) Prompt notification to the addressee at § 591.150(b) (13) is also required to protect the Government's interest in case of a contractor's bankruptcy, receivership, assignment for the benefit of creditors or other insolvency proceedings. For instructions in this regard see the pertinent portion of AR 37-103 (which in Change 46 of November 11, 1963, was paragraph 11-53).

§ 610.402 Advance approval.

(a) *Progress payments.* Requests involving unusual progress payments (enumerated in § 163.86 of this title), if regarded favorably by a Head of Procuring Activity, or his deputy when so authorized, shall be forwarded with supporting information to the addressee at § 591.150(b) (5).

(b) *Advance payments.* Except for signature blocks, the "Findings, Determinations, and Authorization" (referred to in §§ 163.60 and 163.62(f) of this title) shall be submitted and countersigned by a Head of Procuring Activity, or his deputy when so authorized, and forwarded to the addressee at § 591.150(b) (5).

(c) *Advance payment pool agreements.* See § 163.68(a) of this title. The appropriate "Findings, Determination and Authorization" (referred to in §§ 163.60 and 163.62(f) of this title) shall be provided by the Director of Contract Financing, Officer of the Comptroller of the Army for signature by the approving authority regardless of the level where the request for pooled advance payments is initiated.

§ 610.403 Contract debts—interest—deferred payments.

(a) Transfer of case files pursuant to § 163.109 of this title shall be made to the addressee at § 591.150(b) (5), through channels. Such files shall include the contracting officer's brief narrative report of the case giving—

- (1) The name and address of the contractor;
- (2) The contract number;
- (3) The name and location of the finance and accounting office;
- (4) The nature and amount of debt involved;
- (5) A citation to the appropriation to which collection is to be credited;
- (6) A copy of demand made by the contracting officer;
- (7) A statement as to whether the contract contains an interest clause (if so, a copy thereof or a citation thereto);
- (8) The date of filing of appeal, if any; and
- (9) Recommendations on deferred payment proposal, if any.

(b) If the indebtedness represents excess costs incurred in purchasing supplies or services against the account of a defaulted contractor, the file shall also include the following payment data relating to the replacement contract:

- (1) The name and address of the replacement contractor;
- (2) The finance and accounting office voucher number;
- (3) The date paid;
- (4) The bills of lading numbers;
- (5) The name of carrier; and
- (6) The name and symbol number of the finance and accounting officer.

(c) If the indebtedness represents liquidated damages, an explanation of the basis on which such damages were assessed will be furnished. The report shall be forwarded as promptly as possible, ordinarily within 15 days after the end of the 30-day period following the demand for payment (exempt report, par. 39a, AR 335-15).

(d) A report submitted pursuant to this section does not operate to supersede the requirement for appropriate reports to the addressee at § 591.150(b) (13) in the event a contractor becomes the subject of bankruptcy or similar insolvency proceedings. See § 610.401(d); also paragraph 7, AR 27-5.

(e) In connection with the transfer of accountability (§ 163.109 of this title), refer to Chapter 6, AR 37-108.

Subpart E—DA Circular 718—Series

§ 610.501 Open End Contract Information Circulars (OECIC).

(a) *General.* OECIC's are Department of the Army circulars of the 718-

series which contain information concerning the existence of contracts described in § 3.409 of this title initiated by contracting officers within the U.S. Army Materiel Command to fill requirements that are nationwide in scope or that cover a large geographic area. An OECIC may be published for an individual item or group of related items when (1) the appropriate indefinite delivery type contract is utilized and (2) the Commanding General, U.S. Army Materiel Command or his designee determines that sufficient requirements over a large area exist. OECIC's are not published for subsistence or POL.

(b) *Contents.* The OECIC contains information such as circular number and expiration date, item description, contractor, contract number and effective period, whether utilization is optional or mandatory, limitations on maximum or minimum orders, whether delivery is f.o.b. point of origin or destination or otherwise, time allowed for delivery, whether provision has been made for exchange or trade in of used items, level of packing and packaging required, the name and address to which delivery orders should be sent, an address where contracting officers may forward a direct request for a copy of the contract for the purpose of obtaining needed information as to price and other details, and rescissions of previous circulars.

(c) *Responsibility for use.* Each Department of the Army contracting officer located within the United States shall take the following actions with respect to OECIC—

- (1) Obtain and promptly review for applicability to his mission.
- (2) Secure complete contract information as needed, and
- (3) Utilize to maximum appropriate extent.

Subpart G—Treatment of Depreciation on Emergency Facilities Covered by Certificates of Necessity for Contract Pricing Purposes

§ 610.701 Procedure.

Questions arising in connection with the processing or treatment of depreciation on emergency facilities covered by certificates of necessity shall be referred to the Chairman, Army Emergency Facilities Depreciation Board, Office of the Deputy Chief of Staff for Logistics, Department of the Army, Washington, D.C., 20310.

Subpart H—Procedures Under the Gratuities Clause

§ 610.801 Purpose.

This Subpart establishes procedures under which the Department of the Army will exercise the powers conferred upon the Secretary by 10 U.S.C. 2207 and § 30.4 of this title with respect to hearing, findings, termination of contracts, and imposition of exemplary damages in instances under Government contracts where the contractor, his agent, or other representatives may have offered or given any gratuity to an officer, official, or employee of the Department of the Army

to obtain a contract or favorable treatment in awarding, amending, or making of determinations concerning the performance of a contract in violation of the Gratuities clause (§ 7.104-16 of this title). (See also AR 600-50 and CPR C2.)

§ 610.802 Reporting requirements.

(a) Any information received by military or civilian personnel of the Department of the Army which indicates that action under the Gratuities clause may be appropriate shall be forwarded for evaluation and appropriate action through channels to the military commander having jurisdiction over the contract (exempt report, par. 39n, AR 335-15).

(b) If evaluation indicates that a hearing under the Gratuities clause may be appropriate, the military commander shall forward the facts promptly and directly to the cognizant Head of Procuring Activity. Information initially forwarded to the Head of Procuring Activity shall include:

- (1) The name and address of the contractor together with full information as to form of organization, including names and addresses of principals;
- (2) The complete contract data including number, date, estimated day of completion of performance, general description of supplies or services procured, amount, status of performance and of payment under the contract, urgency of requirements, and availability of the supplies or services from other sources;
- (3) A summary of the facts concerning the suspected violation, including names and addresses, dates, and references to documentary evidence available; and
- (4) The status of the investigation, if any, with an estimated date on which it will be submitted.

(c) A complete report of investigation, if required, shall be submitted as soon as practicable (exempt report, par. 39t, AR 335-15). In connection with the investigation, care must be taken to preserve the admissibility of documentary evidence and exhibits, bearing in mind that action adverse to a contractor under the Gratuities clause is subject to review by a competent court. Copies or descriptions shall be utilized in the report where necessary or desirable to preserve the chain of custody.

(d) The Head of Procuring Activity shall forward such information upon its receipt, together with his recommendations, through channels to the addressee at § 591.150(b)(6). Pending final action on the matter, the Head of Procuring Activity shall also submit to such addressee for approval any proposed termination, setoff, or withholding action. Pending this determination, and when a hearing before the Board is recommended, the contracting officer administering the contract or contracts involved shall withhold from payments otherwise due to the contractor a sum equivalent to 10 times the estimated costs of the gratuities alleged to have been provided by the contractor in violation of the Gratuities clause.

§ 610.803 Referral for hearing.

(a) The Director of Procurement, Office of the Assistant Secretary of the Army (Installations and Logistics) shall determine whether the matter will be referred for a hearing. When it is determined that a matter will be referred for hearing, the Director of Procurement will advise in writing the Chairman of the Armed Services Board of Contract Appeals (Board), requesting that he cause the case to be heard by a division of the Board. The request for hearing shall contain sufficient information concerning the case to permit the Board Recorder to provide due notice to the contractor.

(b) The Director of Procurement shall furnish the files in the matter to The Judge Advocate General, ATTN: Chief, Contract Appeals Division, for use of Government counsel.

§ 610.804 Delegation of authority and hearing procedures.

(a) The division of the Board designated under § 610.803(a) is delegated the authority to take the actions set out in paragraph 3, § 30.4 of this title in accordance with the procedures contained in that section.

(b) Each party may be represented in the hearing by counsel who shall be the representative of record. Counsel for the Government shall be furnished by The Judge Advocate General from officers of The Judge Advocate General's Corps assigned to the Contract Appeals Division, Office of The Judge Advocate General.

(c) The Board Recorder shall arrange for a verbatim record of the proceedings to be transcribed in the number of required copies. He shall furnish copies of transcripts to contractors concerned upon payment of reasonable costs.

§ 610.805 Post-hearing actions.

(a) Findings and recommendations of the designated division of the Board, shall be forwarded expeditiously to the addressee at § 591.150(b)(1) for his action, as required by paragraph 14 of § 30.4 of this title.

(b) The Director of Procurement shall promptly furnish the contractor with a copy of the Secretarial decision. Advice concerning the Secretarial action will be forwarded to the cognizant Head of the Procuring Activity who shall furnish notification and instructions, as required, to the contracting officer without delay.

(c) At the conclusion of the case, the Board Recorder shall forward all files in the matter to the Office of The Judge Advocate General which shall serve as the office of record for cases brought for hearing under 10 U.S.C. 2207. With the approval of the Director of Procurement, the Office of Record may make available to persons properly and directly concerned matters of official record pertaining to the case.

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

[F.R. Doc. 65-10141; Filed, Sept. 23, 1965;
8:45 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Department of Justice

Section 213.3310 is amended to show the exception under Schedule C of two additional positions of Staff Assistant in the Criminal Division. Effective on publication in the FEDERAL REGISTER, subparagraph (10) of paragraph (f) of § 213.3310 is amended as set out below.

§ 213.3310 Department of Justice.

(f) *Criminal Division.* * * *

(10) Three positions of Trial Attorney (General)—Staff Assistant.

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

[F.R. Doc. 65-10172; Filed, Sept. 23, 1965; 8:48 a.m.]

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

Noncompetitive Appointment of Certain Present and Former Foreign Service Officers and Employees

Part 315 is amended to show that certain present and former Foreign Service Career officers and employees may be eligible for noncompetitive appointment to positions in the competitive service, provided the Commission has concurred in their present or former agency's plan for noncompetitive entry of civil service employees into the Foreign Service positions of that agency. Effective on publication in the FEDERAL REGISTER, § 315.606 is added to Subpart F of Part 315 as set out below.

§ 315.606 Noncompetitive appointment of certain present and former Foreign Service officers and employees.

Subject to the conditions prescribed by the Commission in the Federal Personnel Manual, an agency may appoint noncompetitively a present or former career officer or employee of the Foreign Service who was appointed under authority of the Foreign Service Act of 1946, as amended, or legislation that supplements or replaces that Act, if:

(a) He qualifies under the requirements set forth in Executive Order 11219, and

(b) The Commission has concurred in his present or former agency's plan, and substantive changes thereto, for noncompetitive entry of civil service employees into the Foreign Service positions of that agency.

(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; sec. 315.606 also issued under E.O. 11219, 30 F.R. 6381, 3 CFR, 1965 Supp.)

UNITED STATES CIVIL SERVICE COMMISSION,

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

[F.R. Doc. 65-10173; Filed, Sept. 23, 1965; 8:49 a.m.]

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

PART 261—RULES REGARDING INFORMATION, SUBMITTALS, AND REQUESTS

PART 262—RULES OF PROCEDURE

Bank Holding Company and Merger Applications

The following amendments are made in Chapter II:

§ 161.2 [Amended]

1. Effective October 30, 1965, § 261.2 (d) (2) (v) is amended by inserting before the period at the end thereof the following: "and except as provided in § 262.2(f) (7) of this chapter concerning bank holding company and bank merger applications".

2. Effective October 30, 1965, § 262.2(f) (7) is amended to read as follows:

§ 262.2 Applications and requests.

(f) *Bank holding company and merger applications.* * * *

(7) Unless the Board shall otherwise direct, each holding company and merger application received subsequent to October 30, 1965, shall be made available for inspection by the public except for portions thereof as to which the Board determines that disclosure would not be in the public interest.

3a. The purpose of these amendments is to make available for public inspection bank holding company and bank merger applications received by the Board subsequent to October 30, 1965, subject to certain limitations, whether or not the Board has ordered public hearings or oral presentations of views with respect to the applications. At present, such an application shall be available for inspection by the public, except such portions thereof as to which the Board finds that disclosure would not be in the public interest, if the Board orders a public hearing or oral presentation of views with respect to the application. The exception with respect to portions of the applications as to which disclosure would not be in the public interest will be continued by the amendments.

b. Notice, public participation, and deferred effective date, are not required by section 4 of the Administrative Procedure Act for rules of agency procedure or practice and, therefore, were not necessary in connection with the adoption of these amendments. Nevertheless, the

amendments set forth herein were the subject of a notice of proposed rule making published in the FEDERAL REGISTER (30 F.R. p. 6275) and were adopted by the Board after consideration of all relevant matters, including the views and arguments received from interested persons.

(Sec. 11(1), 38 Stat. 262; 12 U.S.C. 248(1))

Dated at Washington, D.C., this 15th day of September 1965.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM.

[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 65-10151; Filed, Sept. 23, 1965; 8:46 a.m.]

Title 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice

PART 287—FIELD OFFICERS; POWERS AND DUTIES

Proof of Official Records

The following amendment to Chapter I of Title 8 of the Code of Federal Regulations is hereby prescribed:

Section 287.6 is added to read as follows:

§ 287.6 Proof of official records.

In any proceeding under this chapter, an official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the official having legal custody of the record or by his deputy. If the office in which the record is kept is in foreign territory, the attested copy shall be accompanied by a certificate indicating that the attesting officer has custody of the official record or entry; such a certificate may be made by any officer in the foreign service of the United States stationed in the foreign territory in which the record is kept.

(Sec. 103, 66 Stat. 173; 8 U.S.C. 1103)

This order shall be effective on the date of its publication in the FEDERAL REGISTER. Compliance with the provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) as to notice of proposed rule making and delayed effective date is unnecessary in this instance because the rule prescribed by the order relates to agency procedure.

Dated: September 2, 1965.

RAYMOND F. FARRELL,
Commissioner of

Immigration and Naturalization.

[F.R. Doc. 65-10150; Filed, Sept. 23, 1965; 8:46 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency SUBCHAPTER D—AIRMEN

[Reg. Docket No. 6204; Amdt. 61-20]

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

Pilot Rating Requirements

Correction

In F.R. Doc. 65-9871 appearing in the issue for Friday, September 17, 1965, at page 11903, make the following changes:

a. On page 11904, second column in the second undesignated paragraph following paragraph 4, line 3 should read "Notice No. 64-42, with the exception of".

b. Amendatory paragraph No. 6 should read as follows:

6. By striking out paragraph (b) of § 61.101 and redesignating paragraph (c) as paragraph (b).

Chapter II—Civil Aeronautics Board

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. No. ER-444]

PART 247—DIRECT AIRPORT-TO-AIRPORT MILEAGE RECORDS

Official Mileage Record of the Board

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 20th day of September 1965.

The function of maintaining, amending, and revising official direct airport-to-airport mileage records to be used in all instances where it becomes necessary to determine such mileage pursuant to Titles IV and X of the Act is presently being performed by the Schedule Records Unit of the Office of the Secretary of the Civil Aeronautics Board, whereas it was formerly performed by the Tariffs Section of the Bureau of Economic Regulation, the successor to the Bureau of Air Operations. The following amendment of § 247.1 is designed to reflect this fact and also the additional fact that the Civil Aeronautics Act of 1938 has been superseded by the Federal Aviation Act of 1958, as amended.

Since these amendments are purely editorial in nature they may be issued without public notice and procedure. This action is taken by the General Counsel of the Board pursuant to the authority conferred upon him by § 385.20 of the Organizational Regulations (see OR-13, F.R. 10842, August 20, 1965). The regulation is effective 20 days after publication in the FEDERAL REGISTER and any person desiring review of the action here taken should file a petition seeking such review within 10 days after publication in the FEDERAL REGISTER in accordance with the provisions of § 385.51.

In consideration of the foregoing the Civil Aeronautics Board by the under-

signed hereby amends Part 247 of the Economic Regulations (14 CFR Part 247) effective 20 days after publication in the FEDERAL REGISTER by revising § 247.1 to read as follows:

§ 247.1 Official mileage record of the Board.

The direct airport-to-airport mileage record now maintained, and as hereafter amended or revised from time to time by the Schedule Records Unit of the Office of the Secretary of the Civil Aeronautics Board in the regular performance of its duties, is hereby adopted as the official mileage record of the Board and the mileages set forth therein shall be used in all instances where it shall be necessary to determine direct airport-to-airport mileages pursuant to the provisions of Titles IV and X of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order of the Board pursuant thereto.

(Secs. 204, 407, 72 Stat. 743, 766; 49 U.S.C. 1324, 1377)

By the Civil Aeronautics Board.

[SEAL] JOHN H. WANNER,
General Counsel.

[F.R. Doc. 65-10171; Filed, Sept. 23, 1965; 8:49 a.m.]

Title 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice

[Order No. 347-65]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart K—Criminal Division

GENERAL FUNCTIONS

Assigning to the Criminal Division the responsibility for the enforcement of the Federal Cigarette Labeling and Advertising Act (P.L. 89-92; 79 Stat. 282).

Under and by virtue of the authority vested in me by section 161 of the Revised Statutes (5 U.S.C. 22) and section 2 of Reorganization Plan No. 2 of 1950, § 0.55 of Part 0 of Title 28 of the Code of Federal Regulations is amended by adding at the end thereof a new paragraph as follows:

§ 0.55 General functions.

(c) All criminal and civil litigation under the Federal Cigarette Labeling and Advertising Act, 79 Stat. 282.

(R.S. 161; 5 U.S.C. 22; sec. 2, Reorg. Plan No. 2 of 1950; 3 CFR, 1949-53 Comp., 64 Stat. 1261)

Dated: September 20, 1965.

NICHOLAS DEB. KATZENBACH,
Attorney General.

[F.R. Doc. 65-10170; Filed, Sept. 23, 1965; 8:48 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 11—Coast Guard, Department of the Treasury

[CGFR 65-21]

PART 11-1—GENERAL

Subpart 11-1.3—General Policies

PART 11-3—PROCUREMENT BY NEGOTIATION

Subpart 11-3.1—Use of Negotiation

COMPETITION, AND GENERAL REQUIREMENTS FOR NEGOTIATION

These amendments establish requirements for applying competitive procurement procedures to component items and are issued in this chapter by direction of the Commandant, United States Coast Guard pursuant to the authority contained in Treasury Department Order 167-17 (20 F.R. 4976) and Treasury Department Order 167-50 (28 F.R. 530):

1. Section 11-1.301-1 is added, reading as follows:

§ 11-1.301-1 Competition.

In addition to the requirements of § 1-1.301-1, the purchases and contracts referred to therein are inclusive of end products (including services) and component items of such end products susceptible to separate advertised procurement when such procurement is determined to be both economical and practicable. In taking the required screening action for all purchases and contracts, Coast Guard contracting officers shall include a review and determination as to areas wherein substantial procurement of component items appears to be a part of the end product covered by purchase request. These areas should be further reviewed from a competitive procurement point of view, referred to the technical personnel responsible for the procurement request, and a further determination made as to the feasibility of separate procurement action for component items where justified on the basis of being both economical and practical. The advice received from the interested technical personnel should be carefully considered in view of possible controlling factors that procurement personnel are not aware of.

2. In § 11-3.101 the existing text is designated as paragraph (a), and a new paragraph (b) is added, reading as follows:

§ 11-3.101 General requirements for negotiation.

(a) * * *

(b) In addition to the requirements of § 1-3.101(d), the requirements of § 11-1.301-1 relative to component items susceptible to separate procurement when economical and practicable to do

so are also applicable to negotiated procurements.
(14 U.S.C. 633, 10 U.S.C. Ch. 137)
[SEAL] W. D. SHIELDS,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.
SEPTEMBER 16, 1965.
[P.R. Doc. 65-10164; Filed, Sept. 23, 1965; 8:49 a.m.]

Boats, western style.
Cabinets with radio or other electronic equipment installed.
Clothes pins, spring type.
Guitars, electric.
[SEAL] MARGARET W. SCHWARTZ,
Director, Office of
Foreign Assets Control.
[P.R. Doc. 65-10166; Filed, Sept. 23, 1965; 8:48 a.m.]

Title 31—MONEY AND FINANCE: TREASURY

Chapter V—Office of Foreign Assets Control, Department of the Treasury
PART 500—FOREIGN ASSETS
CONTROL REGULATIONS

Importation of and Dealings in Certain Merchandise

Section 500.204, Appendix, is being amended to authorize under certain conditions the importation without a license of certain Chinese type articles from Japan and of electric guitars made of hardwood from the countries specified in paragraph (a) (3) of § 500.204.

Section 500.204, Appendix, is hereby amended by the addition of the following authorization:

(218) Certain Chinese Type Articles from Japan. The following Chinese type articles subject to § 500.204(a) (2) (ii), not including antiques, originating in and imported directly from Japan are hereby authorized to be imported without a certificate of origin or a specific license, provided there has been no interest therein of a designated national: Bronze, silver, and other metal articles. Ceramics.

Coral articles.
Ivory articles.

Jade and other semi-precious stone manufactures (jewelry, figurines, bowls, etc.).

Section 500.204, Appendix, item (203), is hereby amended by the addition of electric guitars to the list of hardwood manufactures contained therein. As amended, item (203) shall read as follows:

(203) Hardwood manufactures. The following hardwood manufactures subject to § 500.204(a) (3) are hereby authorized to be imported without a certificate of origin or specific license, provided there has been no interest therein of a designated national:

It is further ordered, That service be made on all carriers by railroad which are affected hereby and that notice of this order be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by filing with the Director, Office of the Federal Register.

(Sec. 12, 24 Stat. 383, as amended; 49 U.S.C. 12, Interpret or apply sec. 20, 24 Stat. 386, as amended; 49 U.S.C. 20)

By the Commission, division 2.

[SEAL] H. NEIL GARSON,
Secretary.

