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PART I

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Agencies in this issue—

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Army Department
Atomic Energy Commission
Civil Aeronautics Board
Civil Service Commission
Comptroller of the Currency
Consumer and Marketing Service
Customs Bureau
Emergency Planning Office
Engineers Corps
Federal Aviation Administration
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Maritime Commission
Federal Power Commission
Federal Reserve System
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Interior Department
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Maritime Administration
Mines Bureau
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National Park Service
Securities and Exchange Commission
Treasury Department

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Just Released

LIST OF CFR SECTIONS AFFECTED

January–March 1968

(Codification Guide)

The List of CFR Sections Affected is published monthly on a cumulative basis. It lists by number the titles, parts, and sections of the Code of Federal Regulations amended or otherwise affected by documents published in the FEDERAL REGISTER during 1968. Entries indicate the exact nature of all changes effected. This cumulative list of CFR sections affected is supplemented by the current lists of CFR parts affected which are carried in each daily FEDERAL REGISTER.

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Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

United States-Mexico Commission for Border Development and Friendship

Section 213.3166 is added to show that positions at GS–15 and below on the staff of the U.S. Section, United States-Mexico Commission for Border Development and Friendship are excepted under Schedule A. Effective on publication in the FEDERAL REGISTER, § 213.3166 is added as set out below.

§ 213.3166 United States-Mexico Commission for Border Development and Friendship.

(a) Positions at GS–15 and below on the staff of the U.S. Section of the Commission.

(5 U.S.C. 3301, 3302, E.O. 10577 19 F.R. 7521, 3 CFR 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 68–5006; Filed, Apr. 25, 1968; 8:47 a.m.]

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare

Section 213.3316 is amended to show that one position of Confidential Secretary to the Assistant Secretary for Legislation is no longer in Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (7) of paragraph (f) of § 213.3316 is amended as set out below.

§ 213.3316 Department of Health, Education, and Welfare.

* * * * *

(f) *Office of the Assistant Secretary for Legislation.* * * *

(7) One Confidential Secretary to the Assistant Secretary.

* * * * *

(5 U.S.C. 3301, 3302, E.O. 10577, 19 F.R. 7521, 3 CFR 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 68–5005; Filed, Apr. 25, 1968; 8:47 a.m.]

PART 550—PAY ADMINISTRATION (GENERAL)

Pay for Irregular or Intermittent Duty Involving Physical Hardship or Hazard

Schedule 2 of Appendix A to Subpart I of Part 550 is amended by adding new references for "Flying", "Sea duty aboard deep research vessels", "Centrifuge subjects", "Participation in liquid missile propulsion tests and certain solid propulsion operations", and "Rotational flight simulator subject" and by revising Item (4) under the reference "Underwater duty". These amendments, which are effective as indicated, read as follows:

APPENDIX A

SCHEDULE 2 OF PAY DIFFERENTIALS AUTHORIZED UNDER AUTHORITY OF § 550.904 (a) AND (b)

Irregular or intermittent duty	Rate of hazard pay differential	Duration payable	Effective date
	Percent		
Flying. Participating in (1) test missions for collection of measurement data where two or more aircraft are involved and flight procedures require formation flying and/or rendezvous at various altitudes and aspect angles;	25	Indefinite	First pay period beginning after April 26, 1968.
(2) Flights (fixed wing aircraft) involving maneuver (tactical pattern), flights at altitudes of 500 feet or less in daylight over water or land in a small or large aircraft or 1,000 feet or less at night;	25	do	Do.
(3) Flights involving launch and recovery aboard an aircraft carrier;	25	do	Do.
(4) Low-level helicopter flights under 500 feet altitude involving tactical pattern and hovering flights over water.	25	do	Do.
Sea duty aboard deep research vessels. Participating in sea tests of experimental equipment wherein the team member is engaged in the physical handling of such gear (to rig, raise, lower, and adjust) on or over the side of the research vessel when sea state is high (3 feet or above), and the work is done on deck in relatively unprotected areas.	25	do	Do.
Centrifuge subjects. Participating as subject in centrifuge studies involving elevated G forces above the level of 5 G's whether or not at reduced atmospheric pressure.	25	do	Do.
Participating in liquid missile propulsion tests and certain solid propulsion operations. (1) Tanking or detanking operations of a missile or the test stand "run" bottles with liquid propellants.	25	do	Do.
(2) Hoisting a tanked missile or a solid propellant propulsion system into and/or over the test stand.	25	do	Do.
(3) Pressure tests on loaded missiles, missile tanks, or run bottles during prefire preparations.	25	do	Do.
(4) Test stand operations on loaded missiles under environmental conditions where the high or low temperatures could cause a failure of a critical component.	25	do	Do.
(5) Disassembly and breakdown of a contaminated missile system or test stand plumbing after test.	25	do	Do.
(6) Working on any test stand above the 50-foot level or any stand work while the system is in a "go" condition.	25	do	Do.
(7) Arming, dearming or the installation and/or removal of any squib, explosive device, or a component thereof connected to, or part of, any live or potentially expended liquid or solid propulsion system.	25	do	Do.
(8) Demolition, hazards classification, or destruct type tests where the specimen is nonstandard and/or unproven, and the test techniques do not conform to standard or proven procedures.	25	do	Do.
Rotational flight simulator subject. Participating as a subject in a Rotational Flight Simulator in studies involving continuous rotation in one axis through 360° or in a combination of any axes through 360° at rotation rates greater than 15 r.p.m. for periods exceeding 3 minutes.	25	do	Do.
Underwater duty. * * *			
(4) Participating in full-scale trial programs under submerged conditions on all classes of submarines at different operational stages including trials of newly launched submarines, preoverhaul and postoverhaul trials of repaired or modified submarines.	25	do	Do.

(5 U.S.C. 5544(d))

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 68–5004; Filed, Apr. 25, 1968; 8:45 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 68-WE-26]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zones; Correction

On page 5615 of the FEDERAL REGISTER for April 11, 1968, there was published a final rule, F.R. Doc. 68-4283, that amended Part 71 by altering the description of Whidbey Island, Wash., control zone.

The effective date of the final rule was published as 0001 e.s.t., June 20, 1968. In accordance with the new agency policy, rules shall be made effective at 0901 Greenwich mean time (G.m.t.).

Since this amendment is minor in nature and imposes no additional burden on any person, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, F.R. Doc. 68-4283, Whidbey Island, Wash., control zone is amended to read, "*Effective date.* This amendment shall be effective 0901 G.m.t., June 20, 1968."

Issued in Los Angeles, Calif., on April 17, 1968.

CHARLES J. WINGER,
Acting Director, Western Region.

[F.R. Doc. 68-5035; Filed, Apr. 25, 1968; 8:49 a.m.]

[Airspace Docket No. 68-SW-27]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to amend the Dallas, Tex. (Love Field) control zone.

The Dallas, Tex. (Love Field), control zone is described in FAR, Part 71, § 71.171 (33 F.R. 2075). There are two part-time control zones which abut the Dallas, Tex. (Love Field), control zone, i.e., Dallas, Tex. (Addison Airport), on the north and Dallas, Tex. (Redbird Airport), on the south. These two control zones are effective from 0600-2200 hours, local time daily. During the interim period from 2200-0600 hours, local time daily, the Addison and Redbird control zones are incorporated into and become part of the Love Field control zone for this 8-hour period.

Effective April 30, 1968, the special VFR weather minimums prescribed by FAR 91.107 will no longer apply to the Dallas, Tex. (Love Field), control zone and amendments to FAR Parts 91, 93, and 121 will specifically prohibit the flight operations of all fixed-wing aircraft in 33 designated control zones whenever the existing weather conditions are less than basic VFR minimums. As Dallas, Tex. (Love Field), is one of the 33 control zone locations specified, this will have the effect of prohibiting all special VFR flight operations of fixed-wing aircraft within the Love Field control zone so long as weather conditions are below basic VFR minimums. Like operations would also be prohibited within the Addison Airport and Redbird Airport control zones during the hours of 2200-0600, local time daily, while they are included within and become part of the Love Field control zone.

As it appears flight operations, as previously described, would be unduly restricted as both Addison Airport and Redbird Airport by implementation of the amendments to FAR, Parts 91, 93, and 121, the Addison Airport and the Redbird Airport control zones will be entirely removed from the Love Field control zone. The separate control zones at Addison and Redbird airports will remain unchanged during the hours from 0600-2200, local time daily; however, the remainder of the time, the Dallas, Tex., 700-foot transition area will provide controlled airspace for instrument approach/departure procedures conducted at Addison and Redbird Airports.

As the proposed alteration in controlled airspace imposes no additional burden on the public, but in fact, is less restrictive, notice and public procedures thereon are considered unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective April 30, 1968, to coincide with the effective dates of the amendments to FAR, Part 91, § 91.107 (a), Part 93, § 93.113, and Part 121, § 121.649(c).

In § 71.171 (33 F.R. 2075), the Dallas, Tex. (Love Field), control zone is amended to read as follows:

DALLAS, TEX. (LOVE FIELD)

That airspace bounded by a line beginning at latitude 32°53'15" N., longitude 96°59'35" W.; thence northeast to latitude 32°56'30" N.; thence clockwise along the arc of a 5-mile radius circle centered at Addison Airport (latitude 32°58'05" N., longitude 96°50'05" W.) to latitude 32°59'30" N., longitude 96°55'30" W., through latitude 32°56'30" N., longitude 96°51'30" W., and continuing southeast along a line to latitude 32°54'00" N., longitude 96°46'30" W. until interception of the arc of a 5-mile radius circle centered at Addison Airport, southeast of Addison Airport; then clockwise along the arc of the 5-mile radius centered at Addison Airport to interception with and then clockwise along the arc of a 5-mile radius circle centered at Love Field (latitude 32°51'00" N., longitude 96°50'50" W.) to longitude 96°49'30" W., southeast of Love Field; thence south along longitude 96°49'30" W. to and counterclockwise along the arc of a 5-mile radius circle centered at Redbird Airport (latitude 32°40'50" N., longitude 96°52'00" W.) until interception with and then northeast along a line drawn between latitude 32°39'35" N. longitude 96°54'15" W., and longitude 96°53'30" W. and the arc of a 5-mile radius circle centered at Love Field, southwest of Love Field; thence clockwise along the arc of a 5-mile radius circle centered at Love Field to latitude 32°49'40" N., west of Love Field, to point of beginning; and within 2 miles each side of the Love Field No. 2 ILS localizer southeast course, extending from the arc of a 5-mile radius circle centered at Love Field to the Runway 31L OM (latitude 32°46'29" N., longitude 96°46'28" W.).

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Fort Worth, Tex., on April 19, 1968.

HENRY L. NEWMAN,
Director, Southwest Region.

[F.R. Doc. 68-5036; Filed, Apr. 25, 1968; 8:49 a.m.]

[Airspace Docket No. 68-SO-7]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone and Transition Area

On March 6, 1968, a notice of proposed rule making was published in the FEDERAL REGISTER (33 F.R. 4201), stating that the Federal Aviation Administration was considering amendments to Part 71 of the Federal Aviation Regulations that would alter the Gainesville, Fla., control zone and transition area.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. All comments received were favorable.

Subsequent to publication of the notice, it was determined that the ordinate 86°16'28" W. used in the proposed control zone description should have been 82°16'28" W. Additionally, the geographic coordinate (lat. 29°37'30" N., long. 82°22'35" W.) for the Stengel Field Airport was obtained from Coast and Geodetic Survey. Since the correction of an ordinate for Gainesville Municipal Airport, and the addition of the coordinate for Stengel Field Airport are editorial and minor in nature, they are incorporated in this rule.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., June 20, 1968, as hereinafter set forth.

In § 71.171 (33 F.R. 2058) the Gainesville, Fla., control zone is amended to read:

GAINESVILLE, FLA.

Within a 5-mile radius of Gainesville Municipal Airport (lat. 29°41'20" N., long. 82°16'28" W.) and within 2 miles each side of the Gainesville VORTAC 033° radial, extending from the 5-mile radius zone to the VORTAC.

In § 71.181 (33 F.R. 2137) the Gainesville, Fla., transition area is amended to read:

GAINESVILLE, FLA.

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Gainesville Municipal Airport (lat. 29°41'22" N., long. 82°16'28" W.); excluding that airspace within a 1-mile radius of Stengel Field Airport (lat. 29°37'30" N., long. 82°22'35" W.); that airspace extending upward from 1,200 feet above the surface within an 18-mile radius of the Gainesville Municipal Airport, east and northeast of V-159, and within 5 miles each side of the Gainesville VORTAC 092° radial, extending from the 18-mile radius area to 28 miles east of the VORTAC, excluding the portion which coincides with the Jacksonville, Fla., 1,200-foot transition area.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348(a))

Issued in East Point, Ga., on April 16, 1968.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 68-5037; Filed, Apr. 25, 1968; 8:49 a.m.]

[Airspace Docket No. 68-SO-10]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On March 7, 1968, a notice of proposed rule making was published in the FEDERAL REGISTER (33 F.R. 4271), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Rockingham, N.C., transition area.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. All comments received were favorable.

Subsequent to the publication of the notice, the geographic coordinate (lat. 34°53'30" N., long. 79°45'35" W.) for Rockingham-Hamlet Airport was obtained from Coast and Geodetic Survey. Accordingly, action is taken herein to add the geographic coordinate to the description.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., June 20, 1968, as hereinafter set forth.

In § 71.181 (33 F.R. 2137), the following transition area is added:

ROCKINGHAM, N.C.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Rockingham-Hamlet Airport (lat. 34°53'-30" N., long. 79°45'35" W.); within 2 miles each side of the Pinehurst VORTAC 206° radial, extending from the 5-mile radius area to 13 miles southwest of the Pinehurst VORTAC.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348(a))

Issued in East Point, Ga., on April 16, 1968.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 68-5038; Filed, Apr. 25, 1968; 8:49 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 68-116]

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

France; Transport of Empty Cargo Vans, Lift Vans, and Shipping Tanks

The Government of France has furnished the Department of State with satisfactory evidence of reciprocity in the extension to vessels of the United States of the privileges provided for in § 4.93(a) of the Customs Regulations, subject to reciprocal treatment of vessels of France in ports of the United States. Therefore, vessels of France are permitted to transport coastwise empty cargo vans, lift vans, and shipping tanks under the conditions specified in § 4.93(a).

Accordingly, § 4.93(b) of the Customs Regulations is amended by the insertion of "France" in appropriate alphabetical order in the list of countries in that section.

(80 Stat. 379, R.S. 251, sec. 624, 46 Stat. 759, sec. 27, 41 Stat. 999, as amended; 5 U.S.C. 301, 19 U.S.C. 66, 1624, 46 U.S.C. 883)

[SEAL] LESTER D. JOHNSON,
Commissioner of Customs.

Approved: April 19, 1968.

JOSEPH M. BOWMAN,
Assistant Secretary of the Treasury.

[F.R. Doc. 68-5032; Filed, Apr. 25, 1968; 8:49 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

3-[p-(p-Chlorophenoxy)Phenyl]-1,1-Dimethylurea

A petition (PP 7F0618) was filed with the Food and Drug Administration by the CIBA Corp., Post Office Box 1105, Vero Beach, Fla. 32960, proposing the establishment of tolerances for negligible residues of the herbicide 3-[*p*-(*p*-chlorophenoxy) phenyl]-1,1-dimethylurea in or on the raw agricultural commodities soybeans and soybean hay at 0.1 part per million.

Subsequently, the petitioner amended the petition by changing the proposed tolerances from 0.1 part per million for residues of the herbicide in or on soybeans and soybean hay to 0.15 part per million in or on soybeans and soybean foliage.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which the tolerances are being established.

Based on consideration given the data submitted in the petition, and other relevant material, the Commissioner of Food and Drugs concludes that the tolerances established by this order will protect the public health. Therefore, by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and delegated to the Commissioner (21 CFR 2.120), § 120.216 is revised to read as follows to establish the subject tolerances:

§ 120.216 3-[*p*-(*p*-Chlorophenoxy) phenyl]-1,1-dimethylurea; tolerances for residues.

Tolerances for negligible residues of the herbicide 3-[*p*-(*p*-chlorophenoxy) phenyl]-1,1-dimethylurea in or on raw agricultural commodities are established as follows:

0.15 part per million in or on soybeans and soybean forage.

0.10 part per million in or on strawberries.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: April 18, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-5010; Filed, Apr. 25, 1968; 8:47 a.m.]

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Thiabendazole

A petition (PP 8F0674) was filed with the Food and Drug Administration by Merck & Co., Inc., Rahway, N.J. 07065,

proposing the establishment of a tolerance for residues from postharvest use of the fungicide thiabendazole (2-(4-thiazolyl)-benzimidazole) in or on the raw agricultural commodity bananas at 3 parts per million, of which not more that 0.4 part per million shall be in the pulp after the peel is removed and discarded.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which the tolerance is being established.

Based on consideration given the data submitted in the petition, and other relevant material, the Commissioner of Food and Drugs concludes that the tolerance established by this order will protect the public health. Therefore, by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and delegated to the Commissioner (21 CFR 2.120), Part 120 is amended by adding to Subpart C the following new section:

§ 120.242 Thiabendazole; tolerances for residues.

A tolerance is established for residues from postharvest use of the fungicide thiabendazole (2-(4-thiazolyl)-benzimidazole) in or on bananas at 3 parts per million, of which not more than 0.4 part per million shall be in the pulp after the peel is removed and discarded.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: April 18, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-5009; Filed, Apr. 25, 1968; 8:47 a.m.]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

INDUSTRIAL STARCH-MODIFIED

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP 7B2153) filed by W. A. Scholten's Chemische Fabrieken N.V., Postbus 1, Foxhol, The Netherlands, and other relevant material, has concluded that the food additive regulations should be amended to provide for the use of industrial starch modified by treatment with not more than 6 percent of phosphoric acid and 20 percent urea, as internal sizing for paper and paperboard intended for food packaging. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under the authority delegated to the Commissioner (21 CFR 2.120), § 121.2506 is amended by inserting alphabetically in the list of reactants in paragraph (a) a new item, as follows:

§ 121.2506 Industrial starch-modified.

* * * * * *

(a) * * *

List of reactants	*Limitations*
* * *	* * *
Phosphoric acid, not to exceed 6 percent, and urea, not to exceed 20 percent.	Industrial starch modified by this treatment shall be used only as internal sizing for paper and paperboard intended for food packaging.
* * *	* * *

* * * * * *

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated April 17, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-5011; Filed, Apr. 25, 1968; 8:47 a.m.]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

COMPONENTS OF PAPER AND PAPERBOARD IN CONTACT WITH DRY FOOD

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP 8B2244), filed by Morton Chemical Co., a division of Morton International, Inc., 110 North Wacker Drive, Chicago, Ill. 60606, and other relevant material, has concluded that the food additive regulations should be amended to provide for the use of styrene-allyl alcohol copolymers as optional components of paper and paperboard intended for use in contact with dry food. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under the authority delegated to the Commissioner (21 CFR 2.120), § 121.2571(b)(2) is amended by alphabetically inserting in the list of substances a new item, as follows:

§ 121.2571 Components of paper and paperboard in contact with dry food.

* * * * * *

(b) * * *

(2) * * *

List of substances	*Limitations*
* * *	* * *
Styrene-ally alcohol copolymers.	
* * *	* * *

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: April 18, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-5012; Filed, Apr. 25, 1968; 8:47 a.m.]

Title 30—MINERAL RESOURCES

Chapter I—Bureau of Mines, Department of the Interior

[Bureau of Mines Schedule 2G]

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

Requirements for Investigation, Testing, Approval, Certification, and Acceptance

On March 19, 1968, a notice was published in the FEDERAL REGISTER (33 F.R. 4660) of the revision of Part 18 of Chapter I, Title 30, Code of Federal Regulations.

Minor errors and omissions have been observed in the publication. The following corrections and additions are hereby made which shall become effective upon publication in the FEDERAL REGISTER.

1. The second sentence of paragraph (a) of § 18.9 is corrected by inserting after the word "results" the words "of tests, chemical analysis of materials".

2. The word "extra" is deleted from the second sentence of subparagraph (2) of paragraph (a) of § 18.35.

3. A comma is inserted after the word "clearances" in the first sentence of § 18.63.

4. The word "Dimension" in the heading of Table 5 is corrected to read "Dimensions."

5. The word "Diameter" in the heading of Table 7 is corrected to read "Diameters."

EARL T. HAYES,
Acting Director, Bureau of Mines.

[F.R. Doc. 68-4986; Filed, Apr. 25, 1968; 8:46 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 207—NAVIGATION REGULATIONS

Cooper River and Tributaries, South Carolina

Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1) § 207.164b establishing and governing the use and navigation of a restricted area in Cooper River and tributaries, South Carolina, is hereby amended in its entirety, including its caption, to establish two new restricted areas, effective 30 days after publication in the FEDERAL REGISTER, as follows:

§ 207.164b Cooper River and tributaries at Charleston, S.C.; restricted areas.

(a) *The areas.* (1) That portion of Cooper River beginning on the westerly shore at latitude 32°49'50", longitude 79°56'10"; thence to latitude 32°49'54", langitude 79°55'55"; thence to latitude 32°50'32", longitude 79°55'55"; thence to latitude 32°51'01", longitude 79°56'07"; thence to latitude 32°51'19", longitude 79°57'05"; thence to latitude 32°51'33", longitude 79°57'27"; thence to latitude 32°51'48.5", longitude 79°57'41.5"; thence to latitude 32°52'06", longitude 79°57'54"; thence to latitude 32°52'27", longitude 79°58'01"; thence to latitude 32°52'37", longitude 79°58'03"; and thence to the westerly shore at latitude 32°52'37", longitude 79°58'06".

(2) The reach of Shipyard Creek upstream from a line 300 feet from and parallel to the upstream limit of the improved Federal turning basin.

(3) That portion of Cooper River extending from the mouth of Goose Creek to Red Bank Landing, a distance of approximately 4.8 miles, and the tributaries to Cooper River within 1½ mile radii of the ammunition piers.

(b) *The regulations.* (1) Unauthorized vessels and other watercraft shall not enter at any time the restricted areas described in paragraph (a) (1) and (2) of this section.

(2) Vessels other than those authorized by the Commanding Officer, Naval Ammunition Depot, entering the restricted area described in paragraph (a) (3) of this section shall proceed at normal speed and under no circumstances anchor, fish or loiter in any way until clear of the restricted area. The area will be marked with suitable warning signs.

(3) The regulation in subparagraph (1) of this paragraph shall be enforced by the Commanding Officer, Southeastern Division, Naval Facilities Engineering Command, U.S. Naval Base, Charleston, S.C., and such agencies as he may designate.

(4) The regulation in subparagraph (2) of this paragraph shall be enforced by the Commanding Officer, Naval Ammunition Depot, Charleston, S.C., and such agencies as he may designate.

[Regs., Mar. 28, 1968, 1507-32 (Cooper River and Tributaries, S.C.)-ENGCW-ON]

[Sec. 7, 40 Stat. 266; 33 U.S.C. 1]

For the Adjutant General.

J. W. HURD,
Colonel, AGC, Comptroller, TAGO.

[F.R. Doc. 68-4979; Filed, Apr. 25, 1968; 8:45 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 101—Federal Property Management Regulations

SUBCHAPTER D—PUBLIC BUILDINGS AND SPACE

PART 101-18—ACQUISITION OF REAL PROPERTY

Subpart 101-18.1—Acquisition by Lease

REVISION TO LIST OF SPECIAL PURPOSE SPACE

A general finding of special purpose space will enable the Department of the Interior to acquire space by lease on a temporary basis for field crews of Geological Survey.

Section 101-18.106-1(l) is amended to read as follows:

§ 101-18.106-1 List of special purpose space.

* * * * *

(l) Department of the Interior:

(1) Space in buildings and land incidental thereto used by field crews of the Bureau of Reclamation and the Geological Survey for periods of less than 1 year in remote areas where no other Government agency is quartered.

(2) Garage space held under service contract used by Geological Survey.

* * * * *

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

Effective date. This regulation is effective upon publication in the FEDERAL REGISTER.

Dated: April 19, 1968.

LAWSON B. KNOTT, JR.,
Administrator of General Services.

[F.R. Doc. 68-4983; Filed, Apr. 25, 1968; 8:45 a.m.]

Title 46—SHIPPING

Chapter II—Maritime Administration, Department of Commerce

SUBCHAPTER H—TRAINING

[General Order 97, Rev.]

PART 310—MERCHANT MARINE TRAINING

Subpart C—Admission and Training of Cadets at the United States Merchant Marine Academy

Effective upon date of publication in the FEDERAL REGISTER, Subpart C of this part is hereby revised to read as follows:

Subpart C—Admission and Training of Cadets at the United States Merchant Marine Academy

Sec.

310.50 Purpose.
310.51 General.
310.52 Nominations and vacancies.
310.53 General requirements for eligibility.
310.54 Scholastic requirements.
310.55 Physical requirements.
310.56 Application and selection of cadets.
310.57 Courses of instruction.
310.58 Training on subsidized vessels.
310.59 Training on other vessels and by other facilities or agencies.
310.60 Allowances and expenses.
310.61 Uniforms.
310.62 Privileges.
310.63 Graduation.
310.64 Foreign students.

AUTHORITY: The provisions of this Subpart C issued under sec. 204 (49 Stat. 1987, as amended; 46 U.S.C. 1114), and sec. 216 (52 Stat. 965; 53 Stat. 1182; 70 Stat. 25; 72 Stat. 16; 46 U.S.C. 1126) 75 Stat. 212, 468, 514.

§ 310.50 Purpose.

The regulations in this subpart govern the nomination, admission and appointment of cadets to the U.S. Merchant Marine Academy.

§ 310.51 General.

(a) Cadets are appointed to the U.S. Merchant Marine Academy for training to fit them to become officers in the U.S. Merchant Marine. The Academy, located at Kings Point, N.Y., is maintained by the Government as a part of the Maritime Administration, Department of Commerce, to provide the academic background and the nautical education essential to a successful career at sea. After successful completion of the 4-year course of study, graduates of the Academy will receive the degree of Bachelor of Science, a third officer or third assistant engineer license of the U.S. Coast Guard.

(b) The Maritime Administration is interested in receiving nominations and, subsequent thereto, applications from young men who have a positive interest in becoming officers in the U.S. Merchant Marine.

§ 310.52 Nominations and vacancies.

(a) *Sources of nominations.* Each Senator and Representative of the U.S. Congress; the Governors of the Canal Zone, Guam, American Samoa, and the Virgin Islands; Resident Commissioner of Puerto Rico; and the Commissioner of the District of Columbia; may nominate 10 candidates for admission to the U.S. Merchant Marine Academy. The Secretary of the Interior may designate qualified candidates to fill authorized vacancies from the Trust Territory of the Pacific Islands. Each American Republic (other than the United States) may nominate 10 candidates as specified in § 310.64(a). Nominating officials may select their nominees by any methods they wish, including a screening examination.

(b) *Vacancies.* The vacancies for appointments to the Academy are allocated by the Maritime Administrator. The number of vacancies allocated to each State is proportioned to the representation in Congress from that State, but by law two vacancies are allocated each year to be filled by qualified candidates from among sons of residents of the Canal Zone and the sons of personnel of the U.S. Government and the Panama Canal Company residing in the Republic of Panama; one vacancy each is allocated each year to Puerto Rico, Guam, American Samoa, and the Virgin Islands; four vacancies each year to the District of Columbia. There are also authorized to be admitted to the Academy for training not to exceed four persons at any one time from the Trust Territory of the Pacific Islands and 12 persons from the American Republics (other than the United States) but not more than two from any one of such republics shall receive training at the same time.

(c) *Request for nomination.* A young man interested in a career at sea in the U.S. Merchant Marine who feels that he meets the requirements outlined in the regulations in this subpart for appointment as a cadet to the U.S. Merchant Marine Academy should request his Senator or Representative, or other appropriate official listed in paragraph (a) of this section, to nominate him.

(d) *Date for nominations.* The nominating official will send names of his nominees to the Office of Maritime Manpower, Maritime Administration, between August 1 and December 31 of the school year preceding that in which admission to the Academy is desired.

(e) *Appointments.* The Maritime Administrator will make appointments to fill the vacancies prescribed by paragraph (b) of this section from among qualified nominees in order of merit from each geographical subdivision listed in paragraph (b) of this section. The order of merit will be established by competitive examinations as specified in § 310.56(b). In addition, the Maritime Administrator may make appointments from among qualified nominees to fill vacancies which result from unmet State quotas. These appointments will be made from the national list of qualified nominees established in order of merit. Further, a limited number of additional appointments, not to exceed 25, may be made annually from among qualified nominees selected from the national list who possess special qualities deemed to be of peculiar value to the Academy in pursuit of its mission.

§ 310.53 General requirements for eligibility.

(a) *Citizenship.* All candidates nominated are required to be male citizens of the United States except (1) certain nominees from American republics other than the United States and from the Trust Territories of the Pacific, specifically provided for in § 310.64, and (2) such nominees of the Governor of American Samoa who may be American nationals but not citizens. This provision is not to be construed to permit any such person who is a national but not a citizen of the United States to be entitled to any office or position in the U.S. Merchant Marine by reason of his graduation from the Academy until such person shall have become a citizen.

(b) *Age.* A candidate must be not less than 17 years of age and must not have passed his 22d birthday on July 1 of the calendar year in which he seeks to be appointed as a cadet.

(c) *Marriage.* A candidate must be unmarried and have never been married. Any cadet who shall marry, or who shall be found to be married, or to have been married before his final graduation shall be required to resign. Refusal to resign will result in dismissal.

(d) *Character.* A candidate must be of good moral character. The Maritime Administrator may reject the nomination of any candidate whose character is incompatible with U.S. Merchant Marine Academy standards. No person who has been dismissed or compelled to resign from the U.S. Military Academy, the U.S. Naval Academy, the U.S. Air Force Academy, the U.S. Coast Guard Academy, the U.S. Merchant Marine Academy, or a State Maritime Academy for improper conduct is eligible for appointment as a cadet at the U.S. Merchant Marine Academy. No person whose last discharge from any branch of the military service was under conditions other than honorable is eligible for appointment as a cadet.

(e) *Investigation.* Candidates for appointment, at the time of their physical examination, will be required to execute documents for the purpose of a suitability and security investigation. To be eligible for appointment, all candidates must be completely loyal to the United States and must meet the requirements established by the Department of the Navy for designation as Midshipman, U.S. Naval Reserve.

(f) *No waivers.* No waivers of academic or physical requirements will be granted.

§ 310.54 Scholastic requirements.

(a) *Academic requirements*—(1) *Required credits.* Applicants must have satisfactorily completed their high school education at an accredited secondary school or equivalent, and must present at least 15 units of credit for subjects acceptable to the U.S. Merchant Marine Academy. Candidates insofar as practicable, should include as many as possible of the following in their secondary school programs in order to have acceptable school certificates:

(i) Seven units are required as follows:

3 units of mathematics (from algebra, geometry and/or trigonometry);
3 units of English;
1 unit of physics or chemistry.

(ii) Eight elective units, preferably chosen from the following fields, are desirable:

Additional mathematics and science;
History or social science;
Mechanical drawing and shop work;
Foreign language;
Economics.

(2) *Evidence of academic work.* Evidence must be submitted showing completion of such education, or showing that such education is scheduled to be completed by a specified date in June of the year in which admission is sought before an application for admission will be approved.

(b) *Scholastic examinations*—(1) *Required entrance examination.* Applicants are required to qualify in the College Entrance Examination Board examinations administered nationally on scheduled dates at convenient testing centers. The entrance examination consists of the Scholastic Aptitude Test (verbal and mathematics sections), English Composition Test and the Achievement Test in Mathematics, Level I (Standard) or Level II (Intensive). No additional weight is given to results of the test in Mathematics, Level II (Intensive) over those in Mathematics, Level I (Standard). An unacceptable score on any one test is cause for rejection. The cost of the College Board Entrance Examination must be borne by the applicant. Nominees must have taken all the required examinations by the January testing date in the year for which they seek appointment.

(2) *Forwarding test results.* Candidates who take the tests required by the U.S. Merchant Marine Academy and who desire that the results be considered for

scholastic qualification should request the College Entrance Examination Board to submit their scores to the U.S. Merchant Marine Academy, Kings Point, N.Y.

(3) *Test information.* General information on the tests including dates of administration, location of testing centers, registration, etc., is published by the College Entrance Examination Board in a booklet entitled "Bulletin of Information," a copy of which will be forwarded to applicants by the U.S. Merchant Marine Academy. In addition, booklets entitled, "A Description of the College Board Scholastic Aptitude Test" and "A Description of the College Board Achievement Tests" may be obtained, without charge, from the candidate's high school or the College Entrance Examination Board, Post Office Box 592, Princeton, N.J. 08540, or the College Entrance Examination Board, Post Office Box 1025, Berkeley, Calif. 94701.

§ 310.55 Physical requirements.

(a) *Physical standards.* A candidate is required to meet the physical standards prescribed by the Department of the Navy for designation as Midshipman, USNR. Presently applicable standards are presented in this paragraph. Vision must be not less than 20/30 in each eye corrected to 20/20. Hearing must be at least 15/15. Heart rate is required to be not over 100 nor under 50 in reclining position. Blood pressure is required to be not over 138 systolic nor 90 diastolic. Normal color perception is required. There must be at least 16 natural, vital serviceable teeth, with a minimum of eight in each arch. All missing teeth, which if not replaced would cause unsightly space or significantly reduced masticatory or incisal efficiency, must be replaced by bridges or partial dentures which are well designed and in good physical condition. The teeth must be free from dental caries. The limits of height are 64 to 78 inches. Fractions of greater than one-half inch will be considered as the next full inch. Weight must be in proportion to height and general build as follows:

Height (inches)		Weight (pounds)			
Minimum	64	Minimum	105	Maximum	183
	65		106		187
	66		107		191
	67		111		196
	68		115		202
	69		119		208
	70		123		214
	71		127		219
	72		131		225
	73		135		231
	74		139		237
	75		143		243
	76		147		248
	77		151		254
Maximum	78		153		260

(b) *Qualifying physical examinations and interview.* All candidates for the Academy are required to have a physical and dental examination conducted by Medical and Dental Officers of the U.S. Navy or, by specific arrangements, by other branches of the armed services or U.S. Public Health Service. The required physical examination must be conducted within 1 year preceding the date of admission to the U.S. Merchant Marine Academy. Although there is no charge for such examination, any necessary travel and other expenses such as meals and hotel accommodations incurred in obtaining such examinations must be borne by the applicant. Candidates may be reexamined upon reporting to the Academy.

(c) *Preliminary physical examinations.* Preliminary physical examinations are not required by the Maritime Administration but may be conducted solely for the convenience of candidates and prospective candidates or the nominating official. Preliminary physicals serve to reveal obviously disqualifying defects which may prevent admission as a cadet and may enable candidates to correct temporary disqualifying defects prior to the required physical examination. Preliminary physicals may be conducted by a private physician but must be at no expense to the Government. In addition, preliminary physicals may be obtained through Federal medical facilities upon specific arrangements by the nominating official. Any expense incurred in obtaining such examinations must be borne by the applicant.

(d) *Physical reexaminations.* A candidate rejected because of physical examination may request reexamination by making request to the Admissions Office, U.S. Merchant Marine Academy, Kings Point, N.Y.

§ 310.56 Application and selection of Cadets.

(a) *Application.* Upon receipt of nominations at the U.S. Merchant Marine Academy, there will be forwarded to each candidate an Application for Admission to the U.S. Merchant Marine Academy. The Secondary School Record and Personality Record sections of the form are to be completed by the appropriate school official. The application must be completed and returned to the Admissions Office, U.S. Merchant Marine Academy, Kings Point, N.Y., as early as possible but not later than March 1.

(b) *Selection of cadets.* Selection of cadets for appointment to fill vacancies allotted to the various States and other locations as specified in § 310.52(b), is made in order of merit as a result of competitive examinations. The order of merit will be determined not only by the scores on the required entrance examinations, but also by each candidate's previous academic record, evidence of ability, character, citizenship, and leadership qualities, participation in extra-curricular activities, part-time or full-time employment, church or club activities, physical fitness and, in general, his potential ability to develop into a competent Merchant Marine Officer.

(c) *Notification of selection.* Results of the selection process will be made known about May 1, when each candidate and his nominating official will be notified of his status as (1) a principal candidate, or (2) an alternate candidate, or (3) an unqualified candidate. Alternates will replace principal candidates who decline appointment or fail to meet physical requirements.

(d) *Reporting to the academy.* During July, all candidates selected for appointment who have met all requirements will be issued instructions to report to the U.S. Merchant Marine Academy by a specified date in mid-July for orientation and induction.

(e) *Oath.* Each cadet who is a citizen of the United States will be given an oath of office at the U.S. Merchant Marine Academy as follows:

I, ----------, having been appointed a cadet to the U.S. Merchant Marine Academy accept appointment and do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will comply with all the regulations of the U.S. Merchant Marine Academy; that I take this obligation freely, without any mental reservations or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter; so help me God.

(f) *Birth certificate.* Each candidate will be required to present an acceptable certificate of birth.

§ 310.57 Courses of instruction.

(a) *At academy.* Cadets entering the U.S. Merchant Marine Academy select the Nautical Science or Engineering program which will fit them to serve in the Deck or Engine Department aboard ship. The curriculum includes the study of general education courses in addition to professional and technical subjects. Cadets normally spend four 11-month academic years in the course of study. The first, third and fourth academic years are spent at the Academy at Kings Point, N.Y.

(b) *Sea year.* Cadets spend the second year training at sea aboard one or more merchant vessels. The sea year may be split, when circumstances warrant. In addition to practical shipboard assignments, cadets are required to complete a Sea Project incorporating material from the major segments of the Academy curriculum.

§ 310.58 Training on subsidized vessels.

All subsidized merchant vessels, in accordance with contractural arrangements, are required to provide for the training of at least two cadets, as assigned by the Superintendent of the U.S. Merchant Marine Academy, which shall be in accordance with the following provisions:

(a) *Work assignments.* All practical work assignments for cadets shall be in accordance with such courses as are prescribed by the Superintendent of the U.S. Merchant Marine Academy.

(b) *Working hours.* Steamship company employers, in order to permit cadets to carry on with their training courses, shall not normally require cadets to work more than 8 hours in any one day. Cadets shall devote at least 3 hours of their own time each day to study.

(c) *Pay.* Cadets shall receive pay, while attached to merchant vessels, at

the rate of $160.50 per month from their steamship company employers. Cadets, while assigned to ships, will be furnished quarters and subsistence by the steamship company employer. While aboard ship, they shall be berthed in rooms with other cadets in that part of the vessel designated for licensed officers or first class passenger quarters and shall mess with the licensed officers. In addition, the steamship company employers shall pay the cadets such subsistence and room allowance in port, transportation allowances, and other bonuses or allowances as are paid to the licensed officers of the vessel to which cadets are attached.

§ 310.59 Training on other vessels and by other facilities or agencies.

Arrangements may be made by the Maritime Administrator for training of cadets on Government-owned vessels, in cooperation with other governmental and private agencies, on other vessels, and, for instructional purposes only in shipyards, plants, and industrial and educational organizations.

§ 310.60 Allowances and expenses.

(a) *Items furnished.* Each cadet is provided with free tuition, quarters, subsistence, medical and dental care, and to certain travel expenses in accordance with Chapter 5, Part A of the Joint Travel Regulations while traveling under official Academy orders.

(b) *Allowances.* Cadets receive an allowance of $400 per year, payable quarterly, toward the cost of uniforms and textbooks for each of the 3 years at the Academy. No allowance is received during the sea year as cadets will earn about $1,500 from their steamship company employers.

(c) *Deposit required.* A cadet, upon admission to the U.S. Merchant Marine Academy, is required to deposit $900 on entrance to help defray the initial cost of clothing and equipment. Additional deposits are required in accordance with the following schedule:

Second Class:	
Deposit on return from Sea Training	$350.00
First Class:	
Balance required in account at beginning of year	50.00

Failure to make the required deposits will result in suspension or detachment. These deposits, plus other necessary expenses, except spending money, are balanced off over the 4-year course of training by the allowances and salary specified in paragraph (b) of this section.

§ 310.61 Uniforms.

Cadet uniforms and equipment are supplied at the Academy in accordance with Academy uniform regulations, as directed by the Superintendent.

§ 310.62 Privileges.

(a) Cadets may be granted leave of absence of approximately 4 weeks in July after completion of the first, second, and third year of training.

(b) Studies and exercises are suspended on January 1, February 22, May 30, July 4, the first Monday in September, November 11, Thanksgiving Day, December 25, and on such other days as may be designated by the President as national holidays. On such days cadets may be granted liberty.

(c) Cadets may be granted about 10 days' leave during the period which includes Christmas and New Year's Day.

(d) Liberty and other privileges are granted to cadets meriting it under applicable regulations.

(e) Relatives and friends of cadets may visit them at the Academy at such hours as the Superintendent may prescribe for visitors.

§ 310.63 Graduation.

(a) A cadet will be graduated from the Academy upon the successful attainment of the following objectives:

(1) Completion of the required course of study;

(2) Passing the required U.S. Coast Guard examinations for licensing;

(3) Filing for a Commission in the U.S. Naval Reserve.

(b) Graduates receive the degree of Bachelor of Science; the U.S. Coast Guard license either as third officer or third assistant engineer; and may be granted a commission as Ensign in the U.S. Naval Reserve by the Department of the Navy.

(c) Cadets sign on agreement as a condition for admission which obligates them to serve as licensed officers in the U.S. Merchant Marine for a period of at least 5 consecutive years after graduation.

§ 310.64 Foreign students.

(a) *Appointments from the American Republics.* The Act of Congress approved August 9, 1946 (46 U.S.C. 1126b) and Executive Order 10661 of February 27, 1956 (21 F.R. 1315) provide for the admission of citizens of American Republics (other than the United States) to receive instruction at the U.S. Merchant Marine Academy at Kings Point, N.Y. The total number of persons from American Republics other than the United States to be enrolled at any one time shall not exceed 12 and not more than two persons from any of such republics shall receive instruction at the U.S. Merchant Marine Academy at the same time. Applications for appointment under the provisions of this law must be addressed through the appropriate diplomatic channels of the applicant's country. Nominations must reach the State Department in Washington, D.C. by January 1 of the year in which admission is sought.

(b) *Appointments from the Trust Territory of the Pacific Islands.* The Act of Congress approved September 14, 1961 (75 Stat. 514) provides for the admission of not to exceed four persons at a time from the Trust Territory of the Pacific Islands to receive instruction at the U.S. Merchant Marine Academy at Kings Point, N.Y.

(c) *Regulations.* Persons receiving instruction under the authority of the above Acts shall receive the same pay, allowances, and emoluments as do citizens of the United States, to be paid from the Maritime Administration training appropriation. Subject to any exceptions as may be determined by the Maritime Administrator (in the case of cadets from the Trust Territories as a result of a joint agreement by the Maritime Administrator and the Secretary of Interior), they shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Merchant Marine Academy appointed from the United States; but such persons shall not be entitled to appointment to any office or position in the U.S. Merchant Marine by reason of their graduation from the Merchant Marine Academy. Each candidate must:

(1) Be a bona fide male citizen of the country transmitting the request and meet the other requirements as to age, marital status, and character as set forth in § 310.53 for U.S. citizens.

(2) Possess physical qualifications as specified in § 310.55. All candidates must undergo a physical examination and and physical aptitude examination as arranged by the Maritime Administrator.

(3) Be proficient in reading, writing, and speaking idiomatic English and must meet the following scholastic entrance requirements:

(i) Must qualify in the College Entrance Examination Board Scholastic Aptitude Test and achievement tests in English Composition and Mathematics, Level I, or Mathematics, Level II. See § 310.54(b). Detailed certificates covering schoolwork will not be required of candidates from the other American Republics and the Trust Territories of the Pacific. These candidates will be given the same examination in English Composition as other candidates, but due consideration will be accorded these foreign students when evaluating test results. When available, special foreign language College Board Examinations may be substituted for the Scholastic Aptitude examinations and Mathematics Achievement tests.

(ii) Each candidate shall submit a certificate from his Government that he is conversant with the literature of his native country and that he has completed a course in the literature of his native language equivalent in general to 2 years of secondary school work in literature in the United States. In lieu of this certification, a candidate may produce evidence of having acquired the units for literature from accredited schools of the United States.

(4) Candidates will be furnished information as to the time, place, etc., of the College Entrance Examination Board tests. A maritime representative or a diplomatic representative of the United States in the candidate's country shall in the case of all these candidates furnish a report as to the candidate's proficiency in the use of idiomatic English.

(5) In lieu of the oath of allegiance to the United States, a substitute oath will be required in substance as follows:

I, _____, a citizen of _____, aged _____ years _____ months, having been appointed as a cadet to the U.S. Merchant Marine Academy, do solemnly swear or affirm to comply with all regulations of the Academy, and to give my utmost efforts to accomplish satisfactorily the required curriculum; do swear or affirm not to divulge any information of military value which I may obtain, directly or indirectly, in consequence of my presence at the U.S. Merchant Marine Academy, to any alien government; and do agree that I shall be withdrawn from the U.S. Merchant Marine Academy if deficient in conduct, health, or studies.

Dated: April 22, 1968.

By order of Acting Maritime Administrator.

JAMES S. DAWSON, Jr.,
Secretary.

[F.R. Doc. 68-4997; Filed, Apr. 25, 1968; 8:46 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter II—Bureau of Commercial Fisheries, Fish and Wildlife Service, Department of the Interior

SUBCHAPTER F—AID TO FISHERIES

PART 253—COMMERCIAL FISHERIES RESEARCH AND DEVELOPMENT

On pages 495 through 497 of the FEDERAL REGISTER of January 13, 1968, there was published a notice and text of a proposed new Part 253 of Title 50, Code of Federal Regulations. The purpose of the new part was to amend §§ 253.1(k), 253.2(a), and 253.3(a). The amended sections broadened and clarified the definition of commercial fisheries resources, clarified and deleted the exception relating to the source of matching funds in fiscal years 1965 and 1966, and deleted the obsolete time requirement for submission of project proposals. Other editorial changes were also made in most sections.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections with respect to the proposed new part to the Director, Bureau of Commercial Fisheries, Department of the Interior, Washington, D.C. 20240.

Since no comments were received, Part 253 is now published in its entirety and these regulations are effective upon publication in the FEDERAL REGISTER.

Sec.

253.1 Definitions.
253.2 Interpretation of the authorization.
253.3 Use of research and development funds.
253.4 Use of resource disaster funds.
253.5 Use of new commercial fishery funds.
253.6 Financial responsibility.
253.7 Reporting.
253.8 Record retention.
253.9 Audit and inspection.
253.10 Officials not to benefit.
253.11 Patents and inventions.
253.12 Convict labor.

AUTHORITY: The provisions of this Part 253 issued under sec. 8, Public Law 88-309.

§ 253.1 Definitions.

As used in this part, terms shall have the meaning ascribed in this section.

(a) *Secretary.* The Secretary of the Interior or his authorized representative.

(b) *Act.* Public Law 88-309, the Commercial Fisheries Research and Development Act of 1964.

(c) *Research and development funds.* Funds, the appropriation of which, were authorized by subsection 4(a) of the Act.

(d) *Resource disaster funds.* Funds, the appropriation of which were authorized by subsection 4(b) of the Act.

(e) *New commercial fishery funds.* Funds, the appropriation of which, were authorized by subsection 4(c) of the Act.

(f) *Person.* Individual, association, partnership, or corporation, any one or all as the context requires.

(g) *Primary producer or commercial fisherman.* A person owning, having interest in, managing, or operating a vessel or gear engaged in harvesting fishery resources for commercial purposes.

(h) *Net profits.* The net profit, before taxes, as computed in accordance with generally accepted accounting standards with due regard to the practices in the locality in which the fishing operation is conducted.

(i) *Reasonable amount as determined by the Secretary for the salary of the fisherman.* A computed amount equal to the average income of the applicant from fishing operations during the three (3) preceding calendar years, with a maximum of $3,000, computed from applicant's income tax returns for those years.

(j) *Subcontractor.* A person, agency, institution, or private enterprise, under contract with a State agency, for the purpose of carrying out the provisions of a project agreement.

(k) *Commercial fisheries resources.* Fish, shellfish, other aquatic animals and aquatic plants available or potentially available for harvesting with the primary intent of commercial use as either raw or manufactured products.

§ 253.2 Interpretation of the authorization.

The terms used in the Act to describe the authorization to the Secretary are construed to be limited to the meanings ascribed in this section.

(a) *Supplement, and, to the extent practicable, increase the amounts of State funds.* The words "supplement, and, to the extent practicable, increase the amounts of State funds" means that State funds, to be used for at least 25 percent of the cost of a project financed with research and development funds, will be additional funds provided for this purpose and will not be funds diverted from existing commercial fishery research and development.

(b) *Resource disaster arising from natural or undetermined causes.* The words "resource disaster arising from natural or undetermined causes" mean a serious disruption of a fishery caused by alteration of habitat affecting present and future productivity, inability to catch the raw fish, or inability to sell the catch, because of a natural or undetermined cause. It does not include inability to sell the catch because of competition from imported or other competitive products.

(c) *Developing a new commercial fishery.* The words "developing a new commercial fishery" mean the development of a fishery for a fishery resource not common to the commercial fishery in the area in which the development is anticipated, or on such resources not being utilized commercially.

(d) *Manufactured or processed fishery merchandise.* The words "manufactured or processed fishery merchandise" mean fishery products which are included in the tables entiled "Manufactured Fishery Products" appearing in the annual Bureau of Commercial Fisheries Statistical Digests, Fishery Statistics of the United States. Data on new products or the collection of statistics on products not formerly covered in these tabulations, will only be included in the subsequent year's determination of the apportionments.

§ 253.3 Use of research and development funds.

(a) *Apportionment and obligation.* On July 1 of each year, or as soon thereafter as practicable, the Secretary shall certify to the respective State agencies the amount of funds apportioned to each. Funds apportioned in any fiscal year remain available for obligation until the end of the succeeding fiscal year, and if unobligated at that time, are returned to the Treasury of the United States.

(b) *Designation of State agency.* The Governor of each State shall notify the Secretary which agency of the State government is the agency authorized under its laws to regulate commercial fisheries. An official of the State agency shall certify as to the official(s) authorized in accordance with State law to commit the State to participation under the Act, to sign project documents, and to receive payments. The Secretary shall be advised promptly of any changes made in such authorizations.

(c) *Project proposal.* A project proposal shall be submitted for each proposed project which shall contain such information as the Secretary may require, including objectives, procedure, duration, and cost.

(d) *Project agreement.* After the Secretary has approved a project proposal, activities to be undertaken by the State agency and the obligation of Federal funds shall be evidenced by a project agreement executed by the State agency and the Secretary.

(e) *Prosecution of work.* (1) The State agency shall carry approved projects through to a stage of completion acceptable to the Secretary with reasonable promptness. Failure to render satisfactory progress reports or failure to complete the project to the satisfaction of the Secretary shall be cause for the Secretary to withhold further payments

until the project provisions are satisfactorily met. Projects may be terminated upon determination by the Secretary that satisfactory progress has not been maintained. The Secretary shall have the right to inspect and review work being done at any time.

(2) Research and development work shall be continuously coordinated by the State agency with studies conducted by other State and non-State agencies to avoid unnecessary duplication.

(3) All work shall be performed in accordance with applicable State laws, except when contradictory to Federal laws or regulations, in which case Federal law or regulations will prevail.

(f) *Economy and efficiency.* No project shall be approved until the State has shown to the satisfaction of the Secretary that appropriate and adequate means shall be employed to achieve economy and efficiency in the completion of the project.

(g) *Contracts.* Supply, service, equipment, and construction contracts, other than research and development contracts and contracts for professional services, involving an expenditure of $2,500 or more entered into by a State agency for the execution of approved project activities shall be based upon free and open competitive bids. If a contract is awarded to other than the lowest responsible bidder, the payment of the Federal portion of the cost of the project shall be based on the lowest responsible bid, unless it is satisfactorily shown that it was advantageous to the project to accept a higher bid. Upon request, the State agency shall certify and promptly furnish to the Secretary a copy of each contract executed and copies of all bids received concerning the contract. Contracts for research and development and professional services may be negotiated, provided that the Secretary is satisfied that adequate steps are taken to insure economical and efficient services and the impartial selection of contractors.

(h) *Vouchers.* Vouchers showing amounts expended on each project and the Federal portion claimed to be due on account thereof shall be submitted to the Secretary by the State agency either after completion of a project or as the work progresses.

(i) *Safety and accident prevention.* In the performance of each project, the State agency shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation. The State agency shall be responsible that all safeguards, safety devices, and protective equipment are provided and will take other needed actions reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of work on the project.

(j) *Personnel.* The State agency and its subcontractor(s) shall maintain an adequate and competent force of employees to initiate and carry approved projects through to satisfactory completion. Personnel employed on approved projects shall be selected on the basis of their competence to perform the services required and shall conduct their duties in a manner acceptable to the Secretary.

(k) *Nondiscrimination.* Each project agreement shall be supported by applicable sections of Executive Order 11246, dated September 24, 1965, pertaining to nondiscrimination, and shall also be subject to Public Law 88–352, and any regulations promulgated thereunder.

§ 253.4 Use of resource disaster funds.

(a) *Determination.* The Secretary shall cause to be published in the FEDERAL REGISTER a notice of finding that a commercial fishery failure due to a resource disaster arising from natural or undetermined causes exists at the time such a finding is made. After such publication, resource disaster funds may be used for the following purposes with the cooperation of the respective State agencies:

(1) Payments causing the removal from the usual markets of supplies of fish or shellfish of the species listed in the said finding which are preventing normal trade operations. Payment will not be made under this paragraph unless the Secretary deems such action necessary to aid in restoring normal trade operations; the person receiving such payment, if not the primary producer, provides evidence that he has reimbursed the primary producer, or such other person from whom the fish or shellfish were purchased; the person receiving such payments has furnished the Secretary with such information regarding purchases, costs and sales as the Secretary may require; and satisfactory evidence of removal of the products from channels of distribution, including storage, shall be provided to the Secretary.

(2) Payments to primary producers of the species of fish listed in the said finding to assist them in obtaining gear or equipment necessary to operate in the same or a different fishery than that affected by the said resource disaster. Payment will not be made under this paragraph unless the Secretary deems such action necessary to aid in restoring primary producers adversely affected by the said commercial fishery failure to a condition where they can operate profitably; the person receiving such payment furnishes the Secretary with such information regarding catches, costs and sales as the Secretary may require; and the person receiving such payments agrees to operate the gear purchased with the assistance of such payment in a manner satisfactory to the Secretary.

(3) Short-term loans for operating expenses of primary producers. When loans are made under this paragraph, the interest rate shall be 3 percent and repayment will be required only from net profits of the fishing operation, which net profit shall be reduced by such reasonable amounts as determined by the Secretary for the salary of the fisherman. Such loans will not be made unless the Secretary deems such action necessary to aid in restoring primary producers adversely affected by the said commercial fishery failure to a condition that will permit them to resume operations; the funds are not otherwise available on reasonable terms; and the past earning and credit record of the applicant is such that it provides reasonable assurance of repayment.

(4) Payments to State agencies for projects directly related to the restoration of the fishery affected by the said resource disaster or to prevent a similar failure of the fishery in the future. Such project proposals and their processing will be subject to all regulations relating thereto in this part, except that these projects will be given preference over other proposed projects with reference to the use of funds obtained under subsection 4(b) of the Act, and Federal funds may be used for 100 percent of the cost of the project if all of the funds are obtained from appropriations authorized under subsection 4(b) of the Act.

(b) *Nondetermination.* At any time when there is no finding of a commercial fishery failure as described in subsection (a) of this section, the Secretary may, if he deems such action to be in furtherance of the purposes of the Act, approve project proposals for funding under subsection 4(b) of the Act from funds carried over from previous fiscal years: *Provided, however,* That no project proposal from a State agency will be funded under this subsection until that State agency has obligated all of its available apportioned funds, if any, obtained from appropriations authorized under subsection 4(a) of the Act.

§ 253.5 Use of new commercial fishery funds.

Project proposals leading to the establishment of a new commercial fishery may be approved when the Secretary finds that the proposal, if approved and carried out, will reasonably assure the establishment of a new commercial fishery within the State submitting the proposal. All proposals under this section will be subject to all applicable regulations of this part, except that 100 percent of the project costs may be paid with Federal funds and, if the Secretary deems that the proposal will further the purposes of the Act, the proposal may be approved without the requirement that the State agency submitting the proposal has obligated all of its apportioned funds, if any.

§ 253.6 Financial responsibility.

(a) State agencies are required to account for each approved project. Cost accounting records, consistent with generally accepted accounting standards, shall be maintained for each project separately.

(b) State agencies are responsible for the financial management of the project. Appropriate internal controls will, therefore, be adopted and installed to insure that the project is accomplished in the most efficient and economical manner.

§ 253.7 Reporting.

(a) Progress reports on approved projects will be furnished by State agencies. These reports will be prepared as prescribed by the Secretary.

(b) Completion reports are required when the project is completed pursuant to the project agreement. Final payment

to State agencies will not be made until a completion report has been approved by the Secretary.

§ 253.8 **Record retention.**

(a) All records of accounts, reporting and supporting documentation thereto will be retained by the State or State agency for a period of 3 years after final payment is made by the Federal Government.

(b) Loan applicants, to whom a loan has been granted pursuant to section 9 of Public Law 88–309 or § 253.4(a)(3), shall retain all records incident to the fishing operation for a period of 3 years after the note has been satisfied.

§ 253.9 **Audit and inspection.**

(a) State agencies are expected to provide for a system of periodic internal review or audit by State employees.

(b) Authorized representatives of the Department of the Interior and the U.S. General Accounting Office shall have the right to audit, examine or inspect accounts, books, documents, and other pertinent records involving operations and transactions of the State agency and its subcontractor(s). Project work will be subject at all times to on-site inspection.

(c) Audit exceptions involving reduction in prior payments on a project, whether active or completed, if not cleared by direct collection, may be offset against other approved projects or against other funds due the State agency.

§ 253.10 **Officials not to benefit.**

No member of or delegate to Congress or resident commissioner, shall be admitted to any share or any part of an agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

§ 253.11 **Patents and inventions.**

Determination of the patent rights in any inventions or discoveries made in the course of or under any research and development contract entered into pursuant to the Act shall be governed by the Statement of Government Patent Policy promulgated by the President in his memorandum of October 10, 1963 (3 CFR 1963 Supp. p. 238, 28 F.R. 10943).

§ 253.12 **Convict labor.**

In connection with the performance of work, the State agency shall not employ any person undergoing sentence of imprisonment at hard labor.

H. E. CROWTHER,
Director,
Bureau of Commercial Fisheries.

[F.R. Doc. 68–4984; Filed, Apr. 25, 1968; 8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Part 4]

TRANSPORTATION OF PASSENGERS BETWEEN U.S. PORTS ON FOREIGN-FLAG VESSELS

Shore Leave of Passengers on Foreign Cruise Vessels at Domestic Ports; Extension of Time

A notice of proposed rule making setting forth a proposed amendment to Part 4 of the Customs Regulations (19 CFR Part 4), to add a new § 4.80a, was published in the FEDERAL REGISTER for March 19, 1968 (33 F.R. 4679). Comments were invited to be submitted within 30 days after publication.

Interested parties have requested additional time within which to submit comments. Accordingly, consideration will be given to any data, views, or arguments pertaining to the proposed amendment to the regulations which are submitted in writing to the Commissioner of Customs, Washington, D.C. 20226, not later than May 31, 1968.

[SEAL] LESTER D. JOHNSON,
Commissioner of Customs.

Approved: April 19, 1968.

JOSEPH M. BOWMAN,
Assistant Secretary of the Treasury.

[F.R. Doc. 68-5033; Filed, Apr. 25, 1968; 8:49 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 233]

SAN CARLOS INDIAN IRRIGATION PROJECT, ARIZ.

Electric Service Connect and Reconnect Charge

APRIL 19, 1968.

Basis and purpose. This notice is published in the exercise of rule making authority (hereinafter referred to) delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2. Pursuant to the authority vested in the Secretary of the Interior by the Act of June 7, 1924 (47 Stat. 476), and March 7, 1928 (45 Stat. 210), notice is hereby given that it is proposed to amend § 233.20 of Part 233 of the Code of Federal Regulations, Title 25—Indians, as set forth below. The purpose of this amendment is to establish a customer service charge for new connections and reconnections of electric service.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment to the Bureau of Indian Affairs, 1951 Constitution Avenue NW, Washington, D.C. 20240, within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

Section 233.20 is amended to read as follows:

§ 233.20 Connect and reconnect charge.

A nonrefundable service establishment fee of $5 will be charged each time the Project is requested to establish or reestablish electric service to the customer's delivery point. This charge will be included in and rendered with the first month's bill for electricity after connection or reconnection service.

T. W. TAYLOR,
Acting Commissioner of Indian Affairs.

[F.R. Doc. 68-4985; Filed, Apr. 25, 1968; 8:45 a.m.]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 1033]

[Docket No. AO 166-A35]

MILK IN GREATER CINCINNATI MARKETING AREA

Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Cincinnati, Ohio, on August 23-24, 1967, pursuant to notice thereof issued on August 10, 1967 (32 F.R. 11737).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on March 19, 1968 (33 F.R. 4928; F.R. Doc. 68-3548 and 33 F.R. 5220) filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision (33 F.R. 4928; F.R. Doc. 68-3548 and 33 F.R. 5220) are hereby approved and adopted and set forth in full herein subject to the following modifications.

Index of changes. 1. Under Issue 2, *Diverted milk,* the 14th paragraph is revised and two new paragraphs are added.

2. Under Issue 3, *The application of location adjustment credits should be modified,* the fourth paragraph is revised.

3. Under Issue 3, *The application of location adjustment credits should be modified,* five new paragraphs are added following the ninth paragraph.

4. Under Issue 4, *Revision of producer payment provisions,* the fifth sentence of the third paragraph is deleted.

5. Under Issue 4, *Revision of producer payment provisions,* the fifth paragraph is revised by substituting four paragraphs.

Amendatory provisions to carry out the findings and conclusions of the April 15, 1968, decision of the Assistant Secretary resulting from the general Class I price hearing convened at Memphis, Tenn., on February 23, 1968, are included in the order which is part of this decision. Combination of such provisions with other amendatory provisions in this decision is made to simplify determination of producer approval and modification of this order.

The material issues on the record of the hearing relate to:

1. Modification of pooling requirements for plants;

2. Revision of diversion provisions, including point of pricing for diverted milk;

3. Modification of location differentials;

4. Revision of the provisions for payments to producers;

5. Clarification and revision of transfer provisions; and

6. Revision of a number of administrative provisions of the order, including certain conforming and clarification changes in definitions and other provisions.

FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Plant pooling requirements.* The pooling requirements for distributing plants and supply plants should be revised.

Pool distributing plant. A distributing plant, to qualify as a pool plant, should have total route disposition of at least 50 percent of its receipts of Grade A milk from dairy farmers, from other pool plants which are assigned to Class I milk, from nonpool plants (excluding receipts of bulk fluid milk from other plants as Class II milk), and from cooperatives as handlers. A distributing plant

meeting the 50 percent distributing requirement in the previous month should continue as a pool plant in the current month even if such percentage is not met in such month. Also, the plant should have at least 15 percent of its total monthly route disposition within the marketing area, excluding from such percentage any receipts from other plants of packaged fluid milk products priced as Class I milk under this or any other Federal order.

Currently, a distributing-type plant qualifies either by the fact of its location in the marketing area or, if located outside the marketing area, by disposing of not less than 10 percent of its total route disposition during the month on routes operated wholly or partially within the marketing area.

A major cooperative proposed that a distributing plant's total route disposition should amount to at least 60 percent of total receipts from producers, supply plants, and cooperatives as handlers. A distributing plant meeting the 60 percent requirement for each month of September through March would be permitted to qualify on a minimum route disposition of 50 percent in April through August.

It was the cooperative's position that, under the current provisions, certain distributing plants have acquired supplies solely for their own manufacturing purposes or to sell to others for manufacturing rather than to make such supplies available for fluid use. The current pooling standards for distributing plants thus serve, they contended, to dissipate returns from Class I sales to supplies not available for Class I use and that this practice increases the difficulty of acquiring an economical supply for the fluid market.

The five largest handlers on the market supported the cooperative's proposal to increase the pooling requirements for distributing plants. These handlers stated the need to minimize the amount of producer milk utilized for manufacturing purposes through more definitive pooling requirements. There was no opposition to stricter requirements.

One handler suggested that the pooling requirements for distributing plants should not be lower than the requirements for a distributing plant to pool under the Miami Valley, Ohio, order. This handler specifically proposed that route disposition not less than 50 percent of plant receipts, as used in the Miami Valley and many other orders, would be an appropriate minimum.

It is important to establish minimum performance standards for distributing plants which serve the market in a way, or to a degree, that they should be included in the marketwide pool which provides the means of paying uniform returns to all producers in the market. This is one of the essential means of assuring the market of an adequate and dependable supply of milk. Otherwise the proceeds of the higher Class I price for milk sold in the fluid market would be dissipated on milk acquired by handlers primarily for manufacturing purposes and not go to the primary purpose of assuring an adequate and dependable supply for the fluid market. Having specific marketing performance standards will serve also to minimize the effects of regulation on handlers who have only a minor proportion of their distribution in the regulated market.

To qualify as a pool plant, a distributing plant should be required to meet performance standards as to both the proportion of its supply used in fluid disposition and its disposition in the marketing area.

With the minimal pooling requirements of the past certain handlers have accumulated supplies primarily intended for Class II use either in the plant or by transfer to some other plant with manufacturing facilities. Such supplies have not been generally available for Class I use in the market. This has tended to depress the blend prices to producers at all plants. At the same time other handlers have found it necessary to reach long distances, and at higher cost, for supplies to meet the increasing needs of the Class I market. This situation is encouraged by the minimal pooling requirements in effect and warrants increasing the requirements in the interest of promoting a dependable supply and a better allocation of available milk.

To be considered primarily engaged in the fluid milk business a plant should use at least 50 percent of its Grade A receipts for Class I purposes. Most plants in this market have well in excess of 50 percent utilization of producer receipts in Class I.

The cooperative suggested, in its brief, that monthly performance requirements for each month be based on a "moving average" percentage of producer receipts used in Class I milk. In support of this recommendation, the cooperative indicated that this would give needed flexibility in the requirement, in view of the numerous transfers and diversions of milk among plants in this market. In the absence of such flexibility movements of supplies among plants conceivably could result in loss of pooling status for a plant due to clerical or other error.

The flexibility recommended by the cooperative can be provided in a simpler way by permitting a distributing plant to maintain pool status for a given month if the plant has met the 50 percent performance requirement in either the current or immediately preceding month and it meets, for each month, the minimum in-area route distribution requirement (i.e., 15 percent of total route disposition from such plant), which is discussed below. A distributing plant which has sufficient Class I sales in the marketing area to qualify as a pool plant may have difficulty in meeting the 50 percent utilization requirement for a particular month because of minor changes in receipts or Class I sales or through administrative error. This basis of qualification will minimize occasions of inadvertent loss of pool status. Also, it will allow reasonable time for other handlers to make adjustments in their purchase arrangements with any plant which appears likely to fail in its qualification as a pool plant.

The adoption of such stricter distributing plant requirements should accommodate most existing plant operations in the market. Adjustments in the operations of a few plants may be necessary, however. These would be the plants where a relatively high percentage of producer receipts is used for manufacturing purposes either in the plant or received and shipped to other plants for manufacture. It should be provided, therefore, that distributing plants presently qualified for pooling be permitted to continue pool plant status for 3 months after the adoption of these provisions. This is a reasonable period to make necessary supply or utilization adjustments to meet the more stringent performance requirements.

The 60 percent minimum requirement for certain months proposed by the cooperative association would make difficult the qualification of six plants presently regulated by the order, two of which are plants of long standing in the market. The latter plants were not indicated as engaged in the handling of large supplies of milk solely for manufacturing purposes. The 60 percent requirement could result in a plant with more of its sales in this market being subject to regulation under another order. Most nearby orders provide for a 50 percent requirement for pooling of a distributing plant. For these reasons, the proposed 60 percent requirement is denied.

Proponent cooperative's proposal for minimum in-area route disposition was 10 percent of a distributing plant's Class I sales. A handler pointed out that a 15 percent requirement would not be excessive and would be identical to that provided under the Miami Valley order. These were the only proposals submitted for consideration.

Route disposition in the marketing area of 15 percent or more of a plant's Class I route disposition will provide an appropriate measure of a distributing plant's association with this particular market. Receipts from other plants of packaged fluid milk products at a distributing plant which are priced as Class I under this or any other Federal order should be excluded from the computation of the percentage of the in-area requirement for a distributing plant. The principal purpose of a minimum requirement on in-area distribution for pooling eligibility is to assure that the dstributing plant is associated with the market in a significant and regular manner since all producers at pool plants are eligible to share in the monthly Class I proceeds of the market. The 15 percent requirement adopted is similar to that effective in the adjoining Miami Valley market and will place these closely related markets on equal terms in this regard.

A distributing plant having more than 85 percent of its Class I route disposition outside the marketing area should not be considered substantially associated with this fluid market.

Pool supply plant. The shipping requirements for a supply plant to be pooled should be revised to require that at least 50 percent of the regular supply of Grade A milk from dairy farmers during the month be shipped as fluid milk products to pool distributing plants.

Under present order provisions, a supply plant must ship an amount of fluid milk or skim milk to pool distributing plants not less than one percent of the total Class I utilization at all pool distributing plants during the second preceding month. If such requirement is met (1) in one of the months of October and November, the supply plant qualifies as a pool supply plant for November; (2) in two of the months of October, November, and December, the plant qualifies for December; and (3) in three of the months of October, November, December, and January, the plant qualifies for the following month of January through October.

A major cooperative proposed that a supply plant to be pooled be required to ship at least 60 percent of its receipts from producers regularly assigned to such plant, to pool distributing plants or as Class I milk to nonpool plants. Also, that a supply plant which met the 60 percent shipping standard during each of the months of September through February be designated as a pool plant for the succeeding months of March through August (unless written request for nonpool status is made) even though such percentage is not met in the latter months.

Proponent pointed to the large amounts of direct-ship milk being drawn from distances much greater than the location of the single supply plant now on the market as an important reason for more stringent pooling standards for supply plants, to assure that this or any other supply plant wanting to be pooled would make its milk readily available to the market at all times.

Four of the five handlers supporting more stringent pooling requirements for distributing plants also supported the cooperative's proposal to increase the shipping requirements for pool supply plants. They contended that higher standards would assure that any supply plant to be pooled throughout the year would maintain a close association with the fluid market.

The fifth handler also supported this position, but proposed that the minimum shipping requirement be 50 percent of receipts rather than 60 percent. Also, that a supply plant meeting such requirement during each of the months of August through March should be allowed to qualify during the months of April through July without shipping.

The handler operating the single supply plant currently on the market proposed a somewhat lower pooling requirement. This handler proposed that a supply plant be required to ship 40 percent of its receipts from producers as fluid milk, skim milk or cream to pool distributing plants or as Class I milk to nonpool plants. The supply plant would be pooled if the above shipping requirement were met as follows: (1) If met in one of the months of September and October, the plant would qualify as a pool supply plant for October; (2) if met in two of the months of September, October, and November, the plant would qualify for November; (3) if met in three of the months of September, October, November, and December, the plant would qualify for December; and (4) if met in four of the months of September, October, November, December, and January, the plant would qualify for January through September.