1. In § 110.7, item 15 is amended to read as follows:

Item	Description of records, etc.	Period to be retained
15	Contracts and agreements: (a) Contracts, leases and agreements, except those provided for in items 15(b), 20, 81, and 204. (b) Contracts and required files for transactions which are subject to the provisions of the Clayton Antitrust Act (15 U.S.C. 26).	5 years after termination, expiration, or completion. In original form for 38 years after termination, expiration, or completion. In copies for 10 years after termination, expiration, or completion. In copies for 10 years after termination, expiration, or completion. In copies for 10 years after termination, expiration, or completion.

2. In § 110.7 the descriptions of items 70(d), 70(e), and 82(e) are amended by adding the phrase, "except as provided for in item 15(b)", at the end of each description.

[P.R. Doc. 65-10118; Filed, Sept. 23, 1965; 8:45 a.m.]

[No. 32259 (Sub No. 2)]

PART 110—DESTRUCTION OF

RECORDS

Subpart B—Electric Railway Companies

LIST OF RECORDS AND PERIODS OF RETENTION

At a session of the Interstate Commerce Commission, division 2, held at its office in Washington, D.C., on the 30th day of August A.D. 1965.

Having under consideration the matter of regulations governing the destruction of records pursuant to the Interstate Commerce Act, as amended, and an order entered June 29, 1965, and published in the FEDERAL REGISTER (30 F.R. 8847) on July 14, 1965; and

It appearing, that the Commission's order amended Part 8 of this title (49 CFR Part 8) to relax the restrictions pertaining to the destruction of contracts

and files relating to competitive bidding; and

It further appearing, that amendment of the regulations governing the destruction of records of electric railway companies is necessary to implement the Commission's order, consisting of technical changes which are permissive in nature so that public rule making procedures pursuant to section 4 of the Administrative Procedure Act are deemed unnecessary and for good cause shown;

It is ordered, That the amendments appearing below, and by this reference made a part hereof, are hereby approved to become effective on publication in the FEDERAL REGISTER; and,

It is further ordered, That service be made on all electric railway companies which are affected hereby and that notice of this order be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by filing with the Director, Office of the Federal Register.

(Sec. 12, 24 Stat. 383, as amended; 49 U.S.C. 12, Interpret or apply sec. 20, 24 Stat. 386, as amended; 49 U.S.C. 20)

By the Commission, division 2.

[SEAL] H. NEIL GARSON,
Secretary.

1. In § 110.50, item 10 is amended to read as follows:

Item	Description of records, etc.	Period to be retained
10	Contracts and agreements: (a) Card or book records of contracts, leases, and agreements made, and of expirations and renewals. (b) Contracts, leases, and agreements, except those provided for in items 14(c), 46(f), and 120(e). (c) Contracts and required files for transactions which are subject to the provisions of the Clayton Antitrust Act (15 U.S.C. 20).	Permanent. Do. In original form for 10 years after expiration, provided there is no pending litigation involving these records and, provided that the carrier informs the Commission of its intended action 2 weeks prior to date the records are to be destroyed.

2. In § 110.50 the description of items 60(c) and 120(e) are amended by adding the phrase, "except as provided for in item 10(c)," at the end of each description.

[P.R. Doc. 65-10120; Filed, Sept. 23, 1965; 8:45 a.m.]

[No. 32259 (Sub No. 4)]

PART 110—DESTRUCTION OF RECORDS

Subpart D—Express Companies List of Records and Periods of Retention

At a session of the Interstate Commerce Commission, division 2, held at its office in Washington, D.C., on the 30th day of August A.D. 1965.

Having under consideration the matter of regulations governing the destruction of records pursuant to the Interstate Commerce Act, as amended, and an order entered June 29, 1965, and published in the Federal Register (30 FR. 8847) on July 14, 1965; and,

It appearing that the Commission's order amended Part 8 of this title (49 CFR Part 8) to relax the restrictions pertaining to the destruction of con-

tracts and files relating to competitive bidding; and,
It further appearing, that amendment of the regulations governing the destruction of records of sleeping car companies is necessary to implement the Commission's order, consisting of technical changes which are permissive in nature so that public rule making procedures pursuant to section 4 of the Administrative Procedure Act are deemed unnecessary, and for good cause shown:

It is ordered. That the amendments appearing below, and by this reference made a part hereof, are hereby approved to become effective on publication in the Federal Register; and,
It is further ordered. That a copy of this order shall be served on The Pullman Co. as the only sleeping car company subject to provisions of the Act, and that notice of this order be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by filing with the Director, Office of the Federal Register.

(Sec. 12, 24 Stat. 383, as amended; 49 U.S.C. 12. Interpret or apply sec. 20, 24 Stat. 386, as amended; 49 U.S.C. 20)

By the Commission, division 2.
[SEAL] H. NEIL GARSON,
Secretary.

At a session of the Interstate Commerce Commission, division 2, held at its office in Washington, D.C., on the 30th day of August A.D. 1965.

Having under consideration the matter of regulations governing the destruction of records pursuant to the Interstate Commerce Act, as amended, and an order entered June 29, 1965, and published in the Federal Register (30 FR. 8847) on July 14, 1965; and,

It appearing that the Commission's order amended Part 8 of this title (49 CFR Part 8) to relax the restrictions pertaining to the destruction of con-

1. In § 110.31, item 14 is amended to read as follows:

Item	Description of records, etc.	Period to be retained
14	Contracts and agreements: (a) Card or book records of contracts, leases, and agreements made, and of expirations and renewals. (b) Contracts, leases, and agreements. See also items 14(c) and 46(f). (c) Contracts and required files for transactions which are subject to the provisions of the Clayton Antitrust Act (15 U.S.C. 20).	Permanent. Do. In original form for 10 years after expiration, provided there is no pending litigation involving these records and, provided that the carrier informs the Commission of its intended action 2 weeks prior to date the records are to be destroyed.

2. In § 110.31, the description of item 45(d) is amended by deleting the phrase "except as otherwise provided in item 46(f)," and add in lieu thereof the phrase "except as otherwise provided in items 14(c) and 46(f)."

3. In § 110.31, the description of item 46(d) is amended by adding at the end of the description, the phrase "except as otherwise provided for in item 14(c)." [P.R. Doc. 65-10119; Filed, Sept. 23, 1965; 8:45 a.m.]

[No. 32259 (Sub No. 3)]

PART 110—DESTRUCTION OF RECORDS

Subpart C—Sleeping Car Companies; List of Records

LIST OF ACCOUNTS, RECORDS, AND MEMORANDA, AND PERIODS OF RETENTION

At a session of the Interstate Commerce Commission, division 2, held at its office in Washington, D.C., on the 30th day of August A.D. 1965.

Having under consideration the matter of regulations governing the destruction of records pursuant to the Interstate Commerce Act, as amended, and an order entered June 29, 1965, and published in the Federal Register (30 FR. 8847) on July 14, 1965; and,

It appearing that the Commission's order amended Part 8 of this title (49

1. In § 110.70, item 14 is amended to read as follows:

Item	Description of records, etc.	Period to be retained
14	Contracts and agreements (except for those provided for in item 157): (a) Contracts for construction, acquisition, or sale of physical property, except as provided for in item 14(f). (b) Leases. (c) Contracts with carriers for express privileges. (d) Traffic and operating contracts affecting revenues and expenses. (e) Freight contracts and agreements. (f) Indemnity bonds. (g) Contracts and agreements not specifically provided for elsewhere (See items 14(f), 111(f), and 157). (h) Agreements with branch money-order agents and other branch agents. (i) Records of contracts or agreements; of expirations and renewals. (j) Contracts and required files for transactions which are subject to the provisions of the Clayton Antitrust Act (15 U.S.C. 20).	Permanent. 1 year after expiration. 5 years after expiration. Do. Do. 3 years after expiration. Do. 1 year after expiration. Same as related contract or agreement. In original form for 10 years after expiration, provided there is no pending litigation involving these records and, provided that the carrier informs the Commission of its intended action 2 weeks prior to date the records are to be destroyed.

2. In § 110.70 the description of item 111(f) is amended to read as follows:

Item	Description of records, etc.	Period to be retained
	(f) Contracts for purchase or sale of material and supplies; except as provided for in item 14(f).	Period to be retained

3. In § 110.70 item 167 is amended to read as follows:

Item	Description of records, etc.	Period to be retained
	Contracts and agreements by agents (see item 14(f)).	2 years after expiration.

[P.R. Doc. 65-10121; Filed, Sept. 23, 1965; 8:45 a.m.]

SUBCHAPTER C—CARRIERS BY WATER

[No. 34627]

PART 325—DESTRUCTION OF RECORDS

PRESCRIBED PERIODS OF RETENTION

At a session of the Interstate Commerce Commission, division 2, held at its office in Washington, D.C., on the 30th day of August A.D. 1965.

Having under consideration the matter of regulations governing the destruction of records pursuant to the Interstate Commerce Act, as amended, and an order entered June 29, 1965, and published in the Federal Register (30 F.R. 8847) on July 14, 1965; and,

It appearing, that the Commission's order amended Part 8 of this title (49

CFR Part 8) to relax the restrictions pertaining to the destruction of contracts and files relating to competitive biddings; and,

It further appearing, that amendment of the regulations governing the destruction of records of carriers by water is necessary to implement the Commission's order, consisting of technical changes which are permissive in nature so that public rule making procedures pursuant to section 4 of the Administrative Procedure Act are deemed unnecessary, and for good cause shown:

It is ordered, That the amendment appearing below, and by this reference made a part hereof, is hereby approved to become effective on publication in the Federal Register; and,

It is further ordered, That service be made on all carriers by water affected hereby and that notice of this order be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by filing with the Director, Office of the Federal Register.

(Sec. 304, 54 Stat. 933 as amended; 49 U.S.C. 904. Interpret or apply sec. 313, 54 Stat. 944 as amended; 49 U.S.C. 913)
By the Commission, division 2.
[SEAL] H. NEIL GASSON,
Secretary.
In § 325.7, item 14 is amended to read as follows:

Item	Description of records, etc.	Period to be retained
14	Contracts and agreements: (a) Contracts, leases, and agreements except as provided in item 14(c). (b) Card or book records of contracts, leases, and agreements made, and expirations and renewals. (c) Contracts and required files for transactions which are subject to the provisions of the Clayton Antitrust Act (15 U.S.C. 20).	5 years after expiration or expiration. Do. In original form for 10 years after expiration, provided there is no pending litigation involving these records and, provided that the carrier informs the Commission of its intended action 2 weeks prior to date the records are to be destroyed.

[P.R. Doc. 65-10122; Filed, Sept. 23, 1965; 8:45 a.m.]

Title 43—PUBLIC LANDS:
INTERIOR

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

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 3329]

[Colorado 0125487]

COLORADO

Partly Revoking Stock Driveway Withdrawal

By virtue of the authority contained in section 10 of the Act of December 29, 1916 (39 Stat. 865; 43 U.S.C. 300), as amended, it is ordered as follows:

1. The departmental order of January 29, 1918, withdrawing lands for stock driveway purposes, is hereby revoked so far as it affects the following described lands:

SIXTH PRINCIPAL MERIDIAN

T. 9 S., R. 93 W.,

Sec. 6, lots 3, 6, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$.

The areas described contain 163.18 acres.

2. Beginning at 10 a.m. on October 23, 1965, the lands shall be subject to operation of the public land laws, generally,

subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on October 23, 1965, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The lands have been open to applications and offers under the mineral leasing laws, and to location under the mining laws, subject to the regulations in 43 CFR 3400.3 (formerly 43 CFR 185.35). The State of Colorado has waived its rights under R.S. 2276 as amended (43 U.S.C. 852).

The lands are in Mesa County, north-east of Collbran, Colo., at an elevation of approximately 8,500 feet. The area has steep hillsides with a cover of oakbrush, with some aspen trees along small drainages.

Inquiries concerning the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Room 14023, Federal Building, 1961 Stout Street, Denver, Colo. 80202.

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

SEPTEMBER 17, 1965.

[P.R. Doc. 65-10157; Filed, Sept. 23, 1965; 8:47 a.m.]

[Public Land Order 3830]

[Fairbanks 031968]

ALASKA**Withdrawal for Federal Aviation
Agency Facilities**

By virtue of the authority contained in section 4 of the Act of May 24, 1928 (45 Stat. 729; 49 U.S.C. 214), it is ordered as follows:

1. Subject to valid existing rights, the following described lands are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws, but not from leasing under the mineral leasing laws, and reserved for the maintenance of a Federal Aviation Agency air navigation facility:

KOTzebue**TRACT B**

Beginning at Corner No. 1, located as follows:

From Corner No. 6, U.S. Survey No. 2645, proceed N. 26°30' E., 137.841 chs.; S. 79°15' E., 27.964 chs.

From Corner No. 1, by metes and bounds, N. 10°45' E., 20.369 chs.; S. 79°15' E., 62.945 chs.; S. 10°45' W., 20.369 chs.; N. 79°15' W., 62.945 chs. to Corner No. 1, the place of beginning.

The tract described contains approximately 128 acres.

TRACT C

Beginning at Corner No. 1, located as follows:

From Corner No. 6, U.S. Survey No. 2645, proceed N. 26°30' E., 98.485 chs.; S. 79°15' E., 54.687 chs.

From Corner No. 1, by metes and bounds, S. 79°15' E., 30.040 chs.; S. 10°45' W., 3.873 chs.; N. 79°15' W., 30.040 chs.; N. 10°45' E., 3.873 chs. to Corner No. 1, the place of beginning.

The tract described contains approximately 12 acres.

2. The withdrawal made by this order does not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral and vegetative resources other than

under the mining laws. However, leases, licenses or permits will be issued only if the Federal Aviation Agency finds that the proposed use of the lands will not interfere with the proper operation of its facilities on the lands.

HARRY R. ANDERSON,

Assistant Secretary of the Interior.

SEPTEMBER 17, 1965.

[F.R. Doc. 65-10158; Filed, Sept. 23, 1965; 8:47 a.m.]

[Public Land Order 3831]

[Arizona 035149]

ARIZONA**Modification of Public Land Order
No. 317 To Permit Grant of Right-
of-Way**

By virtue of the authority vested in the President by the Act of June 25, 1910 (36 Stat. 847, 43 U.S.C. 141), and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

Public Land Order No. 317 of April 15, 1946, as amended by Public Land Order No. 922 of October 20, 1953, reserving lands for development under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a), is hereby modified to the extent necessary to permit the grant of a right-of-way under section 2477, U.S. Revised Statutes (43 U.S.C. 932), to Pima County, Arizona, over the following described lands, as delineated on a map on file with the Bureau of Land Management, for construction of a public road:

GILA AND SALT RIVER MERIDIAN

T. 14 S., R. 12 E.,

Sec. 25, NW¼SW¼.

Containing 1.62 acres, in Pima County.

HARRY R. ANDERSON,

Assistant Secretary of the Interior.

SEPTEMBER 17, 1965.

[F.R. Doc. 65-10159; Filed, Sept. 23, 1965; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 51]

TOPPED CARROTS¹

Proposed U.S. Standards for Grades

Notice is hereby given that the U.S. Department of Agriculture is considering the revision of U.S. Standards for Topped Carrots (§§ 51.2360-51.2381) pursuant to the Agricultural Marketing Act of 1946 (60 Stat. 1087, as amended; 7 U.S.C. 1621-1627).

All persons who desire to submit written data, views, or arguments for consideration in connection with the proposal should file the same in duplicate, not later than November 1, 1965, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C., 20250, where they will be available for public inspection during official hours of business (paragraph (b) of § 1.27, as amended at 29 F.R. 7311).

Statement of considerations leading to the proposed revision of the grade standards. Representatives of the carrot industry have for some time indicated a need for changes in the grade standards for topped carrots. The present U.S. Standards were last revised in July 1954 and now need to be brought in line with current marketing practices. Consumer demands have changed since the last revision of the standards. The South Texas Carrot Marketing Order has in recent years established higher size and quality requirements than provided in the U.S. No. 1 grade. The provision for calculating percentages on a count basis in small containers and on a weight basis in large containers has resulted in misunderstanding. The proposed standards more nearly reflect sizes and quality being packed, shipped and accepted today. They will provide the industry with a more satisfactory basis for trading.

A study draft of the proposed revised standards was distributed to industry organizations and individuals in June 1965. Only minor changes have been made in the proposed requirements following preliminary suggestions and recommendations received. The present proposal includes the following major changes from the grade standards now in effect:

Size. In the U.S. Extra No. 1 grade the size requirements remain unchanged. Under the proposed standards other sizes could not be specified as permitted under the present standards except that

diameters within the $\frac{3}{4}$ - to $1\frac{1}{2}$ -inch range, or lengths of more than 5 inches may be specified.

In the U.S. No. 1 grade the minimum and maximum diameters of 1 inch and 3 inches would be changed to $\frac{3}{4}$ and $1\frac{1}{2}$ inches, respectively. The minimum length would be increased from 3 inches to 5 inches.

A new grade, U.S. No. 1 Jumbo, would be added to the proposed standards. This grade is designed chiefly for packages other than consumer units. The requirements, other than for size, would be the same as the U.S. No. 1 grade. The minimum and maximum diameters would be 1 inch and $2\frac{1}{2}$ inches respectively, the minimum length 5 inches. There would be no provision for specifying other sizes.

Quality factors. "Fairly well colored" would be a requirement of the U.S. No. 1 and U.S. No. 1 Jumbo grades. Heretofore "fairly well colored" has been a requirement of only the U.S. Extra No. 1 grade. This would eliminate pale orange or distinctly yellow carrots from all grades except U.S. No. 2.

The shape requirement of the U.S. No. 1 grades would be "fairly well formed." This represents a slight tightening of the present requirement of "not badly misshapen."

The cleanliness requirement of the U.S. No. 1 grades would be "fairly clean." The present requirement of "free from damage by dirt or other foreign matter" is too liberal in view of the efficient washing facilities in use today.

Samples. In selecting samples for grade determination, each sample would consist of 50 carrots. When individual packages contain at least 50 carrots, the sample is drawn from one package; when individual packages contain less than 50 carrots, a sufficient number of adjoining packages would be opened to form a 50 carrot sample. The sample size is constant regardless of the size of the packages.

Basis for calculating percentages. Under the present standards percentages are calculated on a weight basis for packages containing more than approximately 2 pounds and on a basis of count for packages containing approximately 2 pounds or less. Under the proposed standards all percentages would be calculated on a count basis. This, combined with a constant sample size, is both practical and statistically sound. In the past there have been problems with the dual system of calculating percentages. Bulk lots of carrots inspected on a weight basis do not show the same percentages of undersize and oversize when these same lots are packed in consumer units (2 pounds or less) and inspected on a count basis. The proposal would correct this.

Application of tolerances. The present standards allow one and one-half times a specified tolerance of 10 percent

or more or double a specified tolerance of less than 10 percent for packages containing more than 5 pounds. For packages containing less than 5 pounds there are no restrictions on the amount of defects which may be present (except for soft rot or frozen carrots).

Under the proposal, individual samples would be limited to double any specified tolerance, provided that not more than one carrot which is frozen or affected by soft rot may be permitted in any package weighing approximately 3 pounds or less. This would provide restrictions on both the sample, which may be taken from two or more containers, and on the individual container. This would lessen the possibility of a consumer getting a container with a high percentage of defects.

Tolerances. The lot tolerances for defects would not be changed. However, the tolerance for carrots larger than the specified maximum diameter would be reduced from 10 percent to 5 percent. This is to avoid a disproportionate amount of oversize carrots in the lot since all percentages will be determined by count. The present standards allow a 5-percent tolerance for carrots shorter than the specified length and 5 percent for carrots smaller than the specified minimum diameter. This would be changed to allow 10 percent undersize, which could be applied to undersize length or undersize diameter or both. In packing houses the diameter sizing is controlled mechanically, but length sizing is done by hand, hence there is greater room for error. The proposal takes this into consideration by allowing the full tolerance to be applied to undersize length or undersize diameter provided the combined total does not exceed 10 percent.

Standard sizing. The present standards allow 20 percent of the packages to fail to meet the requirements of "Standard Sizing." This would be reduced to 10 percent to bring it in line with standard packing or sizing requirements of other commodities.

The proposed standards, as revised, are as follows:

GRADES	
Sec.	
51.2360	U.S. Extra No. 1.
51.2361	U.S. No. 1.
51.2362	U.S. No. 1 Jumbo.
51.2363	U.S. No. 2.
UNCLASSIFIED	
51.2364	Unclassified.
TOLERANCES	
51.2365	Tolerances.
APPLICATION OF TOLERANCES	
51.2366	Application of tolerances.
SAMPLE FOR GRADE DETERMINATION	
51.2367	Sample for grade determination.
STANDARD SIZING	
51.2368	Standard sizing.

¹ Packing of the product in conformity with the requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or with applicable State laws and regulations.

DEFINITIONS

Sec.	
51.2369	Similar varietal characteristics.
51.2370	Well trimmed.
51.2371	Firm.
51.2372	Clean.
51.2373	Fairly well colored.
51.2374	Fairly smooth.
51.2375	Well formed.
51.2376	Secondary new top growth.
51.2377	Damage.
51.2378	Diameter.
51.2379	Length.
51.2380	Fairly clean.
51.2381	Fairly well colored.
51.2382	Excessively rough.
51.2383	Seriously misshapen.
51.2384	Serious damage.

AUTHORITY: The provisions of this subpart issued under secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended; 7 U.S.C. 1622, 1624.

GRADES

§ 51.2360 U.S. Extra No. 1.

"U.S. Extra No. 1" consists of carrots of similar varietal characteristics which are well trimmed, firm, clean, fairly well colored, fairly smooth, well formed; which are free from secondary new top growth and soft rot, and free from damage caused by freezing, growth cracks, sunburn, pithiness, woodiness, internal discoloration, oil spray, dry rot, other disease, insects or other means. (See § 51.2365.)

(a) **Size.** The diameter of each carrot is not less than three-fourths inch or more than 1½ inches, and the length is not less than 5 inches. (See § 51.2365.)

§ 51.2361 U.S. No. 1.

"U.S. No. 1" consists of carrots of similar varietal characteristics which are well trimmed, firm, fairly clean, fairly well colored, fairly smooth, fairly well formed; which are free from soft rot, and free from damage caused by freezing, growth cracks, sunburn, pithiness, woodiness, internal discoloration, oil spray, dry rot, other disease, insects or other means. (See § 51.2365.)

(a) **Size.** Unless otherwise specified, the diameter of each carrot is not less than ¾ inch or more than 1½ inches, and the length is not less than 5 inches. (See § 51.2365.)