The latter handler contended that the cooperative's proposal would have excluded his plant from pooling during the months of September through December 1966 because receipts during weekends primarily are utilized for manufactured products; also, that rather minor changes in the market's Class I sales can drastically affect the ability of this plant to qualify as a pool plant. It was his position that no pooling standard should be adopted which would prevent his plant from continuing to serve as a "balancing" plant for the market. He proposed also that Class I sales to nonpool plants should be counted in meeting supply plant requirements.

In recent years total Class I utilization of producer receipts on the Cincinnati market has consistently exceeded 50 percent, averaging 64 percent in 1964, 69 percent in 1965, 66 percent in 1966, and 69 percent in 1967. During the past several years (1964–67) Class I sales have been highest relative to producer receipts during the months of September through February, exceeding the above annual percentages in such months. While about 96 percent of the market supply for all purposes is direct-shipped milk, there has been a need in the fluid market for more than 50 percent of the milk regularly received from farms at the one supply plant now on the market. On this basis a minimum 50 percent shipping requirement during the months of September through February is reasonable. It would not be in the interest of promoting an efficient marketing system in this market to permit, through a lower qualification requirement, the retention of a major proportion of supplies in a pool supply plant when needed for fluid use in distributing plants. Thus, each supply plant must qualify by making direct shipments of producer milk supplies to pool distributing plants without receipt at an intermediate plant.

A supply plant from which a lesser proportion of milk is received at pool distributing plants during September through February, should not be considered as primarily associated with this market and therefore should not be fully regulated. On the other hand, the higher percentage (60) proposed by the cooperative association is not necessary to insure a sufficient supply of milk for the market. This market should be in a reasonable competitive position to procure its needs if the minimum performance requirements are similar to those in other nearby regulated markets. A minimum percentage of 50 in this market will place this market and other nearby markets on substantially equal terms in this regard.

Moreover, the proposed higher percentage was based on the proposition that outside sales of Class I milk would be counted toward meeting such percentage. Supply plant requirements should be related to the particular supply situation in the Greater Cincinnati market since their primary purpose is to assure an adequate supply of milk for this market. Outside sales of Class I milk should not be included as a basis for qualifying a supply plant for pool plant status, since such sales do not measure need in this market. It is proposed that the 50 percent requirement adopted be met without the benefit of outside Class I sales.

A supply plant which meets the 50 percent shipping standard during each month of September through February should be automatically designated as a pool plant for the succeeding months of March through August (unless a written request for nonpool status is submitted to the market administrator). As previously indicated, the fall months are those of greatest Class I utilization in relation to producer receipts. Greater flexibility for retaining producer milk supplies at supply plants should be permitted during the normal flush production months of March through August. The latter are the months of peak producer supplies in relation to Class I sales. Accordingly, it is concluded that a supply plant meeting the 50 percent shipping requirement for pooling in each of the short production months of September through February would have demonstrated satisfactorily its year-round association with the market.

Concerning the position of the single supply plant now on the market, which is located about 78 miles from Cincinnati, it is apparent that in the first 3 of the 6 months (October 1966–March 1967) for which shipping experience was shown in the record, this plant would have failed to qualify as a pool supply plant had the 50 percent minimum shipping requirement been in effect. However, it is concluded herein that this or any other supply plant should continue to qualify as a pool plant for the flush production months of 1968 on the basis of meeting the effective pool supply plant shipping requirements of the present order for the fall period of 1967.

Provision should be made which will assure an orderly transition period for a supply plant to meet the revised supply plant pooling requirements herein adopted. This can be accomplished by providing that a pool supply plant which already has gained automatic pooling status for the flush production months in 1968 shall continue to be a pool plant until September 1968, the first month in which the new 50 percent pooling requirement would be effective, unless written notice is received by the market administrator requesting nonpool status.

2. *Diverted milk.* The rules for diverting producer milk should be revised as

follows: There should be no limit on diversions between pool plants. A cooperative association should be able to divert to nonpool plants up to 35 percent of the milk of its producer members received at all pool plants during the month. Similarly, a proprietary handler should be able to divert up to 35 percent of the total producer milk received at his pool distributing plant during the month exclusive of milk diverted therefrom by a cooperative. Diversion of the milk of any producer to a nonpool plant should be permitted only if at least 4 days of production of the milk of such producer is received at a pool plant during the month.

Under the present order, diversions of producer milk from a pool plant to another pool plant by either a proprietary or cooperative handler are limited to not more than 2 consecutive days of delivery and not more than 10 delivery days during the month.

The major cooperative association's proposal for unlimited diversions of producer milk between pool plants should be adopted. This will permit greater flexibility in such diversions for pool handlers under the stricter pooling requirements adopted herein for distributing plants. It will further assist cooperatives and handlers to achieve maximum use of available producer milk in Class I through economical handling practices.

Under current provisions for diversions to nonpool plants, cooperative handlers may divert on an unlimited basis. Proprietary handlers may divert to nonpool plants during the months of March through August only.

The cooperative association proposed with respect to diversions to nonpool plants that only cooperative handlers be able to divert on an unlimited basis. Diversions by proprietary handlers to nonpool plants would be limited, in any month, to a number of days not to exceed one-third of the days of delivery to pool plants. Proponent contended that this would permit somewhat greater flexibility in diversions for proprietary handlers as compared to the present provisions in view of the substantially higher shipping requirements for pool distributing plants proposed relative to the present minimal shipping requirements.

Proponent cooperative association and certain handlers assume responsibility for handling much of the reserve milk in excess of the market's bottling requirements. Consequently, both proprietary handlers and cooperatives should have similar opportunity to divert milk. Since it is intended that the order should assure an adequate, but not excessive, supply of milk for the fluid market, the specific order provisions should be such as to promote this objective. A limited basis of diversion to nonpool plants will avoid the temporary attachment to the market of milk not part of the regular supplies. However, aggregate diversions up to 35 percent of producer receipts should assure orderly handling of supplies and yet discourage the pooling of milk simply to take advantage of the uniform price return.

Producer milk should include that milk of a dairy farmer diverted within the prescribed monthly limit as well as milk received at a pool plant. A cooperative or proprietary handler diverting milk in excess of the percentage limit would be required to designate those producers whose milk must be excluded from the pool when the allowable diversion limit is exceeded. If the handler fails to designate those producers whose milk is ineligible, making it infeasible for the market administrator to determine which milk was overdiverted, all milk diverted to nonpool plants by such handler should be excluded as producer milk.

Diversions by handlers, either proprietary or cooperative, to nonpool plants should be related to some basis of continued association with this market. For this reason milk of a producer eligible for diversion to a nonpool plant should be received at a pool plant in an amount not less than 4 days' production during the month. This will insure that the milk remains qualified for and available to the market.

The basis for pricing producer milk diverted from a pool plant to another plant should be modified.

The diversion provisions for this market are designed to assist in the orderly disposition of producer milk receipts not utilized as Class I milk to pool plants or nonpool plants for processing. Basically, milk would be priced at the plant of receipt. However, there is a need for diversion from bottling plants mainly on weekends when minimal bottling is carried on by such plants. At the present time about 96 percent of total producer receipts normally is received at such city plants where no location adjustments apply.

Diversions between such plants do not involve a change in location pricing for producer receipts. On the other hand, weekend diversions are likely to be made to a location where the price is subject to location adjustment. A principal balancing plant is in a location adjustment zone. Since most of the available producer milk is needed at city plants, and is regularly delivered there, the present provision for pricing diverted milk at the location of the pool plant where normally received should be continued.

The remaining question is a proper measure of normal receipt for this pricing purpose. Under the present order diverted producer milk is priced at the location of the pool or nonpool plant to which the milk is diverted, except in those circumstances where a substantial majority of the producer milk is delivered to a pool plant within 45 miles of Cincinnati. Specifically, producer milk diverted to other plants is priced at the location of the pool plant from which it is diverted, if the milk is received at a pool plant located less than 45 miles from Cincinnati on 60 percent or more of the days of delivery during the immediately preceding September through December period, or 60 percent or more of the days of delivery from the first day of delivery to the last day of February (in the preceding September through February).

Proponent cooperative association proposed that the measure of performance for pricing diverted milk of a producer at the plant from which diverted be changed to delivery to the plant on two-thirds or more of the days of production. Otherwise milk would continue to be priced at the location of the plant to which diverted.

The measure of performance for pricing diverted milk at the location of the pool plant from which diverted should be changed from 60 percent of the days of delivery to 20 days of production delivered to such pool plant during the month. Basically, this requirement is equivalent to that proposed by producers.

Expression in terms of a specific number of days of production avoids, however, the fractional day which could result from use of a percentage figure, such as 60 percent of the days of delivery or two-thirds of the days of production. The provision adopted allows 10–11 days on which milk may be diverted and is reasonable in terms of the need for diversion, which occurs mainly on weekends. It also has the advantage of simplicity.

One further change should be made in the pricing of diverted milk from a "base zone" plant. The base zone of pricing should include all pool plants within 50 miles of Cincinnati, rather than within 45 miles as at present. Diverted milk then, would be priced at the location of a pool plant within 50 miles of Cincinnati from which diverted whenever at least 20 days' production of the producer is delivered to such a plant during the month. Such change will assure that this provision conforms to the location pricing system later discussed.

(3) The application of location adjustment credits should be modified.

A major cooperative association offered alternative proposals to modify location adjustments. Described in general terms, one proposal would specify a "base zone" radius of 100 miles from Cincinnati where no location adjustment credits would be allowed to handlers on Class I milk unless such milk actually was moved to Cincinnati. However, milk moved to Cincinnati from plants beyond 30 miles from the city to a pool plant within a 30-mile radius would receive location credit to the extent the milk was needed to serve the handler's Class I requirements (including a 35 percent cushion) after assigning producer milk received at the handler's distributing plant to Class I use. The rate of credit would be 10 cents per hundredweight for a distance of 30–50 miles, plus 1 cent for each additional 10 miles thereafter. Under this proposal no adjustment to the producers' uniform price would be made at plants within a 100-mile radius from Cincinnati.

The second proposal would provide for no location adjustment at plants within 40 miles of Cincinnati, a 10-cent minus adjustment for distances of 40–50 miles, plus 1.5 cents for each additional 10 miles over 50. For the purpose of computing the amount of milk subject to adjustment under this proposal, the handler's Class I use would be prorated to supply plant milk and other receipts. The current zone rates of adjustment to the producer blend

price would not be changed under this proposal.

A handler proposed location adjustment provisions identical to those recently adopted for the Miami Valley order. Under such provisions no location adjustment credits would apply at pool plants located within 50 miles from Cincinnati. Class I and uniform prices at plants located more than 50 miles would be reduced 9 cents plus 1½ cents for each 10 miles or fraction thereof that the distance exceeds 60 miles.

The problem involving location adjustment credits, as explained by producers, is that handler costs of procuring milk for Class I use can vary significantly by source of supply. The handler with all direct-ship milk (i.e., without reloading) receives his supply f.o.b. his city distributing plant. The farm-to-plant hauling cost in this case is paid entirely by the producer. Because there are insufficient, and steadily declining, direct-ship supplies to meet the needs of all handlers in all months, some must purchase more distant supplies which have been reloaded at "pump-over" facilities or transfer stations,[1] or received at a country supply plant, prior to delivery to the distributing plant.

Competitive procurement conditions have necessitated the payment by handlers of hauling subsidies on certain reloaded milk averaging 3 cents per hundredweight, although such subsidies may vary from 5 to 25 cents per hundredweight on specific reload shipments at some distance from Cincinnati. Much of such milk is procured in competition with the Indianapolis, Miami Valley, and Fort Wayne markets and can move to one or another of these alternative markets at lesser hauling cost than if moved to Cincinnati. In most recent periods the blend price at Cincinnati has been insufficient to pay the full hauling cost to Cincinnati and still be competitive with other markets. Handlers purchasing through a country supply plant must pay a substantial handling charge on such milk.

Handlers thus pay varying amounts in relation to the Class I price to obtain needed supplies for Class I use depending upon whether they receive direct-ship milk, milk reloaded at a transfer station or pump-over facility, or milk previously received at a country supply plant. This is without regard to general premiums, or "negotiated prices," which may also prevail in the market.

Producers expressed the view that, ideally, the total cost of "freight" in procuring supplies should be assessed against handlers and should be shared by them in a manner that all handlers purchase milk delivered to their distributing plants on equal terms. Such a plan for "pooling" the transportation costs of handlers is being carried on at present through voluntary arrangements in the market. The hearing proposals, however, would affect only milk purchased through a country supply plant so as to increase somewhat location credits from the producer-settlement fund to any handler purchasing from such a source. Such proposals would not reach reloaded milk on which localized premiums or hauling subsidies are being paid currently. The country plant milk affected by the proposal is less than 5 percent of the total market supply.

This market has been supplied, up to the present, almost entirely by milk shipped from farms to pool distributing plants without prior receipt at a country supply plant. As previously pointed out, there is one supply plant attached to this market. Under usual conditions, producer milk received at distributing plants should be assigned to Class I use before transportation allowance is given for milk brought in from supply plant sources. This is because location differentials to handlers on Class I milk received from country supply plants are deductible from returns to producers computed at the f.o.b. market Class I value and are credited to handlers from pool funds. The greater the amounts deducted for transportation, the lower the uniform price will be. Location adjustments therefore should be held to the minimum which will accommodate the movement of the necessary plant supplies of milk to fulfill the requirements of the Class I market.

In his exceptions, one handler requested that no location adjustments apply at plants located within 100 miles from Cincinnati. It was his position that producers at the present supply plant at Covington, Ohio, should receive the base zone blend price. As previously indicated, another handler proposed to extend the present base zone to include any plant located within 50 miles of Cincinnati.

The proposal that no location adjustments should apply to plants within 100 miles of Cincinnati would not recognize adequately the differences in transportation costs involved in moving milk to this market from varying locations. Moreover, such a base zone area would substantially change the prevailing Class I price alignment with Miami Valley and other nearby Federal order markets. Consequently, such proposal is denied.

The application of location adjustment credits in relation to an appropriate base zone has been reviewed in the light of exceptions. The recommended decision adopted a different base zone for the purpose of pricing milk diverted to nonpool plants from distributing plants from that provided for computing transportation allowances on milk received from country supply plants.

All present pool distributing plants are located within the marketing area and well within a 50-mile radius from Cincinnati. Adoption of a 50-mile base zone would not increase the cost of milk supplies for any such plants. Under present farm-to-plant delivery methods there is no need for supply plants to locate within such radius from the city as a means for collecting and transshipping milk to city distributing plants. Most of the bulk tank milk currently is moving directly from farms to city distributing plants from substantially greater distances. Nonpool plants to which milk normally would be diverted are located beyond 50 miles from Cincinnati. The adoption of a base zone extending 50 miles from Cincinnati for all purposes under the order will insure consistency within the order and improve the price relationship with the Miami Valley market.

As previously stated, the base zone for pricing diverted milk would be changed from 45 to 50 miles. In order to provide the same base zone for location credits, the two location adjustment zones of 30–40 miles and 40–50 miles should be eliminated as inappropriate under present marketing conditions. A location adjustment of 10 cents per hundredweight thus would apply to those plants located more than 50 miles but less than 60 miles from Cincinnati, plus an additional 1½ cents for each 10-mile zone beyond 60 miles.

At this time the direct-ship supply on which the producers pay full hauling expense is not sufficient to satisfy all the Class I requirements of handlers. In the event a handler needs country plant milk, he therefore should be able to procure it without excessive cost in relation to handlers with adequate quantities of direct-ship milk. Consequently, there should be some additional tolerance in the assignment to Class I of milk brought in from a pool supply plant. As previously stated, one of the cooperative's proposal provides that milk from a supply plant be prorated to Class I along with direct-delivered producer milk. The effect of this proposal would be to increase the amount of location adjustment credit available to the handler to cover the transportation cost in receiving plant supplies as needed to supplement nearby producer milk. At present direct-ship milk is given full priority in assignment to Class I before location credits are computed on any balance in such use received from a supply plant.

For the purpose of computing location differential credits on milk received at a pool distributing plant from another pool plant, such milk should be assigned to Class I on a pro rata basis with direct-ship milk.

The pro rata assignment to Class I disposition in the pool distributing plant of all producer milk, whether received directly from producers' farms or from another pool plant, will reduce somewhat the cost to handlers who must purchase some milk from a supply plant relative to handlers purchasing milk directly from producers' farms and should be adopted.

To mitigate any abuse of location credits, assignments of Class I milk should be made first to any plant at which no location adjustment credit is applicable, and then in sequence beginning with the plant at which the least amount of adjustment credit would apply. For purposes of uniformity, the same provision would apply to any shipment of bulk or packaged fluid milk products between pool plants.

[1] Milk reloaded at pump-over facilities or transfer stations also is priced f.o.b. base zone under the minimum price provisions of the present order.

Reference was made in testimony to the possibility of establishing pump-over facilities and transfer stations as pricing locations in order to allow handlers recovery of the portion of hauling cost they incur to induce milk to move past the Miami Valley market to Cincinnati.

The evidence on this subject does not show how pricing at such reloading points could assist to minimize the problems of milk procurement under past marketing conditions as described in the record. To reimburse handlers for costs incurred for the reload point-to-plant haul and yet return to producers an adequate blend price (adjusted for location) in procurement competition with nearby fluid markets requires maintenance of an f.o.b. market blend somewhat higher than the market blends in the competing fluid markets. Otherwise the application of location pricing at distant reload points might necessitate even higher premiums by handlers to hold specific loads of milk. In most months the Cincinnati Class I utilization has not produced a blend price exceeding the Miami Valley blend.

Also, the practicality of pricing at reload points was not explored sufficiently on this record. Little information was presented on the relative importance of distant reload milk to the total market supply, or as to the relative permanence of any given location as a point for reloading. Similarly, whether in all cases the handler actually pays a part of the reload point-to-plant haul is not clear on the record. Any plan for pricing milk at reloading points, if appropriate, should take into account factors and experience which were not fully explored on this record.

4. *Revision of producer payment provisions.* The rate of partial payment by handlers (for milk delivered during the first 15 days of the month) to producers and cooperative associations (for producer milk marketed by it to other handlers) should be increased. Such payments to individual producers, should be made on the 27th day of the month. A cooperative association should receive partial payment on producer milk marketed by it, 1 day prior to the payment date for other producers. The change in the date for making final payments to producers and cooperative associations is discussed in another section of this decision.

A major cooperative proposed a schedule of partial payment rates related to the Class II price. The payment would be $1 when the Class II price for the preceding month was $2.24 or less, and could be as much as $4 when such Class II price was $4.75 and above. An alternative flat payment rate of $3 also was suggested.

The cooperative proposed the increased rate of partial payment to insure producers a more timely payment for milk delivered to handlers during the first 15 days of the month. It was contended that the partial payment should be higher than the present flat rate of $1 per hundredweight. Proponent pointed out that certain handlers currently make partial payments to producers in the range of $2 to $4 per hundredweight. The producers' proposed plan of partial payments would have called for rates averaging $2.75 in 1966 and $3 in 1967.

Partial payments in excess of the minimum rate of $1 currently being made are on voluntary basis but do not apply uniformly throughout the market. A more uniform basis is needed if producers generally are to be afforded assurance of prompt payment at a reasonable level. At the present time producers deliver as much as 50 days' milk to handlers while receiving only a token payment for the value of the first 15 days' deliveries, since final payment for all milk delivered during any month is received 20 days after the end of the month. On the other hand, the trend to larger volume operations in dairy farming has placed increased pressure on the operating capital of producers. The average producer is faced with increasing cash needs and should receive prompter payment in order to enable him to meet his obligations.

The recommended decision provided that the rate of partial payment should be the Class II price (rounded to the nearest 50 cents) for the preceding month. In their exceptions, two major cooperative associations urged adoption of the proposal considered at the hearing to use a flat rate of partial payment of $3 per hundredweight.

The associations pointed out that current producer "credit assignment" practices would be disrupted if a larger partial payment rate were required at this time. For a substantial number of producers, the customary charges such as for merchandise or credit, made by the handler or a cooperative association against the producer when added to the partial payment could exceed the total value of the monthly milk deliveries by the producer.

Exceptors also pointed out that a higher rate of partial payment would necessitate additional costly bookkeeping procedures under current payment practices.

It is concluded therefore that the rate of partial payment should be set at $3 per hundredweight.

The date for partial payments to producers and cooperative associations should be advanced to the 27th of the month from the fifth day after the end of the month, more closely in line with the dates now provided in other nearby orders. The Miami Valley and Northeastern Ohio orders require such payments by the 27th of the month and other nearby orders—Northwestern Ohio, Tri-State, Fort Wayne, and Indianapolis—provide for such payments not later than the last day of the month.

A handler proposed that partial payment be limited to those producers who continue to deliver to pool plants after the 27th day of the month. He offered this modification in order to assure that the partial payment, after allowing for assignments, loans, etc., would not exceed total payments due any producer who ceases shipping to a pool plant during the month. Adequate assurance to handlers can be provided by requiring that partial payment to a producer be made only when he continues to deliver to a pool plant for at least 15 days during the month. Such delivery requirement is provided.

5. *Transfers.* The rules of classification on transfers and diversions should be revised.

(a) Bulk fluid milk products transferred or diverted from another pool plant to a pool supply plant should be classified to available Class II milk at the latter plant after allocation to such class of unregulated milk, other order milk, inventory of bulk fluid milk products and allowable Class II shrinkage.

The one pool supply plant in this market is primarily a manufacturing plant. It operates also as a supply-balancing plant for the market. Bulk fluid milk products are transferred or diverted regularly from pool distributing plants to this plant for processing into Class II products. Such movements, normally representing milk in excess of bottling requirements, may be classified by agreement between the handlers.

The adopted method of classifying transfers or diversions to a supply plant from either a pool distributing plant or another supply plant is appropriate to remove the possibility that interplant movements might be made for the purpose of enlarging "Class I" disposition solely to obtain greater location adjustment credits at the expense of the pool. Also, the priority assignment of the regular producer milk supply at the pool supply plant to any Class I at such plant would be assured. It is concluded that transfers or diversions to pool supply plants from either pool distributing or supply plants should be first assigned to available Class II milk.

(b) Bulk fluid milk products transferred or diverted between pool distributing plants should continue to be classified by agreement between the handlers involved unless producer milk at the transferee-plant exceeds 115 percent of Class I milk at such plant, after allowing appropriate assignments of other order milk, inventories of fluid milk products, unregulated milk, or shrinkage assigned to Class I milk.

A major cooperative proposed that all transfers between pool distributing plants be classified as Class II milk. The cooperative indicated that this would be of assistance to it in its internal accounting for transfers between pool distributing plants. One handler supported the adoption of this proposal.

In most cases, fluid milk products transferred or diverted between pool distributing plants should continue to be classified as Class I milk unless utilization as Class II milk is claimed by both handlers on reports submitted for the month to the market administrator. Most pool distributing plants in the market utilize a high percentage of producer receipts in Class I products. In the large majority of cases, milk transferred or diverted is intended for Class I use. Thus, the classification in Class II of all transfers and diversions between pool distributing plants could lead to a much greater number of classification adjustments.

As previously indicated, the present provisions make it possible to assign transfers to Class II in those instances where milk is intended for Class II use and the transferee plant has available Class II utilization.

On the other hand, a handler may increase Class I location credits on milk received from a supply plant simply by transferring milk in Class I from his distributing plant to another distributing plant. This is appropriate when the transferee plant requires such milk for Class I use. However, if the latter plant has an adequate supply of producer milk for Class I, such classification of the transferred milk results in assessment of excessive location credits against the pool.

Consequently, the transfer provisions should be modified to insure the assignment of transfers of bulk fluid milk products as Class I milk to reflect actual requirements of such milk for Class I use in excess of producer receipts at the transferee distributing plant. This assurance can be provided through assignment to Class II milk of such movements whenever producer milk at the transferee distributing plant exceeds 115 percent of Class I milk at such plant, after allowing for other order milk and inventories of fluid milk products, unregulated milk or shrinkage assigned to Class I. The adoption of this requirement should deter transfers of bulk fluid milk products as "agreed on" Class I milk simply to obtain greater location credits.

6. *Miscellaneous changes.* (a) The dates for filing handler reports, making payments to the market administrator, pool computations and payments to producers should be advanced.

Handlers are required to file their receipts and use reports for each month by the 10th day after the month. Each handler is required to pay the market administrator his obligation for milk by the 17th day after the end of the month.

The cooperative association representing a majority of producers on the market proposed advancing by 2 days the date for filing handler reports, the date on which handlers must make payments to the market administrator, and the date by which producer payments must be made.

The association pointed out difficulty in making timely payments to producers under present provisions. It seeks to align the reporting and payment dates under this order more closely with those for other orders in this region, such as the Miami Valley, Columbus, Northwestern Ohio, and Northeastern Ohio orders, which compete with the Cincinnati market for milk supplies.

The final date for filing handler reports and the date for making payments to the market administrator should be established so as to permit timely payments to producers. Presently, the deadlines for filing reports and making pool computations result in a later payment date for producers as compared to competing markets. This is particularly disadvantageous to the local cooperative associations.

To bring the producer payment date in line with competing markets, the dates for reporting, uniform price computations and pool payments must be advanced from 3 to 5 days rather than the 2 days proposed by the proponent association. Thus, handlers should be required to file monthly receipts and utilization reports by the seventh day after the end of the month of delivery of milk. By comparison, handlers regulated by the Columbus order are required to file such reports of receipts and utilization on the sixth day after the month, those under the Miami Valley and Northwestern Ohio orders by the seventh day, and handlers under the Northeastern Ohio and Indianapolis orders by the eighth day.

This will necessitate handler payments to the market administrator by the 12th day and permit the uniform price to be announced by the 15th day after the month. Final payments to producers then can be made by the 17th day after the end of the delivery month. Final payments to producers are required by the Columbus and Miami Valley orders on the 16th day after the month, by the Northwestern Ohio order on the 17th, and by the Northeastern Ohio and Indianapolis orders on the 18th.

A cooperative should receive payment 1 day in advance of payments to nonmember producers in order to have sufficient time to prepare checks for members. By this means both members of cooperative associations and nonmember producers may receive final payment at the same time.

No objections were raised to advancement of the various dates for filing reports and making the payments required by the order.

The deadline date for the announcement of the Class I price (with butterfat differential) by the market administrator should be changed to the fifth day of the month to which it applies. Currently, the Class I price is announced officially on the fifth day after the end of such month although in the past an unofficial, or "preliminary", price customarily has been announced by the market administrator by the fifth day of the month. The basic formula price (Minnesota-Wisconsin average price for manufacturing milk) necessary for the computation and announcement of the Class I price is available by the fifth day of each month. Official announcement by such date will provide earlier information to the trade as to the Class I price actually to be effective for the month.

(b) *Duties of Market Administrator.* The provision which requires the market administrator to report to each cooperative association the utilization of milk received by each handler from its member producers in each class should be clarified so as to exclude transfers of fluid milk products at the transferor-handler's plant.

These reports assist the cooperative association to move milk to plants where needed for Class I use and thus assist in improving market utilization of supplies. The cooperative association requested clarification of the provision so as to provide more meaningful data by eliminating duplication of sales in reported data. It suggested that any sale of fluid milk products from the transferor-plant, as an interhandler transfer, be excluded in computing the Class I or Class II use percentage for such plant. Interhandler transfers would be reflected in the data for the transferee-plant.

Inclusion of transferred fluid milk products data for both the transferee and transferor plant artificially inflates utilization data for the transferor handler's plant. The proposed change in reporting method will provide the cooperatives more meaningful data on individual plant utilization and should be adopted.

(c) *Definitions.* (i) A new definition of "route disposition" should be substituted for the present definition of "route", for clarification. Route disposition should be defined as any disposition, including that custom-packaged for another person, and disposition from a plant store or through vendors of vending machines of any fluid milk product to a retail or wholesale outlet, either directly or through a distribution point, other than a plant.

Pickup of fluid milk products by a vendor at a plant and sales through a vending machine would be considered as route disposition from the plant where such fluid milk products were processed and packaged. This would apply also to fluid milk products custom-packaged for another person.

As to fluid milk products moved from a distribution point to a wholesale or retail outlet, such disposition would be considered as route disposition from the pool distributing plant where packaged. This new definition will accommodate more fully current methods of distributing milk, such as custom packaging and movements of packaged products through distribution points.

(ii) The present definition of a "fluid milk plant" should be replaced with definitions of "plant," "supply plant," and "distributing plant" to describe different types of handling operations.

A "plant" would be an establishment having stationary milk holding facilities operated as a single unit for the purpose of receiving milk for assembly and transfer, or for processing and packaging milk products. A distribution point for the storage of packaged fluid milk products in transit for route disposition would not be considered a plant.

Separate definitions are appropriate for "distributing plant" and "supply plant" because of the difference in functions involved. A "distributing plant" should be defined as a plant that is approved by a duly constituted health authority for the processing or packaging of milk for fluid consumption in the marketing area and from which during the month route disposition of fluid milk products is made within the marketing area. A "supply plant" should be defined as a plant from which milk approved for fluid consumption in the marketing area is assembled and shipped in bulk as a fluid milk product to a pool distributing plant.

In view of the fact cooperative associations have certain privileges and responsibilities under various provisions of the order, a definition of cooperative association should be adopted. Presently, the marketing service provision includes the requirement that a cooperative association must meet the qualifications prescribed under the provisions of the Capper-Volstead Act. Also, for clarification of other provisions of the order, it is appropriate to include such a definition which is more specific in setting forth requirements for a producer organization to qualify as a cooperative association under the order.

Corollary changes in other definitions have been made as necessary to update the language of the order in relation to the substantive changes earlier discussed. A definition of "Department" has been added.

These new definitions will assist application of other provisions of the order. The definition of "dairy farmer" has been dropped since other changes have eliminated the need for it.

(iii) The definition of "handler" should be revised to include a cooperative association on milk which it delivers from farms to pool plants in tank trucks owned or operated by or under contract to it.

Proponent of this change in the handler definition regularly arranges for the delivery of milk from producers' farms to pool plants. This has become common practice for such association as well as for many cooperatives in Federal order markets since the advent of bulk tanks. One marketing advantage to the cooperative association in this method of handling milk is that it can balance supplies to meet Class I requirements among the various bottling plants and thus arrange the most economical movement and utilization of producer milk supplies.

Expansion of the definition to include a cooperative operating in this manner requires, however, that it have responsibility for reporting to the market administrator the quantities and butterfat tests of milk received from each dairy farmer involved. When milk is picked up at several farms by tank truck and the milk is commingled in one load under the control of a cooperative association, only the association possesses needed information as to the quantities and butterfat tests of the milk.

Where the cooperative association is the handler for producer milk delivered directly (including milk reloaded from one tank truck to another) from the farm to another handler's plant, the latter should continue to be held accountable for such receipts at class prices for payment to the market administrator, including payment of the administrative expense assessment on such milk. He is the purchaser from the producers and determines the ultimate utilization of the milk.

In the event the receiving plant operator doesn't receive milk from the cooperative handler on the basis of farm weights, the cooperative would be the handler on any difference between the farm weights of milk and the volume received at the handler's plant. The cooperative would be accountable for payment at class prices to the market administrator on such difference. If the cooperative operates a plant for receiving milk for later transfer to another handler's plant, payment by the cooperative association to the market administrator would continue to be at the class prices according to the classification of milk transferred.

Milk marketed by a cooperative association which is not delivered to another handler's pool plant must remain, of course, the responsibility of the association in all important respects—i.e., classification, accounting, and payment. Such milk could be that utilized in its own plant or diverted to a nonpool plant for the account of the association.

(d) *Plant shrinkage.* The Class II shrinkage allowance should be modified to permit, under certain circumstances, a division of allowable shrinkage between the cooperative association and the operator of the receiving pool plant, with respect to bulk tank deliveries of producer milk.

Under the present order a maximum allowable shrinkage of two percent in Class II is permitted the operator of a pool plant with respect to producer milk receipts (other than diverted milk from such plant) and certain bulk receipts of fluid milk products from other order plants and unregulated supply plants. No shrinkage is allowed in such class to a cooperative association as a handler on bulk tank milk delivered to pool distributing plants. In such cases the full allowance for shrinkage accrues to the receiving plant.

A handler proposed an allowance to a cooperative handler of shrinkage up to one-half of one percent of the farm weight when it is the first handler on bulk tank milk, with 1.5 percent accruing to the proprietary handler.

The conversion in recent years from can to bulk tank delivery has been at a rapid pace. More than 93 percent of producer milk receipts in this market is now in bulk tanks. The difference between the sum of individual farm weights and the scale weight taken at the plant may approach one-half of 1 percent. Such loss may occur from adherence of milk to the side of the farm bulk tank, in the transfer from bulk tank to a farm pickup tanker, and in the transfer from tanker to the plant of receipt.

Because of this there may be need, under certain circumstances, for dividing the allowable shrinkage between the cooperative and the proprietary handler. This has been the experience in many other Federal order markets where a shrinkage allowance to the cooperative of one-half of 1 percent for the function of receiving by bulk tank has been accepted as reasonable.

Presently, however, Cincinnati handlers purchase milk on the basis of the farm weights and in this circumstance the cooperatives involved experience no shrinkage. In such case the order should continue to provide that actual shrinkage experienced by the transferee-handler will be allowed him in Class II up to 2 percent provided the market administrator is notified in advance of this basis of purchase. Similarly, when the handler operating the distributing plant buys directly from individual producers, the maximum allowance for shrinkage at the plant should be continued at 2 percent.

Although current market practice results in the receiving handler accounting for all milk on the basis of farm weights and tests, some allowance in Class II should be provided a cooperative in the event the purchasing handler buys on plant scale weight. In such instances the cooperative, as the first receiving handler, would be held accountable to the producer-settlement fund for any difference in the quantities of milk received from producers based upon farm measurements, and the plant scale weight.

Specifically, the maximum shrinkage allowance in Class II at each plant should be 2 percent of milk received from producers, including milk diverted in bulk tank lots from another pool plant (less 1.5 percent of milk transferred in bulk to other plants), plus 1.5 percent of milk in bulk tank lots transferred from other plants or from a cooperative association which is the handler on such milk. There was no suggestion for revising the present maximum of 2 percent for the entire receiving and processing operation.

To provide equitable application of shrinkage provisions to all handlers who may have various types of operations and sources of milk receipt, the rate of 0.5 percent shrinkage allowance should apply to all plant receipts in bulk, whether from other pool plants or unregulated sources. The only exception to this would be in the case of receipts of other source milk for which Class II utilization is requested. In this event, since the entire receipt is for Class II use, there is no need to establish a limit of shrinkage that may be classified as Class II.

One and one-half percent of milk disposed of in bulk tank lots to plants of other handlers by transfer should be deducted. This will allow 0.5 percent for the receiving and handling operation on such transfers. The second plant would be allowed, as stated previously, 1.5 percent on the transfer of milk.

In view of the above, it is concluded that division of shrinkage on bulk tank milk for which a cooperative association is the handler, when the milk is purchased by the handler on plant scale weight, on diversions of bulk tank milk by the cooperative between pool plants, and on transfers of bulk tank milk among plants, should be provided for.

To assure an equitable assignment, total shrinkage should be prorated to (1) those categories of receipts on which the above limits apply, and (2) other receipts in fluid form to which specific shrinkage limits do not apply.

(e) *Proof of class use.* A major cooperative association proposed that all skim milk and butterfat for which a handler cannot establish utilization be classified as Class I milk. It was their position

that the order should make clear that the handler who first receives milk or milk products must prove to the market administrator that classification of milk as Class II is appropriate.

This type of provision is included in other milk orders and removes advantage that otherwise might accrue to any handler who fails to keep adequate records. Thus, the burden of proof is on the handler to prove the utilization of any milk as other than Class I milk. The proposal should be adopted as a means of clarifying this responsibility of the handler.

Producers further proposed to include a new provision to reclassify any skim milk or butterfat if verification by the market administrator discloses that the original classification was incorrect. Such provision is made unnecessary by adoption of the provision on burden of proof referred to above and therefore is not adopted.

(f) *Inventories.* The order should provide that inventories of fluid milk products on hand at the end of the month be classified as Class II milk if in bulk, and Class I if packaged, pending possible reclassification in the following month.

Handlers have inventories of milk and fluid milk products at the beginning and end of each month which must enter into the monthly accounting for receipts and utilization at the plant. Inventories of fluid milk products on hand in pool plants at the end of the month presently are classified as Class II at all such plants whether in bulk or packaged. Beginning of the month inventories of fluid milk products are allocated to Class I when current month receipts of producer milk are less than Class I utilization. When such inventories are allocated to Class I, the handler pays the difference between the Class I price for the current month and the Class II price for the previous month. The volume on which this charge is made may not exceed, however, the volume for which producers were paid at the Class II price in the previous month.

The accounting procedure can be facilitated by providing that inventories of bulk fluid milk products on hand at the end of the month be classified as Class II milk. In the following month inventories in bulk would be subtracted, under the allocation procedure, from any available Class II milk. Any excess over available Class II milk should be subtracted from Class I milk. The higher-use value as Class I thus indicated should be reflected in returns to producers in that month. This would be at the rate of the difference between the Class II price in the first month and the Class I price in the second month.

Fluid milk products on hand in packaged form at the end of the month should be classified as Class I milk. This classification conforms with the ultimate utilization of most of the packaged fluid milk products in inventory. This results in fewer adjustments in classification and handlers' obligations than if classified in Class II as in the case of bulk milk.

To insure that all handlers pay the current month's Class I milk price for fluid milk disposed of during the month, it is provided that, if the Class I milk price increases over the previous month, the handler will be charged the difference between the Class I milk price for the current month and the Class I milk price for the preceding month on the quantity of ending inventory assigned to Class I milk in the preceding month. Likewise, if the Class I milk price decreases, the handler will receive a corresponding credit.

The allocation section of the order should provide that inventories of such packaged fluid milk products on hand at the beginning of the month be subtracted from Class I milk utilization immediately after the allocation of shrinkage and packaged fluid milk products from other orders and before making the other assignments therein provided.

Since the disposition of skim milk and butterfat in nonfluid milk products has been accounted for as Class II when used to produce a manufactured dairy product, such skim milk and butterfat should not be included in inventory.

Inventories of fluid milk products and Class II products on hand at the beginning of the first month in which this amendment becomes effective or during any month in which a plant becomes regulated for the first time should be allocated to any available Class II utilization of the plant during the month. This producedure will preserve the priority of assignment to current receipts of producer milk of the current Class I utilization of the plant.

One handler objected to the Class I classification and pricing in the current month of ending inventories of packaged fluid milk products, since the handler's distribution or final utilization of such product from inventory would be in the following month. It was this handler's position that the payment of the Class I price for end-of-the-month inventory would result in a premature payment and "penalty" on inventories held by handlers.

Most, if not all, end-of-the-month inventory of packaged fluid products is disposed of early in the following month. Handlers under current order provisions make final payment for inventories of packaged Class I products about 50 days after actual disposition of such products. The inclusion of ending inventories of packaged fluid milk products in Class I will result in returning to producers full payment for their product about two weeks after final disposition by handlers, not prior to disposition. It is reasonable for producers to receive payment more promptly after the milk is actually processed and sold as a fluid milk product.

The handler objected also to the potential inflation of total Class I milk pounds which could result from the initial classification of ending inventories of packaged fluid milk products in Class I in computing the "Class I utilization percentage" under the supply-demand adjustment formula. This handler's recommendation that the provision contained in the Miami Valley Order to accommodate the identical change in classifying packaged inventories in Class I should be adopted. He pointed out that sales and receipts for the two markets are utilized in the computation of the common supply-demand adjustor for the two markets.

The classification of packaged fluid milk products in inventory in Class I is not intended to have any significant effect on the "Class I utilization percentage". Accordingly, the computation of the monthly Class I utilization percentage for the supply-demand adjustments which include Class I sales for the month following the effective date of the amended order should be modified to offset the effect of the changeover to include monthly ending inventories of packaged fluid milk products in Class I. Specifically, monthly ending inventories of packaged fluid milk products should be deducted from the aggregate pounds of producer milk in Class I milk in computing the utilization for each of the third, fourth, and fifth months, respectively, after this amended order is first made effective.

The appropriate order language, identical to the Miami Valley order, has been provided to eliminate any significant effect on the resulting supply-demand adjustment. After the fifth month, the adjustment is not required for this purpose.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices

as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

RULINGS ON EXCEPTIONS

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory, provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

MARKETING AGREEMENT AND ORDER

Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Greater Cincinnati Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Greater Cincinnati Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

DETERMINATION OF REPRESENTATIVE PERIOD

The month of January 1968 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Greater Cincinnati marketing area, is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Signed at Washington, D.C., on April 23, 1968.

GEORGE L. MEHREN,
Assistant Secretary.

Order[1] *Amending the Order Regulating the Handling of Milk in the Greater Cincinnati Marketing Area.*

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AUTHORITY: The provisions of this Part 1033 issued under sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1033.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Greater Cincinnati marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

in the Greater Cincinnati marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the Greater Cincinnati order (Part 1033) as contained in (1) the recommended decision issued by the Deputy Administrator, Regulatory Programs, on March 19, 1968, and published in the FEDERAL REGISTER on March 23, 1968 (33 F.R. 4928; F.R. Doc. 68-3548) and March 30, 1968 (33 F.R. 5220); (2) the order amending the order issued on March 27, 1968 (33 F.R. 5198) and effective April 1, 1968; and (3) the recommended decision of March 20, 1968, published in the FEDERAL REGISTER on March 26, 1968 (33 F.R. 4985; F.R. Doc. 68-3612) which provisions were adopted in the decision of April 15, 1968, based upon the February 23, 1968, general Class I price hearing at Memphis, Tenn., shall be and are the terms and provisions of this order, and are set forth in full herein subject to the following revisions:

Changes are made in §§ 1033.15(d), 1033.53(a), and 1033.70(a) with respect to the recommended decision issued on March 19, 1968 (33 F.R. 4928). Also, changes are made in §§ 1033.52 and 1033.63 (h) and (i) to include the April 1 amendments (33 F.R. 5198) and in §§ 1033.50 and 1033.51, to include the amendments resulting from the February 23 Memphis hearing.

DEFINITIONS

§ 1033.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 1033.2 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any employee of the United States authorized to exercise the powers or to perform the duties of the said Secretary of Agriculture.

§ 1033.3 Department.

"Department" means the U.S. Department of Agriculture or any other Federal agency authorized to perform the price reporting functions of the U.S. Department of Agriculture.

§ 1033.4 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 1033.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or milk products for its members; and

(c) To have all of its activities under the control of its members.

§ 1033.6 Greater Cincinnati marketing area.

"Greater Cincinnati marketing area", hereinafter called the "marketing area", means all the territory within the perimeter boundaries of the places listed below:

OHIO COUNTIES

Butler.	Hamilton.
Clermont.	Warren.

KENTUCKY COUNTIES

Boone.	Harrison.
Campbell.	Kenton.
Grant.	Pendleton.

§ 1033.7 Producer.

"Producer" means any person, except a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk in compliance with inspection requirements of a duly constituted health authority for fluid consumption in the marketing area, which milk is (a) received at a pool plant, or (b) diverted as producer milk pursuant to § 1033.15. "Producer" shall not include any such person with respect to milk which is fully subject to the class pricing and producer payment provisions of another order issued pursuant to the Act.

§ 1033.8 Handler.

"Handler" means:

(a) Any person who operates one or more pool plants;

(b) Any cooperative association with respect to producer milk diverted from a pool plant to another pool plant or to a nonpool plant under § 1033.15;

(c) Any cooperative association with respect to producer milk it delivered directly from the farm to the pool plant of another handler in a tank truck or trailer owned or operated by, or under contract to, such cooperative association;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1033.92.

§ 1033.9 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and a handler, but who receives no milk from other dairy farmers: *Provided*, That such person provides proof satisfactory to the market administrator that (a) the maintenance, care and management of all the dairy animals and other resources necessary to produce the entire amount of milk handled is the personal enterprise of and at the personal risk of such person in his capacity as a dairy farmer, and (b) the operation of a distributing plant is the personal enterprise of and at the personal risk of such person in his capacity as a handler.

§ 1033.10 Plant.

"Plant" means the land and buildings together with their surroundings, facilities and equipment, constituting a single operating unit or establishment which contains stationary milk holding facilities and is operated exclusively for the bulk handling or processing of milk or milk products. The term "plant" does not include distribution points (separate premises used primarily for the transfer to vehicles of packaged fluid milk products moved there from processing and packaging plants).

§ 1033.11 Distributing plant.

"Distributing plant" means a plant approved by any duly constituted health authority for the processing or packaging of milk for fluid consumption in the marketing area from which route disposition is made in the marketing area during the month.

§ 1033.12 Supply plant.

"Supply plant" means a plant in which some milk approved by any duly constituted health authority for fluid consumption in the marketing area is assembled and shipped in bulk as a fluid milk product to a distributing plant during the month.

§ 1033.13 Pool plant.

"Pool plant" means a plant specified under paragraph (a) or (b) of this section, except the plant of a producer-handler or a plant exempt pursuant to § 1033.92.

(a) A distributing plant with:

(1) Route disposition within the marketing area during the month of at least 15 percent of its total route disposition, such percentage to be exclusive of receipts from other plants of packaged fluid milk products priced as Class I milk under this or any other Federal order; and

(2) Total route disposition amounting to not less than 50 percent of its total receipts of Grade A milk from dairy farmers, other plants (excluding receipts of bulk fluid milk products transferred or diverted to it as Class II milk from other plants), and cooperatives as handlers pursuant to § 1033.8 (but excluding any such milk diverted from such plant to a nonpool plant by the cooperative pursuant to § 1033.15(c)). Any plant which complies with such percentage requirement during the immediately preceding month shall continue to be a pool plant during the current month even if the minimum percentage requirement under this subparagraph is not met for the current month. Any distributing plant which was subject to pooling for the month immediately preceding the effective date of this paragraph shall be deemed to be a pool distributing plant for the first three months this provision is in effect, irrespective of whether it meets the minimum percentage distribution requirements of this paragraph.

(b) A supply plant from which during the month the volume of fluid milk products shipped directly to and received at

plants qualified pursuant to paragraph (a) of this section and route disposition from such plant within the marketing area, if any, is not less than 50 percent of the volume of Grade A milk received from dairy farmers at such plant (excluding receipts from other plants or as a diversion pursuant to § 1033.15). Any supply plant which meets the required percentage of this paragraph during each of the months of September through February shall continue to be so qualified for the following months of March through August, unless such operator in writing requests nonpool plant status for such plant. Such nonpool plant status shall be effective the first month following such notice and thereafter until the plant requalifies under this section on the basis of shipments. A plant which qualified as a pool plant under former § 1033.7(c) for the month immediately preceding the effective date of this paragraph shall retain pool plant status through August 31, 1968, unless nonpool plant status is requested in the above manner.

§ 1033.14 Nonpool plant.

"Nonpool plant" means any milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in the marketing area during the month of fluid milk products labeled Grade A in consumer-type packages or dispenser units.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which milk, skim milk or cream acceptable to an appropriate health authority for distribution in the marketing area under a Grade A label is shipped to a pool plant.

§ 1033.15 Producer milk.

"Producer milk" means all skim milk and butterfat contained in milk of any producer, other than milk received at a pool plant by diversion from a plant at which such milk would be fully subject to pricing and pooling under the terms and provisions of another order issued pursuant to the Act which is:

(a) Received during the month by a cooperative association as a handler under § 1033.8(c) or received at one or more pool plants. Any such milk delivered in a farm pickup tank truck (other than under § 1033.8(c)) to more than one pool plant shall be deemed to have been received at the first pool plant where any of the milk was withdrawn from the tank truck. If the milk received at a pool plant from a cooperative handler pursuant to § 1033.8(c) is purchased on a basis other than farm weights, the amount by which the total farm weights of such milk exceed the weights on which the pool plant's purchases are based shall be producer milk received by the cooperative handler pursuant to § 1033.8(c) at the location of the pool plant;

(b) Diverted during the month by a handler from a pool plant to another pool plant; or

(c) Received at a pool distributing plant during the month in an amount not less than 4 days' production of the producer and diverted during the month to a nonpool plant under the following conditions:

(1) The quantity of milk so diverted by a cooperative association for its account does not exceed 35 percent of its producer member milk received at pool distributing plants during such month, exclusive of any member milk diverted to a nonpool plant(s) for the account of a handler operating a pool plant.

(2) The quantity of milk so diverted by a proprietary handler does not exceed 35 percent of the receipts at his pool distributing plant during the month exclusive of any such milk receipts diverted for the account of a cooperative association.

(3) If milk diverted to a nonpool plant exceeds the amounts specified in subparagraphs (1) and (2) of this paragraph, eligibility as producer milk under this section shall be forfeited on the excess quantity. In such event the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk. If a handler fails to designate such dairy farmers whose milk is ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler.

(d) Diverted milk shall be deemed to have been received by the handler at the location of the pool plant or nonpool plant to which the milk is diverted, except that if at least twenty days' production of the producer during the month is received at a pool distributing plant located less than 50 miles from the city hall in Cincinnati, milk of the producer diverted from the plant shall be deemed to have been received by the handler at such plant.

§ 1033.16 Fluid milk product.

Except as provided in paragraph (c) of this section, "fluid milk product" means the fluid form of:

(a) Milk, skim milk, buttermilk, flavored milk, milk drink, whipped cream, cream (sweet or sour), eggnog, concentrated milk; and

(b) Any mixture of milk, skim milk or cream including fluid, frozen, or semi-frozen malted milk and milk shake mixtures containing less than 15 percent total milk solids.

(c) Excluded from this definition are: Frozen storage cream, aerated cream in dispensers, ice cream and frozen dessert mixes, pancake mix, evaporated and condensed milk, and any sour mixture of skim milk and butterfat in nonfluid form to which cheese or any food substance other than a milk product has been added and which is disposed of as other than sour cream.

§ 1033.17 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts during the month in the form of fluid milk products, except:

(1) Producer milk (including own farm production),

(2) Such products received from other pool plants, and

(3) Sterilized cream received and disposed of in the same glass or metal hermetically sealed container, and

(b) Products other than fluid milk products from any source (including those produced at the pool plant), which are reprocessed, repackaged, or converted to another product during the month or for which other utilization or disposition is not established pursuant to § 1033.33.

§ 1033.18 Route disposition.

"Route disposition" means a delivery (including that custom-packaged for another person, and disposition from a plant store or through vendors or vending machines) of any fluid milk product to a retail or wholesale outlet either directly or through a distribution point other than a plant.

§ 1033.19 Chicago butter price.

"Chicago butter price" means the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago as reported for the month by the Department.

MARKET ADMINISTRATOR

§ 1033.20 Designation.

The agency for the administration of this part shall be a market administrator, who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of the Secretary.

§ 1033.21 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 1033.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to, the following:

(a) Within 45 days following the date on which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and

with surety thereon satisfactory to the Secretary;

(b) Employ and fix compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Pay, out of the fund provided by § 1033.76, the cost of his bond and of the bonds of those of his employees who handle funds entrusted to the market administrator, his own compensation, and all other expenses which will necessarily be incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(d) Keep such books and records as will clearly reflect the transactions provided for in this part, and surrender the same to his successor or to such other person as the Secretary may designate;

(e) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within 10 days after the date upon which he is required to perform such acts, has not made reports pursuant to § 1033.30 or has not made payments pursuant to §§ 1033.70 and 1033.72;

(f) Promptly verify the information contained in the reports submitted by handlers;

(g) Furnish such information and verified reports as the Secretary may request and submit his books and records to examination by the Secretary at any and all times;

(h) Publicly announce (by posting in a conspicuous place in his office and by such other means as he deems appropriate).

(1) On or before the fifth day of each month the minimum price for Class I milk pursuant to § 1033.51(a) and the Class I butterfat differential pursuant to § 1033.52(a) both for the current month, and the minimum price for Class II milk pursuant to § 1033.51(b) and the Class II butterfat differential pursuant to § 1033.52(b) both for the preceding month;

(2) On or before the 15th day after the end of each month the uniform price computed pursuant to § 1033.63, and the producer butterfat differential computed pursuant to § 1033.74;

(i) On or before the 12th day after the end of each month:

(1) Notify each handler of his net obligation pursuant to §§ 1033.60 and 1033.61 and of any adjustments pursuant to § 1033.62; and

(2) Report to each cooperative association the amount and class utilization of milk caused to be delivered by such association, either directly or from producers who have authorized such association to receive payments for them under § 1033.73(c), to each pool plant. For the purpose of this report the milk so received shall be prorated to each class in the proportions that the total receipts of producer milk at such plant were used in each class, adjusted to eliminate transfers of fluid milk products to other pool plants;

(j) Prepare and disseminate for the benefit of producers, consumers, and handlers, such statistics and information concerning the operation of this part as do not reveal confidential information;

(k) Whenever required for purpose of allocating receipts from other order plants pursuant to § 1033.46(a)(9) and the corresponding step of § 1033.46(b), the market administrator shall estimate and publicly announce the ultization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(l) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1033.46 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such report; and

(m) Furnish to each handler operating a pool plant who has shipped fluid milk products to an other order plant, the classification to which the skim milk and butterfat in such fluid milk products were allocated by the market administrator of the other order on the basis of the report of the receiving handler; and, as necessary, any changes in such classification arising in the verification of such report.

REPORTS, RECORDS, AND FACILITIES

§ 1033.30 Monthly reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler for each of his pool plants, and a cooperative association with respect to milk for which it is the handler, shall report for such month to the market administrator, in the detail and on forms prescribed by the market administrator, the following:

(a) The total pounds of skim milk and butterfat contained in or represented by:

(1) Producer milk, including own farm production and quantities diverted to nonpool plants;

(2) Fluid milk products received from other pool plants;

(3) Other source milk, with the identity of each source; and

(4) Inventories of fluid milk products on hand at the beginning and end of the month in bulk and in packaged form, separately;

(b) The utilization or disposition of all skim milk and butterfat required to be reported pursuant to this section;

(c) Such other information with respect to such receipts, utilization or disposition as the market administrator may prescribe;

(d) His producer payroll, which shall show for each producer: (1) The total pounds of milk with the average butterfat test thereof, (2) the amount of the partial payment to such producer made pursuant to § 1033.70 and the nature and amount of deductions and charges made by the handler; and

(e) The name and address of each new producer.

§ 1033.31 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler specified in § 1033.8(d) who operates a partially regulated distributing plant shall report as required of handlers operating pool plants pursuant to § 1033.30 (a) through (c), except dairy farmer receipts of Grade A milk shall be reported in lieu of producer milk. Such report shall include a separate statement showing route disposition in the marketing area; and

(c) On or before the seventh day after the end of the month each handler who operates a partially regulated distributing plant, except one who elects to make payments pursuant to § 1033.61(b), shall report to the market administrator on forms approved by the market administrator his dairy farmer payroll which shall show for each dairy farmer, the total pounds of milk received from him with the average butterfat content thereof, and the net amount of the payment made to such dairy farmer together with the price, deductions and charges involved.

§ 1033.32 Verification of handler reports.

Each handler shall make available to the market administrator or to his agent, or to such other persons as the Secretary may designate, those records which are necessary for the verification of the information contained in the reports submitted pursuant to §§ 1033.30 and 1033.31, and those facilities which are necessary for the sampling, weighing, and testing of the milk of each producer.

§ 1033.33 Records and facilities.

Each handler required to make reports to the market administrator shall maintain, and make available to the market administrator during the usual hours of business, such accounts and records of his operations and such facilities as are necessary for the market administrator to verify reports, or to ascertain the correct information with respect to (a) the receipts and utilization of all skim milk and butterfat received, including all milk products received and disposed of in the same form; (b) the weights and tests for butterfat, and for other content, of all milk and milk products handled; and (c) payments to producers and cooperative associations.

§ 1033.34 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such books and records pertain. If, within such 3-year period, the market administrator notifies a handler in writing that the retention of such books and records, or specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act

or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 1033.40 Basis of classification.

The skim milk and butterfat which are required to be reported pursuant to § 1033.30(a) shall be classified by the market administrator, subject to the provisions of §§ 1033.41 through 1033.46.

§ 1033.41 Classes of utilization.

Subject to the conditions set forth in §§ 1033.43 and 1033.44, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except:

(i) Fluid milk products classified as Class II pursuant to paragraph (b) (2), (3), and (4) of this section;

(ii) Sterilized cream disposed of in the same glass or metal hermetically sealed container in which received; and

(iii) Fluid milk products which are fortified with the addition of milk solids shall be Class I in an amount equal only to the weight of an equal volume of an unmodified fluid milk product of the same nature and butterfat content;

(2) In inventory of fluid milk products in packaged form on hand at the end of the month; and

(3) Not accounted for as Class II milk;

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Ice cream, frozen desserts, frozen cream, cheese, butter, and pancake mix;

(ii) Ice cream and frozen dessert mixes, excluding malted milk or milk shake mixtures containing less than 15 percent total milk solids;

(iii) Milk or skim milk and cream mixtures disposed of in containers or dispensers under pressure for the purpose of dispensing a whipped or aerated product;

(iv) Any sour mixture of skim milk and butterfat in nonfluid form to which cheese or any food substance other than a milk product has been added and which is disposed of as other than sour cream;

(v) Spray and roller process nonfat dry milk; and

(vi) Evaporated and condensed milk (or skim milk) either in bulk or in hermetically sealed cans;

(2) Skim milk contained in that portion of fortified fluid milk products not classified as Class I milk pursuant to paragraph (a)(1)(iii) of this section;

(3) Disposed of in bulk as milk, skim milk or cream to any commercial food processing establishment where food products are prepared only for consumption off the premises;

(4) Specifically accounted for as dumped, spilled, or disposed of for animal feed;

(5) Contained in inventories of bulk fluid milk products on hand at the end of the month;

(6) Contained in shrinkage of skim milk and butterfat, respectively, prorated pursuant to § 1033.42(b)(1) for each pool plant and for each cooperative association in its capacity as a handler pursuant to § 1033.8(c), not to exceed the quantities calculated pursuant to subdivisions (i) through (vii) of this subparagraph:

(i) Two percent of receipts of skim milk and butterfat from producers (including receipts by a cooperative association pursuant to § 1033.8(c)) and milk diverted in bulk tank lots from another pool plant pursuant to § 1033.15;

(ii) Plus 1.5 percent of milk received by transfer from other pool plants in bulk;

(iii) Plus 1.5 percent of milk received in bulk from cooperative associations in their capacity as handlers pursuant to § 1033.8(c), except that if the handler operating the pool plant files with the market administrator, prior to the first day of the month, notice that he is purchasing such milk on the basis of farm weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

(iv) Plus 1.5 percent of receipts of fluid milk products in bulk from an other order plant, exclusive of the quantity for which Class II utilization was requested by the operator of such plant and the handler;

(v) Plus 1.5 percent of receipts of fluid milk products in bulk from unregulated supply plants, exclusive of the quantity for which Class II utilization was requested by the handler;

(vi) Less 1.5 percent of bulk transfers of milk to a pool plant of another handler;

(vii) Less 1.5 percent of bulk transfers of milk to nonpool plants;

(7) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1033.42(b)(2).

§ 1033.42 Shrinkage.

The market administrator shall:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, at each pool plant; and

(b) If other source milk is received at the pool plant, shrinkage at such plant shall be prorated between:

(1) Skim milk and butterfat, respectively, in the amounts of receipts used in the computations pursuant to § 1033.41(b)(6); and

(2) Skim milk and butterfat in other source milk in bulk fluid form, exclusive of that specified in § 1033.41(b)(6).

§ 1033.43 Transfers.

Skim milk or butterfat in the form of a fluid milk product disposed of by a handler from a pool plant shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred or diverted from a pool plant to another pool plant, subject to the following conditions:

(1) The skim milk or butterfat so assigned to either class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1033.46 (a)(9) and (b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1033.46(a)(4), the skim milk and butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk;

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1033.46(a) (8) or (9) and (b), the skim milk and butterfat so transferred or diverted up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant; and

(4) Movements in bulk to a pool supply plant from another pool plant, shall be Class II utilization to the extent such utilization is available at the receiving plant after the computations pursuant to § 1033.46 (a)(9) and (b);

(5) Movements in bulk between pool distributing plants shall be assigned to each class at the transferee plant in sequence beginning with Class II milk when the producer milk received during the month exceeds 115 percent of Class I milk at such plant after the computations pursuant to § 1033.46 (a)(9) and (b).

(b) As Class I milk, if moved from a pool plant to a producer-handler;

(c) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is neither an other order plant nor a producer-handler plant, unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(1) The transferring or diverting handler claims classification pursuant to the assignment set forth in subparagraph (3) of this paragraph in his report submitted to the market administrator pursuant to § 1033.30 for the month within which such transaction occurred;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred or diverted shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Route disposition in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to receipts from other order plants and thereafter to receipts from dairy farmers who the

market administrator determines constitute regular sources of supply of Grade A milk for such nonpool plant;

(ii) Route disposition in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of fluid milk products from such nonpool plants;

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply of fluid milk products for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it; the skim milk and butterfat so transferred or diverted shall be classified as Class II milk; and

(d) As follows, if transferred or diverted to an other order plant in excess of receipts from such plant in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred in consumer packages, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred or diverted in bulk form, classification shall be in the classes to which allocated as a fluid milk product under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II to the extent of the Class II utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, milk allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and milk allocated to other classes shall be classified as Class II; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1033.41.

§ 1033.44 Responsibility of handler and reclassification of milk.

(a) Except as provided in paragraph (b) of this section, all skim milk and butterfat shall be classified as Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

(b) Producer milk in bulk delivered by a cooperative association as a handler under § 1033.8(c) to the pool plant of another handler or caused to be diverted by the cooperative association from one pool plant to another, shall be deemed to be received as producer milk at the receiving plant and shall be classified according to use or disposition thereat, and the value thereof at the class prices shall be included in the net pool obligation computed for such handler pursuant to § 1033.60. For purposes of location adjustments pursuant to § 1033.53 and administrative expense pursuant to § 1033.76, such milk shall be treated as producer milk of the receiving handler.

§ 1033.45 Computation of skim milk and butterfat in each class.

For each month the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization of each handler and shall compute the pounds of butterfat and skim milk in Class I milk and Class II milk for such handler. If any of the water contained in the milk from which a product is made, is removed before the product is utilized or disposed of by the handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all of the water normally associated with such solids in the form of whole milk.

§ 1033.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1033.45, the market administrator shall determine the classification of producer milk received at each pool plant, and by a cooperative association in its capacity as a handler, each month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1033.41(b)(6);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants as follows:

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Except for the first month this subparagraph is effective with respect to each handler, subtract from the remaining pounds of skim milk in Class I, the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

(4) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products for which Grade A certification is not established, or which are from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(5) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants which are in excess of the pounds of skim milk determined as follows:

(*a*) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(*b*) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants; and

(*c*) (*1*) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II milk if Class II utilization was requested by the operator of such plant and the handler;

(6) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of bulk fluid milk products (and for the first month this subparagraph is effective with respect to

each handler the pounds of fluid milk products in packaged form) on hand at the beginning of the month;

(7) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(8) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraph (5) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraph (5) (iii) of this paragraph pursuant to the following procedure:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be prorata to whichever of the following represents the higher proportion of all Class II milk:

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1033.22(k); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(10) Subtract from the pounds of skim milk remaining in each class, the pounds of skim milk received in fluid milk products from other pool plants according to classification under § 1033.43(a); and

(11) If the pounds of skim milk remaining in both classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

MINIMUM PRICES

§ 1033.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the Department for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the Chicago butter price for the month. The basic formula price shall be rounded to the nearest full cent. For the purpose of computing Class I prices from the effective date hereof through April 1969, the basic formula price shall be not less than $4.33.

§ 1033.51 Class prices.

Subject to the provisions of § 1033.52 and § 1033.53, the class prices for milk per hundredweight for the month shall be determined by the market administrator as follows:

(a) *Class I milk.* The price for Class I milk shall be the basic formula price for the preceding month plus $1.34 plus 20 cents through April 1969, and plus or minus a "supply-demand adjustment" of not more than 39 cents computed pursuant to subparagraphs (1) and (2) of this paragraph:

(1) Divide the aggregate pounds of producer milk in Class I milk (including inventory and "overage", but adjusted to eliminate duplications due to interhandler and intermarket plant transfers) under this part and under Part 1034 of this chapter (Miami Valley, Ohio, order) for the second, third, and fourth months preceding by the aggregate pounds of producer milk receipts under such parts for the same months, multiply the result by 100 and round to the nearest whole number. The result shall be known as the "Class I utilization percentage";

(2) For each full percentage point that the Class I utilization percentage is above the applicable maximum standard utilization percentage listed below increase the Class I price differential by 3 cents; and for each full percentage point that the Class I utilization percentage is below the applicable minimum standard utilization percentage listed below decrease such differential by 3 cents.

Month for which price is being computed	Preceding months used in computation	Standard utilization percentages	
		Minimum	Maximum
Jan.	Sept., Oct., Nov.	66	69
Feb.	Oct., Nov., Dec.	68	71
Mar.	Nov., Dec., Jan.	69	72
Apr.	Dec., Jan., Feb.	68	71
May	Jan., Feb., Mar.	68	71
June	Feb., Mar., Apr.	66	69
July	Mar., Apr., May	60	63
Aug.	Apr., May, June	54	57
Sept.	May, June, July	52	55
Oct.	June, July, Aug.	53	56
Nov.	July, Aug., Sept.	58	61
Dec.	Aug., Sept., Oct.	62	65

(3) For the third month this subparagraph is effective, the monthly ending inventory of packaged fluid milk products for the month preceding such month shall be deducted in computing the three months' Class I milk total under subparagraph (1) of this paragraph and the same adjusted monthly Class I milk total shall be used in the 2 successive 3 months' Class I milk total in subparagraph (1) of this paragraph.

(b) *Class II milk.* The Class II milk price shall be the basic formula price for the month except that in no event shall such price exceed an amount computed from the sum of subparagraphs (1) and (2) of this paragraph rounded to the nearest cent, plus 10 cents:

(1) From the Chicago butter price, subtract 3 cents, add 20 percent of the resulting amount and then multiply by 3.5; and

(2) From the weighted average of carlot prices per pound of spray process nonfat dry milk for human consumption, f.o.b. Chicago area manufacturing plants, as published for the month by the Department subtract 5.5 cents, multiply by 8.5 and then multiply by 0.965.

§ 1033.52 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices for the month calculated pursuant to § 1033.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I price.* Multiply the Chicago butter price for the preceding month by 0.120.

(b) *Class II milk.* Multiply the Chicago butter price for the month by 0.115.

§ 1033.53 Location differentials to handlers.

(a) For (1) that skim milk and butterfat in producer milk received at a pool plant located 50 or more miles by the shortest highway distance from the city

hall in Cincinnati, Ohio, as determined by the market administrator, and which is (i) moved in the form of a fluid milk product to a pool plant located less than 50 miles from the city hall in Cincinnati, Ohio, and assigned Class I location adjustment credit pursuant to paragraph (b) of this section or (ii) otherwise disposed of as Class I milk, and (2) other source milk for which a location adjustment credit is applicable, the handler's obligation pursuant to § 1033.60 shall be reduced at the rate set forth in the following schedule:

Distance from city hall (miles):	*Rate per hundredweight (cents)*
Less than 50	0
50 but less than 60	10.0
For each 10 miles or fraction thereof in excess of 60 miles an additional	1.5

(b) (1) Fluid milk products received by a handler at a pool distributing plant from another pool plant under paragraph (a)(1) of this section shall be assigned, for Class I location adjustment credit, to the remaining Class I milk at the transferee plant after the application of § 1033.46(a) (1) through (9), on a prorata basis with the aggregate receipts at such plant of producer milk.

(2) If milk eligible for location credit under this paragraph is received from more than one plant, assignment shall be made in sequence beginning with the plant at which the least location adjustment would apply.

§ 1033.54 Use of equivalent prices.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

Computation of Uniform Price

§ 1033.60 Computation of the net pool obligation of each pool handler.

The net pool obligation of each pool handler during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, computed pursuant to § 1033.46(c), by the applicable class prices and add the resulting amount. Subtract the location differential credits calculated pursuant to § 1033.53;

(b) Add the amounts obtained from multiplying the pounds of overage deducted from each class pursuant to § 1033.46(a)(11) and the corresponding step of § 1033.46(b) by the applicable class prices;

(c) Add the amount obtained from multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1033.46(a)(6) and the corresponding step of § 1033.46(b);

(d) Add an amount determined by multiplying the difference between the Class I price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1033.46(a)(3) and the corresponding step of § 1033.46(b). If the Class I price for the current month is less than the Class I price for the preceding month the result shall be a minus amount;

(e) Add an amount equal to the difference between the value at the Class I price and the value at the Class II price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1033.46(a)(4) and the corresponding step of § 1033.46(b);

(f) Add an amount equal to the value at the Class I price, adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received, with respect to skim milk and butterfat subtracted from Class I pursuant to § 1033.46(a)(8) and the corresponding step of § 1033.46(b).

§ 1033.61 Obligations of a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 14th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to § 1033.31 (b) and (c) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1033.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1033.60(e) and a credit in the amount specified in § 1033.72(b) with respect to receipts from an unregulated supply plant, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to § 1033.31 (b) and (c) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1033.13(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of (i) the gross payments made by such handler for Grade A milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph, and (ii) any payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as route disposition (other than to pool plants) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act;

(3) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(4) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location (not to be less than the Class II price).

§ 1033.62 Correction of errors.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in monies due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred following the fifth day after such notice.

§ 1033.63 Computation of uniform prices.

For each month the market administrator shall compute the uniform price per hundredweight of milk received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1033.60 for all handlers who filed the reports prescribed by § 1033.30 for the month and who made the payments pursuant to § 1033.72 for the preceding month;

(b) Add an amount equal to the total value of the location differentials computed pursuant to § 1033.75;

(c) Subtract, if the average butterfat content of the milk specified in paragraph (e) of this section is more than 3.5 percent, or add, if such butterfat content is less than 3.5 percent an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential computed pursuant to § 1033.74 and multiplying the result by the total hundredweight of such milk;

(d) Add an amount equal to the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to §1033.60(e);

(f) Subtract not less than four cents nor more than five cents per hundredweight. The result shall be the "weighted average price", and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(g) For the months specified in paragraphs (h) and (i) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (d) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (e)(2) of this section by the weighted average price;

(h) Subtract from the remainder for each of the months of April, May, June, and July an amount computed by multiplying the total hundredweight of producer milk by the following amounts: 20 cents in April; 25 cents in May and June; and 20 cents in July;

(i) Add for each of the months of September, October, November, and December, 20, 30, 30, and 20 percent, respectively, of the total amount of the obligated balance in the producer-settlement fund pursuant to § 1033.71(b) on September 30 of such year;

(j) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

(k) Subtract not less than four cents nor more than five cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

Payments for Milk

§ 1033.70 Payments to producers.

(a) On or before the 27th day of each month each handler shall pay to each producer who did not discontinue shipping milk to such handler before the 15th day of the month, not less than $3 for each hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph; and

(b) Payments required in paragraph (a) of this section shall be made to a cooperative association, qualified under § 1033.5, or its duly authorized agent, with respect to milk of producers which the market administrator determines have authorized such cooperative association to collect payment for their milk and the cooperative association has presented the handler with a written request for such payments. Payments to the cooperative association under this paragraph shall be made one day in advance of the applicable payment date in paragraph (a), subject to the condition that the association has provided the handler with a written promise to reimburse the handler the amount of any actual loss incurred by such handler because of any improper claim with respect to such payments on the part of the cooperative association.