§ 51.2362 U.S. No. 1 Jumbo.

"U.S. No. 1 Jumbo" consists of carrots which meet all requirements of the U.S. No. 1 grade except for size. (See § 51.2365.)

(a) **Size.** The diameter of each carrot is not less than 1 inch or more than 2½ inches, and the length is not less than 5 inches. (See § 51.2365.)

§ 51.2363 U.S. No. 2.

"U.S. No. 2" consists of carrots of similar varietal characteristics which are well trimmed, firm, not excessively rough, not seriously misshapen; which are free from soft rot, and free from serious damage caused by dirt, freezing, growth cracks, sunburn, pithiness, woodiness, internal discoloration, oil spray, dry rot, other disease, insects or other means. (See § 51.2365.)

(a) **Size.** Unless otherwise specified, the diameter of each carrot is not less

than 1 inch or more than 3 inches, and the length is not less than 3 inches. (See § 51.2365.)

UNCLASSIFIED

§ 51.2364 Unclassified.

"Unclassified" consists of carrots which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards, but is provided as a designation to show that no grade has been applied to the lot.

TOLERANCES

§ 51.2365 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified:

(a) **Defects—(1) U.S. Extra No. 1 grade.** Ten percent for carrots in any lot which fail to meet the requirements of this grade: *Provided*, That not more than one-half of this amount, or 5 percent, shall be allowed for defects causing serious damage, including therein not more than 1 percent for carrots affected by soft rot.

(2) **U.S. No. 1 and U.S. No. 1 Jumbo grades.** Ten percent for carrots in any lot which fail to meet the requirements of the grade: *Provided*, That not more than one-half of this amount, or 5 percent, shall be allowed for defects causing serious damage, including therein not more than 2 percent for carrots affected by soft rot.

(3) **U.S. No. 2 grade.** Ten percent for carrots which fail to meet the requirements of this grade, including therein not more than 2 percent for carrots affected by soft rot.

(b) **Off-size.** (1) Five percent for carrots in any lot which are larger than the specified maximum diameter; and

(2) Ten percent for carrots in any lot which are smaller than the specified minimum diameter or shorter than the specified minimum length.

APPLICATION OF TOLERANCES

§ 51.2366 Application of tolerances.

Individual samples shall not have more than double the tolerance specified: *Provided*, That not more than one carrot which is frozen or affected by soft rot may be permitted in any package weighing approximately 3 pounds or less: *And provided further*, That the averages for the entire lot are within the tolerances specified for the grade.

SAMPLE FOR GRADE DETERMINATION

§ 51.2367 Sample for grade determination.

Each sample shall consist of 50 carrots. When individual packages contain at least 50 carrots, the sample is drawn from one package; when individual packages contain less than 50 carrots, a sufficient number of adjoining packages are opened to form a 50 carrot sample.

STANDARD SIZING

§ 51.2368 Standard sizing.

(a) Packages of carrots containing 2 pounds or less may be certified as "standard sizing," provided the variation in diameter of the carrots in any individual package is not more than ⅜ inch and the variation in length is not more than 2½ inches.

(b) Not more than 10 percent of the packages in any lot may fail to meet the requirements for "standard sizing."

DEFINITIONS

§ 51.2369 Similar varietal characteristics.

"Similar varietal characteristics" means that the carrots in any lot of the same general type. For example, carrots with a short, but blunt growth like the Oxheart variety, shall not be mixed with long or half-long carrots like the Emperor or Danvers varieties.

§ 51.2370 Well trimmed.

"Well trimmed" means that the tops are cut back to not more than 1 inch in length, except that new leaves developing within the original central cluster of leafstems, or occasional uncut leaves or leafstems, exceeding this length which do not materially affect the appearance of the individual carrot shall be permitted. Carrots may have tips of roots cut or broken off: *Provided*, That these cuts or breaks are small and fairly smooth and do not materially affect the appearance of the individual carrot.

§ 51.2371 Firm.

"Firm" means that the carrot is not soft, flabby or shriveled.

§ 51.2372 Clean.

"Clean" means that the individual carrot is practically free from dirt or other foreign matter.

§ 51.2373 Fairly well colored.

"Fairly well colored" means that the carrot has an orange, orange red, or orange scarlet color, but not a pale orange or distinct yellow color.

§ 51.2374 Fairly smooth.

"Fairly smooth" means that the individual carrot is not rough, ridged, or covered with secondary rootlets to the extent that the appearance is materially affected.

§ 51.2375 Well formed.

"Well formed" means that the individual carrot is not forked, or misshapen to the extent that the appearance is more than slightly affected.

§ 51.2376 Secondary new top growth.

"Secondary new top growth" means new leaves or clusters of leaves which have developed outside the original central cluster of leafstems.

§ 51.2377 Damage.

"Damage" means any specific defect described in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially

detracts from the appearance, or the edible or shipping quality of the individual carrot or the appearance of the sample as a whole, or which cannot be removed without a loss of more than 5 percent, by weight, in the ordinary preparation for use. The following specific defects shall be considered as damage:

(a) Growth cracks which are not shallow or not smooth, or which materially detract from the appearance of the individual carrot;

(b) Sunburn which causes a loss of more than 5 percent, by weight, in the ordinary preparation for use, except that superficial light green color at the stem end which does not materially detract from the appearance of the carrot shall be permitted.

§ 51.2378 Diameter.

"Diameter" means the greatest dimension of the carrot measured at right angles to the longitudinal axis.

§ 51.2379 Length.

"Length" means the greatest dimension of the carrot measured from the crown to the lowest point which is not less than one-fourth inch in diameter.

§ 51.2380 Fairly clean.

"Fairly clean" means that the individual carrot is reasonably free from dirt or other foreign matter.

§ 51.2381 Fairly well formed.

"Fairly well formed" means that the individual carrot is not forked, or misshapen to the extent that the appearance is materially affected.

§ 51.2382 Excessively rough.

"Excessively rough" means that the individual carrot is rough or ridged to the extent that the appearance is seriously affected.

§ 51.2383 Seriously misshapen.

"Seriously misshapen" means that the individual carrot is forked or misshapen to the extent that the appearance is seriously affected.

§ 51.2384 Serious damage.

"Serious damage" means any defect, or any combination of defects, which seriously detracts from the appearance, or the edible or shipping quality of the individual carrot or the appearance of the sample as a whole, or which cannot be removed without a loss of more than 20 percent, by weight, in the ordinary preparation for use.

Dated: September 21, 1965.

G. R. GRANGE,
Deputy Administrator,
Marketing Services.

[F.R. Doc. 65-10147; Filed, Sept. 23, 1965;
8:45 a.m.]

Notices

FEDERAL POWER COMMISSION

[Docket No. G-3629 etc.]

TEXAS OIL AND GAS CORP. ET AL.

Findings and Order

SEPTEMBER 15, 1965.

In the matter of Texas Oil & Gas Corp. (Operator), et al. (successor to Salt Dome Production Co. (Operator), et al.) and other Applicants listed herein, Docket Nos. G-3629, et al.

Findings and order after statutory hearing issuing certificates of public convenience and necessity, amending certificates, permitting and approving abandonment of service, terminating certificates, substituting respondents, redesignating proceedings, accepting agreements and undertakings for filing, and accepting related rate schedules and supplements for filing.

Each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce, for permission and approval to abandon service, or a petition to amend an existing certificate authorization, all as more fully described in the respective applications and petitions (and any supplements or amendments thereto) which are on file with the Commission.

The Applicants herein have filed related FPC Gas Rate Schedules and propose to initiate or abandon, add or delete natural gas service in interstate commerce as indicated by the tabulation herein. All sales certificated herein are either equal to or below the ceiling prices established by the Commission's Statement of General Policy 61-1, as amended, or involve sales for which permanent certificates have been previously issued.

Texas Oil & Gas Corp. (Operator), et al., Applicant in Docket No. G-3629, proposes to continue the sale of natural gas authorized in said docket and made pursuant to Salt Dome Production Co. (Operator), et al., FPC Gas Rate Schedule No. 1. Texas Oil & Gas Corp., Applicant in Docket Nos. G-3650 and G-18368, proposes to continue the sales of natural gas authorized in said dockets and made pursuant to Salt Dome Production Co. FPC Gas Rate Schedule Nos. 3 and 5. Salt Dome's rate schedules will be redesignated as those of Texas Oil & Gas. The presently effective rates under Salt Dome's FPC Gas Rate Schedule Nos. 1, 3, and 5 are in effect subject to refund in Docket Nos. G-17288,¹ RI64-253,² and RI65-240, respectively. Prior increased rates have been collected for locked-in periods by Salt Dome under its FPC Gas Rate Schedule No. 5 subject to refund in Docket Nos. G-19769,³ RI61-181,⁴ RI62-84,⁵ RI63-111,⁶ and RI64-253.⁷ Texas Oil & Gas has filed a motion to be sub-

stituted in lieu of Salt Dome as respondent in each of the rate proceedings and has filed agreements and undertakings to assure the refund of any amounts collected in excess of the amounts determined to be just and reasonable in said proceedings. Accordingly, Texas Oil & Gas Corp., will be substituted as respondent, the proceedings will be redesignated, and the agreements and undertakings will be accepted for filing.

Pan American Petroleum Corp., Applicant in Docket No. CI66-64, proposes to continue in part the sale of natural gas authorized in Docket No. G-18432 and made pursuant to Nafco Oil and Gas, Inc., FPC Gas Rate Schedule No. 13. Said rate schedule will be redesignated as that of Pan American. The presently effective rate under said rate schedule is in effect subject to refund in Docket No. RI65-408. Pan American has filed a motion to be substituted in lieu of Nafco as respondent in said proceeding together with an agreement and undertaking to assure the refund of any amount collected in excess of the amount determined to be just and reasonable in said proceeding. Accordingly, Pan American will be substituted as respondent, the proceeding will be redesignated, and the agreement and undertaking will be accepted for filing.

After due notice, no petitions to intervene, notices of intervention, or protests to the granting of any of the respective applications or petitions in this order have been received.

At a hearing held on September 10, 1965, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications, amendments and exhibits thereto, submitted in support of the respective authorizations sought herein, and upon consideration of the record.

The Commission finds:

(1) Each Applicant herein is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission or will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and will, therefore, be a "natural-gas company" within the meaning of said Act upon the commencement of the service under the respective authorizations granted hereinafter.

(2) The sales of natural gas hereinbefore described, as more fully described in the respective applications, amendments and/or supplements herein, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales by the respective Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

(3) The sales of natural gas by the respective Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(4) The respective Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate authorizations heretofore issued by the Commission in Docket Nos. G-3473, G-3629, G-3651, G-7002, G-11179, G-13139, G-18368, G-18432, G-19810, G-20361, CI61-209, CI61-231, CI61-516, CI62-816, and CI64-836 should be amended as hereinafter ordered.

(6) The sales of natural gas proposed to be abandoned by the respective Applicants, as hereinbefore described, all as more fully described in the tabulation herein and in the respective applications, are subject to the requirements of subsection (b) of section 7 of the Natural Gas Act, and such abandonments should be permitted and approved as hereinafter ordered.

(7) The certificates of public convenience and necessity heretofore issued to the respective Applicants herein relating to the abandonments hereinafter permitted and approved should be terminated.

(8) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Texas Oil & Gas Corp. (Operator), et al., should be substituted in lieu of Salt Dome Production Co. (Operator), et al., as respondent in the proceeding pending in Docket No. G-17288, that Texas Oil & Gas Corp. should be substituted in lieu of Salt Dome Production Co. as respondent in the proceedings pending in Docket Nos. G-19769, RI61-181, RI62-84, RI63-111, RI64-253, and RI65-240, that said proceedings should be redesignated accordingly, and that the agreements and undertakings submitted by Texas Oil & Gas Corp. in said dockets should be accepted for filing.

(9) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Pan American Petroleum Corp. should be substituted in lieu of Nafco Oil and Gas, Inc., as respondent in the proceeding pending in Docket No. RI65-408, that said proceeding should be redesignated accordingly, and that the agreement and undertaking submitted by Pan American should be accepted for filing.

(10) The respective related rate schedules and supplements as designated or

¹ Consolidated with Docket No. AR64-2, et al.

redesignated in the tabulation herein should be accepted for filing as herein-after ordered.

The Commission orders:

(A) Certificates of public convenience and necessity are issued upon the terms and conditions of this order, authorizing the sales by the respective Applicants herein of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sales, all as hereinbefore described and as more fully described in the respective applications, amendments, supplements, and exhibits in this proceeding.

(B) The certificates granted in paragraph (A) above are not transferable and shall be effective only so long as Applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission.

(C) The grant of the certificates issued in paragraph (A) above shall not be construed as a waiver of the requirements of section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the respective Applicants. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificates aforesaid for service to the particular customers involved imply approval of all of the terms of the respective contracts, particularly as to the cessation of service upon termination of said contracts, as provided by section 7(b) of the Natural Gas Act. Nor shall the grant of the certificates aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

(D) The grant of the certificates issued herein on all applications filed after April 15, 1965, is upon the condition that no increase in rate which would exceed the ceiling prescribed for the given area by paragraph (d) of the Commission's Statement of General Policy 61-1, as amended, shall be filed prior to the applicable dates as indicated by footnotes 12 and 15 in the attached tabulation.

(E) The certificates issued herein in Docket Nos. CI63-712 and CI65-1240 are subject to the conditions set forth in paragraphs (C), (D), and (E) of the order accompanying Opinion No. 353 (27 FPC 449).

(F) The certificate heretofore issued in Docket No. CI64-836 is amended by deleting therefrom authorization to sell natural gas to the same purchaser and in the same area as covered by the original authorization, pursuant to the rate schedule supplement as indicated in the tabulation herein.

(G) The certificates heretofore issued in Docket Nos. G-3473, G-18432, and CI61-516 are amended by deleting therefrom authorization to sell natural gas from acreage assigned to Applicants in Docket Nos. CI66-54, CI66-64, and CI65-1240.

(H) The certificates heretofore issued in Docket Nos. G-3629, G-3651, G-7002, G-11179, G-13139, G-18368, G-19810, G-20361, CI61-209, CI61-231, and CI62-816 are amended by changing the certificate holders to the respective successors in interest as indicated in the tabulation herein.

(I) Permission for and approval of the abandonment of service by the respective Applicants, as hereinbefore described and as more fully described in the respective applications herein are granted.

(J) The certificates heretofore issued in Docket Nos. G-3574, G-3684, G-12056, and CI62-63 are terminated.

(K) Texas Oil & Gas Corp. (Operator), et al., is substituted in lieu of Salt Dome Production Co. (Operator), et al., as respondent in the proceeding pending in Docket No. G-17288 and Texas Oil & Gas Corp. is substituted in lieu of Salt Dome Production Co. as respondent in the proceedings pending in Docket Nos. G-19769, RI61-181, RI62-84, RI63-111, RI64-253, and RI65-240, said proceedings are redesignated accordingly,¹ and the agreements and undertakings submitted by Texas Oil & Gas Corp. in said proceedings are accepted for filing.

(L) Texas Oil & Gas Corp. shall comply with the refunding and reporting

procedure required by the Natural Gas Act and section 154.102 of the Regulations thereunder, and the agreements and undertakings filed by Texas Oil & Gas Corp. in Docket Nos. G-17288, G-19769, RI61-181, RI62-84, RI63-111, RI64-253, and RI65-240 shall remain in full force and effect until discharged by the Commission.

(M) Pan American Petroleum Corp. is substituted in lieu of Nafco Oil and Gas, Inc., as respondent in the proceeding pending in Docket No. RI65-408, said proceeding is redesignated accordingly,² and the agreement and undertaking submitted by Pan American in said proceeding is accepted for filing.

(N) Pan American Petroleum Corp. shall comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, and the agreement and undertaking filed by Pan American in Docket No. RI65-408 shall remain in full force and effect until discharged by the Commission.

(O) The respective related rate schedules and supplements as indicated in the tabulation herein are accepted for filing; further, the rate schedules relating to the successions herein are redesignated and accepted, subject to the applicable Commission regulations under the Natural Gas Act to be effective on the dates as indicated in the tabulation herein.

By the Commission.

[SEAL]

GORDON M. GRANT,
Acting Secretary.

Docket No. and date filed	Applicant	Purchaser, field, and location	FPC rate schedule to be accepted		
			Description and date of document	No.	Supp.
G-3629 E 7-22-65	Texas Oil & Gas Corp. (Operator), et al. (successor to Salt Dome Production Co. (Operator), et al.).	Tennessee Gas Transmission Co., North Lisite Field, Colorado County, Tex.	Salt Dome Production Co. (Operator), et al., FPC GRS No. 1. Supplement Nos. 1-5. Notice of succession 7-1-65.	42	-----
			Assignment 7-1-65. Effective date: 7-1-65.	42	1-5
G-3650 E 7-22-65	Texas Oil & Gas Corp. (successor to Salt Dome Production Co.).	Texas Eastern Transmission Corp., Provident City Field, Lavaca County, Tex.	Salt Dome Production Co., FPC GRS No. 3. Supplement Nos. 1-17. Notice of succession 7-1-65.	44	1-17
			Assignment 7-1-65. Effective date: 7-1-65.	44	18
G-3651 E 7-22-65	Texas Oil & Gas Corp. (Operator), et al. (successor to Salt Dome Production Co. (Operator), et al.).	Tennessee Gas Transmission Co., North Louise Field, Wharton County, Tex.	Salt Dome Production Co. (Operator), et al., FPC GRS No. 2. Supplement Nos. 1-8. Notice of succession 7-1-65.	43	1-8
			Assignment 7-1-65. Effective date: 7-1-65.	43	9
G-7002 E 7-12-65	George R. Brown (successor to Herman Brown Estate).	Arkansas Louisiana Gas Co., Bear Creek Field, Blenville Parish, La.	Herman Brown Estate, FPC GRS No. 2. Supplement Nos. 1-11. Notice of succession 7-4-65.	14	1-11
			Assignment 12-30-64. Effective date: 12-30-64.	14	12

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

See footnotes at end of table.

¹ Docket No. G-17288, Texas Oil & Gas Corp. (Operators), et al.; Docket Nos. G-19769, RI61-181, RI62-84, RI63-111, RI64-253, and RI65-240, Texas Oil & Gas Corp.

² Pan American Petroleum Corp.

FPC rate schedule to be accepted			FPC rate schedule to be accepted		
Docket No. and date filed	Applicant	Purchaser, field, and location	Description and date of document	No.	Supp.
G-11179 E 6-28-65	Crystal Oil & Land Co. (Operator), et al. (successor to Robert F. Roberts (Operator), et al.),	United Gas Pipe Line Co., Bethany Field, Parola County, Tex.	Robert F. Roberts (Operator), et al. FPC GRS No. 1. Supplement Nos. 1-2. Notice of succession 6-28-65. Assignment 6-1-63. Amendment 7-25-63. Articles of merger 10-31-63. Effective date: 6-1-63. Notice of cancellation 6-28-65.	7	1-2
G-13139 E 6-28-65	do	do	Robert F. Roberts (Operator), et al. FPC GRS No. 2. Supplement Nos. 1-4. Notice of succession 6-28-65. Assignment 6-1-63. Articles of merger 10-31-63. Effective date: 6-1-63. Notice of cancellation 6-28-65.	8	1-4
G-33992 E 7-22-65	Texas Oil & Gas Corp. (successor to Salt Dome Production Co.),	Texas Eastern Transmission Corp., Garwood Field, Garfield County, Tex.	Robert F. Roberts (Operator), et al. FPC GRS No. 3. Supplement Nos. 1-6. Notice of succession 7-1-65. Assignment 7-1-63. Effective date: 7-1-63. Notice of cancellation 7-22-65.	45	1-6
G-19319 E 6-31-64	Crystal Oil & Land Co. (successor to Robert F. Roberts),	United Gas Pipe Line Co., Simsboro Field, Lincoln Parish, La.	Robert F. Roberts (Operator), et al. FPC GRS No. 4. Supplement Nos. 1-5. Notice of succession 8-28-64. Assignment 5-31-63. Amendment 7-25-63. Articles of merger 10-31-63. Effective date: 6-1-63. Notice of cancellation 6-28-65.	9	1-5
G-20931 E 6-29-65	do	Arkansas Louisiana Gas Co., Simsboro Field, Lincoln Parish, La.	Robert F. Roberts (Operator), et al. FPC GRS No. 5. Supplement Nos. 1-3. Notice of succession 6-28-65. Assignment 5-31-63. Amendment 7-25-63. Articles of merger 10-31-63. Effective date: 6-1-63. Notice of cancellation 6-28-65.	10	1-3
G-195-209 E 6-29-65	do	Texas Gas Transmission Corp., Shaloboo Field, Webster Parish, La.	Robert F. Roberts (Operator), et al. FPC GRS No. 6. Supplement Nos. 1-3. Notice of succession 6-28-65. Assignment 5-31-63. Amendment 7-25-63. Articles of merger 10-31-63. Effective date: 6-1-63. Notice of cancellation 6-28-65.	11	1-3
G-195-231 E 6-24-64	Crystal Oil & Land Co., et al. (successor to Robert F. Roberts, et al.),	Texas Gas Transmission Corp., Sugar Creek Field, Claiborne Parish, La.	Robert F. Roberts (Operator), et al. FPC GRS No. 7. Supplement Nos. 1-3. Notice of succession 6-28-65. Assignment 5-31-63. Amendment 7-25-63. Articles of merger 10-31-63. Effective date: 6-1-63. Notice of cancellation 6-28-65.	12	1-3

See footnotes at end of table.

FPC rate schedule to be accepted			FPC rate schedule to be accepted		
Docket No. and date filed	Applicant	Purchaser, field, and location	Description and date of document	No.	Supp.
C192-416 E 3-3-65	Crystal Oil & Land Co. (successor to Robert F. Roberts),	United Gas Pipe Line Co., Silgo Field, Bossier Parish, La.	Robert F. Roberts (Operator), et al. FPC GRS No. 8. Supplement No. 1. Notice of succession 6-31-64. Assignment 6-1-63. Amendment 7-25-63. Articles of merger 10-31-63. Effective date: 6-1-63. Notice of cancellation 6-28-65.	13	1
C193-712 A 12-3-62	Solo Petroleum Co.,	Michigan Wisconsin Pipe Line Co., Woodward Area, Woodward County, Okla.	Michigan Wisconsin Pipe Line Co., Woodward Area, Woodward County, Okla.	13	1
C194-806 D 7-23-65	The Superior Oil Co.,	Kansas-Nebraska Natural Gas Co., Inc., Bradshaw Field, Hamilton County, Kans.	Kansas-Nebraska Natural Gas Co., Inc., Bradshaw Field, Hamilton County, Kans.	13	1
C195-1063 (G-3574) B 4-22-65	J. Robert Horner	Equitable Gas Co., Buckham District, Upshur and Lewis Counties, W. Va.	Equitable Gas Co., Buckham District, Upshur and Lewis Counties, W. Va.	13	1
C195-1296 (G-3574) B 4-22-65	Tring Drilling Co. (Operator), et al.,	Michigan Wisconsin Pipe Line Co., Woodward Area, Major County, Okla.	Michigan Wisconsin Pipe Line Co., Woodward Area, Major County, Okla.	13	1
C195-1296 (G-3574) B 4-22-65	Nemours Corp.,	Abilene Oil & Refining Co., Monroe Field, Union Parish, La.	Abilene Oil & Refining Co., Monroe Field, Union Parish, La.	13	1
C195-1296 (G-3574) B 4-22-65	Humble Oil & Refining Co.,	Natural Gas Pipeline Co. of America, Purman Field, Dewey County, Okla.	Natural Gas Pipeline Co. of America, Purman Field, Dewey County, Okla.	13	1
C195-1296 (G-3574) B 4-22-65	Russell Williamson, Agent, et al. (successor to Mrs. W. E. Richmond),	United Fuel Gas Co., Appalachian Field, Martin County, Ky.	United Fuel Gas Co., Appalachian Field, Martin County, Ky.	13	1
C195-59 (G-12669) B 7-25-65	Abilene Oil & Refining Co.,	Arkansas Louisiana Gas Co., Wadon Field, Harrison County, Tex.	Arkansas Louisiana Gas Co., Wadon Field, Harrison County, Tex.	13	1
C195-59 (G-12669) B 7-25-65	Nelson B. Evers	Packard Eastern Pipe Line Co., Adams Ranch Field, Meade County, Kans.	Packard Eastern Pipe Line Co., Adams Ranch Field, Meade County, Kans.	13	1
C195-59 (G-12669) B 7-25-65	Dixon Management Corp., agent for J. M. Frost, Jr.,	Union Texas Petroleum, a division of Allied Chemical Corp. (successor to Texas Gas Corp.), Ft. Ridge Field, Chambers County, Tex.	Union Texas Petroleum, a division of Allied Chemical Corp. (successor to Texas Gas Corp.), Ft. Ridge Field, Chambers County, Tex.	13	1
C195-59 (G-12669) B 7-25-65	Charles O. Hardley (Operator), et al. (successor to Phillips Petroleum Co.),	United Gas Pipe Line Co., Shibley Field, Webster Parish, La.	United Gas Pipe Line Co., Shibley Field, Webster Parish, La.	13	1

Docket No. and date filed	Applicant	Purchaser, field, and location	FPC rate schedule to be accepted		
			Description and date of document	No.	Supp.
CI66-58 A 7-26-65 ¹⁴	Texaco Inc.	Cities Service Gas Co., South Bishop Field, Ellis County, Okla.	Contract 7-8-65 ¹⁴	353	
CI66-59 A 7-26-65 ¹⁴	Mess Petroleum Co. (Operator), et al.	Phillips Petroleum Co., West Panhandle Field, Moore County, Tex.	Ratification 4-27-65 ¹⁴ Contract 7-28-65 ¹⁴	6 6	1
CI66-60 (CI62-63) B 7-26-65	Texaco Inc.	South Texas Natural Gas Gathering Co., Gutierrez Field, Jim Hogg County, Tex.	Notice of cancellation 7-19-65, 1 ¹²	245	2
CI66-61 A 7-26-65 ¹⁴	M. R. Mottern, T/A Little Sandy Gas Co.	United Natural Gas Co., acreage in Jefferson County, Pa.	Contract 7-22-65 ¹⁴	1	
A CI66-64 (G-18432) F 7-19-65	Pan American Petro- leum Corp. (successor to Nafco Oil & Gas, Inc.).	Nafco Oil Pipeline Co. of America, Old Ocean Field Area, Matagorda County, Tex.	Nafco Oil & Gas, Inc., FPC ORS No. 13, Supplement Nos. 1-2, Notice of succession 7-15-65 ¹⁴	421 421	1-2
CI66-65 A 7-27-65 ¹⁴ 7-20-65 ¹⁴	O. W. Gerwig, et al., d.b.a. Trace Gas Co.	Equitable Gas Co., Otter District, Braxton County, W. Va.	Letter 4-18-65 ¹⁴ Conveyance 5-1-65 ¹⁴ Effective date: 5-1-65 ¹⁴ Contract 7-24-65 ¹⁴ Letter Agreement 9-20-65 ¹⁴	421 421 1 1	3 4 1 1
CI66-69 A 7-28-65 ¹⁴	Skelly Oil Co.	Natural Gas Pipeline Co. of America, Camrick Field, Beaver County, Okla.	Contract 4-1-65 ¹⁴	208	

¹ Assigns Salt Dome's interest to Texas Oil & Gas Corp.

² Assignment of property to Bolemar Oil Co.

³ Changed the name from Bolemar Oil Co. to Roberts Petroleum Co.

⁴ Merged Roberts Petroleum Co. into Crystal Oil & Land Co.

⁵ Continues in effect the reimbursement of a portion of the Louisiana Severance Tax which had expired under the terms of a letter agreement dated July 1, 1960.

⁶ By letter filed Mar. 1, 1963, Applicant agreed to accept a permanent certificate conditioned similarly to the certificates issued in Opinion No. 353.

⁷ Deletes 160 net acres of non-productive acreage on leases which have terminated.

⁸ Effective Date: Date of this order.

⁹ The buyer advised by letter dated May 10, 1965, that the contract was cancelled on Sept. 1, 1961, due to low production.

¹⁰ Rate schedule has not been filed with the Commission covering this sale.

¹¹ By letter filed Aug. 13, 1965, Applicant advised its willingness to accept a permanent certificate conditioned similarly to the certificates issued in Opinion No. 353.

¹² Covers acreage acquired from Pan American Petroleum Corp. and The Atlantic Refining Co. in Docket Nos. CI61-316 and CI61-732, respectively, which were certificated in Opinion No. 353; also covers acreage not previously dedicated. (The certificate issued to Atlantic in Docket No. CI61-732 was amended by order issued Aug. 19, 1965, in Docket Nos. G-3083, et al., to delete the subject acreage.)

¹³ Jan. 1, 1968, moratorium date pursuant to Commission's Statement of General Policy 61-1, as amended.

¹⁴ Buyer sells gas to both Southern Natural Gas Co. (FPC ORS No. 103) and Texas Gas Transmission Corp. (FPC ORS No. 106) from gathering system into which subject gas will go.

¹⁵ Letter agreement covers 14 interest in a 160-acre unit. Term is for life of production, but either party may terminate contract on 30 day notice.

¹⁶ July 1, 1967, moratorium date pursuant to Commission's Statement of General Policy 61-1, as amended.

¹⁷ By letter filed Aug. 30, 1965, Applicant agreed to accept a permanent certificate at a total initial rate of 15.0 cents per Mcf at 14.65 p.s.i.a.

¹⁸ Adopta terms of Dec. 17, 1962, contract between buyer and Sarkeys, Inc.

¹⁹ Provides for price escalations of 2.5 cents each 5 years and requires 100 percent take-or-pay with a 2-year make-up period.

²⁰ Certificate application filed Nov. 23, 1954, rejected due to improper filing, however, the related rate was accepted. Applicant never resubmitted the certificate application.

²¹ Last will and testament of Mrs. W. B. Richmond, probated Mar. 7, 1963, in Martin County Court, Kentucky.

²² Assigns interest to Anna M. Cox.

²³ Russell Williamson, an original interest owner, is designated as Agent by Anna M. Cox, et al.

²⁴ Source of gas depleted.

²⁵ Effective date: Date of initial delivery.

²⁶ Contract between Phillips Petroleum Co. and United Gas Pipe Line Co.; on file as Phillips' FPC ORS No. 189 and certificated in Docket No. G-3473.

²⁷ Relates to reimbursement of gathering tax and/or other taxes.

²⁸ Modifies the basic contract provisions relating to taxes, delivery pressure, definitions, measurement and price.

²⁹ Changes the delivery point.

³⁰ Conveys acreage from Phillips Petroleum Co. to Charles O. Hardey, et al.

³¹ This is a June 7, 1954, filing.

³² Buyer agrees to change daily charts in lieu of Seller.

³³ Conveys acreage from Nafco Oil & Gas, Inc., to Pan American Petroleum Corp.

[F.R. Doc. 65-10040; Filed, Sept. 23, 1965; 8:45 a.m.]

[Docket No. E-7244]

CENTRAL MAINE POWER CO.

Notice of Application

SEPTEMBER 17, 1965.

Take notice that on September 9, 1965, Central Maine Power Co. (Central Maine) filed an application with the Federal Power Commission, pursuant to section 203 of the Federal Power Act, seeking an order authorizing it to acquire all of the operating facilities of Casco Bay Light & Power Co. (Casco).

Central Maine is incorporated under the laws of the State of Maine and has its principal place of business office at Augusta, Maine. It is engaged in the

generation, purchase, transmission, distribution and sale of electric energy serving all of the 16 counties in the State of Maine except the Counties of Aroostook and Washington.

Casco is incorporated under the laws of the State of Maine and has its principal business office at Portland, Maine. It is engaged in the generation, purchase, transmission, distribution and sale of electric energy serving 7 islands in Casco Bay with power generated by three diesel-driven generators on Peaks Island and distributed over 20 miles of distribution lines located on the seven islands, interconnected by 10 miles of cable.

According to the application, Central Maine proposes to acquire all of the assets of Casco, except the franchise to be a corporation, including three diesel generators, distribution lines, cables interconnecting the islands, real estate, automotive equipment and all other related facilities. Central Maine states that Casco's facilities will be fully integrated with its operations in contiguous areas and it will assume full obligations to serve all customers in the area now being served by Casco and to serve the territories authorized but not presently served by Casco.

According to the application, the integration of the relatively small electric utility system of Casco into the larger integrated system of Central Maine which is interconnected with the New England Grid will result in assuring a plentiful supply of electric energy in the territories now served by Casco, will avoid the need for a rate increase by Casco and will clear the way for future rate decreases.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 8, 1965, file with the Federal Power Commission, Washington, D.C., 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

JOSEPH H. GUTRIE,
Secretary.

[F.R. Doc. 65-10142; Filed, Sept. 23, 1965; 8:45 a.m.]

[Docket No. CP65-395]

HUMBLE GAS TRANSMISSION CO.

Order To Show Cause

SEPTEMBER 17, 1965.

On June 9, 1965, Humble Gas Transmission Co. (Humble) of New Orleans, La., filed, pursuant to section 7 of the Natural Gas Act, an application for a certificate of public convenience and necessity, as amended on July 6, 1965, for authorization to construct a measuring station and one four-inch pipeline approximately 4,100 feet in length, to maintain and operate approximately 2,350 feet thereof, and to transport, sell, and deliver natural gas to Diamond National Corp. (Diamond), as hereinafter described. The proposed lateral line will extend from a point of connection with Humble's existing facilities near Natchez in Adams County, Miss., to Diamond's plant.

Humble agreed that upon completion of the construction of such facilities it would assign title to Diamond, free of cost, of that portion of the connecting line extending from the discharge side of its measuring station to the terminal end of the line at the plant. The proposed facilities are estimated to cost \$21,000. The line section of approximately 1,750 feet in length that Humble intends to assign to Diamond represents approximately \$8,400 of the estimated total cost of the proposed facilities.

Humble seeks authority to construct the aforementioned facilities in order to make a direct sale of natural gas to Diamond. Diamond will use this gas in boilers to produce steam for processing, for direct-fired driers, and miscellaneous plant uses in a facility that it is presently constructing near Natchez, Miss. Humble, in its application, requests permission to sell 500,000 Mcf of gas to Diamond on an annual basis and a maximum of 3,000 Mcf on a daily basis.

On July 12, 1965, Mississippi Valley Gas Co. (Mississippi) filed a petition to intervene in opposition to the application. Diamond, on August 5, 1965, filed a petition to intervene in the above-styled proceeding. On August 12, 1965, Humble filed an answer in opposition to Mississippi's petition to intervene.

Mississippi alleges in its petition to intervene that it is a local gas distribution company serving over one hundred communities in Mississippi and that the Diamond plant will be located within the geographical confines which are designated as being within its service area by the Mississippi Public Service Commission. Mississippi purchases gas to serve its customers in this area under a service agreement dated September 11, 1963, with Humble. Humble's effective gas tariff on file with the Commission contains a provision that could preclude Mississippi from attaching industrial loads of any significant size in this area.¹

Mississippi also alleges in its petition to intervene that it worked with the Mississippi Agricultural and Industrial Board in order to induce Diamond to locate a plant in the Natchez, Miss., area and that it had negotiated with Diamond to supply the natural gas requirements for this plant. Mississippi further claims that Humble has continuously refused to consent to provide it with the additional gas supply necessary for it to serve the requirements of Diamond even though it offered Diamond a contract to supply its gas requirements at a price lower than the price herein proposed by Humble.

Humble in its answer filed in opposition to Mississippi's petition to intervene places strong emphasis on Paragraph 10 of the General Terms and Conditions of its effective FPC gas tariff. Humble contends that under the above-mentioned provisions of this tariff it is only required to meet a customer's request for additional gas to be consumed for industrial purposes when such requirements do not exceed a maximum of 100 Mcf per month.

Mississippi cites Southern Natural Gas Co., 25 F.P.C. 925 (1961) and Northern Natural Gas Co., Opinion No. 458, -- F.P.C. --, issued March 9, 1965, to support its petition to intervene in opposition to Humble's application. The situation that has been directed to the Commission's attention herein by Mississippi

is not analogous to our holding in Southern Natural Gas Co., supra, wherein we expressed the view that, in general, the wholesale-supplier should not compete directly with its distributor customers. Nor are the reflections in Northern Natural Gas Co., supra, helpful in resolving the situation presented herein. In the latter proceeding the Commission indicated that it did not endorse a policy in Southern that would limit the making of industrial sales solely to distribution companies, to the exclusion of potential competition by their pipeline suppliers. The ramifications of the tariff provision that we are now considering are of far different consequence than the issues discussed in the proceedings supra, because it may serve to restrict local distribution companies from making any direct industrial sales in competition with their pipeline supplier. This provision in Humble's tariff may be unduly restrictive and unjust and unreasonable under the provisions of the Natural Gas Act.

Under the circumstances, the Commission believes that the question of the propriety of this provision in the Humble tariff should be examined. In order to provide an opportunity in a formal hearing, the Commission will direct an order to Humble that it show cause why the above-noted tariff provision should not be held to be unjust and unreasonable. The Commission will invite any of Humble's customers or other persons who are affected by this tariff provision to intervene in this proceeding in order to submit its views on this matter.

The Commission will further consolidate Humble's request for a certificate of public convenience and necessity under section 7 of the Natural Gas Act in the above-styled proceeding with the issue relating to the necessity and propriety of Paragraph 10 of the General Terms and Conditions of Humble's FPC tariff Original Volume No. 1.

The Commission will also set a date for a prehearing conference in connection with this matter in order to endeavor to determine whether or not gas service can be afforded to Diamond on an interim basis pending the final determination of this proceeding.

The Commission finds: Pursuant to the Natural Gas Act, particularly sections 4, 5 and 7 thereof, it is necessary and appropriate that Humble Gas Transmission Co. be directed to show cause in a formal hearing why the Commission should not find and determine that the above-mentioned provision in Humble Gas Transmission Company's filed tariff is unjust and unreasonable.

The Commission orders:

(A) Notice of intervention or petitions to intervene in this proceeding may be filed with the Commission on or before October 4, 1965, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8).

(B) A prehearing conference be convened in the proceeding entitled Humble Gas Transmission Co., Docket No. CP65-395, in a hearing room of the Federal Power Commission, 441 G Street NW.,

Washington, D.C., on October 11, 1965, at 10 a.m., e.d.s.t. The Chief Examiner will designate an appropriate officer of the Commission to preside at the prehearing conference and at the formal hearing of these matters, pursuant to the Commission's rules of practice and procedure.

(C) On or before November 19, 1965, Humble Gas Transmission Co. shall serve the testimony and exhibits that it intends to present in response to this order upon the various parties to this proceeding.

(D) A formal hearing be commenced in the proceeding entitled Humble Gas Transmission Co., Docket No. CP65-395, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., on December 8, 1965, e.d.s.t.

By the Commission.

[SEAL] JOSEPH H. GUTRIE,
Secretary.

[F.R. Doc. 65-10143; Filed, Sept. 23, 1965;
8:45 a.m.]

[Docket No. E-7245]

ILLINOIS POWER CO.

Order Providing for Investigation and Hearing

SEPTEMBER 16, 1965.

By this order we shall institute an investigation and provide for hearing to determine whether certain of the filed wholesale rates and charges of Illinois Power Co. (Illinois Power) are lawful within the meaning of sections 205 and 206 of the Federal Power Act. Illinois Power's schedules of these rates and charges to the villages of Fithian, Ladd, Ogden, Oglesby, and Sawyerville, Ill., Cedar Point Light & Water Co., and Central Illinois Electric & Gas Co. are set forth in the attached Appendix.

Examination and analysis of the rate schedules and other data currently available to the Commission indicate that Illinois Power's wholesale rates and charges to the seven customers named in the preceding paragraph may result in excessive rates or charges; may place an undue burden upon ultimate customers; and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful within the meaning of the Federal Power Act.

As we held in our opinion in the Southwestern Public Service Co. proceeding,¹ rate of return from service to one group of wholesale customers cannot be considered in isolation from the return on the Company's other wholesale business. Accordingly, while we are not placing in issue in this proceeding any question as to the validity of the rates charged for other sales, we are sending a notice of our order in this proceeding to each of Illinois Power's wholesale customers.

The Commission further finds: In view of the foregoing, it is necessary and

¹ Paragraph 10 of the General Terms and Conditions of Humble's FPC Gas Tariff Original Volume No. 1 provides as follows:

Buyer shall not sell gas purchased under Seller's Rate Schedule G-1 to any one industrial consumer in excess of 100,000 cubic feet per month except by written consent of Seller.

¹ Opinion No. 451, Southwestern Public Service Co., Docket No. E-7038, issued Mar. 2, 1965, mimeo. ed., p. 14.

appropriate for the purposes of carrying out the provisions of the Federal Power Act, and particularly, but not in limitation of the foregoing, sections 205, 206, 208, 301, 307, 308, and 309, that an investigation and hearing be instituted to determine the lawfulness of Illinois Power's rates and charges for wholesale electric service to the seven purchasers set forth in the Appendix hereto.

The Commission orders:

(A) A public hearing shall be held concerning the lawfulness of Illinois Power's rate schedules for wholesale electric service to the seven purchasers preferred to in the finding paragraph above and all as set forth in the Appendix hereto, at a time and place and before a hearing examiner to be specified.

(B) A prehearing conference shall be held before a presiding examiner at a time to be specified by notice of the Secretary in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., 20426, for purposes as specified in the Commission's rules of practice and procedure.

(C) In order that the issues involved herein may be properly determined, an investigation is hereby initiated and Illinois Power is hereby directed pursuant to the provisions of sections 301(b), 307 and 309 of the Federal Power Act to grant to authorized members of the staff of the Federal Power Commission during regular business hours, free access to its property and access to and the right to inspect and examine all of its accounts, records and memoranda including, but not limited to, the following: books, papers, correspondence, contracts, agreements, maps, reports of engineers, meter readings, and log sheets upon their request; and shall either furnish copies of such material at the request of the staff, or make such material available for reproduction by the staff or shall produce such material for use by the staff prior to and during said hearing at the offices of the Commission, 441 G Street NW., Washington, D.C., 20426.

(D) Notices of intervention or petitions to intervene in this proceeding may be filed with the Federal Power Commission, Washington, D.C., 20426, on or before October 8, 1965, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.37).

(E) Illinois Power shall within 45 days from the date hereof, submit a special report setting out cost and revenue data using 1964 as the test year, showing Illinois Power's costs of rendering service to each of the seven purchasers referred to in Paragraph (A) above, calculated in accordance with applicable Commission precedents and submitted in the form as prescribed in Statements A through O, § 35.13(b) (4) (IV) of the Commission's regulations under the Federal Power Act. An original and nine conformed copies of the report shall be submitted.

By the Commission.

[SEAL] GORDON M. GRANT,
Acting Secretary.

APPENDIX

Rate schedule designation	Other party	Instrument date
Rate Schedule FPC No. 25.	Village of Eltham...	11-10-58
Supplement No. 1 to Rate Schedule FPC No. 25.	do	7- 7-58
Rate Schedule FPC No. 26.	Village of Ladd...	7- 2-64
Supplement No. 1 to Rate Schedule FPC No. 26.	do	11-10-58
Rate Schedule FPC No. 27.	Village of Ogden...	7- 7-54
Supplement No. 1 to Rate Schedule FPC No. 27.	do	7- 2-64
Rate Schedule FPC No. 28.	Village of Oglesby...	11-10-58
Supplement No. 1 to Rate Schedule FPC No. 28.	do	7- 7-54
Rate Schedule FPC No. 29.	Village of Sawyerville...	7- 2-64
Supplement No. 1 to Rate Schedule FPC No. 29.	do	11-10-58
Rate Schedule FPC No. 30.	Cedar Point Light & Water Co.	7- 7-54
Supplement No. 1 to Rate Schedule FPC No. 30.	do	7- 2-64
Rate Schedule FPC No. 31.	Central Illinois Electric & Gas Co.	3- 8-54

[P.R. Doc. 65-10144; Filed, Sept. 23, 1965; 8:45 a.m.]

[Project No. 1487]

QUINAULT LIGHT CO.

Notice of Application for Surrender of License for Constructed Project

SEPTEMBER 16, 1965.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Quinault Light Co. (correspondence to: Vic Esses, President of the Board of Trustees, Quinault Light Co., Quinault, Wash. 98575) for surrender of license for constructed Project No. 1487, known as the Zeigler Creek Hydroelectric Project, located on Zeigler Creek, a tributary of Quinault River, in Grays Harbor County, Wash., and affecting lands of the United States within the Olympic National Forest.