§ 1033.71 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund, known as the "producer-settlement fund", which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1033.61 (a) and (b) and 1033.72 shall be deposited in this fund, and all payments made pursuant to § 1033.73 shall be made out of this fund;

(b) All amounts subtracted pursuant to § 1033.63(h) shall be deposited in this fund and shall remain therein as an obligated balance until withdrawn for the purpose of effectuating § 1033.63(i); and

(c) The difference between the amount added pursuant to § 1033.63(d) and the amount resulting from the subtraction pursuant to § 1033.63 (f) or (k) shall be deposited in, or withdrawn from, this fund, as the case may be.

§ 1033.72 Payments to producer-settlement fund.

On or before the 14th day after the end of each month, each handler shall pay to the market administrator his obligation for milk for such month of which he is notified pursuant to § 1033.22(i)(1) which shall consist of the amount specified in paragraph (a) of this section minus the amount of the credit in paragraph (b) of this section, less the amount paid out to each producer in accordance with § 1033.70, and less the amount of the deductions and charges authorized by such producer which are itemized on the handler's producer payroll:

(a) The total of the net pool obligation computed pursuant to § 1033.60 for such handler;

(b) The value at the weighted average price(s) applicable at the location of the plant(s), from which received (not to be less than the value at the Class II price) with respect to other source milk for which values are computed pursuant to § 1033.60(e).

In the calculation of the total amount of the deductions and charges to be subtracted, the deductions and charges to be considered with respect to each individual producer shall not be greater than an amount which, when added to the payment made to such producer in accordance with § 1033.70 (inclusive of the deductions and charges authorized by § 1033.70) will not exceed the total value of the milk received from such producer.

§ 1033.73 Payments from producer-settlement fund.

(a) The market administrator shall compute the payment due each producer for milk received during the month from such producer by a handler(s) who made the payments for such month pursuant to § 1033.72, by multiplying the hundredweight of such milk by the uniform price computed pursuant to § 1033.63 adjusted by the location differential pursuant to § 1033.75 and the butterfat differential pursuant to § 1033.74, and subtracting any charges and deductions made pursuant to § 1033.72.

(b) On or before the 17th day of the following month, the market administrator shall pay, subject to the provision of § 1033.77, direct to each producer who has not authorized a cooperative association to receive payments for such producer, the amount of the payment calculated for such producer pursuant to paragraph (a) of this section.

(c) On or before the 16th day of the following month, the market administrator shall pay to each cooperative association authorized to receive payments due producers who market their milk through such cooperative association, the aggregate of payment calculated pursuant to paragraph (a) of this section, for all producers certified to the market administrator by such cooperative association as having authorized such cooperative association to receive such payment.

§ 1033.74 Butterfat differential to producers.

In computing the payments due each producer for milk pursuant to § 1033.73, there shall be added to or subtracted from the uniform price per hundredweight for each one-tenth of 1 percent of butterfat content in such milk above or below 3.5 percent, as the case may be, a butterfat differential computed by the market administrator as follows:

(a) Compute the percentage of the total butterfat in producer milk assigned to each class pursuant to § 1033.46;

(b) Multiply each such percentage figure by the butterfat differential for the respective class pursuant to § 1033.52; and

(c) Add into one total the value obtained in paragraph (b) of this section, rounding off the result to the nearest even one-tenth cent.

§ 1033.75 Location differentials to producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced according to the location of the pool plant at the rates set forth in § 1033.53; and

(b) For purposes of computations pursuant to § 1033.72 the weighted average price shall be adjusted at the rates set forth in § 1033.53 applicable at the location of the nonpool plant from which the milk was received.

§ 1033.76 Expense of administration.

As his prorata share of the expense of administration of the order, each handler (excluding a cooperative association in its capacity as a handler pursuant to § 1033.8(c) with respect to milk delivered to pool plants) shall pay to the market administrator on or before the 14th day after the end of the month, 2 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to §§ 1033.46(a)(4) and 1033.46(a)(8) and the corresponding step of § 1033.46(b); and

(c) Packaged Class I milk disposed of from partially regulated distributing plants as route disposition in the marketing area that exceeds the hundredweight of Class I milk received during the month at such plants from pool plants and other order plants.

§ 1033.77 Marketing services.

(a) The market administrator shall deduct an amount not exceeding 6 cents per hundredweight (the exact amount to be determined by the market administrator) from the payments made pursuant to § 1033.73(b), with respect to the milk of those producers for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association for the purpose of performing the services set forth in paragraph (b) of this section.

(b) The monies received by the market administrator pursuant to paragraph (a) of this section shall be expended by the market administrator for market information to, and for the verification of weights, samples, and tests of milk of producers for whom a cooperative association, as described in paragraph (a) of this section, is not performing the same services on a comparable basis, as determined by the market administrator, subject to review by the Secretary.

§ 1033.78 Termination of obligation.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producers or cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may within the 2-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part, shall terminate 2 years after the end of the calendar month during which milk involved in the claim was received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1033.80 Effective time.

The provisions of this part, or any amendments to this part shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 1033.81 Suspension or termination.

Any or all provisions of this part, or amendments to this part, shall be suspended or terminated as to any or all handlers after such reasonable notice as the Secretary may give, and shall terminate in any event, whenever the provisions of the act authorizing it cease to be in effect.

§ 1033.82 Continuing power and duty of the market administrator.

If upon the suspension or termination of any or all provisions of this part, there are any obligations arising under this part, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination. Any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate. The market administrator, or such other person as the Secretary may designate, shall continue in such capacity until removed by the Secretary, account from time to time for all receipts and disbursements and, when so directed by the Secretary, deliver all funds on hand, together with the books and records of the market administrator, or such other person to such person as the Secretary shall direct, and execute, if so directed by the Secretary, such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

§ 1033.83 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amount necessary to meet outstanding obligations and the expense necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1033.90 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 1033.91 Separability of provisions.

If any provision of this part, or its application to any persons or circumstances, is held invalid the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

§ 1033.92 Plants subject to other Federal orders.

The provisions of this part shall not apply to a distributing plant or a supply plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant meets the requirements for a pool plant pursuant to § 1033.13 and a greater volume of fluid milk products is disposed of from such plant to pool plants and to retail or wholesale outlets located in the Greater Cincinnati marketing area than in the marketing area regulated pursuant to

such other order during the current month and each of the 3 months immediately preceding. The operator of a distributing plant or a supply plant which is exempt from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

[F.R. Doc. 68-4992; Filed, Apr. 25, 1968; 8:46 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 8]

COLOR ADDITIVES

Notice of Proposed Rule Making

The Commissioner of Food and Drugs proposes that Part 8, the color additive regulations, be amended as set forth below to effect editorial and clarifying changes. Therefore, pursuant to the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (secs. 701(a), 706, 52 Stat. 1055, 74 Stat. 399 et seq.; 21 U.S.C. 371(a), 376) and delegated to the Commissioner (21 CFR 2.120), it is proposed that Part 8 be amended:

§ 8.7 [Amended]

1. By changing § 8.7 as follows:

a. By revising the section heading to read: "§ 8.7 Samples; additional information."

b. By changing in the first sentence the words "method at any time" to "method or other aspect of a petition at any time".

c. By changing in the third sentence the words "information and sample" to "information and/or sample."

2. By revising the introductory text of § 8.32(a) to read as follows:

§ 8.32 Labeling requirements for color additives (other than hair dyes).

(a) *General labeling requirements.* All color additives shall be labeled with sufficient information to assure their safe use and to allow a determination of compliance with any limitations imposed by Subparts A and B of this part. In addition to all other information required by the act, labels for color additives, except those in a form suitable for coloring the human body, shall state:

* * * * *

3. By adding to § 8.101 a new paragraph, as follows:

§ 8.101 General restrictions on use of color additives.

* * * * *

(—) *Color additives for use in surgical sutures.* No listing or certification of a color additive shall be considered to authorize the use of any such color additive in any article intended for use as a surgical suture unless such listing or certification of such color additive specifically provides for such use. Any color additive used in or on any article intended for use as a surgical suture, the listing or certification of which color additive does not provide for such use, shall be considered to be a color additive not listed under Subparts E and F of this part, even though such color additive is certified and/or listed for other uses.

4. By revising § 8.201 to read as follows:

§ 8.201 Citrus Red No. 2.

(a) *Identity.* (1) The color additive Citrus Red No. 2 is principally 1-(2,5-dimethoxyphenylazo)-2-naphthol.

(2) The following diluents may be used in aqueous suspension, in the percentages specified, to facilitate application to oranges in accordance with paragraph (c)(1) of this section:

(i) Suitable diluents used in accordance with § 8.300(a).

(ii) Volatile solvents that leave no residue after application to the orange.

(iii) Salts of fatty acids meeting the requirements of § 121.1071 of this chapter.

(iv) Sodium tripolyphosphate, not more thar 0.05 percent.

(b) *Specifications.* Citrus Red No. 2 shall conform to the following specifications and shall be free from impurities, other than those named, to the extent that such other impurities may be avoided by good manufacturing practice:

Volatile matter (at 100° C.), not more than 0.5 percent.
Water-soluble matter, not more than 0.3 percent.
Matter insoluble in carbon tetrachloride, not more than 0.5 percent.
Uncombined intermediates, not more than 0.05 percent.
Subsidiary dyes, not more than 2.0 percent.
Lead (as Pb), not more than 10 parts per million.
Arsenic (as As), not more than 1 part per million.
Pure color, not less than 98 percent.

(c) *Uses and restrictions.* (1) Citrus Red No. 2 shall be used only for coloring the skins of oranges that are not intended or used for processing (or if so used are designated in the trade as "Packinghouse elimination") and that meet minimum maturity standards established by or under the laws of the States in which the oranges are grown.

(2) Oranges colored with Citrus Red No. 2 shall bear not more than 2.0 parts per million of such color additive, calculated on the basis of the weight of the whole fruit.

(d) *Labeling.* The label of the color additive and any mixtures prepared therefrom and intended solely or in part for coloring purposes shall conform to the requirements of § 8.32. To meet the requirements of § 8.32 (b) and (c) the label shall bear:

(1) The statement (or its equivalent) "To be used only for coloring skins of oranges."

(2) Directions for use to limit the amount of the color additive to not more than 2.0 parts per million, calculated on the basis of the weight of the whole fruit.

(e) *Certification.* All batches of Citrus Red No. 2 shall be certified in accordance with regulations in Subpart A of this Part 8.

§ 8.300 [Amended]

5. In § 8.300(b)(1):

a. By changing the heading of subdivision (i) to read *"Inks for marking food supplements in tablet form, gum, and confectionery."*

b. By changing in the table for items "Alcohol, SDA-3A," "*n*-Butyl alcohol," "Cyclohexane," "Ethylene glycol monoethyl ether," "Isobutyl alcohol," and "Isopropyl alcohol" the text under "Restrictions" to read "No residue."

c. By deleting subdivision (iii).

6. By revising §§ 8.301, 8.302, 8.303, 8.304, 8.305, 8.315, 8.316, 8.4070, and 8.4132 to read as follows:

§ 8.301 Dried algae meal.

(a) *Identity.* The color additive dried algae meal is a dried mixture of algae cells (genus *Spongiococcum*, separated from its culture broth), molasses, corn-steep liquor, and a maximum of 0.3 percent ethoxyquin. The algae cells are produced by suitable fermentation, under controlled conditions, from a pure culture of the genus *Spongiococcum*.

(b) *Uses and restrictions.* The color additive dried algae meal may be safely used in chicken feed in accordance with the following prescribed conditions:

(1) The color additive is used to enhance the yellow color of chicken skin and eggs.

(2) The quantity of the color additive incorporated in the feed is such that the finished feed:

(i) Is supplemented sufficiently with xanthophyll and associated carotenoids so as to accomplish the intended effect described in subparagraph (1) of this paragraph; and

(ii) Meets the tolerance limitation for ethoxyquin in animal feed prescribed in § 121.202 of this chapter.

(c) *Labeling.* The label of the color additives and any premixes prepared therefrom shall bear in addition to the information required by § 8.32:

(1) A statement of the concentrations of xanthophyll and ethoxyquin contained therein.

(2) Adequate directions to provide a final product complying with the limitations prescribed in paragraph (b) of this section.

(d) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 706(c) of the act.

§ 8.302 β-Apo-8'-carotenal.

(a) *Identity.* (1) The color additive is β-apo-8'-carotenal.

(2) Color additive mixtures for food use made with β-apo-8'-carotenal may contain only diluents that are suitable and that are listed in this subpart as safe

in color additive mixtures for coloring foods.

(b) *Specifications.* β-Apo-8'-carotenal shall conform to the following specifications:

Physical state, solid.
1 percent solution in chloroform, clear.
Melting point (decomposition), 136° C.–140° C. (corrected).
Loss of weight on drying, not more than 0.2 percent.
Residue on ignition, not more than 0.2 percent.
Lead (as Pb), not more than 10 parts per million.
Arsenic (as As), not more than 1 part per million.
Assay (spectrophotometric), 96–101 percent.

(c) *Uses and restrictions.* The color additive β-apo-8'-carotenal may be safely used for coloring foods generally, subject to the following restrictions:

(1) The quantity of β-apo-8'-carotenal does not exceed 15 milligrams per pound of solid or semisolid food or 15 milligrams per pint of liquid food.

(2) It may not be used to color foods for which standards of identity have been promulgated under section 401 of the act unless added color is authorized by such standards.

(d) *Labeling.* The label of the color additive and any mixtures prepared therefrom and intended solely or in part for coloring purposes shall conform to the requirements of § 8.32.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 706(c) of the act.

§ 8.303 Caramel.

(a) *Identity.* (1) The color additive caramel is the dark-brown liquid or solid material resulting from the carefully controlled heat treatment of the following food-grade carbohydrates:

Dextrose.
Invert sugar.
Lactose.
Malt sirup.
Molasses.
Starch hydrolysates and fractions thereof.
Sucrose.

(2) The food-grade acids, alkalis, and salts listed in this subparagraph may be employed to assist caramelization, in amounts consistent with good manufacturing practice.

(i) Acids:

Acetic acid.
Citric acid.
Phosphoric acid.
Sulfuric acid.
Sulfurous acid.

(ii) Alkalis:

Ammonium hydroxide.
Calcium hydroxide U.S.P.
Potassium hydroxide.
Sodium hydroxide.

(iii) Salts: Ammonium, sodium, or potassium carbonate, bicarbonate, phosphate (including dibasic phosphate and monobasic phosphate), sulfate, and sulfite.

(3) Polyglycerol esters of fatty acids, identified in § 121.1120 of this chapter, may be used as antifoaming agents in amounts not greater than that required to produce the intended effect.

(4) Color additive mixtures for food use made with caramel may contain only diluents that are suitable and that are listed in this subpart as safe in color additive mixtures for coloring foods.

(b) *Specifications.* Caramel shall conform to the following specifications:

Lead (as Pb), not more than 10 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 0.1 part per million.

(c) *Uses and restrictions.* Caramel may be safely used for coloring foods generally, in amounts consistent with good manufacturing practice, except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act unless added color is authorized by such standards.

(d) *Labeling.* The label of the color additive and any mixtures prepared therefrom and intended solely or in part for coloring purposes shall conform to the requirements of § 8.32.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 706(c) of the act.

§ 8.304 β-Carotene.

(a) *Identity.* (1) The color additive is β-carotene prepared synthetically or obtained from natural sources.

(2) Color additive mixtures for food use made with β-carotene may contain only diluents that are suitable and that are listed in this subpart as safe in color additive mixtures for coloring foods.

(b) *Specifications.* β-carotene shall conform to the following specifications:

Physical state, solid.
1 percent solution in chloroform, clear.
Loss of weight on drying, not more than 0.2 percent.
Residue on ignition, not more than 0.2 percent.
Lead (as Pb), not more than 10 parts per million.
Arsenic (as As), not more than 3 parts per million.
Assay (spectrophotometric), 96–101 percent.

(c) *Uses and restrictions.* The color additive β-carotene may be safely used for coloring foods generally, in amounts consistent with good manufacturing practice, except that it may not be used to color those foods for which standards of identity have been promulgated under section 401 of the act unless added color is authorized by such standards.

(d) *Labeling.* The label of the color additive and any mixtures prepared therefrom and intended solely or in part for coloring purposes shall conform to the requirements of § 8.32.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 706(c) of the act.

§ 8.305 Annatto extract.

(a) *Identity.* (1) The color additive annatto extract is an extract prepared from annatto seed, *Bixa orellana* L., using any one or an appropriate combination of the food-grade extractants listed in subdivisions (i) and (ii) of this subparagraph:

(i) Alkaline aqueous solution, alkaline propylene glycol, ethyl alcohol or alkaline solutions thereof, edible vegetable oils or fats, mono- and diglycerides from the glyceroloysis of edible vegetable oils or fats. The alkaline alcohol or aqueous extracts may be treated with food-grade acids to precipitate annatto pigments, which are separated from the liquid and dried, with or without intermediate recrystallization, using the solvents listed under subdivision (ii) of this subparagraph. Food-grade alkalis or carbonates may be added to adjust alkalinity.

(ii) Acetone, ethylene dichloride, hexane, isopropyl alcohol, methyl alcohol, methylene chloride, trichloroethylene.

(2) Color additive mixtures for food use made with annatto extract may contain only diluents that are suitable and that are listed in this subpart as safe in color additive mixtures for coloring foods.

(b) *Specifications.* Annatto extract, including pigments precipitated therefrom, shall conform to the following specifications:

(1) Arsenic (as As), not more than 3 parts per million; lead as Pb, not more than 10 parts per million.

(2) When solvents listed under paragraph (a)(1)(ii) of this section are used, annatto extract shall contain no more solvent residue than is permitted of the corresponding solvents in spice oleoresins under applicable food additive regulations in Part 121 of this chapter.

(c) *Uses and restrictions.* Annatto extract may be safely used for coloring foods generally, in amounts consistent with good manufacturing practice, except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act unless added color is authorized by such standards.

(d) *Labeling.* The label of the color additive and any mixtures prepared therefrom and intended solely or in part for coloring purposes shall conform to the requirements of § 8.32. Labels shall bear information showing that the color is derived from annatto seed. The requirements of § 8.32(a) that all ingredients shall be listed by name shall not be construed as requiring the declaration of residues of solvents listed in paragraph (a)(1)(ii) of this section.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 706(c) of the act.

§ 8.315 Toasted partially defatted cooked cottonseed flour.

(a) *Identity.* (1) The color additive toasted partially defatted cooked cottonseed flour is a product prepared as follows: Food quality cottonseed is delinted and decorticated; the meats are screened, aspirated, and rolled; moisture is adjusted, the meats heated, and the oil expressed; the cooked meats are cooled, ground, and reheated to obtain a product varying in shade from light to dark brown.

(2) Color additive mixtures for food use made with toasted partially defatted cooked cottonseed flour may contain only diluents that are suitable and that are listed in this subpart as safe in color additive mixtures for coloring foods.

(b) *Specifications.* Toasted partially defatted cooked cottonseed flour shall conform to the following specifications:

Arsenic: It contains no added arsenic compound and therefore may not exceed a maximum natural background level of 0.2 part per million total arsenic, calculated as As.
Lead (as Pb), not more than 10 parts per million.
Free gossypol content, not more than 450 parts per million.

(c) *Uses and restrictions.* The color additive toasted partially defatted cooked cottonseed flour may be safely used for coloring foods generally, in amounts consistent with good manufacturing practice, except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act, unless added color is authorized by such standards.

(d) *Labeling.* The label of the color additive and any mixtures prepared therefrom and intended solely or in part for coloring purposes shall conform to the requirements of § 8.32.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 706(c) of the act.

§ 8.316 Titanium dioxide.

(a) *Identity.* (1) The color additive titanium dioxide is synthetically prepared TiO_2, free from admixture with other substances.

(2) Color additive mixtures for food use made with titanium dioxide may contain only those diluents that are suitable and that are listed in this subpart as safe in color additive mixtures for coloring foods, and the following: Silicon dioxide, SiO_2 and/or aluminum oxide, Al_2O_3, as dispersing aids—not more than 2 percent total.

(b) *Specifications.* Titanium dioxide shall conform to the following specifications:

Lead (as Pb), not more than 10 parts per million.
Arsenic (as As), not more than 1 part per million.
Antimony (as Sb), not more than 2 parts per million.
Mercury (as Hg), not more than 1 part per million.
Loss on ignition at 800° C. (after drying for 3 hours at 105° C.), not more than 0.5 percent.
Water soluble substances, not more than 0.3 percent.
Acid soluble substances, not more than 0.5 percent.
TiO_2, not less than 99.0 percent after drying for 3 hours at 105° C.

Lead, arsenic, and antimony shall be determined in the solution obtained by boiling 10 grams of the titanium dioxide for 15 minutes in 50 milliliters of 0.5*N* hydrochloric acid.

(c) *Uses and restrictions.* The color additive titanium dioxide may be safely used for coloring foods generally, subject to the following restrictions:

(1) The quantity of titanium dioxide does not exceed 1 percent by weight of the food.

(2) It may not be used to color foods for which standards of identity have been promulgated under section 401 of the act unless added color is authorized by such standards.

(d) *Labeling.* The label of the color additive and any mixtures intended solely or in part for coloring purposes prepared therefrom shall conform to the requirements of § 8.32.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 706(c) of the act.

§ 8.4070 D&C Green No. 6.

(a) *Identity.* The color additive D&C Green No. 6 is 1-4-di-*p*-toluidino anthraquinone.

(b) *Specifications.* D&C Green No. 6 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

Volatile matter (at 135° C.), not more than 2.0 percent.
Water-soluble matter, not more than 0.3 percent.
Matter insoluble in carbon tetrachloride, not more than 1.5 percent.
Intermediates, not more than 0.5 percent.
Lead (as Pb), not more than 10 parts per million.
Arsenic (as As), not more than 1 part per million.
Pure color, not less than 96.0 percent.

(c) *Uses and restrictions.* D&C Green No. 6 may be safely used for coloring polyethylene terephthalate surgical sutures, including sutures for ophthalmic use, subject to the following restrictions:

(1) The quantity of the color additive does not exceed 0.75 percent by weight of the suture material.

(2) When the sutures are used for the purposes specified in their labeling there is no migration of the color additive to the surrounding tissue.

(3) The listing of D&C Green No. 6 for the purposes described in paragraph (c) of this section is not to be construed as a listing for any other use.

(d) *Labeling.* The label of the color additive shall conform to the requirements of § 8.32.

(e) *Certification.* All batches of D&C Green No. 6 shall be certified in accordance with regulations promulgated under Subpart A of this part.

§ 8.4132 D&C Red No. 39.

(a) *Identity.* (1) The color additive D&C Red No. 39 is o-[*p*(β,β′-dihydroxydiethylamino)-phenylazo]-benzoic acid.

(2) Color additive mixtures made with D&C Red No. 39 may contain the following diluents: Water, acetone, isopropyl alcohol, and specially denatured alcohols used in accordance with 26 CFR Part 212.

(b) *Specifications.* D&C Red No. 39 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

Volatile matter (at 100° C.), not more than 2.0 percent.
Matter insoluble in acetone, not more than 1.0 percent.
Anthranilic acid, not more than 0.2 percent.
N,N-(β,β′-Dihydroxy-diethyl) aniline, not more than 0.2 percent.
Subsidiary colors, not more than 3.0 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Pure color, not less than 95.0 percent.

(c) *Uses and restrictions.* The color additive D&C Red No. 39 may be safely used for the coloring of quaternary ammonium type germicidal solutions intended for external application only, and subject to the further restriction that the quantity of the color additive does not exceed 0.1 percent by weight of the finished drug product.

(d) *Labeling.* The label of the color additive and any mixtures prepared therefrom and intended solely or in part for coloring purposes shall conform to the requirements of § 8.32.

(e) *Certification.* All batches of D&C Red No. 39 shall be certified in accordance with regulations promulgated under Subpart A of this part.

§ 8.6000 [Amended]

7. In paragraph (a) of § 8.6000 *Diluents in color additive mixtures for drug use exempt from certification:*

a. By inserting in the table in subparagraph (1) for the item "Alcohol, specially denatured" under the heading "Restrictions" the statement "As set forth in 26 CFR, Part 211."

b. By changing the introduction of subparagraph (2) to read as follows:

(2) *Special use; inks for branding pharmaceutical forms.* Items listed in subparagraph (1) of this paragraph, § 8.300(b)(1)(i), and the following:

8. By revising §§ 8.6003, 8.6005, and 8.8002 to read as follows:

§ 8.6003 Annatto extract.

(a) *Identity and specifications.* (1) The color additive annatto extract shall conform in identity and specifications to the requirements of § 8.305(a)(1) and (b).

(2) Color additive mixtures for drug use made with annatto extract may contain only those diluents that are suitable and that are listed in this subpart as safe in color additive mixtures for coloring ingested drugs.

(b) *Uses and restrictions.* The color additive annatto extract may be used for coloring ingested drugs generally in amounts consistent with good manufacturing practice.

(c) *Labeling.* The label of the color additive and any mixtures prepared therefrom and intended solely or in part for coloring purposes shall conform to the requirements of § 8.32. Labels shall bear information showing that the color is derived from annatto seed. The requirements of § 8.32(a) that all ingredients shall be listed by name shall not be construed as requiring the declaration of residues of solvents listed in § 8.305(a)(1)(ii).

(d) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 706(c) of the act.

§ 8.6005 Titanium dioxide.

(a) *Identity and specifications.* (1) The color additive titanium dioxide shall conform in identity and specifications to the requirements of § 8.316 (a)(1) and (b).

(2) Color additive mixtures for drug use made with titanium dioxide may contain only those diluents that are suitable and that are listed in this subpart as safe in color additive mixtures for coloring drugs, and the following: Silicon dioxide, SiO_2, and/or aluminum oxide, Al_2O_3, as dispersing aids—not more than 2 percent total.

(b) *Uses and restrictions.* The color additive titanium dioxide may be used for coloring ingested and externally applied drugs generally, in amounts consistent with good manufacturing practice. External application includes use in the area of the eye.

(c) *Labeling.* The label of the color additive and any mixtures prepared therefrom and intended solely or in part for coloring purposes shall conform to the requirements of § 8.32.

(d) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 706(c) of the act.

§ 8.8002 Henna.

(a) *Identity.* (1) The color additive henna is the dried leaf and petiole of *Lawsonia alba* Lam. (*Lawsonia inermis* L.). It may be identified by its characteristic odor and by characteristic plant histology.

(b) *Specifications.* Henna shall conform to the following specifications:

It shall not contain more than 10 percent of plant material from *Lawsonia alba* Lam. (*Lawsonia inermis* L.) other than the leaf and petiole, and shall be free from admixture with material from any other species of plant.

Moisture, not more than 10 percent.
Total ash, not more than 15 percent.
Acid-insoluble ash, not more than 5 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.

(c) *Uses and restrictions.* The color additive henna may be safely used for coloring hair only. It may not be used for coloring the eyelashes or eyebrows, or generally in the area of the eye.

(d) *Labeling.* The label for henna shall bear the information required by § 8.32 and the following statements or their equivalent:

"Do not use in the area of the eye."
"Do not use on cut or abraded scalp."

(e) *Exemption from certification.* Certification of this color additive for the prescribed use is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 706(c) of the act.

All interested persons are invited to submit their views in writing, preferably in quintuplicate, regarding this proposal within 30 days following the date of publication of this notice in the FEDERAL REGISTER. Such views and comments should be addressed to the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, and may be accompanied by a memorandum or brief in support thereof.

Dated: April 19, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-5013; Filed, Apr. 25, 1968; 8:47 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 68-WE-35]

CONTROL ZONE AND TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amendments to Part 71 of the Federal Aviation Regulations which would designate a control zone and 1,200-foot transition area for Las Animas County Airport, Trinidad, Colo.

Interested persons may participate in the proposed rule-making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Western Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 5651 West Manchester Avenue, Post Office Box 90007, Airport Station, Los Angeles, Calif. 90009. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 5651 West Manchester Avenue, Los Angeles, Calif. 90045.

New instrument approach and departure procedures have been developed to serve the Las Animas County Airport, Trinidad, Colo. As a result, a control zone and 1,200-foot transition area are required to provide controlled airspace protection for aircraft executing the prescribed instrument procedures. The proposed control zone is required to protect aircraft executing prescribed approach and departure procedures while operating below 1,200 feet above the surface. The 1,200 foot-transition area will provide controlled airspace protection for holding aircraft and those portions of prescribed approach and departure procedures conducted above 1,200 feet above the surface.

In view of the foregoing, the FAA proposes the following airspace actions:

In § 71.171 (33 F.R. 2058) the following control zone is added:

LAS ANIMAS, COLO.

Within a 5-mile radius of Las Animas County Airport (latitude 37°15'36" N., longitude 104°20'22" W.), and within 2 miles each side of the 352° bearing from the Trinidad, Colo. RBN extending from the 5-mile radius zone to 8 miles north of the RBN.

In § 71.181 (33 F.R. 2137) the following transition area is added:

LAS ANIMAS, COLO.

That airspace extending upward from 1,200 feet above the surface within 5 miles west and 8 miles east of the 172° and 352° bearings from the Trinidad, Colo. RBN, extending from 7 miles south to 13 miles north of the RBN.

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (72 Stat. 749; 49 U.S.C. 1348).

Issued in Los Angeles, Calif., on April 17, 1968.

CHARLES J. WINGER,
Acting Director, Western Region.

[F.R. Doc. 68-5039; Filed, Apr. 25, 1968; 8:49 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 68-CE-25]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to

designate a transition area at Fort Madison, Iowa.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief.

Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106.

A public use instrument approach procedure has been developed to serve the Fort Madison, Iowa, Municipal Airport, using the Burlington, Iowa, VORTAC as a navigational aid. Consequently, it is necessary to designate a 700-foot floor transition area at Fort Madison to provide protection for aircraft that will be executing this approach procedure. With the designation of controlled airspace for its protection, the new approach procedure will be effective. IFR air traffic into and out of Fort Madison Municipal Airport will be controlled by the Chicago ARTC Center through the Burlington Flight Service Station.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (33 F.R. 2137), the following transition area is added:

FORT MADISON, IOWA

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Fort Madison Municipal Airport (latitude 40°39'00" N., longitude 91°19'20" W.); and within 2 miles each side of the Burlington, Iowa VORTAC 258° radial, extending from the 5-mile radius area to 12 miles west of the VORTAC excluding the portion which overlies the Burlington, Iowa, transition area.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348).

Issued at Kansas City, Mo., on April 11, 1968.

DANIEL E. BARROW,
Acting Director, Central Region.

[F.R. Doc. 68-5040; Filed, Apr. 25, 1968; 8:49 a.m.]

ATOMIC ENERGY COMMISSION

[10 CFR Parts 31, 32]

IODINE-125 OR IODINE-131

General Licensing for Use in Clinical or Laboratory Tests Not Involving Administration to Human Beings

By letter dated October 20, 1966, the Jones Medical Instrument Co. filed a petition (PRM-30-26) with the Atomic Energy Commission requesting issuance of a general license for use of iodine-125, in prepackaged units, not to exceed 10 microcuries each, for in vitro testing of thyroid functioning.

Such testing has been performed for several years with iodine-131 under the general license provided in § 31.4, 10 CFR Part 31, and, with iodine-125 under specific license. The usefulness of these isotopes in medical tests and the similarity of radiological safety considerations between in vitro thyroid function tests and other in vitro tests have led the Commission to consider the issuance of a separate general license, in a new § 31.11, to physicians, clinical laboratories, and hospitals, authorizing the receipt, acquisition, possession, use or transfer of iodine-125 or iodine-131 for in vitro clinical or laboratory tests.

The tests, which do not involve administration of radioactive material to human beings, are performed by physicians and clinical and laboratory personnel who generally are trained to perform the tests with care and precision.

The general licensee would be required to register with the Commission and to receive an acknowledgment of his registration and a registration number before receiving iodine-125 or iodine-131 pursuant to the general license. The objectives of the registration requirement are: (1) To provide a means of identifying the general licensee, (2) to provide assurance that the general licensee is aware of the terms and conditions of the general license prior to receipt of material, and (3) to facilitate communication with the general licensee.

A new § 32.71 would be added to 10 CFR Part 32 to set out requirements for issuance of specific licenses to manufacture or distribute iodine-125 or iodine-131 for use under the proposed general license. These requirements are intended to assure that general licensees receive properly packaged products, labeled to identify the radioactive contents and to specify that use is restricted to in vitro clinical or laboratory tests.

Pursuant to the Atomic Energy Act of 1954, as amended, and section 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Parts 31 and 32 is contemplated. All interested persons who desire to submit written comments or suggestions should send them to the Secretary, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Branch, within 30 days after publication of this notice in the FEDERAL REGISTER. Comments received after that period will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed within the period specified. Copies of comments on the proposed rule may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

1. A new § 31.11 is added to 10 CFR Part 31 to read as follows:

§ 31.11 General license for use of iodine-125 or iodine-131 for in vitro clinical or laboratory testing.

(a) A general license is hereby issued to any physician, clinical laboratory or hospital to receive, acquire, possess, transfer or use, for any of the following stated tests, in accordance with the provisions of paragraphs (b), (c), (d), (e), and (f) of this section, the following byproduct materials in prepackaged units:

(1) Iodine-125, in units not exceeding 10 microcuries each for use in in vitro clinical or laboratory tests not involving internal or external administration of byproduct material, or the radiation therefrom, to human beings or animals.

(2) Iodine-131, in units not exceeding 10 microcuries each for use in in vitro clinical or laboratory tests not involving internal or external administration of byproduct material, or the radiation therefrom, to human beings or animals.

(b) No person shall receive, acquire, possess, use or transfer byproduct material pursuant to the general license established by paragraph (a) of this section until he has filed Form AEC-____, "Registration Certificate—In Vitro Testing with Byproduct Material Under General License", with the Director, Division of Materials Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545, and received from the Commission a validated copy of Form AEC-____ with registration number assigned. The registrant shall furnish on Form AEC-____ the following information and such other information as may be required by that form:

(1) Name and address of the registrant;

(2) The location of use; and;

(3) A statement that the registrant has appropriate radiation measuring instruments to carry out in vitro clinical or laboratory tests with byproduct materials as authorized under the general license in paragraph (a) of this section, and that such tests will be performed only by personnel competent in the use of such instruments and in the handling of the byproduct materials.

(c) A person who receives, acquires, possesses or uses byproduct material pursuant to the general license established by paragraph (a) of this section shall comply with the following:

(1) The general licensee shall not possess at any one time, pursuant to the general license in paragraph (a) of this section, at any one location of storage or use a total amount of iodine-125 and/or iodine-131 in excess of 200 microcuries.

(2) The general licensee shall store the byproduct material, until used, in the

original shipping container or in a container providing equivalent radiation protection.

(3) The general licensee shall use the byproduct material only for the uses authorized by paragraph (a) of this section.

(4) The general licensee shall not transfer the byproduct material to a person who is not authorized to receive it pursuant to a license issued by the Commission or an agreement State,[1] nor transfer the byproduct material in any manner other than in the unopened, labeled shipping container as received from the supplier.

(d) The general licensee shall not receive, acquire, possess, or use byproduct material pursuant to paragraph (a) of this section:

(1) Except as prepackaged units which are labeled in accordance with the provisions of a specific license issued under the provisions of § 32.71 of this chapter or in accordance with the provisions of a specific license issued by an agreement State, which authorizes manufacture and distribution of iodine-125 or iodine-131 for distribution to persons generally licensed by the agreement State.

(2) Unless the following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

This radioactive material may be received, acquired, possessed, and used only by physicians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material or the radiation therefrom to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the regulations and a general license of the U.S. Atomic Energy Commission or of a State with which the Commission has entered into an agreement for the exercise of regulatory authority.

Name of manufacturer

(e) The registrant possessing or using byproduct materials under the general license of paragraph (a) of this section shall report in writing to the Director, Division of Materials Licensing, any changes in the information furnished by him in the "Registration Certificate—In Vitro Testing with Byproduct Material Under General License", Form AEC-_____. The report shall be furnished within 30 days after the effective date of such change.

(f) Any person using byproduct material pursuant to the general license of paragraph (a) of this section is exempt from the requirements of Part 20 of this chapter with respect to byproduct materials covered by that general license.

2. A new § 32.71 is added to 10 CFR Part 32 to read as follows:

§ 32.71 Manufacture and distribution of byproduct materials for certain in vitro clinical or laboratory testing under general license.

An application for a specific license to manufacture or distribute byproduct material for use under the general license of § 31.11 of this chapter will be approved if:

(a) The applicant satisfies the general requirements specified in § 30.33 of this chapter.

(b) The byproduct material is to be prepared for distribution in prepackaged units of:

(1) Iodine-125 in units not exceeding 10 microcuries each.

(2) Iodine-131 in units not exceeding 10 microcuries each.

(c) Each prepackaged unit bears a durable, clearly visible label:

(1) Identifying the radioactive contents as to chemical form, radionuclide, activity and date of determination of activity; and

(2) Displaying the radiation caution symbol described in § 20.203(a)(1) of this chapter and the words, "Caution, Radioactive Material", and "Not For Internal or External Use in Humans or Animals."

(d) The following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

This radioactive material may be received, acquired, possessed, and used only by physicians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material or the radiation therefrom to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the regulations and a general license of the U.S. Atomic Energy Commission or of a State with which the Commission has entered into an agreement for the exercise of regulatory authority.

Name of manufacturer

(e) The label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling and storing such byproduct material.

(Sec. 81, 68 Stat. 935; 42 U.S.C. 2111; sec. 161, 68 Stat. 948; 42 U.S.C. 2201)

Dated at Germantown, Md., this 12th day of April 1968.

For the Atomic Energy Commission.

W. B. McCool,
Secretary.

[F.R. Doc. 68-5018; Filed, Apr. 25, 1968; 8:48 a.m.]

[1] A State to which the Commission has transferred certain regulatory authority over radioactive material by formal agreement, pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

Notices

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

INSURED BANKS

Joint Call for Report of Condition

CROSS REFERENCE: For a document relating to a joint call for report of condition of insured banks, see F.R. Doc. 68-4994, Federal Deposit Insurance Corporation, *infra*.

Office of the Secretary

[Antidumping—ATS 643.3-v]

TITANIUM SPONGE FROM THE U.S.S.R.

Determination of Sales at Less Than Fair Value

APRIL 19, 1968.

On April 6, 1968, there was published in the FEDERAL REGISTER a "Notice of Tentative Determination" that titanium sponge imported from the U.S.S.R. is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

The statement of reasons for the tentative determination was published in the above-mentioned notice, and interested parties were afforded until April 16, 1968, to make written submissions or requests for an opportunity to present views in connection with the tentative determination.

No requests were received for an opportunity to present views orally in opposition to the tentative determination.

After consideration of all written submissions received, I hereby determine that for the reasons stated in the tentative determination titanium sponge imported from the U.S.S.R. is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

This determination is published pursuant to section 210(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL] JOSEPH M. BOWMAN,
Assistant Secretary of the Treasury.

APRIL 19, 1968.

[F.R. Doc. 68-5034; Filed, Apr. 25, 1968; 8:49 a.m.]

DEPARTMENT OF DEFENSE

Department of the Army

DEFENSE FACILITIES POSTER

Change in Notice Used

This is notice of a revision to the poster entitled, "Notice To All Officers and Employees of This Facility", which was issued by the Department of Defense in August 1962, as an implementation of the provisions of section 5(b) of the Internal Security Act of 1950, as amended, 64 Stat. 992; 50 U.S.C. 784(b). This revision cancels paragraph 1(b) of the poster-notice which states, "* * * if such organization is a Communist-action organization, to engage in any employment in any defense facility." Pending the issuance of a revised poster-notice, the management of a designated "defense facility" is authorized and requested to amend existing posters by deleting or obliterating the provision contained in paragraph 1(b).

The above revision stems from the decision, United States v. Robel, handed down by the Supreme Court of the United States on December 11, 1967. The Court ruled that the provision of the Act, which makes it unlawful for any member of a Communist-action organization to engage in employment in any defense facility, is unconstitutional. Such provision is contained in section 5(a)(1)(D) of the Act, 64 Stat. 987; 50 U.S.C. 784(a).

For the Adjutant General.

J. W. HURD,
Colonel, AGC, Comptroller, TAGO.

[F.R. Doc. 68-4978; Filed, Apr. 25, 1968; 8:45 a.m.]

DEPARTMENT OF THE INTERIOR

National Park Service

THEODORE ROOSEVELT NATIONAL MEMORIAL PARK, N. DAK.

Notice of Intention To Issue Concession Permit

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Superintendent, Theodore Roosevelt National Memorial Park, Medora, N. Dak. 58645, proposes to issue a concession permit to Alvin Tescher, Dickinson, N. Dak., authorizing him to provide a Saddle Horse Concession, including buckboard rides, for the public at the South Unit of Theodore Roosevelt National Memorial Park, for a period of five (5) years from June 1, 1968, through May 31, 1973. The foregoing concessioner has performed his obligations under an existing permit to the satisfaction of the National Park Service, and therefore, pursuant to the Act cited above, is entitled to be given preference in the issuance of a new permit. However, under the Act cited above, the Secretary is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted within thirty (30) days after the date of publication of this notice.

Interested parties should contact the Superintendent, Theodore Roosevelt National Memorial Park, Medora, N. Dak. 58645, for information as to the requirements of the proposed permit.

ARTHUR L. SULLIVAN,
Superintendent, Theodore Roosevelt National Memorial Park.

MARCH 29, 1968.

[F.R. Doc. 68-4987; Filed, Apr. 25, 1968; 8:46 a.m.]

Office of the Secretary

ALABAMA

Fishery Failure Due to Resource Disaster

APRIL 19, 1968.

Whereas, several firms and many individuals are engaged in raising, harvesting, processing, and marketing oysters in the State of Alabama; and

Whereas, a sudden and severe mortality of seed oysters on major producing reefs in Mobile Bay occurred in 1967, resulting in a failure of a substantial portion of the seed oyster resource; and

Whereas, this loss of a major source of seed oysters will be felt throughout the entire Mobile Bay, with a limited prospect of marketable oysters for the years 1968 and 1969; and

Whereas, insurmountable uninsured losses of seed and marketable oyster production will amount to a several hundred thousand dollar loss of income within the State; and

Whereas, the serious disruption of the Alabama oyster fishery is due to undetermined causes;

Now, therefore, as Secretary of the Interior, I hereby determine that the foregoing circumstances constitute a commercial fishery failure due to a resource disaster within the meaning of section 4(b) of Public Law 88-309. Pursuant to this determination, I hereby authorize the use of funds appropriated under the above legislation to rehabilitate, restore, and put back into production the oyster grounds of the State of Alabama, and for such other measures as may be necessary to mitigate damage to the resource.

STEWART L. UDALL,
Secretary of the Interior.

[F.R. Doc. 68-4988; Filed Apr. 25, 1968; 8:46 a.m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

GREAT PLAINS CONSERVATION PROGRAM

Applicability in Albany County, Wyo.

Designation of county within the Great Plains Area of the 10 Great Plains States where the Great Plains Conservation Program is specifically applicable.

For the purpose of making contracts based upon an approved plan of farming operations pursuant to the Act of August 7, 1956 (70 Stat. 1115, 16 U.S.C. 590p(b)), as amended, the following county in the following State is designated as susceptible to serious wind erosion by reason of its soil types, terrain, and climatic and other factors.

WYOMING

Albany.

Done at Washington, D.C., this 22d day of April 1968.

ALFRED L. EDWARDS,
Acting Assistant Secretary.

[F.R. Doc. 68-4993; Filed, Apr. 25, 1968; 8:46 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

E. I. DU PONT DE NEMOURS & CO., INC.

Notice of Filing of Petition for Food Additives

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 6B2030) has been filed by E. I. du Pont de Nemours & Co., Inc., 1007 Market Street, Wilmington, Del. 19898, proposing that § 121.2562 *Rubber articles intended for repeated use* be amended to provide for the safe use of diethyl xanthogen disulfide and tridecyl mercaptan as modifiers in rubber articles intended for repeated food-contact use.

Dated: April 18, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-5015; Filed, Apr. 25, 1868; 8:48 a.m.]

WALLERSTEIN CO.

Notice of Withdrawal of Petition for Food Additives

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786; 21 U.S.C. 348(b)), the following notice is issued:

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of the procedural food additive regulations (21 CFR 121.52), Wallerstein Co., Division of Travenol Laboratories, Inc., 125 Lake Avenue, Staten Island, N.Y. 10303, has withdrawn their petition (FAP 7A2194), notice of which was published in the FEDERAL REGISTER of August 4, 1967 (32 F.R. 11351), proposing the issuance of a regulation to provide for the safe use of zinc sulfate in fermented malt beverages to improve foam properties.

Dated: April 18, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-5016; Filed, Apr. 25, 1968; 8:48 a.m.]

WELLS LABORATORIES, INC.

Notice of Filing of Petition for Food Additives

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 8B2284) has been filed by Wells Laboratories, Inc., 25-27 Lewis Avenue, Jersey City, N.J. 07306, proposing that paragraph (a) of § 121.2542 *Polyamide-epichlorohydrin resin* be amended to provide for optional use of itaconic acid instead of adipic acid for reaction with diethylenetriamine in preparation of polyamide-epichlorohydrin resin intended for use as a component of food-contact articles.

Dated: April 18, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-5017; Filed, Apr. 25, 1968; 8:48 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 19836; Order E-26686]

UNITED AIR LINES, INC.

Order of Investigation and Suspension Regarding Fare Adjustments

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 18th day of April 1968.

By tariff revisions[1] marked to become effective April 28, 1968, United Air Lines, Inc. (United), proposes, with regard to its normal one-way fares, to (1) establish approximately 1,250 new jet first-class and coach fares; (2) increase jet first-class fares between South Bend, on the one hand, and Chicago and Fort Wayne, on the other, and between Detroit and Toledo; and (3) reduce 32 jet and prop fares to match competitive fares. All new jet fares that contain a surcharge element are marked with an expiration date of December 31, 1968.

In support of its proposed new jet fares, United maintains they were generally established in accordance with the carrier's formulas used previously in constructing jet fares over its routes. There were some exceptions to the carrier's jet fare formulas, namely, in those instances where United is matching lower competitive fares; or avoiding higher fares for intermediate points; or where jet first-class fares are based on jet coach fares plus $1, rather than United's jet first-class formula. United asserts that second level jet fares, higher than direct fares but involving greater mileage circuitry, have been proposed to provide passengers with better service and greater routing flexibility.

As justification for increasing three first-class fares, United contends it is establishing a fare differential between first-class and coach fares. In view of the short haul markets involved, along with their high operating costs, United believes that the proper method of achieving the differential is to increase the present jet first-class fares by $1 rather than establishing lower coach fares.

No complaints have been filed.

Upon consideration of all relevant matters, the Board has determined that the proposed fare increases, and 17 new jet fares described below may be unjust or unreasonable, or unduly discriminatory, or unduly preferential, or unduly prejudicial, or otherwise unlawful, and should be investigated.

The three proposed jet first-class fare increases constitute increases in price solely on the basis of a fare structure adjustment and without any demonstration of overall need for a revenue increase at the present time or compensating adjustments of higher fares. Similarly, in 17 markets where the proposed new jet first-class fares are based on the coach fares plus $1, those proposed fares constitute increases of $1 over the jet first-class fares United would have normally established in the markets involved, again on the basis of a structure adjustment. We would see no objection, however, in the establishment of an appropriate differential between the first-class and coach fares if this were accomplished by a reduction in the coach fare along with the increase in the first-class fare. The Board therefore concludes that the proposed fare increase should be suspended pending investigation. This action is consistent with the recent suspension of a similar increase proposed by Braniff and Continental (Order E-26607, Apr. 3, 1968).

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof:

It is ordered, That:

1. An investigation be instituted to determine whether the fares and provisions described in Appendix A attached hereto,[2] and rules, regulations, and practices affecting such fares and provisions, are or will be unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or

[1] Revisions to Airline Tariff Publishers, Inc., Agent, Local and Joint Passenger Fares Tariff CAB No. 101, filed Mar. 11, 1968.

[2] Not filed as part of the original document.

otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful fares and provisions, and rules, regulations, or practices affecting such fares and provisions;

2. Pending hearing and decision by the Board, the fares and provisions described in appendix A hereto are suspended and their use deferred to and including July 26, 1968, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. This investigation be assigned for hearing before an examiner of the Board at a time and place hereafter to be designated; and

4. A copy of this order be filed with the aforesaid tariff and be served upon United Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[2]

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 68-4990; Filed, Apr. 25, 1968; 8:46 a.m.]

[Docket No. 17828; Order E-26688]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Establishment of North Atlantic Family Fares

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 19th day of April 1968.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's economic regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Joint Conference 1-2 of the International Air Transport Association (IATA), and adopted by mail vote. The agreement has been assigned the above-designated CAB agreement number.

The agreement proposes the offering of special family fares for travel to the United States, Canada, and Mexico where transportation originates in Europe or one of the common-rated points in the Middle East or Cyprus. It provides that when the husband or wife purchases a round-trip normal first- or economy-class ticket or the 14-21-day excursion or inclusive-tour-basing fare ticket for individual travel, accompanying members of the family (husband or wife and children from 12 to 22 years of age) may travel round-trip for the price of the one-way normal first- or economy-class adult fare. It requires that accompanying family members adhere to the terms applicable to the fare purchased by the head of the family.

Although we had hoped that the carriers would agree to more significant fare reductions for westbound transatlantic travel, the fares agreed to will aid this Government's program to ease its balance of payments deficit. These fares should serve as a useful adjunct to the "Discount 50-Air Travel U.S.A. Fare" recently implemented by the U.S. trunkline carriers. However, we expect the carriers to use their best efforts in the future to institute more meaningful westbound fare reductions.

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, does not find Resolution JT12(Mail 531) 091c, which is incorporated in the above-designated agreement, to be adverse to the public interest or in violation of the Act.

Accordingly, it is ordered, That:

Agreement CAB 20206 be approved.

Any air carrier party to the agreement, or any interested person, may, within 15 days from the date of service of this order, submit statements in writing containing reasons deemed appropriate, together with supporting data, in support of or in opposition to the Board's action herein. An original and 19 copies of the statements should be filed with the Board's Docket Section. The Board may, upon consideration of any such statements filed, modify or rescind its action herein by subsequent order.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 68-4991; Filed, Apr. 25, 1968; 8:46 a.m.]

[2] Dissenting statement of Members Adams and Gillilland filed as part of the original document.

CIVIL SERVICE COMMISSION

PODIATRISTS

Minimum Educational Requirements

In accordance with section 5 of the Veterans' Preference Act of 1944, as amended, the Civil Service Commission has decided that minimum educational requirements are necessary for positions in the Podiatrist Series, GS-668. These requirements, the duties of the positions, and the reasons for the Commission's decision that these requirements are necessary are set forth below.

PODIATRIST SERIES, GS-668 (ALL GRADES)

Minimum educational requirements. Applicants for all positions must have successfully completed the full 4-year course of study in podiatry at a school approved by the Council of Education, American Podiatry Association, and at least 1 year of prepodiatry study. Qualifying education completed prior to 1953 that did not include 1 year of prepodiatry study or which was in a program of less than 4 years must have been followed by at least 1 year of qualifying experience.

Duties. Podiatry consists of the professional care and treatment of the feet, including work in the prevention, diagnosis, and treatment of foot diseases and disorders by physical, medical, and/or surgical methods. The podiatrist writes prescriptions for topical medications and other purposes. Some podiatrists engage in investigative research for analytical evaluations and experimental purposes when such work requires the application of professional podiatry knowledges and skills.

Reasons for the requirements. The duties of podiatrist positions cannot be performed without a broad knowledge of and intensive training in the techniques and principles of the care and treatment of diseases and injuries of the foot. The professional knowledges of podiatry are based on scientific principles of chemistry, microbiology, physiology, and other medical subjects. The level of training of the podiatrist must be sufficient not only to equip him to deal with the full range of foot problems but must also enable him to recognize conditions that are outside his sphere of competence and which require referral to a physician (for example, diseases of systemic origin). These knowledges and abilities can only be acquired through successful completion of a directed course of study in an accredited college or university which provides adequate library and laboratory facilities, and thoroughly trained instructors who can give specific guidance and evaluate the progress of the professional training competently.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 68-5008; Filed, Apr. 25, 1968; 8:47 a.m.]

DEPARTMENT OF JUSTICE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Justice to fill by noncareer executive assignment in the excepted service the two positions of Special Assistant to the Attorney General (Consumer Counsel) and Special Assistant to the Attorney General (Law Enforcement Coordinator).

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 68-5007; Filed, Apr. 25, 1968; 8:47 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 17185, etc.; FCC 68-420]

GENERAL TELEPHONE COMPANY OF FLORIDA ET AL.

Memorandum Opinion and Order Designating Petition and Applications for Consolidated Hearing on Stated Issues

In the matter of the petition of General Telephone Company of Florida,

Docket No. 17185, for establishment of a physical connection, pursuant to section 201(a) of the Communications Act of 1934, as amended, with facilities of American Telephone and Telegraph Co. and Southern Bell Telephone and Telegraph Co. at Polk City (Eva), Fla.

In re applications of Florida Telephone Corp., Docket No. 18167, File No. 48–C1–P–67, for a construction permit to establish additional facilities in the Domestic Public Point-to-Point Microwave Radio Service between Dade City and Plant City, Fla.; American Telephone and Telegraph Co., Docket No. 18168, File Nos. 646–C1–P–67, 647–C1–P–67, 648–C1–P–67, for construction permits to establish additional facilities in the Domestic Public Point-to-Point Microwave Radio Service between Tampa and Polk City, Fla.; General Telephone Company of Florida, Docket No. 18169, File Nos. 1552–C1–P–67, 1553–C1–P–67, 1554–C1–P–67, 1555–C1–P–67, 1556–C1–P–67, for construction permits to establish additional and new facilities in the Domestic Public Point-to-Point Microwave Radio Service between Tampa and Hillcrest, Fla., connecting with Florida Telephone Corp. near Plant City and connecting with United Telephone Company of Florida near Avon Park, Fla.; General Telephone Company of Florida, Docket No. 18170, File Nos. 5035–C1–P–67, 5036–C1–P–67, 5037–C1–P–67, 5038–C1–P–67, for construction permits to establish additional and new facilities in the Domestic Public Point-to-Point Microwave Radio Service between Clearwater and Polk City (Eva), Fla.; United Telephone Company of Florida, Docket No. 18171, File No. 5774–C1–P–67, for a construction permit to establish additional facilities in the Domestic Public Point-to-Point Microwave Radio Service between Avon Park and Hillcrest, Fla.; American Telephone and Telegraph Co., Illinois Bell Telephone Co., and New York Telephone Co., Docket No. 18172, File No. P–C–6799, for authority under section 214(a) of the Communications Act of 1934, as amended, to supplement existing facilities by installing and operating broadband channel groups between locations in Bell System Associated Cos. service areas, and locations in the General Telephone Company of Florida service area; and General Telephone Company of Florida, Docket No. 18173, File Nos. 4449–C1–P–68, 4450–C1–P–68, 4451–C1–P–68, for construction permits to establish additional and new facilities in the Domestic Public Point-to-Point Microwave Radio Service between Tampa and Polk City (Eva), Fla.

1. The Commission has before it a petition filed January 20, 1967, by General Telephone Company of Florida (General) requesting that the Commission, in accordance with section 201(a) of the Communications Act of 1934, as amended, order the American Telephone and Telegraph Co. (AT&T) and Southern Bell Telephone and Telegraph Co. (Southern Bell), to establish and maintain physical connection with its facilities at Polk City (Eva), Fla. Said petition is opposed by AT&T and Southern Bell (hereafter sometimes referred to as Bell). Also before the Commission are various applications filed by AT&T, General and other carriers requesting authority to establish new and/or additional point-to-point microwave radio facilities, as described in Appendix A, and depicted in Appendix B, set forth below.

2. General is a communications common carrier providing communication services to the general public in Tampa, Plant City, Polk City, Clearwater, Lakeland, Sarasota, St. Petersburg, and various other communities within the State of Florida. At the end of 1966, General owned and operated in its certificated intrastate service area more than 125,000 channel miles of toll lines consisting of over 4,500 circuits.

3. AT&T and Southern Bell are also communications common carriers. Southern Bell provides local exchange and intrastate toll service within certain areas of Florida. AT&T and Southern Bell are each engaged in the provision of interstate and foreign communications services individually or jointly with one or more other carriers. Both AT&T and Southern Bell are "fully subject" to the provisions of Title II of the Communications Act. General is engaged in interstate and foreign communications services solely through physical connection with the facilities of AT&T and/or Southern Bell. The terms and conditions governing such physical connection are embodied in various agreements between General and Southern Bell which, among other things, set forth routings and points of connection between the respective systems for the various interchanged services.

4. General presently has an interconnection arrangement with Bell at Tampa, Fla. for a general interchange of services. In addition, General has facilities interconnecting with Bell at Polk City. The latter connection has been restricted to the interchange of private line services to the U.S. Department of Defense (DoD) or other Government agency to meet DoD requirements for emergency or alternate routing for traffic to and from MacDill Air Force Base in Florida, General seeks the removal of such restriction and establishment of an interconnection at Polk City permitting interchange of message toll traffic and industrial private line traffic in addition to private line services which are now or have been provided to DoD. General argues that its facility between MacDill Air Force Base and Polk City has substantial spare capacity and that AT&T should not expand its system while the General facilities lie idle.

5. Bell has opposed General's efforts to establish Polk City as a point of connection for interchange of traffic generally. Bell contends that General seeks such an additional connection simply to justify constructing a route paralleling an existing Bell System TD–2 microwave route serving Tampa, Fla., by way of Polk City. Included in the applications here before us is an AT&T proposal [1] for authority to increase the capacity of this route. General petitioned to deny the AT&T applications alleging that General's route could handle the traffic for which AT&T proposed to expand its TD–2 route.

6. AT&T argued, among other things, that it would be more economical to expand its TD–2 route than to construct the facilities that would be needed to permit the use of General's route; that General's baseband system is inherently more wasteful of frequency space and would provide inferior transmission on long hauls and for data services. Bell further contends that its Tampa facilities and route were engineered on a long range basis for maximum economy relying on the continuance of Tampa as the point of connection for traffic generally to and from that area; that the existing route still has a large potential capacity that can be developed to take full advantage of economics of scale; and that to change the point of connection, or to divert any substantial traffic to an additional point of connection, would make orderly expansion of existing facilities impossible and increase overall investment and expenses.

7. General replied, in effect, that there is a need for the Commission to scrutinize, not only Bell's refusal to enter into an unrestricted point of connection at Polk City, but "* * * all the contractual fetters the Bell Companies have employed to restrict, if not prohibit, General from satisfying the communications needs of its own customers in its own operating territory." According to General, the Commission should not assume that a Bell System company will effect interconnection arrangements with both affiliated and nonaffiliated carriers on a nondiscriminatory basis, at least apparently not at Polk City. General contends that if both routes in question were Bell Companies' routes, the same unrestricted point of connection at Polk City here requested by General would be advocated by Bell as essential for the orderly expansion of existing facilities.

8. Despite numerous meetings and discussions between representatives of Bell and General dating back as early as 1964 and even before, including efforts under the auspices of the Commission's staff, it appears that Bell and General have been unable to reach a mutually satisfactory agreement regarding interconnection arrangements of their facilities at Polk City for the furnishing of interstate communications services. In light thereof and since the applications and pleadings enumerated in appendix A hereto raise substantial questions of fact requiring evidentiary hearings, we are designating General's 201(a) petition and the said related applications for radio facilities for a consolidated hearing upon appropriate issues as specified below.

9. Our designation order will include applications [2] filed by General on February 20, 1968, which request authority to construct additional TD–2 channels on the existing AT&T TD–2 route between Tampa and Polk City. It is proposed by

[1] File Nos. 646 through 648–C1–P–67.

[2] File Nos. 4449 through 4451–C1–P–68.

General that such additional facilities would be maintained by Bell. However, Bell alleges that such applications were filed without it being consulted. Bell makes it clear that it is unwilling to operate and maintain channels of General on AT&T's TD–2 route.

10. Thus, questions are raised whether General could effectuate its proposal and at all times retain exclusive responsibility for the operation and control of the facilities as required of a Commission licensee in order to avoid a violation of section 310(b) of the Communications Act.[3] Troublesome questions are also raised by the apparent conflict of interest in which Bell employees would be placed if required to operate and maintain facilities licensed to General, a competitor of their employer.

11. In addition, Bell urges that if General's prior filed applications proposing a route bypassing Tampa [4] and a route between Tampa and Plant City [5] are found to be mutually exclusive with AT&T's applications for expansion of its TD–2 route between Tampa and Polk City,[6] then General's applications should be rejected for the additional reason that they are inconsistent or conflicting with its prior applications, pursuant to § 21.21 of the Commission's rules.[7]

12. We believe that all of these matters require examination. Accordingly, appropriate issues are specified herein under which they may be fully explored.

13. It further appears that present communications facilities in the Tampa-Polk City area of Florida are now, or soon will be, inadequate to accommodate expeditiously all present and anticipated traffic requirements for the immediate future and that such requirements are expected to reach a peak late this year. It also appears that the AT&T proposal to expand its TD–2 route is capable of being implemented with a minimum of delay once authority is granted and that grant and implementation of General's proposals do not appear to be as readily feasible. It further appears that General has indicated its willingness to accept a conditional grant of authority to AT&T for expansion of its TD–2 route pending Commission determination of the question of whether AT&T or General should be the licensee, if the Commission determines that such grant is required in the public interest.

14. In view of the foregoing, we find that the public interest requires the prompt establishment of additional circuits in the Tampa-Polk City area and that the public interest will be served by a conditional grant of the AT&T applications pursuant to the provisions of § 21.27(g) of the Commission's rules. Such conditional grant will be made upon the express condition that it is subject to being withdrawn if at the hearing it is shown that the public interest will be better served by a grant of another or other applications.

15. It also appears that except for the matters placed in issue herein, all applicants are legally, technically, financially, and otherwise qualified to render the services they have proposed.

16. Accordingly, in view of our conclusions above: *It is ordered,* That pursuant to the provisions of sections 201(a), 309(e), and 403 of the Communications Act of 1934, as amended, the captioned petition and applications are designated for hearing, in a consolidated proceeding, at the Commission's offices in Washington, D.C., before an examiner and on a date to be hereafter specified by separate order, upon the following issues:

(a) To determine whether it is necessary or desirable in the public interest to establish physical connections between existing and proposed facilities of Bell and General at Polk City, Fla., to establish through routes and charges applicable thereto, and to establish and provide facilities and regulations for operating such through routes, within the meaning of section 201(a) of the Communications Act of 1934, as amended; and, if so, what connections, through routes, charges, facilities, and regulations should be established;

(b) To determine the need for any or all of the additional facilities proposed by AT&T, General and others in the above captioned applications;

(c) To determine, on a comparative basis, whether, and to what extent the proposals of AT&T or General would better serve the public interest, convenience, and necessity with respect to, but not limited to, the following:

(1) The rates, charges, practices, classifications, regulations, personnel, and services;

(2) The use of radio frequency space;

(3) The cost of the proposed facilities, including estimated maintenance, and operating costs;

(4) The proposed degree or reliability and whether such degree of reliability is likely to be achieved;

(5) The proposed quality of transmission services and whether such degree of quality is likely to be achieved; and

(6) The capability for orderly expansion;

(d) To determine, with respect to the station sites and operating and maintenance arrangements proposed in application File Nos. 4449 through 4451–C1–P–68, the ability of General to construct and operate the facilities proposed in view of Bell's apparent unwillingness to consummate the arrangements proposed by General;

(e) To determine, in light of the evidence adduced on all the foregoing issues, whether or not, and under what conditions, the public interest, convenience or necessity will be served by the grant of the subject petition for establishment of a physical connection and/or by the grant of any of the subject applications.

17. *It is further ordered,* That the burden of proof on issues (a) and (d) is placed upon General; the burden of proof on issue (b) is placed upon the respective applicants herein; the burden of proof on issue (c) is placed upon AT&T and General; and the burden of proof on issue (e) is placed upon General and the respective applicants herein.

18. *It is further ordered,* That American Telephone and Telegraph Co., Southern Bell Telephone and Telegraph Co., Illinois Bell Telephone Co., New York Telephone Co., General Telephone Company of Florida, Florida Telephone Corp., United Telephone Company of Florida, Florida Public Service Commission, and the Chief, Common Carrier Bureau, are made parties to the proceeding.

19. *It is further ordered,* That a conditional grant is, hereby, made of application File Nos. 646 through 648–C1–P–68 pursuant to the provisions of § 21.27 (g) of our rules and our findings in paragraph 14 herein.

20. *It is further ordered,* That, except as otherwise provided herein, requests contained in petitions to deny and other pleadings, described in appendix A hereto, filed by AT&T, Southern Bell, and General are denied.

21. *It is further ordered,* That the parties desiring to participate herein shall file their notice of appearance in accordance with § 1.221 of the Commission's rules.

Adopted: April 17, 1968.

Released: April 22, 1968.

FEDERAL COMMUNICATIONS COMMISSION,[8]
[SEAL] BEN F. WAPLE,
Secretary.

APPENDIX A

The following pleadings [9] are before the Commission:

"Petition of General Telephone Company of Florida for a Commission order requiring American Telephone and Telegraph Co. To Establish a Point of Connection of its facilities with those of General Telephone Company of Florida at Polk City, Fla." filed January 20, 1967;

"Opposition of American Telephone and Telegraph Co. and Southern Bell Telephone and Telegraph Co." filed February 1, 1967; and

"Reply of General Telephone Company of Florida" filed February 13, 1967.

The following applications and associated pleadings [9] are also before the Commission:

1. Applications of Florida Telephone Corp. for a construction permit to establish additional facilities in the Domestic Public Point-to-Point Microwave Radio Service between Dade City and Plant City, Fla., connecting with facilities of General Telephone Company of Florida near Plant City.

File No. 48–C1–P–67; received July 6, 1966;

2. Applications of American Telephone and Telegraph Co. for construction permits to establish additional facilities in the Domestic Public Point-to-Point Microwave Radio Service between Tampa and Polk City, Fla.

File Nos. 646 through 648–C1–P–67; received August 17, 1966;

"Petition of General Telephone Company of Florida To Deny Applications" filed November 9, 1966;

"Opposition" filed November 23, 1966, by AT&T;

[3] See our Public Notice–G, Nonbroadcast and General Action, Report No. 1142, dated Feb. 6, 1963 (Appendix C hereto).

[4] File Nos. 5035 through 5038–C1–P–67.

[5] File Nos. 1552 through 1556–C1–P–67.

[6] File Nos. 646 through 648–C1–P–67.

[7] Bell does not consider the AT&T applications as mutually exclusive with General's Tampa bypass and Tampa-Plant City proposals. Bell recites that it has advanced compromise proposals predicated on the view that all three sets of applications identified in footnotes 4, 5, and 6 above should be granted.

[8] Commissioners Bartley and Johnson absent.

[9] All pleadings were timely filed.

"Reply to Opposition" filed December 7, 1966 by General;

3. Applications of General Telephone Company of Florida for construction permits to establish additional and new facilities in the Domestic Public Point-to-Point Microwave Radio Service between Tampa and Hillcrest, Fla., connecting with Florida Telephone Corp. near Plant City and connecting with United Telephone Company of Florida near Avon Park, Fla.

File Nos. 1552 through 1556–C1–P–67; received October 10, 1966;

"Petition of Southern Bell Telephone and Telegraph Co. To Deny Applications" filed January 3, 1967;

"Petition To Deny" filed January 4, 1967 by AT&T;

"Opposition of General Telephone Company of Florida To Separate Petitions To Deny Application Filed by Southern Bell Telephone and Telegraph Co. and American Telephone and Telegraph Co." filed January 18, 1967;

"Reply" filed January 30, 1967 by AT&T and Southern Bell;

4. Applications of General Telephone Company of Florida for construction permits to establish additional and new facilities in the Domestic Public Point-to-Point Microwave Radio Service between Clearwater and Polk City (Eva), Fla.

File Nos. 5035 through 5038–C1–P–67; received May 19, 1967;

"Petition of American Telephone and Telegraph Co. and Southern Bell Telephone and Telegraph Co. To Deny Applications" filed July 18, 1967;

"Opposition of General Telephone Company of Florida To Petition of American Telephone And Telegraph Co. and Southern Bell Telephone and Telegraph Co. To Deny Applications" filed August 2, 1967;

5. Application of United Telephone Company of Florida for a construction to establish additional facilities in the Domestic Public Point-to-Point Microwave Radio Service between Avon Park and Hillcrest, Fla., connecting with General Telephone Company of Florida near Hillcrest.

File No. 5774–C1–P–67; received June 26, 1967;

6. Application of American Telephone and Telegraph Co., Illinois Bell Telephone Co., and New York Telephone Co. for authority under section 214(a) of the Communications Act of 1934, as amended, to supplement existing facilities by installing and operating broadband channel groups between locations in Bell System Associated Cos. service areas, and locations in the General Telephone Company of Florida service area;

File No. P–C–6799; received July 26, 1967;

7. Applications of General Telephone Company of Florida for construction permits to establish additional and new facilities in the Domestic Public Point-to-Point Microwave Radio Service between Tampa and Polk City (Eva), Fla.

File Nos. 449 through 4451–C1–P–68; received February 20, 1968;

"Petition To Reject Defective Applications" filed February 29, 1968, by AT&T and Southern Bell Telephone and Telegraph Co.;

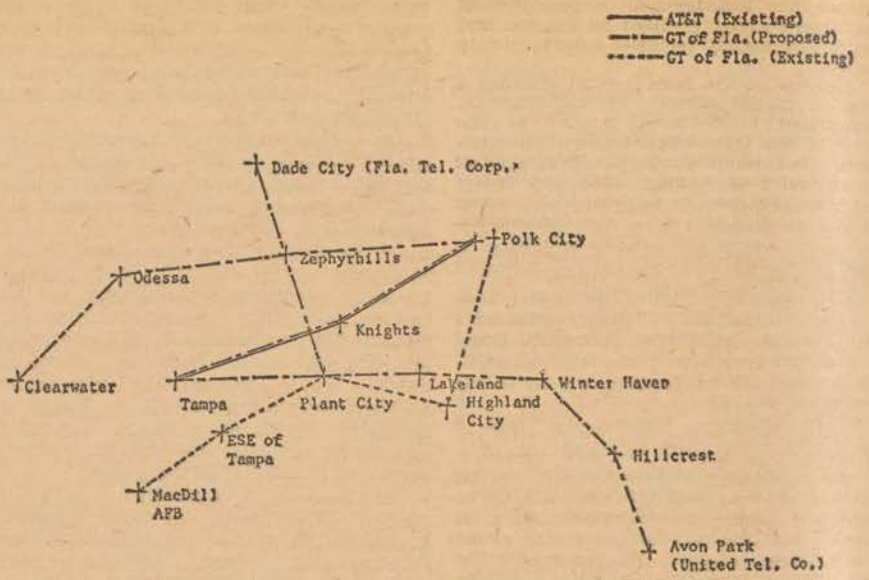
"Opposition of General Telephone Company of Florida To Petition of American Telephone And Telegraph Co. and Southern Bell Telephone and Telegraph Co. To Reject Applications" filed March 12, 1968; and

"Reply to Opposition" filed March 22, 1968.