The existing project consists of: A low rockfilled log-crib diversion dam; an 18-inch diameter wood-stave pipeline 1,850 feet long; an 18-inch diameter steel penstock 1,965 feet long; a powerhouse with installed capacity of 375 horsepower; a 7,200 volt distribution line 25 miles long; and appurtenant electrical and mechanical facilities.

The Zeigler Creek Hydroelectric Project has not been operated since 1957, and the Company is purchasing power from Bonneville Power Administration.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day upon which protests or petitions may be filed is November 3, 1965. The application is on

file with the Commission for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[P.R. Doc. 65-10145; Filed, Sept. 23, 1965; 8:45 a.m.]

[Docket No. CP64-34]

TRANSWESTERN PIPELINE CO.

Notice of Petition To Further Amend

SEPTEMBER 17, 1965.

Take notice that on September 13, 1965, Transwestern Pipeline Co. (Petitioner), Post Office Box 1502, Houston, Tex., 77002, filed in Docket No. CP64-34, a petition to further amend the certificate of public convenience and necessity issued to it in said docket by the Commission on December 16, 1963, which certificate was amended by order of the Commission issued December 4, 1964. The certificate and amendment authorized Applicant to sell and deliver to the Pacific Lighting Gas Supply Co. (Pacific Lighting) up to 430,000 Mcf of gas per day on an annual average basis for a limited period ending December 31, 1965, as more fully set forth in said certificate and order amending said certificate.

By the instant filing Petitioner seeks authorization to increase its sales volumes to Pacific Lighting from 430,000 Mcf to 440,000 Mcf on an average annual basis for a limited period ending December 31, 1966, or until commencement of the service resulting from a determination and an order is issued in Transwestern Pipeline Co., et al., Docket No. CP63-204, et al., whichever date is earlier. Transwestern further purposes to increase its maximum daily demand obligation for such deliveries from 410,000 Mcf per day to 430,000 Mcf per day effective January 1, 1966.

The petition states that the proposed amendment is made pursuant to a request by Pacific Lighting that Petitioner increase the volumetric limit for annual average deliveries and extend the period of such authorization and increase its maximum daily demand obligation effective January 1, 1966.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (157.10) on or before October 14, 1965.

JOSEPH H. GUTRIDE,
Secretary.

[P.R. Doc. 65-10146; Filed, Sept. 23, 1965; 8:45 a.m.]

DEPARTMENT OF THE TREASURY

Bureau of Customs

[Antidumping—AA 643.3-r]

STEEL WELDED WIRE MESH FROM ITALY

Withholding of Appraisement Notice

SEPTEMBER 17, 1965.

Pursuant to section 201(b) of the Antidumping Act, 1921, as amended (19

U.S.C. 160(b)), notice is hereby given that there are reasonable grounds to believe or suspect, from information presented to me, that the purchase price is less or likely to be less than the foreign market value of steel welded wire mesh for concrete reinforcement imported from Italy as defined by sections 203 and 205, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162 and 164).

Customs officers are being directed to withhold appraisement of steel welded wire mesh for concrete reinforcement imported from Italy in accordance with the provisions of § 14.9(a) of the Customs Regulations (19 CFR 14.9(a)).

The information alleging that the merchandise under consideration was being sold at less than fair value within the meaning of the Antidumping Act was received in proper form on March 3, 1965. This information was the subject of an "Antidumping Proceeding Notice" which was published pursuant to § 14.6(d), Customs Regulations (19 CFR 14.6(d)), in the FEDERAL REGISTER of March 26, 1965, on page 3992 thereof.

This notice is published pursuant to § 14.6(e) of the Customs Regulations (19 CFR 14.6(e)).

[SEAL] LESTER D. JOHNSON,
Commissioner of Customs.

[F.R. Doc. 65-10168; Filed, Sept. 23, 1965;
8:48 a.m.]

Foreign Assets Control Office IMPORTATION OF JADE STONES DIRECTLY FROM JAPAN

Notice of Available Certifications by Government of Japan; Correction

Notice is hereby given that the item "Jade stones, cut," announced June 24, 1964, should read as follows:

Jade stones, cut but not set, suitable for use in jewelry.

[SEAL] MARGARET W. SCHWARTZ,
Director, Office of
Foreign Assets Control.

[F.R. Doc. 65-10167; Filed, Sept. 23, 1965;
8:48 a.m.]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[P. & S. Docket No. 1246]

ST. LOUIS NATIONAL STOCKYARDS CO.

Notice of Petition for Modification of Rate Order

Pursuant to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), an order was issued on June 19, 1964 (23 A.D. 653), continuing in effect to and including June 30, 1966, an order issued on May 17, 1962 (21 A.D. 454), authorizing the respondent, St. Louis National Stockyards Co., National Stock Yards, Illinois, to assess the current temporary schedule of rates and charges.

By a petition filed on August 31, 1965, the respondent requested authority to

modify, as soon as possible, the order of May 17, 1962, as extended, as indicated below.

SECTION I-C

DELIVERY CHARGES

Delivery of hogs from truck unloading chutes to Market Agency pens, 5 cents (presently 2½ cents) per head.

Delivery of sheep and goats from truck unloading chutes to Market Agency pens, 3 cents per head.

This charge will be assessed against the market agency receiving the livestock.

SECTION VII

PRESENT

Sale pavilion charges:

Charges on regular auction sales of stocker and feeder cattle and calves held under the auspices of the market interest, will be the regular cattle yardage charge published herein, plus a ring fee of 25¢ per head with a maximum ring fee of \$5.00 per lot.

Regular charges for all feed.

Arrangements and charges for use of facilities for special sales must be arranged with Stockyards Company.

NOTE: Section I calf yardage rates do not apply to calves sold in the auction.

SECTION VII

PROPOSED

Sale pavilion charges:

Charges on regular auction sales of cattle and calves held under the auspices of any market interest, will be the regular cattle yardage charge published herein.

Regular charges for all feed.

Arrangements and charges for use of facilities for special sales must be arranged with Stockyards Company.

NOTE: Section I calf yardage rates do not apply to calves sold in the auction.

Although the modification of section VII of the respondent's tariff would involve a reduction in a rate or charge, the modification of section I-C would result in an increase in a charge.

Accordingly, it appears that this public notice of the filing of the petition and its contents should be given in order that all interested persons may have an opportunity to indicate a desire to be heard in the matter.

All interested persons who desire to be heard in the matter shall notify the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., 20250, within 5 days after the publication of this notice in the FEDERAL REGISTER.

Done at Washington, D.C., this 21st day of September 1965.

DONALD A. CAMPBELL,
Director, Packers and Stock-
yards Division, Consumer and
Marketing Service.

[F.R. Doc. 65-10148; Filed, Sept. 23, 1965;
8:46 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[FCC 65-805]

MOBILE TARIFFS

Notice of Policy Regarding Filing

SEPTEMBER 16, 1965.

The Commission today adopted a new policy with respect to the filing of tariffs

by miscellaneous mobile common carriers. Under the new policy any such carrier whose base station's reliable service area, as defined in § 21.504 of the Commission's rules, does not extend beyond the borders of the state in which it is located need no longer file tariffs with the F.C.C. to cover message relay or one-way signaling service.

The Commission also considers local service furnished through interconnection with a landline telephone company to be exchange service within the meaning of section 221(b) of the Communications Act. Under that section the Commission does not have jurisdiction over such service, even though a portion of such service is interstate, wherever the service is subject to regulation by state or local authority.

Those carriers whose tariffs no longer are required to be filed under these criteria should file with the Commission cancellation supplements in accordance with the provisions of Part 61 of the Commission's rules. Such supplements will not be accepted unless they are accompanied by a complete showing as to the applicability of the criteria enumerated.

Those carriers whose tariffs apply to their portions of interstate message toll telephone service furnished through interconnection with a landline carrier should not cancel their tariffs. However, consideration may be given to an alternative method of publishing such charges consistent with Part 61 of the Commission's rules.

Adopted: September 15, 1965.

FEDERAL COMMUNICATIONS
COMMISSION,¹

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 65-10017; Filed, Sept. 23, 1965;
8:49 a.m.]

FEDERAL MARITIME COMMISSION

ATLANTIC & GULF AND WEST COAST AMERICAN-FLAG BERTH OPERA- TORS

Notice of Agreement Filed for Approval

Notice is hereby given that the following agreement has 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 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 5 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded

¹ Commissioner Hyde absent.

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:

Mr. R. L. Hansen, Secretary, Atlantic & Gulf American-Flag Berth Operators, 80 Broad Street, New York, N.Y., 10004.

Agreement 8750-1, a modification of a joint agreement between the members of the Atlantic & Gulf American-Flag Berth Operators, Agreement 8086 and the members of the West Coast American-Flag Berth Operators, Agreement 8186, provides for the inclusion of language which will require either group to give the other group 48 hours notice prior to taking any action or following procedures independent of these agreed upon by the parties.

Dated: September 21, 1965.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 65-10174; Filed, Sept. 23, 1965; 8:49 a.m.]

UNITED KINGDOM/UNITED STATES PACIFIC FREIGHT ASSOCIATION

Notice of Agreement Filed for Approval

Notice is hereby given that the following agreement has 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 at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 301; or may inspect agreement 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 5 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:

Mr. S. Collins, Secretary, United Kingdom/United States Pacific Freight Association, 14 Leadenhall Street, London, E.C. 3.

Agreement No. 3357-4 between the member lines of the United Kingdom/United States Pacific Freight Association, operating in the trade from the United Kingdom to United States Pacific Coast ports and Hawaii, establishes a self-policing and arbitration system pursuant to General Order 7 (46 CFR Part 528), and provides that differences between shippers and the Association which cannot be solved by the normal procedure will be handled in accordance with the Note of Understanding reached between European Conference lines and

European shippers following the European Ministers' Resolution of March, 1963.

Dated: September 21, 1965.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 65-10175; Filed, Sept. 23, 1965; 8:49 a.m.]

HOUSING AND HOME FINANCE AGENCY

Office of the Administrator

ACTING DIRECTOR, DEMONSTRATION PROGRAM BRANCH, URBAN RE- NEWAL ADMINISTRATION

Designation

The Assistant Director, Demonstration Program Branch, Urban Renewal Administration, is hereby designated to serve as Acting Director, Demonstration Program Branch, Urban Renewal Administration, during the absence of the Director, Demonstration Program Branch, Urban Renewal Administration, with all the powers, functions, and duties redelegated or assigned to the Director.

(Sec. 502(a), Housing Act of 1948, as amended, 12 U.S.C. 1701c; subparagraph 4(a) of the Housing and Home Finance Administrator's delegation published October 14, 1960, 25 F.R. 9874, as amended)

Effective as of the 24th day of September 1965.

[SEAL] WILLIAM L. SLAYTON,
Urban Renewal Commissioner.

[F.R. Doc. 65-10152; Filed, Sept. 23, 1965; 8:46 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[812-1830]

GLEN ALDEN CORP.

Notice of Application for Order Extending Period of Exemption

SEPTEMBER 20, 1965.

Notice is hereby given that Glen Alden Corp. ("Applicant"), 1740 Broadway, New York, N.Y., 10019, a Pennsylvania corporation, has filed an application pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") for an order of the Commission extending the period during which Applicant is exempted from all provisions of the Act applicable to investment companies as such.

Applicant filed on July 19, 1965 an application pursuant to section 3(b)(2) of the Act for an order of the Commission declaring that it is not an investment company. As here pertinent, section 3(b)(2) provides that the filing of the application thereunder exempts the Applicant for a period of sixty days from all provisions of the Act applicable to investment companies as such. The sixty

day period of exemption expired on September 17, 1965. Applicant requests that the period of exemption be extended from September 17, 1965, to such time as the Commission shall dispose of its application under section 3(b)(2) of the Act.

Applicant has presently under discussion arrangements for the sale of its stock of McKesson & Robbins, Inc., to a third party not in any way affiliated with Applicant or any of its affiliates. It is probable that upon consummation of the sale of this stock Applicant will no longer own "investment securities" in an amount sufficient to bring Applicant within the definition of an investment company in section 3(a)(3) of the Act.

Glen Alden has undertaken in the instant application that pending determination of its status under the Act, it will not, without the prior permission of the Commission, engage in any transaction or take any action which, in the absence of such permission, would be prohibited to a registered investment company.

Notice is further given that, in respect to the application pursuant to section 6(c) of the Act for an order of temporary exemption, any interested person may, not later than October 4, 1965, 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 reasons 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 should 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 Applicant at the address 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, as amended, may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing thereon shall be issued upon request or upon the Commission's own motion.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 65-10162; Filed, Sept. 23, 1965; 8:48 a.m.]

[812-1824]

TEN KEYS, INC.

Notice of Filing of Application for Order Exempting Sale by Open-End Company of Its Shares at Other Than Public Offering Price in Ex- change for Assets of Four Other Companies

SEPTEMBER 20, 1965.

Notice is hereby given, that Ten Keys, Inc., 910 Hospital Trust Building, Provi-

dence, R.I. ("Ten Keys"), a Rhode Island corporation which is registered under the Investment Company Act of 1940 ("Act") as an open-end non-diversified company, has filed an application pursuant to section 6(c) of the Act. Ten Keys requests an order of the Commission exempting from the provisions of section 22(d) of the Act the proposed issuance of its shares in exchange for the assets of four unregistered investment companies, Davenport Investment Fund, Inc., Conanic Co., Prudent Securities Corp., and Thrift Corp. ("the four Funds"), all of which are Rhode Island corporations. Since the sale of Ten Keys' stock will be at a price other than the public offering price, which normally includes a sales charge, an exemption is deemed necessary. All interested persons are referred to the application as filed with the Commission for a statement of the representations therein which are summarized below.

As of August 31, 1965, the net asset values of Ten Keys and of the four Funds approximated \$297,000 and \$312,000, respectively.

The stockholders of each of the four Funds have authorized the transfer of substantially all the assets of their respective fund, subject to the respective liabilities, in exchange for stock of Ten Keys which will be distributed to the shareholders of each of the four Funds upon their liquidation.

The amount of stock of Ten Keys to be exchanged per outstanding share of each of the four Funds will be determined on the basis of the values as of the day of closing by dividing the respective net asset values per share of each of the four Funds by the net asset value per share of Ten Keys, which net asset values will have been adjusted according to a formula set forth in the application. This formula reflects the higher ratio of unrealized appreciation in the assets of each of the four Funds than in the assets of Ten Keys and the potential federal income taxes payable upon the excess unrealized appreciation.

Notice is further given that any interested person may, not later than October 15, 1965, 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 application at the address 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 information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

For the Commission. (pursuant to delegated authority).

[SEAL]

ORVAL L. DUBOIS,
Secretary.

[P.R. Doc. 65-10163; Filed, Sept. 23, 1965;
8:48 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

CERTIFICATES AUTHORIZING EMPLOYMENT OF FULL-TIME STUDENTS WORKING OUTSIDE OF SCHOOL HOURS IN RETAIL OR SERVICE ESTABLISHMENTS AT SPECIAL MINIMUM WAGES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), the regulation on employment of full-time students (29 CFR Part 519), and Administrative Order No. 579 (28 F.R. 11524), the establishments listed in this notice have been issued special certificates authorizing the employment of full-time students working outside of school hours at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the act. The effective and expiration dates are from September 3, 1965, to September 2, 1966, except as otherwise indicated. Pursuant to § 519.6 (b) of the regulation, the minimum certificate rates are not less than 85 percent of the minimum applicable under section 6 of the act.

The following certificates were issued pursuant to paragraphs (c) and (g) of § 519.6 of 29 CFR Part 519, providing for an allowance not to exceed the proportion of the total number of hours worked by full-time students at rates below \$1 an hour to the total number of hours worked by all employees in the establishment during the base period, or 10 percent, whichever is less, in occupations of the same general classes in which the establishment employed full-time students at wages below \$1 an hour in the base period.

Baahs Markets, Inc., food stores: 300 North Florence, Casa Grande, Ariz.; 15 South Arizona Place, Chandler, Ariz.; No. 11, Glendale, Ariz.; No. 3, Phoenix, Ariz.; No. 5, Phoenix, Ariz.; No. 7, Scottsdale, Ariz.

Buehler Market, food store: 2315 N Street, Omaha, Nebr.

Caplin's El Paso Store, department store: 125-129 Morley Avenue, Nogales, Ariz.

Carrollton Foods, Inc., food store: 905 South Main, Carrollton, Mo.

Davis Super Market, Inc., food store: 730 East Pittsburgh Street, Greensburg, Pa.

Ehrlich's Market, Inc., food store: 635 North Columbus Avenue, Lebanon, Ohio.

Elkin Cash & Carry Super Market, Inc., food store: Highway 268, Elkin, N.C.

M. H. Fishman, variety store: 88-90 Merchants Row, Rutland, Vt.

The First Street Store, Ltd., department store: 3634-44 East First Street, Los Angeles, Calif.

Glenwood Market, Inc., food store: 114 Glenwood Plaza, Midwest City, Okla.

Glosser Brothers, Inc., department store: Franklin and Locust Streets, Johnstown, Pa.

W. T. Grant Co., variety stores: No. 705, Birmingham, Ala.; 2100 Dixwell Avenue, Hamden, Conn.; 3459 North Federal Highway, Pompano Beach, Fla. (9-10-65 to 9-9-66); 3507 Memorial Drive, Decatur, Ga.; 129 Eastland Shopping Center, Lexington, Ky. (9-2-65 to 8-31-66); 216 West Lexington Street, Baltimore, Md.; 301 North Washington Street, Rockville, Md.; No. 5, New Bedford, Mass.; 139 East Broadway, Mount Pleasant, Mich.; No. 190, Minneapolis, Minn.; No. 165, Camden, N.J. (9-3-65 to 8-31-66); No. 735, Carteret, N.J. (9-3-65 to 8-31-66); No. 853, Dover, N.J. (9-3-65 to 8-31-66); No. 253, Middlesex, N.J. (9-3-65 to 8-31-66); No. 724, Parsippany, N.J. (9-3-65 to 8-31-66); 146 Main Street, Paterson, N.J. (9-3-65 to 8-31-66); No. 868, Pennsville, N.J. (9-3-65 to 8-31-66); 15 Wanaque Avenue, Pompton Lakes, N.J. (9-3-65 to 8-31-66); No. 393, Roselle, N.J. (9-3-65 to 8-31-66); No. 751, Broomall, Pa.; 401 West Main Street, Lansdale, Pa.; 6595 Roosevelt Boulevard, Philadelphia, Pa.; Foster and Steuben Street, Pittsburgh, Pa.; 513 Smithfield Street, Pittsburgh, Pa.; No. 28, Reading, Pa.; No. 747, Shillington, Pa.; 345 Market Street, Sunbury, Pa.; 13 East Gay Street, West Chester, Pa.; No. 240, Williamsport, Pa.; 315 Gay Street, Knoxville, Tenn. (9-3-65 to 8-31-66); 23-30 Church Street, Martinsville, Va. (9-3-65 to 8-31-66); No. 356, Clarksburg, W. Va. (9-3-65 to 8-31-66); 629 West Foster Street, Appleton, Wis.

Grebe's Bakeries, Inc., bakery store: 5132 West Lincoln Avenue, West Allis, Wis.

H.E.B. Food Store, food stores: No. 102, Corpus Christi, Tex.; No. 103, Corpus Christi, Tex.; No. 104, Corpus Christi, Tex.; No. 105, Corpus Christi, Tex.; No. 107, Corpus Christi, Tex.

The W. J. Kennedy Co., food store: Orange Street and Bellbrook Avenue, Xenia, Ohio.

Kessler's Inc., food store: Sixth Avenue and State Street, Aberdeen, S. Dak.

S. S. Kreege Co., variety stores: No. 732, Birmingham, Ala. (10-13-65 to 12-7-65); No. 728, Bradenton, Fla.; No. 174, Champaign, Ill.; No. 164, Canton, Ill.; No. 94, Bridgeview, Ill.; No. 34, Bloomington, Ill.; No. 254, Aurora, Ill.; No. 4546, Moline, Ill.; No. 318, Rockford, Ill.; No. 321, Quincy, Ill.; No. 630, Park Forest, Ill.; No. 497, Mattoon, Ill.; No. 122, Lincoln, Ill.; No. 218, LaGrange, Ill.; No. 179, Galesburg, Ill.; No. 50 Deerfield, Ill.; No. 201, Decatur, Ill.; No. 261, Danville, Ill.; No. 627, Chicago, Ill.; No. 599, Chicago, Ill.; No. 513, Chicago, Ill.; No. 471, Chicago, Ill.; No. 445, Chicago, Ill.; No. 416, Chicago, Ill.; No. 8, Chicago, Ill.; No. 142, Marion, Ind.; No. 7, Indianapolis, Ind.; No. 672, Indianapolis, Ind.; No. 556, Evansville, Ind.; No. 4557, Bloomington, Ind.; No. 483, Bedford, Ind.; 20 North Broadway, Peru, Ind.; No. 85, Muncie, Ind.; No. 692, Mason City, Iowa; No. 210, Marshalltown, Iowa; No. 145, Fort Dodge, Iowa; 790 Main, Dubuque, Iowa; No. 542, Des Moines, Iowa; No. 71, Des Moines, Iowa; 902 West Kimberly Road, Davenport, Iowa; 616 West Broadway, Council Bluffs, Iowa; No. 108, Cedar Rapids, Iowa; No. 1039, Newport, Ky. (9-3-65 to 8-31-66); 3508 Eastern Avenue, Baltimore, Md.; No. 20, Baltimore, Md.; No. 414, Baltimore, Md.; No. 616, Baltimore, Md.; No. 491, Bladensburg, Md.; No. 209, Dundalk, Md.; No. 698, Glen Burnie, Md.; No. 695, Hagerstown, Md.; No. 691, Rockville, Md.; No. 74, Ann Arbor, Mich.; No. 176, Minneapolis, Minn.; No. 520, Minneapolis, Minn.; No. 694, Minneapolis, Minn.; 2167 Hudson Road, Saint Paul, Minn.; 76 North Main Street, Concord, N.H.; 348 East Main Street, Alliance, Ohio; No. 604, Columbus, Ohio (9-15-65 to 9-14-66); No. 362, Marion, Ohio; No. 680, Norfolk, Va. (9-3-65 to 8-31-66); No. 807, Eau Claire, Wis.; No. 4569, Green Bay, Wis.; No. 268, Madison, Wis.; No. 420, Mani-

towoc, Wis.; 2201 North Third Street, Milwaukee, Wis.; No. 78, Superior, Wis.

S. H. Kress and Co., variety stores: 901 G Avenue, Douglas, Ariz.; 119 Morley Avenue, Nogales, Ariz.; 22 West Washington Street, Phoenix, Ariz.; 97 East Congress Street, Tucson, Ariz.; 116 North Main Street, Rockford, Ill.; 111 West Main Street, Gastonia, N.C. (9-24-65 to 9-23-66); 105 West Center Street, Provo, Utah; 257 South Main Street, Salt Lake City, Utah.

K. C. Super Market, food store; Eighth Street and Ohio Avenue, Etowah, Tenn.; 9-2-65 to 8-31-66.

La Ville De Paris, department store; 101-105 Morley Avenue, Nogales, Ariz.

Wm. A. Lewis Clothing Co., apparel stores; 2301 West 95th Street, Chicago, Ill.; Hillside Shopping Center, Hillside, Ill.; Harlem-Irving Plaza, Norridge, Ill.

McCrary-McLellan-Green Stores, variety stores: No. 239, Fort Smith, Ark.; 1138 Main Street, Bridgeport, Conn.; No. 75, Gainesville, Fla. (9-1-65 to 8-31-66); No. 245, Homestead, Fla.; No. 57, Ocala, Fla.; No. 71, West Palm Beach, Fla.; No. 678, Pekin, Ill.; No. 305, Lexington, Ky. (9-3-65 to 8-31-66); No. 447, Lapeer, Mich.; No. 575, Columbus, Miss.; No. 302, Gulfport, Miss.; No. 1072, Succasunna, N.J.; No. 485, Hobbs, N. Mex.; No. 410, Wilson, N.C.; No. 1035, Columbus, Ohio; No. 597, Lawton, Okla.; No. 1116, Chester, Pa.; No. 1104, Columbia, S.C.; 225 East Main Street, Johnson City, Tenn.; No. 578, Marinette, Wis.; No. 579, Monroe, Wis.; No. 694, Oconomowoc, Wis.

Meyer Brothers, department store; 181 Main Street, Paterson, N.J.; 9-3-65 to 8-31-66.

G. C. Murphy Co., variety stores: No. 401, Bluffton, Ind.; No. 136, Ocean City, N.J. (9-3-65 to 8-31-66); No. 139, Washington, N.J. (9-3-65 to 8-31-66); No. 135, Wildwood, N.J. (9-3-65 to 8-31-66); No. 108, Mercer, Pa.

N. Hess' Sons, Inc., shoe stores: 510 East Belvedere Avenue, Baltimore, Md.; 4404 Edmondson Avenue, Baltimore, Md.; 7761 Eastern Avenue, Baltimore, Md.

Nelson Brothers, Inc., variety stores: No. 30, Chicago, Ill.; No. 31, Chicago, Ill.; No. 35, Chicago, Ill.; No. 52, Chicago, Ill.; No. 54, Chicago, Ill.; No. 57, Chicago, Ill.; No. 65, Chicago, Ill.; No. 74, Chicago, Ill.; No. 76, Chicago, Ill.; No. 97, Chicago, Ill.; No. 69, Evanston, Ill.; No. 150, Melrose Park, Ill.; No. 37, Waukegan, Ill.; No. 26, Evanston, Ind.; No. 129, Rochester, Minn.; No. 20, Saint Paul, Minn.

J. J. Newberry Co., variety stores: 788-96 Chapel Street, New Haven, Conn.; 110 South Main Street, Harlan, Ky. (9-3-65 to 8-31-66); 216 Penobscot Avenue, Millinocket, Maine; 362 Main Street, Rockland, Maine; 106-110 East Main Street, Elkton, Md.; 61-75 West Washington Street, Hagerstown, Md.; 15-17 Main Street, Franklin, Mass.; No. 73 Holyoke, Mass.; 21-23 Main Street, Leominster, Mass.; 175 Main Street, Northampton, Mass.; 395 Main Street, Wakefield, Mass.; No. 360 Alma, Mich.; 109 South Main Street, Ishpeming, Mich.; No. 104, Asbury Park, N.J. (9-3-65 to 8-31-66); No. 36, Dover, N.J. (9-3-65 to 8-31-66); 7 West Main Street, Freehold, N.J. (9-3-65 to 8-31-66); No. 157, Keyport, N.J. (9-3-65 to 8-31-66); No. 182, Littleton, N.H.; 77 Broad Street, Red Bank, N.J. (9-3-65 to 8-31-66); No. 187, Vineland, N.J. (9-3-65 to 8-31-66); 724-730 Wheeling Avenue, Cambridge, Ohio; 600 Race Street, Cincinnati, Ohio; 141 South Washington Street, Tiffin, Ohio; No. 415, Wooster, Ohio; 258-266 Mill Street, Danville, Pa.; 304 Market Street, Lewisburg, Pa.; No. 129, Milton, Pa.; No. 13, Newport, Pa. (10-26-65 to 10-25-66); 2028 Main Street, Northampton, Pa.; No. 5, Shamokin, Pa.; 600 Main Street, Stroudsburg, Pa.; 416-422 Market Street, Sunbury, Pa.; No. 117, Tamaqua, Pa.; No. 33, Newport, R.I.; 201-209 Westminster Street, Providence, R.I.; 37-41 Washington Street, West Warwick, R.I.;

201-15 North Stanton Street, El Paso, Tex.; 20 Rockingham Street, Bellows Falls, Vt.; 46 Main Street, Newport, Vt.; South Main Street, White River Junction, Vt.; 102-122 Davis Street, Culpeper, Va. (9-3-65 to 8-31-66); 125-127 East Main Street, Front Royal, Va. (9-3-65 to 8-31-66); Main Street, South Boston, Va. (9-3-65 to 8-31-66); No. 318, Charles Town, W. Va.

The Outlet Co., department store; 176 Weybosset Street, Providence, R.I.

J. C. Penny Co., department store; Main Street, Waynesboro, Pa.

Piggly Wiggly, food stores: No. 1, De Ridder, La.; No. 37, Ridgeland, S.C.; No. 1, Lamesa, Tex.; No. 2, Lamesa, Tex.

Rose's Stores, Inc., variety store: No. 140, Columbus, Ga.

Seiferts, apparel store; 227 Second Street, Cedar Rapids, Iowa (10-13-65 to 10-12-66).

Sunshine Department Stores, Inc., department store; 795 Marietta Street, Atlanta, Ga.

T. G. & Y. Stores, Co., variety stores: No. 240, Chickasaw, Ala.; No. 174, Fort Smith, Ark.; No. 207, Baton Rouge, La.; No. 225, Baton Rouge, La.; No. 209, Denham Springs, La.; No. 219, La Place, La.; No. 220, Metairie, La.; No. 210, New Orleans, La.; No. 211, New Orleans, La.; No. 214, New Orleans, La.; No. 218, Shreveport, La.; No. 233, Thibodaux, La.; No. 31, Bartlesville, Okla.; No. 8, Elk City, Okla.; No. 59, Oklahoma City, Okla.; No. 71, Tulsa, Okla.

Whittaker, Inc., food store; No. 1, Oklahoma City, Okla.

Younker Bros., Inc.; department store; 1629 Second Avenue, Rock Island, Ill.

The following certificates were issued to establishments coming into existence after May 1, 1960, under paragraphs (c), (d), (g), and (h) of § 519.6 of 29 CFR Part 519. The certificates permit the employment of full-time students at rates of not less than 85 percent of the minimum applicable under section 6 of the act in the classes of occupations listed, and provide for limitations on the percentage of full-time student hours of employment at rates below the applicable statutory minimum to total hours of employment of all employees. The percentage limitations vary from month to month between the minimum and maximum figures indicated.

Bashas, food stores for the occupations of carry-out, janitorial: No. 10, Mesa, Ariz. (10 percent for each month); No. 12, Phoenix, Ariz. (10 percent for each month); No. 8, Phoenix, Ariz. (10 percent for each month); No. 9, Phoenix, Ariz. (10 percent for each month); No. 15, Phoenix, Ariz. (10 percent for each month); No. 13, Scottsdale, Ariz. (10 percent for each month); No. 14, Scottsdale, Ariz. (10 percent for each month); No. 16, Scottsdale, Ariz. (10 percent for each month); No. 6, Tucson, Ariz. (10 percent for each month).

Boonville Foods, food store; No. 57, Boonville, Mo.; carry-out; between 8.0 percent and 10 percent.

Britts, department store for the occupations of sales clerk, stock clerk, janitorial, clerical, window trimmer, marker: Ellsworth Shopping Center, Ellsworth, Maine (between 0.0 percent and 10 percent); Chambers Bridge Road, Brick Town, N.J. (between 8.8 percent and 10 percent, 9-3-65 to 8-31-66); Route No. 9, Freehold, N.J. (10 percent for each month, 9-3-65 to 8-31-66); 77-89 Spring Street, Newton, N.J. (between 8.8 percent and 10 percent, 9-3-65 to 8-31-66).

Centers Department Store, variety store; 80 Railroad Street, Saint Johnsbury, Vt.; stock clerk, sales clerk; between 4.8 percent and 10 percent.

Famous Co., Inc., variety store; Parkview Shopping Center, Marshall, Tex.; sales clerk,

stock clerk, janitorial; 10 percent for each month.

W. T. Grant Co., variety stores for the occupations of sales clerk, stock clerk, clerical, cashier, except as otherwise indicated: 200 Sherwood Square, Jacksonville, Fla. (sales clerk, 10 percent for each month); No. 1157, Evansville, Ind. (between 4.4 percent and 10 percent); No. 1051, Indianapolis, Ind. (between 6.9 percent and 10 percent); 6644 Security Boulevard, Baltimore, Md. (between 7.4 percent and 10 percent); No. 1082, Baltimore, Md. (between 7.4 percent and 10 percent); No. 1131, Baltimore, Md. (between 7.4 percent and 10 percent); No. 932, Grand Rapids, Mich. (between 2.7 percent and 10 percent); No. 983, Hammon, N.J. (between 4.6 percent and 10 percent, 9-3-65 to 8-31-66); No. 1126, Somers Point, N.J. (between 3.2 percent and 10 percent, 9-3-65 to 8-31-66); No. 974, West Caldwell, N.J. (between 6.0 percent and 10 percent, 9-3-65 to 8-31-66); No. 896, Allentown, Pa. (sales clerk, cashier, between 2.5 percent and 10 percent); No. 327, Ephrata, Pa. (10 percent for each month); No. 1143, Folcroft, Pa. (between 8.4 percent and 10 percent); No. 1004, Montoursville, Pa. (10 percent for each month); 1125 Freeport Road, Pittsburgh, Pa. (sales clerk, between 5.8 percent and 10 percent); 500 Second Street Pike, Southampton, Pa. (sales clerk, between 0.0 percent and 9.2 percent); No. 848, State College, Pa. (sales clerk, 10 percent for each month); No. 1031, Farmville, Va. (between 2.5 percent and 10 percent, 9-3-65 to 8-31-66); 6001 Fort Avenue, Lynchburg, Va. (between 1.7 percent and 10 percent, 9-3-65 to 8-31-66).

H.E.B. Food Stores, food stores for the occupations of bottle boy, package boy, sack boy: No. 101, Corpus Christi, Tex. (10 percent for each month); No. 99, Belmead, Tex. (10 percent for each month).

S. S. Kresge Co., variety stores for the occupations of sales clerk, except as otherwise indicated: No. 745, Carol City, Fla. (between 7.2 percent and 10 percent); No. 791, Clearwater, Fla. (between 6.7 percent and 10 percent); No. 763, Daytona Beach, Fla. (between 5.0 percent and 10 percent); No. 783, Merritt Island, Fla. (between 5.0 percent and 10 percent, 9-16-65 to 9-15-66); No. 720, Orlando, Fla. (between 5.0 percent and 10 percent, 10-1-65 to 9-30-66); No. 4044, Savannah, Ga. (between 3.5 percent and 10 percent); No. 4031, Bloomington, Ill. (between 3.9 percent and 10 percent); No. 4019, Champaign, Ill. (between 3.9 percent and 10 percent); 4777 North Milwaukee Avenue, Chicago, Ill. (10 percent for each month); No. 554, Moline, Ill. (10 percent for each month); 999 Elmhurst Road, Mount Prospect, Ill. (10 percent for each month, 9-14-65 to 9-13-66); No. 4568, Niles, Ill. (sales clerk, stock clerk, cashier, 10 percent for each month); No. 503, Oak Brook, Ill. (10 percent for each month); No. 187, Palatine, Ill. (10 percent for each month); No. 4005, Peoria, Ill. (between 3.9 percent and 10 percent); No. 4592, Streator, Ill. (stock clerk, cashier, between 2.1 percent and 10 percent); No. 4587, Hammond, Ind. (between 7.4 percent and 10 percent); No. 4039, South Bend, Ind. (10 percent for each month); No. 170, Cedar Rapids, Iowa (between 3.4 percent and 8.2 percent); No. 195, Bangor, Maine (10 percent for each month); No. 264, Lutherville, Timonium, Md. (10 percent for each month); No. 4066, Jackson, Mich. (10 percent for each month); 200 West Michigan Avenue, Ipsanti, Mich. (between 3.9 percent and 10 percent); No. 135, Bloomington, Minn. (10 percent for each month); No. 4022, Grand Forks, N. Dak. (between 6.0 percent and 10 percent); 8 South Main Street, Minot, N. Dak. (stock clerk, cashier, between 7.6 percent and 10 percent); No. 4004, Knoxville, Tenn. (between 2.1 percent and 10 percent); No. 757, Austin, Tex. (between 0.7 percent and 10 percent); No. 741, Lubbock, Tex. (between 0.8 percent and 8.5

percent); 3654 Fredericksburg Road, San Antonio, Tex. (sales clerk, cashier, between 0.0 percent and 5.1 percent, 10-13-65 to 10-12-66); No. 746, San Antonio, Tex. (between 4.9 percent and 10 percent); No. 553, Hampton, Va. (between 0.0 percent and 10 percent); No. 4521, Parkersburg, W. Va. (between 3.6 percent and 10 percent, 9-3-65 to 8-31-66); No. 4542, Beloit, Wis. (between 9.4 percent and 10 percent); No. 222, Green Bay, Wis. (between 5.5 percent and 10 percent); No. 442, Neenah, Wis. (10 percent for each month).

S. H. Kress & Co., variety store; 3300 Robinson Road, Winston-Salem, N.C.; sales clerk, stock clerk; between 2.8 percent and 10 percent, 9-10-65 to 9-9-66.

Wm. A. Lewis Clothing Co., apparel store; Elmhurst and Rand Road, Mount Prospect, Ill.; receptionist, check writers, wrappers, stock clerk; between 9.1 percent and 10 percent.

McCrory Stores Corp., variety stores for the occupations of sales clerk, stock clerk, clerical; No. 344, Mount Dora, Fla. (between 6.8 percent and 10 percent); No. 360, East Alton, Ill. (10 percent for each month).

Minimax Super Markets, food stores for the occupations of bagger, carry-out, janitorial, stock clerk; 1001 South Broadway, La Porte, Tex. (between 8.3 percent and 10 percent); 1201 Strawberry Road, Pasadena, Tex. (between 8.3 percent and 10 percent, 10-19-65 to 10-18-66).

G. C. Murphy Co., variety stores for the occupations of sales clerk, stock clerk, clerical, janitorial; No. 298, Trenton, N.J. (10 percent for each month, 9-3-65 to 8-31-66); No. 71, Trenton, N.J. (10 percent for each month, 9-3-65 to 8-31-66).

N. Hess' Sons, Inc., shoe stores for the occupation of hostess; 6774 Reisterstown Road, Baltimore, Md. (between 3.1 percent and 4.6 percent); 740-C Fairmount Avenue, Towson, Md. (between 3.1 percent and 4.6 percent).

Neisner Brothers, Inc., variety store; No. 202, Crystal Lake, Ill.; sales clerk, stock clerk, clerical; 10 percent for each month.

J. J. Newberry Co., variety stores for the occupations of sales clerk, clerical; 850 Mentor Avenue, Mentor, Ohio (between 6.4 percent and 10 percent); 135 Main Street, Palmsville, Ohio (between 6.4 percent and 10 percent).

Parisian Mercantile Corp., department store; 205 Morley Avenue, Nogales, Ariz.; sales clerk, wrapper, marker, stock clerk; between 1.4 percent and 10 percent.

Piggly Wiggly, food store; No. 2, De Ridder, La.; bag boy; between 2.8 percent and 10 percent.

T. G. & Y. Stores Co., variety stores for the occupations of sales clerk, stock clerk; No. 335, Slidell, La. (10 percent for each month); No. 242, New Orleans, La. (between 3.2 percent and 10 percent); No. 189, Yuma, Ariz. (10 percent for each month).

Each certificate has been issued upon the representations of the employer which, among other things, were that employment of full-time students at special minimum rates is necessary to prevent curtailment of opportunities for employment, and the hiring of full-time students at special minimum rates will not tend to displace full-time employees. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in Part 528 of Title 29 of the Code of Federal Regulations. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within 15 days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 519.9.

Signed at Washington, D.C., this 17th day of September 1965.

ROBERT G. GRONEWALD,
Authorized Representative
of the Administrator.

[F.R. Doc. 65-10160; Filed, Sept. 23, 1965; 8:47 a.m.]

CERTIFICATES AUTHORIZING EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM RATES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), and Administrative Order No. 579 (28 F.R. 11524) the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the act. The effective and expiration dates, occupations, wage rates, number or proportion of learners and learning periods, for certificates issued under general learner regulations (29 CFR 522.1 to 522.9), and the principal product manufactured by the employer are as indicated below. Conditions provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.20 to 522.25, as amended).

The following learner certificates were issued authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

The Arrow Co., Division of Cluett, Peabody & Co., Inc., Albertville, Ala.; effective 9-8-65 to 9-7-66 (men's shirts).

Biltmore Manufacturing Co., a division of Kellwood Co., Hendersonville, N.C.; effective 8-25-65 to 8-24-66 (ladies' capris, shorts, pedal pushers).

Brew-Schneider Co., Inc., 709 Magnolia Street, Blakely, Ga.; effective 9-4-65 to 9-3-66 (men's and ladies' washable service garments).

Carolina Underwear Co., Inc., Pajama and Carole Department, Thomasville, N.C.; effective 8-31-65 to 8-30-66 (men's, ladies' and children's pajamas).

Detroit Slacks, Inc., Detroit, Ala.; effective 9-1-65 to 8-31-66 (men's and boys' slacks).

Dublin Sportswear, Inc., Dublin, Tex.; effective 8-30-65 to 8-29-66 (boys' work clothing).

M. Fine & Sons Manufacturing Co., Inc., 12th and K Streets, Bedford, Ind.; effective 8-30-65 to 8-29-66 (men's and boys' work pants).

C. & S. Manufacturing, Inc., Central and P Streets, Auburn, Neb.; effective 8-24-65 to 8-23-66 (boys' pants).

H. D. Lee of Virginia, Inc., Broadway, Va.; effective 8-21-65 to 8-20-66 (work pants).

McCoy Manufacturing Co., Inc., Sulligent, Ala.; effective 9-1-65 to 8-31-66 (men's and boys' slacks).

Meyersdale Manufacturing Co., Inc., Meyersdale, Pa.; effective 9-4-65 to 9-3-66 (men's shirts).

Morehead City Garment Co., Morehead City, N.C.; effective 9-10-65 to 9-9-66 (men's sport shirts).

Phil Campbell Manufacturing Co., Inc., Post Office Box 117, Phil Campbell, Ala.; effective 8-23-65 to 8-22-66 (men's boys' and ladies' slacks).

Providence Pants Manufacturing Co., Inc., 101 Pittston Avenue, Scranton, Pa.; effective 8-27-65 to 8-26-66 (boys' trousers).

Salem Garment Co., Salem, S.C.; effective 8-25-65 to 8-24-66 (women's dresses).

Shawnee Garment Manufacturing Co., 113 1/2 North Bell Street, Shawnee, Okla.; effective 8-25-65 to 8-24-66 (men's and boys' jeans and shirts).

Somerset Shirt & Pajama Co., Rural Delivery No. 1, Somerset, Pa.; effective 8-23-65 to 8-22-66 (men's and boys' nightwear).

Levi Strauss & Co., Murphy, N.C.; effective 8-26-65 to 8-25-66 (men's and boys' pants).

W. F. Apparel Co., Inc., 902 West Main Street, West Frankfort, Ill.; effective 8-27-65 to 8-26-66 (men's and misses' dresses).

Wendell Garment Co., Inc., 91 North Pine Street, Wendell, N.C.; effective 9-5-65 to 9-4-66 (men's sport shirts).

J. M. Wood Manufacturing Co., Inc., 403 East Black Jack, Dublin, Tex.; effective 8-30-65 to 8-29-66 (work pants and work shirts).

The following learner certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

Bentonville Manufacturing Co., 1004 South Main Street, Bentonville, Ark.; effective 8-24-65 to 8-23-66; 10 learners (children's blouses, pants and outerwear jackets).

Green Bay Clothing Manufacturers, Inc., 507 Cedar Street, Green Bay, Wis.; effective 9-3-65 to 9-2-66; 10 learners (men's and boys' outerwear coats and outerwear jackets).

Normandy Dress Co., 700 South Madison Avenue, Bay City, Mich.; effective 8-26-65 to 8-25-66; 10 learners (women's dresses).

Tunxis Sportswear Manufacturing Co., Inc., and Laurel Togs, Inc., 100 Garfield Avenue, New London, Conn.; effective 8-28-65 to 8-27-66; 10 learners (girls' ski jackets and car coats).

The following learner certificates were issued for plant expansion purposes. The effective and expiration dates and the number of learners authorized are indicated.

The Arrow Co., Division of Cluett, Peabody & Co., Inc., Albertville, Ala.; effective 9-8-65 to 3-7-66; 150 learners (men's shirts).

Decatur Shirt Corp., Decatur, Miss.; effective 8-30-65 to 2-28-66; 75 learners (boys' sport shirts).