"Petition To Deny" filed April 3, 1968, by AT&T and Southern Bell.[10]

[10] The said petition does not raise any issue not previously raised by Bell and was not relied upon by the Commission in reaching its conclusions herein. In view of the Commission's action herein, it appears that such petition and any responsive filing(s) have been rendered moot.

APPENDIX B



APPENDIX C

[Report No. 1142]

NONBROADCAST AND GENERAL ACTION

FEBRUARY 6, 1963.

The Commission en banc, by Commissioners Minow (Chairman), Hyde, Bartley, Lee, Craven, and Ford, took the following action on February 6:

APPLICATIONS FOR MICROWAVE TRANSFERS TO TELEPROMPTER APPROVED WITH WARNING

The Commission granted applications involving the transfer of certain point-to-point microwave facilities of Intermountain Microwave in Montana to Teleprompter Tranmission of Kansas, Inc., and of Major Electronics, Inc., in Oregon to Teleprompter Transmission of Oregon, Inc. In so doing it sent warning letters to the parties involved. The following letter was prompted by the Intermountain transaction (the one concerning the Major Electronics deal being almost similar):

"The Commission has before it for consideration the captioned applications filed by Intermountain Microwave for construction permits to establish additional point-to-point microwave radio facilities and an application for consent to assignment of station licenses from Intermountain Microwave to Teleprompter Transmission of Kansas, Inc., a subsidiary of Teleprompter Corp. Examination of the assignment application and exhibits submitted in support thereto disclose that various transactions have taken place between Intermountain Microwave, Teleprompter Corp. and Teleprompter Transmission of Kansas, Inc., prior to the filing of the pending assignment application. Briefly recited, on September 25, 1961, Intermountain Microwave and Teleprompter Corp. entered into a contract for the sale of the licensee's assets and business as a going concern. Subsequently, on October 16, 1961, the purchase price consisting of cash and stock of Teleprompter Corp. was turned over to Intermountain Microwave. On October 25, 1961, the transaction was closed and Intermountain Microwave turned over to Teleprompter Corp. various instruments set forth in the aforesaid agreement. Thereupon on the same date Teleprompter Corp. conveyed all the assets acquired to its subsidiary, Teleprompter Transmission of Kansas, Inc. In addition to all of the foregoing, it also appears that subsequent to the closing various persons employed by Teleprompter Corp. and Teleprompter Transmission of Kansas, Inc., have participated in the activities of the licensee including the solicitation of subscribers for the licensee's microwave radio system. Further, it also appears that Teleprompter Corp. has paid a portion of the operating expenses and has received a share of the profits.

"Section 310(b) of the Communications Act of 1934, as amended, sets forth in pertinent part that 'no construction permit or station license, or any rights thereunder shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.' The aforesaid finding by the Commission is a condition precedent, not a condition subsequent, to the consummation of an assignment or transfer of control. Uncertainty on the part of the licensee or counsel as to the legal consequences of a transfer is no excuse for failure to comply with section 310(b). If a party is uncertain as to whether a proposed transaction results in a transfer within the meaning of section 310(b) such uncertainty should be resolved by bringing the complete facts to the attention of the Commission in advance of the consummation of such transaction.

"The Commission does not necessarily require a common carrier licensee to own the facilities used in its operation of a point-to-point microwave radio service. Further, it is permissible for such licensee to lease facilities from a customer utilizing the services of the licensee. However, it is essential that the licensee at all times retain exclusive responsibility for the operation and control of the facilities in order to avoid a violation of section 310(b). The normal minimum incidents of such interest include the unfettered use of all facilities and equipment used in connection therewith; day to day operation and control; determination of and the carrying out of policy decisions, including the preparation and filing of applications with this Commission; employment, supervision, and dismissal of personnel; payment of financial obligations including expenses arising out of operation; and the receipt of monies and profits derived from the operation of the microwave facilities. Ownership of the licensed facilities by someone other than the licensee is not necessarily inconsistent with these incidents of control. At a minimum, however, where such ownership

rests in hands other than those of the licensee, the maintenance or retention of the latter's exclusive right to operate and control the licensed facilities must be clearly reflected.

"A review of the facts herein indicates a total or partial absence of the aforesaid enumerated incidents of control as the result of the transactions entered into between Teleprompter Corp., Teleprompter Transmission of Kansas, Inc., and Intermountain Microwave. Consequently, based on the evidence before us, the Commission finds that the parties' actions constitute a surrender of control of the licensed facilities in contravention of section 310(b).

"A violation of section 310(b) constitutes a serious infraction of the Commission's processes and cannot be condoned. The Commission views with concern the conduct of the parties herein and wishes to point out that strict and careful compliance with the Communications Act and the Commission's rules is required of licensees. The parties are hereby advised that any further infraction of the Commission's pocesses will not be tolerated and may result in the institution of revocation proceedings. However, since it appears that the aforesaid violation stems from an apparent confusion concerning the Commission's requirements, the Commission will not take any further action at this time. Accordingly, the captioned applications have been granted and the required authorizations will be forwarded under separate cover. This letter will be made a part of the permanent station record and these matters will again be reconsidered in connection with any future violation of the Communications Act or rules."

[F.R. Doc. 68-4975; Filed, Apr. 25, 1968; 8:45 a.m.]

[Docket No. 18139; FCC 68-424]

EGYPTIAN CABLEVISION AND SOUTHERN VIDEO CORP. ET AL.

Memorandum Opinion and Order Instituting Hearing

In re petitions by Egyptian Cablevision and Southern Video Corp., Marion, Murphysboro, Johnston City, West Frankfort, Carterville, and Carbondale, Ill., File No. CATV 100-28; Multi-Channel Cable Co., Paducah, Ky., Docket No. 18139, File No. CATV 100-120; Benton Television Co., Benton, Ky., File No. CATV 100-165; for authority pursuant to § 74.1107 of the rules to operate CATV systems in the Cape Girardeau, Mo., Paducah, Ky., Harrisburg, Ill., television market (ARB 80).

1. The Commission has before it for consideration the above-captioned petitions which request waiver of the hearing requirements of § 74.1107 of the rules to permit the importation of distant television signals into various communities in the Cape Girardeau, Mo.-Paducah, Ky.-Harrisburg, Ill. television market, currently ranked 80th on the basis of a total net weekly circulation of 237,000. Channel assignments in the market and their status are: 6 (NBC), 29 (CP), Paducah; 12 (CBS), 23 (idle), and *39 (idle), Cape Girardeau; 3 (ABC), Harrisburg; *8 (educ.), Carbondale, Ill.; and *22 (idle), Flat River, Mo.

2. The proposals and contentions in support and opposition are as follows:

Egyptian Cablevision and Southern Video Corp. (100-28) plan to operate CATV systems at Marion (11,274), Murphysboro (8,673), Johnston City (3,891), West Frankfort (9,027), Carterville (2,643), and Carbondale (14,670), all in Illinois. These communities are all 20-35 miles from the nearest central cities. Petitioner will carry the three market network stations and the Carbondale educational station, and seeks permission to carry the distant signals of the three St. Louis network stations, the St. Louis independent station, and the three Evansville network affiliates. In support of waiver it is urged that the Grade Bs of the requested distant signals are 30 miles or less away and are receivable by rooftop antenna; that the prospective CATV communities have an affinity to St. Louis and are too small to have significant effect on independent stations; that the market is unique, involving stations over 60 miles apart and stretching over three different States; that antedating the Second Report substantial money and effort has already been expended and that the distant signals are needed to make CATV workable here.

The oppositions filed by three market network stations, but not by the UHF permittee, allege generally: That there are two potential independent UHF stations in the market but that no showing has been made as to impact of the proposed systems on these channels; that neither system expenditures nor economic need is a basis for waiver; that Evansville signals are not available off the air; that importation of the St. Louis stations would upset allocations; and that the unusual nature of the market—a number of small communities spread over a wide area—indicates that CATV would have substantial impact because it would operate in areas almost as large in population as the central cities of the market.

Multi-Channel Cable Co. (100-120) holds a franchise for Paducah, Ky. (34,479), which is in the predicted Grade A contours of Channel 6 (NBC), Paducah, and Channel 12 (CBS), Cape Girardeau, and in the predicted Grade B contour of Channel 3 (ABC), Harrisburg. Petitioner will carry the three local network stations and requests permission to carry the disant signals of the three Nashville network stations, the four St. Louis commercial stations (three networks and one independent), the Evansville ABC affiliate, and the Bowling Green, Ky. independent VHF station. Pertinent arguments in support of the petition are: Substantial amounts of time and money have been spent; the market is artificial, largely rural (60 percent) and unavailable to CATV, with only 13.5 percent of the market in the Grade A contours of all three market stations and no large population centers; Paducah is a small part of the market and station profits are healthy and growing at over 20 percent a year, with bulk of revenues coming from networks; the system will assist the public schools, will help UHF stations, will improve the signals of Channel 12, Cape Girardeau, 87 miles away, and Channel 3, Harrisburg, 53 miles away; and will provide additional Kentucky programing for Kentuckians.[1]

The oppositions from the three market stations allege generally that: The petition is so vague and undocumented as to be unanswerable; the franchise has been outstanding for more than 10 years without being built and has therefore been abandoned; Paducah is an important part of the market and has a UHF proposal pending for Channel 29; the Second Report is also concerned with protection for VHF facilities in modest-sized markets such as Paducah. Petitioner replies that its franchise is still valid on its face, no action has been instituted to cancel it, and that it has not been abandoned.

Benton Television Co. (100-165) proposes to operate a CATV system at Benton, Ky. (3,074). Benton is located approximately 20 miles southeast of Paducah and is within the Grade B or better contours of Channel 3 (ABC), Harrisburg; Channel 6 (NBC), Paducah; Channel 12 (CBS), Cape Girardeau. The system will carry: The three market network signals, the distant signals of the four Nashville VHF stations (three networks and one educational), and the Evansville, Ind. VHF, ABC station. Benton alleges in support of its proposal that the community is within the Grade A of only one of the market stations (Channel 6, Paducah) and is 20 miles from Paducah, but over 40 miles from the Channel 6 transmitter. The system seeks to carry only the nearby stations, is not leapfrogging, and would bring in no VHF independent station. Benton is less than 25 miles from the Grade B of two of the distant stations (CBS and NBC, Nashville), less than 50 miles from the Grade B of the other two distant signals (ABC stations from Nashville and Evansville), and all four signals are received off the air with a high rotor antenna. Benton states that it is reserving a channel for the proposed Kentucky educational station and in the interim will carry the Nashville educational station; that it will provide free service to three city departments, the municipal hospital, and to all schools. It is argued finally: That the system would be too small to harm UHF stations; that the distant signals are needed for a viable system; that the Paducah station does not program for Benton, and Kentucky political candidates go to the Nashville stations for broadcast coverage in Kentucky; that it has no plans to carry distant St. Louis stations; and that carriage of the proposed Paducah UHF station would improve that station's chances.

Oppositions filed by the Paducah and Cape Girardeau stations argue that this market, unlike other top-100 markets, has no central city but is made up of a

[1] Petitioner also requests waiver of carriage and nonduplication requirements on the basis that compliance would "impair the acceptance of its services and create financial, administrative and technical problems which were not contemplated." This request will be denied as totally unsupported.

number of small communities like Benton and that the cumulative impact of this system would be substantial; that Benton has no ties to, and is significantly distant from the distant stations; that petitioner has failed to demonstrate a need for the distant signals or lack of impact upon local UHF development. The permittee for Channel 29, Paducah, one of the two UHF allocations in the market (the other allocation is Channel 23, Cape Girardeau, idle, and approximately 75 miles from Benton), filed comments stating that it has no objection to the proposed Benton system provided it receives carriage and nonduplication and the distant signals are limited to those requested.

3. The Cape Girardeau-Paducah-Harrisburg market contains an unusually large rural population—generally not available to CATV—spread over a large three-State area and comprised of three cities with no common connecting metropolitan area. CATV could in this situation provide a useful supplemental service and at the same time keep intact a large economic base for existing and potential television broadcast stations in the market.

4. Hearing will be ordered for the Paducah proposal (100–120) since it is in one of the three central cities, the essential base for new UHF operations, and proposes to import distant VHF independent signals while a construction permit is outstanding for a UHF station in the CATV community.[2] However, waiver seems appropriate for the proposed systems in Benton (100–165), Marion, Murphysboro, Johnston City, West Frankfort, Carterville, and Carbondale (100–28). All of these communities are located at a distance from the central cities, and with the exception of Carbondale and Marion have populations of less than 10,000. Additionally, there is a construction permit outstanding for Channel 29, Paducah, and the permittee filed comments stating that it has no objection to the CATV proposal for Benton. There are no UHF allocations for the Illinois section of the market. There is an idle UHF allocation in Cape Girardeau, but the community nearest to it with a CATV proposal is 35 miles away. The remaining stations in the market are all basic network affiliates and have made no showing which would indicate that carriage and nonduplication will not "* * * contribute very substantially to insuring (their) viability." Second Report, 2 FCC 2d 725, 783. Finally, most of the signals to be imported place a predicted Grade B signal into part of the market and are receivable off the air. Cf. Fetzer Cablevision, Inc., et al., FCC 67–223, 6 FCC 2d 845; CATV of Rockford, Inc., et al., FCC 67–248, 7 FCC 2d 619.

[2] The objectors have also argued that the Paducah franchise was abandoned by the actions of Mid-West Video Corp., petitioner's predecessor in interest. A letter from the Paducah Corporation Counsel was submitted by WPSD–TV in which it is stated that while no official action has been taken, a "substantial significant legal question" exists as to whether the franchise has been terminated "as a matter of law." Petitioner argues that the franchise is still valid, has not been abandoned, that a previous city attorney advised it in 1965 that the Mid-West Video franchise could be acquired, that it could be extended for 20 years; that subsequently the franchise was acquired and the city was notified; that the franchise is assignable on its face; and that no action has been taken under the specific section of Kentucky law which establishes specific procedures concerning abandoned property. The Commission has refused to involve itself in franchise disputes such as this (Meredith-Avco, Inc., FCC 67–1035, 10 FCC 1d 126) except where the system itself has admitted lack of franchise (American Television Relay, Inc., FCC 67–499, 7 FCC 2d 1021). Since the franchise appears to be valid on its face and no subsequent formal action has been taken to terminate it, it would not appear appropriate for the Commission to become involved. The matter will be left for whatever action is deemed necessary at the local level.

5. We have also inquired into the cumulative effect of the action recommended here (assuming at the outside the same action for all other communities similarly situated). Our analysis shows that the described dispositions would have no effect on about 85 percent of the television homes, i.e., about 85 percent of all television homes in the market would remain unavailable to CATV.[3] The theoretical maximum cumulative effect would thus be approximately 15 percent of all television homes. Accordingly, it appears that the maximum cumulative effect which conceivably could result from action as recommended is not of real consequence. On the other hand the increased program diversity and improved television reception resulting from the CATV proposal would clearly be in the public interest.

Accordingly, it is ordered, That the provisions of § 74.1107 of the rules are waived and the Marion, Murphysboro, Johnston City, West Frankfort, Carterville, Carbondale, and Benton CATV systems are authorized to carry the distant signals as proposed subject to the applicable provisions of § 74.1103 of the rules.

It is further ordered, That the request of Multi-Channel Cable Company for waiver of § 74.1103 of the rules is denied.

It is futher ordered, That the request of Multi-Channel Cable Co. for waiver of the hearing provisions of § 74.1107 of the rules is denied; and pursuant to sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended, and § 74.1107 of the rules, a hearing is ordered as to said matters on the following issues:

1. To determine the present and proposed penetration of CATV service in the Cape Girardeau - Paducah - Harrisburg market;

2. To determine the effects of current and proposed CATV service in the market upon existing, proposed and potential television broadcast stations in the market;

3. To determine (a) the present policy and proposed future plans of petitioners with respect to the furnishing of any service other than the relay of the signals of broadcast stations; and (b) the impact of such services upon broadcast stations in the market; and,

4. To determine in light of the above whether the proposal is consistent with the public interest.

Multi-Channel Cable Co., Turner-Farrar Association, Paducah Newspapers, Inc., and Hirsch Broadcasting Co. are made parties to this proceeding, and to participate, must comply with the applicable provisions of § 1.221 of the Commission's rules. The burden of proof is upon petitioner. A time and place for the hearing will be specified in another order.

Adopted: April 17, 1968.

Released: April 23, 1968.

FEDERAL COMMUNICATIONS COMMISSION,[4]
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68–5041; Filed, Apr. 25, 1968; 8:50 a.m.]

[3] Clinton TV Cable Co., Inc., FCC 68–172, 11 FCC 2d 704.

[Docket No. 18038; FCC 68M–642]

DALE W. FLEWELLING

Order Continuing Hearing

In the matter of revocation of the license of Dale W. Flewelling for FM Broadcast Station KXRQ, Sacramento, Calif., Docket No. 18038.

A prehearing conference having been held on April 22, 1968:

It is ordered, That further hearing procedures are continued pending further order.

Issued: April 22, 1968.

Released: April 23, 1968.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68–5042; Filed, Apr. 25, 1968; 8:50 a.m.]

[Docket No. 17185 etc.; FCC 68M–647]

GENERAL TELEPHONE COMPANY OF FLORIDA ET AL.

Order Scheduling Hearing

In the matter of the petition of General Telephone Company of Florida, Docket No. 17185, for establishment of a physical connection, pursuant to section 201(a) of the Communications Act of 1934, as amended, with facilities of American Telephone and Telegraph Co. and Southern Bell Telephone and Telegraph Co. at Polk City (Eva), Fla.

In re applications of Florida Telephone Corp., Docket No. 18167, File No. 48–C1–P–67, for a construction permit to establish additional facilities in the Domestic Public Point-to-Point Microwave Radio Service between Dade City

[4] Commissioners Bartley and Johnson absent; statements in which Commissioners Cox and Lee concur in part and dissent in part filed as part of original document; Commissioner Loevinger concurring in the result.

and Plant City, Fla.; American Telephone and Telegraph Co., Docket No. 18168, File Nos. 646–C1–P–67, 647–C1–P–67, 648–C1–P–67, for construction permits to establish additional facilities in the Domestic Public Point-to-Point Microwave Radio Service between Tampa and Polk City, Fla.; General Telephone Company of Florida, Docket No. 18169, File Nos. 1552–C1–P–67, 1553–C1–P–67, 1554–C1–P–67, 1555–C1–P–67, 1556–C1–P–67, for construction permits to establish additional and new facilities in the Domestic Public Point-to-Point Microwave Radio Service between Tampa and Hillcrest, Fla., connecting with Florida Telephone Corp. near Plant City and connecting with United Telephone Company of Florida near Avon Park, Fla.; General Telephone Company of Florida, Docket No. 18170, File Nos. 5035–C1–P–67, 5036–C1–P–67, 5037–C1–P–67, 5038–C1–P–67, for construction permits to establish additional and new facilities in the Domestic Public Point-to-Point Microwave Radio Service between Clearwater and Polk City (Eva), Fla.; United Telephone Company of Florida, Docket No. 18171, File No. 5774–C1–P–67, for a construction permit to establish additional facilities in the Domestic Public Point-to-Point Microwave Radio Service between Avon Park and Hillcrest, Fla.; American Telephone and Telegraph Co., Illinois Bell Telephone Co. and New York Telephone Co., Docket No. 18172, File No. P–C–6799, for authority under section 214(a) of the Communications Act of 1934, as amended, to supplement existing facilities by installing and operating broadband channel groups between locations in Bell System Associated Cos. service areas, and locations in the General Telephone Company of Florida service area; and General Telephone Company of Florida, Docket No. 18173, File Nos. 4449–C1–P–68, 4450–C1–P–68, 4451–C1–P–68, for construction permits to establish additional and new facilities in the Domestic Public Point-to-Point Microwave Radio Service between Tampa and Polk City (Eva), Fla.:

It is ordered, That Millard F. French shall serve as Presiding Officer in the above-entitled proceeding; that the hearings therein shall be convened on June 17, 1968, at 10 a.m.; and that a prehearing conference shall be held on May 13, 1968, commencing at 9 a.m.: *And, it is further ordered,* That all proceedings shall take place in the offices of the Commission, Washington, D.C.

Issued: April 22, 1968.

Released: April 23, 1968.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68–5043; Filed, Apr. 25, 1968; 8:50 a.m.]

[Docket Nos. 17778, 17779; FCC 68M–643]

GRAYSON TELEVISION CO., INC., AND HERCULES BROADCASTING CO.

Order Rescheduling Hearing

In re applications of: Grayson Television Co., Inc., Sacramento, Calif., Docket No. 17778, File No. BPCT–3698; Hercules Broadcastng Co., Sacramento, Calif., Docket No. 17779, File No. BPCT–3812; for construction permit for new television broadcast station (Channel 15).

A prehearing conference having been held on April 22, 1968:

It is ordered, That the written cases of the parties heretofore exchanged may be modified, but that such modification shall be solely for the purpose of updating the applicant's showing, and shall not be for the purpose of altering the basic proposals; that such modified exhibits shall be exchanged by May 7, 1968; that notification of witness shall be by May 14, 1968;[1] and that hearing shall commence on June 4, 1968, at 10 a.m. in the offices of the Commission at Washington, D.C.

Issued: April 22, 1968.

Released: April 23, 1968.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68–5044; Filed, Apr. 25, 1968; 8:50 a.m.]

FEDERAL DEPOSIT INSURANCE CORPORATION

INSURED BANKS

Joint Call for Report of Condition

Pursuant to the provisions of section 7(a)(3) of the Federal Deposit Insurance Act each insured bank is required to make a Report of Condition as of the close of business April 18, 1968, to the appropriate agency designated herein, within 10 days after notice that such report shall be made: *Provided,* That if such reporting date is a nonbusiness day for any bank, the preceding business day shall be its reporting date.

Each national bank and each bank in the District of Columbia shall make its original Report of Condition on Office of the Comptroller Form, Call No. 465,[1] and shall send the same to the Comptroller of the Currency, and shall send a signed and attested copy thereof to the Federal Deposit Insurance Corporation. Each insured State bank which is a member of the Federal Reserve System, except a bank in the District of Columbia, shall make its original Report of Condition on Federal Reserve Form 105—Call 187,[1] and shall send the same to the Federal Reserve Bank of the District wherein the bank is located, and shall send a signed and attested copy thereof to the Federal Deposit Insurance Corporation. Each insured State bank not a member of the Federal Reserve System, except a bank in the District of Columbia and a mutual savings bank, shall make its original Report of Condition on FDIC Form 64—Call No. 83,[1] and shall send the same to the Federal Deposit Insurance Corporation.

The original Report of Condition required to be furnished hereunder to the Comptroller of the Currency and the copy thereof required to be furnished to the Federal Deposit Insurance Corporation shall be prepared in accordance with "Instructions for preparation of Reports of Condition by National Banking Associations," dated January, 1961, and any amendments thereto.[1] The original Report of Condition required to be furnished hereunder to the Federal Reserve Bank of the District wherein the bank is located and the copy thereof required to be furnished to the Federal Deposit Insurance Corporation shall be prepared in accordance with "Instructions for the preparation of Reports of Condition by State Member Banks of the Federal Reserve System," dated February, 1961, and any amendments thereto.[1] The original Report of Condition required to be furnished hereunder to the Federal Deposit Insurance Corporation shall be prepared in accordance with "Instructions for the preparation of Report of Condition on Form 64, by insured State banks not members of the Federal Reserve System," dated January, 1961, and any amendments thereto.[1]

Each insured mutual savings bank not a member of the Federal Reserve System shall make its original Report of Condition on FDIC Form 64 (Savings),[1] prepared in accordance with "Instructions for the preparation of Report of Condition on Form 64 (Savings) and Report of Income and Dividends on Form 73 (Savings) by Mutual Savings Banks," dated December, 1962, and any amendments thereto,[1] and shall send the same to the Federal Deposit Insurance Corporation.

K. A. RANDALL,
Chairman, Federal Deposit Insurance Corporation.

WILLIAM B. CAMP,
Acting Comptroller of the Currency.

J. L. ROBERTSON,
Vice Chairman, Board of Governors of the Federal Reserve System.

[F.R. Doc. 68–4994; Filed, Apr. 25, 1968; 8:46 a.m.]

[1] Previous notifications of witnesses are set aside, and all parties shall identify all witnesses they wish produced for cross-examination.

[1] Filed as part of original document.

FEDERAL POWER COMMISSION

[Docket No. G-3636, etc.]

UNION TEXAS PETROLEUM ET AL.

Notice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

APRIL 18, 1968.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service heretofore authorized as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

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) on or before May 10, 1968

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on all applications in which no protest or petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a protest or petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given: Provided, however, that pursuant to § 2.56, Part 2, Statement of General Policy and Interpretations, Chapter I of Title 18 of the Code of Federal Regulations, as amended, all permanent certificates of public convenience and necessity granting applications, filed after July 1, 1967, without further notice, will contain a condition precluding any filing of an increased rate at a price in excess of that designated for the particular area of production for the period prescribed therein unless at the time of filing of protests or petitions to intervene the Applicant indicates in writing that it is unwilling to accept such a condition. In the event Applicant is unwilling to accept such condition the application will be set for formal hearing.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser, field, and location	Price per Mcf	Pressure base
G-3636 ..... D 3-22-68	Union Texas Petroleum, a division of Allied Chemical Corp., Post Office Box 2120, Houston, Tex. 77001 (partial abandonment).	Texas Gas Transmission Corp., Rayne Field, Acadia Parish, La.	(1)	.....
G-4102 ..... C 4-4-68	The Altex Corp., Post Office Box 6798, 5168 Broadway, San Antonio, Tex. 78209.	Tennessee Gas Pipeline Co., a division of Tenneco, Inc., East Alice Field, Jim Wells County, Tex.	15.0952	14.65
G-4579 ..... D 4-10-68	Cities Service Oil Co. (Operator) et al., Cities Service Bldg., Bartlesville, Okla. 74003 (partial abandonment).	Kansas-Nebraska Natural Gas Co., Inc., Hugoton Field, Finney County, Kans.	(2)	.....
G-6304 ..... E 4-4-68	Lone Star Producing Co., (successor to D. E. & R. J. Whelan, Inc.), 301 South Harwood, Dallas, Tex. 75201.	Texas Eastern Transmission Corp., Whelan Field, Harrison and Marion Counties, Tex.	15.0	14.65
G-11637 ..... 3-28-68 [3]	Gulf Oil Corp. (Operator) et al., Post Office Box 1589, Tulsa, Okla. 74102.	El Paso Natural Gas Co., Teague Blinebry Field, Lea County, N. Mex.	10.0	14.65
G-11853 ..... E 4-1-68	Herman George Kaiser (Operator) (successor to Shell Oil Co.) 909 Palace Bldg., Tulsa, Okla. 74103.	Northern Natural Gas Co., Farnsworth Field, Ochiltree County, Tex.	[4] 17.5	14.65
G-11864 ..... D 4-4-68	Mobil Oil Corp., Post Office Box 2444, Houston, Tex. 77001 (partial abandonment).	Lone Star Gas Co., Doyle Field, Stephens County, Okla.	Uneconomical	.....
G-11997 (G-4831) C 4-4-68 [3]	....do.....	Natural Gas Pipeline Co. of America, Old Ocean Field, Brazoria and Matagorda Counties, Tex.	14.0	14.65
G-13634 ..... C 3-29-68	Sunray DX Oil Co., Post Office Box 2039, Tulsa, Okla. 74102.	Northern Natural Gas Co., Northwest Dower Unit, Beaver County, Okla.	15.5	14.65
G-16093 ..... D 4-4-68	Gulf Oil Corp.....	Transwestern Pipeline Co., Southeast Gage Field, Woodward County, Okla.	(5)	.....
G-17246 ..... D 3-27-68	Mobil Oil Corp. (Operator) et al. (partial abandonment).	Sinclair Oil & Gas Co., Abell Field, Pecos County, Tex.	(7)	.....
G-17248 ..... D 3-27-68	....do.....	....do.....	Depleted	.....
G-19838 ..... C 4-1-68	Continental Oil Co., Post Office Box 2197, Houston, Tex. 77001.	Tennessee Gas Pipeline Co., a division of Tenneco, Inc., Grand Isle Area, Offshore, La.	19.5	15.025
G-20020 ..... C 4-1-68	Atlantic Richfield Co., Post Office Box 2819, Dallas, Tex. 75221.	Tennessee Gas Pipeline Co., a division of Tenneco, Inc., Grand Isle Area, Block 42, Offshore Jefferson Parish, La.	19.5	15.025
CI60-355 [6] ..... D 4-1-68	The Estate of Grady H. Vaughn, Jr., deceased, and Jack C. Vaughn (Operators) et al., c/o Jack C. Vaughn, Gen. Manager, 1200 Vaughn Bldg., Dallas, Tex. 75201 (partial abandonment).	Texas Gas Transmission Corp., West Lisbon Field, Claiborne Parish, La.	Uneconomical	.....
CI62-871 ..... E 3-25-68	Phil W. Phillips (successor to May Petroleum, Inc.), Post Office Box 788, Perryton, Tex. 79070.	Michigan Wisconsin Pipe Line Co., Laverne Field, Harper County, Okla.	[9] 17.0	14.65
CI62-1037 ..... E 3-25-68	Consolidated Oil & Gas, Inc. (successor to Shell Oil Co. (Operator) et al.), 550 Petroleum Club Bldg., Denver, Colo. 80202.	El Paso Natural Gas Co., East Boundary Butte Field, Apache County, Ariz.	[10] 18.7	15.025
CI64-47 ..... D 4-8-68	Gulf Oil Corp.....	Cities Service Gas Co., Northwest Quinlan Field, Woodward County, Okla.	(11)	.....
CI65-406 ..... D 4-4-68	Gulf Oil Corp. (Operator) et al..	Cities Service Gas Co., Northwest Lovedale Field, Harper County, Okla.	(11)	.....
CI65-1159 ..... C 4-4-68	Tenneco Oil Co. et al., Post Office Box 2511, Houston, Tex. 77001.	El Paso Natural Gas Co., San Juan Basin, San Juan and Rio Arriba Counties, N. Mex.	13.0	15.025
CI66-470 ..... C 4-4-68	Sunray DX Oil Co.....	Arkansas Louisiana Gas Co., Arkoma Area, Le Flore County, Okla.	15.0	14.65
CI66-559 ..... C 3-28-68	Phillips Petroleum Co., Bartlesville, Okla. 74003.	Panhandle Eastern Pipe Line Co., acreage in Roger Mills County, Okla.	[12] 17.0	14.65
CI66-853 ..... C 4-11-68	Service Gas Products Co. (Operator) et al., 1010 Wilshire Blvd., Los Angeles, Calif. 90017.	Panhandle Eastern Pipe Line Co., acreage in Alfalfa and Dewey Counties, Okla.	[12] 15.0	14.65
CI67-79 ..... C 3-29-68	Tenneco Oil Co.....	Panhandle Eastern Pipe Line Co., South Peek Field, Ellis County, Okla.	17.0	14.65
CI67-167 ..... E 3-29-68	Reading & Bates Production Co. (Operator) et al. (successor to Goff Oil Co. (Operator) et al.), 11th Floor, Philtower Bldg., Tulsa, Okla. 74103.	Northern Natural Gas Co., Northeast Harmon Field, Woodward County, Okla.	[13] 19.924	14.65
CI67-603 ..... C 3-13-68	John E. Schalk, 915 Midland Savings Bldg., Denver, Colo. 80202.	El Paso Natural Gas Co., Ballard Pictured Cliffs (Cinco Diablo No. 6), Rio Arriba County, N. Mex.	12.0	15.025
CI67-1085 ..... C 4-4-68	Sunray DX Oil Co.....	Oklahoma Natural Gas Gathering Corp.[14], Ringwood Field, Major County, Okla.	11.0	14.65
CI68-853 ..... C 3-29-68	Thomas H. Harrington, Post Office Box 4026, Station A, Albuquerque, N. Mex. 87106.	El Paso Natural Gas Co., Mesa Verde Field, Rio Arriba County, N. Mex.	13.0	15.025

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.

Docket No. and date filed	Applicant	Purchaser, field, and location	Price per Mcf	Pressure base
CI68-1148 A 3-28-68	Appalachian Exploration & Development, Inc., c/o Boyd D. Taylor, Regional Counsel, Post Office Box 1473, Charleston, W. Va. 25325.	United Fuel Gas Co., acreage in Kanawha County, W. Va.	28.0	15.325
CI68-1149 A 3-28-68	Humble Oil & Refining Co., Post Office Box 2180, Houston, Tex. 77001.	United Gas Pipe Line Co., Laura LaVelle Field, Houston County, Tex.	15.0	14.65
CI68-1150 (G-5524) F 3-25-68 [15]	William M. Wiseman et al. (successor to Dearing Pipe & Specialty Co.), c/o Alfred T. White, attorney, 603 San Jacinto Bldg., Houston, Tex. 77002.	Texas Eastern Transmission Corp., Kennelly Field, Colorado County, Tex.	14.6	14.73
CI68-1151 A 3-28-68	Roger M. Wheeler, c/o J. B. Bailey, attorney, 602 National Bank of Tulsa Bldg., Tulsa, Okla. 74103.	Arkansas Louisiana Gas Co., Mansfield, Field, Scott County, Ark.	15.0	14.65
CI68-1152 A 3-27-68	Texaco, Inc., Post Office Box 52332, Houston, Tex. 77052.	Southern Natural Gas Co., Block 75, N½ of Block 89 and N½ of Block 90, West Delta Area, Offshore, La.	19.0	15.025
CI68-1153 B 3-28-68	The Superior Oil Co., Post Office Box 1521, Houston, Tex. 77001.	El Paso Natural Gas Co., acreage in Apache County, Ariz.	[16]	----
CI68-1154 B 3-29-68 [17]	Joanna Champlin Thomas et al., c/o Herbert Hiram Champlin, 700 First National Bldg., Enid, Okla. 73701.	Panhandle Eastern Pipe Line Co., Woodward Area, Dewey County, Okla.	Uneconomical	----
CI68-1155 A 3-28-68	Phillips Petroleum Co	Texas Eastern Transmission Corp., Bird Island Field, Kleberg County, Tex.	16.0	14.65
CI68-1156 A 3-29-68	Nabob Production Co., 1501 Taylor St., Amarillo, Tex. 79101.	Diamond Shamrock Oil & Gas Co., Kelln-Tonkawa Field, Lipscomb County, Tex.	15.0	14.65
CI68-1157 (CI68-931) F 3-29-68	Douglas Resources Corp. (successor to Melvin Van Helsdinger [15]), 310 Kermac Bldg., Oklahoma City, Okla. 73102.	Panhandle Eastern Pipe Line Co., Northeast Avard Area, Woods County, Okla.	[19] 15.0	14.65
CI68-1158 (CI67-1647) F 3-29-68	Douglas Resources Corp., (successor to Cleary Petroleum, Inc.).	Panhandle Eastern Pipe Line Co., North Hopeton Field, Woods County, Okla.	[20] 17.0 [12 21] 15.0	14.65
CI69-1159 A 4-1-68	Davis Drilling, Inc., American State Bank Bldg., Great Bend, Kans. 67530.	Panhandle Eastern Pipe Line Co., Marmaton Pool, Greenwood Field, Morton County, Kans.	16.0	14.65
CI68-1160 A 4-1-68	Bentsen-Whittington Oil Co. (Operator) et al., 301 First National Bank Bldg., McAllen, Tex. 78501.	Tennessee Gas Pipeline Co., a division of Tenneco, Inc., Lockhart Field, Starr County, Tex.	16.0	14.65
CI68-1161 A 3-25-68	T. F. Hodge, 1605 Continental National Bank Bldg., Fort Worth, Tex. 76102.	Arkansas Louisiana Gas Co., North Drummond Area, Garfield and Major Counties, Okla.	[22] 16.015	14.65
CI68-1162 (G-17775) F 3-27-68	Sklar Producing Co., Inc. (successor to Hurley Oil and Gas Co.), c/o John M. Shuey, attorney, 604 Johnson Bldg., Shreveport, La. 71101.	Transcontinental Gas Pipe Line Corp., Vacherie Field, St. James Parish, La.	23.05	15.025
CI68-1163 A 3-27-68	W. M. Gallaway, Farmington National Bank, Post Office Box 630, Farmington, N. Mex. 87401.	El Paso Natural Gas Co., Basin Dakota Field, La Plata County, Colo.	13.0	15.025
CI68-1164 (G-12083) F 4-1-68	James A. Wood, Trustee (successor to Mobil Oil Corp.), Box 609, Mission, Tex. 78572.	Tennessee Gas Pipeline Co., a division of Tenneco, Inc., La Reforma Field, Starr County, Tex.	[23] 15.6	14.65
CI68-1165 A 3-29-68	J. W. Kinzer, Allen, Ky. 41601.	Columbian Fuel Corp., acreage in Pike County, Ky.	20.0	15.325
CI68-1166 (CI67-952) F 4-2-68	Franks Petroleum, Inc. (successor to Humble Oil & Refining Co.), Post Office Box 1200, Shreveport, La. 71102.	United Gas Pipe Line Co., West Bryceland Field, Bienville Parish, La.	18.5	15.025
CI68-1167 (CI64-644) F 4-1-68	Aikman Brothers (successor to Ashland Oil & Refining Co.), 706 Bank of the Southwest Bldg., Amarillo, Tex. 79109.	Natural Gas Pipeline Co. of America, Quinland Field, Woodward County, Okla.	[24] 17.015	14.65
CI68-1168 B 4-1-68	Sun Oil Co., 1608 Walnut St., Philadelphia, Pa. 19103.	Texas Eastern Transmission Corp., Appling Field, Calhoun County, Tex.	Depleted	----
CI68-1169 (G-19858) F 4-1-68	American Petrofina Co. of Texas (Operator) et al. (successor to Ralph E. Fair and Rado Refining Co.), Post Office Box 2159, Dallas, Tex. 75221.	Tennessee Gas Pipeline Co., a division of Tenneco, Inc., McAllen Field, Hidalgo County, Tex.	[25] 17.24347	14.65
CI68-1170 (G-12423) F 4-1-68	Mobil Oil Corp. (successor to Texas Eastern Transmission Corp.[26]).	Transcontinental Gas Pipe Line Corp., Dilworth Area, McMullen County, Tex.	[27] 14.189	14.65
CI68-1171 A 4-2-68	Offshore Exploration Corp., Suite 2701, 225 Baronne St., New Orelans, La. 70112.	United Gas Pipe Line Co., Roanoke Field, Jefferson Davis Parish, La.	20.0	15.025
CI68-1172 B 4-3-68	Tenneco Oil Co. (Operator) et al.	Texas Eastern Transmission Corp., South Cottonwood Creek Field, De Witt County, Tex.	[28]	----
CI68-1173 A 4-3-68	Mount Carmel Drilling Co., c/o Lawrence Sadlek, Jr., Skiles Bldg., Post Office Box 251, Mount Carmel, Ill. 62863.	Kentucky-West Virginia Gas Co., Little Blaine Creek, Lawrence County, Ky.	[29] 20.0	15.225
CI68-1174 B 4-3-68	Grace E. and Robert A. Lowther, Middlebourne, W. Va. 26149.	Consolidated Gas Supply Corp., acreage in Tyler County, W. Va.	Uneconomical	----
CI68-1175 B 4-4-68	Edwin L. Cox (Operator) et al., 3800 First National Bank Bldg., Dallas, Tex. 75202.	Texas Eastern Transmission Corp., South Cottonwood Creek Field, De Witt County, Tex.	Depleted	----
CI68-1176 A 4-4-68	Dr. William B. Frymark, et al., 509 Clay St., Hinsdale, Ill. 60521.	United Fuel Gas Co., acreage in Martin County, Ky.	25.0	15.325
CI68-1177 A 4-4-68	Neil E. Hanson (Operator) et al., 1234 Americana Bldg., Houston, Tex. 77002.	Texas Eastern Transmission Corp., La Jara Field, Hidalgo and Willacy Counties, Tex.	16.0	14.65
CI68-1178 A 4-4-68	Union Pacific Railroad Co., 5480 Ferguson Dr., Los Angeles, Calif. 90022.	Mountain Fuel Supply Co., Pine Canyon Unit, Nitchie Gulch Area, Sweetwater County, Wyo.	15.0	15.025
CI68-1179 A 4-3-68	Pioneer Production Corp., Post Office Box 2542, Amarillo, Tex. 79105.	Natural Gas pipeline Co. of America, Southeast Boyd Field, Beaver County, Okla.	17.0	14.65
CI68-1180 A 4-5-68	Edwin L. Cox (Operator) et al.	Texas Gas Transmission Corp., North Maurice Field, Layfayette Parish, La.	21.25	15.025
CI68-1181 B 4-5-68	Pan American Petroleum Corp. (Operator) et al., Post Office Box 591, Tulsa, Okla. 74102.	Valley Gas Transmission, Inc., Sol West Field, Live Oak County, Tex.	Depleted	----
CI68-1182 A 4-8-68	H. L. Hutton, Post Office Box 86, Braman, Okla. 74632.	Arkansas Louisiana Gas Co., Northwest Braman Field, Kay County, Okla.	12.0	14.65
CI68-1183 A 4-4-68	Diamond Shamrock Corp., Post Office Box 631, Amarillo, Tex. 79105.	Northern Natural Gas Co., acreage in Woodward County, Okla.	[30] 17.01343	14.65
CI68-1184 (G-4579) F 4-8-68	Mallonee-Mahoney, Inc. (successor to Cities Service Oil Co.), 925 Sutton Pl., Wichita, Kans. 67202.	Northern Natural Gas Co., Evalyn Field, Seward County, Kans.	16.0	14.65
CI68-1185 A 4-8-68	Wosk-Mitchell, 912 West Goff Bldg., Clarksburg, W. Va. 26301.	United Fuel Gas Co., Rocky Fork Field, Kanawha County, W. Va.	28.0	15.325
CI68-1186 B 4-8-68	Texaco, Inc	Coastal States Gas Producing Co., Alfred (Brownley) Field, Jim Wells County, Tex.	Depleted	----
CI68-1187 B 4-8-68	do	Coastal States Gas Producing Co., Alfred Field, Jim Wells County, Tex.	Depleted	----
CI68-1188 B 4-8-68	do	United Gas Pipe Line Co., Weesatche Field, Goliad County, Tex.	Depleted	----
CI68-1189 A 4-10-68	Natol Petroleum Corp., 1100 Petroleum Club Bldg., Oklahoma City, Okla. 73102.	Arkansas Louisiana Gas Co., Pine Hollow-Arpelar Fields, Pittsburg County, Okla.	15.0	14.65
CI68-1190 A 4-9-68	Elliott A. Riggs, Post Office Box 711, Farmington, N. Mex. 87401.	El Paso Natural Gas Co., Aztec Pictured Cliffs Field, San Juan County, N. Mex.	12.0	15.025

See footnotes at end of table.

Docket No. and date filed	Applicant	Purchaser, field, and location	Price per Mcf	Pressure base
CI68-1191 A 4-9-68	Tenneco Oil Co	Cities Service Gas Co., Waynoka Northeast Field, Woodward County, Okla.	14.0	14.65
CI68-1192 A 4-9-68	do	El Paso Natural Gas Co., Blanco Field, San Juan County, N. Mex.	12.0	15.025
CI68-1193 A 4-9-68	Shell Oil Co., 50 West 50th St., New York, N. Y. 10020.	Texas Eastern Transmission Corp., Sheridan Field, Colorado County, Tex.	18.0	14.65
CI68-1194 A 4-9-68	G. M. Close and W. C. Payne, First National Bldg., Oklahoma City, Okla. 73102.	Panhandle Eastern Pipe Line Co., acreage in Woods County, Okla.	[31] 15.0	14.65
CI68-1195 B 4-10-68	H & S Oil & Gas Co., c/o Maurice K. Jewell, partner, 408 46th St., Vienna, W. Va. 26101.	Consolidated Gas Supply Corp., Williams District, Wood County, W. Va.	Uneconomical	

[1] Insufficient pressure for delivery into pipeline.
[2] Well has ceased to produce in commercial quantities.
[3] Amendment to certificate filed to cover interest of coowner.
[4] Rate in effect subject to refund in Docket No. RI67-301. A previous increase in rate to 16.5 cents per Mcf was made effective subject to refund in Docket No. RI65-475.
[5] Adds acreage acquired from La Gloria Oil & Gas Co., whose interest has heretofore been covered by certificate issued to Pan American Petroleum Corp. in Docket No. G-4831.
[6] Uneconomical to connect to well.
[7] Acreage released to landowners.
[8] Certificate issued to G. H. Vaughn, Jr., and Jack C. Vaughn (Operators) et al.
[9] Subject to upward B.t.u. adjustment.
[10] Rate in effect subject to refund in Docket No. RI67-169.
[11] Available supply of gas from subject acreage is depleted to the extent that well is no longer capable of producing gas in commercial quantities.
[12] Subject to upward and downward B.t.u. adjustment.
[13] Includes 2.924 cents upward B.t.u. adjustment. Subject to upward and downward B.t.u. adjustment.
[14] National Fuels Corp. purchases liquids extracted from Applicant's gas at the Ringwood Gasoline Plant.
[15] Partially succeeds Charles H. Osmond et al., FPC GRS No. 1.
[16] Service abandoned due to cessation of production and subsequent expiration of lease.
[17] Abandons service under certificate issued to Joe N. Champlin, trustee, Docket No. CI67-958.
[18] Coowner under Lone Star Producing Co.'s FPC GRS No. 85.
[19] Applicant states its willingness to accept permanent certificate subject to the same terms as specified by the Commission's order issued Mar. 30, 1964, in Docket No. G-19416 et al.
[20] For gas from acreage committed under initial contract. Rate in effect subject to refund in Docket No. RI68-148.
[21] For gas from acreage committed under amendment.
[22] Includes 0.015-cent tax reimbursement.
[23] Rate in effect subject to refund in Docket No. RI67-273.
[24] Rate in effect subject to refund in Docket No. RI68-128. Subject to upward and downward B.t.u. adjustment.
[25] Rate in effect subject to refund in Docket No. RI60-295.
[26] Service authorized under Texam Oil Corp.'s FPC GRS No. 2, Docket No. G-12423.
[27] Includes tax reimbursement. Subject to downward B.t.u. adjustment.
[28] Leases are no longer capable of producing in quantities sufficient to warrant gathering and compressing into Buyer's system.
[29] If gas contains objectionable elements and the Purchaser elects to clean the gas, price will be 17 cents per Mcf.
[30] Includes 0.01343 cent upward B.t.u. adjustment. Subject to upward and downward B.t.u. adjustment.
[31] Contract rate is 17 cents per Mcf, however, Applicants agree to accept 15 cents per Mcf, plus B.t.u. adjustment.

[F.R. Doc. 68-4937; Filed, Apr. 25, 1968; 8:45 a.m.]

[Docket No. CP68-220, etc.]

MISSISSIPPI RIVER TRANSMISSION CORP. ET AL.

Order Permitting Interventions, Consolidating Applications, and Fixing Date of Prehearing Conference

APRIL 19, 1968.

Mississippi River Transmission Corp., Docket No. CP68-220; Arkansas Louisiana Gas Co., Docket No. CP65-209; United Gas Pipe Line Co., Docket No. CP68-222.

In its application filed February 5, 1968, in Docket No. CP68-220, Mississippi River Transmission Corp. (Mississippi River) seeks a certificate of public convenience and necessity authorizing it to construct and operate pipeline and compressor facilities at an estimated cost of $25,462,000 for the purpose of enlarging the capability of its interstate pipeline by about 100,000 Mcf per day which it alleges is necessary to meet the expanding firm requirements for its winter peak in 1968-69 and will be an economical method of providing for minor additional system capacity expansion. It proposes to purchase an additional 50,000 Mcf per day from United Gas Pipe Line Co. (United Gas) at Perryville, La., and that company has filed, in Docket No. CP68-222, an interdependent application requesting a certificate of public convenience and necessity authorizing it to sell gas to Mississippi River and to construct and operate additional pipeline facilities and appurtenance at an estimated cost of $3,227,000 for that increased delivery. As part of Mississippi River's expansion program, it will construct facilities for the receipt and compression of additional purchases of interruptible gas from Arkansas Louisiana Gas Co. (Ark La). In Docket No. CP65-209, the latter company has asked permission to amend its previously issued certificate to increase its authorized daily maximum deliveries from 25,000 Mcf to 75,000 Mcf of interruptible gas to be delivered during the October 15-April 15 winter season.

Further details concerning Mississippi River's United Gas' and Ark La's applications have previously been given in separate notices issued February 5, February 8, and January 11, 1968, respectively, and published in the FEDERAL REGISTER on the dates and pages indicated.

Docket No.	Date of publication	Citation
CP68-220	2-13-1968	33 F.R. 2909
CP68-222	2-14-1968	33 F.R. 2961
CP65-209	1-18-1968	33 F.R. 653

Petitions seeking leave to intervene in this proceeding were filed as indicated in the following tabulation:

Petitioner's name and alleged basis for intervention	Docket No.	Dates of filing
Joint petition of Laclede Gas Co., Missouri Natural Gas Co., and Midwest Missouri Gas Co., States Mississippi River furnishes total requirements.	CP68-220	Feb. 12, 1968
Public Service Commission of the State of Missouri. Filed notice of intervention pursuant to § 1.8(a)(1) of the Commission's rules of practice.	CP68-220	Feb. 19, 1968
Owens Illinois, Inc., Firm industrial customer of Mississippi River.	CP68-220	Feb. 20, 1968
Three joint petitions of National Coal Association and Mid-West Coal Producers Institute, Inc., Represent suppliers of competitive fuel.	CP68-220 CP68-222 CP65-209	Feb. 29, 1968 Feb. 29, 1968 [1] Mar. 20, 1968

[1] Not filed within the time prescribed for filing. As to the reason for filing late, Petitioners state they were not aware that the amendment for increased sales was a part of an alleged larger expansion program by Mississippi River.

All those requesting permission to intervene, except for the National Coal Association and Mid-West Coal Producers Institute (hereinafter referred to as the Coal Groups), favor granting the application and request a shortened procedure. The Public Service Commission of Missouri also favors the application and joins in the request for shortened procedure. Those indicated as customers of Mississippi River state that there interests cannot be adequately represented without their participation in any formal or contested hearing which may be held.

The Coal Groups request a formal hearing be held. They allege that some of their members market energy in the area served by Mississippi River and that the Mississippi River pipeline expansion program would be utilized to replace the bituminous coal energy supply from Illinois, Indiana, and the "Western Kentucky Producing Field" and that such replacement would not be a rational energy policy for the use of national resources nor in the public interest. The Coal Groups have also filed, on March 18, 1968, a motion to consolidate the aforementioned applications.

Applicants and some intervenors oppose the Coal Groups request for intervention by their answers and by United Gas' motion to dismiss, claiming that no direct harm can be shown by the Coal Groups to result from the instant application and further that the delay incident to a formal hearing would impede their proposed expansion program to an extent that would not be in the public interest. Applicants Mississippi River and Arkansas Louisiana oppose the Coal Groups request for consolidating Docket No. CP65-209 with Docket Nos. CP68-220 and CP68-222 stating, inter alia, that while the latter two are clearly interdependent, there is no such interdependence between Ark La's petition to amend and Mississippi River's application since Mississippi River has no obligation to receive any of the interruptible gas to be sold under Ark La's requested amendment.[1]

[1] Laclede Gas Co. joins Mississippi River and Ark La in opposing the requested consolidation.

While there appears to be some merit in Applicants' contentions that the Coal Groups allegations of direct harm are not specific, ruling case law requires that the Coal Groups, as representatives of competitors in the fuels market, should be allowed to participate in the administrative process which determines the public convenience and necessity so that they may protect their self interest. National Coal Association v. FPC, 191 F. 2d 462 (1951); Virginia Petroleum Jobbers Association v. FPC, 265 F. 2d 364 (1959); Juarez Gas Co. v. FPC, 375 F. 2d 595, 598 (CADC, 1967) and Northern Natural Gas Co., et al., 23 FPC, 708, 710 (1960).

The application of Ark La to amend its certificate should be consolidated with those of United Gas and Mississippi since both the deliveries of United and Arkansas Louisiana are part of Mississippi River's overall gas supply and independent scrutiny of that application alone could not disclose its economic effect on the St. Louis market.

The Commission finds:

(1) Although the joint petition of National Coal Association and Mid-West Coal Producers Institute to intervene in Docket No. CP65–209 was not filed within the time perscribed by § 1.8(d) of the Commission's rules of practice and procedure, good cause has been shown to permit the late filing.

(2) The applications of Mississippi River, United Gas, and Arkansas Louisiana in Docket Nos. CP68–220, CP68–222, and CP65–209 respectively, are related and their consolidation for purposes of hearing is in the public interest.

(3) It is desirable to allow the entities which have filed petitions to intervene to become interveners in this proceeding in order that they may establish the facts and law from which the nature and validity of their rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

The Commission orders:

(A) The above-named petitioners are hereby permitted to become interveners in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such interveners shall be limited to matters which might affect the asserted rights and interests as specificially set forth in said petitions for leave to intervene: *And provided, further,* That the admission of such interveners shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) Pursuant to the provisions of § 1.18 of the Commission's rules of practice and procedure, a prehearing conference before a duly designated presiding examiner shall commence at 10 a.m., e.s.t., on April 25, 1968, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C. 20426, for the purpose of considering all matters at issue in the proceeding, determining the manner and time within which evidence shall be presented, fixing the date on which the hearing shall commence, and entertaining adoption of suggestions which may expedite the proceeding.

(C) The applications of Mississippi River Transmission Corp., United Gas Pipe Line Co., and Arkansas Louisiana Gas Co. in Docket Nos. CP68–220, CP68–222, and CP65–209 are consolidated for purposes of hearing.

(D) Applicants shall, within 5 days after issuance of this order, serve copies of their applications and supplements thereto and other filings, if any, upon all parties to this consolidated proceeding, unless such service has heretofore been made.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

[F.R. Doc. 68–4980; Filed, Apr. 25, 1968; 8:45 a.m.]

FEDERAL MARITIME COMMISSION

DELTA STEAMSHIP LINES, INC.

Order of Revocation

Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation No. P–25 and Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages No. C–1,040.

Whereas, Delta Steamship Lines, Inc., 1700 International Trade Mart, 2 Canal Street, New Orleans, La. 70130, has ceased to operate passenger vessels subject to section 2 and 3 of Public Law 89–777, and,

Whereas, Delta Steamship Lines, Inc., has returned Certificate (Performance) No. P–25 and Certificate (Casualty) No. C–1,040 to the Commission for revocation:

It is ordered, That Certificate (Performance) No. P–25 and Certificate (Casualty) No. C–1,040 be and are hereby revoked effective this date.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served on Delta Steamship Lines, Inc.

By the Commission, April 17, 1968.

THOMAS LISI, *Secretary.*

[F.R. Doc. 68–4998; Filed, Apr. 25, 1968; 8:46 a.m.]

ATLANTIC PASSENGER STEAMSHIP CONFERENCE

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 609; 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 20 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. R. M. L. Duffy, Secretary General, Atlantic Passenger Steamship Conference, 139 Sandgate Road, Folkestone, Kent, England.

Agreement No. 7840–73 modifies the basic agreement of the Atlantic Passenger Steamship Conference to provide that Conference action shall be by unanimous agreement of the Member Lines except as provided in Article 6(a) thereof. Article 6(a) is amended to provide that commissions and handling fees to be paid by the Member Lines to their agents or subagents shall be established by agreement of at least 75 percent of the Member Lines.

Dated: April 23, 1968.

By order of the Federal Maritime Commission.

THOMAS LISI, *Secretary.*

[F.R. Doc. 68–4999; Filed, Apr. 25, 1968; 8:46 a.m.]

BLUE STAR LINE, LTD., ET AL.

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 609; 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 20 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:

Edmund Smith, Esq., Casey, Lane & Mittendorf, 26 Broadway, New York, N.Y. 10004.

Agreement No. 9715 between Blue Star Line, Ltd., Port Line, Ltd., and Ellerman Lines, Ltd. (1) permits the parties to arrange advertising and sailing schedules so as to avoid conflicting sailing dates in the trade from Australia to U.S. Atlantic and Gulf ports; and (2) appoints Joint Cargo Services Pty., Ltd. to act as agent for the parties in Australia for the solicitation and booking of cargoes, collection of freights, adjustment of sailing schedules at Australian ports and in managing the operation of inbound vessels and the collection of freight.

Dated: April 23, 1968.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 68-5000; Filed, Apr. 25, 1968; 8:47 a.m.]

FEDERAL RESERVE SYSTEM

INSURED BANKS

Joint Call for Report of Condition

CROSS REFERENCE: For a document relating to a joint call for report of condition of insured banks, see F.R. Doc. 68-4994, Federal Deposit Insurance Corporation, *supra*.

NORTHWEST BANCORPORATION

Order on Request for Reconsideration

In the matter of the application of Northwest Bancorporation, Minneapolis, Minn., for approval of acquisition of 85 percent or more of the voting shares of The First National Bank of Ely, Ely, Minn.

This matter comes before the Board on a request filed by the Independent Bankers of Minnesota, a Protestant in these proceedings, that the Board reconsider its order dated January 31, 1968, whereby the Board approved the application of Northwest Bancorporation, filed pursuant to section 3(a) of the Bank Holding Company Act of 1956, for prior approval of the acquisition of 85 percent or more of the voting shares of The First National Bank of Ely, Ely, Minn.

The request for reconsideration was filed by letter dated February 22, 1968, and was supplemented by a letter dated March 12, 1968. Applicant, through its counsel, opposed the request by memorandum dated February 26, 1968, and responded, by letter dated March 14, 1968, to the supplement filed by the Independent Bankers of Minnesota.

Rule 262.3(f)(6) of the Board's rules of procedure (12 CFR 262.3(f)(6)) provides that the Board will not grant a request for reconsideration of its action unless the request presents relevant facts which, for good cause shown, were not previously presented to the Board, or unless it otherwise appears to the Board that reconsideration would be appropriate.

The request herein does not present any evidence or factual assertions not earlier considered in detail by the Board in connection with its original decision. Nor does it appear that developments in the applicable law or other circumstances since that decision so affect the Board's order or statement in this matter as to make reconsideration appropriate.

It is hereby ordered, For the reasons set forth herein, that the request for reconsideration of the Board's order and accompanying statement[1] of January 31, 1968, with respect to the subject application be and hereby is denied.

Dated at Washington, D.C., this 19th day of April 1968.

By order of the Board of Governors.[2]

[SEAL] ROBERT P. FORRESTAL,
Assistant Secretary.

[F.R. Doc. 68-4981; Filed, Apr. 25, 1968; 8:45 a.m.]

VIRGINIA COMMONWEALTH BANKSHARES, INC.

Order Approving Application Under Bank Holding Company Act

In the matter of the application of Virginia Commonwealth Bankshares, Inc., Richmond, Va., for approval of acquisition of all the voting shares to be issued by The First Colonial Bank, Virginia Beach, Va., a proposed new bank.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and § 222.4(a)(3) of Federal Reserve Regulation Y (12 CFR 222.4(a)(3)), an application by Virginia Commonwealth Bankshares, Inc., Richmond, Va., for the Board's prior approval of acquisition of all of the voting shares to be issued by The First Colonial Bank, Virginia Beach, Va., a proposed new bank.

As required by section 3(b) of the Act, the Board notified the Commissioner of Banking for the State of Virgina of the application and requested his views and recommendation. The Commissioner recommended approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on November 30, 1967 (32 F.R. 16452), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered by the Board.

It is hereby ordered, For the reasons set forth in the Board's statement[1] of this date, that said application be and hereby is approved, provided that the acquisition so approved shall not be consummated: (a) Before the 30th-calendar day following the date of this order or, (b) later than 3 months after the date of this order unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Richmond pursuant to delegated authority, and that The First Colonial Bank shall be open for business not later than 6 months after the date of this order.

Dated at Washington, D.C., this 18th day of April 1968.

By order of the Board of Governors.[2]

[SEAL] ROBERT P. FORRESTAL,
Assistant Secretary.

[F.R. Doc. 68-4982; Filed, Apr. 25, 1968; 8:45 a.m.]

OFFICE OF EMERGENCY PLANNING

TRUST TERRITORY OF THE PACIFIC ISLANDS

Notice of Major Disaster

Pursuant to the authority vested in me by the President under Executive Order 10427 of January 16, 1953, Executive Order 10737 of October 29, 1957, and Executive Order 11051 of September 27, 1962 (18 F.R. 407, 22 F.R. 8799, 27 F.R. 9683); Reorganization Plan No. 1 of 1958, Public Law 85-763, and Public Law 87-296; by virtue of the Act of September 30, 1950, entitled "An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes" (42 U.S.C. 1855-1855g), as amended; notice is hereby given of a declaration of "major disaster" by the President in his telegram dated April 18, 1968, reading in part as follows:

I have determined that the damage in the various areas of the Trust Territory of the Pacific Islands caused by Typhoon Jean is of sufficient severity and magnitude to warrant declaration of major disaster.

I do hereby determine the following areas in the Trust Territory of the Pacific Islands to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 18, 1968:

The Areas of:

Northern Mariana Islands.
Northern Truk Islands.

[1] Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Minneapolis.

[2] Voting for this action: Chairman Martin, and Governors Robertson, Mitchell, and Maisel. Absent and not voting: Governors Daane, Brimmer, and Sherrill.

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Richmond.

[2] Voting for this action: Chairman Martin, and Governors Mitchell, Daane, Maisel, and Sherrill. Absent and not voting: Governors Robertson and Brimmer.

Dated: April 19, 1968.

PRICE DANIEL,
Director,
Office of Emergency Planning.

[F.R. Doc. 68-4989; Filed, Apr. 25, 1968; 8:46 a.m.]

SECURITIES AND EXCHANGE COMMISSION

AMERICAN CHECKMASTER SYSTEM, INC.

Order Suspending Trading

APRIL 22, 1968.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of American Checkmaster System, Inc., Houston, Tex., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15 (c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period April 22, 1968, at 11:15 a.m., e.s.t., through May 1, 1968, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 68-5019; Filed, Apr. 25, 1968; 8:48 a.m.]

[File No. 1-4672]

CAMEO-PARKWAY RECORDS, INC.

Order Suspending Trading

APRIL 22, 1968.,

The common stock, 10-cent par value, of Cameo-Parkway Records, Inc., Philadelphia, Pa., being listed and registered on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Cameo-Parkway Records, Inc., being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such Exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to sections 15 (c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in such securities on the American Stock Exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period April 23, 1968, through May 2, 1968, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 68-5020; Filed, Apr. 25, 1968; 8:48 a.m.]

[70-4620]

COLUMBIA GAS SYSTEM, INC.

Notice of Proposed Issue and Sale of Short-Term Notes

APRIL 22, 1968.

Notice is hereby given that The Columbia Gas System, Inc. ("Columbia"), 120 East 41st Street, New York, N.Y. 10017, a registered holding company, has filed an application and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating section 6(b) thereof and Rule 50(a) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

Columbia requests that, from the date of the granting of the application to June 1, 1969, the exemption from the provisions of section 6(a) of the Act afforded to it by the first sentence of section 6(b) thereof, relating to the issue and sale of short-term notes, be increased from 5 percent to approximately 14 percent of the principal amount and par value of the other securities of Columbia then outstanding. Pursuant thereto, Columbia proposes, from time to time, to issue and sell short-term notes (including commercial paper) in an aggregate face amount of not more than $140 million to be outstanding at any one time. Generally, Columbia will make the proceeds from the sale of these notes available to its subsidiary companies for construction, for the purchase of underground storage gas during the summer months, and for other short-term seasonal requirements, in accordance with the terms of an earlier filing with this Commission (File No. 70-4607) (Holding Company Act Release No. 16011). Of the $140 million to be borrowed, $80 million will be used for the subsidiary companies' underground storage gas and other short-term seasonal requirements and will be repaid from cash generated during the winter months. The balance is to be used for the subsidiary companies' construction and will be repaid through the sale of long-term debt. The subsidiary companies' construction programs are estimated to aggregate $167,594,900.

Columbia has already negotiated bank loans of up to $80 million for short-term seasonal requirements. The names of the banks and the maximum borrowings therefrom are as follows:

Bankers Trust Co., New York, N.Y	$3,800,000
Brown Brothers, Harriman & Co., New York, N.Y	750,000
The Charleston National Bank, Charleston, W. Va	1,200,000
Chemical Bank New York Trust Co., New York, N.Y	10,200,000
The City National Bank and Trust Company of Columbus, Ohio	1,200,000
The Cleveland Trust Co., Cleveland, Ohio	1,300,000
First-City National Bank of Binghamton, N.Y	120,000
The First Huntington National Bank, Huntington, W. Va	550,000
The First-Knox National Bank, Mt. Vernon, Ohio	100,000
First and Merchants National Bank of Richmond, Va	410,000
First National Bank of Mansfield, Ohio	300,000
First National Bank of Toledo, Ohio	300,000
First National City Bank, New York, N.Y	5,800,000
First National City Bank of Alliance, Ohio	200,000
First Security National Bank and Trust Co., Lexington, Ky	450,000
Glen National Bank and Trust Co., Watkins Glen, N.Y	50,000
The Huntington National Bank of Columbus, Ohio	1,800,000
Irving Trust Co., New York, N.Y	3,800,000
Manufacturers Hanover Trust Co., New York, N.Y	5,800,000
Mellon National Bank and Trust Co., Pittsburgh, Pa	7,400,000
Morgan Guaranty Trust Company of New York, N.Y	27,320,000
The National Bank of Commerce, Charleston, W. Va	200,000
The Ohio Citizens Trust Co., Toledo, Ohio	300,000
The Ohio National Bank of Columbus, Ohio	2,300,000
Pittsburgh National Bank, Pittsburgh, Pa	2,200,000
The Richland Trust Co., Mansfield, Ohio	200,000
The Toledo Trust Co., Toledo, Ohio	1,200,000
The Union National Bank of Pittsburgh, Pa	750,000
Total	80,000,000

Pursuant to agreements with the banks, the $80 million of notes will be issued no later than November 1, 1968, and will mature as follows: $25 million on February 28, 1969; $25 million on March 31, 1969; and $30 million on April 30, 1969. The notes will bear interest at the prime rate for commercial loans in effect on the date of the agreements (6 percent per annum) and will be prepayable without premium or penalty, unless prepaid with funds borrowed from banks at a lower rate of interest.

Prior to any additional bank borrowings pursuant to the authorization requested herein, a list of participating banks, the amount of their participations, and the terms of the borrowings will be filed by post-effective amendment.

Columbia also proposes during the period commencing with the date of our order and ending June 1, 1969, to issue and sell, from time to time, commerical paper in the form of promissory notes to one or more dealers in commercial paper, up to $140 million face amount to be outstanding at any one time. The aggregate amount of commercial paper notes and of bank notes outstanding at

any one time will not exceed $140 million. It is Columbia's intention initially to sell commercial paper and continue to do so as long as the effective interest rate is less than the prime commercial bank rate which Columbia would have to pay to the banks for an equivalent amount of funds as of the date of borrowing. It is further anticipated that $80 million of such commercial paper will be converted to bank loans, as noted above, on or before November 1, 1968.

The commercial paper notes will be of varying maturities, not to exceed 270 days, and none will be prepayable prior to maturity. The actual maturities will be determined by market conditions, effective interest cost to Columbia, and Columbia's anticipated cash requirements at the time of issue. Each commercial paper note will be issued in denominations of not less than $50,000 and not more than $1 million, and will be sold to the dealers at a discount which will be not in excess of the discount rate per annum prevailing at the date of issuance for prime commercial paper of the particular maturity and which will not exceed the bank prime rate which Columbia would have to pay on the date of issuance.

It is stated that no commission or fee will be payable in connection with the issue and sale of the commercial paper notes. Each dealer, as principal, will reoffer such notes at a discount rate of one-eighth of 1 percent per annum less than the discount rate to Columbia. The notes will be reoffered to no more than 100 customers of each dealer identified and designated in a list (nonpublic) prepared in advance. No additions will be made to this customer list, which consists of institutional investors which invest funds in commercial paper. It is expected that Columbia's commercial paper notes will be held by customers to maturity, but, if they wish to resell prior thereto, the dealers, pursuant to a repurchase agreement, will repurchase the notes and reoffer the same to others in the group of 100 customers. Columbia states that the cost of commercial paper borrowing for companies with credit comparable to Columbia's has averaged approximately three-fourths of 1 percent per annum less than the prime rate of banks in New York City.

Columbia requests exception from the competitive bidding requirements of Rule 50 for the proposed issue and sale of its commercial paper pursuant to clause (a)(5)(B) thereof. Columbia states that the proposed commercial paper notes will have a maturity of 9 months or less, that it is not practical to invite competitive bids for commercial paper, and that current rates for commercial paper for such prime borrowers as Columbia are published daily in financial publications.

The fees and expenses to be paid by Columbia in connection with the proposed transactions are estimated at $700. It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than May 9, 1968, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should 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 the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended or as it may be further amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

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

[F.R. Doc. 68-5021; Filed, Apr. 25, 1968; 8:48 a.m.]

[File No. 2-14698]

CORMAC CHEMICAL CORP.

Order Suspending Trading

APRIL 22, 1968.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Cormac Chemical Corp., New York, N.Y., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period April 23, 1968, through May 2, 1968, both dates inclusive.

By the Commission.

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

[F.R. Doc. 68-5022; Filed, Apr. 25, 1968; 8:48 a.m.]

[812-2285]

MUNICIPAL INVESTMENT TRUST FUND, SERIES J

Notice of Filing of Application for Order of Exemption

APRIL 22, 1968.

Notice is hereby given that Municipal Investment Trust Fund, Series J ("Applicant"), 55 Broad Street, New York, N.Y., a unit investment trust registered under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 6(c) of the Act for an order of the Commission exempting Applicant from compliance with the provisions of section 14(a) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below.

Applicant is one of a series of similar funds named "Municipal Investment Trust Fund," and will be governed by a trust agreement under which Goodbody & Co. and Bache & Co. will act as sponsors and the United States Trust Company of New York as trustee. Pursuant to the trust agreement, the sponsors will deposit with the trustee between $4 million and $6 million principal amount of bonds which the sponsors shall have accumulated for such purpose and simultaneously with such deposit will receive from the trustee registered certificates for between 4,000 and 6,000 units. Applicant proposes to offer such units for sale to the public and for this purpose a registration statement under the Securities Act of 1933 has been filed which has not yet become effective. The trust agreement does not provide for the issuance of additional units. The proceeds of bonds which may be sold, redeemed or which mature will be distributed to unit holders.

Units will remain outstanding until redeemed or until the termination of the trust agreement, which may be terminated by 100 percent agreement of the unitholders of Applicant, or, in the event that the value of the bonds shall fall below 40 percent of the principal amount of the fund, upon direction of the sponsors to the trustee. In connection with the requested exemption, the sponsors have agreed to refund the sales load to purchasers of units, if within 90 days after the registration statement under the Securities Act becomes effective, the net worth of Applicant shall be reduced to less than $100,000 or if Applicant is terminated. The sponsors will instruct the trustee on the date the bonds are deposited that if Applicant shall at any time have a net worth of less than 40 percent of the principal amount of the fund, as a result of redemption by the sponsors of units constituting a part of the unsold units, the trustee shall terminate the trust in the manner provided in the trust agreement and distribute any bonds or other assets deposited with the trustee pursuant to the trust agreement as provided therein.