Edward Hyman Co., Lake Street and Frost Street, Hazlehurst, Miss.; effective 9-1-65 to 2-28-66; 40 learners (work pants).

H. D. Lee Co., Trenton, Ga.; effective 9-1-65 to 2-28-66; 70 learners (work pants).

Olney Manufacturing Co., Olney, Tex.; effective 9-2-65 to 3-1-66; 50 learners (men's and boys' dress slacks).

Phil Campbell Manufacturing Co., Inc., Post Office Box 117, Phil Campbell, Ala.; effective 8-23-65 to 2-22-66; 50 learners (men's, boys' and ladies' slacks).

Richard Martin Manufacturing Inc., 447 Elm Street, Graham, Tex.; effective 8-25-65 to 2-24-66; 40 learners. Learners may not be employed at special minimum wages in the production of ladies' skirts, suits, and jackets (ladies' blouses and dresses).

Tom & Huck Togs, Inc., Beaverton, Ala.; effective 8-26-65 to 2-25-66; 20 learners (men's and boys' dress and sport pants).

Vista Slack Corp., 660 L Street, Chula Vista, Calif.; effective 8-28-65 to 2-27-66; 10 learners (men's dress slacks).

Glove Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.60 to 522.65, as amended).

Newton Glove, Inc., Box 271, Newton, N.C.; effective 8-26-65 to 8-25-66; 12 learners for plant expansion purposes (cotton and leather work gloves).

Hosiery Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.40 to 522.43, as amended).

Unique Knitting Co., Acworth, Ga.; effective 8-30-65 to 8-29-66; 5 percent of the total number of factory production workers for normal labor turnover purposes (seamless).

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.30 to 522.35, as amended).

Carolina Underwear Co., Inc., Rayon & Forsyth Division, Thomasville, N.C.; effective 8-31-65 to 8-30-66; 5 percent of the total number of factory production workers engaged in the production of ladies' and children's panties and ladies' pajamas for normal labor turnover purposes (ladies' and children's panties and ladies' pajamas).

Circle Manufacturing Co., Thomasville, N.C.; effective 8-28-65 to 8-27-66; 5 percent of the total number of factory production workers for normal labor turnover purposes (ladies' panties and men's shorts).

Sierra Lingerie Co., 300 West 12th Street, Ogden, Utah; effective 8-25-65 to 8-24-66; 5 percent of the total number of factory production workers for normal labor turnover purposes (ladies' and children's panties, children's pajamas).

Sierra Lingerie Co., 300 West 12th Street, Ogden, Utah; effective 8-25-65 to 8-24-66; 15 learners for plant expansion purposes (ladies' and children's panties, children's pajamas).

Snowdon, Inc., Osceola, Iowa; effective 8-26-65 to 8-25-66; 5 percent of the total number of factory production workers for normal labor turnover purposes (ladies' lingerie).

The following student-worker certificates were issued pursuant to the regulations applicable to the employment of student-workers (29 CFR 527.1 to 527.9). The effective and expiration dates, occupations, wage rates, number of student-workers, and learning periods for the certificates issued under Part 527 are as indicated below.

Maplewood Academy, 700 North Main Street, Hutchinson, Minn.; effective 9-1-65 to 8-31-66; authorizing the employment of: (1) 45 student-workers in the bookbinding industry in the occupations of bookbinder, bindery worker and related skilled and semiskilled occupations, for a learning period of 600 hours at the rates of \$1.10 an hour for the first 300 hours and \$1.15 an hour for the remaining 300 hours; (2) 40 student-workers in the furniture manufacturing industry in the occupations of woodworking machine operator, assembler, finisher, and related skilled and semiskilled occupations, for a learning period of 600 hours at the rates of \$1.10 an hour for the first 300 hours and \$1.15 an hour for the remaining 300 hours; and (3) 2 student-workers in the clerical occupations of typist, record-keeper, and related skilled and semiskilled occupations in the office, for a learning period of 480 hours at the rates of \$1.10 an hour for the first 240 hours and \$1.15 an hour for the remaining 240 hours.

Oak Park Academy, Nevada, Iowa; effective 9-1-65 to 8-31-66; authorizing the employment of: (1) 6 student-workers in the printing industry in the occupations of compositor, pressman, and related skilled and semiskilled occupations including incidental

clerical work in the shop, for a learning period of 1,000 hours at the rates of \$1.10 an hour for the first 500 hours and \$1.15 an hour for the remaining 500 hours; and (2) 12 student-workers in the broom manufacturing industry in the occupations of broom maker, stitcher, and related skilled and semiskilled occupations, for a learning period of 360 hours at the rates of \$1.10 an hour for the first 180 hours and \$1.15 an hour for the remaining 180 hours.

Ozark Academy, Route No. 2, Gentry, Ark.; effective 9/1/65 to 8/31/66; authorizing the employment of 15 student-workers in the broom and mop manufacturing industry in the occupations of broom maker, stitcher, sorter, winder, painter, and related skilled and semiskilled occupations, for a learning period of 360 hours at the rates of \$1.10 an hour for the first 180 hours and \$1.15 an hour for the remaining 180 hours.

Union College, 3800 South 48th Street, Lincoln, Nebr.; effective 9/1/65 to 8/31/66; authorizing the employment of: (1) 8 student-workers in the printing industry in the occupations of compositor, pressman, and related skilled and semiskilled occupations, for a learning period of 1,000 hours at the rates of \$1.10 an hour for the first 500 hours and \$1.15 an hour for the remaining 500 hours; (2) 15 student-workers in the bookbinding industry in the occupations of bookbinder, bindery worker, and related skilled and semiskilled occupations, for a learning period of 600 hours at the rates of \$1.10 an hour for the first 300 hours and \$1.15 an hour for the remaining 300 hours; (3) 20 student-workers in the furniture manufacturing industry in the occupations of woodworking machine operator, assembler, finisher, and related skilled and semiskilled occupations, for a learning period of 600 hours at the rates of \$1.10 an hour for the first 300 hours and \$1.15 an hour for the remaining 300 hours; (4) 8 student-workers in the clerical occupations of bookkeeper, business machine operator, and related skilled and semiskilled occupations, for a learning period of 480 hours at the rates of \$1.10 an hour for the first 240 hours and \$1.15 an hour for the remaining 240 hours; and (5) 8 student-workers in the broom manufacturing industry in the occupations of broom maker, stitcher, and related skilled and semiskilled occupations, for a learning period of 360 hours at the rates of \$1.10 an hour for the first 180 hours and \$1.15 an hour for the remaining 180 hours.

Union Springs Academy, Seminary Street, Union Springs, N.Y.; effective 9/1/65 to 8/31/66; authorizing the employment of 30 student-workers in the broom manufacturing industry in the occupations of broom maker, sorter, winder, stitcher, and related skilled and semiskilled occupations, for a learning period of 360 hours at the rates of \$1.10 an hour for the first 180 hours and \$1.15 an hour for the remaining 180 hours.

The student-worker certificates were issued upon the applicant's representations and supporting material fulfilling the statutory requirements for the issuance of such certificates, as interpreted and applied by Part 527.

Each learner certificate has been issued upon the representations of the employer which, among other things, were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within 15 days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9. The

certificates may be annulled or withdrawn, as indicated therein, in the manner provided in 29 CFR Part 528.

Signed at Washington, D.C., this 10th day of September 1965.

ROBERT G. GRONEWALD,
Authorized Representative
of the Administrator.

[F.R. Doc. 65-10161; Filed, Sept. 23, 1965; 8:48 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 52]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

SEPTEMBER 21, 1965.

The following are notices of filing of applications for temporary authority under section 210(a) of the Interstate Commerce Act provided for under the new rules in Ex Parte No. MC 67 (49 CFR Part 240), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protest must be specific as the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined, at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 25798 (Sub-No. 133 TA), filed September 17, 1965. Applicant: CLAY HYDER TRUCKING LINES, INC., 502 East Bridgers Avenue, Post Office Box 1186, Auburndale, Fla. Applicant's representative: George W. Clapp (same address as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Grape juice*, in bulk, in tank vehicles, from Geneva, Ohio, to Bradenton, Fla., for 120 days. Supporting shipper: Tropicana Products, Inc., Post Office Box 333, Bradenton, Fla. Send protests to: Joseph B. Telchert, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, Room 1621, 51 Southwest 1st Avenue, Miami, Fla., 33130.

No. MC 25798 (Sub-No. 134 TA), filed September 17, 1965. Applicant: CLAY HYDER TRUCKING LINES, INC., 502 East Bridgers Avenue, Post Office Box 1186, Auburndale, Fla. Applicant's representative: George W. Clapp (same address as above). Authority sought to

operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Grape juice*, in bulk, in tank vehicles, from Westfield, N.Y., to Bradenton, Fla., for 150 days. Supporting shipper: Tropicana Products, Inc., Post Office Box 338, Bradenton, Fla. Send protests to: Joseph B. Teichert, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, Room 1621, 51 Southwest First Avenue, Miami, Fla., 33130.

No. MC 66562 (Sub-No. 2120 TA), filed September 17, 1965. Applicant: RAILWAY EXPRESS AGENCY, INCORPORATED, 219 East 42d Street, New York, N.Y., 10017. Applicant's representative: Elmer F. Slovacek, Suite 2800, 188 Randolph Tower, Chicago, Ill., 60601. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *General commodities* moving in express service, between Sioux City, Iowa, and Sioux Falls, S. Dak., from Sioux City over Iowa Highway 12 to junction of Iowa Highway 10, thence over Iowa Highway 10 to junction South Dakota Highway 46, thence over South Dakota Highway 46 to junction Interstate Highway 29, thence over Interstate Highway 29 to Sioux Falls, and return over the same route, serving the intermediate and/or off-route points of Akron and Hawarden, Iowa, for 150 days, subject to the following conditions: (1) The service to be performed by the applicant shall be limited to that which is auxiliary to or supplemental of express service of the Railway Express Agency, Inc.; (2) shipments transported by applicant shall be limited to those on through bills of lading or express receipts; and (3) such further specific conditions as the Commission, in the future, may find necessary to impose in order to restrict applicant's operations to a service which is auxiliary to or supplemental of express service of the Railway Express Agency, Inc. Supporting shippers: There are six (6) supporting shippers affidavits attached to the application which may be examined here at the Interstate Commerce Commission, in Washington, D.C. Send protests to: Stephen P. Tomany, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 346 Broadway, New York, N.Y., 10013.

No. MC 113362 (Sub-No. 89 TA), filed September 17, 1965. Applicant: ELLSWORTH FREIGHT LINES, INC., 220 East Broadway, Eagle Grove, Iowa. Applicant's representative: Marshall D. Becker, 630 City National Bank Building, Omaha, Nebr., 68102. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Candy and confectionery*, (1) from Long Island City, N.Y., to Cleveland, Ohio, and Detroit, Mich., and (2) from Poughkeepsie, N.Y., to Rockford, Ill., Cleveland, Ohio, and Detroit, Mich., for 180 days. Supporting shipper: American Chicle Co., 30-30 Thomson Avenue, Long Island City 1, N.Y. Send protests to: Ellis L. Annett, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 227 Federal Office Building, Des Moines, Iowa, 50309.

No. MC 117797 (Sub-No. 3 TA), filed September 17, 1965. Applicant: R. D. LEWIS, doing business as LEWIS BANANA CO., 221 Fourth Street, Fowler, Colo. Applicant's representative: Herbert M. Boyle, 946 Metropolitan Building, Denver 2, Colo. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Bananas*, from Gulfport, Miss., to Denver, Colorado Springs, and Pueblo, Colo., for 180 days. Supporting shippers: Safeway Stores, Inc., Post Office Box 315, Oakland, Calif.; A. L. Blakley Co., 156 Denargo Market, Denver, Colo.; and Standard Fruit and Steamship Co., 944 St. Charles Avenue, New Orleans, La. Send protests to: Luther H. Oldham, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 2022 Federal Building, Denver, Colo., 80202.

No. MC 127216 (Sub-No. 2 TA), filed September 17, 1965. Applicant: WALACE S. CROPPER, JR., Jarvis Road, Bishop, Md. Applicant's representative: F. D. Hammond, Masonic Temple Building, Post Office Box 53, Dover, Del. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Fish meal*, from Lewes, Del., to the facilities of A. W. Perdue & Son in Wicomico County, Md., and the facilities of Berlin Milling Co., Inc., in Worcester County, Md., for 180 days. Supporting shippers: A. W. Perdue & Son, Inc., Salisbury, Md., 21801; Robert L. Brodey, Treasurer; and Berlin Milling Co., Inc., Berlin, Md., 21811. B. Quillin Chandler, Secretary. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 206 Post Office Building, Salisbury, Md., 21801.

No. MC 127440 (Sub-No. 1 TA), filed September 17, 1965. Applicant: L & M FEED COMPANY, INC., Rocky Face, Ga. Applicant's representative: Ariel V. Conlin, Suite 626, Fulton National Bank Building, Atlanta, Ga., 30303. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Animal and poultry feeds*, in bags and/or in bulk, between points in Jackson, De Kalb, and Cherokee Counties, Ala.; points in Bradley, Polk, Hamilton, Marion, Sequatchie, Bledsoe, Rhea, Meigs, McMinn, Monroe, Grundy, and Franklin Counties, Tenn.; and points in Dade, Walker, Catoosa, Whitfield, Murray, Chattooga, Gordon, Floyd, Bartow, Cherokee, Forsyth, Hall, Dawson, Pickens, Lumpkin, Gilmer, Fannin, Union, Towns, Polk, Haralson, Paulding, and Cobb Counties, Ga.; and from Chattanooga, Tenn., to Covington, Ga., for 180 days. Supporting shipper: Tennessee Egg Co., Inc., 414 West 16th Street, Chattanooga, Tenn., 37408. Send protests to: William L. Scroogs, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, Room 300, Atlanta, Ga., 30308.

No. MC 127576 TA, filed September 17, 1965. Applicant: JAMES VANCE GEREN, doing business as JIMMY GEREN TRUCKING, Star Route 1, Box 7, Coalinga, Calif. Applicant's repre-

sentative: Marvin Handler, 625 Market Street, San Francisco 5, Calif. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Asbestos shorts and waste*, from the site of Coalinga Asbestos Co., Inc., mill, approximately 21 miles northwest of Coalinga, Calif., to Coalinga, Calif., for 150 days. Supporting shipper: Coalinga Asbestos Co., Inc., Post Office Box 1045, Coalinga, Calif., 93210. Send protests to: Wm. E. Murphy, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 450 Golden Gate Avenue, Post Office Box 36004, San Francisco, Calif., 94102.

No. MC 127577 TA, filed September 17, 1965. Applicant: D. DONNELLY LIMITED, 191 Murray Street, Montreal, Quebec, Canada. Applicant's representative: Norman Charles, 80 Bay Street, Glens Falls, N.Y. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Rock salt*, in bulk, in dump vehicles, from ports of entry on the international boundary line between the United States and Canada located in Vermont, to points in Caledonia, Chittenden, Essex, Franklin, Grand Isle, Lamoille, Orleans, and Washington Counties, Vt., with no transportation for compensation on return except as otherwise authorized, for 150 days. Supporting shipper: Morton Salt Co., 110 North Wacker Drive, Chicago, Ill., 60606. Attention: R. W. Brinckman. Send protests to: Wilmet E. James, Jr., District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 518 Federal Building, Albany, N.Y., 12207.

No. MC 127578 TA, filed September 17, 1965. Applicant: KAMIAH DAIRY PRODUCTS, INC., Box 785, Kamiah, Idaho. Authority sought to operate as a contract carrier, by motor vehicle, over regular routes, transporting: *Dairy products* in shipper owned refrigerator trailers, under continuing contract with Carnation Co., Spokane, Wash., between Spokane, Wash., and Lewiston, Idaho, as follows: From Spokane over U.S. Highway 195 to junction U.S. Highway 95, thence over U.S. Highway 95 to Lewiston, Idaho, and return over the same route, serving no intermediate points, for 180 days. Supporting shipper: Carnation Co., Post Office Box 2667, Terminal Annex, Spokane, Wash., 99220. Send protests to: L. C. Taylor, Bureau of Operations and Compliance, Interstate Commerce Commission, 401 U.S. Post Office, Spokane, Wash., 99201.

By the Commission.

[SEAL]

H. NEIL GARSON,
Secretary.

[F.R. Doc. 65-10153; Filed, Sept. 23, 1965; 8:46 a.m.]

FOURTH SECTION APPLICATION FOR RELIEF

SEPTEMBER 21, 1965.

Protests to the granting of an application must be prepared in accordance

with Rule 1.40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 40030—*Joint motor-rail rates—Southern Motor Carriers*. Filed by Southern Motor Carriers Rate Conference, agent (No. 120), for interested carriers. Rates on commodities moving on class and commodity rates over joint routes of applicant rail and motor carriers, between points in southern territory, on the one hand, and points in middlewest territory, on the other.

Grounds for relief—Motortruck competition.

Tariff—Supplement 25 to Southern Motor Carriers Rate Conference, agent, tariff MF-ICC 1312.

By the Commission.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 65-10155; Filed, Sept. 23, 1965;
8:47 a.m.]

[Docket No. 34540]

MOTOR CARRIER PROBABILITY SAMPLING STUDIES

Certain Class I and Class II Common Carriers

AUGUST 23, 1965.

Notice to all class I and class II common carriers of general freight having gross revenues over \$500,000 with 75 percent or more of such revenues being derived from general commodities.

The Commission, by its notice of April 23, 1965, indicated it was considering a method of continuous probability sampling for forms 4, 7, and 10 used for the collection of special study data for regional motor carrier cost studies. The purpose is to obtain data which will adequately represent the annual operations of the cost study carriers. These forms are briefly described as follows:

Form 4, pickup and delivery manifest, provides for a detailed report on all pickup and delivery trips for a random sample of drivers and days.

Form 7, intercity trip report, provides for a detailed report on all intercity trips

started within a 24-hour period for a random sample of drivers and days.

Form 10, platform handling report determines the number of platform handlings accorded various weight shipments for a random sample of terminal days.

Instructions covering the probability sampling methods contemplated for forms 4, 7, and 10 are attached hereto.¹

We welcome any comments you and other interested parties may have regarding the sampling procedures set forth for forms 4, 7, and 10 or the general principle of using probability sampling for collection of data on forms 4, 7, and 10. Replies, in five (5) copies, should reach this office not later than 30 days from the date of this notice.²

[SEAL]

H. NEIL GARSON,
Secretary.

[F.R. Doc. 65-10154; Filed, Sept. 23, 1965;
8:46 a.m.]

¹ Instructions filed as part of original document.

² By notice dated Sept. 17, 1965, the date for filing responses was extended to Oct. 23, 1965.

CUMULATIVE LIST OF CFR PARTS AFFECTED—SEPTEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during September.

3 CFR	Page	7 CFR—Continued	Page	7 CFR—Continued	Page
PROCLAMATIONS:		81.....	12117	PROPOSED RULES—Continued	
3670.....	11827	354.....	12023	1005.....	11627
3671.....	11829	362.....	11272	1030.....	11694
3672.....	12115	401.....	11711, 11712	1031.....	11642, 11694
EXECUTIVE ORDERS:		406.....	11956	1032.....	11694, 11761
July 2, 1910 (modified by PLO		409.....	11956	1038.....	11694
3803).....	11352	701.....	11371	1039.....	11694
(revoked in part by PLO		728.....	11831, 12067	1050.....	11761
3812).....	11517	729.....	11345	1051.....	11694
5799 (revoked by PLO 3808).....	11354	775.....	11914	1062.....	11694
6276 (revoked in part by PLO		850.....	11680	1063.....	11694
3823).....	11969	905.....	11682, 11683	1067.....	11694
6583 (revoked in part by PLO		906.....	11684, 11685	1070.....	11694
3823).....	11969	908.....	11345, 11685, 11959	1078.....	11694
11157 (amended by EO 11242).....	11205	910.....	11346, 11373, 11685, 11959, 12024	1079.....	11694
11242.....	11205	915.....	11751, 11959, 12117		
11243.....	11709	919.....	11346	8 CFR	
11244.....	11945	927.....	11713	287.....	12248
11245.....	11947	944.....	11713, 11751, 11960	9 CFR	
5 CFR		946.....	11596	74.....	11949
213.....	11208	981.....	11596	94.....	12118
11314, 11371, 11501, 11669, 11903,		984.....	11346	101.....	11848
11961, 12117, 12248.		987.....	11315	103.....	11848
315.....	12248	1421.....	11207	201.....	12118
511.....	11751	11272, 11315, 11868, 12067, 12117,		PROPOSED RULES:	
534.....	11751	12118.		76.....	12128
550.....	11669	1464.....	11501	201.....	11728
731.....	11846	1489.....	12067	325.....	11970
752.....	11846	PROPOSED RULES:		329.....	11970
754.....	11846	51.....	12254	10 CFR	
772.....	11846	52.....	11691, 11723	150.....	12069
831.....	11209	729.....	11694	PROPOSED RULES:	
6 CFR		730.....	11282	30.....	11923
50.....	11847	925.....	11530	32.....	11923
7 CFR		926.....	11728	50.....	12039
52.....	11595	932.....	11611	70.....	12039
53.....	11680	991.....	11282	115.....	12039
		993.....	11530	140.....	11873, 12039, 12077
		1004.....	11214		

12 CFR

201	11949
261	12248
262	12248
329	12032
525	11714
545	11714, 11715
561	12119
563	12119

PROPOSED RULES:

523	11973
525	11973
541	11973
545	11974
563	11975

13 CFR

107	11960
-----	-------

PROPOSED RULES:

121	11734
-----	-------

14 CFR

13	12024, 12120
21	11373, 11376, 11849
39	11272
	11313, 11347, 11348, 11669, 11670, 11752, 11849, 12120.

61	11903, 12249
67	12025
71	11209

	11313, 11314, 11348, 11380, 11381, 11501, 11597, 11598, 11670-11672, 11716, 11849, 11949, 12026, 12120, 12121.
--	--

73	11314, 11348, 11502, 11850
----	----------------------------

75	11314
----	-------

95	11310
----	-------

97	11273, 11305, 11906, 12027
----	----------------------------

159	11348
-----	-------

207	11381
-----	-------

247	12249
-----	-------

387	11717
-----	-------

PROPOSED RULES:

21	11773
37	11695, 11773
39	11227
	11283, 11732, 11971, 12129.