The sponsors have agreed to refund any sales load to any purchaser of units purchased from the sponsors or any participating dealer on demand and without any deduction in the event of such termination. In addition, it is the sponsors' intention to maintain a market for the units of Applicant and continually to offer to purchase such units at prices in excess of the redemption price as set forth in the trust agreement, although the sponsors are not obligated to do so.

Section 14(a) of the Act requires that a registered investment company (a) have a net worth of at least $100,000 prior to making a public offering of its securities, (b) have previously made a public offering and at that time have had a net worth of $100,000, or (c) have made arrangements for at least $100,000 to be paid in by 25 or fewer persons before acceptance of public subscriptions.

Section 6(c) of the Act provides, among other things, that the Commission, by order upon application, may conditionally or unconditionally exempt any person from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than May 9, 1968, 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 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 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. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

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

[F.R. Doc. 68-5023; Filed, Apr. 25, 1968; 8:48 a.m.]

[File No. 7-2897]

STUDEBAKER-WORTHINGTON, INC.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

APRIL 22, 1968.

In the Matter of application of the Boston Stock Exchange for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Studebaker-Worthington, Inc.; File No. 7-2897.

Upon receipt of a request, on or before May 7, 1968, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

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

[F.R. Doc. 68-5024; Filed, Apr. 25, 1968; 8:48 a.m.]

[File No. 7-2898]

STUDEBAKER-WORTHINGTON, INC.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

APRIL 22, 1968.

In the matter of application of the Detroit Stock Exchange for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Studebaker-Worthington, Inc.; File No. 7-2898.

Upon receipt of a request, on or before May 7, 1968, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

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

[F.R. Doc. 68-5025; Filed, Apr. 25, 1968; 8:48 a.m.]

[File No. 7-2899]

STUDEBAKER-WORTHINGTON, INC.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

APRIL 22, 1968.

In the matter of application of the Midwest Stock Exchange for unlisted trading privileges in a certain security.

The above-named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Studebaker-Worthington, Inc.; File No. 7-2899.

Upon receipt of a request, on or before May 7, 1968, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

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

[F.R. Doc. 68-5026; Filed, Apr. 25, 1968; 8:48 a.m.]

[File No. 7-2900]

STUDEBAKER-WORTHINGTON, INC.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

APRIL 22, 1968.

In the matter of application of the Pacific Coast Stock Exchange for unlisted trading privileges in a certain security.

The above-named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Studebaker-Worthington, Inc.; File No. 7-2900.

Upon receipt of a request, on or before May 7, 1968, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

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

[F.R. Doc. 68-5027; Filed, Apr. 25, 1968; 8:49 a.m.]

[File No. 7-2901]

STUDEBAKER-WORTHINGTON, INC.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

APRIL 22, 1968.

In the matter of application of the Philadelphia - Baltimore - Washington Stock Exchange for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Studebaker-Worthington, Inc.; File No. 7-2901.

Upon receipt of a request, on or before May 7, 1968, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

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

[F.R. Doc. 68-5028; Filed, Apr. 25, 1968; 8:49 a.m.]

[File No. 7-2902]

STUDEBAKER-WORTHINGTON, INC.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

APRIL 22, 1968.

In the matter of application of the Pittsburgh Stock Exchange for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Studebaker-Worthington, Inc.; File No. 7-2902.

Upon receipt of a request, on or before May 7, 1968, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

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

[F.R. Doc. 68-5029; Filed, Apr. 25, 1968; 8:49 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

APRIL 23, 1968.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 41302—*Wheat or grain sorghums to Texas Gulf Ports.* Filed by The Atchison, Topeka, and Santa Fe Railway Co. (No. 95-A), for and on behalf of itself. Rates on wheat or grain sorghums, in bulk, in carloads, from points in Colorado, Kansas, Missouri, New Mexico, and Oklahoma, to Gulf Ports, viz: Beaumont, Galveston, Houston and Texas City, Tex.

Grounds for relief—Motortruck and barge competition.

Tariff—Supplement 34 to The Atchison, Topeka, and Santa Fe Railway Co. tariff ICC 15044.

FSA No. 41303—*Chlorine from Charleston, Tenn.* Filed by O. W. South, Jr., agent (No. A6001), for interested rail carriers. Rates on chlorine, in tank carloads, from Charleston, Tenn., to St. Louis, Mo., and East St. Louis, Ill.

Grounds for relief—Market competition.

Tariff—Supplement 199 to Southern Freight Association, agent, tariff ICC S-272.

FSA No. 41304—*Salt to Charlotte, N.C.* Filed by Traffic Executive Association-Eastern Railroads, agent (E.R. No. 2913), for interested rail carriers. Rates on salt, in bulk, in covered hopper cars, minimum weight 200,000 pounds per car, aggregate minimum weight of 600,000 pounds per shipment, from Rittman, Ohio, to Charlotte, N.C.

Grounds for relief—Market Competition.

Tariff—Supplement 39 to Traffic Executive Association-Eastern Railroads, agent, tariff ICC C-262.

FSA No. 41305—*Iso-octyl alcohol from Texas points to Chicago and Lemont, Ill.* Filed by Southwestern Freight Bureau, agent (No. B-9070), for interested rail carriers. Rates on iso-octyl alcohol, other than perfumery grade, in tank carloads, from specified points in Texas, to Chicago, Ill., and points grouped therewith, and Lemont, Ill.

Grounds for relief—Rate relationship.

Tariff—Supplement 38 to Southwestern Freight Bureau, agent, tariff ICC 4722.

FSA No. 41306—*Industrial sand between points in southern territory.* Filed by O. W. South, Jr., agent (No. A6002), for interested rail carriers. Rates on industrials and (naturally) bonded, in carloads, between points in southern territory.

Grounds for relief—Short-line distance formula and grouping.

Tariff—Supplement 54 to Southern Freight Association, agent, tariff ICC S-675.

FSA No. 41307—*Fertilizer and Fertilizer materials from points in Idaho and Utah.* Filed by Union Pacific Railroad Co. (No. 132), for itself and interested rail carriers. Rates on fertilizer and fertilizer materials, dry, in carloads, from Don and Epco, Idaho, Garfield, Geneva, and Hardy, Utah, to specified points in Minnesota, North Dakota, and South Dakota.

Grounds for relief—Rate relationship.

Tariff—Supplement 15 to Union Pacific Railroad Co., tariff ICC 5636.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 68-5002; Filed, Apr. 25, 1968; 8:47 a.m.]

[Notice 594]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

APRIL 23, 1968.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 340), 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 of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protest must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six 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 63387 (Sub-No. 4 TA), filed April 18, 1968. Applicant: STANLEY STANLEY, doing business as ACME EXPRESS, 23 Fenwick Street, Newark, N.J. 07114. Applicant's representative: Herman B. J. Weckstein, 1060 Broad Street, Newark, N.J. 07102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, such as bars and castings and machine parts each not exceeding 200 pounds in weight, between the plantsite of Benedict-Miller, Inc., of Lyndhurst, N.J., on the one hand, and, on the other, New York, N.Y., and points in Nassau and Suffolk Counties, N.Y., for 50 days. Supporting shipper: Benedict-Miller, Inc., Marin Avenue and Orient Way, Lyndhurst, N.J. 07071, Attention: Joseph F. Harrington, Traffic Manager. Send protests to: Robert S. H. Vance, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, N.J. 07102.

No. MC 107107 (Sub-No. 391 TA), filed April 18, 1968. Applicant: ALTERMAN TRANSPORT LINES, INC., 2424 Northwest 46th Street, Post Office Box 458, Allapattah Station, Miami, Fla. 33142. Applicant's representative: Ford W. Sewell (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C as defined by the Commission, from the plantsite of Missouri Beef Packers, Inc., at or near Friona, Tex., to points in Alabama, Florida, Georgia, North Carolina, and South Carolina, for 180 days. Supporting shipper: Missouri Beef Packers, Inc., Rockport, Mo. Send protests to: District Supervisor, Joseph B. Teichert, Interstate Commerce Commission, Bureau of Operations, Room 1226, 51 Southwest First Avenue, Miami, Fla. 33130.

No. MC 109136 (Sub-No. 36 TA), filed April 18, 1968. Applicant: ORIOLE CHEMICAL CARRIERS, INC., 9722 Pulaski Highway, Baltimore, Md. 21220. Applicant's representative: Maxwell A. Howell, 1511 K Street NW., Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Silica sand*, in bulk, in tank vehicles, from Gore, Va., to the plantsite of the J. M. Huber Corp., at or near Havre de Grace, Md., with the transportation of returned or undelivered shipments in the reverse direction. Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with the J. M. Huber Corp. of Menlo Park, N.J., for 180 days. Supporting shipper: Harry L. Brand, Director of Traffic, J. M. Huber Corp., Menlo Park, N.J. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1125 Federal Building, Baltimore, Md. 21201.

No. MC 113459 (Sub-No. 46 TA), filed April 18, 1968. Applicant: H. J. JEFFRIES TRUCK LINE, INC., 4720 South Shields Boulevard, 73129, Post Office Box 94850, Oklahoma City, Okla. 73109. Applicant's representative: Walter G. Hintz, Jr., (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Material handling equipment; winches; compaction and road making equipment, rollers, self-propelled and nonself-propelled; mobile cranes; and highway freight trailers;* (2) *parts, attachments and accessories* for the commodities described in (1) above, between the plantsites of the Hyster Co., located at or near Danville, Kewanee, and Peoria, Ill., on the one hand, and, on the other, points in Arkansas, Colorado, Kansas, Louisiana, Missouri, Montana, New Mexico, Oklahoma, Texas, North Dakota, South Dakota, and Wyoming. Restriction: Restricted to the handling of traffic originating at or destined to the named plantsites, for 180 days. Supporting shipper: David C. Williams, General Traffic Manager, Hyster Co. 2902 Northeast Clackamas, Portland, Oreg. 97208. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 350, American General Building, 210 Northwest Sixth, Oklahoma City, Okla. 73102.

No. MC 119955 (Sub-No. 3 TA), filed April 18, 1968. Applicant: RUDOLPH LABRANCHE, Post Office Box 23, West Franklin, N.H. 03235. Applicant's representative: Andre J. Barbeau, 795 Elm Street, Manchester, N.H. 03101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Valves, valve components, tools, jigs and fixtures used in manufacturing valves, rough castings and machine parts, and correspondence, orders, payroll records and blueprints, in interplant messenger service*, between Franklin, N.H., Lawrence, Mass., and Kittery, Maine, for 150 days. Supporting shipper: Timothy P. Horne, Vice President, Webster Valve Co., Franklin, N.H. 03235. Send protests to: Ross J. Seymour, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 424 Federal Building, 55 Pleasant Street, Concord, N.H. 03301.

No. MC 129247 (Sub-No. 2 TA), filed April 18, 1968. Applicant: CLARK'S FROZEN EXPRESS, INC., 2535 Airport Way South, Seattle, Wash. 98134. Applicant's representative: George LaBissoniere, 920 Logan Building, Seattle, Wash. 98101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meats, meat products, meat byproducts, dairy products, and articles distributed by meat packinghouses*, as described in section A, B and C of appendix 1, to the *report in descriptions and motor carrier certificates*, 61 MCC 209 and 766, except commodities in bulk, (2) *Pizza crust and products*, from Greeley, Colorado Springs, and Denver, Colo., to points in Oreogn, Washington, and Idaho, for 180 days. Supporting shipper: Colorado Pizza Co., 2143 Court Place, Denver, Colo. 80205; Foster Frosty Foods, Inc., 1421 Oneida, Denver, Colo. 80220; Home Provision Co., Inc., 835 East 50th Avenue, Denver, Colo. 80216; Johnson Food Co., Post Office Box 1269, Colorado Springs, Colo. 80901; Monfort Packing Co., Box G, Greeley, Colo. 80631; Shurtenda Steaks, Inc., 2468 West Second Avenue, Denver, Colo. 80223. Send protests to: E. J. Casey, District Supervisor, Bureau of Operations, Interstate Commerce Commission,

6130 Arcade Building, Seattle, Wash. 98101.

No. MC 129820 (Sub-No. 1 TA), filed April 9, 1968. Applicant: TRIPLE E EXPRESS, INC., 4544a North Prospect Road, Peoria Heights, Ill. 61614. Applicant's representative: John P. Meyer, Suite 500, 4 North Vermillion Street, Danville, Ill. Authority sought to operate as a *contract carried*, by motor vehicle, over irregular routes, transporting: *Units or bundles of boxes fiberboard*, without wooden frames (paper boxes), corrugated knocked down flat (fiber content consisting of not less than 80 percent woodpulp, waste paper or straw pulp or mixture thereof), from Galesburg, Ill., to Waverly, Iowa, Cedar Falls, Iowa, and Cedar Rapids, Iowa, for 180 days. Supporting shipper: Alton Box Board Co., Galesburg, Ill. Send protests to: District Supervisor, Raymond E. Mauk, Interstate Commerce Commission, Bureau of Operations, U.S. Court House, Federal Office Building, Room 1086, 219 South Dearborn Street, Chicago, Ill. 60604.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 68-5003; Filed, Apr. 25, 1968; 8:47 a.m.]

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PART II

National Aeronautics and Space Administration

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Procurement Regulations

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Subtitle A—Federal Procurement Regulations System

Chapter 18—National Aeronautics and Space Administration Procurement Regulation

MISCELLANEOUS AMENDMENTS TO CHAPTER

The following amendments to Chapter 18 of Title 41 are prescribed as set forth below. These amendments to Chapter 18 cover changes made by Revision 10 of NASA Procurement Regulations and were effective December 29, 1967.

(42 U.S.C. 2473(b)(1))

GEORGE J. VECCHIETTI,
Director of Procurement, National Aeronautics and Space Administration.

1. Section 18–1.103 is revised to read as follows:

§ 18–1.103 Arrangement of chapter.

§ 18–1.103–1 General.

This chapter is divided into parts, each of which covers a separate aspect of procurement. Each part is further divided into subparts, sections and paragraphs.

§ 18–1.103–2 Appendices and supplements.

Policies and instructions concerned with procurement which, while directive, are essentially procedural in nature, will be published as appendices to this chapter when applicable to, or required by, substantially all users of and subscribers to this chapter. Such policies and instructions will be published as supplements to the NASA procurement regulation when they are not applicable to, or required by, substantially all users of and subscribers to this regulation.

2. Section 18–1.109–1 is revised to read as follows:

§ 18–1.109–1 Applicability.

A deviation shall be considered to be any of the following:

(a) When a prescribed contract clause is set forth verbatim in NASA procurement regulations, use of a contract clause or a schedule provision covering the same subject matter which varies from, or has the effect of altering, the prescribed NASA clause, or changing its application;

(b) When a contract clause is set forth in NASA procurement regulations but not for use verbatim, use of a contract clause covering the same subject matter which is inconsistent with the intent, principle and substance of the NASA procurement regulation clause or related coverage of the subject matter;

(c) Omission of any mandatory contract clause constitutes a deviation;

(d) When a standard, NASA, or other form is prescribed by NASA procurement regulations, use of any other form for the same purpose;

(e) Alteration of a standard or NASA form except as authorized by NASA procurement regulations;

(f) When limitations are imposed by NASA procurement regulations upon the use of a contract clause, form, procedure, type of contract, or any other procurement action, the imposition of lesser or greater limitations; or

(g) When a policy, procedure, method, or practice of conducting procurement actions is prescribed in NASA procurement regulations, any policy, procedure, method, or practice inconsistent therewith.

3. Section 18–1.109–3 is revised to read as follows:

§ 18–1.109–3 Requests for deviations.

Requests for authority to deviate from the provisions of this chapter and other procurement publications shall be submitted to the Office of Procurement (Code KDP). Such requests shall be signed by the Procurement Officer of a field installation (or the Director in the case of the Headquarters Contracts Division and the Office of University Affairs) or his deputy. Such requests shall be submitted as far in advance as the exigencies of the situation will permit. Each request for a deviation shall contain as a minimum:

(a) Identification of the NASA procurement regulation requirement from which a deviation is sought;

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

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

(d) A statement as to whether the deviation has been requested previously, and, if so, circumstances of the previous request;

(e) The name of the contractor and identification of the contract affected, including the dollar value; and

(f) Detailed reasons supporting the request, including any pertinent background information which will contribute to a fuller understanding of the deviation sought.

4. Section 18–1.312(b) is revised to read as follows:

§ 18–1.312 Voluntary refunds.

* * * * *

(b) *Solicited refunds.* Voluntary refunds may be requested during or after contract performance. They shall be requested only when it is considered that the Government was overcharged under a contract or was inadequately compensated for the use of Government-owned property or in the disposition of contractor inventory, and retention by the contractor or subcontractor of the amount in question would be contrary to good conscience and equity. Generally, retention by the contractor or subcontractor shall not be considered contrary to good conscience and equity, and thus a voluntary refund shall not be requested, unless the overcharge or inadequate compensation was due, at least in part, to the fault of the contractor or subcontractor. The decision to solicit a voluntary refund shall be made by the Deputy Administrator or his designee after coordination with the Director of Procurement.

* * * * *

§ 18–1.1200 [Deleted]

5. Section 18–1.1200 is deleted and §§ 18–1.1201, 18–1.1202, and 18–1.1203 are revised to read as follows:

§ 18–1.1201 General.

(a) Plans, drawings, specifications, or purchase descriptions for procurements shall state only the actual minimum needs of the Government and describe the supplies and services in a manner which will encourage maximum competition and eliminate, insofar as is possible, any restrictive features which might limit acceptable offers to one supplier's product, or the products of a relatively few suppliers. Items to be procured shall be described by reference to the applicable specifications or by a description containing the necessary requirements. When specifications are cited, all amendments or revisions thereof, applicable to the procurement, should be identified and the identification shall include the dates thereof. Drawings and data furnished with solicitations shall be clear and legible.

(b) Many specifications cover several grades or types, and provide for several options in methods of inspection, etc. When such specifications are used, the solicitation shall state specifically the grade, type, or method of inspection, etc., on which bids or offers are to be based.

§ 18–1.1202 Mandatory specifications.

(a) Except as provided in paragraph (b) of this section, Federal specifications are mandatory for use by NASA in the procurement of supplies and services covered by such specifications, unless determined by NASA to be inapplicable for its use.

(b) Federal specifications need not be used for the following unless required by agency instructions:

(1) Purchase incident to research and development;

(2) Purchase of items for test or evaluation;

(3) Purchase of laboratory test equipment for use by Government laboratories;

(4) Purchase of items in an amount not to exceed $2,500 (multiple small purchases of less than $2,500 of the same item shall not be made for the purpose of avoiding the use of Federal specifications);

(5) Purchase of one-time procurement items; or

(6) Purchase of items for which it is impracticable or uneconomical to prepare a specification (repetitive use of a purchase description containing the essential characteristics of a specification will be construed as evidence of improper use of this exception).

(c) Whenever a specification is found to be inadequate, immediate action shall be taken to effect the issuance of an amendment or a revision in accordance with established procedures to obviate

the necessity for repeated departures from the specification.

§ 18–1.1203 Availability of specifications, standards, plans, and drawings.

Each solicitation shall be accompanied by the applicable specifications, standards, plans, drawings, and other pertinent documents or shall state where such documents may be obtained or examined, in accordance with this paragraph. If the applicable specifications, standards, plans, drawings, and other pertinent documents are not furnished, the solicitation shall include a provision substantially similar to paragraph (a) or (b) of this section, as appropriate.

(a) *Availability of specifications, standards, plans, drawings, and other pertinent documents.* The specifications, standards, plans, drawings, and other pertinent documents cited in this Invitation for Bids/Request for Proposals may be obtained by submitting a request to:

(Installation)

(Complete Address)

Requests should give the number of the Invitation for Bids/Requests for Proposal, and the title and number of the specification, standard, plan, drawing, or other pertinent document requested, exactly as cited in this Invitation Request.

(b) *Availability of specifications, standards, plans, drawings, and other pertinent documents.* The specifications, standards, plans, drawings, and other pertinent documents cited in this Invitation for Bids/Request for Proposals may be examined at the following locations:

(Insert Complete Address)

§ 18–1.1204 [Amended]

6. Section 18–1.1204(a), in first sentence, the word "marketing" is changed to "marking".

§ 18–3.210–2 [Amended]

7. Section 18–3.210–2(p), the reference "18–13.101–17" is changed to "18–13.101–8".

8. Section 18–3.404–4(b)(1), the 1st sentence is revised to read as follows:

§ 18–3.404–4 Fixed price incentive contracts.

* * * * *

(b) *Application.* (1) Fixed-price incentive contracts are appropriate for use when design, specifications and performance requirements are reasonably firm, end item performance levels and scheduled deliveries are known to be attainable without extensive research and development effort or advancement of the state of the art, but cost and production experience are insufficient for the establishment of reasonable firm fixed prices, and the supplies or services being procured are of such a nature that assumption of a degree of cost responsibility by the contractor is likely to provide him with a positive profit incentive for effective cost control and contract performance. * * *

9. Section 18–3.501(b)(35) is revised to read as follows:

§ 18–3.501 Preparation of request for proposals or request for quotations.

* * * * *

(b) * * *

(35) Requirement that additional facilities to be provided by the Government be described and identified by category, such as "Land," "Buildings," "Machinery," "Equipment," etc. (see § 18–13.5105 for format);

* * * * *

10. Section 18–3.802–3(b)(6) is revised to read as follows:

§ 18–3.802–3 Noncompetitive procurement.

* * * * *

(b) * * *

(6) Procurements of scientific experiments, based on unsolicited proposals, where selection is made pursuant to NASA Management Instruction 7100.1 (§ 18–4.403(d));

* * * * *

11. In section 18–3.805–1 paragraphs (c) and (d) are revised to read as follows and new paragraphs (e) and (f) are added:

§ 18–3.805–1 General.

* * * * *

(c) Whenever negotiations are conducted with more than one offeror, auction techniques are strictly prohibited. An example would be indicating to an offeror a price which must be met to obtain further consideration, or informing him that his price is not low in relation to that of another offeror. On the other hand, it is permissible to inform an offeror that his price is considered by the Government to be too high. After receipt of proposals, no information regarding the number or identity of the offerors participating in the negotiations shall be made available to the public or to any one whose official duties do not require such knowledge (see § 18–1.1050). Whenever negotiations are conducted with several offerors, while such negotiations may be conducted successively, all offerors selected to participate in such negotiations (see paragraph (a) of this section) shall be offered an equitable opportunity to submit such price, technical, or other revisions in their proposals as may result from the negotiations. All such offerors shall be informed of the specified date (and time if desired) of the closing of negotiations and that any revisions to their proposals must be submitted by that date. All such offerors shall be informed that any revision received after such date shall be treated as a late proposal in accordance with the "Late Proposals" provisions of the request for proposals. All such offerors shall also be informed that after the specified date for the closing of negotiation no information other than notice of unacceptability of proposal, if applicable (see § 18–3.106–3), will be furnished to any offeror until award has been made.

(d) Except where cost-reimbursement type contracts are to be used (see § 18–3.805–2), a request for proposals may provide that after receipt of initial technical proposals, such proposals will be evaluated to determine those which are acceptible to the Government or which, after discussion of those within a competitive range, can be made acceptable, and upon submission of prices thereafter, award shall be made to that offeror of an acceptable proposal who is the low responsible offeror.

(e) The procedures set forth in paragraphs (a), (b), (c), and (d) of this section may not be applicable in certain cases when procuring research and development, or special services (such as architect-engineer services), or when cost-reimbursement type contracting is anticipated. Award of such a contract may be properly influenced by the proposal which promises the greatest value to the Government in terms of possible performance, technical quality, ultimate producibility, growth potential and other factors rather than the proposals offering the lowest price or probable cost and fixed fee.

(f) When, during negotiations, a substantial change occurs in the Government's requirements or a decision is reached to relax, increase or otherwise modify the scope of the work or statement of requirements, such change or modification shall be made in writing as an amendment to the request for proposal or request for quotations, and a copy shall be furnished to each prospective contractor. See § 18–3.802–4. Oral advice of change or modification may be given if (1) the changes involved are not complex in nature, (2) all prospective contractors are notified simultaneously (preferably by a meeting with the contracting officer), and (3) a record is made of the oral advice given. In such instances, however, the oral advice should be promptly followed by a written amendment verifying such oral advice previously given. The dissemination of oral advice of changes or modifications separately to each prospective offeror during individual negotiation sessions should be avoided unless preceded, accompanied, or immediately followed by a written amendment to the request for proposal or request for quotations embodying such changes or modifications. Each offeror whether notified orally or in writing shall be required to acknowledge receipt of the amendment and to state that he understands the time limit for submission of revised proposals (see § 18–3.501(b)(54)).

12. Section 18–3.805–2, new section is added as follows:

§ 18–3.805–2 Cost-reimbursement type contracts.

In selecting the contractor for a cost-reimbursement type contract, estimated costs of contract performance and proposed fees should not be considered as controlling, since in this type of contract advance estimates of cost may not provide valid indicators of final actual costs. There is no requirement that cost-reimbursement type contracts be awarded on the basis of either (a) the lowest proposed cost, (b) the lowest proposed fee,

or (c) the lowest total estimated cost plus proposed fee. The award of cost-reimbursement type contracts primarily on the basis of estimated costs may encourage the submission of unrealistically low estimates and increase the likelihood of cost overruns. The cost estimate is important to determine the prospective contractor's understanding of the project and ability to organize and perform the contract. The agreed fee must be within the limits prescribed by law and appropriate to the work to be performed. Beyond this, however, the primary consideration in determining to whom the award shall be made is: which contractor can perform the contract in a manner most advantageous to the Government.

§ 18–3.852–1 [Amended]

13. Section 18–3.852–1(b)(1) is deleted; subparagraphs (2) through (7) are renumbered (1) through (6).

§ 18–3.852.3 [Amended]

14. Section 18–3.852.3(a) In the format of the "Procurement Plan For _____":

Paragraph 3d: The reference "§ 18–3.852–2" is changed to "§ 18–3.802–3";

Paragraph 5c: The words "pursuant to ASPR provisions incorporated by reference in § 18–3.400," are deleted;

Paragraph 5e: 3d sentence, the words "Associate Administrator" are changed to "Deputy Administrator";

Paragraph 8a: Last line, the reference "§ 18–13.406" is changed to "§ 18–13.307."

15. Section 18–3.903–4(a)(7) is revised to read as follows:

§ 18–3.903–4 Review of individual subcontracts.

(a) * * *

(7) Type of contract used;

* * * * *

§ 18–4.403 [Amended]

16. Section 18–4.403(d)(2): The words "for flight" are deleted.

17. Section 18–4.5102(c) is revised to read as follows:

§ 18–4.5102 Definitions.

* * * * *

(c) *Nonprofit organization.* Any corporation, foundation, trust, or institution operated for scientific, educational, or medical purposes, not organized for profit, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

* * * * *

18. Section 18–4.5105 (b) and (d) are revised to read as follows:

§ 18–4.5105 Vesting of title to research equipment.

* * * * *

(b) Contracting officers, in conjunction with cognizant technical personnel, shall determine in writing those instances where it is desirable to vest title to equipment purchased with grant or applicable contract funds in grantees or contractors.

* * * * *

(d) In connection with a contract, when it is anticipated that title to equipment may be vested in the contractor in accordance with this Subpart 18–4.51, the alternate paragraph (c)(2) of the Government Property (Fixed-Price, Nonprofit) clause in § 18–13.706 shall be included in fixed-price contracts using the long form clause, and the addition to paragraph (c)(1) of the Government Property (Cost-Reimbursement, Nonprofit) clause in § 18–13.707 shall be included in cost-reimbursement contracts using the long form clause.

19. Section 18–5.907, the clause only is revised to read as follows:

§ 18–5.907 Contract clause.

* * * * *

GENERAL SERVICES ADMINISTRATION SUPPLY SOURCES (OCTOBER 1967)

The Contracting Officer may issue the Contractor an authorization to utilize General Services Administration supply sources for property to be used in the performance of this contract. Title to all property acquired under such an authorization shall be in the Government. All property acquired under such an authorization shall be subject to the provisions of the clause of this contract entitled "Government Property", except paragrahphs (a) and (b) thereof.

§ 18–7.102 [Amended]

20. Section 18–7.102, in last line: "§ 18–13–101.17." changed to "§ 18–13.101–8."

21. Sections 18–7.104–24 and 18–7.104–25 are revised to read as follows:

§ 18–7.104–24 Government property.

In accordance with the requirements of § 18–13.702, insert the appropriate clause set forth therein.

§ 18–7.104–25 Special tooling.

In accordance with the requirements of § 18–13.704, insert the clause therein.

22. Section 18–7.104–57 is revised to read as follows:

§ 18–7.104–57 Liability for Government property furnished for repair or other services.

In accordance with the requirements of § 18–13.702(c), insert the clause set forth therein.

§ 18–7.202 [Amended]

23. Section 18–7.202(c), the last line: "§ 18–13.101–17." is changed to "§ 18–13.101–8."

24. In § 18–7.203–4, the section heading, paragraph (a) heading, and the clause heading in paragraph (a) are revised to read as follows:

§ 18–7.203–4 Allowable cost, fee and payment.

* * * * *

(a) *Allowable cost, fee and payment.* * * *

ALLOWABLE COST, FEE AND PAYMENT (JULY 1965)

* * * * *

25. Section 18–7.203–8, the caption to the clause is revised to read as follows:

§ 18–7.203–8 Subcontracts.

SUBCONTRACTS (OCTOBER 1967)

* * * * *

26. Section 18–7.203–21 is revised to read as follows:

§ 18–7.203–21 Government property.

Insert the clause set forth in §18–13.703.

27. Section 18–7.303–7 is revised to read as follows:

§ 18–7.303–7 Government property.

In accordance with the requirements set forth in § 18–13.702 or § 18–13.706, insert the appropriate contract clause.

§ 18–7.304–61 [Amended]

28. Section 18–7.304–61, the reference to "§ 18–13.504" is changed to "§18–13.704."

§ 18–7.350–4 [Amended]

29. Section 18–7.350–4, the reference to "§18–13.505." is changed to "§18–13.710."

§ 18–7.402–25 [Amended]

30. Section 18–7.402–25, the reference to "§ 18–13.503." is changed to "§ 18–13.703."

§ 18–7.451–25 [Amended]

31. Section 18–7.451–25, the reference to "§ 18–13.506," is changed to "§ 18–13.703 or § 18–13.707,"

§ 18–7.460–3 [Amended]

32. Section 18–7.460–3, the reference to "§ 18–13.506." is changed to "§18–13.707."

33. Subpart 18–7.7 is revised in its entirety as follows:

Subpart 18–7.7—Clauses for Facilities Contracts

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18–7.702	Required clauses for consolidated facilities contracts.
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18–7.702–2	Facilities to be provided.
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18–7.702–4	Changes.
18–7.702–5	Representations and warranties.
18–7.702–6	Inspection.
18–7.702–7	Excusable delays.
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§ 18-7.701 Applicability.

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

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

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

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

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

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

§ 18-7.702 Required clauses for consolidated facilities contracts.

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

§ 18-7.702-1 Definitions.

DEFINITIONS (OCTOBER 1967)

As used throughout this Contract the following terms shall have the meanings set forth below:

(a) The term "Administrator" means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Administrator.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a property designated Contracting Officer; and the term includes, except as otherwise provided in this Contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this Contract, the term "Subcontracts" includes purchase orders under this Contract.

(d) The term "NASA" means the National Aeronautics and Space Administration.

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

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

§ 18–7.702–2 Facilities to be provided.

FACILITIES TO BE PROVIDED (OCTOBER 1967)

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

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

§ 18–7.702–3 Late delivery, diversion, and substitution.

LATE DELIVERY, DIVERSION, AND SUBSTITUTION (MARCH 1963)

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

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

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

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

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

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

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

§ 18–7.702–4 Changes.

CHANGES (MARCH 1963)

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

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

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted may be varied not to exceed "sixty (60) days."

§ 18–7.702–5 Representations and warranties.

REPRESENTATIONS AND WARRANTIES (MARCH 1963)

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

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

§ 18–7.702–6 Inspection.

INSPECTION (OCTOBER 1967)

(a) The Facilities and work called for by this contract shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the Facilities and work called for by this contract. The Government, through any authorized representative, may inspect such Facilities and work at the plant or plants of the Contractor or any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work to be performed by the Contractor under this contract or any related procurement contract.

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

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

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

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

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

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

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

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

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

§ 18–7.702–7 Excusable delays.

Insert the clause set forth in § 18–8.708.

§ 18–7.702–8 Location of the facilities.

LOCATION OF THE FACILITIES (MARCH 1963)

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

§ 18–7.702–9 Government bills of lading.

GOVERNMENT BILLS OF LADING (MARCH 1963)

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

§ 18–7.702–10 Allowable cost and payment.

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

ALLOWABLE COST AND PAYMENT (OCTOBER 1967)

(a) For the performance of any work, duty, or obligation by the Contractor under this contract which is provided herein to be at Government expense, the Government shall pay the Contractor the cost thereof, determined by the Contracting Officer to be allowable in accordance with (i) Part 15, Subpart 5, of the NASA Procurement Regulation as in effect on the date of this contract and (ii) the terms of this contract.

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

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

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

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

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

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

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

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

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

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

(b) In paragraph (h)(ii)(B) of the foregoing clause, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor: *Provided*, That a corresponding increase is made in the period for retention of records required in paragraph (a)(4) of the Records clause prescribed by § 18–7.702–13.

§ 18–7.702–11 Limitation of cost.

LIMITATION OF COST (MARCH 1963)

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

(b) The Government shall not be obligated to reimburse the Contractor under this contract for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue the performance of work under this contract which is provided herein to be at Government expense, or to incur costs therefor, in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performing such work. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

§ 18–7.702–12 Use and charges.

USE AND CHARGES (OCTOBER 1967)

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

(i) Prime contracts with the Government which specifically authorize use without charge,

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

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

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

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

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

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

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

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

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

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

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

(5) If the Contractor's failure to submit the statement within the prescribed ninety (90) day period arose out of causes beyond

the control and without the fault or negligence of the Contractor, the Contracting Officer shall grant to the Contractor in writing a reasonable extension of time in which to make such submission.

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

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

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

EXHIBIT A

RENTAL RATES

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

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

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

Federal supply classification code numbers	*Description*
3411 through 3419	Machine Tools.
3441 through 3449	Secondary Metal-forming Machinery.

The following rates shall apply:

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

The age of each item of the Facilities shall be based on the year in which it was manufactured, with an annual birthday on January 1 of each year thereafter. On January 1 following the date of manufacture, the item shall be considered one year old; and on each succeeding January 1st, it shall become one year older. For example, if an item of equipment is manufactured on July 15, 1958, it will be considered to be 1 year old on January 1, 1959, 2 years old on January 1, 1960, 3 years old on January 1, 1961, and so forth. The item of equipment will be considered "over 2 years old" on and after January 1, 1960, "over 6 years old" on and after January 1, 1964, and "over 10 years old" on and after January 1, 1968:

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

§ 18–7.702–13 Records.

Insert the clause set forth in § 18–7.203–7.

§ 18–7.702–14 Maintenance.

MAINTENANCE (OCTOBER 1967)

(a) Except as otherwise provided in the Schedule, the Contractor shall perform normal maintenance of the Facilities in accordance with sound industrial practice, including protection, preservation, maintenance, and repair of the Facilities, and with respect to equipment, normal parts replacement.

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

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

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

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

(f) The Contractor's obligation under this clause shall continue, with respect to each item of the Facilities, until such item is removed, abandoned, or otherwise disposed of, until expiration of the one hundred and eighty (180) day period prescribed in paragraph (c) of the "Disposition of the Facilities" clause, or until the Contractor has discharged his obligations under this contract with respect to such items, whichever last occurs.

§ 18–7.702–15 Title.

TITLE (OCTOBER 1967)

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

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

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

§ 18–7.702–16 Access.

ACCESS (MARCH 1963)

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

§ 18–7.702–17 Property control.

PROPERTY CONTROL (OCTOBER 1967)

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

§ 18–7.702–18 Liability for the facilities.

LIABILITY FOR THE FACILITIES (OCTOBER 1967)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Pay such proceeds to the Government.

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

§ 18–7.702–19 Insurance—liability to third persons.

INSURANCE—LIABILITY TO THIRD PERSONS

(a) The Contractor shall procure and thereafter maintain workmen's compensation, employer's liability, comprehensive general liability (bodily injury) and comprehensive automobile liability (bodily injury and property damage) insurance, with respect to performance of work at Government expense under this contract, and such other insurance as the Contracting Officer may from time to time require with respect to performance of work at Government expense under this contract: *Provided*, That the Contractor may with the approval of the Contracting Officer, maintain a self-insurance program, *And provided further*, That with respect to workmen's compensation the Contractor is qualified pursuant to statutory authority. All insurance required pursuant to the provisions of this paragraph shall be in such form, in such amounts, and for such periods of time, as the Contracting Officer may from time to time require or approve, and with insurers approved by the Contracting Officer.

(b) The Contractor agrees, to the extent and in the manner required by the Contracting Officer to submit for the approval of the Contracting Officer any other insurance maintained by the Contractor in connection with the performance of work at Government expense under this contract and for which the Contractor seeks reimbursement hereunder.

(c) The Contractor shall be reimbursed: (i) For the portion allocable to this contract of the reasonable cost of insurance as required or approved pursuant to the provisions of this clause, and (ii) for liabilities to third persons for loss of or damage to property (other than property (A) owned, occupied, or used by the Contractor or rented to the Contractor, or (B) in the care, custody, or control of the Contractor), or for death or bodily injury, not compensated by insurance or otherwise, arising out of the performance of work at Government expense under this contract, whether or not caused by the negligence of the Contractor, his agents, servants, or employees, provided such liabilities are represented by final judgments or by settlements approved in writing by the Government, and expenses incidental to such liabilities, except liabilities (I) for which the Contractor is otherwise responsible under the express terms of the clause or clauses, if any, specified in the Schedule, or (II) with respect to which the Contractor has failed to insure as required or maintain insurance as approved by the Contracting Officer, or (III) which results from willful misconduct or

lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (1) all or substantially all of the Contractor's business, or (2) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (3) a separate and complete major industrial operation in connection with the performance of work at Government expense under this contract. The foregoing shall not restrict the right of the Contractor to be reimbursed for the most of insurance maintained by the Contractor in connection with the performance of work at Government expense under this contract, other than insurance required to be submitted for approval or required to be procured and maintained pursuant to the provisions of this clause, provided such cost would constitute allowable cost under the clause of this contract entitled "Allowable Cost and Payment".

(d) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of work at Government expense under this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract, and the risk of which is then uninsured or in which the amount claimed exceeds the amount of coverage. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. If the amount of the liability claimed exceeds the amount of coverage, the Contractor shall authorize representatives of the Government to collaborate with counsel for the insurance carrier, if any, in settling or defending such claim. If the liability is not insured or covered by bond, the Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith: *Provided, however,* That the Contractor may, at his own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

§ 18–7.702–20 Indemnification of the Government.

INDEMNIFICATION OF THE GOVERNMENT (MARCH 1963)

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

§ 18–7.702–21 Stop work orders.

STOP WORK ORDERS (MARCH 1963)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the acquisition, construction, or installation work called for by the Schedule for a period of ninety (90) [1] days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall, at Government expense, forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90)[1] days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

(i) Cancel the Stop Work Order, or

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

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

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

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

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

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

§ 18–7.702–22 Termination of work.

TERMINATION OF WORK (OCTOBER 1967)

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

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

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

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

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

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

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

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

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

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

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

(A) Shall not be required to extend credit to any purchaser, and

(B) May acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *and provided further.* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

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

(ix) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of Contractor in which the Government has or may acquire an interest. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining any item of reimbursable cost under this clause. At any time after expiration of the plant clearance period, as defined in Part 8 of the NASA Procurement Regulations, in effect as of the date of this contract, the Contractor may submit to the Contracting Officer a list,, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter the Government will accept such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be

[1] This clause may provide for less than 90 days.

submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request for the Contractor made in writing within such 1-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period of any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Part 8 of the NASA Procurement Regulation in effect as of the date of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by Part 8 of the NASA Procurement Regulation in effect as of the date of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to costs to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by Part 8 of the NASA Procurement Regulation in effect as of the date of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

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

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

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

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

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

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

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

§ 18–7.702–23 Notice of use of the facilities.

NOTICE OF USE OF THE FACILITIES (OCTOBER 1967)

The Contractor shall notify the Contracting Officer in writing whenever:

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

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

(iii) Any item of the Facilities is no longer needed or usable for the purpose of performing Government contracts or subcontracts.

§ 18–7.702–24 Termination of the use of the facilities.

TERMINATION OF THE USE OF THE FACILITIES (MARCH 1963)

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

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

§ 18–7.702–25 Period of this contract.

PERIOD OF THIS CONTRACT (MARCH 1963)

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

A period of less than 5 years may be specified where appropriate. A period of more than 5 years may be specified only in accordance with the deviation procedures of § 18–1.109.

§ 18–7.702–26 Disposition of the facilities.

DISPOSITION OF THE FACILITIES (OCTOBER 1967)

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

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

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

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

(c) Within one hundred and eighty (180) days after the Contractor accounts for any Facilities pursuant to paragraph (b) above, the Contracting Officer shall give written notice to the Contractor as to the disposition thereof, except as otherwise provided in paragraph (e) below. In effecting such disposition, the Government may either:

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

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

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

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

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

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

(d) If the Contracting Officer fails to give the written notice required by paragraph (c) above within the prescribed one hundred and eighty (180) day period, or within thirty (30) days after notice as hereinafter provided, the Contractor may, upon not less than thirty (30) days' written notice to the Government and at Government risk and expense, (i) retain the Facilities in place or (ii) remove any of the affected serverable Facilities located in Contractor-owned buildings or property and store them elsewhere, at the Contractor's plant or in a public insured warehouse, in accordance with sound practice and in a manner compatible with their security classification, if any. Except as provided in this paragraph, the Government shall not be liable to the Contractor for failure to give the written notice required by paragraph (c) above.

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

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

(g) The Contractor shall, within a reasonable time after the expiration of the one hundred and eighty (180) day period specified in paragraph (c) above, remove all property owned by him from land or buildings owned or acquired by the Government and take such action as the Contracting Officer may direct in writing with respect to restoring such land or buildings, insofar as they are affected by the installation therein of the Contractor's property, to their condition prior to such installation.

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

§ 18–7.702–27 Failure to perform.

FAILURE TO PERFORM (MARCH 1963)

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

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

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

§ 18–7.702–28 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.702–29 Security requirements.

SECURITY REQUIREMENTS (MARCH 1963)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential" or higher.

(b) NASA shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Check List (DD Form 254), or other written notification.

(c) The Contractor agrees to execute, if he has not already done so, a Security Agreement (DD Form 441) with the Government, represented by the Military Department assigned security cognizance over the Contractor's facility. To the extent the Government has indicated, as of the date of this contract, or thereafter indicates, a security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within its own organization in accordance with the requirements of:

(i) The Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for safeguarding Classified Information in effect on the date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) Any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department assigned security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility, and representatives of NASA, shall have the right to inspect at reasonable intervals the procedures, methods and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through these representatives, determine that the Contractor is not complying with the security requirements of this contract, the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

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

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

(g) The Contractor also agrees that he shall determine that any subcontractor proposed by him for the furnishing of supplies and services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information.

§ 18–7.702–30 Authorization and consent.

Insert the clause set forth in § 18–9.103(a) or § 18–9.103(b), as appropriate.

§ 18–7.702–31 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in §18–9.105.

§ 18–7.702–32 [Reserved]

§ 18–7.702–33 Subcontract.

Insert the clause set forth in § 18–7.402–8.

§ 18–7.702–34 Utilization of small business concerns.

Insert the clause set forth in § 18–1.707–3(a).

§ 18–7.702–35 Utilization of concerns in labor surplus areas.

Insert the clause set forth in § 18–1.805–3(a).

§ 18–7.702–36 Buy American Act.

Insert the clause set forth in § 18–6.104–5.

§ 18–7.702–37 Assignment of claims.

Insert the clause set forth in § 18–7.103–8.

§ 18–7.702–38 Renegotiation.

Insert the clause set forth in § 18–7.103–13.

§ 18–7.702–39 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.702–40 [Reserved]

§ 18–7.702–41 Covenant against contingent fees.

Insert the clause set forth in 18–1.503.

§ 18–7.702–42 Payment for overtime and shift premiums.

In accordance with the requirements of § 18–12.102, insert the clause in § 18–12.102–3(h)(1).

§ 18–7.702–43 Convict labor.

In accordance with the requirements of § 18–12.202, insert the clause set forth in § 18–12.203.

§ 18–7.702–44 Equal opportunity.

Insert one or the other of the following clauses, as required by and in accordance with the instructions in § 18–12.802: (i) the Equal Opportunity clause set forth in § 18–12.802–1, or (ii) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18–12.802–2.

§ 18–7.702–45 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18–12.604.

§ 18–7.702–46 Contract Work Hours Standards Act—Overtime compensation.

Insert the appropriate clause set forth in § 18–12.303.

§ 18–7.702–47 Contractor and subcontractor cost and pricing data.

Insert the clause set forth in § 18–3.807–4 in all contracts over $100,000 and in all contract modifications over $100,000 even though the original amount of the contract is $100,000 or less.

§ 18–7.702–48 Audit and records.

Insert the clause set forth in § 18–7.104–42, except that paragraph (a) thereof shall be modified to read as follows:

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

§ 18–7.702–49 [Reserved]

§ 18–7.702–50 Competition in subcontracting.

Insert the clause set forth in § 18–7.104–40.

§ 18–7.702–51 Interest.

Insert the clause set forth in § 18–7.103–53, except in contracts with nonprofit organizations.

§ 18–7.702–52 Notice to the Government of labor disputes.

Insert the clause set forth in § 18–7.104–4.

§ 18–7.702–53 General Services Administration supply sources.

The clause set forth in § 18–5.907 will be included in contracts in accordance with the instructions set forth therein.

§ 18–7.702–54 Limitation on withholding of payments.

LIMITATION ON WITHHOLDING OF PAYMENTS (MARCH 1963)

If more than one clause or schedule provision of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for work performed under this contract, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or schedule provision at that time: *Provided*, That this limitation shall not apply to:

(i) Withholdings pursuant to any clause relating to wages or hours of employees;

(ii) Withholdings not specifically provided for by this contract; and

(iii) The recovery of overpayments.

§ 18–7.702–55 Payment of royalties.

In accordance with the instructions of § 18–9.108, insert the appropriate clause set forth therein.

§ 18–7.702–56 Property listings.

PROPERTY LISTINGS (OCTOBER 1967)

(a) Within thirty (30) days of receipt of written request from the Contracting Officer, the contractor shall furnish an up-to-date summary statement of all facilities for which he is accountable under this contract. The summary statement used in support of the clause entitled "Use and Charges" of this contract; shall contain the following information:

(i) Land, land preparations, and land installations other than those items specified in (ii) below—total acquisition cost.

(ii) Buildings and building installations other than those specified in (iii) below—total acquisition cost.

(iii) Machinery, production equipment, machine tools, FSC Code Nos. 3411 through 3419, and secondary metal—forming machinery, FSC Nos. 3411 through 3449—number of items and total acquisition cost of items in each of the following age categories: 0–2 years; 2–6 years; 6–10 years; and over 10 years of age;

(iv) Personal property and equipment and automotive equipment—total acquisition cost.

(v) Electronics test equipment and automotive equipment—total acquisition cost.

Total acquisition cost as referred to (i) above shall be as defined in the "Use and Charges" clause of this contract.

(b) All listings required pursuant to paragraph (a) shall be signed by the Contractor and be submitted to the cognizant Government Property Administrator for verification and forwarding to the Contracting Officer.

(c) In addition to the summary listing required by paragraph (a), the Contractor agrees to furnish a current itemized listing of all Government-owned property accountable under this contract within thirty (30) days of receipt of a written request from the Contracting Officer therefor.

§ 18–7.702–57 Small business subcontracting program.

SMALL BUSINESS SUBCONTRACTING PROGRAM (OCTOBER 1967)

(a) The Contractor agrees to establish and conduct a program to afford small business concerns an equitable opportunity to compete for NASA subcontracts within their capabilities. In this connection, the Contractor shall—

(i) Designate a small business liaison officer, who will (A) maintain liaison with duly authorized representatives of the Government on small business matters, (B) supervise compliance with the clause of this contract entitled "Utilization of Small Business Concerns," and (C) administer the Contractor's Small Business Program;

(ii) Provide adequate and timely consideration of the potentialities of small business concerns in all "make-or-buy" decisions;

(iii) Ensure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specification, and delivery schedules so as to facilitate small business participation;

(iv) Maintain records showing (A) whether each prospective subcontractor is a small business concern, and (B) procedures which have been adopted to comply with the policies set forth in this clause;

(v) Include the "Utilization of Small Business Concerns" clause in subcontracts which offer substantial small business subcontracting opportunities; and

(vi) Submit NASA Form 524 reports in accordance with the instructions contained therein.

(b) A "small business concern" is a concern that meets the pertinent criteria established by the Small Business Administration and set forth in paragraph 1.701 of the NASA Procurement Regulation.

(c) The Contractor further agrees to insert in any subcontract hereunder which is in excess of $500,000 and which contains the clause entitled "Utilization of Small Business Concerns" provisions which shall conform substantially to the language of this clause, including this paragraph (c).

§ 18–7.702–58 Supersedure.

SUPERSEDURE (JULY 1964)

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

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

§ 18–7.702–59 Report on NASA subcontracts.

In accordance with the instructions of § 7.104–60, insert the appropriate clause set forth therein.

§ 18–7.703 Required Clauses for Facilities Acquisition Contracts.

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

§ 18–7.703–1 Definitions.

Insert the contract clause set forth in § 18–7.702–1.

§ 18–7.703–2 Facilities to be provided.

Insert the clause set forth in § 18–7.702–2.

§ 18–7.703–3 Late delivery, diversion, and substitution.

Insert the clause set forth in § 18–7.702–3.

§ 18–7.703–4 Changes.

Insert the clause set forth in § 18–7.702–4.

§ 18–7.703–5 Representations and warranties.

Insert the clause set forth in § 18–7.702–5.

§ 18–7.703–6 Inspection.

Insert the clause set forth in § 18–7.702–6.

§ 18–7.703–7 Excusable delays.

Insert the clause set forth in § 18–8.708.

§ 18–7.703–8 Government bills of lading.

Insert the clause set forth in § 18–7.702–9.

§ 18–7.703–9 Allowable cost and payment.

(a) In accordance with the instructions in § 18–7.702–10, insert the contract clause set forth therein.

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

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

(c) If desired, the following additional paragraph may be added to this clause as paragraph (f), in which case paragraph (f) of the clause set forth in § 18–7.702–10 shall be redesignated paragraph (g).

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

§ 18–7.703–10 Limitation of cost.

Insert the clause set forth in § 18–7.702–11.

§ 18–7.703–11 Records.

Insert the clause set forth in § 18–7.203–7.

§ 18–7.703–12 Title.

Insert the clause set forth in § 18–7.702–15, except that the third sentence of paragraph (a) shall be deleted.

§ 18–7.703–13 Access.

Insert the clause set forth in § 18–7.702–16.

§ 18–7.703–14 Liability for the facilities.

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

§ 18–7.703–15 Insurance-liability to third persons.

Insert the clause set forth in § 18–7.702–19.

§ 18–7.703–16 Indemnification of the Government.

Insert the clause set forth in § 18–7.702–20.

§ 18–7.703–17 Stop work orders.

Insert the clause set forth in § 18–7.702–21.

§ 18–7.703–18 Termination of work.

Insert the clause set forth in § 18–7.702–22.

§ 18–7.03–19 Failure to perform.

Insert the clause set forth in § 18–7.702–27.

§ 18–7.703–20 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.703–21 Security requirements.

Insert the clause set forth in § 18–7.702–29.

§ 18–7.703–22 Authorization and consent.

Insert the clause set forth in § 18–9.103(a) or § 9.103(b), as appropriate.

§ 18–7.703–23 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.703–24 Patent or proprietary rights in facilities.

Insert the clause set forth in § 18–7.702–32.

§ 18–7.703–25 Subcontracts.

Insert the clause set forth in § 18–7.402–8.

§ 18–7.703–26 Utilization of small business concerns.

Insert the clause set forth in § 18–1.707–3(a).

§ 18–7.703–27 Utilization of concerns in labor surplus areas.

Insert the clause set forth in § 18–1.805–3(a).

§ 18–7.703–28 Buy American Act.

Insert the clause set forth in § 18–6.104–5.

§ 18–7.703–29 Assignment of claims.

Insert the clause set forth in § 18–7.103–8.

§ 18–7.703–30 Renegotiation.

Insert the clause set forth in § 18–7.103–13.

§ 18–7.703–31 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.703–32 [Reserved]

§ 18–7.703–33 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.703–34 Payment for overtime and shift premiums.

In accordance with the requirements of § 18–12.102, insert the clause set forth in § 18–12.102–3(h)(1).

§ 18–7.703–35 Convict labor.

In accordance with the requirements of § 18–12.202, insert the clause set forth in § 18–12.203.

§ 18–7.703–36 Equal opportunity.

Insert one or the other of the following clauses, as required by and in accordance with the instructions in § 18–12.802: (a) the Equal Opportunity clause set forth in § 18–12.802–1, or (b) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18–12.802–2.

§ 18–7.703–37 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18–12.604.

§ 18–7.703–38 Contract Work Hours Standards Act—Overtime compensation.

Insert the appropriate clause set forth in § 18–12.303.

§ 18–7.703–39 Supersedure.

SUPERSEDURE (OCTOBER 1967)

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

§ 18–7.703–40 Contractor and subcontractor cost and pricing data.

Insert the clause set forth in § 18–3.807–4 in all contracts over $100,000 and in all contract modifications over $100,000 even though the original amount of the contract is $100,000 or less.

§ 18–7.703–41 Audit and records.

Insert the clause set forth in § 18–7.104–42, except that paragraph (a) thereof shall be modified to read as follows:

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

§ 18–7.703–42 [Reserved]

§ 18–7.703–43 Competition in subcontracting.

Insert the clause set forth in § 18–7.104–40.

§ 18–7.703–44 Interest.

Insert the clause set forth in § 18–7.103–53, except in contracts with nonprofit organizations.

§ 18–7.703–45 Notice to the Government of labor disputes.

Insert the clause set forth in § 18–7.104–4.

§ 18–7.703–46 General Services Administration supply sources.

The clause set forth in § 18–5.907 will be included in contracts in accordance with the instructions set forth therein.

§ 18–7.703–47 Limitation on withholding of payments.

Insert the clause set forth in § 18–7.702–54.

§ 18–7.703–48 Payment of royalties.

In accordance with the instructions of § 18–9.108, insert the appropriate clause set forth therein.

§ 18–7.703–49 Small business subcontracting program.

Insert the clause set forth in § 18–7.702–57.

§ 18–7.703–50 Report on NASA subcontracts.

In accordance with the instructions of § 18–7.105–60, insert the appropriate clause set forth therein.

§ 18–7.704 Required clauses for facilities use contracts.

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

§ 18–7.704–1 Definitions.

Insert the clause set forth in § 18–7.702–1.

§ 18–7.704–2 Use and charges.

Insert the clause set forth in § 18–7.702–12.

§ 18–7.704–3 Allowable cost and payment.

ALLOWABLE COST AND PAYMENT (OCTOBER 1967)

(a) For the performance of any work, duty, or obligation by the Contractor under this contract which is provided herein to be at Government expense, the Government shall pay the Contractor the cost thereof, determined by the Contracting Officer to be allowable in accordance with (i) Part 15, Subpart 5 of the NASA Procurement Regulation in effect as of the date of this contract; and (ii) the terms of this contract.

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

§ 18–7.704–4 Limitation of cost.

Insert the clause set forth in § 18–7.702–11.

§ 18–7.704–5 Records.

Insert the clause set forth in § 18–7.203–7.

§ 18–7.704–6 Location of the facilities.

Insert the clause set forth in § 18–7.702–8.

§ 18–7.704–7 Maintenance.

Insert the clause set forth in § 18–7.702–14.

§ 18–7.704–8 Inspection.

Insert the clause set forth in § 18–7.702–6.

§ 18–7.704–9 Title.

Insert the clause set forth in § 18–7.702–15 except that the following paragraph (a) shall be substituted for the corresponding paragraph in that clause:

(a) Title to the Facilities shall remain in the Government. Title to parts replaced by the Contractor in carrying out its normal maintenance obligations pursuant to the clause of this contract entitled "Maintenance" shall pass to and vest in the Government upon completion of their installation in the Facilities.

§ 18–7.704–10 Access.

Insert the clause set forth in § 18–7.702–16.

§ 18–7.404–11 Property control.

Insert the clause set forth in § 18–7.702–17.

§ 18–7.704–12 Representations and warranties.

Insert the clause set forth in § 18–7.702–5.

§ 18–7.704–13 Government bills of lading.

Insert the clause set forth in § 18–7.702–9.

§ 18–7.704–14 Liability for the facilities.

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

§ 18–7.704–15 Indemnification of the Government.

Insert the clause set forth in § 18–7.702–20, deleting the phrase "Except as provided in the 'Insurance—Liability to Third Persons' clause" in the first sentence.

§ 18–7.704–16 Notice of use of the facilities.

Insert the clause set forth in § 18–7.702–23.

§ 18–7.704–17 Termination of the use of the facilities.

Insert the clause set forth in § 18–7.702–24.

§ 18–7.704–18 Period of this contract.

Insert the clause set forth in § 18–7.702–25.

§ 18–7.704–19 Disposition of the facilities.

Insert the clause set forth in § 18–7.702–26.

§ 18–7.704–20 Failure to perform.

Insert the clause set forth in §18–7.702–27, except that the phrase "Subject to the provisions of the clause hereof entitled 'Excusable Delays'," shall be deleted in paragraph (a).

§ 18–7.704–21 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.704–22 Security requirements.

Insert the clause set forth in § 18–7.702–29.

§ 18–7.704–23 Assignment of claims.

Insert the clause set forth in § 18–7.103–8.

§ 18–7.704–24 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.704–25 [Reserved]

§ 18–7.704–26 Covenant against contingent fees.

Insert the clause set forth in §18–1.503.

§ 18–7.704–27 Payment for overtime and shift premiums.

In accordance with the requirements of § 18–12.102, insert the clause set forth in § 18–12.102–3(h) (1).

§ 18–7.704–28 Convict labor.

In accordance with the requirements of § 18–12.202, insert the clause set forth in § 18–12.203.

§ 18–7.704–29 Equal opportunity.

Insert one or the other of the following clauses, as required by and in accordance with the instructions in § 18–12.802: (a) the Equal Opportunity clause set forth § 18–12.802–1, or (b) the Equal Opportunity in Federally Assisted Construction Contraction Contracts clause set forth in § 18–12.802–2.

§ 18–7.704–30 Contract Work Hours Standards Act—Overtime compensation.

Insert the appropriate clause set forth in § 18–12.303.

§ 18–7.704–31 Supersedure.

Insert the clause set forth in § 18–7.702–58.

§ 18–7.704–32 [Reserved]

§ 18–7.704–33 Audit and records.

Insert the clause set forth in § 18–7.104–42, except that paragraph (a) thereof shall be modified to read as follows:

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

§ 18–7.704–34 [Reserved]

§ 18–7.704–35 Competition in subcontracting.

Insert the clause set forth in § 18–7.104–40.

§ 18–7.704–36 Interest.

Insert the clause set forth in § 18–7.103–53, except in contracts with nonprofit organizations.

§ 18–7.704–37 Property listings.

Insert the clause set forth in § 18–7.702–56.

§ 18–7.705 Clauses required to be used when applicable.

The clauses set forth in this paragraph are to be used with the clauses required for use in (a) Consolidated Facilities Contracts (§ 18–7.702), (b) Facilities Acquisition Contracts (§ 18–7.703), and (c) Facilities Use Contract (§ 18–7.704).

§ 18–7.705–1 Rights in data.

In accordance with the requirements of § 18–9.203, insert the clause in § 18–9.203–1. Particular attention shall be given to obtaining data where necessary to make possible the use or disposal of facilities.

§ 18–7.705–2 Filing of patent applications.

In accordance with the requirements of § 18–9.107, insert the clause set forth therein.

§ 18–7.705–3 Priorities, allocations, and allotments.

In accordance with the requirements of § 18–1.307–2, insert the clause set forth therein.

§ 18–7.705–4 Transfer of title to the facilities.

In accordance with the instructions contained in § 18–4.5105, the following clause may be inserted in facilities contracts.

TRANSFER OF TITLE TO THE FACILITIES (OCTOBER 1967)

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

§ 18–7.705–5 Labor standards for construction work.

Except as provided in § 18–12.403–3, and § 18–12.403–4, every construction contract as this term is defined in § 18–12.402, shall include the following:

LABOR STANDARDS FOR CONSTRUCTION WORK (NOVEMBER 1964)

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

(b) The Contractor shall, in the performance of items of work so determined to be subject to the Davis-Bacon Act, comply with the following clauses set forth in 12.403–1 of the NASA Procurement Regulation in effect as of the date of this contract:

(i) Davis-Bacon Act.

(ii) Contract Work Hours Standards Act—Overtime Compensation.

(iii) Apprentices.

(iv) Payrolls and Payroll Records.

(v) Compliance with Copeland Regulations.

(vi) Withholding of Funds.

(vii) Subcontracts.

(viii) Contract Termination Debarment.

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

§ 18–7.705–6 Buy American Act—Construction contracts.

In accordance with the requirements of § 18–6.207(c), every contract for construction shall include the contract clause set forth therein.

§ 18–7.705–7 Improvements to buildings or land owned by the Government.

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

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

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

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

§ 18–7.705–8 New technology.

In accordance with the requirements of § 18–9.101–2, insert the New Technology clause, as appropriate.

§ 18–7.705–9 Required source for jewel bearings.

In accordance with the requirements of § 18–1.315, insert the clause set forth therein.

§ 18–7.705–10 Changes to make-or-buy program.

In accordance with the requirements of § 18–3.902–1, insert the clause set forth therein.

§ 18–7.705–11 Contractor and subcontractor cost and pricing data.

Insert the clause set forth in § 18–3.807–4 in all countracts over $100,000 and in all contract modifications over $100,000 even though the original amount of the contract is $100,000 or less.

§ 18–7.705–12 Negotiated overhead rates.

When negotiated overhead rates are to be in contracts with concerns other than educational institutions pursuant to Subpart 18–3.7, insert the contract clause set forth in § 18–3.704–1, except that (a) the reference to the clause of the contract entitled "Allowable Cost, Fixed Fee and Payment," in paragraph (a) thereof shall be changed to "Allowable Cost and Payment" and (b) the reference to "Part 15, Subpart 2" in paragraph (c) thereof shall be changed to "Part 15, Subpart 5." Where negotiated overrates (postdetermined or predetermined) are to be used in contracts with educational institutions, pursuant to that Subpart, insert the appropriate contract clause set forth in § 18–3.704–2, except that reference to "Part 15, Subpart 3", in paragraph (c) of these two clauses shall be changed to "Part 15, Subpart 5."

§ 18–7.705–13 Rights in data for potentially hazardous items.

In accordance with the requirements of § 18–9.204–52, insert the clause set forth in § 18–9.204–52(c).

§ 18–7.705–14 Potentially hazardous items.

In accordance with the requirements of § 18–1.351, insert the clause set forth therein.

34. Section 18–7.901–5 is revised to read as follows:

§ 18–7.901–5 Government property.

Insert the clause set forth in § 18–13.703 except that:

(a) The phrase "estimated cost, fixed-fee or delivery or performance dates, or all of them," appearing in lines 14 and 15 of paragraph (a) of the clause shall be deleted and the phrase "ceiling price, hourly rate, the delivery or performance date, or all of them," substituted therefor;

(b) Paragraph (i) shall be deleted, and paragraph (i) of the clause set forth in § 18–13.702(a) substituted therefor; and

(c) Add to the end of paragraph (g) (3) of the clause, the following:

For any such repairs or renovations so directed, the Contracting Officer shall, upon written request of the Contractor, equitably adjust the ceiling price, hourly rate, delivery or performance date, or all of them in accordance with the procedures provided for in the clause of this contract entitled "Changes". In any such equitable adjustment due regard shall be given to the liability of the Contractor as determined under (1) above.

35. Section 18–7.902–52 is revised to read as follows:

§ 18–7.902–52 Liability for Government property furnished for repair or other services.

In accordance with the requirements of § 18–13.702(c), insert the clause set forth therein.

§ 18–8.205–51 [Amended]

36. Section 18–8.205–51(a)(4), last line, the reference "§ 18–13.151." is changed to "§ 18–13.150."

37. Section 18–8.209–3 is revised to read as follows:

§ 18–8.209–3 Government property.

Before any settlement agreement is executed, the contracting officer shall determine the status of the Government property account for the terminated contract. If the audit of such property required by paragraph B.104 of appendix B, or paragraph C.104 of appendix C discloses property for which the contractor cannot account, the settlement agreement shall reserve the rights of the Government with respect to such property, or make an appropriate deduction from the amount otherwise due the contractor.

38. Section 18–10.303 is revised to read as follows:

§ 18–10.303 Responsibility for loss of or damage to Government property.

NASA's policy with respect to Government assumption of risk for loss of or damage to Government property in the possession of contractors is set forth in § 18–13.102. This policy is implemented by the Government property clauses set forth in Subpart 18–13.7, and the facilities contract clauses set forth in Subpart 18–7.7. Except for contracts using the clause set forth in § 18–13.710 where contractor responsibility for risk of loss or damage would not result in the inclusion of contingency charges in the contract, it is NASA's policy to assume the risk of loss or damage. This policy is based on the principle that it is less costly for the Government to act as a self-insurer than to permit the contractor to take out property damage insurance. However, when, 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 cost to the Government, this policy may be waived, and the contractor held fully responsible. Such a waiver constitutes a deviation to be processed in accordance with § 18–1.109–3.

39. Section 18–10.305 is revised to read as follows:

§ 18–10.305 Procedures to be followed in the event of loss of or damage to Government property.

Upon the happening of loss of or damage to any Government property for which the Contractor is relieved of responsibility by contract provision, the procedures set forth in the applicable Government Property clause of the contract involved shall be followed.

40. Section 18–10.402 is revised to read as follows:

§ 18–10.402 Government-furnished property.

The Contractor's responsibilities for loss of or damage to Government-furnished property under fixed-price contracts are set forth in the applicable Government Property clause (see § 18–13.702).

§ 18–10.601 [Amended]

41. Section 18–10.601, in text, the words "Department concerned," are changed to "installation concerned.".

42. Section 18–10.602–1 is revised to read as follows:

§ 18–10.602–1 Facilities contracts.

Facilities contracts shall provide that the contractor shall not include the cost of insurance in any contract except to the extent of insurance required or approved by NASA. If a facilities contract does not restrict the use of the facilities to work performed for the Government, provision shall be made that the contractor shall procure and maintain insurance as NASA may require against loss or damage to the industrial facilities (see § 18–13.602).

43. Part 18–13 is revised in its entirety as follows:

PART 18–13—GOVERNMENT PROPERTY

Sec.
18–13.000 Scope of part.

Subpart 18–13.1—General

18–13.101 Definitions.
18–13.101–1 Property.
18–13.101–2 Government property.
18–13.101–3 Provide.
18–13.101–4 Material.
18–13.101–5 Special tooling.
18–13.101–6 Special test equipment.
18–13.101–7 Space property.
18–13.101–8 Facilities.
18–13.101–9 Government production and research property.
18–13.101–10 Nonseverable.
18–13.101–11 Facilities contract.
18–13.101–12 Facilities project.
18–13.101–13 Nonprofit organization.
18–13.101–50 Related procurement contract.
18–13.101–51 Approval or authorization.
18–13.102 Responsibility and liability for Government property.
18–13.102–1 Prime contractors.
18–13.102–2 Subcontractors.
18–13.103 Furnishing space property.
18–13.104 Profits and fees.
18–13.105 Use for or by contractors of test facilities owned and operated by the Government.
18–13.106 Control of Government property.
18–13.150 Disposition of excess property and residual inventories.

Subpart 18–13.2—Material

18–13.201 Policy on furnishing material.
18–13.202 Procedure.
18–13.203 Changing the amount of material to be furnished by the Government.

Subpart 18–13.3—Providing Government Production and Research Property to Contractors

18–13.301 Providing facilities.
18–13.302 Securing approval for facilities projects.
18–13.303 Use of facilities contracts.
18–13.303–1 General requirements for separate facilities contracts.
18–13.303–50 Acquisition, use, and consolidated facilities contracts.
18–13.303–51 Application of acquisition, use, and consolidated facilities contracts.
18–13.304 Furnishing existing Government-owned special tooling.
18–13.305 Acquisition of special tooling.
18–13.305–1 General.
18–13.305–2 Fixed-price contracts.
18–13.305–3 Cost-reimbursement type contracts.
18–13.306 Providing special test equipment.
18–13.306–1 Furnishing existing special test equipment.
18–13.306–2 Acquisition of new special test equipment.
18–13.306–3 Contract provisions for acquiring special test equipment.
18–13.306–4 Screening existing Government-owned special test equipment costing $1,000 or more.
18–13.307 Providing Government production and research property when disposal is limited.
18–13.308 Offer to furnish Government production and research property "as is".
18–13.309 Changing Government production and research property to be provided.
18–13.310 Limited offers.
18–13.311 [Reserved]
18–13.312 Items to be screened.

Subpart 18–13.4—Use and Rental of Government Production and Research Property

18–13.401 Policy.
18–13.402 Authorizing and contractors to use Government production and research property without charge.
18–13.402–50 Authorizations.
18–13.402–51 Provisions of related procurement contracts requiring the use of Government facilities in the possession of a contractor.
18–13.402–52 Related procurement contracts requiring the provision of additional facilities.
18–13.402–53 Facilities for subcontractors on a no-charge basis.
18–13.402–54 Contract provisions where facilities are provided under a contract other than a facilities contract.
18–13.403 Rental of Government production and research property.
18–13.404 Rental rates and policies applicable to the use of Government production and research property.
18–13.405 Non-Government use.
18–13.406 Rent-free use of Government production and research property on work for foreign governments.
18–13.407 Use of Government production and research property without charge by nonprofit organizations.
18–13.450 Procurement by other Government agencies requiring the use of NASA facilities in possession of the contractor.

Subpart 18–13.5—Competitive Advantage

18–13.501 Policy.
18–13.502 Advertised procurement—Use of existing Government production and research property.

Sec.
18–13.502–1 General.
18–13.502–2 Procedures for use of evaluation factors.
18–13.502–3 Limitations.
18–13.502–4 Rent.
18–13.503 Negotiated procurement—Use of existing Government production and research property.
18–13.504 Residual value to the Government of special tooling and special test equipment to be acquired in competitively negotiated procurements.
18–13.505 Additional evaluation factors.
18–13.506 Solicitations—Description of evaluation procedure.

Subpart 18–13.6—Administration of Government Production and Research Property

18–13.601 Maintenance.
18–13.601–1 Facilities contracts.
18–13.601–2 Contracts other than facilities contracts.
18–13.602 Risk of loss or damage and liability.
18–13.603 Termination of facilities contracts.
18–13.604 Standby or layaway provision.
18–13.605 Retention of special tooling and special test equipment.
18–13.606 Disposition.
18–13.607 Insurance.

Subpart 18–13.7—Contract Clauses

18–13.701 Applicability.
18–13.702 Government property clauses for fixed-price contracts.
18–13.703 Government property clause for cost-reimbursement contracts.
18–13.704 Special tooling clause for fixed-price contracts.
18–13.705 Special test equipment clause for negotiated contracts.
18–13.706 Government property clause for fixed-price type contracts with nonprofit institutions.
18–13.707 Government property clauses for cost-reimbursement type research and development contracts with nonprofit institutions.
18–13.708 Government property clause for contracts with fixed-price and cost-reimbursement provisions.
18–13.709 Clause for Government property furnished "as is".
18–13.710 Government-furnished property clause for short form contracts.

Subpart 18–13.8—Administrative Practices

18–13.800 Scope of subpart.
18–13.801 Appointment of property administrators.
18–13.802 Assignment of contracts for property administration.
18–13.803 Records of Government property.

Subpart 18–13.50—Acquisition of Idle Production Equipment

18–13.5000 Scope of subpart.
18–13.5001 General.
18–13.5002 Procedure.
18–13.5003 Transfers from NASA to the military departments.

Subpart 18–13.51—Facilities Expansion, Application, and Approval

18–13.5100 Scope of subpart.
18–13.5101 Consideration of facilities expansion applications.
18–13.5102 Procedure for determining facilities expansion.
18–13.5103 Processing the application.
18–13.5104 Administration of approved facilities application.

AUTHORITY. The provisions of this Part 18–13 issued under 42 U.S.C. 2473(b)(1).

§ 18–13.000 Scope of part.

This part sets forth:

(a) The NASA policies with respect to providing property for use by contractors in connection with procurement by NASA.

(b) Applicable contract clauses for contracts other than facilities contracts. (For facilities contract clauses, see Subpart 18–7.7.)

This part does not apply to property to which the Government has acquired a lien or title solely as a result of partial, advance or progress payments.

Subpart 18–13.1—General

§ 18–13.101 Definitions.

As used in this Part 18–13 the following terms have the meaning stated in this § 18–13.101. Additional definitions applicable to property administration are set forth in appendices B and C.

§ 18–13.101–1 Property.

"Property" includes all property, both real and personal. For the purpose of this part, it consists of five separate categories—material, special tooling, special test equipment, space property, and facilities.

§ 18–13.101–2 Government property.

"Government property" means all property owned by or leased to the Government or acquired by the Government under the terms of a contract. Government property includes both Government-furnished property and contractor-acquired property as defined below:

(a) "Government-furnished property" is property in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise made available to the contractor; and

(b) "Contractor-acquired property" is property procured or otherwise provided by the contractor for the performance of a contract, title to which is vested in the Government.

§ 18–13.101–3 Provide.

"Provide", as used in the context of such phrases as "Government property provided to the contractor" and "Government-provided property", means either to furnish, as in "Government-furnished property", or to acquire, as in "contractor-acquired property."

§ 18–13.101–4 Material.

"Material" means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of a contract.

§ 18–13.101–5 Special tooling.

"Special tooling" means all jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and replacements thereof, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production or particular supplies or parts thereof, or the performance of particular services. The term includes all components of such items, but does not include:

(a) Consumable property;

(b) Special test equipment; or

(c) Buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items.

§ 18–13.101–6 Special test equipment.

"Special test equipment" means electrical, electronic hydraulic, pneumatic, mechanical or other items or assemblies of equipment, which are of such a specialized nature that, without modification or alteration, the use of such items (if they are to be used separately) or assemblies is limited to testing in the development or production of particular supplies or parts thereof, or in the performance of particular services. The term "special test equipment" includes all components of any assemblies of such equipment, but does not include:

(a) Consumable property.;

(b) Special tooling; or

(c) Buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special test equipment), general or special machine tools, or similar capital items.

§ 18–13.101–7 Space property.

"Space property" means personal property which is peculiar to aeronautical and space programs of NASA, and is not otherwise included in the categories of property set forth in §§ 18–13.101–4, 18–13.101–5, 18–13.101–6 and 18–13.101–8. It includes such items as aircraft, engines, space vehicles, and other similar components and related support equipment furnished for use as a standard or model, to establish equipment compatibility, or for such other similar reasons as may be determined by the contracting officer.

§ 18–13.101–8 Facilties.

"Facilities" means industrial property (other than material, special tooling, space property, and special test equipment) for production, maintenance, research, development, or test, including real property and rights therein, buildings, structures, improvements, and plant equipment.

§ 18–13.101–9 Government production and research property.

"Government production and research property" means:

(a) Government-owned facilities,

(b) Government-owned special test equipment, and

(c) Special tooling to which the Government has title or the right to acquire title.

§ 18–13.101–10 Nonseverable.

"Nonseverable," when related to Government production and research property, means that such property cannot be removed after erection or installation without substantial loss of value or damage thereto, or to the premises where installed.

§ 18–13.101–11 Facilities contract.

"Facilities contract" means a contract under which Government facilities, and occasionally special tooling and special test equipment, are provided to a contractor or a subcontractor by the Government for use in connection with the performance of a separate contract or contracts for supplies or services. The term includes facilities acquisition contracts, facilities use contracts, and consolidated facilities contracts.

§ 18–13.101–12 Facilities project.

"Facilities project" means an undertaking by the Government to provide facilities to a contractor for the performance of a Government contract or subcontract or to modernize or replace facilities for the same purpose.

§ 18–13.101–13 Nonprofit organization.

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

§ 18–13.101–50 Related procurement contract.

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

§ 18–13.101–51 Approval or authorization.

"Approval or authorization" as used in this part means written approval and written authorization unless the context is clearly to the contrary.

§ 18–13.102 Responsibility and liability for Government property.

§ 18–13.102–1 Prime contractors.

It is NASA policy not to hold a contractor responsible for loss or damage to Government property caused by certain perils when such Government property is provided under:

(a) A facilities contract, or

(b) A procurement contract for which cost or pricing data are required.

This policy is implemented in the required contract clauses for facilities contracts, and the contract clauses set forth in Subpart 18–13.7.

§ 18–13.102–2 Subcontractors.

(a) If Government property is provided to a subcontractor directly by the Government, § 18–13.102–1 shall apply.

(b) If Government property is provided to a subcontractor by a prime contractor, the latter shall be required to hold the subcontractor liable for any loss of or damage to such property: *Provided, however,* That:

(1) If both the prime contract and the subcontract require the submission of certified cost or pricing data, the prime contractor may, with the prior approval of the contracting officer, include in such subcontract a provision similar to that contained in § 18–13.702(b); and

(2) A prime contractor holding a cost-reimbursement contract may, with the prior approval of the contracting officer—

(i) Include in any cost-reimbursement subcontract thereunder provisions similar to those contained in paragraph (g) of the clause in § 18–13.703; and

(ii) Include in any fixed-price type subcontract under which the subcontractor is required to submit certified cost or pricing data (see § 18–3.807–3) a provision similar to that contained in § 18–13.702(b).

Contracting officers shall, prior to approving the inclusion of the provisions referred to in this § 18–13.102–2 in any subcontract, balance the need for the protection and care of Government property against the cost thereof. A prime contractor who provides Government property to a subcontractor shall not be relieved of any responsibility to the Government that he may have under the terms of his contract.

§ 18–13.103 Furnishing space property.

(a) Space property may be furnished to contractors when necessary for use as a standard or model, for testing the contractors' end item where suitable commercial equipment is not available, to establish equipment compatibility, or for such other similar reasons as the Procurement Officer or his designee determines to be in the best interest of the Government.

(b) Space property may be furnished to contractors under a facilities contract or under a supplies or services contract. Each contract under which such property is furnished shall provide that:

(1) Each item of the property be identified by its NASA Identification Number and Government nomenclature;

(2) The property be accounted for under that contract; and

(3) Upon its completion or termination, the contractor shall request and comply with disposition instructions from the contracting officer.

§ 18–13.104 Profits and fees.

No fee is to be provided or allowed a facilities contractor under a facilities contract. (See also § 18–3.808–2.)

§ 18–13.105 Use for or by contractors of test facilities owned and operated by the Government.

The on-site use for or by contractors of existing Government-owned test facilities located at installations owned and operated by the Government may be authorized in connection with the performance of Government contracts only when:

(a) There is no commercial test capability adequate for the testing needs, or

(b) Substantial cost savings will result from use of the Government-owned test facilities.

Whenever any such use is authorized, adequate consideration comparable to commercial charges, if any, shall be obtained under any affected contract.

§ 18–13.106 Control of Government property.

The control of Government property shall be in accordance with the provisions of appendix B except, in contracts with educational or other nonprofit organizations appendix C is applicable; unless otherwise authorized in this Part 18–13.

§ 18–13.150 Disposition of excess property and residual inventories.

Excess property and residual inventories shall be disposed of in accordance with the procedures contained in Part 18–8 and NASA Management Instruction 4310.1.

Subpart 18–13.2—Material

§ 18–13.201 Policy on furnishing material.

It is the general policy of NASA that contractors will furnish all material required for the performance of Government contracts. However, the Government should furnish material to a contractor when it is determined to be in the best interest of the Goverment by reason of economy, standardization, the expediting of production, or other appropriate circumstances.

§ 18–13.202 Procedure.

(a) Material to be furnished by the Government shall be set forth in the solicitation in sufficient detail to permit evaluation by prospective contractors.

(b) The contract schedule or specification shall identify specifically, by name and estimated quantities, all materials to be furnished by the Government of the types listed in § 18–52.508.

§ 18–13.203 Changing the amount of material to be furnished by the Government.

(a) At any time after a contract has been entered into, whether as a result of formal advertising or negotiation, the contract may be bilaterally modified to provide for the furnishing of Government material, or to increase the amount to be furnished, provided there is adequate consideration for such modification.

(b) When it is anticipated that substantial quantities of Government material will become available for the contract by transfer from another contract or otherwise, the contract may provide that a unilateral increase in the amount of material to be furnished by the Government may be ordered by the contracting officer, and that the contract shall be equitably adjusted therefor.

(c) Unilateral decreases in or substitutions for the material specified under a

contract to be provided by the Government may be ordered by the contracting officer, subject to the equitable adjustment of the contract, in accordance with paragraph (b) of the appropriate Government Property clause in Subpart 18–13.7.

Subpart 18–13.3—Providing Government Production and Research Property to Contractors

§ 18–13.301 Providing facilities.

(a) It is the policy of NASA that contractors will furnish all facilities required for the performance of Government contracts, except under the conditions set forth in paragraph (b) of this section. Competitive solicitations shall not include an offer by the Government to provide new facilities, although such solicitations may include an offer to furnish existing Government-owned facilities.

(b) Subject to paragraphs (c) and (d) of this section, facilities may be provided by the Government when:

(1) Necessary to obtain contract performance; or

(2) Furnishing existing Government-owned facilities (including facilities in possession of a prospective contractor) is likely to result in subtantially lower cost to the Government of the items produced, when all costs involved, such as costs of transporting, installing, maintaining, and reactivating such facilities, are compared with the cost to the Government of the contractor's use of privately-owned facilities.

(c) New facilities shall not be provided by the Government where an economical, practical and appropriate alternative exists. Examples include:

(1) Procuring from sources not requiring Government-owned facilities;

(2) Requiring the contractor to make full utilization of subcontractors possessing adequate and available capacity;

(3) Having the contractor rent facilities from commercial sources; and

(4) Using existing Government-owned facilities.

(d) Items having an acquisition cost of $500 or less will not be provided under the terms of any facility, supply or services contract. The above limitation does not apply to: (1) Research and development contracts with educational or other nonprofit organizations, or (2) wholly owned NASA installations.

(e) Facilities shall not be provided by the Government to contractors under this part solely for non-Government use.

(f) Prior to acquiring new facilities listed in § 18–13.312 and having an item acquisition cost of $1,000 or more, DoD Production Equipment Requisition/Non-Availability Certificate (DD Form 1419) shall be submitted to the Office of Procurement (Code KDM) for screening in accordance with Subpart 18–13.50.

§ 18–13.302 Securing approval for facilities projects.

(a) When Government-owned facilities, other than those presently in the contractor's possession, are to be provided to a contractor under a facilities contract pursuant to § 18–13.301(b), the written determination by the Director (or other head) of the installation, or his deputy, setting forth the necessity of the Government's obligation and the estimated cost of the facilities authorized will be included in the file of the related procurement contract. When the facilities contract covering those facilities included within the scope of the determination made in connection with the related procurement contract is submitted to the Director of Procurement for approval, a copy of such determination will be included in the submission. When additional facilities are to be provided, which exceed the scope authorized by the original determination, a new determination shall be made.

(b) The original and 5 copies (3 executed and 2 conformed) of each proposed facilities contract or modification thereto which provides facilities having a total acquisition value exceeding $250,000 or provides real property regardless of amount, shall be forwarded to the Office of Procurement (Code KDR) for review and approval prior to award. Such contract or modification shall contain the approval provision set forth in § 18–7.104–51. One copy of all other contracts or modifications thereto which provide facilities to a contractor shall be forwarded promptly upon execution to the Office of Procurement (Code KDR).

(c) If a facilities project involves construction work, approval of the Deputy Administrator, NASA Headquarters, or other designated officials, shall be obtained in accordance with the policies and procedures set forth in NASA Handbook (NHB) 7330.1. The approval document shall be placed in the supporting file prior to the initiation of the procurement action relating to the facilities project.

§ 18–13.303 Use of facilities contracts.

§ 18–13.303–1 General requirements for separate facilities contracts.

(a) Except as provided in paragraph (b) of this section, facilities shall be provided by the Government to a contractor or subcontractor only under a facilities contract.

(b) Facilities may be provided to a contractor under a contract other than a facilities contract when:

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

(2) The contract is for construction;

(3) The contract is for the performance of work within an establishment or installation operated by the Government; or

(4) The contract is for the performance of services involving the operation of a Government-owned plant or installation for a period of 6 months or less, and the facilities provided are to be used only in connection with such contract, which shall, to the extent practicable, contain the clauses in Subpart 18–7.7.

When facilities are provided under a contract other than a facilities contract, the contract shall contain the appropriate Government Property clause, except where, pursuant to subparagraph (4) of this paragraph (b), adequate contractual coverage is obtained through the use of clauses set forth in Subpart 18–7.7.

(c) Except as otherwise provided in paragraph (b) of the section, all facilities provided by NASA to a contractor or subcontractor at any one plant or general location shall be accountable under a single NASA facilities contract governing use, modified from time to time as necessary, and covering only the facilities at that plant, or general location, except that: (1) The contracting officer may authorize the temporary use of the facilities at a location other than that covered in the facilities contract for a period of 6 months or less, and (2) the Director of Procurement may authorize other exceptions where he determines it to be impracticable to require a single facilities contract.

(d) Special tooling and special test equipment will normally be provided to a contractor under a supply contract, but may be provided under a facilities contract when to do so is administratively desirable.

§ 18–13.303–50 Acquisition, use, and consolidated facilities contracts.

(a) A facilities acquisition contract is a facilities contract which contains terms and conditions covering Government provision of facilities to a contractor. It covers (a) contractor acquisition, construction, and installation of the facilities described in the contract schedule and (b) NASA furnishing of facilities when work, such as installation work, will be performed by the contractor at direct expense to the Government under the contract. A facilities acquisition contract does not contain authority for contractor use of facilities. When the facilities under the acquisition contract are acquired, installed, and accepted by the Government, accountability is transferred to a facilities contract governing use.

(b) A facilities use contract is a facilities contract which contains terms and conditions covering the contractor's use of Government-owned facilities for which he is accountable. Facilities, in addition, are furnished to a contractor by the Government under a facilities use contract in the circumstances set forth in § 18–13.303–51.

(c) A consolidated facilities contract is a facilities contract which provides for both acquisition and use of facilities.

§ 18–13.303–51 Application of acquisition, use, and consolidated facilities contracts.

(a) When a facilities contract is required to provide facilities under § 18–13.303–1(a) and there is no existing facilities contract covering the use of facilities by the contractor, the acquisition type of facilities contract shall be used in conjunction with a facilities use contract, except that:

(1) A consolidated facilities contract may be used if it is anticipated that all foreseeable work with the contractor will

continue to remain under the cognizance of the NASA installation entering into the facilities contract; and

(2) A facilities use contract shall be used, without a facilities acquisition contract, to cover Government furnishing of facilities to a contractor when the contract does not require direct reimbursement thereunder in connection with the furnishing of such facilities.

(b) If there is an existing facilities use contract, additional facilities may be provided by:

(1) A new facilities acquisition contract which provides for the transfer of the additional facilities to the existing use contract;

(2) If administratively convenient, by amendment of any existing uncompleted facilities acquisition contract; or

(3) In the circumstances described in paragraph (a)(2) of this section, by amendment of the existing use contract. If there is an existing consolidated facilities contract, additional facilities may be provided by its amendment, or by a facilities acquisition contract which provides for the transfer of the additional facilities to the use provisions of the consolidated facilities contract, whichever is more administratively convenient.

(c) Prior written advice regarding a proposed increase in facilities assistance shall be furnished the contracting officer of an existing facilities use contract or consolidated facilities contract.

§ 18–13.304 Furnishing existing Government-owned special tooling.

(a) *General.* It is the policy of NASA that existing special tooling to which the Government has title, or the right to acquire title pursuant to the Special Tooling clause in § 18–13.704, be offered to prospective contractors for use in performing Government contracts and subcontracts, if:

(1) To do so will not interfere with production or program schedules having a greater priority;

(2) To do so is otherwise advantageous to the Government; and

(3) Its use would be authorized pursuant to § 18–13.402 or § 18–403 were it furnished.

(b) *Contract provisions.* Special tooling shall be furnished pursuant to either the appropriate clause in Subpart 18–13.7 or a facilities contract. In any case, the contract under which the special tooling is furnished shall contain a description thereof, and the terms and conditions applicable to its shipment to the plant of the contractor and to the cost of adapting and installing it.

§ 18–13.305 Acquisition of special tooling.

§ 18–13.305–1 General.

(a) *Policy.* It is the policy of NASA that contractors provide and retain title to special tooling required for the performance of contracts to the maximum extent consistent with sound procurement objectives. Government acquisition of title or the right to title in special tooling creates substantial administrative burden, encumbers the competitive procurement process and frequently results in the retention of special tooling without advantage commensurate with such burden. In certain instances, however, the acquisition of special tooling or rights thereto may help the Government obtain fair prices, recover the residual value of special tooling paid for by the Government, and increase competition in subsequent procurements by increasing the number of sources, where the tooling is susceptible of use by more than one contractor, considering its adaptability and all costs of movement. Additionally, the Government may require all or a substantial part of the tooling for subsequent in-house use. The particular circumstances of each procurement must be considered in determining whether the advantages of acquiring special tooling or rights thereto outweigh the disadvantages.

(b) *Application of policy in competitive and noncompetitive procurements.* In procurements where there is adequate price competition, the Government usually relies on the competition to obtain a fair charge for the amortization of special tooling provided by the contractor. Furthermore, in a competitive area, ownership of special tooling by one contractor is not likely to prevent others from competing in follow-on procurements. Thus, it is not generally appropriate for the Government to acquire special tooling or rights thereto in competitive procurements. However, where there is not adequate price competition, the Government typically pays the full cost of the special tooling regardless of who owns or has rights to it, and therefore it is usually appropriate for the Government to acquire special tooling or rights thereto. Moreover, Government ownership may make it easier to create competition in follow-on procurements. Where a decision is made not to take title to special tooling in a procurement without price competition, consideration shall be given to the need for special contract provisions covering contractor plans for future recovery of any initial special tooling costs in follow-on competitive procurements (see §18–3.813).

§ 18–13.305–2 Fixed-price contracts.

(a) *General.* In fixed-price contracts where a certificate of current cost or pricing data is not required, special tooling or rights thereto shall not be acquired unless the contracting officer determines such acquisition to be advantageous to the Government, considering the factors set forth in paragraph (b) of this section.

(b) *Criteria for acquisition.* In deciding whether to acquire special tooling or rights thereto, or to exercise the Government's acquisition rights under contracts or subcontracts pursuant to the Special Tooling clause set forth in §18–13.704, the following factors shall be considered:

(1) The current or probable future need of the Government for the items involved and the estimated cost of reproducing them if not acquired;

(2) Their estimated residual value;

(3) The administrative and other expense incident to reporting, recordkeeping, preparation, handling, transportation, and storage;

(4) The effect on pricing future contracts;

(5) The feasibility and probable cost of making the items available to other bidders or offerors in the event of future procurement;

(6) The amount offered by the contractor for the right to retain the items; and

(7) The contribution Government acquisition makes to future competition.

(c) *Criteria for waiving special tooling provisions in subcontracts.* In determining whether rights to acquire special tooling from subcontractors are not of substantial interest to the Government so as to permit the omission of special tooling provisions from the affected subcontracts pursuant to paragraph (j) of the Special Tooling clause set forth in § 18–13.704, the contracting officer shall consider the factors listed in paragraph (b) of this section. It is desirable that such determination be made before execution of the contract, to the extent practicable, in which case the price shall reflect the authorized omission of special tooling provisions in any affected subcontract. If this question is presented to the contracting officer after execution of the contract, he shall condition his determination upon securing the contractor's consent to an equitable reduction in the contract price to reflect any reduction in the price of the affected subcontracts resulting from the omission of such provisions.

(d) *Procedures.* (1) If the contracting officer has decided not to acquire special tooling or rights thereto, he may include in the solicitation such information as he may have of current planning for future procurements of the item involved, consistent with security requirements. Offerors shall be advised in the solicitation that such statements are estimates and there is no assurance that any quantity will be procured.

(2) In formally advertised procurements, each item of special tooling to be acquired by the Government under the standards set forth above shall be clearly identified in the invitation for bids as a separate item, or by category if individual items are low in value, and the Special Tooling clause in § 18–13.704 shall not be used.

(3) In negotiated procurements, each item of special tooling to be acquired under the standards set forth above shall be identified as a separate item in the solicitation and contract to the maximum extent practicable, or by category if individual items are low in value. If such identification is impracticable, title to special tooling may be obtained through use of the Special Tooling clause in § 18–13.704. If the use of this clause will result in an undesirable acquisition of rights to some special tooling, the Schedule shall specify the special tooling not covered by the clause.

(e) *Protecting government interest in contractor-owned special tooling.* Where the Government does not acquire special tooling or the rights thereto pursuant to paragraph (d) of this section, but will

pay for a substantial portion of the special tooling in the price paid for supplies or services, special provisions may be included in the Schedule of a contract to give recognition to the equitable interest of the Government in the special tooling, if such interest is significant. For example:

(1) Where there is a distinct possibility that the Government eventually may decide to acquire title to the special tooling, the contract may provide for an option in the Government to acquire the special tooling at a specified price or for an amount to be determined in accordance with specified standards (the criteria set forth in paragraph (b) of this section shall be considered in exercising such options); or

(2) If the Government does not acquire or reserve the right to acquire title to the special tooling, the contract may provide for the contractor's future amortization of the special tooling under Government contracts.

§ 18–13.305–3 Cost-reimbursement type contracts.

Title to special tooling under cost-reimbursement type contracts shall be acquired pursuant to the clauses set forth in §§ 18–13.703 and 18–13.707.

§ 18–13.306 Providing special test equipment.

§ 18–13.306–1 Furnishing existing special test equipment.

It is the policy of NASA to offer existing Government-owned special test equipment to contractors when advantageous to the Government in the light of the factors set forth in § 18–13.304. Government-owned components to be incorporated into special test equipment may also be offered in accordance with this policy. These components may be facilities, special test equipment, or cannibalized components of other special test equipment for which there in no further need.

§ 18–13.306–2 Acquisition of new special test equipment.

New special test equipment may be acquired by a contractor for the Government when:

(a) Advantageous to the Government in the light of the criteria set forth in 18–13.305–2(b) for special tooling in fixed-price contract, and

(b) Existing Government-owned special test equipment or components thereof cannot be made available.

§ 18–13.306–3 Contract provisions for acquiring special test equipment.

(a) In formally advertised procurements, each item of special test equipment to be acquired by the Government shall be clearly identified in the invitation for bids as a separate item, or by category if individual items are low in value.

(b) In negotiated procurements, with respect to special test equipment the exact nature of which is known when the contract is signed, the contract shall identify each item of special test equipment to be acquired by the Government as a separated item or by category if individual items are low in value.

(c) In negotiated procurements, with respect to special test equipment the exact nature of which is not known when the contract is signed, the contract shall define the extent to which the contractor will be responsible for acquiring special test equipment for the Government. In such cases, the clause set forth in § 18–13.705 shall be used to permit the Government to furnish special test equipment in kind and thereby obtain an equitable adjustment.

§ 18–13.306–4 Screening existing Government-owned special test equipment costing $1,000 or more.

In order to minimize the acquisition of new special test equipment or components thereof, the contracting officer shall consider the utilization of the Department of Defense Industrial Plant Equipment Center resources and if the time limitations and other considerations permit screening existing NASA owned production and research property, to ascertain whether any Government-owned property can be furnished in accordance with the policy set forth in §18–13.306–1. To accomplish such screening, Department of Defense Production Equipment Requisition/Non-Availability Certificate (DD Form 1419) shall be submitted to the Office of Procurement (Code KDM) in accordance with Subpart 18–13.50. Where special test equipment is to be acquired in the manner described in § 18–13.306–3(b), the screening shall be accomplished before contract award. Where special test equipment is to be acquired in the manner described in § 18–13.306–3(c), the contracting officer shall normally accomplish the screening and notify the contractor of the Government's election within the notice period provided in the Special Test Equipment clause in § 18–13.705. Thereafter, the Government-owned items to be furnished shall be promptly shipped to the contractor and the contract shall be equitably adjusted pursuant to the Special Test Equipment clause. However, if the contracting officer determines that the savings anticipated from furnishing Government-owned items would be exceeded by costs that might be incurred as a result of delays or administrative actions, he may, except as to items listed in § 18–13.312, waive the screening and shall immediately advise the contractor that the Government will not furnish the equipment.

§ 18–13.307 Providing Government production and research property when disposal is limited.

(a) *Nonseverable property.* Nonseverable Government production and research property, other than foundations and similar improvements necessary for the installation of special tooling, special test equipment, and plant equipment, shall not be installed or constructed on land not owned by the Government, in such fashion as to be nonseverable, unless the Director (or other lead) of the installation determines that such location is necessary. The determination to locate such nonseverable production and research property on land not owned by the Government shall be made only when all of the conditions in the following subparagraphs (1) through (4) of this paragraph have been met:

(1) Consideration has been given to any nonrecoverable costs involved, including transportation and installation;

(2) Consideration has been given to locating the Government property on a portion of the land where it can be segregated from existing contractor-owned and Government-owned facilities and where the new Government production and research property is readily accessible to public thoroughfares, where it is practical to do so, and in such cases consideration has been given to obtaining a written agreement by the contractor on whose land the property is to be placed that either the Government or another Government contractor will have a right to operate the production and research property upon termination or completion of the work for which it was provided; and in cases where such an agreement is not obtained, the negotiation effort shall be documented to justify the alternate proposal;

(3) The contractor agrees that the Government will have the right to abandon in place all nonseverable Government production and research property provided and that the Government, in such event, will not have any obligation to restore or rehabilitate the premises on which the property is located, unless otherwise provided in the contract with the prior approval of the Director (or other head) of a NASA installation (this approval authority shall not be delegated).

(4) One of the circumstances in the following subdivisions (i) through (iv) has been met—

(i) The Government obtains an option to acquire the underlaying land;

(ii) The production and research property is disposable, after the Government's need therefor has ceased, to parties other than the contractor for commercial or industrial operations and the Government acquires from the owner a right to retain title and to dispose of all facilities it has constructed, without regard to the laws of real property in the jurisdiction in which the facility is located. Such right of disposition must be unencumbered, and will be evidenced by written agreement or other legal instrument signed by the contractor or other owner of the real property;

(iii) The contractor agrees in writing that he will purchase the property upon the termination or completion of the contract under which the property is provided, or within a specified reasonable time thereafter, at a price to be determined by appraisal, or at a price equal to the acquisition cost of the property less depreciation at the rate or rates specified in the contract (which rate or rates shall take into account the estimated useful life of the property) or for the scrap and salvage value of the property if the Director (or other head) of the NASA

installation determines that the estimated useful life of the property will not extend beyond the expiration of the facilities contract or the completion of the work for which the property was provided. Any such purchase agreement must permit the Government to credit any amounts due the contractor under the contract against the purchase price; or

(iv) The Administrator, NASA, specifically approves other provisions which he considers adequate to protect the interests of the Government in regard to the production and research property.

(b) *Property subject to patent or other proprietary rights.* If patent or other proprietary rights of a contractor may restrict the disposal of Government production and research property, the condition in either paragraph (a)(4)(ii) or paragraph (a)(4)(iii) of this section shall be satisfied before such property is provided.

§ 18–13.308 Offer to furnish Government production and research property "as is".

(a) Government production and research property may be offered on an "as is" basis in any solicitation for fixed-price type contracts, whether such property is in storage or in the possession of a contractor. In the latter event, the offer will be subject to the policy stated in § 18–13.304(a)(1) regarding the relative priorities of the work involved.

(b) Government production and research property may be offered on an "as is" basis for the performance of fixed-price type contracts only if it can be inspected by bidders or proposers prior to the submission of their offers. In such cases, the solicitation shall state:

(1) The availability and location of the property, and the conditions under which it may be inspected;

(2) That the property will be offered in its current condition, f.o.b. present location;

(3) That bidders or proposers must satisfy themselves that the property is suitable for their use;

(4) That any costs of transporting, installing, modifying, repairing, or otherwise making the property suitable for use shall be borne by the successful bidder or proposer;

(5) That evaluations will be made to eliminate any competitive advantage from the use of the property (see Subpart 18–13.5); and

(6) The bidders or proposers to whom the property is offered, if it is not to be offered to all.

(c) If, in accordance with the policy stated in §§ 18–13.402 and 18–13.403, the successful bidder or proposer is authorized to use property furnished on an "as is" basis, the Government shall furnish the property in its current condition, f.o.b. present location. If a facilities contract is used to furnish Government production and research property offered on an "as is" basis, the Schedule shall state that the contractor shall not be reimbursed thereunder for transporting, installing, modifying, repairing, or otherwise making the property ready for use.

§ 18–13.309 Changing Government production and research property to be provided.

The amount of Government production and research property specified under a contract to be provided may be increased by a bilateral modification of the contract. Such increases shall be made only when approved in accordance with the policies prescribed in this Subpart 3 and when the Government receives adequate consideration therefor. Unilateral decreases in or substitution for the Government production and research property specified under a contract to be provided by the Government may be ordered by the contracting officer, subject to the equitable adjustment of the contract, in accordance with paragraph (b) of the appropriate Government Property clause in Subpart 18–13.7.

§ 18–13.310 Limited offers.

If it is not feasible to make Government production and research property available to all bidders or proposers, solicitations offering to furnish such property under this Subpart may limit the offer accordingly.

§ 18–13.311 [Reserved]

§ 18–13.312 Items to be screened.

The items to be screened (see Subpart 18–13.50) in accordance with §§ 18–13.301(f) and 18–13.306–4 are as follows:

LIST I

This list is for use by all NASA activities using the Plant Equipment Code/Standard Commodity Code as the basis for equipment classification.

Plant equipment code	Standard commodity code	Description
	2432	Pressure and Vacuum Tanks, Enclosures Only.
	2433	Storage and Processing Tanks, Enclosures Only.
	3111	Generators, Alternating Current.
	3112	Generators, Direct Current.
	3123	Motors, A.C., Integral, 1 Horsepower and Over.
	3126	Motors, D.C., Integral, 1 Horsepower and Over.
	3129	Motors, Universal, Integral, 1 Horsepower and Over.
	3131	Prime Mover Generator Sets, Gasoline Engine.
	3132	Prime Mover Generator Sets, Diesel Engine.
	3133	Prime Mover Generator Sets, Gas Turbine.
	3134	Prime Mover Generator Sets, Steam Engine.
	3135	Prime Mover Generator Sets, Steam Turbine.
	3139	Miscellaneous Prime Mover Generator Sets.
	3140	Rotating Converting Equipment: Includes Dynamotors, Motor Converters, Phase Converters, Phase Modifiers, Frequency Changers, Synchronous Converters, Sychronous Booster Converters.
	3148	Motor Generator Sets.
	3149	Rotating Converting Equipment Miscellaneous.
	3191	Dynamometers.
	3311	Compressors, Air, Reciprocating, Stationary, Tank Mounted.
	3312	Compressors, Air, Reciprocating, Stationary, Except Tank Mounted.
	3313	Compressors, Air, Reciprocating, Portable.
	3314	Compressors, Industrial Gases.
	3321	Compressors, Rotary, Lobe Type, Except Refrigeration.
	3322	Compressors, Rotary, Vane Type, Except Refrigeration.
	3323	Compressors, Rotary, Screw Type, Except Refrigeration.
	3324	Compressors, Rotary, Gear Type, Except Refrigeration.
	3329	Compressors, Rotary, Miscellaneous, Except Refrigeration.
	3331	Vacuum Pumps, Reciprocating.
	3332	Vacuum Pumps, Rotary.
	3339	Vacuum Pumps, Miscellaneous.
	3341	Pumps, Reciprocating, Power Driven.
	3342	Pumps, Centrifugal, Power Driven.
	3343	Pumps, Turbine, Power Driven.
	3344	Pumps, Rotary, Power Driven.
	3345	Pumps, Diaphragm, Power Driven.
	3349	Pumps, Miscellaneous, Power Driven.
	3399	Compressors and Pumps, Miscellaneous.
3411	----------	Boring Machines.
3412	----------	Broaching Machines.
3413	----------	Drilling Machines.
3414	----------	Gear Cutting and Finishing Machines.
3415	----------	Grinding Machines.
3416	----------	Lathes.
3417	----------	Milling Machines.
3418	----------	Planers.
3419	----------	Miscellaneous Machine Tools.
	3421	Boring Machines, Portable.
	3422	Drilling Machines, Portable.
	3423	Facing Machines, Portable.
	3424	Milling Machines, Portable.
	3425	Planers, Portable, Except Rotary Type.
	3426	Turning Machines, Portable.
	3427	Keyway Cutters, Shaft, Portable.
	3428	Shapers and Slotters, Portable.
	3429	Portable Machine Tools, Not Elsewhere Classified.
	3431	Rolling Mills and Allied Equipment.
	3432	Drawing Machines and Drawing Benches.
	3433	Finishing Equipment.
	3439	Primary Metal Forming Machines and Equipment, Not Elsewhere Classified.
3431	----------	Electric Arc Welding Equipment.
3432	----------	Electric Resistance Welding Equipment.
3433	----------	Gas Welding and Heat Cutting and Metallizing Equipment.
3436	----------	Welding Positioners and Manipulators.
3438	----------	Miscellaneous Welding Equipment.
3441	----------	Bending and Forming Machines.
3442	----------	Hydraulic and Pneumatic Presses, Power Diven.
3443	----------	Mechanical Presses, Power Driven.
3444	----------	Manual Presses.
3445	----------	Punching and Shearing Machines.
3446	----------	Forging Machinery and Hammers.
3447	----------	Wire and Metal Ribbon Forming Machines.
3448	----------	Riveting Machines.
3449	----------	Miscellaneous Secondary Metal Forming and Cutting Machines.
	3473	Surface Plates.
	3521	Plant-to-Fiber Machinery.
	3522	Fiber-to-Fabric Machinery.
	3523	Fabric Machinery.
	3524	Bleaching, Dyeing, and Finishing Machinery.
	3525	Sewing Machinery, Industrial.
	3526	Clothing and Other Fabric Working Machinery.
	3527	Cordage and Rope Machinery.
	3529	Miscellaneous Textile Industries Machinery.
	3531	Pulp Mill Machinery.
	3532	Paper Mill Machinery.
	3533	Wallboard Machinery.
	3534	Paperboard Machinery.
	3535	Box and Carton Making Machinery.
	3536	Fiber Can, Tube, Drum, and Pail Making Machinery.
	3537	Bag and Envelope Making Machinery.
	3539	Miscellaneous Paper Converting Machinery.
	3551	Rubber Processing Machinery.
	3552	Rubber Fabricating Machinery.
	3553	Vulcanizing Machinery and Presses.
	3554	Rubber Reclaiming Machinery.
	3559	Miscellaneous Rubber Working Machinery.

Plant equipment code	Standard commodity code	Description
	3562	Sawing Machines, Except Sawmills.
	3563	Surfacing Machines.
	3564	Lathes, Woodworking.
	3565	Jointer, Matchers, Molders, Mortisers, and Tenoners, Etc.
	3566	Veneer and Plywood Machinery.
	3569	Miscellaneous Woodworking Machinery.
	3571	Metallurgical and Metal Melting Furnaces.
	3572	Metal Heat Treating Furnaces and Ovens.
	3573	Kilns, Except Wood Industry Kilns.
	3574	Wood Industry Kilns.
	3575	Ovens, Except Metal Heat Treating and Food Industry Including Reheating Furnaces.
	3577	Lehrs.
	3578	Ammonia Dissociators and Gas Generators.
	3579	Industrial Furnaces, Miscellaneous.
	3581	Core Making Machines.
	3582	Molding Machines.
	3583	Shakeout Equipment.
	3584	Tumbling Barrels and Mills.
	3585	Blast Cleaning Equipment for Castings, Except Barrels and Mills.
	3586	Casting Machines.
	3587	Sand Conditioning and Reclamation Equipment, Multiple Purpose Units.
	3589	Miscellaneous Foundry Equipment Except Furnaces and Ovens.
	3593	Special Machinery for Glass Industry (Forming, Polishing, Grinding, and Finishing).
	3597	Special Machines for the Chemical and Pharmaceutical Products Manufacturing Industries, Including Synthetic Rubber Manufacturing Machinery.
	3598	Special Machines for Ammunition and Ordnance.
	3599	Special Industry Machinery, Not Elsewhere Classified.
	3911	Crushers.
	3912	Pulverizers, Grinders, and Granulators.
	3913	Shredders, Chippers, and Knife Hogs.
	3914	Screeners, Sifters, and Other Sizers.
	3915	Mixing Machines, Except Construction Material Mixers.
	3919	Miscellaneous Crushing, Pulverizing, and Screening Machines, and Equipment, Except Construction Material Mixers.
	3921	Filling Machines (Packaging).
	3922	Wrapping Machines.
	3923	Cartoning Machines and Carton Closing Machines.
	3924	Package Sealing, Stapling, and Closing Machines.
	3925	Capping Machines.
	3926	Labeling Machines.
	3927	Combination Packaging Machines.
	3929	Wrapping Packaging Machinery, Miscellaneous.
	3931	Cabinet Driers and Dehydrators.
	3932	Multipass Driers.
	3933	Tunnel Driers and Dehydrators.
	3934	Rotary Driers and Dehydrators.
	3935	Spray Driers.
	3936	Flash Driers.
	3937	Gas Driers, Includes Activated Alumina Towers.
	3939	Miscellaneous Thermal Driers, Dehydrators and Anhydrators.
	3941	Closed Heat Exchangers.
	3942	Open Heat Exchangers.
	3943	Direct Contact Heat Exchangers Intermixed Fluids.
	3944	Pebble Heat Exchangers.
	3949	Miscellaneous Industrial Heat Exchangers.
	3951	Steam Boilers, Stationary, Over 15 Pounds W.S.P.
	3952	Steam Boilers, Marine, Over 15 Pounds W.S.P.
	3961	Industrial Fans and Blowers, Centrifugal, Except Turbo-Fans and Blowers.
	3962	Industrial Fans and Blowers, Centrifugal, Turbo.
	3963	Industrial Fans and Blowers, Axial; Except Turbo-Blowers.
	3964	Industrial Fans and Blowers, Axial Turbo.
	3965	Industrial Fans and Blowers, Rotary.
	3966	Industrial Fans and Blowers, Mechanical Draft Type.
	3969	Miscellaneous Industrial Fans and Blowers.
	3971	Pressure Type Filters for Liquids.
	3972	Vacuum Type Filters for Liquids.
	3973	Combination Pressure and Vacuum Type Filers for Liquids.
	3991	Centrifugals.
	3992	Separators.
	3994	Feeders.
	3995	Metallizing Equipment.
	3996	Dust Collection and Other Air Purification Equipment (For Removal of Solid and Gaseous Foreign Matter).
	3999	General Purpose Industrial Machinery Not Elsewhere Classified.
	5211	Air Conditioning Units, Mechanical, Self-Contained, Room.
	5212	Air Conditioning Units, Mechanical, Self-Contained, Except Room.
	5231	Refrigerators, Commercial, Mechanical, Reach In.
	5232	Refrigerators, Commercial, Mechanical, Walk In.
	5239	Refrigerators, Commercial, Mechanical, Miscellaneous.
	5272	Refrigeration Units, Industrial, Mechanical, Cutting Tool Coolers, Rivet Coolers.
	5291	Air Conditioning Units, Non-Mechanical, Water Ice.
	5293	Refrigerators, Commercial, Non-Mechanical, Water Ice.
	5412	Transformers, Instrument.
	5413	Transformers, Special Purpose, Except Specialty and Instrument Transformers, Includes Luminous Tube Illumination, Constant Current, Street Lighting, Rotary Converter, and Mercury Arc Rectifier Transformers.
	5414	Regulators. Induction Step Type Booster.
	5415	Transformers. Distribution and Network. 1½ Kilovolt Amperes Through 500 Kilovolt Amperes.
	5416	Transformers, Power, Over 500 Kilovolt Amperes.
	5419	Transformers; Miscellaneous.
	5421	Mercury Pool, Arc Rectifier, and Inverting Units.
	5422	Hot Cathode Rectifier and Inverting Units.
	5423	Cold Cathode Rectifier and Inverting Units.
	5424	Electrolytic Rectifier Units.
	5425	Metallic Junction Rectifier Units.
	5426	Mechanical (Vibrating) Rectifier and Inverting Units.
	5429	Miscellaneous Non-Rotating Rectifying and Inverting Equipment.
	5431	Switchgear, Complete Units.
	5432	Wired Switchboards.
	5433	Circuit Breakers, Except Feeder Type. Including Automatic Circuit Reclosers.
	5434	Knife Switches, Including Disconnect and Switchboard Mounting Type Switches.
	5441	Electronic Control Apparatus.
	5442	Motor Control Equipment, Except Electronic.
	5443	Motor Braking Devices.
	5444	Variable Resistors. Potentiometers and Rheostats.
	5445	Fixed and Adjustable Resistors.
	5447	Pilot Devices and Servo Mechanisms.
	5449	Miscellaneous Industrial Control Equipment.
	5451	Primary Substations.
	5452	Secondary Substations, Load Centers, Power Centers.
	5473	Circuit Breakers. Feeder Type.
	5499	Electrical Control and Distribution Equipment Not Elsewhere Classified.
	5511	Gravity Conveyors. Wheel and Roller.
	5512	Power Conveyors, Except Overhead Trolley, Pneumatic Tube, and Portable, Including Vertical Conveyors.
	5513	Overhead Trolley Conveyor Systems.
	5514	Pneumatic Tube Systems, Including Foot Power Units.
	5515	Portable Conveyor Units.
	5516	Straight and Spiral Chutes.
	5519	Miscellaneous Conveyors and Conveying Systems.
	5542	Overhead Traveling Cranes.
	5543	Charging and Decharging Machines and Manipulators.
	5544	Gantry and Portal Type Cranes and Ore Bridges.
	5545	Whirley Cranes.
	5546	Jib Cranes, Including Bracket and Pillar Cranes.
	5547	Derricks.
	5549	Miscellaneous Cranes.
	5551	Hoists.
	5552	Winches.
	5553	Windlasses.
	5554	Capstans.
	5561	Powered Trucks, Industrial (Warehouse).
	5562	Hand Trucks, Including Dollies.
	5563	Tractors, Warehouse.
	5564	Trailers for Warehouse Tractors.
	5565	Stackers, Portable Platform Type Elevators.
	5590	Conveying, Elevating, Materials Handling Equipment, Miscellaneous.
	5621	Voltmeters and Millivoltmeters.
	5622	Ammeters and Milliammeters.
	5623	Wattmeters and Power Instruments, Including Power Factor Meters.
	5624	Frequency Meters, Low Frequency, and Synchroscopes.
	5625	Ohmmeters.
	5626	Watt Hour Meters and Watt Hour Demand Meters.
	5627	Laboratory Measuring Instruments, Electric.
	5628	Radio and Radar Test Equipment.
	5629	Miscellaneous Electrical Quantity Measuring Instruments.
	5631	Temperature Measuring Instruments.
	5632	Humidity Measuring Instruments.
	5633	Pressure and Vacuum Measuring Instruments.
	5634	Fluid Flow and Liquid Level Measuring Instruments.
	5635	Tachometers.
	5636	Instruments for Measuring pH Acidity, Alkalinity, Density, and Constituents of Gases.
	5638	Combination Measuring Instruments.
	5639	Miscellaneous Measuring Instruments Except Aircraft and Electrical Quantity Measuring Instruments.
	5641	Temperature Controlling and Measuring Apparatus.
	5642	Humidity and Moisture Controlling and Measuring Apparatus.
	5643	Pressure and Vacuum Controlling and Measuring Apparatus Except Refrigeration Controls and Barometers.
	5644	Fluid Flow and Liquid Level Controlling and Measuring Apparatus.
	5646	Acidity, pH Controlling and Measuring Apparatus.
	5651	Hardness Testing Machines.
	5652	Strength of Materials Testing Machines.
	5653	Pressure Testing Machines.
	5654	Spring Testing and Checking Machines.
	5655	Wear, Abrasion, and Aging Testing Machines.
	5656	Balancing Machines.
	5657	Inspection, Testing, and Measuring Machines.
	5658	Insulation, Heating, Ventilation, and Air Conditioning Testing Machines.
	5659	Miscellaneous Physical Properties Testing Equipment, Industrial Production Type, Excludes X-ray and Gamma Ray Equipment.
	5661	Drafting (Lofting) Machines, Numerically Controlled.
	5671	Chemical Laboratory Apparatus.
	5672	Laboratory Testing Instruments and Apparatus.
	5673	Clinical, Bacteriological, and Pathological Laboratory Instruments and Apparatus.
	5676	Constant Temperature Apparatus and Devices, Laboratory.
	5677	Balances, Weights, and Laboratory Scales.

Plant equipment code	Standard commodity code	Description
	5679	Miscellaneous Laboratory Instruments and Apparatus, Except Measuring.
	5683	Microscopes and Magnifiers.
	5684	Laboratory and Industrial Optical Instruments, Except Microscopes.
	5685	Microprojectors.
	5686	Optical Elements and Assemblies.
	5689	Miscellaneous Optical Apparatus and Instruments.
	5693	Electronic Devices for Scientific Research and Related Application.
	5694	Ordnance Testing Equipment.
	5695	Performance Testing Equipment of Aircraft and Aircraft Instrument Testing Equipment.
	5859 (part-of-class).	Sine Bars and Plates.
	6327	Electric Computing Equipment (Class not listed in SCC) (Air Force assigned Code).
	6542	Overhead. Supported or Suspended Scales, Except Platform Type.
	6543	Platform Scales.
	6545	Hopper and Tank Scales, Except Suspended.
	6546	Trip Scales.
	6547	Special Scales.
	6630	Electronic Testing and Measureing Instruments. NOTE: Nomenclature has been changed from "Radio Equipment and Related Devices" to "Electronic Testing and Measuring Instruments". DIPEC does not desire to control Radio Equipment and Related Devices per se but control of electronic and measuring equipment used in the manufacture of such items. Also listed under SCC 5628.
	6640	Electronic Testing and Measuring Instruments. NOTE: Nomenclature has been changed from "Radar Equipment and Related Devices" to "Electronic Testing and Measuring Instruments". DIPEC does not desire to control Radar Equipment and Related Devices per se but the electronic and measuring equipment used in the manufacture of such items. Also listed under SCC 5628.
	6649	See SCC 6640, same nomenclature and Note applies to the Miscellaneous Radar and Related Devices.
	6670	Power Supplies. NOTE: Includes Precision Supplies that are specifically designed for use with electronic testing and measuring equipment.
	6721	Still Picture Cameras.
	6723	Readers and Viewers.
	6732	Still Picture Processing and Finishing Equipment.
	6738	Densitometers (Part of Class SCC 6738).
	6814	Complete Industrial X-Ray Units.
	6891	Electromagnet Lifting.
	9748	Aeromedical (Altitude Chambers).

LIST II

This list is for use by all Department of Defense activities using the Federal Supply Classification as the basis for equipment classification.

Federal supply classification — *Description*

3220---- Woodworking Machines.
3411---- Boring Machines.
3412---- Broaching Machines.
3413---- Drilling Machines.
3414---- Gear Cutting and Finishing Machines.
3415---- Grinding Machines.
3416---- Lathes.
3417---- Milling Machines.
3418---- Planers.
3419---- Miscellaneous Machine Tools.
3422---- Rolling Mills and Drawing Machines.
3424---- Metal Heat Treating Equipment.
3426---- Metal Finishing Equipment.
3428---- Foundry Equipment and Supplies.
3431---- Electric Arc Welding Equipment.
3432---- Electric Resistance Welding Equipment.
3433---- Gas Welding, Heat Cutting and Metallizing Equipment.
3436---- Welding Positioners and Manipulators.
3438---- Miscellaneous Welding Equipment.
3441---- Bending and Forming Machines.
3442---- Hydraulic and Pneumatic Presses, Power Driven.
3444---- Manual Presses.
3445---- Punching and Shearing Machines.
3446---- Forging Machinery and Hammers.
3447---- Wire and Metal Ribbon Forming Machinery.
3448---- Riveting Machines.
3449---- Miscellaneous Secondary Metal Forming and Cutting Machines.
3450---- Machine Tools, Portable.
3460---- Machine Tool Accessories.
Plates, Duplex, Surface, and Lapping.
3530---- Industrial Sewing Machines and Mobile Textile Repair Shops Industrial Sewing Machines.
3540---- Wrapping and Packaging Machinery.
Adhesive Applying Machines, Label.
Baling Presses, Industrial.
Bottle Capping Machines.
Bottle Filing Machines.
Boxes and Cutters, Steel Strapping Coil.
Capping Machines.
Filling Machines.
Labeling Machines.
Measuring and Cutting Machines, Paper.
Nailing Machines, Automatic.
Package Sealing Machines.
Preservation and Packaging Equipment Sets.
Sealers, Box Strapping.
Sealing Machines, Heat.
Sealing Plates, Electric.
Staplers, Box.
Stapling Machines, Except Office Type.
Steel Strapping and Sealing Kits.
Stretching Machines, Steel Strapping, Electric.
Supplementary Equipment, Depot, Packaging and Preservation.
Twisters, Wire Typing, Hand.
Typing Machines, Bundle, Industrial.
3615---- Pulp and Paper Industries Machinery.
3620---- Rubber Working Machinery.
3625---- Textile Industries Machinery.
3635---- Glass Industries Machinery.
3650---- Chemical and Pharmaceutical
3650---- Chemical and Pharmaceutical Products Manufacturing Machinery.
3655---- Gas Generating Equipment.
Gas Generators, Except Semitrailer Mounted Types.
Ammonia Dissociators.
3695---- Miscellaneous Special Industry Machines.
Ammunition Loading (Filling and Assembling) Machinery, Specialized.
Crystal Fabricating Equipment.
Crystal Platers, Metallic Vapor.
Drum Manufacturing Machinery.
Explosives Loading (Filling and Assembling) Machinery, Specialized.
Jerrican Manufacturing Machinery.
Lapping Machinery, Quartz Crystal.
Marking Machines, Electric, Electric Wire-Flexible Insulating Sleeving.
Optical Goods Manufacturing Machinery.
Optical Lens Cutting Machines.
Optical Lens Grinding Machines.
Petroleum Refinery Machinery.
Strippers, Wire, Power Operated.
Tapes, Electric Wire-Flexible Insulating Sleeving Marking Machine.
3815---- Crane and Crane-Shovel Attachments.
Electromagnets, Lifting.
3820---- Mining, Rock Drilling, Earth Boring and Related Equipment.
Crushers, Gyratoy Type.
Crushers, Jaw Type.
Crushers, Roll Type.
Crushers, Ring Type.
Crushers, Hammer Type.
Mills, Ball and Pebble Type.
Mills, Flaking Type.
Mills, Jar Type.
Mills, Preliminator Type.
Mills, Rod Type.
Mills, Tube Type.
Mills, Outside Screen Type.
Mills, Roller Type.
Pulverizers.
Screens.
Sifters.
Sizers.
3895---- Miscellaneous Construction Equipment.
Feeders Material.
3910---- Conveyors.
3920---- Materials Handling Equipment, Non-Self-Propelled.
Dolly Trucks.
Hand Trucks.
Stackers, Hand Propelled.
Trailers, Materials Handling.
Trailers, Platform, Airborne.
Trailers, Platform, Warehouse.
Trailers, Rack, Sheet Stock.
Trailer Bodies, Warehouse Trailer.
Trucks, Barrel.
Trucks, Dolly.
Trucks, Hand, Adjustable, General Purpose.
Trucks, Hand, Box, Except Specially Designed Laundry and Dry Cleaning Type.
Trucks, Hand, Lift.
Trucks, Hand, Platform, General Purpose.
3930---- Warehouse Trucks and Tractors: Self-Propelled.
3950---- Winches, Hoists, Cranes, and Derricks.
3990---- Miscellaneous Materials Handling Equipment.
4110---- Self-Contained Refrigeration Units and Accessories.
Refrigerators, Mechanical, Commercial.
Refrigerators, Nonmechanical, Water Ice.

4120---- Self-Contained Air Conditioning Units and Accessories.
4310---- Compressors and Vacuum Pumps.
Compressors, Axial Flow, Except Refrigeration.
Compressors, Centrifugal.
Compressors, Mixed Flow, Except Refrigeration.
Compressors, Reciprocating, Direct Acting.
Compressors, Reciprocating, Power Driven, Multiapplication.
Compressors, Rotary, Power Driven.
Compressors, Trailer Mounted.
Compressors, Truck Mounted.
Compressor Assemblies, Power Driven.
Compressor Sets, Power Driven.
Compressor Units, Reciprocating, Multiapplication.
Pumps, High Vacuum, Rotary.
Pumps, Vacuum, Diffusion.
Pumps, Vacuum, Mechanical.
Pumps, Vacuum, Reciprocating.
Pump Assemblies, Vacuum.
Tanks, Pressure.
Vacuum Pumps, Diffusion and Rotary, Power Driven.
4320---- Power and Hand Pumps.
Pumps, Axial Piston.
Pumps, Centrifugal.
Pumps, Centrifugal-Jet.
Pumps, Radial Piston.
Pumps, Reciprocating, Power Driven.
Pumps, Rotary, Power Driven.
Pumps, Variable Delivery, Hydraulic.
Pumps, Verticle Turbine.
Pump Assemblies, Centrifugal, Power Driven.
Pump Assemblies, Rotary, Power Driven.
Pump Assemblies, Rotary-Centrifugal, Power Driven.
Pump Units, Centrifugal-Vacuum Power Driven.
Pumping Assemblies, Deep Well.
Pumping Assemblies, Flammable Liquid, Bulk Transfer.
Pumping Units, Hydraulic.
Rams and Pumps, Hydraulic.
4330---- Centrifugals, Separators, and Pressure and Vacuum Filters.
4410---- Industrial Boilers.
4420---- Heat Exchangers and Steam Condensers.
4430---- Industrial Furnaces, Kilns, Lehrs, and Ovens.
4440---- Driers, Dehydrators, and Anhydrators.
4450---- Industrial Fan and Blower Equipment.
4460---- Air Purification Equipment.
4920---- Aircraft Maintenance and Repair shop Specialized Equipment.
4925---- Ammunition Maintenance and Repair Shop Specialized Equipment.
4940---- Miscellaneous Maintenance and Repair Shop Specialized Equipment.
Blast Cleaning Cabinets.
Blast Cleaning Machines.
5220---- Inspection Gages and Precision Layout Tools.
Sine Bars and Plates.
Surface Plates.
5430---- Storage Tanks.
Enclosures for Pressure and Vacuum Tanks.
Gasoline Storage Tanks.
Liquid Storage Tanks, Metal.
Metal Tanks, Liquid Storage.
Oil Storage Tanks.
Storage Tanks, Metal, Liquid.
Tanks, Liquid, Storage, Metal.
5905---- Resistors.
Variable Resistors, Potentiometers and Rheostats.
Fixed and Adjustable Resistors.
5925---- Circuit Breakers.
Circuit Breakers, Feeder Type.
5930---- Switches.
Knife Switches, Including Disconnect and Switchboard Mounting Type Switches.
5950---- Coils and Transformers.
Attenuators, Fixed, Inductive Type.
Attenuators, Variable, Inductive Type.
Attenuator Assemblies, Inductive Type.
Audiofrequency Autotransformers.
Autotransformers.
Autotransformer Assemblies.
Booster Transformers.
Demagnetizers.
Discriminator Transformers.
Transformer, Audio.
Transformers, Audiofrequency.
Transformers, Audio Oscillator.
Transformers, Battery Charging.
Transformers, Blocking Tube Oscillator.
Transformers, Constant Voltage.
Transformers, Current.
Transformers, Discriminator.
Transformers, Driver.
Transformers, Frequency Modulation.
Transformers, Grid Modulation.
Transformers, Instrument Potential.
Transformers, Intermediate Frequency.
Transformers, Microphone.
Transformers, Modulation.
Transformers, Plate to Grid.
Transformers, Potential.
Transformers, Power, Filament.
Transformers, Power, Filament and Plate.
Transformers, Power, Fixed Autotransformer.
Transformers, Power Isolation.
Transformers, Power, Isolation and Step-Down.
Transformers, Power, Isolation and Step-Down and Step-Up.
Transformers, Power, Isolation and Step-Up.
Transformers, Power, Phase Conversion.
Transformers, Power, Plate.
Transformers, Power, Step-Down.
Transformers, Power, Step-Down and Step-Up.
Transformers, Power, Step-Up.
Transformers, Power, Vibrator.
Transformers, Power, Voltage Regulating.
Transformers, Pulse.
Transformers, Radiofrequency.
Transformers, Rotatable.
Transformers, Synchro Overload.
Transformers, Universal Bias.
Transformers, Variable, Power.
Transformers, Variable, Radiofrequency.
Transformers, Vibrator.
Transformer Assemblies.
Transformer Sets.
6105---- Motors, Electrical.
Motors, Electrical, AC, 1 Horsepower and Over.
Motors, Electrical DC, 1 Horsepower and Over.
Motors, Electrical, Universal, 1 Horsepower and Over.
6110---- Electrical Control Equipment.
6115---- Generators and Generator Sets, Electrical.
All Generator Sets, Except Aircraft and Trailer Mounted Types.
6120---- Transformers: Distribution and Power Station.
6125---- Converters, Electrical.
6130---- Rectifying Equipment, Electrical.
6625---- Electrical and Electronic Properties Measuring and Testing Instrument.
6630---- Chemical Analysis Instruments.
6635---- Physical Properties Testing Equipment.
6636---- Environmental Chambers and Related Equipment.
6640---- Laboratory Equipment and Supplies.
Baths, Water, Electric.
Burners, Alcohol.
Burners, Bunsen.
Burners, Gas, Laboratory.
Cabinets, Constant Temperature.
Centrifuges, Labortory.
Crucibles.
Culture Apparatus, Anaerobic.
Distilling Apparatus, Laboratory.
Drying Chambers, Vacuum.
Extraction Apparatus, Soxhlet.
Extraction Assemblies.
Incubators, Bacteriological.
Laboratory Furnaces.
Ovens, Laboratory.
Presses, Cork, Laboratory.
Pumps, Vacuum.
Shaking Machines, Laboratory.
Water Baths, Nonelectric.
6650---- Optical Instruments.
Cathetometers.
Clinometers, Elevation.
Magnifiers, Except Ophthalmological.
Microscopes, Binocular.
Microscopes, Optical.
Microscopes, Spectrum Measuring.
Microscopes, Toolmakers'.
Polarimeters.
Projectors, Microscopic Slide.
Projectors, Retical Image.
Reducing Glasses.
Refractometers.
Spectrographs.
Spectrophotometers.
Spectroscopes, Direct Vision.
Spotting Instruments, Optical.
Stereoscopes, Prism-Mirror.
6670---- Scales and Balances.
Balances, Analytical.
Balances, Laboratory.
Balances, Trip.
Scales, Industrial.
Scales, Laboratory.
Scales, Platform.
Scales, Airplane Type.
6675---- Drafting, Surveying and Mapping Instruments.
Drafting and Lofting Machines, Numerically Controlled Type.
6680---- Liquid and Gas Flow, Liquid Level, and Mechanical Motion Measuring Instruments.
6685---- Pressure, Temperature, and Humidity Measuring and Controlling Instruments.
6695---- Combinations and Miscellaneous Instruments.
Dynamometers.
Flow-Pressure Instruments.
Meters, Frequency.
Meters, Wire and Cable Measuring.
6720---- Cameras, Still Pictures.
Cameras, Aircraft and/or Aerial.
Cameras, Microfilm.
Cameras, Still Pictures.
Cameras, Stereo.

6730---- Photographic, Projection Equipment.
Microfile, Readers, Viewers, and Projectors.
6740---- Photographic Developing and Finishing Equipment.
Developing Machines.
Developing Tanks, Film.
Driers, Photographic Film, Except Radiographic and Photofluorographic.
Driers, Photographic Plate.
Driers, Photographic Print.
Dry, Mounting Presses.
Film, Cleaning Machines.
Hangers, Photographic Film and Plate.
Printers, Contact, Photographic.
Printing Frames.
Processing Machines, Photographic Film, Except Radiographic.
Processing Machines, Photographic Film and Paper.
Siphons, Photographic Tray, Automatic.
Tanks, Processing, Photographic.
Washers, Photographic Print.
6760---- Photographic Equipment and Accessories.
Cabinets, Film Storage.
Densitometers, Except Radiographic.
Focusing Aids, Photographic, Projection Printer.
7440---- Automatic Data Processing Systems: Industrial, Scientific and Office Types.
Analog Computer Systems.
Digital Computer Systems.

Subpart 18–13.4—Use and Rental of Government Production and Research Property

§ 18–13.401 Policy.

It is the policy of NASA to put Government production and research property which is in the possession of a contractor or subcontractor to the greatest possible use in the performance of Government contracts or subcontracts, so long as such use does not confer a competitive advantage on the contractor or subcontractor contrary to the policies set forth in Subpart 18–13.5.

§ 18–13.402 Authorizing a contractor to use Government production and research property without charge.

(a) A contractor may use Government production and research property without charge:

(1) In the performance of—

(i) Prime contracts which specifically authorize use without charge;

(ii) Subcontracts of any tier if the contracting officer having cognizance over the prime contract concerned has authorized use without charge by:

(*a*) Approving a subcontract specifically authorizing such use;

(*b*) Including such authorization in the prime contract; or

(*c*) By otherwise approving such use in writing;

(iii) Contracts of foreign government if use without charge has been authorized in writing pursuant to § 18–13.406; or

(iv) Research, development, or educational work by nonprofit organizations if the contracting officer having cognizance of such property approves such use in writing.

(2) Provided, as to subdivisions (i) and (ii) of subparagraph (1) of this paragraph—

(i) The procedures set forth in Subpart 18–13.5 are complied with;

(ii) The contracting officer having cognizance of the prime contract determines that the Government will receive adequate consideration for the use of the property through reduced costs for the supplies or services or otherwise; and

(iii) A concurrence in the proposed use of the property in accordance with paragraphs (b) and (c) of this section is obtained.

(b) (1) A contracting officer desiring to authorize use of Government production and research property under the cognizance of another contracting officer may request the latter to give his concurrence in such use. If concurrence is denied, the resolution procedures set forth in paragraph (c) of this section shall be employed.

(2) Unless its use is authorized by the solicitation, each solicitation shall require that any contractor or subcontractor desiring to use Government production and research property in his possession in the performance of the proposed Government contract or subcontract shall request the contracting officer having cognizance of such property to give his written concurrence in such use. Such concurrence shall be be given whenever possible and shall contain any information required by § 18–13.502 or § 18–13.503.

(c) If the contracting officer having cognizance of Government production and research property refuses to give the concurrence called for by paragraph (b) (2) of this section, the contractor may report the matter to the contracting officer, who may then request permission of the contracting officer having cognizance over such property to authorize its use. The latter shall respond promptly to this request. In the event of a disagreement between the two contracting officers, they shall refer the matter to the Director (or other head) of their respective field installation as promptly as may be practicable. If the latter are unable to reach agreement, they shall refer the matter to their respective higher echelons of procurement authority for resolution. Any intergovernmental issue shall be referred to the Director of Procurement, NASA Headquarters for resolution.

(d) Notwithstanding paragraph (a) of this section, a contract may be modified to provide for the use of Government production and research property on a rent-free basis, if the contract is equitably adjusted to reflect the elimination of rent and any other amount attributable thereto.

§ 18–13.402–50 Authorizations.

For purposes of documentation and administration, a copy of any authorization to use Government provided production and research property shall be furnished by the contracting officer granting the authorization to the contracting officer requesting the authority to use the property. A record of contracts and subcontracts on which the property is authorized to be used shall be included in the file of the contract under which the property is accountable. Documentation of any authorization to use Government property in the performance of a supply or service contract shall accompany each supply or service contract submitted to NASA Headquarters for review.

§ 18–13.402–51 Provisions of related procurement contracts requiring the use of government facilities in the possession of a contractor.

When a related procurement contract, or modification thereto is negotiated on the basis of the use of facilities which have been previously provided (or are currently being provided under an existing contract) by NASA or another Government agency to the prime contractor or his subcontractors, the following procedures shall apply:

(a) Facilities which are authorized for use by a prime contractor shall be identified by the facilities contract number. If use of the facilities is authorized on a no-charge basis, the contract shall contain the following clause:

USE OF GOVERNMENT FACILITIES ON A NO-CHARGE BASIS (OCTOBER 1967)

The Contractor is authorized to use on a no-charge basis, in the performance of this contract, the Government-owned facilities provided to him under the facilities contract identified below:

(b) Where no-charge use of facilities is authorized for subcontract work which will support the related prime procurement contract, the names of subcontractors, with the respective facilities contract numbers and items to be produced, shall be inserted in the related procurement contract, or modification thereof, pursuant to § 18–13.402–53.

§ 18–13.402–52 Related procurement contracts requiring the provision of additional facilities.

(a) Prior to executing a related procurement contract in which it is agreed that additional Government facilities shall be provided, the contracting officer shall determine whether the proposed contractor has in existence a facilities contract with NASA. If so, the contracting officer shall arrange with the contracting officer administering the facilities contract to have the proposed additional facilities included under the facilities contract and the related procurement contract shall specify such arrangement. If the proposed contractor does not have a facilities contract with NASA, the contracting officer shall either enter into a separate facilities contract or provide the required facilities under the related procurement contract, subject to the limitations set forth in §18–13.303–1.

(b) If a related procurement contract, or a modification thereof, is negotiated on the basis that additional facilities will be provided to the contractor under a separate facilities contract (either directly by the Government or by contractor acquisition at Government

expense), the following Facilities clause shall be inserted in the Schedule of such related procurement contract:

FACILITIES (OCTOBER 1967)

(a) The terms and conditions of the contract are based on the providing to the Contractor, under separate facilities contract, of certain facilities which are described in such facilities, as determined by the Contracting Officer, shall be either furnished to the Contractor directly by the Government, or the Contractor shall be authorized to acquire them at Government expense. The parties hereby agree to enter into such a separate facilities contract, or to supplement an existing facilities contract to cover such additional facilities, as the case may be, at the earliest practicable date. Any separate facilities contract shall be made using such applicable contract form, if any, as is prescribed by the NASA Procurement Regulation in effect on the date such facilities contract is executed and shall provide that such facilities may be used rent-free in the performance of this contract.

(b) It is agreed that if such facilities are not provided at the time and to the extent as indicated in paragraph (a) above, an equitable adjustment shall, upon timely written request of the Contractor, be made in the terms and conditions of this contract to the extent required by reason of the Government's failure to provide such facilities.

(c) In the blank in paragraph (a) of the clause in paragraph (b) of this section, specifically identify the facilities to be provided, either (1) by referencing the contractor's proposal or that portion thereof which describes the additional facilities to be provided, or (2) by referencing any other document which identifies and describes the facilities, or (3) by identifying and describing in the clause itself the facilities which have been agreed upon as those to be provided. Where rent-free use will not be authorized, the clause shall be modified to delete the reference to such use.

§ 18–13.402–53 Facilities for subcontractors on a no-charge basis.

If it is desired to permit a contractor to let certain of his subcontractors have the benefit of the use of Government facilities in the possession of such subcontractors on a no-charge basis, whether or not the prime contractor is to have the use of facilities no a no-charge basis, the Use of Government Facilities by Subcontractors clause set forth below shall be included in the related procurement contract: *Provided*, That: (a) The price or the fee of the prime contract is negotiated on the specific understanding that the use of the facilities on a no-charge basis will be permitted in the performance of the specified subcontract items by the specified subcontractors to be set forth in subparagraph (a) of the Use of Government Facilities by Subcontractors clause and (b) the subcontractor is not placed in a favored competitive position.

USE OF GOVERNMENT FACILITIES BY SUBCONTRACTORS (APRIL 1962)

(a) The following subcontractors having Government-owned facilities provided under the Facilities contracts set forth below, in effect on the date of this contract, are authorized to use such facilities on a no-charge basis for the subcontract items listed below, and the subcontract shall so provide:

Subcontractor	Facilities contract number	Subcontract item

(b) If the Contractor enters into other subcontracts with subcontractors who have Government-owned facilities provided to them under Facilities contracts which provide that no-charge use may be authorized, the Contracting Officer may authorize the use of such facilities on a no-charge basis: *Provided:*

(i) He determines that such use will not give the subcontractor a favored competitive position; and

(ii) This contract is amended to reflect adequate consideration to the Government for the use of such facilities on a no-charge basis.

Such subcontracts shall specifically authorize the no-charge use, and require the written approval of the Contracting Officer. No modification to this contract will be required, as provided in (ii) above, if the Contracting Officer determines that an elimination of charge for use of such facilities will, of itself, result in an adequate decreased cost to the Government under this contract.

(c) If the Government-owned facilities provided to the Contractor or any subcontractor hereunder on a no-charge basis are increased or decreased or do not remain available during the performance of this contract, or if any change is made in the terms and conditions under which they are made available, such equitable adjustments as may be appropriate will be made in the terms of this contract, unless such increase or decrease was contemplated in the establishment of the price of this contract or a subcontract.

(d) The Contractor agrees that he will not directly or indirectly, through overhead charges or otherwise, include in the price of this contract, or seek reimbursement under this contract for, any rental charge paid by the Contractor for the us on other contracts of the facilities referred to herein. Any subcontract hereunder which authorizes the subcontractor to use Government facilities on a no-charge basis shall contain a provision to the same effect as this paragraph (d).

§ 18–13.402–54 Contract provisions where facilities are provided under a contract other than a facilities contract.

(a) Where Government-owned facilities are to be acquired or fabricated by a contractor under a contract other than a facilities contract, the following clause, with the Schedule terms called for therein, shall be included in the contract, in addition to the appropriate Government Property clause:

FACILITIES ACQUIRED OR FABRICATED (MAY 1965)

Subject to the approval of the contracting officer, the contractor may acquire or fabricate the facilities listed in the Schedule of the contract. Costs incurred therefor will be allowable costs: *Provided*, That the contractor shall have no obligation to acquire or fabricate facilities and the Government shall have no obligation to reimburse any amount for such facilities in excess of the total estimated facilities costs set forth in the Schedule, unless this contract is amended to increase such amount. The facilities acquired or fabricated shall be considered Government property and subject to the provisions of the Government Property clause of this contract.