43	11773
----	-------

65	11773
----	-------

67	11732
----	-------

71	11283
----	-------

	11328, 11329, 11392-11396, 11644, 11874, 11875, 12040, 12042, 12130
--	---

73	11283, 11695
----	--------------

105	11733
-----	-------

121	11530
-----	-------

223	12038
-----	-------

231	11227
-----	-------

241	11729
-----	-------

243	11729
-----	-------

298	11695
-----	-------

399	11391, 11729
-----	--------------

15 CFR

30	11502
----	-------

369	12121
-----	-------

370	11962, 12121
-----	--------------

371	11964
-----	-------

372	11964
-----	-------

373	11964
-----	-------

374	11965
-----	-------

376	11966
-----	-------

377	11966
-----	-------

380	11966
-----	-------

385	11966
-----	-------

PROPOSED RULES:

Subtitle A	11390
------------	-------

16 CFR

13	11850, 12032, 12033, 12035
----	----------------------------

302	12122
-----	-------

16 CFR—Continued

PROPOSED RULES:	
303	11696

17 CFR

240	11673, 11851
-----	--------------

249	11673
-----	-------

PROPOSED RULES:

230	12078
-----	-------

18 CFR

154	12069
-----	-------

PROPOSED RULES:

152	12077
-----	-------

153	12077
-----	-------

154	11228
-----	-------

156	12077
-----	-------

157	12077
-----	-------

159	12077
-----	-------

19 CFR

8	11851
---	-------

9	11851
---	-------

10	11317, 11851
----	--------------

17	11853
----	-------

20	11853
----	-------

PROPOSED RULES:

10	11760
----	-------

54	11723
----	-------

21 CFR

2	11279
---	-------

15	11914
----	-------

20	11915
----	-------

45	11915
----	-------

46	11349
----	-------

120	11915, 11916
-----	--------------

121	11208
-----	-------

	11753, 11915, 11916, 11950, 11952, 11953, 12070, 12123.
--	---

132	11916
-----	-------

141c	11953
------	-------

146	11598
-----	-------

146c	11953
------	-------

148x	11754
------	-------

PROPOSED RULES:

16	11921
----	-------

46	11970
----	-------

51	11922
----	-------

141c	11922
------	-------

146c	11922
------	-------

24 CFR

203	11318, 11503
-----	--------------

207	11279
-----	-------

220	11279
-----	-------

221	11279
-----	-------

222	12024
-----	-------

809	11503
-----	-------

25 CFR

120	11676
-----	-------

26 CFR

1	11854
---	-------

170	11599
-----	-------

296	11602
-----	-------

PROPOSED RULES:

1	11862
---	-------

28 CFR

0	12249
---	-------

29 CFR

800	11504
-----	-------

30 CFR

41	11349
----	-------

31 CFR

500	12250
-----	-------

32 CFR

1	11997
---	-------

2	12001
---	-------

32 CFR—Continued

3	12001
---	-------

4	12001
---	-------

5	12004
---	-------

6	12005
---	-------

7	12005
---	-------

9	12005
---	-------

10	12005
----	-------

12	12008
----	-------

13	12008
----	-------

15	12011
----	-------

16	12021
----	-------

30	12021
----	-------

140	11918
-----	-------

160	11677
-----	-------

165	11677
-----	-------

257	11677
-----	-------

536	11855
-----	-------

537	11387
-----	-------

591	12155
-----	-------

592	12171
-----	-------

593	12173
-----	-------

594	12187
-----	-------

595	12191
-----	-------

596	12192
-----	-------

597	12194
-----	-------

598	12198
-----	-------

599	12199
-----	-------

600	12208
-----	-------

601	12213
-----	-------

602	12214
-----	-------

603	12225
-----	-------

604	12234
-----	-------

605	12235
-----	-------

606	12235
-----	-------

608	12239
-----	-------

610	12239
-----	-------

729	11718
-----	-------

761	11919
-----	-------

1455	11753
------	-------

1459	11351
------	-------

1808	11718
------	-------

32A CFR

OEP (Ch. I):	
--------------	--

DMO 8505.1	11516
------------	-------

33 CFR

203	11318, 11967
-----	--------------

204	11209, 11318
-----	--------------

207	11209
-----	-------

36 CFR

7	11388
---	-------

311	11920
-----	-------

326	12070
-----	-------

37 CFR

1	12124
---	-------

38 CFR

2	11318
---	-------

3	11388, 11754, 11855
---	---------------------

17	11676
----	-------

21	11319
----	-------

39 CFR

13	11752
----	-------

16	11752
----	-------

17	11719
----	-------

24	11752
----	-------

29	11603
----	-------

39 CFR—Continued

Page

PROPOSED RULES—Continued

96	12038
121	11645
168	11645

41 CFR

4-12	12071
9-1	11351
9-9	11352
9-10	11351
9-12	11967
9-15	11720
9-16	11351
9-51	11351
11-1	12249
11-3	12249
101-19	11755
101-26	11603, 11720
101-44	11903
101-47	11281

42 CFR

401	11517
-----	-------

43 CFR**PUBLIC LAND ORDERS:**

317	
Modified by PLO 3809	11383
Modified by PLO 3831	12253
922	
See PLO 3809	11383
See PLO 3831	12253
990 (see PLO 3817)	11679
1374 (revoked in part by PLO 3819)	11968
2040 (revoked by PLO 3827)	12076
2345 (revoked in part by PLO 3826)	12075
3492 (revoked in part by PLO 3825)	12075
3529 (corrected and revoked in part by PLO 3815)	11679
3591 (corrected by PLO 3807)	11353
3673 (corrected by PLO 3807)	11353
3767 (corrected)	11604
3787 (corrected by PLO 3821)	11968

43 CFR—Continued

Page

PUBLIC LAND ORDERS—Continued

3802	11326
3803	11352
3804	11327
3805	11327
3806	11352
3807	11353
3808	11354
3809	11383
3810	11383
3811	11516
3812	11517
3813	11678
3814	11679
3815	11679
3816	11679
3817	11679
3818	11920
3819	11968
3820	11968
3821	11968
3822	11969
3823	11969
3824	12075
3825	12075
3826	12075
3827	12076
3828	12076
3829	12252
3830	12253
3831	12253
PROPOSED RULES:	
3107	11355
3120	11329

44 CFR**PROPOSED RULES:**

401	11728
-----	-------

45 CFR

116	11810
117	11817
119	11518
120	11523

45 CFR—Continued

Page

PROPOSED RULES:

635	11396
-----	-------

46 CFR**Ch. I**

160	11413
164	11581
205	11581
251	11680
255	11756
401	12036
	11720

PROPOSED RULES:

531	11284
537	11646

47 CFR

0	12124
1	12125
2	11354, 12125
15	11354
64	12126
73	11856, 11857, 11859, 11872
74	11859, 12125

PROPOSED RULES:

73	11284, 11875, 11877-11880, 11972
81	11881
83	11284, 11881
91	11881

49 CFR

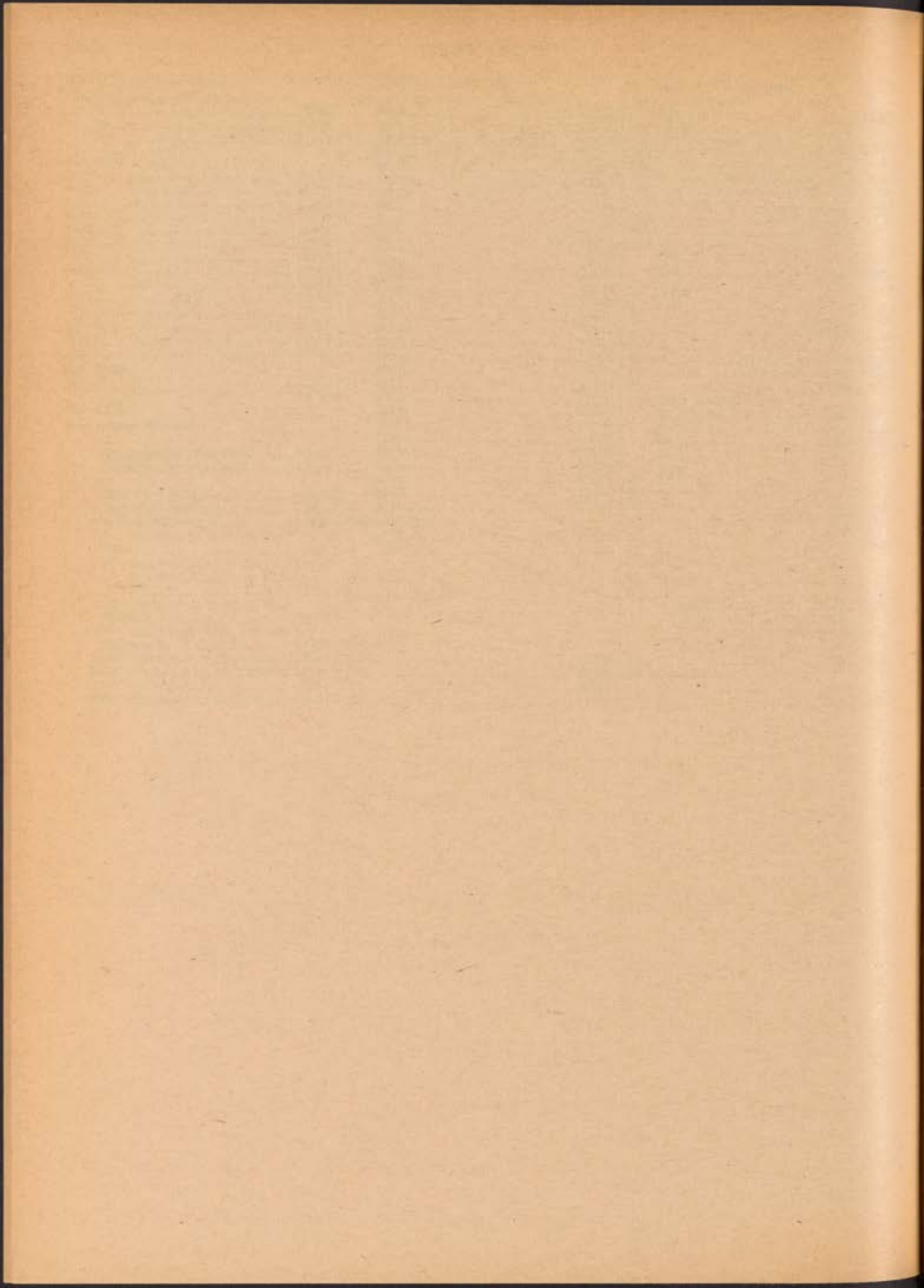
51	11210
56	11210
110	11524, 12250, 12251
170	11757
325	12252

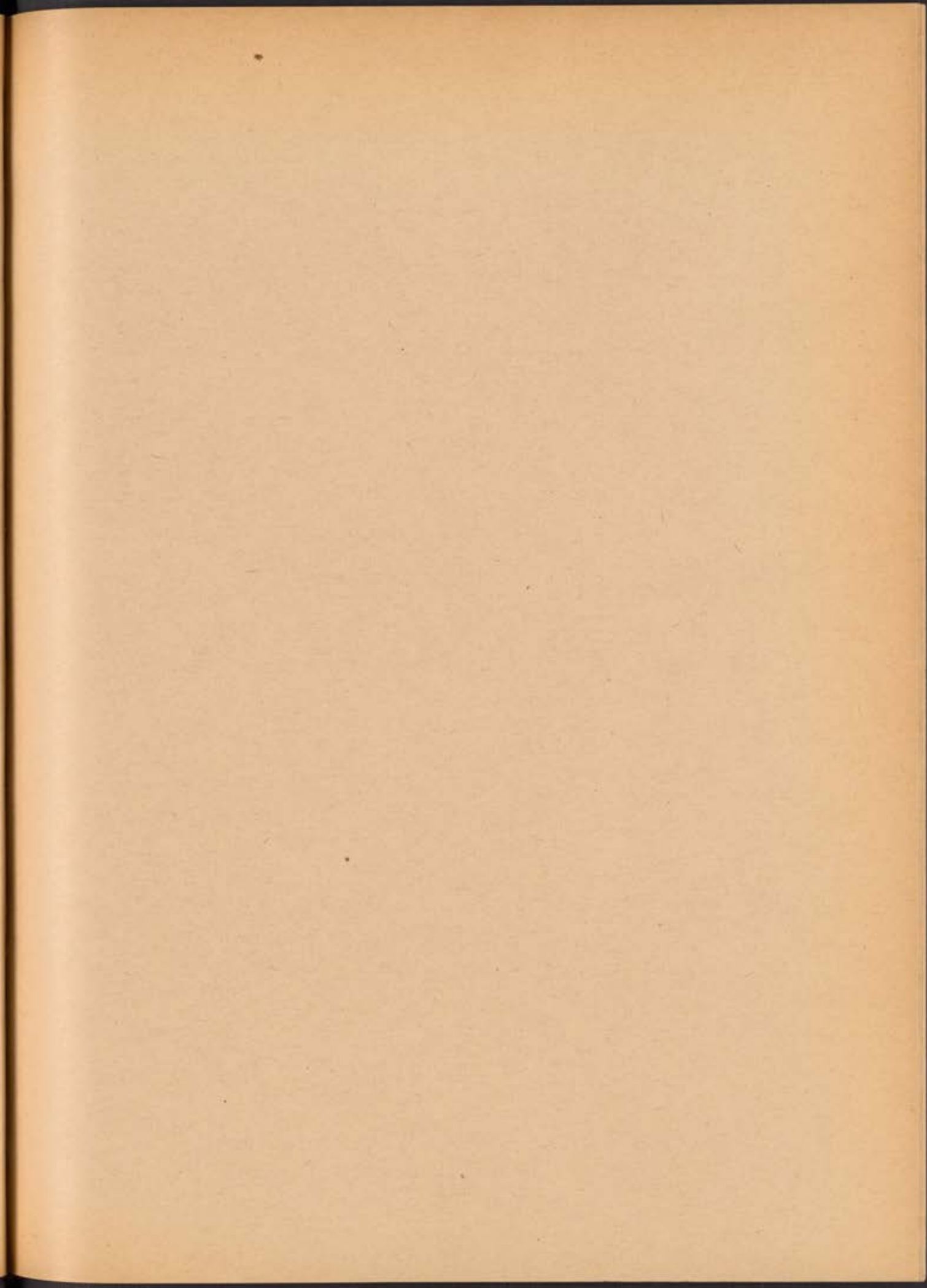
50 CFR

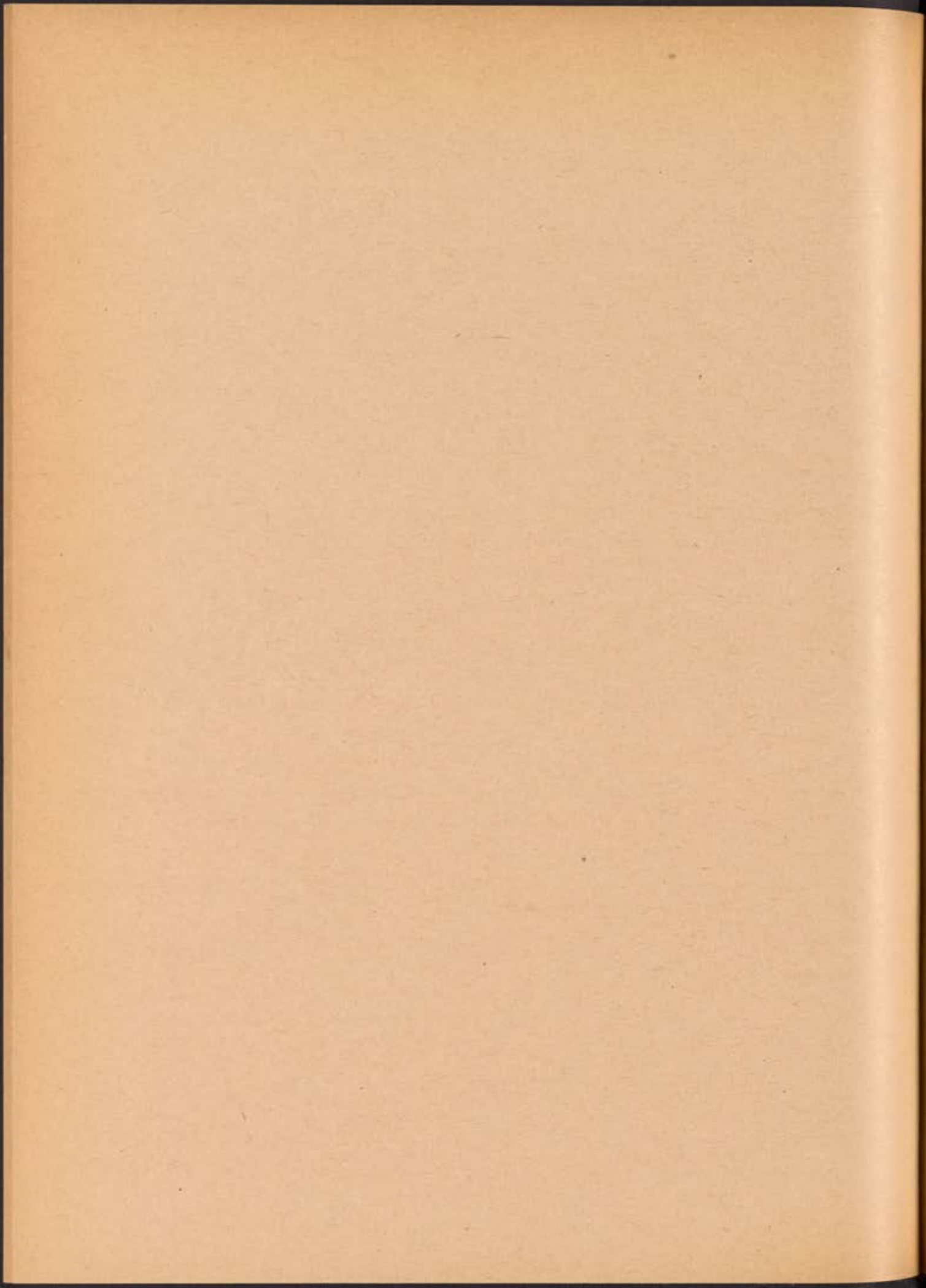
10	11383
32	11211, 11212, 11271, 11327, 11386, 11387, 11525-11527, 11604-11610, 11678, 11721, 11757, 11759, 11860, 11969, 12126, 12127
33	11327, 12127

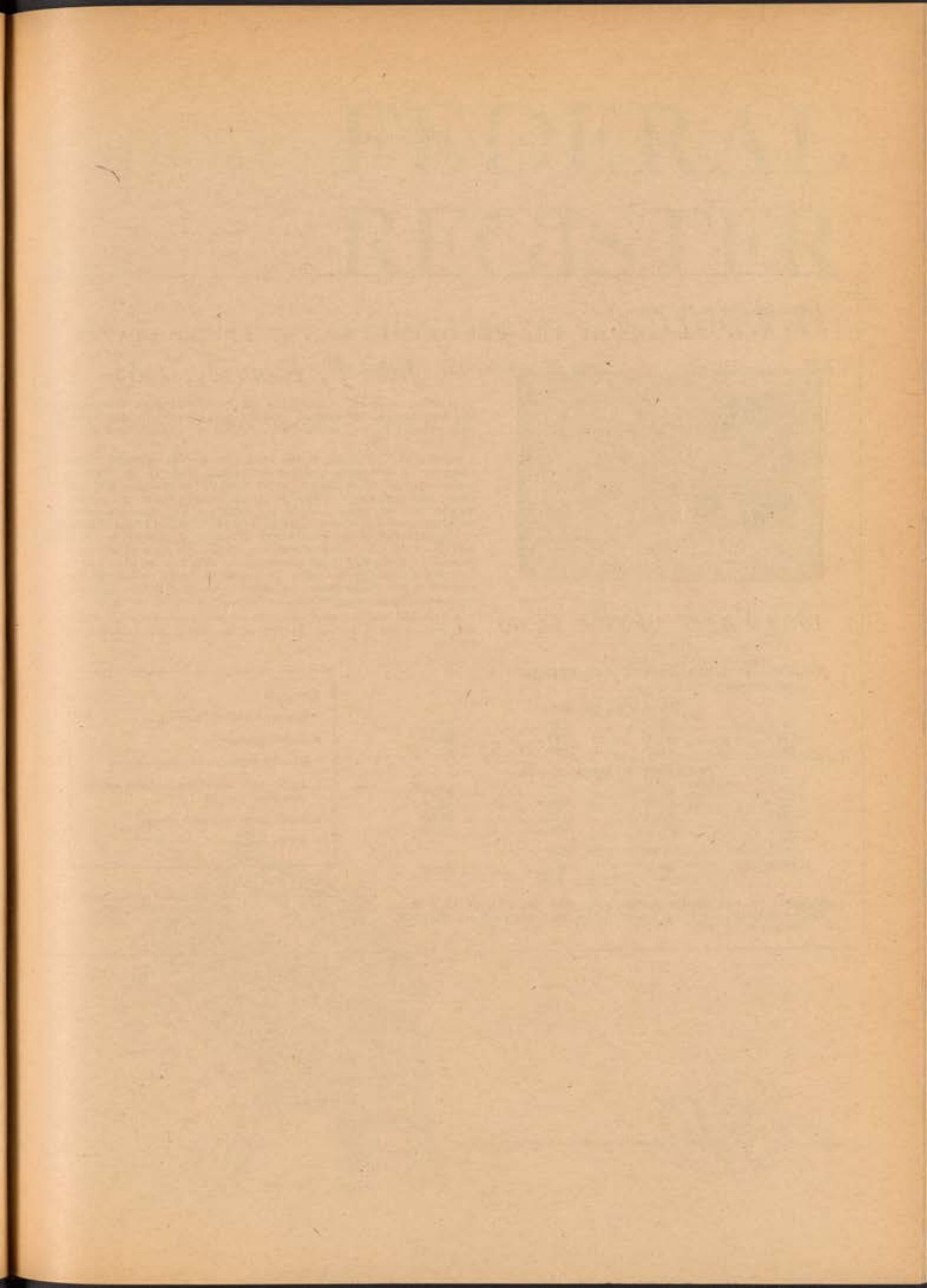
PROPOSED RULES:

32	11529
33	11529









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