(b) Where existing facilities are to be furnished under a contract containing the appropriate Government Property clause of Subpart 18–13.7, no separate clause covering such facilities generally is necessary. The items of facilities will be listed or specified in the Schedule as Government-furnished property. However, if installation of such existing facilities to be furnished by the Government is to be performed by the contractor at Government expense, the contract Schedule shall so state and set forth the total estimated cost therefor.

§ 18–13.403 Rental of Government production and research property.

(a) When use of Government production and research property is authorized by the contracting officer having cognizance of the property, rent computed in accordance with § 18–13.404 shall be charged for such use except where use without charge is authorized under § 18–13.402. If this contracting officer refuses to grant such authorization with respect to work for the Government, the contracting officer having cognizance of the procurement may refer the matter to the higher echelons of authority referred to in § 18–13.402(c).

(b) When Government production and research property is no longer required for the performance of Government contracts or subcontracts, it shall not continue to be made available to a contractor solely for commercial use pursuant to this Subpart 18–13.4. (See § 18–13.301(e).)

(c) Each contracting officer having cognizance of Government production and research property shall be responsible for the collection of rent thereon.

§ 18–13.404 Rental rates and policies applicable to the use of Government production and research property.

(a) Except as provided in paragraph (b) of this section, the rent for all Government production and research property shall be computed in accordance with the Use and Charges clause set forth in § 18–7.702–12 for facilities. Rent for machine tools (Production Equipment Codes 3411–341999) and secondary metalforming and cutting machines (Production Equipment Codes 3441–34490) shall be based on the time such property is available for use. Rent for other classes of Government production and research property is normally charged on the same basis; however, if the Director of Procurement determines it to be in the best interest of the Government, rent may be charged on an actual use or other basis. In such cases, the Use and Charges clause should be appropriately modified.

(b) The rental charge required by paragraph (a) of this section shall not be applicable to:

(1) Wholly Government-owned plants operated by private contractors on a fee basis;

(2) Items of equipment which are of such size or complexity, or have such performance characteristics, that they present unusual problems in relation to the time required for their preparation for shipment, installation, and preparation for operation: *Provided*, That the

Office of Emergency Planning has approved the general program involving such equipment;

(3) Government production and research property left in place or installed on contractor-owned property for mobilization or future production purposes of NASA: *Provided,* That a rental charge computed in accordance with (a) shall apply to so much of such property or its capacity as may be used or authorized for use; or

(4) Such other Government production and research property as may be otherwise excepted by the Office of Emergency Planning.

§ 18–13.405 Non-Government use.

Prior approval of the Office of Emergency Planning shall be obtained through the Director of Procurement with the concurrence of the Director, Facilities Management (Code BX) before more than 25 percent non-Government use of Government-owned machinery and tools (Production Equipment Code Nos. 3411–341999 and 3441–34490) having a unit acquisition cost of $500 or more may be authorized. For purposes of this section, use for a foreign government authorized under § 18–13.406 is Government use.

§ 18–13.406 Rent-free use of Government production and research property on work for foreign governments.

Upon the request of a foreign government, or a contractor certifying that he is acting on behalf of a foreign government, Government production and research property located in the United States, its possessions, or Puerto Rico, may be authorized for use without charge on contracts of foreign government or subcontracts thereunder if:

(a) Such use is approved by the Director of Procurement with the concurrence of the Director, Facilities Management;

(b) Such use is legally authorized;

(c) The foreign government's placement of the contract directly with the contractor is consistent with the best interest of the United States;

(d) It appears that the foreign government will place the contract with the contractor whether or not such use is authorized, or that no competitive pricing advantage will accrue to the contractor by virtue of such use;

(e) The contractor agrees that no charge for the use of such property will be included in the price charged the foreign government under the contract; and

(f) Such use will not interfere with forseeable requirements of the United States.

§ 18–13.407 Use of Government production and research property without charge by nonprofit organizations.

The contracting officer cognizant of Government production and research property in the possession of a nonprofit organization may approve the use of such property by such organization without charge, for research, development or educational work, if:

(a) Such use is directly or indirectly in the national interest;

(b) Such use is not for the direct benefit of a profit-making organization; and

(c) The Government receives some direct benefit from such use (such benefit shall, at a minimum, include the furnishing of a report by the contractor on the work for which the property was provided, and may include rights to use the results of the work without charge, or any other benefit that may be appropriate).

§ 18–13.450 Procurement by other Government agencies requiring the use of NASA facilities in possession of the contractor.

Use of NASA production and research property in the possession of the contractor on contracts of other agencies of the Government shall be authorized to the extent that such use will not:

(a) Interfere with the primary NASA purpose of the facilities; and

(b) Require the use of the facilities beyond the anticipated date of completion of the primary purpose;

In such cases, approval, on a noninterference basis, for use may be given by the NASA contracting officer having cognizance of the property.

Subpart 18–13.5—Competitive Advantage

§ 18–13.501 Policy.

It is the policy of NASA to eliminate the competitive advantage that might otherwise arise from the acquisition or use of Government production and research property. This is accomplished by charging rental or by use of rental equivalents in evaluating bids and proposals as provided in §§ 18–13.502 and 18–13.503. The only exception to this general policy is stated in § 18–13.503, which provides that certain costs or savings to the Government related to providing such property to contractors shall be considered in such evaluation, regardless of any competitive advantage that may result from this exception.

§ 18–13.502 Advertised procurements—Use of existing Government production and research property.

§ 18–13.502–1 General.

In formally advertised procurements, the competitive advantage that might otherwise accrue to a contractor from the use of existing Government production and research property shall be eliminated by adding an evaluation factor to each bid for which such use is requested, or where the use of an evaluation factor is not practical, by charging rent for such use.

§ 18–13.502–2 Procedures for use of evaluation factors.

Where an evaluation factor is used, it shall be equal to the rent, allocable to the contract, which would otherwise have been charged for such use. The invitation for bids shall set forth a description of the evaluation procedure to be followed, as required by § 18–13.506, and it shall require all bidders to submit with their bids:

(a) A list or description of all Government production and research property which the bidder or his anticipated subcontractors propose to use on a rent-free basis, including property offered for use in the invitation for bids, as well as property already in possession of the bidder and his subcontractors under other contracts;

(b) With respect to such property already in possession of the bidder and his proposed subcontractors, identification of the facilities contract or other instrument under which the property is held, and the written permission of the contracting officer having cognizance of the property for use of that property;

(c) The months during which such property will be available for use, which shall include the first, last, and all intervening months, and with respect to any such property which will be used concurrently in performance of two or more contracts, the amounts of the respective uses in sufficient detail to support the proration required by § 18–13.502–3(b); and

(d) The amount of rent which would otherwise be charged for such use, computed in accordance with § 18–13.404.

§ 18–13.502–3 Limitations.

(a) The invitation for bids shall provide that no use of Government production and research property other than as described and permitted pursuant to § 18–13.502–2 shall be authorized unless such use is approved in writing by the contracting officer cognizant of the property, and either rent calculated in accordance with § 18–13.404 is charged, or the contract price is reduced by an equivalent amount.

(b) If Government production and research property will be used on other work under one or more existing contracts for which use has been authorized (see §§ 18–13.402 and 18–13.403), the evaluation factor shall be determined by prorating the rent between the proposed contract and such other work. The pro rata share applicable to a proposed contract shall be determined by multiplying the full rental charge for the use of Government production and research property for the period for which rent-free use is requested (*i.e.*, the full charge for the requisite number of rental periods computed in accordance with paragraph (b)(2) of the Use and Charges clause in §18–7.702–12, before application of the credit for rent-free use) by a fraction the numerator of which is the amount of use of such property requested by the contractor under that contract determined in accordance with paragraph (b)(1)(iv) of the Use and Charges clause and the denominator of which is the sum of the previously authorized use of the property by the contractor for the period and the use requested under the proposed contract.

§ 18–13.502–4 Rent.

If competitive advantage is to be eliminated by charging rent, any bidder or subcontractor may use Government production and research property after obtaining the written approval of each

contracting officer having cognizance of such property. Rent shall be charged for such use in accordance with § 18–13.404.

§ 18–13.503 Negotiated procurement—Use of existing Government production and research property.

In negotiated procurements, competitive advantage arising from the use of Government production and research property shall be eliminated by the use of an evaluation factor established in accordance with § 18–13.502, except when the contracting officer determines that the use of an evaluation factor would not affect the choice of contractors.

§ 18–13.504 Residual value to the Government of special tooling and special test equipment to be acquired in competitively negotiated procurements.

(a) In competitively negotiated procurements that permit the acquisition of special tooling or special test equipment, an evaluation of the residual value of such property to the Government may be made where practicable in accordance with paragraphs (b) and (c) of this section. Such an evaluation is appropriate in cases where the contracting officer has determined that such property will have a reasonably foreseeable future usefulness and related residual value beyond the period of use on the award under consideration, and it is anticipated that the cost of such property as proposed by the several offerors may be a factor in making the award. Such an evaluation is not appropriate in cases where the resulting contract is to provide for the acquisition of the special tooling or special test equipment as an end item.

(b) The purpose of evaluating the residual value of special tooling or special test equipment is to apportion to each proposal under consideration only that part of the total cost of such property which represents the amount of useful life to be consumed during performance of the resulting contract. Accordingly, the proposed price or cost of such property may be reduced for evaluation purposes by an amount representing the residual value to the Government of such property. In estimating such residual value, the following factors shall be considered:

(1) The useful life of the special tooling and special test equipment to be acquired,

(2) Its adaptability for use by other contractors or by the Government,

(3) The reasonably foreseeable requirements for its future use, and

(4) Its scrap or salvage value.

(c) If the contracting officer decides to consider the residual value of special tooling or special test equipment in a competitively negotiated procurement, the solicitation shall give notice thereof and a statement of the reasonably foreseeable future requirements of the Government for the supplies in question, in order to afford offerors the opportunity to consider such residual value as a factor in making their proposals. If the solictation does not contain such notice and statement but the contracting officer decides to consider the residual value of special tooling or special test equipment after receipt of the proposals, he shall during the negotiations give all offerors within a competitive range a notice and statement as above, and shall permit them to make such changes in their proposals as they may consider necessary as a result of the addition of the residual value factor.

§ 18–13.505 Additional evaluation factors.

(a) If the furnishing of Government production and research property will result in direct and measurable costs and under the terms contained in the solicitation such costs are to be borne by the Government, additional factors, set forth in the solicitation either in the form of a dollar amount or a formula, shall be employed in the evaluation of bids or proposals. Such factors shall be limited to:

(1) The cost of reactivation from base package or storage;

(2) The cost of rehabilitation and conversion; and

(3) The costs of making such property available on a f.o.b. basis.

(b) If, under the terms contained in the solicitation, the costs of furnishing Government production and research property or making it suitable for use are to be borne by the contractor, as, for example, when such property is offered on an "as is" basis (see § 18–13.308), no additional evaluation factors related to such costs shall be used.

(c) If measurable savings to the Government will result directly from the use of Government production and research property on the contract for which the solicitation is made, a dollar amount representing such savings shall be set forth in the solicitation and employed in the evaluation of bids or proposals. Examples of such savings include:

(1) Savings occurring as a direct result of activation of idle tools being maintained in idle status at known cost to the Government; and

(2) Avoidance of the cost of deactivation and placing active tools in layaway or storage, or of maintaining them in an idle state where the prospective costs are known and firm decisions have been made that such tools will be laid away or stored if not used on the contract for which solicitation is made.

Avoidance of the costs of initial lay-away or storage shall not be evaluated when such costs will merely be deferred by the proposed use.

§ 18–13.506 Solicitations — Description of evaluation procedure.

Generally, where Government production and research property is offered for use in a competitive procurement, the solicitation should provide that the user will assume all costs related to making the property available (such as transportation or rehabilitation costs), to avoid the need for separate evaluation of such costs. Where this is not feasible, or it is otherwise in the Government's interest, the Government may assume certain of such costs provided they are included in the evaluation of bids or proposals. The rental charges or equivalent factors to be used to eliminate competitive advantage, as well as all costs or savings to be evaluated, shall be clearly shown in the solicitation to insure that all prospective bidders or offerors understand the basis to be used for selection of the lowest bid or proposal and take these factors into account in preparing their bids or proposals.

Subpart 18–13.6—Administration of Government Production and Research Property

§ 18–13.601 Maintenance.

§ 18–13.601–1 Facilities contracts.

(a) To the extent practicable, the Schedule of each facilities contract containing the Maintenance clause set forth in § 18–7.702–14 shall specify or incorporate by reference a normal maintenance program.

(b) Where no provisions are made pursuant to paragraph (a) of this section, the contractor shall be required to submit a normal maintenance program to the contracting officer as promptly as practicable after the execution of the facilities contract. The contracting officer shall examine such program and shall negotiate with the contractor for an agreement thereon.

(c) Any normal maintenance program that is agreed to pursuant to either paragraph (a) or (b) of this section shall provide specific details which will insure protection, preservation, maintenance, and repair of the Government production and research property in accordance with sound industrial practice. In addition, such program shall include general language covering any aspects of maintenance which are not specifically provided for. With the prior written agreement of the contracting officer, such program may also provide for:

(1) A specified degree of inspection procedures, maintenance, and repairs that is less than sound industrial practice as to any part of the Government production and research property which is determined by NASA to be nonessential to future utilization of the property as a whole; and

(2) Reimbursement by the Government for the cost of protecting, preserving, maintaining, and repairing Government production and research property not authorized for use by the contractor.

(d) The contracting officer shall order a decrease in maintenance when the current maintenance is not necessary to assure the standards set forth in paragraph (c) of this section, and when such an order will result in savings to the Government.

(e) The contracting officer may order more than the normal maintenance when necessary and in the best interest of the Government, but only if adequate funds are available therefor. The Government shall reimburse the contractor for the costs incurred.

§ 18–13.601–2 Contracts other than facilities contracts.

Government production and research property provided under a contract other than a facilities contract shall be maintained in accordance with sound industrial practice pursuant to the appropriate clause of the contract under which it is provided. However, the Schedule of any contract under which such Government production and research property is provided may contain specific maintenance requirements for such property when appropriate.

§ 18–13.602 Risk of loss or damage and liability.

When justified by the circumstances of any particular contract, the contract may require the contractor to assume greater risks than those enumerated in the clause set forth in § 18–7.702–18, or the applicable contract clause set forth in Subpart 18–13.7, as appropriate. (See § 18–10.602–1.)

§ 18–13.603 Termination of facilities contracts.

A facilities contract shall be terminated when the Government production and research property covered thereby is no longer required for the performance of Government contracts or subcontracts, unless such termination is detrimental to the Government's interests. The contractor shall not be granted the unilateral right, at his election, to extend the time during which he is entitled to use the property provided under the facilities contract.

§ 18–13.604 Standby or layaway provision.

(a) A facilities contract may include appropriate provisions for maintenance and storage of Government production and research property in standby or layaway status. Such provisions shall include specifications for the care and maintenance of the property appropriate for its intended future use. These provisions may be the same as or different from the Maintenance clause set forth in § 18–7.702–14, depending upon the purpose and scope of the standby or layaway provisions, the expected duration of the standby or layaway status and other pertinent considerations.

(b) If the Government is required to pay the contractor for maintenance and storage of Government production and research property in standby or layaway, the facilities contract shall define with particularity what constitutes standby or layaway, and when and under what circumstances such payments will commence and terminate with respect to all or any part of the property.

(c) The facilities contracts shall provide that, if the contractor is required to pay any State or local property tax measured by his possession of or interest in Government production and research property in standby or layaway, he shall be reimbursed therefor to the extent provided under § 18–15.205–41.

§ 18–13.605 Retention of special tooling and special test equipment.

Upon termination or completion of a contract under which the Government has obtained title to or the right to acquire title to special tooling or special test equipment, the NASA installation which issued the contract shall review the Government's need for its continued retention. In addition, the installation shall periodically review the Government's need for retaining all special tooling and special test equipment, not currently in use, to which it has title or the right to acquire title. In either case, consideration shall be given to the factors set forth in §18–13.305–2(b) in determining the Government's need for retention of the special tooling and special test equipment.

§ 18–13.606 Disposition.

(a) Except for nonseverable production and research property for which specific provision is made by § 18–13.307, the disposition of Government production and research property shall be in accordance with Part 18–8 and NASA Management Instruction 4310.1 provided, that all Government production and research property listed in § 18–13.–312 awaiting disposition, shall be reported to the Office of Procurement (Code KDM).

(b) Contracts under which Government production and research property is provided to a contractor shall reserve to the Government the right to abandon such property in place, without any obligation to restore or rehabilitate the premises of the contractor. However, this right may be waived if the prior approval of the Director (or other Head) of the NASA installation is obtained. The authority to grant such approval shall not be delegated.

§ 18–13.607 Insurance.

When less than 75 percent of the total use of facilities is for Government work, consideration shall be given to requiring that the contractor procure and maintain insurance against loss of or damage to the facilities. If necessary, facilities contracts may be modified to require such insurance.

Subpart 18–13.7—Contract Clauses

§ 18–13.701 Applicability.

(a) As used throughout this subpart, the term "fixed-price contract" shall include any advertised or negotiated fixed-price type contract (see § 18–3.404) and any letter contract which will be converted into a fixed-price type definitive contract, but shall exclude small purchases made under Subpart 18–3.6.

(b) As used throughout this subpart, the term "cost-reimbursement contract" shall include any cost-reimbursement type contract (see § 18–3.405) and any letter contract which will be converted to a cost-reimbursement type definitive contract, but shall exclude facilities contracts (see § 18–13.101–11).

§ 18–13.702 Government property clauses for fixed-price contracts.

The appropriate clause of those set forth in paragraphs (a) and (c) of this § 18–13.702 and in § 18–13.710 shall be used, in accordance with the instructions therein, in fixed-price contracts (except for experimental, developmental, or research work with educational or nonprofit institutions, where no profit to the contractor is contemplated).

(a) *Government property clause for fixed price contracts.* Except as provided in paragraphs (b) and (c) of this § 18–13.702, the following clause shall be used in all fixed-price contracts under which the Government is to furnish to the contractor, or the contractor is to acquire, Government property:

GOVERNMENT PROPERTY (FIXED PRICE) (OCTOBER 1967)

(a) *Government-Furnished Property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use (except for such property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contratcor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." Except for Government-furnished property furnished "as is", in the event the Government-furnished property is received by the Contractor in a condition not suitable for the intended use the Contractor shall, upon receipt thereof notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon the completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the rejection or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Changes in Government-furnished Property.*

(1) By notice in writing, the Contracting Officer may (i) decrease the property provided or to be provided by the Government under this contract, or (ii) substitute other Government-owned property for property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to subparagraph (1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution, or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

(c) *Title.* Title to all property furnished by the Government shall remain in the Government. In order to define the obligations of the parties under this clause, title to each item of facilities, special test equipment, and special tooling (other than that subject to a "Special Tooling" clause) acquired by the Contractor for the Government pursuant to this contract shall pass to and vest in the Government when its use in the performance of this contract commences, or upon payment therefor by the Government, whichever is earlier, whether or not title previously vested. All Government-furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government property". Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(d) *Property Administration.* The Contractor shall comply with the provisions of the "Control of Government Property in Possession of Contractors" (appendix B, NASA Procurement Regulation) as in effect on the date of the contract, which is hereby incorporated by reference and made a part of this contract.

(e) *Use of Government Property.* The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) *Maintenance and Repair of Government Property.* The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the maintenance, repair, protection, and preservation of Government property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs: *Provided, however,* That if the Contractor cannot effect such repair within the time required, the Contractor shall dispose of such property in the manner directed by the Contracting Officer. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in any contractual provisions affected by such repair or replacement of Government property made at the direction of the Government, in accordance with the procedures provided for in the "Changes" clause of this contract. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at his own expense.

(g) *Risk of Loss.* Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss of or damage to Government property provided under this contract upon its delivery to him or upon passage of title thereto to the Government as provided in paragraph (c) hereof, except for reasonable wear and tear and except to the extent that such property is consumed in the performance of this contract.

(h) *Access.* The Government, and any persons designated by it, shall at all reasonable times have access to the premises wherein any Government property is located, for the purpose of inspecting the Government property.

(i) *Final Accounting and Disposition of Government Property.* Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government propcontract (including any resulting scrap)or erty not consumed in the performance of this not theretofore delivered to the Government, and shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as the Contracting Officer may direct.

(j) *Restoration of Contractor's Premises.* Unless otherwise provided herein the Government:

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

(ii) Shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of, the Contractor's plant or any portion thereof which is affected by the abandonment or removal of any Government property.

(k) *Communications.* All communications issued pursuant to this clause shall be in writing.

(b) *Contracts requiring the furnishing of cost and pricing data.* In fixed-price contracts under which the contractor is required to submit cost or pricing data (see § 18–3.807.3), substitute the following for paragraph (g) of the clause set forth in paragraph (a) of this section;

(g) *Risk of Loss.*

(1) Except for loss, destruction, or damage resulting from a failure of the Contractor due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel as defined herein, to maintain and administer the program for the maintenance, repair, protection and preservation of the Government property as required by paragraph (f) hereof, and except as specifically provided in the clause or clauses of this contract designated in the Schedule, the Contractor shall not be liable for loss or destruction of or damage to the Government property provided under this contract:

(i) Caused by any peril while the property is in transit off the Contractor's premises; or

(ii) Caused by any of the following perils while the property is on the Contractor's or subcontractor's premises, or on any other premises where such property may properly be located, or by removal therefrom because of any of the following perils—

(A) Fire; lightning, windstorm, cyclone, tornado, hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; sabotage; aircraft or objects falling therefrom; vehicles running on land or tracks; excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke, sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; nuclear reaction, nuclear radiation, or radioactive contamination; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending, or expected attack by any government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces; or by an agent of any such government, power, authority, or forces; or

(B) Other peril, of a type not listed above, if such other peril is customarily covered by insurance (or by a reserve for self-insurance) in accordance with the normal practice of the Contractor, or the prevailing practice in the industry in which the Contractor is engaged with respect to similar property in the same general locale.

The perils as set forth in (i) and (ii) above are hereinafter called "excepted perils."

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

The term "Contractor's managerial personnel" as used herein means the Contractor's directors, officers and any of his managers, superintendents, or other equivalent representatives who have supervision or direction of:

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

(ii) All or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(2) The Contractor represents that he is not including in the price hereunder, and agrees that he will not hereafter include in any price to the Government, any charge or reserve for insurance (including any self-insurance funds or reserve) covering loss or destruction of or damage to the Government property caused by any excepted peril.

(3) Upon the happening of loss or destruction of or damage to any Government property caused by an excepted peril, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed), shall take all reasonable steps to

protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed, and damaged Government property;

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

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made by him in performing his obligations under this subparagraph (3) (including charges made to the contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly), in accordance with the procedures provided for in the "Changes" clause of this contract.

(4) With the approval of the Contracting Officer after loss or destruction of or damage to Government property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(5) Except to the extent of any loss or destruction of or damage to Government property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government property in accordance with the provisions of this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of or damage to the Government property, and such property (other than that which is permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (f) above.

(6) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government property, caused by an excepted peril, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to the Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

(7) If this contract is for the development, production, modification, maintenance or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the "Ground and Flight Risk" clause of this contract shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft. [This subparagraph may be omitted where it is clearly inapplicable and shall be deleted when the Ground and Flight Risk clause is omitted.]

(c) *Liability for Government property furnished for repair or other services.* The clause set forth below shall be included in contracts for repair (modification, rehabilitation) or other servicing of Government property, when such property is furnished to a contractor for that purpose. If a substantial quantity of parts or material will be furnished to the contractor, or a significant amount of scrap will result from the work to be performed, or if other Government property will be furnished to or acquired by the contractor, the contract will also contain the appropriate Government-furnished Property or Government Property clause and the schedule of the contract shall provide that such property shall be governed by the terms of that clause. When minor repairs are obtained under small purchases procedures, the procedures of this paragraph will not apply. Contracting officers shall not require additional insurance under the clause unless the circumstances clearly indicate advantages to the Government.

LIABILITY FOR GOVERNMENT PROPERTY FURNISHED FOR REPAIR OR OTHER SERVICES (OCTOBER 1967)

(a) The provisions of this clause shall govern with respect to any Government property furnished to the Contractor for repair or other services, and which is to be returned to the Government. Such property is hereinafter referred to as "Government property furnished for servicing" and shall not be subject to the provisions of any clause of this contract entitled "Government Furnished Property" or "Government Property."

(b) The Contractor shall maintain adequate records and procedures to assure that the Government property furnished for repair or servicing may be readily accounted for and identified at all times while in his custody or possession or in the custody or possession of any subcontractor.

(c) The Contractor shall be liable for any loss or destruction of or damage to the Government property furnished for repair or servicing (i) caused by the Contractor's failure to exercise such care and diligence as a reasonable prudent owner of similar property would exercise under similar circumstances; or (ii) sustained while the property is being worked upon and directly resulting therefrom, including but not limited to, any repairing, adjusting, inspecting, servicing or maintenance operation. The Contractor shall not be liable for loss or destruction of or damage to Government property furnished for repair or 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).

(d) In addition to any insurance (including self-insurance funds or reserves) carried by the Contractor and in effect on the date of this contract affording protection in whole or in part against loss or destruction of or damage to such Government property furnished for repair or servicing, the amount and coverage of which the Contractor 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 repair or servicing as may, from time to time, be required by the Contracting Officer. The requirements for such additional insurance shall be effected under the procedures established by the "Changes" clause of this contract.

(e) The Contractor shall hold the Government harmless and shall indemnify the Government against all 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 repair or servicing or arising from the presence of said property on the premises or property of the Contractor.

§ 18–13.703 Government property clause for cost-reimbursement contracts.

The following clause shall be used in cost-reimbursement contracts for supplies and services (except contracts for experimental developmental, or research work with educational or nonprofit institutions, where no profit to the contractor is contemplated) under which NASA is to furnish to the contractor, or the contractor is to acquire, Government property.

GOVERNMENT PROPERTY (COST-REIMBURSEMENT) (OCTOBER 1967)

(a) *Government-Furnished Property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provision affected by the return or disposition, or the repair or modification in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Changes in Government-Furnished Property.*

(1) By notice in writing, the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contract, or (ii) substitute other Government-owned property for property to be furnished by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to paragraph (1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

(c) *Title.* Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under the contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government in whole or in part, whichever first occurs. All Government-furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government property". Title to the Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(d) *Property Administration.* The Contractor shall comply with the provisions of the "Control of Government Property in Possession of Contractors" (appendix B, NASA Procurement Regulation), as in effect on the date of the contract, which is hereby incorporated by reference and made a part of this contract.

(e) *Use of Government Property.* The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) *Maintenance of Government Property.* The Contractor shall maintain and administer in accordance with sound industrial practice, a program for the maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of Government property.

(g) *Risk of Loss.*

(1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

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

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

(B) All or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed; or a separate and complete major industrial operation in connection with the performance of this contract;

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

(A) To maintain and administer, in accordance with sound industrial practice, the program for maintenance, repair, protection, and preservation of Government property as required by paragraph (f) hereof, or

(B) To take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (f) hereof;

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

(iv) Which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

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

Provided, That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception. If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(2) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provisions of this contract.

(3) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, and damaged Government property;

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

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovations of the damaged Government property or take such other action, as the Contracting Officer directs.

(4) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, he shall use the proceeds to repair, renovate or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

(5) If this contract is for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the clause of this contract entitled "Flight Risks" shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft. [This subparagraph may be omitted where it is clearly inapplicable.]

(h) *Access.* The Government, and any persons designated by it, shall at all reasonable times have access to the premises where any of the Government property is located, for the purpose of inspecting the Government property.

(i) *Final Accounting and Disposition of Government Property.* Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government Property not consumed in the performance of this contract, or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government Property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct. The foregoing provisions shall apply to scrap from Government Property: *Provided however*, That the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of

faulty castings or forgings, or cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account therefor as a part of general overhead or other reimbursable cost in accordance with the Contractor's established accounting procedures.

(j) *Restoration of Contractor's Premises.* Unless otherwise provided herein, the Government:

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

(ii) Shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of, the Contractor's plant or any portion thereof which is affected by the abandonment or removal of any Government property.

(k) *Communications.* All communications issued pursuant to this clause shall be in writing.

As provided in paragraph (i) of the above clause, the contracting officer may authorize or approve use of the contractor's established scrap disposal and accounting procedures whenever the amount and recoverable value of scrap from Government property are relatively minor and the contractor's established procedures for accumulating and disposing of scrap and crediting the proceeds thereof to general overhead or other general cost will permit the Government to share equitably in such scrap recovery through a reduction of overhead or other cost factor affecting reimbursement under the contract.

§ 18–13.704 Special tooling clause for fixed-price contracts.

The following clause shall be used in negotiated fixed-price contracts for supplies or services under which the Government is to acquire full rights in special tooling other than as a line item (see § 18–13.305).

SPECIAL TOOLING (OCTOBER 1967)

(a) *Definition.*

(1) The term "special tooling" means all jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and replacements thereof, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production of particular supplies or parts thereof, or the performance of particular services. The term includes all components of such items, but does not include:

(i) Consumable property;

(ii) Special test equipment; or

(iii) Buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items.

(2) For the purposes of this clause, the term "special tooling" does not include:

(i) Items acquired by the Contractor prior to the effective date of this contract, or replacements of such items, whether or not altered or adapted for use in the performance of this contract; or

(ii) Items specifically excluded by the Schedule.

(b) *Use of Special Tooling.* The Contractor agrees not to use any items of special tooling except in the performance of this contract, or as approved by the Contracting Officer.

(c) *List of Special Tooling.* Within sixty (60) days after delivery of the first end items under this contract, or such later date as may be prescribed by the Contracting Officer, the Contractor shall if the Contracting Officer so requests, furnish the Contracting Officer a list of all special tooling acquired or manufactured by the Contractor for use in the performance of this contract. The list shall specify the nomenclature, tool number and related product part number or service, and unit or group cost of the special tooling. Upon completion or termination of all or a substantial part of the work under this contract the Contractor shall furnish a final list in the same form covering all items not previously reported under this paragraph: *Provided, however,* That the Contracting Officer may by written notice waive this requirement or extend it until the completion of this contract and other contracts and subcontracts as to which approval has been obtained under paragraph (b) above. Special tooling which has become obsolete as a result of changes in design or specification need not be reported, except as provided for in paragraph (d).

(d) *Changes in Design.* In the event of any changes in design or specifications which affect interchangeability of parts, the Contractor shall, unless otherwise agreed to by the Contracting Officer, give the Contracting Officer notice of any part which is not interchangeable with the new or superseding part and the usable special tooling for each part covered in such notice shall be retained by the Contractor subject to the provisions of paragraph (i) pending disposition under paragraph (f).

(e) *Contractor's Offer to Retain Special Tooling.* At the time he furnishes any list or notice under (c) or (d) above, the Contractor may designate those items of special tooling (either specifically or by listing the particular products, parts, or services for which such items were used or designed) which he desires to retain, together with a written offer:

(i) To retain any or all of such items, free and clear of any Government interest, for an amount designated therein, which should ordinarily not be less than the then fair value of such items which fair value takes into account, among other things, the value of such items to the Contractor for use in further work by him; or

(ii) To retain any or all such items for such period of time and subject to such terms and conditions as may be agreed to by the parties hereto, subject to ultimate retention or disposition of such items in accordance with paragraph (f) hereof.

(f) *Disposition of Special Tooling.* Within ninety (90) days after receipt of any list or notice under paragraph (c) or (d) hereof, or such further period as may be agreed upon by the parties, the Contracting Officer shall furnish to the Contractor:

(i) A list specifying the particular products, parts, or services for which the Government may require special tooling, together with a request that the Contractor transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Government all usable items of special tooling which were used or designed for the manufacture or performance of any designated portion of such products, parts, or services, and which were on hand when production of such products or parts, or performance of such services, ceased;

(ii) An acceptance or rejection of any offer made by the Contractor under paragraph (e) above, or a request for further negotiation with respect thereto;

(iii) A direction to the Contractor to sell, or to dispose of as scrap, for the account of the Government, any or all of the special tooling covered by such list;

(iv) A statement with respect to any or all of the special tooling covered by such list that the Government has no further interest therein and waives its rights therein; or

(v) any combination of the foregoing, as the circumstances warrant.

The Contractor shall promptly comply with any request by the Contracting Officer under this paragraph to transfer title to any items of special tooling, and shall: (1) immediately prepare such items for shipment by proper packaging, packing, and marking, in accordance with any instructions fhich may be issued by the Contracting Officer, and shall promptly deliver such items to the Government f.o.b. origin, as directed by the Contracting Officer; or (2) if a storage agreement has been entered into, prepare such items for storage in accordance therewith, as directed by the Contracting Officer. Any items of special tooling so delivered or stored shall be accompanied by such operation sheets or other appropriate data as are necessary to show the manufacturing operations or processes for which such items were used or designed. If the Contracting Officer has requested further negotiations under (ii) of this paragraph, the Contractor agrees that he will enter into such negotiations in good faith with the Contracting Officer. Any items of special tooling which are not disposed of by transfer of title and delivery to the Government, or by acceptance of an offer of the Contractor made under paragraph (e), or of such offer as modified in the course of negotiations, shall be disposed of in the manner set forth in (iii) or (iv) of this paragraph. Any failure of the Contracting Officer to give the instructions required above within the specified period shall be construed as a direction pursuant to (iii) above.

(g) *Proceeds of Retention or Disposition of Special Tooling.* If the Contracting Officer accepts an offer of the Contractor to retain any items of special tooling, or if any such items are sold to third parties or disposed of as scrap, the net proceeds shall: (i) be deducted from the amounts due to the Contractor under this contract and the contract amended accordingly; or (ii) be otherwise paid as the Contracting Officer may direct.

(h) *Property Control.* The Contractor agrees that he will follow his normal industrial practice in maintaining property control records on all the special tooling, and that he will make such records available for inspection by the Government at all reasonable times. The Contractor further agrees that, to the extent practicable, he will identify by appropriate stamp, tag, or other mark all special tooling subject to this clause.

(i) *Maintenance Pending Disposition.* The Contractor agrees that between the date any usable items of special tooling are no longer needed by him, within the meaning of this clause, and the date of final disposition of such items under this clause, he will take all reasonable steps necessary to maintain the identity and existing conditions of such items, unless the Contracting Officer has directed that such items be disposed of as scrap or has given notice under (f)(iv). The Contractor shall not be required to keep any such items in place.

(j) *Special Tooling Provisions for Subcontracts.* The Contractor agrees that, in placing any subcontracts or purchase orders under this contract which involve the use of special tooling, the full cost of which is charged to such subcontract or purchase order, he will include therein appropriate provisions to obtain rights comparable to those granted to the Government by this clause, unless the Contracting Officer determines, upon the Contractor's request, that, with respect to any subcontract, purchase order, or class thereof, such rights are not of substantial interest to the Government. The Contractor

further agrees that he will exercise any such rights for the benefit of the Government, as the Contracting Officer may direct.

§ 18–13.705 Special test equipment clause for negotiated contracts.

The following clause shall be used in negotiated contracts which provide that the contractor will acquire special test equipment for the Government but do not specify the items to be acquired (see § 18–13.306–3(c)).

SPECIAL TEST EQUIPMENT (OCTOBER 1967)

(a) *Definition.* Special test equipment means electrical, electronic, hydraulic, pneumatic, mechanical or other items or assemblies of equipment, which are of such a specialized nature that, without modification or alteration, the use of such items (if they are to be used separately) or assemblies is limited to testing in the development or production of particular supplies or parts thereof, or in the performance of particular services. The term "special test equipment" includes all components of any assemblies of such equipment, but does not include:

(i) Consumable property;

(ii) Special tooling; or

(iii) Buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special test equipment), general or special machine tools, or similar capital items.

(b) *Contractor Notice of Intent To Acquire Special Test Equipment.* This contract provides that the Contractor will acquire special test equipment for the Government, but does not specify its exact nature. Before acquiring any such special test equipment or components thereof having an item acquisition cost of $1,000 or more, the Contractor shall give the Contracting Officer thirty (30) day's notice of his intention to do so including a full description of all such items and a list of alternate items that could be used. The Government may elect to furnish the special test equipment or any components thereof to the Contractor by giving written notice of its election to the Contractor within the thirty (30) day period. In the event the Contractor has not received such written notice within the period prescribed, he may proceed to acquire such equipment or components, subject to any other applicable provisions of this contract.

(c) *Government-Furnished Special Test Equipment.* In the event the Government elects to furnish special test equipment or any components thereof pursuant to paragraph (b) above, such items shall be furnished subject to the Government Property clause hereof: *Provided, however,* That the Government shall not be obligated to deliver such items any sooner than the Contractor could have procured them after expiration of the thirty (30) day notice period prescribed in paragraph (b) above.

(d) *Equitable adjustment.* If the Government furnishes any special test equipment or components thereof under paragraph (c) above, any affected provision of this contract shall be equitably adjusted in accordance with the procedures of the Changes clause hereof.

(e) *Subcontracts.* If special test equipment or components thereof having an item acquisition cost of $1,000 or more are to be acquired for the Government by a subcontractor under this contract, the Government's rights to receive thirty (30) days' advance notice thereof from the prime contractor, and to furnish such items to the prime contractor and obtain an equitable adjustment of the prime contract therefor, in accordance with paragraphs (b), (c), and (d) above, shall be preserved.

§ 18–13.706 Government property clause for fixed-price type contracts with nonprofit institutions.

(a) Except as provided in paragraph (b) of this section, the following clause shall be used in fixed-price research and development contracts with nonprofit institutions (provided such contracts are executed on a nonprofit basis) under which NASA is to furnish to the contractor, or the contractor is to acquire Government property.

GOVERNMENT PROPERTY (FIXED-PRICE, NONPROFIT (OCTOBER 1967)

(a) *Government-furnished Property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use (except for such property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule, or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by any such delay. Except for Government-furnished property furnished "as is", in the event that Government-furnished property is received by the Contractor in a condition not suitable for its intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of such property, or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision effected by the return, disposition, repair or modification. The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Changes in Government-furnished Property.*

(1) By notice in writing, the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contract, or (ii) substitute other Government-owned property for property to be furnished by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to paragraph (1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided in the "Changes" clause of this contract.

(c) *Title.*

(1) Title to all property furnished by the Government shall remain in the Government. In order to define the obligations of the parties under this clause, title to each item of facilities, special test equipment, and special tooling (other than that subject to a "Special Tooling" clause) acquired by the Contractor for the Government pursuant to this contract shall pass to and vest in the Government when its use in the performance of this contract commences, or upon payment therefor by the Government whichever is earlier, whether or not title previously vested. All Government-furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government property".

(2) Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(d) *Property Administration.* The Contractor shall comply with the provisions of the "Control of Government Property in Possession of Nonprofit Research and Development Contractors" (appendix C, NASA Procurement Regulation) as in effect on the date of the contract, which is hereby incorporated by reference and made part of this contract.

(e) *Use of Government Property.* The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) *Maintenance and Repair of Government Property.* The Contractor shall maintain and administer, in accordance with sound business practice, a program for the maintenance, repair, protection, and preservation of Government property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs: *Provided, however,* That if the Contractor cannot effect such repair within the time required, the Contractor may reject such property. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in any contractual provisions affected by the repair or replacement of Government property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at his own expense.

(g) *Risk of Loss.*

(1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage except that the Contractor shall be liable for any loss or damage

to Government property provided under this contract upon its delivery to him or passage of title to the Government as provided in paragraph (c) above (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of his managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant, laboratory, or separate location in which this contract is being performed;

(ii) Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (i) above, to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection and preservation of Government property as required by paragraph (f) above;

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

(iv) Which results from a risk expressly required to be insured under some other provision of this contract, or of the schedules or task orders thereunder, but only to the extent of the insurance so required to be procured and maintained or to the extent of insurance actually procured and maintained, whichever is greater; or

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

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

(2) The Contractor represents that he is not including in the price hereunder, and agrees that he will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to the Government property, except to the extent that the risk of loss is imposed on the Contractor under (1)(iii) above, or insurance has been required under (1)(iv) above.

(3) Upon the happening of loss or destruction of or damage to any Government property, the Contractor shall notify the Contracting Officer thereof and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed) shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed, and damaged Government property;

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

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made by him in performing his obligations under this subparagraph (3) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly).

(4) With the approval of the Contracting Officer after loss or destruction of or damage to Government property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(5) Except to the extent of any loss or destruction of or damage to Government property for which the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government property in accordance with the provisions of this contract, the Contractor assumes the risk of, and shall be responsible for any loss or destruction of or damage to the Government property, and such property (other than that which is permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (f) above.

(6) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government property, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecuting of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(7) If this contract is for the development, production, modification, maintenance or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the "Ground and Flight Risk" clause of this contract shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft. [This subparagraph may be omitted where it is clearly inapplicable and shall be deleted when the Ground and Flight Risk clause is omitted.]

(h) *Access.* The Government, and any persons designated by it, shall at all reasonable times have access to the premises wherein any Government property is located, for the purpose of inspecting the Government property.

(i) *Disposition of Government Property.* Upon completion or expiration of this contract, any Government property which has not been consumed in the performance of this contract, or which has not been disposed of pursuant to this clause, or for which the Contractor has not otherwise been relieved of responsibility, shall be disposed of in the same manner, and subject to the same procedures, as is provided in paragraph (g) of the clause of this contract entitled "Termination for the Convenience of the Government" with respect to termination inventory. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall otherwise be credited to the price or costs of the work covered by this contract, or shall be paid in such other manner as the Contracting Officer may direct. Pending final disposition of such property, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation thereof.

(j) *Removal of Government Property.* If the Contracting Officer determines that the interests of the Government require removal of any Government property, or if the Contractor determines any Government property to be in excess of his needs under this contract, such Government property shall be disposed of in the same manner as covered by paragraph (i) above. In the event that the Contracting Officer requires the removal of any Government property under this paragraph (j) or paragraph (i) above, upon timely written request of the Contractor, an equitable adjustment shall be made in the contract price to cover the direct cost to the Contractor of such removal and of any property damage occasioned thereby.

(k) *Communications.* All communications issued pursuant to this clause shall be in writing.

(b) In accordance with § 18–4.5105, the following alternative subparagraph (2) may be substituted for (c)(2) of the clause in paragraph (a) of this section:

(2) Notwithstanding subparagraph (1) above, the Contracting Officer may, at any time during the term of this contract, or upon completion of termination, transfer title to equipment to the Contractor upon such terms, and conditions as may be agreed upon: *Provided*, That the Contractor shall not under any Government contract, or subcontract thereunder, charge for any depreciation, amortization, or use of such equipment as is donated under this paragraph. Upon the transfer of title to equipment under this paragraph, such equipment shall cease to be Government property. Title to Government property, not otherwise transferred to the Contractor, shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

§ 18–13.707 Government property clauses for cost-reimbursement type research and development contracts with nonprofit institutions.

The appropriate clause set forth in paragraph (a) or (c) of this section shall be used, in accordance with the instructions therein, in cost-reimbursement type research and development contracts with nonprofit institutions (provided such contracts are executed on a no-fee basis) under which NASA is to furnish to the contractor, or the contractor is to acquire, Government property.

(a) Except as provided in paragraph (b) of this section, when the total cost of the contract is $25,000 or over, the following clause shall be included in the contract:

GOVERNMENT PROPERTY (COST-REIMBURSEMENT, NONPROFIT) (OCTOBER 1967)

(a) *Government-furnished Property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in this contract, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-funished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract

are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the schedule of this contract or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor and shall equitably adjust the estimated cost, or delivery or performance dates, or both, and any other contractual provisions affected by any such delay. In the event that the Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property, or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the estimated cost, or delivery or performance dates, or both, and any other contractual provision affected by the return, disposition, repair or modification. The foregoing provisions for adjustment are exclusive and the Government shall not be liable for suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Changes in Government-furnished Property.*

(1) By notice in writing, the Contracting Officer may (1) decrease the property furnished or to be furnished by the Government under this contract, or (ii) substitute other Government-owned property for property to be furnished by the Government, or to be acquired by the the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to subparagraph (1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

(c) *Title.*

(1) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is to be reimbursed to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement or processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs. All Government-furnished property, together with all property acquired by the Contractor, title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government property".

(2) Title to the Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(d) *Property Administration.* The Contractor shall comply with the provisions of the "Control of Government Property in Possession of Nonprofit Research and Development Contractors" (appendix C, NASA Procurement Regulation) as in effect on the date of the contract, which is hereby incorporated by reference and made a part of this contract.

(e) *Use of Government Property.* The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) *Maintenance of Government Property.* The Contractor shall maintain and administer in accordance with sound business practice a program for the maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of the Government property.

(g) *Risk of Loss.*

(1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant, laboratory, or separate location in which this contract is being performed;

(ii) which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in (i) above, (A) to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection, and preservation of Government property as required by (f) above, or (B) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under (f) above;

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

(iv) which results from a risk expressly required to be insured under some other provision of this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement: *Provided,* That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(2) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.

(3) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed, and damaged Government property;

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

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovations of the damaged Government property or take such other action as the Contracting Officer directs.

(4) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, he shall use the proceeds to repair, renovate or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction or damage, and upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(5) If this contract is for the development, production, modification, maintenance or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the clause of this contract entitled "Flight Risks" shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft. [This subparagraph may be omitted where it is clearly inapplicable.]

(h) *Access.* The Government, and any persons designated by it, shall at all reasonable times have access to the premises wherein any of the Government property is located, for the purpose of inspecting the Government property.

(i) *Disposition of Government Property.* Upon completion or expiration of this contract, or at such earlier dates as may be fixed by the Contracting Officer, any Government property which has not been consumed in the performance of this contract, or which has not been disposed of as provided in paragraph (j) of this clause, or for which the Contractor has not otherwise been relieved of responsibility, shall be disposed of in the same manner, and subject to the same procedures, as is provided in paragraph (g) of the clause of this contract entitled "Termination for the Convenience of the Government" with respect to termination inventory. The proceeds of any such disposition shall be

applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall otherwise be credited to the cost of the work covered by this contract, or shall be paid in such other manner as the Contracting Officer may direct. Pending final disposition of such property, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation thereof.

(j) *Removal of Government Property.* If the Contracting Officer determines that the interests of the Government require removal of any Government property, or if the Contractor determines any Government property to be in excess of his needs under this contract, such Government property shall be disposed of in the same manner as provided by paragraph (i) above. In the event that the Contracting Officer requires the removal of any Government property under this paragraph (j) or paragraph (i) above, the direct cost to the Contractor of such removal and of any property damage occasioned thereby shall constitute an allowable cost thereunder.

(k) *Restoration of Contractor's Premises.* Unless otherwise provided herein, the Government:

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

(ii) Shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of the Contractor's plant or any portion thereof which is affected by the removal of any Government property.

(l) *Communications.* All communications issued pursuant to this clause shall be in writing.

(b) In accordance with § 18–4.5105, the following may be added to subparagraph (c)(1) of the clause in paragraph (a) of this section.

Notwithstanding the provisions of this subparagraph (c)(1) relative to title, the Contracting Officer may at any time during the term of this contract, or upon completion or termination, transfer title to equipment to the Contractor upon such terms and conditions as may be agreed upon: *Provided,* That the Contractor shall not under any Government contract, or subcontract thereunder, charge for any depreciation, amortization or use of such equipment as is donated under this paragraph. Upon the transfer of title to equipment under this paragraph, such equipment shall cease to be Government property.

(c) Government property clause for contracts less than $25,000: When the total cost of the contract is less than $25,000, the clause set forth below shall be included in the contract:

GOVERNMENT PROPERTY (SHORT FORM) (APRIL 1962)

All property furnished to or purchased by the Contractor in connection with work under this contract shall be and remain the property of the Contractor, except as provided below, even though the Contractor is entitled to be reimbursed for the cost of the property as a direct item of cost under this contract. If the Contractor acquires individual items of equipment exceeding $1,000 in value for any single item, the Contractor shall report such items to the Contracting Officer from time to time as they are procured and maintain a control system which will permit their ready identification and location. Upon final payment, the Contractor agrees to transfer to the Government, without charge, any items of equipment furnished to the Contractor or required to be reported hereunder, which the Contracting Officer may request to be transferred in accordance with instructions issued at that time. The packing, crating, and shipping charges incident to delivery to the Government will be borne by the Government.

§ 18–13.708 Government property clause for contracts with fixed-price and cost-reimbursement provisions.

The clause set forth in § 18–13.702(a) shall be inserted in all contracts which set forth a fixed-price for a portion of the contract but also provide for reimbursement of the cost of certain materials, except that paragraph (c) thereof shall be deleted and replaced by the following.

(c) *Title.* Title to all property furnished by the Government shall remain in the Government. In order to define the obligations of the parties under this clause, title to each item of facilities, special test equipment, and special tooling (other than that subject to a "Special Tooling" clause) acquired by the Contractor for the Government pursuant to this contract shall pass to and vest in the Government when its use in the performance of this contract commences, or upon payment therefor by the Government, whichever is earlier, whether or not title previously vested. Title to all material purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such material by the vendor. Title to other material, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such material in the performance of this contract, or (ii) commencement of processing or use of such material in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever occurs first. All Government-furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government property." Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any reality.

§ 18–13.709 Clause for Government property furnished "as is".

The following clause shall be inserted in all contracts in which Government production and research property is furnished "as is" in accordance with § 18–13.308.

GOVERNMENT PROPERTY FURNISHED "AS IS" (OCTOBER 1967)

(a) The Government makes no warranty whatsoever with respect to Government property furnished "as is" except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when inspected by the Contractor pursuant to the solicitation, or, if not inspected by the Contractor, as when last available for inspection under the solicitation.

(b) The Contractor may repair any property made available to him "as is". Such repair will be at the Contractor's expense except as otherwise provided in this clause. Such property may be modified at the Contractor's expense, but only with the written permission of the Contracting Officer. Any repair or modification of property furnished "as is" shall not affect the title of the Government.

(c) If there is any change in the condition of Government property furnished "as is" from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation, and such change will adversely affect the Contractor, the Contractor shall, upon receipt of the property, notify the Contracting Officer of such fact, and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property, or (ii) effect repairs to return the property to its condition when inspected under the solicitation, or if not inspected, when last available for inspection under the solicitation. Upon completion of (i) and (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust any contractual provisions affected by the return, disposition or repair, in accordance with the procedures provided for in the "Changes" clause of this contract. The foregoing provisions for adjustment are exclusive and the Government shall not be liable for any delivery of Government property furnished "as is" in a condition other than that in which it was originally offered.

(d) Except as otherwise provided in this clause, Government property furnished "as is" shall be governed by the "Government Property" clause of this contract.

§ 18–13.710 Government - furnished property clause for short form contracts.

(a) The following short form clause shall be used in contracts under which the Government is to furnish to the contractor Government property having an acquisition cost of $25,000 or less.

GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (OCTOBER 1967)

(a) The Government shall deliver to the Contractor, for use only in connection with this contract, the property described in the schedule or specifications (hereinafter referred to as "Government-furnished property"), at the times and locations stated therein. If the Government-furnished property, suitable for its intended use, is not so delivered to the Contractor, the Contracting Officer shall, upon timely written request made by the Contractor, and if the facts warrant such action, equitably adjust any affected provision of this contract pursuant to the procedures of the "Changes" clause hereof.

(b) Title to Government-furnished property shall remain in the Government. The Contractor shall maintain adequate property control records of Government-furnished property in accordance with sound industrial practice.

(c) Unless otherwise provided in this contract, the Contractor, upon delivery to him of any Government-furnished property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereto except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of this contract.

(d) The Contractor shall, upon completion of this contract, prepare for shipment, deliver f.o.b. origin, or dispose of all Government-furnished property not consumed in the performance of this contract or not theretofore delivered to the Government, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or paid in such other manner as the Contracting Officer may direct.

Subpart 18–13.8—Administrative Practices

§ 18–13.800 Scope of subpart.

This subpart establishes the policies and procedures for appointing and assigning NASA property administrators to administer the property provisions of NASA contracts. Normally, property administration on all contracts will be delegated to the cognizant DoD Contract Administration Office (CAO) in accordance with the instructions contained in Subpart 18–51.3. This subpart applies only to those instances where NASA property administrators are to be assigned to contracts at installation or plants which are wholly controlled by NASA.

§ 18–13.801 Appointment of property administrators.

(a) The selection, appointment and termination of appointment of property administrators shall be made in writing by the Procurement Officer or his designee. In selecting qualified property administrators the appointing authority shall consider experience, training, education, business acumen, judgment, character, and ethics.

(b) In considering experience, training and education, the following shall be evaluated:

(1) Experience in accounting, material control, inventory control and allied functions;

(2) Formal education or specialization in such areas as evaluating, monitoring, administering or coordinating industrial property programs or implementing plans and policies in support of diversified property control system; and

(3) Knowledge of the provisions of this and other applicable regulations.

§ 18–13.802 Assignment of contracts for property administration.

(a) All NASA contracts performed at a single location by a contractor shall be assigned to a single property administrator.

(b) Each contract under which Government property will be provided to the contractor will be assigned in writing to a property administrator by the Procurement Officer or his designee. The assignment document shall contain the (1) name and address of the contractor, (2) contract number, and (3) type of contract. The contracting officer and the contractor shall be advised in writing of the assignment and any changes thereto.

(c) The assignment shall be terminated when:

(1) It has been determined that no Government property has been or will be furnished or acquired, or

(2) The contract is reassigned to another property administrator.

§ 18–13.803 Records of Government property.

Records of Government property established and maintained by the contractor pursuant to the terms of the contract shall be designated and utilized as the official contract property records. Duplicate records shall not be furnished to nor be maintained by Government personnel, except that where Government property is furnished to a contractor for repair or servicing and return to the shipping organization property accountability shall be retained by the shipping organization. In such cases, the property will be accounted for as a suspense item within the field installation account from which shipped and the Government property clause shall be modified by insertion of the following clause:

PROPERTY RECORDS (OCTOBER 1967)

The Government shall maintain the official contract records in connection with Government property under this contract. The "Government Property" clause is hereby modified by deleting so much thereof as requires that the Contractor maintain such records.

Subpart 18–13.50—Acquisition of Idle Production Equipment

§ 18–13.5000 Scope of subpart.

This subpart establishes procedures for the acquisition of the equipment listed in § 18–13.312 from the Department of Defense Industrial Plant Equipment Center (DIPEC) pursuant to the DoD-NASA Letter of Agreement for Utilization of Idle Production Plant Equipment set forth in NASA Management Instruction 1052.17.

§ 18–13.5001 General.

In accordance with the policy set forth in § 18–13.301, NASA will not provide contractors with new facilities unless fully justified and an economical, practical, and appropriate alternative does not exist. To implement this policy, contracting officers shall determine, prior to the use of the procedures of this subpart, that:

(a) Suitable equipment is not available at any other NASA installation for loan or transfer, and

(b) Current excess property listings promulgated by the Department of Defense and the General Services Administration have been screened, and that the requirement cannot be satisfied therefrom.

§ 18–13.5002 Procedure.

(a) *Requests for idle industrial plant equipment.* Requests for item(s) of equipment to be acquired by screening availability from DIPEC idle inventories shall be submitted on DD Form 1419 (DoD Products Equipment Requisition/Nonavailability Certificate) in an original and three(3) copies to the Office of Procurement (Code KDM) for processing.

(b) *Instructions for preparation of DD Form 1419.* (1) DD Form 1419 will be initiated by the NASA office requiring the equipment. A separate form will be completed for each item of equipment required, i.e. if sixteen (16) lathes of the same type and model are required, sixteen (16) DD Form 1419's will be completed as follows:

(2) Case number: A case number will be assigned to each DD Form 1419 request by the NASA installation. Each number assigned will be coded for Automatic Data Processing by DIPEC. It will also identify the requiring installation and provide a serial number and date of submission for subsequent reference. The case number will begin with the appropriate NASA Installation Symbol Identification set forth below:

Langley Research Center	XNAS01
Ames Research Center	XNAS02
Lewis Research Center	XNAS03
Flight Research Center	XNAS04
Goddard Space Flight Center	XNAS05
Wallops Station	XNAS06
NASA Pasadena Office	XNAS07
George C. Marshall Space Flight Center	XNAS08
Manned Spacecraft Center	XNAS09
John F. Kennedy Space Center	XNAS10
North Eastern Office (Disestablished)	XNAS11
Electronics Research Center	XNAS12
Headquarters Contracts Division	XNASOW
Office of University Affairs	XNAROO
SNPO Germantown	XSNPOG
SNPO Cleveland Extension	XSNPOC
SNPO Nevada Extension	XSNPON

Next will be a four digit entry comprised of the last digit of the current calendar year and the Julian date of the year, i.e. 3035 for February 4, 1963. The last entry will be a four-digit number from 0001 to 9999, to sequentially number requisition forms prepared on the same date. For example: the ninth requisition prepared on February 1, 1963 would be "3032–0009" preceded by the Field Installation Symbol Identification, an example being Langley—"XNAS01 3032–0009". When submitting subsequent DD Forms 1419 related to the item requested, the same case number is to be used and alpha code added to the end of the case number to indicate a second or third action on the basic request. Alpha "A" would indicate a second request, "B" a third, etc. In this manner, all actions, correspondence, etc., relative to a given request can be identified at all levels of processing, by the use of the case number.

(3) Section I of Form: (i) *Item Description.* It is necessary to provide a complete description of the item desired, to obtain maximum screening results. Requests for single purpose or general purpose equipment with special features must contain detailed descriptive data as to the size and capacities, setting forth special operating features or particular operations required to be performed by the item.

(ii) *Commodity Code (Block 1).* Check the appropriate block to indicate the code used. PEC (Production Equipment Code as listed in the "Production Equipment Directory" and "DoD Classification of Equipment for Inventory Control") for metalworking, welding, heat cutting and metallizing equipment or SCC Code (Standard Commodity Classification Code) for other industrial plant equipment. Enter the complete 10-digit PEC or 12-digit SCC for the type of item being requested. For activities using the Federal Stock Number (FSN) as the identifying system, the FSN should be entered and "FSN" typed above the cell blocks of item one.

(iii) *Model Code (Block 2).* The model code will follow the machine description

and will precede the manufacturer's code. It will always be placed in the 11th and 12th blocks. The 11th and 12th digit of the PEC is the two-digit model code for metalworking, welding, heat cutting, and metallizing equipment. For Industrial Plant Equipment other than metalworking, welding, heat cutting, metallizing equipment, the 11th and 12th digit of the SCC is a component part of the descriptive code. Since this type of equipment does not have a model code, the 10 blocks in Item 1 and the two (2) blocks of Item 2 will be combined as one 12-digit entry. FSN's will be entered in the 10 blocks of Item 1 and the first block of Item 2.

(iv) *Manufacturer's Code (Block 3).* Enter the 5-digit numerical code identifying the manufacturer of the item of equipment as listed in DSMA H4–1, "Federal Supply Code for Manufacturers".

(v) *Power Code (Block 4).* Enter the applicable 2-digit input power code.

(vi) *Manufacturer and Model Number (Block 5).* Enter the name of the manufacturer of the item and model, style or catalog number assigned to the equipment by the manufacturer. Always use the model number if available. The style number would be next in preference. In most cases the model number is shown on the item of equipment. When a model, type, or catalog number is not assigned by the manufacturer, the word "none" will be inserted.

(vii) *Description (Block 6).* Complete detailed description listing size, capacities, and adjustments thereof. The ability of DIPEC to make an intelligent determination of availability will depend upon the requestor's completeness of description. Requisitions for metalworking, welding, heat cutting, and metallizing equipment must include the capacities listed in the 1960 Directory of Metal Working Machinery and/or the Directory of Welding, Heat Cutting and Metallizing Equipment. Request for single purpose or general purpose equipment with special features must contain within the description, detailed data as to size and capacities, setting forth special operating features or particular operations required to be performed by the item.

(viii) *Excess Item (Block 7).* Self-explanatory.

(ix) *Date Item Desired (Block 8).* This should represent that point in time wherein NASA must have an acceptable item. (In addition enter a second date, under "Shipping Instructions," Block 58, which will indicate the earliest date the item can be accepted at the user's site.)

(x) *Procurement Specification Attached (Block 10).* Not applicable.

(4) Section II of form: (i) *Block 11.* Must reflect NASA office or NASA contractor for which the requisition is issued.

(ii) *Block 12.* Contract number if for contractor facilities requirements. (Absence of such will delay processing of request until number is furnished.)

(iii) *Block 13.* Applies to appendices to Contractor Proposals.

(iv) *Block 14.* Cite applicable program for which equipment is intended.

(v) *Block 15.* Division or Department Head of NASA requisitioning office.

(vi) *Block 16.* Signature of person named in Block 15.

(vii) *Block 17.* Date requisition signed.

(5) Section III. of form: (i) *Block 18.* Must reflect NASA center validating request.

(ii) *Block 19.* Signature of person named in Block 21.

(iii) *Block 20.* Date approval signed.

(iv) *Block 21.* Contracting Officer or Procurement Officer of NASA Center or his authorized representative.

(6) Section IV of form: (i) *Block 22.* Check appropriate box.

(7) Section V of form: To be completed by Office of Procurement (Code KDM), NASA Headquarters.

(8) Section VI of the form: To be completed by DIPEC. After completion by DIPEC, copy is used for admittance to storage site for inspection of property offered.

(9) Section VII of the form: To be completed by DIPEC if equipment not available. The statement directly below "Certificate Number" does not apply to NASA.

(10) Section VIII of the form: Blocks 48, 49, and 50 are to be completed by office signing request in Section III, after inspection.

(11) Section IX of the form: Self explanatory. However, insure that appropriation symbols are included in Blocks 56 and 57 and that proper and adequate shipping address as well as marking instruction are provided to permit the equipment to arrive at destination. Work order number can be shown in Blocks 56 and 57 after citation of appropriation symbol. (See instructions for Section I, Block 8.)

(12) Section X of the form: To be completed by DIPEC.

(c) *Processing DD Form 1419.* (1) The essential information, outlined in paragraph (b) of this section, covering Sections I, II, and III is required to be completed prior to submission of DD Form 1419 to the Office of Procurement (Code KDM). The Office of Procurement will review each submission for completeness and authenticity. Incomplete or invalid requests will be returned for correction. The original and two (2) copies of the approved DD Form 1419 will be forwarded to DIPEC for screening of inventories. Upon completion of the screening process, DIPEC will annotate the results of the screening in Sections VI and VII. Certification of nonavailability when cited in Section VII is evidence that screening has been accomplished by DIPEC. The original and one (1) copy of the request will be returned by DIPEC to the approving official indicated in Block 21 of Section III through the Office of Procurement (Code KDM).

(2) When a suitable item is allocated in Section VI, inspection of the equipment is recommended. Notification of acceptance or rejection of the item offered must reach DIPEC within 30 days after allocation. A copy of the DD Form 1419 will serve as the clearance document to inspect the equipment at the storage site. Acceptance or rejection of item, without inspection or after inspection is to be noted in Section VIII. If it is determined that the item is acceptable, Section IX is to be executed. The NASA appropriation symbol must be cited where applicable in Section IX. In either instance, acceptance or rejection, the original of the DD Form 1419 is to be returned to DIPEC through the Office of Procurement (Code KDM).

§ 18–13.5003 Transfers from NASA to the military departments.

Requests for NASA idle production equipment received by NASA installations from the military departments shall be referred to the Office of Procurement (Code KDM) for appropriate action.

Subpart 18–13.51—Facilities Expansion, Application and Approval

§ 18–13.5100 Scope of subpart.

This subpart sets forth additional procedures with regard to the provision of Government-owned facilities to contractors and subcontractors for the performance of NASA work, including procedures for the processing of facilities applications.

§ 18–13.5101 Consideration of facilities expansion applications.

Facilities expansion is subject to the policies of § 18–13.301 and to the approval requirements of § 18–13.302. It is the continuing obligation of NASA personnel who are: (a) sponsoring the development of NASA programs, (b) selecting sources, or (c) negotiating related procurement contracts, to give due consideration to the utilization of existing capacity. Where additional facilities are required, every effort will be made to select those sources that demonstrate a willingness and ability to provide their own facilities, subject to the policy of § 18–13.301(b)(2) that existing facilities may be furnished if substantial cost savings are likely to result. NASA contractors and subcontractors are expected to furnish all facilities unless it is otherwise determined to be in the best interests of the Government.

§ 18–13.5102 Procedure for determining facilities expansion.

The following procedures will be applied in determining the need for facilities expansion, to the extent applicable:

(a) When prime contractors are being selected or requested to submit proposals pursuant to § 18–3.802–3, for each procurement, the contracting officer will require all potential sources to state in writing whether additional facilities will be required, the estimated cost and nature of such facilities, and whether the contractor will furnish the facilities with contractor funds or will request the Government to provide the facilities.

(b) When the selected contractor has stated that additional Government facilities will be required, the contracting officer will advise the contractor to submit a formal application for facilities, furnishing the information indicated in

§§ 18–13.5105 and 18–13.5106. The contractor may request assistance in preparing his application for facilities. In order to expedite processing the application, it is important that full and complete justification be given for the required facilities. When the application for facilities is prepared in conjunction with contract proposal for an end-item, nine (9) copies of the facility application should be forwarded together with the proposal, or as soon as practicable thereafter. Any facilities requirements by subcontractors shall be prepared in accordance with the procedures and provisions of this Subpart 18–13.51 and submitted through the prime contractor to the contracting officer for comments and evaluations. All facilities approved for subcontractors will be provided under separate facilities contracts except as may be provided under § 18–13.303–1.

(c) If a facilities project involves construction work, approval of the Deputy Administrator, or other designated officials, must be obtained by the cognizant NASA Headquarters Program Director prior to the initiation of the procurement action, in accordance with the policies and procedures set forth in NASA Handbook 7330.1.

(d) Facilities provided under a related procurement contract pursuant to § 18–13.402–5 will be controlled by a facilities action control number. Before providing facilities (not in excess of $50,000) under a related procurement contract, the contracting officer must obtain the facilities action control number from the Office of Procurement (Code KDM). The contracting officer will obtain the facilities action control number by letter or telegram as the urgency of each case demands. Such communications will include as a minimum:

(1) The proposed contract number;

(2) Name of contractor and plant location;

(3) A brief description of the facilities and purpose of expansion, and

(4) Total estimated cost of the additional Government facilities to be provided.

Application for and justification of facilities so provided will be in accordance with this Subpart 18–13.51. When the related procurement contract is awarded, the contracting officer will insure that an appropriate facilities clause is included according to § 18–13.402–5.

§ 18–13.5103 Processing the application.

(a) Upon receipt of a formal facilities application, the contracting officer will:

(1) Forward three (3) copies of the application to the appropriate installation technical office for review and request comments and recommendations as to the technical aspects and overall scope of application.

(2) Forward one (1) copy to the Facilities Management Office (Code BX).

(3) Forward one (1) copy to the appropriate small business specialist for review (see § 18–1.704–2).

(4) Initially appraise and obtain correction for any proposal deficiencies, including;

(i) Review facilities application for adequacy and completeness;

(ii) Delete items which duplicate contractor facilities having open time available;

(iii) Investigate the possibility of increasing subcontracting to reduce or eliminate the need for Government provided facilities;

(iv) Examine loading methods used by the contractor in developing facilities requirements;

(v) Analyze the validy of the justification;

(vi) Process nonseverable facilities in accordance with § 18–13.307 and eliminate where not justified, and

(vii) Appraise the contractor's statement of the availability of local service (utilities, labor housing, transportation, etc.) which may be necessary to support a proposed expansion.

(b) Based upon his evaluation of the application, and the comments and recommendations of the appropriate installation technical office, the contracting officer will forward his findings and recommendations together with one (1) copy of the application to the cognizant installation project manager for review and approval. In making the request, the contracting officer will include the dollar amount recommended for approval and a request that a purchase request in that monetary amount be furnished to him for supporting the facilities contract.

§ 18–13.5104 Administration of approved facilities application.

After negotiation of a facilities contract or amendment thereto providing for the furnishing of Government facilities, NASA Headquarters approval will be obtained treated as follows:

(a) The contracting officer or his authorized representative assigned to administer the facilities contract will determine necessity for the individual items listed on the approved application. The determination of necessity will be made on the basis of the installation technical office confirmation of requirements.

(b) The contracting officer or his authorized representative will identify equipment which may be available from existing Government inventories and will request assistance of the Office of Procurement (Code KDM) in screening idle inventories. Allocation of idle equipment will be requested by the contractor through and with the concurrence of the NASA contracting officer pursuant to Subpart 18–13.50. If screening of any item of idle Government production and research property on an approved application cannot be completed prior to the required release for procurement date, the contracting officer or his representative may approve purchase of the item without further screening.

(c) Revisions to the approved application to conform to determination of necessity will be subject to the approval of the contracting officer. The determination of necessity will be made as expeditiously as possible and normally will be made on the basis of the contractor's statement that the justification as delineated in the approved application remains valid; the contracting officer may, however, request additional justification, if, in his judgment, such a request is justified.

(d) Substitution of items for similar items listed on an approved application may be considered when necessitated by engineering changes, technological changes, or nonavailability in reserve inventories, and may be approved by the contracting officer or his authorized representative when the substituted item either:

(1) Falls within the same schedule subcategory as the previously approved item;

(2) Is justified for the same intended function and remains within the estimated cost of the previously approved item; and

(3) In cases of justified necessity, exceeds such amount provided that the approved dollar amount of the appendix A schedule category is not exceeded.

Proposed substitutions not meeting the foregoing standard will be processed as facilities expansions in accordance with this § 18–13.5104.

44. Section 18–15.205–40 is revised to read as follows:

§ 18–15.205–40 Special tooling and special test equipment costs.

(a) The term "special tooling" means all jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and replacements thereof, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production of particular supplies or parts thereof, or the performance of particular services. The term includes all components of such items, but does not include:

(1) Consumable property;

(2) Special test equipment; or

(3) Buildings, nonseverable structures (except foundations and similar improvements involving relatively minor expense which are necessary for the installation of special tooling), general or special machine tools, or similar capital items.

(b) The term "special test equipment" means electrical, electronic, hydraulic, pneumatic, mechanical or other items or assemblies of equipment, which are of such a specialized nature that, without modification or alteration, the use of such items (if they are to be used separately) or assemblies is limited to testing in the development or production of particular supplies or parts thereof, or in the performance of particular services. The term "special test equipment" includes all components of any assemblies of such equipment, but does not include:

(1) Consumable property;

(2) Special tooling; or

(3) Buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special test equipment), general or special machine tools, or similar capital items.

(c) The cost of special tooling and special test equipment used in the performance of one or more Government contracts is allowable and shall be allocated to the specific Government contract or contracts for which acquired, except that the cost of—

(1) Items acquired by the contractor prior to the effective date of the contract, or replacements of such items, whether or not altered or adapted for use in the performance of the contract, or

(2) Items the acquisition of which by the Government is specifically excluded by the Schedule

shall be allowable only as depreciation or amortization.

(d) Where items are disqualified as special tooling because with less than substantial modification or alteration they can be made general purpose, and where items are disqualified as special test equipment because with relatively minor expense they can be made suitable for general purpose use and have a value as such commensurate with their value as special test equipment, the cost of adapting the items for use under the contract and the cost of returning them to their prior configuration will be allowable.

45. Section 18–16.202–10 is revised to read as follows:

§ 18–16.202–10 Facilities contracts (NASA Forms 746, 747, and 748).

(a) NASA Form 746 (General Provisions for Cost-Reimbursement Facilities Acquisition Contract) shall be used for the acquisition by the contractor on a cost-reimbursement basis of facilities for the account of the Government (see §§ 18–13.303–50 and 18–13.303–51).

(b) NASA Form 747 (General Provisions for Facilities Use Contract) provides for the use by the contractor of Government-owned facilities in those instances where no direct Government funding is applied (see §§ 18–13.303–50 and 18–13.303–51).

(c) NASA Form 748 (General Provisions for Cost-Reimbursement Consolidated Facilities Contract) shall be used as a combination of both the acquisition and use of facilities (see §§ 18–13.402, 18–13.303–50, and 18–13.303–51).

46. Section 18–16.865 is revised to read as follows:

§ 18–16.865 Analysis of Industrial Facilities and Material Report (NASA Form 1018).

The Analysis of Industrial Facilities and Material Report (NASA Form 1018) shall be used in accordance with the provisions of paragraph B.311 of appendix B and paragraph C.311 of appendix C of this chapter.

47. Section 18–16.867 is revised to read as follows:

§ 18–16.867 DoD Property Record (DD Form 1342).

The DoD Property Record (DD Form 1342) shall be used in accordance with the provisions of paragraph B.306–1 of appendix B and paragraph C.306–1 of appendix C of this chapter.

§ 18–50.105 [Amended]

48. In section 18–50.105(b)(3) the reference "(see § 18–13.403(e)); and" is changed to "(see § 18–13.302(b)); and"

49. Appendix A is reserved and Appendices B and C to Chapter 18 of Title 41 are added as follows:

Appendix B; Control of Government in Possession of Contractors

SUBPART 1—INTRODUCTION

B.100 *Scope of Appendix.* This appendix sets forth the basic requirements to be observed by contractors in establishing and maintaining control over Government property provided pursuant to the terms of contracts with the National Aeronautics and Space Administration. To the extent of any inconsistency between this appendix and the terms of the contract under which the Government property is provided, the terms of the contract shall govern.

B.101 *General.* The contractor shall be directly responsible for and accountable for all Government property in accordance with the provisions of the contract including property provided under such contract which may be in the possession or control of a subcontractor. The contractor shall establish and maintain a system (in accordance with the provisions of this appendix) to control, protect, preserve and maintain all Government property. This system shall be reviewed and, if satisfactory, approved in writing by the assigned property administrator. The contractor shall maintain and make available such records as are required by Subpart 3 of this appendix and must account for all Government property until relieved of responsibility therefor in accordance with procedures set forth in Subpart 2 of this appendix. Liability for loss, damage, or excessive use of property in a given instance will necessarily depend upon all the circumstances surrounding the particular case and must be considered and determined in accordance with the provisions of the contract. The contractor shall furnish all necessary data to substantiate any request for discharge from responsibility.

(a) The contractor shall require any of his subcontractors who are provided Government property under the prime contract to comply with the provisions of this appendix. Procedures for assuring subcontractor compliance shall be included in the contractor's approved property control system. In those instances where the property administrator assigned to the contract has requested supporting property administration, the contractor may accept the system approval and continuing surveillance of the supporting property administrator in lieu of performing duplicative actions to assure the subcontractor's compliance with the provisions of this appendix.

(b) In the event any portion of the contractor's property control system is found to be inadequate upon review by the property administrator, any necessary corrective action will be accomplished by the contractor prior to approval of the system. When agreement as to adequacy of control and corrective action is not reached between the contractor and the property administrator, the matter will be referred to the contracting officer.

(c) When Government property (excluding misdirected shipments) is disclosed to be in the possession or control of the contractor but not provided in accordance with the provisions of any contract, the contractor will, as promptly as possible, (i) record such property according to the established property control procedure, and (ii) furnish the property administrator with all known circumstances and factual data pertaining to its receipt and a statement as to whether there is a need for retention of such property. For misdirected shipments see B.313.

(d) The contractor shall report all Government property in excess of the amounts needed to complete full performance under the contract pursuant to which it was provided, or other existing contracts which authorize the use of such property, as promptly as possible after disclosure of the condition.

B.102 *Definitions.* As used in this appendix:

B.102–1 "Property administrator" means the individual duly designated by appropriate authority to administer the contract requirements and obligations relative to Government property. He is an authorized representative of the contracting officer.

B.102–2 "Government property" means all property owned by or leased to the Government or acquired by the Government under the terms of a contract. Government property includes both Government-furnished property and contractor-acquired property as defined below:

(i) Government-furnished property is property in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise made available to the contractor; and

(ii) Contractor-acquired property is property procured or otherwise provided by the contractor for the performance of a contract, title to which is vested in the Government (see B.201(e)).

B.102–3 "Provide," as used in the context of such phrases as "Government property provided to the contractor" and "Government-provided property," means either to furnish, as in "Government-furnished property," or to acquire, as in "contractor-acquired property."

B.102–4 "Government material" means Government property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies.

B.102–5 "Special tooling" means all jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and replacements thereof, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production of particular supplies or parts thereof, or the performance of particular services. The term includes all components of such items, but does not include:

(i) Consumable property;

(ii) Special test equipment; or

(iii) Buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items.

B.102–6 "Special test equipment" means electrical, electronic, hydraulic, pneumatic, mechanical or other items or assemblies of equipment, which are of such a specialized nature that, without modification or alteration, the use of such items (if they are to be used separately) or assemblies is limited to testing in the development or production of particular supplies or parts thereof, or in the performance of particular services. The term "special test equipment" includes all components of any assemblies of such equipment but does not include:

(i) Consumable property;

(ii) Special tooling; or

(iii) Buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special test equipment), general or special machine tools, or similar capital items.

B.102–7 "Facilities" means industrial property (other than material, special tooling, space property, and special test equipment) for production, maintenance, research, development, or test, including real property and rights therein, buildings, structures, improvements, and plant equipment.

B.102–8 "Real property", for purposes of accounting classification, means (i) land and rights therein, (ii) ground improvements, (iii) utility distribution systems, (iv) buildings, (v) structures, and leasehold improvements. It excludes foundations and other work necessary for the installation of special tooling, special test equipment and plant equipment.

B.102–9 [Reserved]

B.102–10 "Plant equipment" means personal property of a capital nature (consisting of equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items, but excluding special tooling and special test equipment) used or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose. (For financial reporting purposes see NASA Form 1018 Instructions.)

B.102–11 "Industrial plant equipment" (IPE) means that part of plant equipment with an acquisition cost of $1,000 or more which is listed in § 18–13.312.

B.102–12 "Minor plant equipment" means an item of plant equipment having an acquisition cost of less than $200.

B.102–13 "Accessory item" means an item which facilitates or enhances the operation of plant equipment but which is not essential for its operation, such as remote control devices.

B.102–14 "Auxiliary item" means an item without which the basic unit of plant equipment cannot operate, such as motors for pumps and machine tools.

B.102–15 "Salvage" means property which, because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations, but which has some value in excess of its scrap value.

B.102–16 "Scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

B.102–17 "Custodial records" means written memoranda or identifying checks of any description or type used to control items issued from tool cribs, tool rooms, stockrooms, etc., such as requisitions, issue hand receipts, tool checks, stock record books, etc.

B.102–18 "Individual item record" means a separate card form, or document utilized to account for one item of property.

B.102–19 "Stock record" means a perpetual inventory form of record which shows, by nomenclature, the quantities received and issued and the balances on hand.

B.102–20 "Discrepancies incident to shipment" means all deficiencies incident to the shipment of Government property to or from a contractor's facility whereby differences exist between the property purported to have been shipped and the property actually received. Such deficiencies include, but are not limited to loss, damage, destruction, improper status and condition coding, error in identity or classification, and improper consignment.

B.102–21 "Space property" means personal property which is peculiar to aeronautical and space programs of NASA, and is not otherwise included in the categories of property set forth in §§ 18–13.101–4, 18–13.101–5, 18–13.101–6, and 18–13.101–8. It includes such items as aircraft, engines, space vehicles, and other similar components and related support equipment furnished for use as a standard or model, to establish equipment compatibility, or for such other similar reasons as may be determined by the contracting officer.

B.103 *Segregation or Commingling of Government Property and Contractor's Property.* Government property will be segregated and kept physically separate from contractor-owned property. However, when advantageous to the Government and consistent with the contractor's authority to use such property, the property may be commingled:

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

(b) When approved by the property administrator in connection with research and development contracts;

(c) When material included in a multicontract cost and material control system approved in accordance with B.303(e)(ii);

(d) When (i) scrap of a uniform nature is produced from both Government-owned and contractor-owned material and physical segregation is impracticable, (ii) scrap produced from Government-owned material is insignificant in consideration of the cost of segregation and control, or (iii) Government contracts involved are fixed-price in nature and provide for the retention of the scrap by the contractor; or

(e) When otherwise approved by the property administrator.

B.104 *Audit of Property Control System.* The contractor's Government property control system shall be audited by the Government as frequently as conditions warrant. Any such audit or audits may take place at any time during the performance of the contract, upon completion or termination of the contract, or at any time thereafter, during the period the contractor is required to retain such records. The contractor shall make all such records, including correspondence related thereto, available to the auditors.

B.105 *Administration of Space Property.* Due to the special nature of space property the contract under which it is provided generally will contain specific requirements for maintenance and control. Moreover, the following conditions shall be observed: (i) Each item of the property shall be identified by its Federal item identification number and Government nomenclature, and (ii) upon the completion or termination of the contract the contractor shall request and comply with disposition instructions from the contracting officer. To the extent specified in the contract, provisions of this appendix shall apply to Space Property.

SUBPART 2—CONTRACTOR'S RESPONSIBILITY

B.200 *Scope of Subpart.* This subpart covers to the extent not otherwise provided in the contract, (i) the duties and responsibilities of the contractor with respect to Government property, (ii) the obligations of the contractor with respect to the control of Government property, both physically and administratively, and (iii) the liability of the contractor for Government property lost, damaged, destroyed, or for which the contractor is otherwise unable to account.

B.201 *Assumption of Responsibility.* A contractor shall be responsible for all Government property in his possession or control in accordance with the terms of the contract including property provided under such contract which may be in the possession or control of a subcontractor. Sources from which Government property may be furnished or acquired are as follows:

(a) *NASA Installations or Other Contractor's Plants.* Government property may be shipped to a contractor from NASA installations, other Government installations, or plants of NASA or other Government agency contractors. For the purpose of this appendix, the contractor shall become responsible for such property upon delivery of the property into his custody or control. The shipping activity shall furnish the contractor with copies of documents necessary to permit the contractor's property records to accurately reflect the transaction.

(b) *Direct Purchase by the Contractor.* Direct purchases shall be subject to a determination by the NASA contracting officer that the items are allocable to the contract involved and are reasonably necessary therefor. For purposes of property control within the scope of this appendix, it shall be considered that property purchased by the contractor, for which reimbursement is to be requested, becomes Government property upon its receipt by the contractor. This provision shall not be deemed to alter or modify contractual provisions relating to passage of title.

(c) *Withdrawal From Contractor-Owned Stores.* For purposes of property control, within the scope of this appendix, property withdrawn from contractor-owned stores, for direct charge to the contract, shall be considered Government property at the time of approval of the claim for reimbursement, or at the time of issuance for use of such property for the performance of the contract, whichever is earlier.

(d) *Contract Provisions, Terminations, Contract Charges.* Pursuant to specific contractual provisions, or as a result of termination of a contract, or change orders issued under a contract, the Government may acquire title to property. For purposes of property control, such property shall, unless otherwise provided by the contract, be considered Government property upon acceptance of title by the Government.

(e) *Advance, Progress, or Partial Payments.* Pursuant to the terms of a contract, the Government may acquire a lien or title to property upon the making of advance, progress, or partial payments to the contractor. Property to which the Government has acquired a lien or title solely as a result of advance, progress, or partial payments shall not be subject to the provisions of this Appendix.

B.201–1 *Evidence of Receipt of Government Property.* The contractor shall furnish written receipts for all, or specific classes of Government-provided property only in those instances where such action is determined by the property administrator to be essential for maintenance of minimum acceptable property controls. Where such evidence of receipt is required for contractor-acquired property, it shall be provided by the contractor not later than the time he submits his application for payment (public voucher) for the property. In the instance of Government-furnished property, the required receipt shall be provided by the contractor immediately upon receipt of the property.

B.201–2 *Discrepancies Incident to Shipment.*

(a) *Government-furnished Property.* When overages, shortages, or damages are discovered upon receipt of Government-furnished property, the contractor shall provide a statement of the condition and the apparent causes in accordance with procedures approved by the property administrator pursuant to B.101. When the quantity or description of property received by a contractor differs from the quantity or description denoted as shipped on the shipping document, only that quantity, or property, actually received will be recorded on the official records of the contractor.

(b) *Contractor-Acquired Property.* The contractor shall take all actions necessary in adjustment of overages, shortages, or damages in shipment of contractor-acquired property from a vendor or supplier; except in those instances wherein the shipment has moved via Government bill of lading and carrier liability is indicated. In the latter

event, the contractor shall report the instance in accordance with B.201–2(a) above.

B.202 *Relief from Responsibility.* Subject to specific instructions of the contracting officer, and unless otherwise provided for in the contract, the contractor shall be relieved of his property control responsibility for Government property by the following:

(a) *Consumption of Property in the Performance of the Contract.* To the extent that the property administrator determines that property has been consumed or expended for proper purposes and in reasonable amounts in the performance of the contract;

(b) *Retention by the Contractor.* When the contractor retains with the approval of the contracting officer Government property for which the Government has received consideration.

(c) *Sale of Property.* For Government property sold pursuant to instructions of the plant clearance officer: *Provided,* That, the proceeds of such sale shall have been received by or credited to the Government;

(d) *Shipment of Government Property from a Contractor's Plant.* When Government property is shipped from the contractor's plant (except when shipment is to a subcontractor or other location of the contractor) pursuant to the instructions of the plant clearance officer or the property administrator; or

(e) *Determination by the Contracting Officer.* For Government property which is lost, damaged, destroyed, or consumed in excess of that normally anticipated in a manufacturing or processing operation, and for which the contracting officer has determined the extent of liability, if any, of the contractor: *Provided,* That:

(i) such determination is furnished to the contractor in writing;

(ii) the Government has been reimbursed where required by the determination; and

(iii) proper disposition of property rendered unserviceable by damage has been accomplished, and appropriate cross-reference is recorded on the determination as to the shipping document or other documents evidencing disposal.

B.203 *Contractor's Liability.*

(a) Subject to the terms of the contract, the contractor may be liable when shortages of Government property are disclosed or when Government property is lost, damaged, or destroyed, or when there is evidence of unreasonable use or consumption of Government property as measured by the allowances provided for by the terms of the contract, the bill of material, or other appropriate criteria.

(b) The contractor shall report all cases of loss, damage, or destruction of Government property in his possession or control to the property administrator as soon as such facts become known or when requested by the property administrator. The report shall be furnished when completed and accepted products or end items are lost, damaged, or destroyed while such property is in the possession or control of the contractor.

(c) The contractor shall require any of his subcontractors having Government property in their possession or control which is accountable under the contract to report to him all instances of loss, damage, or destruction of such Government property. Further procedures shall be in accordance with that prescribed in (a) and (b) above.

Subpart 3—Records of Government Property

B.300 *Scope of Subpart.* This subpart establishes minimum requirements for records to be established and maintained by the contractor for Government property in his possession or control.

B.301 *General.*

(a) It is the Government's policy to rely upon contractor property control records and to designate and use such records as the official contract records unless an exception has been authorized due to special circumstances. The contractor shall establish and maintain adequate control records, either manual or mechanized, in accordance with the requirements of this appendix for all Government property provided under a contract, including property provided under such contract as may be in the possession or control of a subcontractor. When the subcontractor has a property control system approved by the Government for Government property provided under the subcontractor's own prime contracts, the contractor will utilize records created and maintained in accordance with such approved system unless otherwise directed by the property administrator.

(b) The contractor's property control system shall provide financial accounts for Government-owned property in the contractor's possession or control. The system shall be subject to internal control standards and be supported by property records for such property in the manner described in this Subpart 3.

(c) The official records shall be kept in such condition that at any stage of completion of the work under a contract the status of Government property may be readily ascertained.

(d) Separate property records for each contract are desirable but a consolidated property record may be maintained: *Provided,* That the consolidated record provides the information set forth in this subpart.

(e) Special tooling and special test equipment fabricated from materials which are the property of the Government will be appropriately recorded as Government-owned special tooling or special test equipment immediately upon fabrication. Special tooling and special test equipment fabricated from materials which are the property of the contractor will be appropriately recorded as Government property at the time title passes to the Government.

(f) Property records of the same type which would have been established for components if acquired separately shall be established for such usable components which are permanently removed from items of Government property as a result of modification or otherwise.

(g) The contractor's property control system shall contain an adequate locator system or techniques to permit the location of any item of Government property within a a reasonable period of time after request therefor.

B.302 *Pricing.* Except as provided in B.302–1 the contractor's property control system shall contain the unit price for each item of Government property recorded therein. It is a recognized practice of many contractors to record the unit price of property on other than the quantitative inventory record, thus requiring the use of supplementary records to ascertain unit prices. Under such circumstances, the supplementary records containing such information shall be identified and recognized as a portion of the official property records. The requirement that unit prices be contained in the official property records will not apply to those separate property records located at contractor's secondary sites and subcontractor's plants; provided that: (i) Records maintained by the prime contractor at his primary site are in full compliance in this respect and (ii) the prime contractor agrees to furnish either actual or reasonable estimated unit prices to the secondary site or subcontractor as the need arises. When definite information as to unit price cannot be obtained, reasonable estimates will be used.

B.302–1 *Contractor-Acquired and Contractor-Fabricated Property.* The unit price of a contractor-acquired and contractor-fabricated property shall be determined in accordance with the system established by the contractor in conformance with sound accounting principles and consistently applied. Generally, it is desired that separate unit prices be applied to items of special tooling and special test equipment fabricated or acquired by the contractor. However, if the contractor's accounting system is acceptable, and if the maintenance of detailed cost records results in excessive accounting cost or is otherwise impracticable considering all circumstances, group pricing may be used for special tooling and special test equipment. Group pricing may also be used for work-in-process in accordance with the contractor's acceptable cost accounting system. Processed material, fabricated parts, components, assemblies, etc., charged to the contractor's work-in-process inventory, including items in temporary storage while awaiting processing may be considered as work-in-process for the purpose of compliance with this requirement. Nothing in the foregoing lessens the requirement for quantitative property controls for special tooling, special test equipment, and work-in-process necessary for the proper protection of the Government's interest.

B.302–2 *Government-Furnished Property.* The unit price of Government-furnished property shall be determined by the Government and furnished to the contractor. Transportation and installation costs will not be considered as part of the unit price for this purpose. Normally, the unit price of Government-furnished property will be provided on the document covering shipment of the property to the contractor. In event the unit price is not provided on the document, action will be taken through the property administrator to obtain the information.

B.303 *Records of Material.* All Government material furnished to the contractor, as well as other material to which title has passed to the Government by reason of allocation from contractor-owned stores or purchase by the contractor for direct charge to a Government contract or otherwise, shall be recorded in accordance with the contractor's property control system, as follows:

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

(i) Contract number or equivalent code designation;

(ii) Nomenclature or description of item (including Federal Stock Number if known);

(iii) Quantity received;

(iv) Quantity issued;

(v) Balance on hand;

(vi) Posting reference and date of transaction;

(vii) Unit price;

(viii) Location; and

(ix) Disposition.

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

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

(d) *Use of Receipt and Issue Documents.* When authorized by the property administrator, the contractor may maintain in lieu of "stock records," a file of approximately cross-referenced documents evidencing receipt, issue and use of Government-provided material which is issued for immediate consumption upon receipt and is not entered in the inventory record as a matter of sound business practice. This method of control may be authorized by the property administrator in the following instances:

(i) Material charged through overhead, including but not limited to items used in manufacturing, maintenance, and office supplies;

(ii) Material under research and development contracts;

(iii) Subcontract or outside production items;

(iv) Nonstock or special items. These items are considered to be those whose procurement cycle is irregular and infrequent;

(v) Items which are produced for direct charge to a contract, procured and issued for installation upon receipt, and involve no spoilage such as maintenance and repair parts for plant equipment; or

(vi) Items issued from contractor-owned inventory direct to production, maintenance, etc.

(e) *Multicontract Cost and Material Control.*

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

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

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

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

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

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

(F) Notwithstanding B.502, physical inventories of material in stores included in the systems (other than work-in-process) will be taken by the contractor at least annually, price extended, and reconciled to the quantitative balance for each item, and adjustments recorded in the stock record and financial inventory control accounts. Such physical inventories and adjustments shall be reviewed by and are subject to the approval of the property administrator. An equitable distribution to cost accounts of any inventory losses will be subject to a like review and approval.

(ii) *Authorization.* The Procurement Officer responsible for contract administration at the contractor's plant involved or his designee may authorize a contractor who is performing or will perform more than one Government contract to use the multicontract cost and material control system in accordance with this paragraph. The property administrator will, for each system authorized, approve detailed operating procedures as are necessary for that particular system.

(iii) *Criteria.* A multicontract cost and material control system may be authorized if:

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

(B) The contractor's accounting system is adequate to satisfy the requirements set out in B.312; and

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

B.304 *Records of Special Tooling.* The contractor's property control system shall be such as to provide the following minimum information regarding each item of Government-owned special tooling:

(i) Contract number or equivalent code designation;

(ii) Nomenclature or description of item (including identification number and item on which used);

(iii) Quantity received or fabricated;

(iv) Posting reference and date of transaction;

(v) Location;

(vi) Disposition;

(vii) Unit or group price; and

(viii) Retention category (when required by the contract).

(a) In event group pricing of special tooling is utilized by the contractor, as recognized in B.302–1, unit prices may be computed as and when required.

(b) Retention category, item (iii) above (when applicable) shall be established by the contractor at time of acquisition or fabrication of the item of special tooling. Retention categories as defined below shall be used:

(i) Assembly tooling—required for manufacture of the end product but not required for production of spare parts. Those items having no post production need except for potential modification or resumed production programs.

(ii) Critical tooling—those tools within a family of tools absolutely essential to fabricate spare parts and assemblies even at a minimum production rate. This would include basic forming tools and tooling for special processes. Tools within this category are to be further identified as:

(A) Spares tooling—required to produce a provisioned spare part or assembly.

(B) Judgment (insurance) tooling—fabrication tools for parts that are not provisioned spares but which in the judgment of the contractor will be required at some time for logistic support of the end item.

(C) Support tooling—of secondary importance, necessary to economically produce at increased rates but not essential for parts fabrication at low production rates.

This information will be utilized to expedite screening when the special tooling becomes excess to contract requirements. After a major system has gone out of production, this information need not be required for those items of special tooling which have been retained for spares production, overhaul, or repair work.

B.305 *Records of Special Test Equipment.* The contractor's property control system shall be such as to provide the following minimum information regarding each item of Government-owned special test equipment:

(i) Contract number or equivalent code designation;

(ii) Nomenclature or description of item (including identification number and item on which used);

(iii) Identity of any general purpose test equipment incorporated as components in such a manner that removal and reutilization may be feasible and economical;

(iv) Quantity received or fabricated;

(v) Posting reference and date of transaction;

(vi) Location;

(vii) Disposition;

(viii) Unit or group price; and

(ix) Retention category (when required by the contract).

(a) In event group pricing of special test equipment is utilized by the contractor, as recognized in B.302–1, unit prices may be computed as and when required.

(b) Retention category, item (ix) above (when applicable), shall be established by the contractor at time of acquisition or fabrication of the item of special test equipment. Retention categories defined in B.304(b) will be used for special test equipment. This information will be utilized to expedite screening when the special test equipment becomes excess to contract requirements. After a major system has gone out of production, this information need not be required for those items of special test equipment which have been retained for spare production, overhaul or repair work.

B.306 *Record of Plant Equipment.*

(a) Plant Equipment Costing $1000 or More. The contractor shall maintain individual item records (manual or mechanized) of each item of Government-owned plant equipment having a unit cost of $1000 or more which will provide the following minimum information:

(i) Federal Supply Code for Manufacturer (Cataloging Handbooks H4–1, H4–2) and, at the option of the contractor, the name and address of the equipment manufacturer.

(ii) Manufacturers model/part number.

(iii) Serial number and year built (when available).

(iv) U.S. Government Identification/tag number.

(v) Noun name of the item and Federal Supply Classification (Cataloging Handbook H2–1, H2–2, and H2–3).

(vi) Acquisition document reference and date.

(vii) Location.

(viii) Disposition document reference and date.

(ix) Contract number or equivalent code designation.

(x) Unit price when equipment is Government-furnished or cost (f.o.b. manufacturer) when contractor acquired.

NOTE: Unit price will be reduced when accessory and auxiliary items are permanently separated from the basic item of plant equipment.

(b) *Record of Accessory and Auxiliary Equipment.* Accessory and auxiliary equipment, which is attached to or otherwise a part of an item of plant equipment or has been acquired for use in connection with a specific item, shall be recorded on the record of the item of plant equipment. In the event the accessory or auxiliary item is not attached to, a part of, or acquired for use with a specific item of plant equipment, it shall be recorded as indicated in B.306(d).

(c) *Record of Manufacturing Systems.* Where plant equipment (including accessory or auxiliary type items) is assembled and interconnected to form a single operating unit to perform continuously the same manufacturing process, such equipment may, for property and inventory control purposes, be grouped and recorded as a single item of plant equipment on one plant equipment record in lieu of an individual item record for each component comprising the item of plant equipment. This does not obviate the requirement for adequately describing the component items on the plant equipment record nor does it preclude the use of more than one plant equipment record form when additional space is required.

(d) *Plant Equipment Costing More Than $200 and Less Than $1,000.* Except where individual item records are necessary for effective control, calibration, or maintenance, summary stock records may be maintained for minor plant equipment and for plant equipment costing between $200 and $1,000 per unit. The contractor's property control system shall be such as to provide the following minimum information:

(i) Contract number or equivalent code designation;
(ii) Noun name, Federal Supply Classification in Cataloging Handbooks H2–1, H2–2, and H2–3;
(iii) Manufacturer or Federal Supply Code for the manufacturer and model/part number;
(iv) Quantity received;
(v) Balance on hand;
(vi) Posting reference and date of transaction;
(vii) Unit price;
(viii) Location (see B.301(g)); and
(ix) Disposition.

In addition, where appropriate as determined by the property administrator the serial number or Government identification number or both for each item shall be recorded in a permanent manner in the property records and, upon disposition, lined out or otherwise deleted from the record. DD Form 1342 may be used for individual record cards for items costing between $200 and $1,000.

B.306–1 *Centrally Reportable Plant Equipment.* Notwithstanding the approval of a contractor's property accounting and control system the contractor shall, with respect to items identified as industrial plant equipment (IPE) (including those items which are a part of a manufacturing system but excluding general purpose components of special test equipment) prepare a DD Form 1342 (see Attachment 1) at the time of acquisition or receipt. When IPE including general purpose components of special test equipment is no longer required at the point of acquisition or receipt, the contractor shall prepare a DD 1342 and reflect thereon any changes in original data not previously reported. The contractor shall retain the original of each DD Form 1342 and forward the copies through the property administrator to the NASA contracting officer. Use of the DD Form 1342 as the official property record is optional.

B.307 *Records of Real Property.* Records of real property shall consist of maps, drawings, plans, and specifications supplemented, where necessary to reflect building installations such as heating, electrical, sanitary ventilating, drainage, sprinkler systems, etc. Appropriate changes will be made to the records to reflect alterations, additions, or extensions to real property. Where the maps, drawings, plans, and specifications do not adequately reflect descriptive data as to buildings installations, supplemental records will be maintained. The foregoing records will: (i) Be complete, (ii) show the original cost of the property and improvements and the cost of changes and additions thereto, and (iii) be appropriately indexed.

B.308 *Records of Scrap and Salvage.* Except as provided in B.103(d) the contractor shall maintain records of all scrap or salvage generated. These records shall be in accordance with the contractor's established system of scrap and salvage control, if approved by the property administrator, who shall take into consideration the need for protecting the Government's interest in the proration, disposition, and allocation of proceeds resulting therefrom.

B.308–1 *Records of Scrap.* The contractor's property control system shall be such as to provide the following minimum information:

(i) Contract number, if practicable, or equivalent code designation;
(ii) Scrap classification (material content);
(iii) Quantity on hand;
(iv) Unit of measure;
(v) Posting references and date of transactions; and
(vi) Disposition.

B.308–2 *Records of Salvage.* The contractor's property control system shall be such as to provide the following minimum information:

(i) Contract number, if practicable, or equivalent code designation;
(ii) Nomenclature or description of item;
(iii) Quantity on hand;
(iv) Posting reference and date of transaction; and
(v) Disposition.

B.309 *Records of Related Data and Information.* The contractor shall maintain property control and accountability in accordance with sound industrial practice with respect to manufacturing or assembly drawings, installation, operation, repair, or maintenance instructions, or other similar data and information furnished to the contractor by the Government. The requirements of this appendix are not otherwise applicable to such property.

B.310 *Records of Completed Products.* The contractor shall maintain a record of all completed products produced under a contract as follows:

(a) When there is no lapse of time between Government inspection and acceptance of the completed products and shipment from the plant site, the records shall, as a minimum, consist of summarization of quantities accepted and shipped. When end items are accepted by the Government and stored with the contractor awaiting shipment, the record shall identify quantities stored, location and disposition action.

(b) On contracts which provide that complete products are to be retained by the contractor for further use under the contract, or other contracts, such items shall be considered "Government-furnished property" upon acceptance and shall be recorded as prescribed in this subpart.

(c) When completed products are returned to a contractor under the terms of a warranty clause, the contractor shall, as a minimum, maintain a record by contract, setting forth a description of the items involved, quantities received and returned to the Government, and such other pertinent data as may be required to permit determination that a proper accounting for all property has been made.

B.311 *Financial Control Accounts and Reports.*

(a) *Property Accounts.* The contractor's property control system shall be such as to provide semiannually the dollar amount of Government facilities and material for which he is accountable in the following classifications:

(i) Land and rights therein;
(ii) Buildings;
(iii) Other structures and facilities;
(iv) Leasehold improvements;
(v) Plant Euipment; and
(vi) Material.

(b) *Facilities.* The contractor's accounts covering items (i) through (v) above will be susceptible to local reconciliation in totals and subtotals as to whether contractor-acquired or Government furnished.

(c) *Government Material.* The contractor's property control system shall be such as to provide semiannually the dollar amount of Government material for which he is accountable.

(d) *Reports To Be Prepared.*

(i) The contractor will prepare, semiannually, an Analysis of Industrial Facilities and Material Report (NASA Form 1018) in accordance with the instruction contained therein. When a contractor has been awarded more than one contract pursuant to which industrial facilities or material or both are furnished or acquired, a separate report will be prepared for each contract except that, if material is accountable under more than one contract with a single NASA installation, the cognizant NASA installation may authorize one report covering material for all such contracts. (This exception does not eliminate the necessity for separate records of material for each contract.) Property included in one report will not be duplicated in another report.

(ii) The report will include: (A) The cost of Government-owned industrial facilities in the possession of the contractor and subcontractors under each prime contract, or (B) the cost of Government-owned material held in storage for issue by the contractor and subcontractors when the balance on hand at the end of the reporting period is estimated to amount to $25,000 or more for each prime contract, or both.

(iii) Also, the cost of material will be reported only as of each June 30 except that: (A) The cost will be reported as of November 30 when all material has been disposed of since the preceding June 30 (for example, due to completion or termination of the contract), or (B) the amount of increase or decrease since the preceding June 30 is in excess of $100,000.

(iv) The report will not include minor plant equipment; special tooling; special test equipment; space property; industrial facilities in process of construction or material held for use in construction of industrial facilities; or any of the following types of material: scrap and salvage, items forwarded to the contractor for repair and return to NASA, work in process, material issued for consumption, material held in storage for issue which is estimated to amount to less than $25,000, and NASA shipping containers.

(e) *Submission of Reports.*

(i) Six copies of the Analysis of Industrial Facilities and Material Report will be submitted by the contractor to the cognizant property administrator so as to be received by: December 26 covering the period July–November 30, and July 26 covering the period December 1–June 30.

B.312 *Financial Accounting Requirements for Multicontract Cost and Material Control Systems.* Whenever a multicontract cost and material control system is authorized, the contractor's financial accounts must include all material, including Government-furnished material in the system. Specifically, his accounting system must be adequate to:

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

(ii) Reflect separately for Government-furnished and contractor-acquired material

in stores (except work-in process) the inventory balances as affected by receipts, issues, adjustments, and other dispositions;

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

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

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

B.313 *Records of Property of Misdirected Shipments.* The contractor's property control system shall be such as to provide the following information regarding each misdirected shipment of Government property received:

(i) Identity of shipment (shipping document, bill of lading, etc.);

(ii) Origin of shipment;

(iii) Content (items in the shipment) per shipping document, if available;

(iv) Location; and

(v) Disposition.

B.314 *Records of Property Provided Under Exception Authority.* The contractor's property control system shall be such as to provide the following minimum information regarding each item of Government property provided:

(i) Exception identification number;

(ii) Nomenclature or description of item;

(iii) Quantity received;

(iv) Posting reference and date of transaction;

(v) Location;

(vi) Disposition; and

(vii) Unit price.

B.315 *Records of Property Sent to Contractors for Processing and Return.*

(a) The contractor shall maintain quantitative records of such items to assure control from time of receipt, during processing and return of the items to the NASA installation. Such item records will be established by the contractor in accordance with his property control system but will include at least the following:

(i) Contract number or equivalent code designation;

(ii) Nomenclature or description of item including the Federal Stock Number;

(iii) Quantity received;

(iv) Unit price;

(v) Location;

(vi) Quantity returned to NASA installation;

(vii) Quantity disposed of otherwise pursuant to proper authority;

(viii) Balance on hand; and

(ix) Posting reference and date of transaction.

Subpart 4—Identification

B.400 *Scope of Subpart.* This subpart establishes minimum requirements for the identification and marking of Government property in the possession or control of the contractor.

B.401 *General.* The contractor shall identify, mark, and record all Government property promptly upon receipt, except as may be exempted by this subpart, and it shall remain so identified so long as it remains in the custody, possession, or control of the contractor. Assigned Government property identification numbers will be recorded on all applicable receiving documents, shipping documents, disposal documents, and any other documents pertaining to the property control system. Such markings shall be removed or obliterated from the property involved when the disposal is by sale, scrap, or through donation.

B.402 *Material and Minor Plant Equipment.* All Government material and minor plant equipment shall be identified as Government property except in those cases where:

(i) No material or minor plant equipment of the same type at the same location is owned by the contractor, his employees, or other contracting agencies;

(ii) Adequate physical control is maintained over tool-crib items, guard force items, protective clothing, and other items issued for use by individuals in the performance of their work under the contract;

(iii) Property is of bulk type or by its general nature of packing or handling precludes adequate marking, as may be determined by the property administrator; and

(iv) Property is commingled, as authorized by B.103.

B.403 *Special Tooling and Special Test Equipment.* Government-owned special tooling and special test equipment shall be marked in accordance with the procedure established by the contractor and approved by the property administrator, unless it is determined by the contractor in an individual case that marking will damage the special tooling or special test equipment or is otherwise impracticable. The contractor shall advise the property administrator, in writing, of any such determination. Identification shall consist of a serial number (identification number), and an indication of NASA ownership, including the NASA installation responsible for funding and control of the property. If an item is already identified as "U.S. Property," the marking shall not be changed solely to conform to the provisions of this paragraph. Components of special test equipment, having an acquisition cost of $1,000 or more and incorporated in such a manner that removal and reutilization is feasible and economical, shall be marked in a manner similar to plant equipment as required by B.404. General purpose components of special test equipment having an acquisition cost of between $200 and $1,000 may be identified in the same manner, when required for effective control, in accordance with a contractor's approved property control system.

B.404 *Plant Equipment.*

(a) Unless already marked in compliance with these instructions, all NASA-owned plant equipment, including industrial plant equipment but excluding minor plant equipment (see B.402 above), shall be marked by the contractor with a NASA identification number, except (i) when the size or nature of the equipment makes it impracticable; or (ii) the equipment is accessory or auxiliary and attached to or otherwise a part of an item of plant equipment and is required for its normal operation, in which case such item shall be entered and described on the record of the equipment to which it is attached or of which it is otherwise a part. Identification shall be effected by affixing a metal, fiber, plastic, or other plate direct to the equipment; by using indelible ink, acid, or electric etch, steel dies, or any other legible, permanent, conspicuous, and tamper-proof method.

(b) Identification by the contractor shall be in accordance with procedures established by the contractor and approved by the property administrator and shall consist of the following:

(i) An indication of NASA ownership; however, if the item is already identified as "U.S. Property," the marking shall not be changed solely to conform to the provisions of this paragraph;

(ii) A two-part identification number. The first part shall be the property account number (contract number) and the second part shall be a contractor assigned serial; and

(iii) Accessory or auxiliary equipment associated with a specific item of plant equipment and recorded on the official records for that item need not be marked with an identification number unless circumstances necessitate marking to assure that the item of accessory or auxiliary equipment will be returned to the Government with the basic item with which associated.

(c) Normally, identification numbers assigned and marking affixed shall be permanent and will not be changed as long as the equipment remains under the control of NASA. However, identification markings may be removed and new identification numbers assigned and appropriate markings affixed in event of transfer of funding and control responsibilities between Government agencies or transfer of the equipments between contractors. The marking so removed shall be shown on the appropriate documents involved.

Subpart 5—Physical Inventories

B.500 *Scope of Subpart.* This subpart establishes minimum requirements for the physical inventory of Government property in the possession or control of the contractor.

B.501 *Periodic Inventories.* The contractor shall periodically physically inventory all Government property (except materials issued from stock for performance of manufacturing, research, design, or other services required by the contract) in his possession or control and shall cause his subcontractors to do likewise. The type and frequency of physical inventory and the procedures therefor shall be established by the contractor and approved by the property administrator. In establishing type and frequency of physical inventory consideration should be given to contractor's established practices, type, and usage of the Government property in the possession or control of the contractor, amount of Government property involved and their monetary value, and the reliability of contractor's property control system. Type and frequency of physical inventories normally will not vary between contracts being performed by the contractor; however, it may vary with the types of property being controlled. Inventory, as used here, consists of sighting, tagging or marking, describing, recording, and reporting the property concerned and reconciling the property recorded and reported with the property records.

B.502 *Inventories Upon Termination or Completion.* Immediately upon termination or completion of a contract, the contractor shall perform a physical inventory adequate for disposal purposes, of all Government property applicable to the terminated or completed contract. Further, the contractor shall cause each subcontractor to perform a physical inventory, adequate for disposal purposes, of all Government property in the subcontractor's possession or control which is applicable to the terminated or completed contract. The requirement for physical inventory of Government property at the completion of a contract may be waived by the property administrator when the property applicable to the completed contract is authorized for use on a follow-on contract, provided:

(i) Past experience has established the adequacy of property controls and an acceptable degree of inventory discrepancies; and

(ii) A statement is provided by the contractor indicating that transfer of record balances has been made in lieu of preparing formal inventory list and the contractor accepts responsibility and accountability for these balances under the terms of the follow-on contract.

B.503 *Reporting Results of Inventories.* The contractor shall, as a minimum, submit to the property administrator: (i) A listing which properly identifies all discrepancies disclosed by a physical inventory, and (ii)

a signed statement that physical inventory of all or certain classes of Government property was completed on a given date and that the official property records were found to be in agreement with the physical inventory except for discrepancies reported. The listing and signed statement will be furnished with a minimum of delay after completion of the physical inventory.

B.504 *Quantitative and Monetary Control.* As directed or required by proper authority, contractor's reports of results of physical inventory action shall be prepared on both a quantitative and monetary basis and segregated by categories of property such as material (except material issued from stock for performance of manufacturing, research, design, or other services required by the contract), special tooling, special test equipment, and plant equipment.

SUBPART 6—CARE, MAINTENANCE, AND UTILIZATION

B.600 *Scope of Subpart.* This subpart establishes minimum requirements as to care, maintenance, and utilization of Government property in the possession or control of the contractor.

B.601 *General.* The contractor shall be responsible for the proper care, maintenance, and utilization of Government property in his possession or control from the time of receipt of the property until properly relieved of responsibility in accordance with the contract. The removal of Government property to storage, or its contemplated transfer, does not relieve the contractor of these responsibilities.

B.602 *Contractor's Maintenance Program.* The contractor's maintenance program (which shall be approved in accordance with B.101) shall be such as to provide for, consistent with sound industrial practice and the terms of the contract: (i) Disclosure of need for and the performance of normal maintenance, (ii) disclosure and reporting of need for capital type rehabilitation, and (iii) recording of work accomplished under the program.

(a) *Normal Maintenance.* Normal maintenance is maintenance generally performed on a regular scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences. An effective normal maintenance program shall consist of, but not be limited to, the following actions:

(i) Inspecting buildings at such periodic intervals as will assure detection of deterioration and the need for repairs;

(ii) Inspecting plant equipment at such periodic intervals as will assure detection of maladjustment, wear, or impending breakdown;

(iii) Regularly scheduled lubrication of bearings and moving parts in accordance with a lubrication chart or equivalent plan;

(iv) Protection from exposure to deteriorating agents;

(v) Adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration of associated parts;

(vi) Removal of sludge, chips, and cutting oils from equipment which will not be used for a period of time;

(vii) Taking necessary precautions to prevent deterioration from contamination and corrosion; and

(viii) Proper storage and preservation of accessories and special tools furnished with an item of plant equipment but not regularly used with it.

(b) *Capital Type Rehabilitation.* The contractor's maintenance program shall be such as to provide for the disclosure and reporting of the need for major repair, replacement, and other rehabilitation work for Government property in the possession or control of the contractor.

(c) *Records of Maintenance.* The contractor's maintenance program shall provide for records sufficient to disclose the maintenance actions performed and deficiencies discovered as a result of inspections.

B.603 *Utilization of Government Property.* The contractor's procedures shall be adequate to assure that Government property will be utilized only for those purposes authorized in the contract.

B.604 *Property in Possession of Subcontractors.* The contractor shall require any of his subcontractors having Government property in their possession or control to adequately care for and maintain that property and assure that it is utilized only as authorized by the contract. Procedures necessary to the accomplishment of this responsibility shall be included in the contractor's approved property control system.

INSTRUCTIONS FOR THE PREPARATION OF NASA PROPERTY RECORDS—DD FORM 1342

1. *Check Boxes Under Title of Form*—The first time an item is acquired by NASA, place an "X" in "Inventory" box. Place an "X" in both "Inventory" and "Change" boxes for all subsequent reports of an acquisition.

2. *Name of Item (Upper right corner of form)*—Enter simple noun name, i.e., Lathe.

SECTION I—INVENTORY CODES

Item 1—Place an "X" in appropriate box to designate code being used. Use PEC when available. When Federal Stock No. (FSN) is used, enter the FSN in the blocks marked FSN. If complete FSN is not available, enter the Federal Supply Classification (FSC) in the first four (4) blocks.

PEC Codes—See "Production Equipment Directory".

SCC Codes—See DSMA–H3, "Department of Defense Classification of Equipment for Inventory Control".

Enter FSN, if available.

Obtain "Production Equipment Directory" and "DoD Classification of Equipment for Documents, U.S. Government Printing Office, Washington, D.C.

Item 2—If a PEC commodity code is used, enter the model code shown in the Production Equipment Directory. If an SCC code is used, enter the last two (2) digits of the twelve (12) digit code.

Item 3—If PEC commodity code is used, enter manufacturer's code in Production Equipment Directory. If SCC commodity code is used, enter manufacturer's code in DSMA–H4–1, "Federal Supply Code for Manufacturers". Obtain DSMA–H4–1 from: Superintendent of Documents, U.S. GPO, Washington, D.C.

Item 4—Enter applicable Type code for the equipment indicated below. Type Codes 1, 2 and 3 are to be used for industrial equipment.

Code:	*Type*
1	General Purpose Equipment.
2	General Purpose Equipment
3	with Special Features.
4	Single Purpose Equipment.
	Other Plant Equipment.

Item 5—Enter complete NASA identification number for the equipment (see B.404). If less than eleven (11) digits are used, make entries to the right.

Item 6—Enter name, city, and State of the manufacturer of the equipment. Do not use distributor's or vendor's name.

Item 7—To be completed by the installation financial management officer. Contractors and/or property administrators leave these blocks blank.

Item 8—Enter name, street address, city, and State of the actual possessor of the equipment. If in possession of a subcontractor or contractor's secondary site, enter name and address of contractor having the NASA contract which provided the equipment, also, the name and address of the subcontractor or secondary site.

Item 9—Enter the last two (2) digits of calendar year equipment was manufactured.

Item 10—Operating Power Code—Enter the applicable two-digit code from DSAM 4215.1 "Defense Industrial Plant Equipment Center Operations".

Item 11—Service Code—Enter the two-digit code "32" to indicate NASA-owned equipment.

Item 12—Enter the cost rounded off to the nearest dollar. Make entries of less than six (6) digits within the blocks to the far right.

Item 13—Enter serial number assigned by the manufacturer. Place number to the far left. Do not add zeros. If equipment has no serial number, enter the word "None".

Item 14—Enter one of the following codes in block to the far left: 1—Active, 2—Leased, 3—Disposal, 4—Other.

Item 15—Enter Condition Code:
S—In service;
N—New or not used;
E—Used, reconditioned;
O—Used, useable without repairs.

Item 16—Leave blank.

Item 17—Leave blank.

SECTION II—INVENTORY DATA

Item 18—Give complete, detailed description. List all sizes, capacities and ranges thereof. Description will be determined from a physical inspection of the item by qualified technical personnel.

Item 19—Enter manufacturer's model, style, or catalogue number of equipment being reported. Use model number if available.

Item 20—Enter NASA contract number under which contractor is accountable.

Item 21—Designate program, project, or service to which equipment is asigned.

Item 22—Enter NASA installation cognizant of the contract number under which equipment was acquired.

Item 23—Give all dimensions (including skid) to the nearest foot as item is normally stored.

Items 24 and 25—Leave blank.

SECTION III—ACQUISITION AND TRANSFER

Item 26—Enter a reference to approval issued by NASA Contracting Officer for acquisition or transfer of the item.

Item 27—Enter the Government contract number under which the item was purchased by a contractor for the account of the Government.

Item 28—Place an "X" in the applicable box to indicate whether item was new or used when first received by NASA.

Item 29—Enter name and address of the consignor from which the item was shipped.

Item 30—Enter name and address of the consignee at which the item was received.

Item 31—If acquired by purchase, leave blank; otherwise, enter date and voucher number on which item was received (incoming shipping document).

Item 32—Leave blank when reporting acquisition. When reporting a transfer of accountability, insert date and voucher number on which item was shipped (outgoing shipping document).

Item 33—Enter NASA contract number which provides for item being reported. For items transferred to a NASA installation, enter name of the cognizant installation.

Item 34—Enter actual day, month, and year on which item was physically received by the consignee in item 30.

Item 35—Enter amount of increase (to the nearest dollar) to "Acquisition Cost" (Item

12). This will include the addition of attachments and/or accessories. For new purchases, this entry will be identical to amount shown in item 12.

Item 36—Enter amount of decrease (to the nearest dollar) to "Acquisition Cost" (Item 12). This will include the deletion of attachments and/or accessories.

SECTION IV—DISPOSITION DATA

Item 37—Enter name and address of NASA installation, Government agency and activity or contractor to which item is transferred.

Item 38—Enter identification and date of document issued directing disposition.

Item 39—Enter an "X" in appropriate box to indicate type of disposition. If disposal was by sale, insert amount of proceeds realized.

Item 40—Insert voucher number and date of document which effected the shipment.

Item 41—Enter date title was transferred to donee or purchaser, if readily available; otherwise, enter date of delivery to donee or purchaser.

SECTION V—ELECTRICAL CHARACTERISTICS

Item 42—Self-explanatory.

SECTION VI—PLANNING DATA

Items 43 through 46—Not applicable to NASA.

SECTION VII—CHANGE PROCEDURE

Items 47 through 52—This section is not to be used.

SECTION VIII—THIS SPACE IS PROVIDED FOR CONTINUATION OF ENTRIES OF ITEMS 1 THROUGH 46 WHEN APPLICABLE WHICH MAY NEED MORE SPACE THAN PROVIDED IN ITEM 18

SECTION IX—CERTIFICATION OF INVENTORY

Enter date, signature, and title of the individual certifying that the facts presented are accurate.

SECTION X—VALIDATION OF LAYAWAY

Not applicable to NASA equipment.

Appendix C: Control of Property in Possession of Nonprofit Research and Development Contractors

SUBPART 1—INTRODUCTION

C.100 *Scope of Appendix.* This appendix sets forth the basic requirements to be observed by contractors in establishing and maintaining control over Government property provided pursuant to the terms of contracts with the National Aeronautics and Space Administration. To the extent of any inconsistency between this appendix and the terms of the contract under which the Government property is provided, the terms of the contract shall govern.

C.101 *General.* The contractor shall be directly responsible for and accountable for all Government property in accordance with the provisions of the contract, including property provided under such contract which may be in the possession or control of a subcontractor. The contractor shall establish and maintain a system (in accordance with the provisions of this appendix) to control, protect, preserve and maintain all Government property. This system shall be reviewed and, if satisfactory, approved in writing by the assigned property administrator. The contractor shall maintain and make available such records as are required by Subpart 3 of this appendix and must account for all Government property until relieved of responsibility therefor in accordance wtih procedures set forth in Subpart 2 of this appendix. Liability for loss, damage, or excessive use of property in a given instance will necessarily depend upon all the circumstances surrounding the particular case and must be considered and determined in accordance with the provisions of the contract. The contractor shall furnish all necessary data to substantiate any request for discharge from responsibility.

(a) The contractor shall require any of his subcontractors who are provided Government property under the prime contract to comply with the provisions of this appendix. Procedures for assuring subcontractor compliance shall be included in the contractor's approved property control system. In those instances where the property administrator assigned to the contract has requested supporting property administration, the contractor may accept the system approval and continuing surveillance of the supporting property administrator in lieu of performing duplicative actions to assure the subcontractor's compliance with the provisions of this appendix.

(b) In the event any portion of the contractor's property control system is found to be inadequate upon review by the property administrator, any necessary corrective action will be accomplished by the contractor prior to approval of the system. When agreement as to adequacy of control and corrective action is not reached between the contractor and the property administrator, the matter will be referred to the contracting officer.

(c) Procedures for the control of scrap and salvage shall not be required unless the property administrator determines that the scrap or salvage is substantial in amount and that the Government is not receiving sufficient benefits from the use or disposal thereof. In this event the contractor shall establish a procedure whereby all Government property that can be salvaged shall be returned to Government stock, which procedure shall be subject to the approval of the property administrator.

(d) When Government property (excluding misdirected shipments) is disclosed to be in the possession or control of the contractor but not provided in accordance with the provisions of any contract, the contractor will, as promptly as possible, (i) record such property according to the established property control procedure, and (ii) furnish the property administrator with all known circumstances and factual data pertaining to its receipt and a statement as to whether there is a need for retention of such property. For misdirected shipments see C.312.

(e) The contractor shall report all Government property in excess of the amounts needed to complete full performance under the contract pursuant to which it was provided, or other existing contracts which authorize the use of such property, as promptly as possible after disclosure of the condition.

C.102 Definitions. As used in this appendix:

C.102–1 "Property administrator" means the individual designated by appropriate authority to administer the contract requirements and obligations relative to Government property. He is an authorized representative of the contracting officer.

C.102–2 "Government property" means all property owned by or leased to the Government or acquired by the Government under the terms of a contract. Government property includes both Government-furnished property and contractor-acquired property as defined below.

(i) "Government-furnished property" is property in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise made available to the contractors; and

(ii) "Contractor-acquired property" is property procured or otherwise provided by the contractor for the performance of a contract, title to which is vested in the Government.

C.102–3 "Provide," as used in the context of such phrases as "Government property provided to the contractor" and "Government-provided property," means either to furnish, as in "Government-furnished property," or to acquire, as in "contractor-acquired property."

C.102–4 "Government material" means Government property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed in the performance of a contract. It includes, but is not limited to, raw and processed materials, parts, components, assemblies and small tools and supplies.

C.102–5 "Special tooling" means all jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and maufacturing aids, and replacement thereof, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production of particular supplies or parts thereof, or the performance of particular services. The term includes all components of such items, but does not include:

(i) Consumable property;

(ii) Special test equipment; or

(iii) Buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items.

C.102–6 "Special test" equipment means electrical, electronic, hydraulic, pneumatic, mechanical or other items or assemblies of equipment, which are of such a specialized nature that, without modification or alteration, the use of such items (if they are to be used separately) or assemblies is limited to testing in the development or production of particular supplies or parts thereof, or in the performance of particular services. The term "special test equipment" includes all components of any assemblies of such equipment, but does not include:

(i) Consumable property;

(ii) Special tooling; or

(iii) Buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special test equipment), general or special machine tools, or similar capital items.

C.102–7 "Facilities" means industrial property (other than material, special tooling, space property, and special test equipment) for production, maintenance, research, development, or test, including real property and rights therein, buildings, structures, improvements and plan equipment.

C.102–8 "Real property," for purposes of accounting classification, means (i) land and rights therein; (ii) ground improvements; (iii) utility distribution systems; (iv) buildings; (v) structures; and (vi) lease hold improvements. It excludes foundations and other work necessary for the installation of special tooling, special test equipment, and plan equipment.

C.102–9 [Reserved]

C.102–10 "Plant equipment" means personal property of a capital nature (consisting of equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items, but excluding special tooling and special test equipment) used or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plan purpose. (For financial reporting purposes see NASA Form 1018 Instructions.)

C.102–11 "Industrial Plant Equipment" (IPE) means that part of plant equipment with an acquisition cost of $1,000 or more which is listed in § 18–13.312.

C.102–12 "Minor plant equipment" means an item of plant equipment having an acquisition cost of less than $200.

C.102–13 "Accessory item" means an item which facilitates or enhances the operation of plant equipment but which is not essential

for its operation, such as remote control devices.

C.102–14 "Auxiliary item" means an item without which the basic unit of plant equipment cannot operate, such as motors for pumps and machine tools.

C.102–15 "Salvage" means property which because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations, but which has some value in excess of its scrap value.

C.102–16 "Scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

C.102–17 "Custodial records" means written memorandum or identifying checks of any description or type used to control items issued from tool cribs, tool rooms, stockrooms, etc., such as requisitions, issue hand receipts, tool checks, stock record books, etc.

C.102–18 "Individual item record" means a separate card form, or document utilized to account for one item of property.

C.102–19 "Stock record" means a perpetual inventory form of record which shows, by nomenclature, the quantities received and issued and the balances on hand.

C.102–20 "Discrepancies incident to shipment" means all deficiencies incident to the shipment of Government property to or from a contractor's facility whereby differences exist between the property purported to have been shipped and the property actually received. Such deficiencies include, but are not limited to, loss, damage, destruction, improper status and condition coding, error in identity of classification, and improper consignment.

C.102–21 "Space property" means personal property which is peculiar to aeronautical and space programs of NASA, and is not otherwise included in the categories of property set forth in §§ 18–13.101–4, 18–13.101–5, 18–13.101–6, and 18–13.101–8. It includes such items as aircraft, engines, space vehicles, and other similar components and related support equipment furnished for use as a standard or model, to establish equipment compatibility, or for such other similar reasons as may be determined by the contracting officer.

C.102–22 "Property account" means the official records of Government property provided to a contractor by NASA, which are established and maintained under the provisions of this appendix. Separate property accounts will be maintained either on an individual contract basis or contractor basis.

C.102–23 "Nonprofit organization" means any corporation, foundation, trust, or institution operated for scientific, or educational or medical purposes, not organized for profit, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

C.103 *Segregation or Commingling of Government Property and Contractor's Property.* Ordinarily, Government property, particularly material, should be segregated and kept physically separate from contractor-owned property at all times. However, when advantageous to the Government and consistent with the contractor's authority to use such property, the property may be commingled:

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

(b) When (i) scrap of a uniform nature is produced from both Government-owned and contractor-owned materials and physical segregation is impracticable, (ii) scrap produced from Government-owned materials is so insignificant in consideration of the cost of segregation and control;

(c) When approved by the property administrator.

C.104 *Audit of Property Control System.* The contractor's Government property control system shall be audited by the Government as frequently as conditions warrant. Any such audit or audits may take place at any time during the performance of the contract, upon completion or termination of the contract, or at any time thereafter, during the period the contractor is required to retain such records. The contractor shall make all such records, including correspondence related thereto, available to the auditors.

C.105 *Administration of Space Property.* Due to the special nature of space property the contract under which it is provided generally will contain specific requirements for maintenance and control. Moreover, the following conditions shall be observed: (i) Each item of the property shall be identified by its Federal Item Identification Number and Government nomenclature; and (ii) upon the completion or termination of the contract the contractor shall request and comply with disposition instructions from the Contracting Officer. To the extent specified in the contract the provisions of this appendix, with respect to all Government property, shall apply to space property.

SUBPART 2—CONTRACTOR'S RESPONSIBILITY

C.200 *Scope of Subpart.* This subpart covers to the extent not otherwise provided in the contract, (i) the duties and responsibilities of the contractor with respect to Government property, (ii) the obligations of the contractor with respect to the control of Government property, both physically and administratively, and (iii) the liability of the contractor for Government property lost, damaged, destroyed, or for which the contractor is otherwise unable to account.

C.201 *Assumption of Responsibility.* A contractor shall be responsible for all Government property in his possession or control in accordance with the terms of the contract, including property provided under such contract which may be in the possession or control of a subcontractor. Sources from which Government property may be furnished or acquired are as follows:

(a) *NASA Installation or Other Contractor's Plants.* Government property may be shipped to a contractor from NASA installations, other Government installations, or plants of NASA or other Government agency contractors. For the purpose of this appendix, the contractor shall become responsible for such property upon delivery of the property into his custody or control. The shipping activity shall furnish the contractor with copies of documents necessary to permit the contractor's property records to accurately reflect the transaction.

(b) *Direct Purchase by the Contractor.* Direct purchases shall be subject to a determination by the NASA Contracting Officer that the items are allocable to the contract involved and are reasonably necessary therefor. For purposes of property control within the scope of this appendix, it shall be considered that property purchased by the contractor for which reimbursement is to be requested, becomes Government property upon its receipt by the contractor. This provision shall not be deemed to alter or modify contractual provisions relating to passage of title.

(c) *Withdrawal From Contractor-Owned Stores.* For purposes of property control, within the scope of this appendix, property withdrawn from contractor-owned stores, for direct charge to the contract, shall be considered Government property at the time of approval of the claim for reimbursement, or at the time of issuance for use of such property for the performance of the contract, whichever is earlier.

(d) *Contract Provisions, Terminations, Contract Changes.* Pursuant to specific contractual provisions or as a result of termination of a contract, or change orders issued under a contract, the Government may acquire title to property. For purposes of property control, such property shall, unless otherwise provided by the contract, be considered Government property upon acceptance of title by the Government.

(e) *Advance, Progress, or Partial Payments.* Pursuant to the terms of a contract the Government may acquire a lien or title to property upon the making of advance, progress, or partial payments to the contractor. Property to which the Government has acquired a lien or title solely as a result of advance, progress, or partial payments shall not be subject to the provisions of this appendix.

C.201–1 *Evidence of Receipt of Government Property.* The contractor shall furnish written receipts for all, or specific classes of Government-provided property only in those instances where such action is determined by the property administrator to be essential for maintenance of minimum acceptable property controls. Where such evidence of receipt is required for contractor-acquired property, it shall be provided by the contractor not later than the time he submits his application for payment (public voucher) for the property. In the instance of Government-furnished property, the required receipt shall be provided by the contractor immediately upon receipt of the property.

C.201–2 *Discrepancies Incident to Shipment.*

(a) *Government-furnished property.* When overages, shortages, or damages are discovered upon receipt of Government-furnished property, the contractor shall provide a statement of the condition and the apparent causes in accordance with procedures approved by the property administrator pursuant to C.201. When the quantity or description of property received by a contractor differs from the quantity or description denoted as shipped on the shipping document, only that quantity, or property, actually received will be recorded on the official records of the contractor.

(b) *Contractor-acquired property.* The contractor shall take all actions necessary in adjustment of shortages, overages, or damages in shipment of contractor-acquired property from a vendor or supplier; except in those instances wherein the shipment has moved via Government bill of lading and carrier liability is indicated. In the latter event, the contractor shall report the instance in accordance with C.201–2(a) above.

C.202 *Relief from Responsibility.* Subject to specific instructions of the contracting officer, and unless otherwise provided for in the contract, the contractor shall be relieved of his property control responsibility for Government property by the following:

(a) *Consumption of Property in the Performance of the Contract.* To the extent that the property administrator shall determine that property has been consumed or expended for proper purposes and in reasonable amounts in the performance of the contract;

(b) *Retention by the Contractor.* When the contractor retains, with the approval of the contracting officer, Government property for which the Government has received consideration.

(c) *Sale of Property.* For Government property sold pursuant to instructions of the plant clearance officer: *Provided,* That the proceeds of such sale shall have been received by or credited to the Government;

(d) *Shipment of Government Property from a Contractor's Plant.* When Government property is shipped from the contractor's

plant (except when shipment is to a subcontractor or other location of the contractor) pursuant to the instructions of the plant clearance officer or the property administrator;

(e) *Determination by the Contracting Officer.* For Government property which is lost, damaged, destroyed, or consumed in excess of that normally anticipated in a manufacturing or processing operation, and for which the contracting officer has determined the extent, of liability if any of the contractor: *Provided,* That:

(i) Such determination is furnished to the contractor in writing;

(ii) The Government has been reimbursed where required by the determination; and

(iii) Proper disposition of property rendered unserviceable by damage has been accomplished, and appropriate cross-reference is recorded on the determination as to the shipping documents or other documents evidencing disposal.

(f) *Transfer of Title.* The contractor shall be relieved of responsibility for Government property when title to the property has been transferred to the contractor in accordance with § 18–4.5105.

C.203 *Contractor's Liability.*

(a) Subject to the terms of the contract, the contractor may be liable when shortages of Government property are disclosed or when Government property is lost, damaged, or destroyed, or when there is evidence of unreasonable use or consumption of Government property as measured by the allowance provided for by the terms of the contract, the bill of materials, or other appropriate criteria.

(b) The contractor shall report all cases of loss, damage, or destruction of Government property in his possession or control to the property administrator as soon as such facts become known or when requested by the property administrator. The report shall contain all factual data as to the circumstances surrounding such loss, damage, or destruction. A similar report shall be furnished when completed products or end items are lost, damaged, or destroyed while such property is in the possession or control of the contractor.

(c) The contractor shall require any of his subcontractors having Government property in their possession or control which is accountable under the contract to report to him all instances of loss, damage, or destruction of such Government property. Further procedure shall be in accordance with that prescribed in (a) and (b) above.

SUBPART 3—RECORDS OF GOVERNMENT PROPERTY

C.300 *Scope of Subpart.* This subpart establishes minimum requirements for records to be established and maintained by the contractor for Government property in his possession of control.

C.301 *General.*

(a) It is the Government's policy to rely upon contractor property control records and to designate and use such records as the official contract records unless an exception has been authorized due to special circumstances. The contractor shall establish and maintain adequate control records, either manual or mechanized, in accordance with the requirements of this appendix for all Government property provided under a contract, including property provided under such contract as may be in the possession or control of a subcontractor. When the subcontractor has a property control system approved by the Government for Government property provided under the subcontractor's own prime contracts, the contractor will utilize records created and maintained in accordance with such approved system unless otherwise directed by the property administrator.

(b) The contractor's property control system shall provide financial data for Government-owned property in the contractor's possession or control. The system shall be subject to internal control standards and be supported by property records for such property in the manner described in this Subpart 3.

(c) The official records shall be kept in such condition that at any stage of completion of the work under a contract the status of Government property can be readily ascertained.

(d) Separate property records for each contract are desirable but a consolidated property record may be maintained: *Provided,* That the consolidated record provides the information set forth in this part.

(e) Special tooling and special test equipment fabricated from materials which are the property of the Government will be appropriately recorded as Government-owned special tooling or special test equipment immediately upon fabrication. Special tooling and special test equipment fabricated from materials which are the property of the contractor will be appropriately recorded as Government property at the time title passes to the Government.

(f) Property records of the same type which would have been established for components if acquired separately shall be established for such usable components which are permanently removed from items of Government property, as a result of modification, or otherwise.

(g) The contractor's property control system shall contain an adequate locator system or techniques to permit the location of any item of Government property within a reasonable period of time after request therefor.

C.302 *Pricing.* Except as provided in C.302–1, the contractor's property control system shall contain the unit price for each item of Government property recorded therein. It is a recognized practice of many contractors to record the unit price of property on other than the quantitative inventory record, thus requiring the use of supplementary records to ascertain unit prices. Under such circumstances, the supplementary records containing such information shall be identified and recognized as a portion of the official property records.

C.302–1 *Contractor-Acquired and Contractor-Fabricated Property.* Except for items fabricated for research and development purposes by the contractor, the unit price of contractor-acquired and contractor-fabricated property shall be determined in accordance with the system established by the contractor in conformance with sound accounting principles and consistently applied. Generally, it is desired that separate unit prices be applied to items of special tooling and special test equipment fabricated or acquired by the contractor. However, if the contractor's accounting system is acceptable, and if the maintenance of detailed cost records results in excessive accounting cost or is otherwise impracticable considering all circumstances, group pricing may be used for special tooling and special test equipment. Group pricing may also be used for work-in-process in accordance with the contractor's acceptable cost accounting system. Processed material, fabricated parts, components, assemblies, etc., charged to the contractor's work-in-process inventory, including items in temporary storage while awaiting processing, may be considered as work-in-process for the purpose of compliance with this requirement. Nothing in the foregoing lessens the requirement for quantitative property controls for special tooling, special test equipment, and work-in-process necessary for the proper protection of the Government's interest.

C.302–2 *Government-Furnished Property.* The unit price of Government-furnished property shall be determined by the Government and furnished to the contractor. Transportation and installation costs will not be considered as part of the unit price for this purpose. Normally, the unit price of Government-furnished property will be provided on the document covering shipment of the property to the contractor. In event the unit price is not provided on the document, action will be taken through the property administrator to obtain the information.

C.303 *Records of Material.* All Government material furnished to the contractor, as well as other material to which title has passed to the Government by reason of allocation from contractor-owned stores or purchase by the contractor for direct charge to a Government contract or otherwise, shall be recorded in accordance with the contractor's property control system, as follows:

(a) *Material Issued Directly Upon Receipt.*

(i) *Fixed-Price Contracts.* In the case of Government-furnished material which is issued directly by the contractor upon receipt so as to be considered consumed under the contract, and in the case of minor plant equipment, and special tooling the documents evidencing receipt and issue maintained by the contractor will be accepted as property control records; and

(ii) *Cost-Type Contracts.* For material, whether Government-furnished or contractor-acquired, issued by the contractor directly so as to be considered consumed under the contract, for minor plant equipment, and for special tooling, the Government invoices, contractor's purchase documents or other documentary evidence of acquisition and issue, will be accepted as adequate property records.

(b) *Material Maintained in Stocks.* For material maintained by the contractor in stocks or stores, the contractor's property control system shall be such as to provide the following information:

(i) Contract number, or equivalent code designation;

(ii) Nomenclature or description of item;

(iii) Quantity received;

(iv) Quantity issued;

(v) Balance on hand;

(vi) Posting reference;

(vii) Date received or issued;

(viii) Price; and

(ix) Disposition action taken.

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

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

C.304 *Records of Special Tooling.* In the case of special tooling acquired or fabricated by the contractor or furnished by the Government, for research and development purposes, the oGvernment invoices, contractor's purchase document, or other documental evidence of acquisition and issue, will be accepted as adequate property control records.

C.305 *Records of Special Test Equipment.* The contractor's property control system shall be such as to provide the following minimum information regarding each

item of Government-owned special test equipment:

(i) Contract number of equivalent code designation;

(ii) Nomenclature or description of item (including identification number and item on which used);

(iii) Identity of any general purpose test equipment incorporated as components in such a manner that removal and reutilization may be feasible and economical.

(iv) Quantity received or fabricated;

(v) Posting reference and date of transaction;

(vi) Location;

(vii) Disposition; and

(viii) Unit or group price.

(a) In event group pricing of special test equipment is utilized by the contractor, as recognized in C.302–1, unit prices may be computed as and when required.

C.306 *Records of Plant Equipment.*

(a) *Plant Equipment Costing $1,000 or More.* The contractor shall maintain individual item records (manual or mechanized) of each item of Government-owned plant equipment having a unit cost of $1,000 or more which will provide the following minimum information:

(i) Federal Supply Code for Manufacturer (Cataloging Handbooks H4–1, H4–2) and, at the option of the contractor, the name and address of the equipment manufacturer;

(ii) Manufacturers model/part number;

(iii) Serial number and year built (when available);

(iv) U.S. Government Identification/tag number;

(v) Noun name of the item and Federal Supply Classification (Cataloging Handbook H2–1, H2–2, and H2–3);

(vi) Acquisition document reference and date;

(vii) Location;

(viii) Disposition document, reference, and date;

(ix) Contract number or equivalent code designation; and

(x) unit price when equipment is Government furnished or cost (f.o.b. manufacturer) when contractor acquired. NOTE: Unit price will be reduced when accessory and auxiliary items are permanently separate from the basic item of plant equipment.

(b) *Plant Equipment Costing More Than $200 and Less Than $1,000.* Except where individual item records are necessary for effective control, calibration, or maintenance, summary stock records may be maintained for minor plant equipment and for plant equipment costing between $200 and $1,000 per unit. The contractor's property control system shall be such as to provide the following minimum information:

(i) Contract number or equivalent code designation;

(ii) Noun name, Federal Supply Classification in Cataloging Handbooks H2–1, H2–2, and H2–3;

(iii) Manufacturer or Federal Supply Code for the manufacturer and model/part number;

(iv) Quantity received;

(v) Balance on hand;

(vi) Posting reference and date of transaction;

(vii) Unit price;

(viii) Location (see B–301(g)); and

(ix) Disposition.

In addition, where appropriate as determined by the property administrator, the serial number or Government identification number, or both for each item shall be recorded in a permanent manner in the property records and upon disposition, lined out or otherwise deleted from the record.

(c) *Record of Accessory and Auxiliary Equipment.* Accessory and auxiliary equipment, which is attached to or otherwise a part of an item or plant equipment or has been acquired for use in connection with a specific item, shall be recorded on the record of the item of plant equipment. In the event the accessory or auxiliary item is not attached to, a part of, or acquired for use with a specific item of plant equipment, it shall be recorded as indicated in C.306(b).

C.306–1 *Centrally Reportable Plant Equipment.* Notwithstanding the approval of a contractors' property accounting and control system the contractor shall, with respect to items identified as industrial plant equipment (IPE) (including those items which are a part of a manufacturing system but excluding general purpose components of special test equipment) prepare a DD Form 1342 (see Attachment 1) at the time of acquisition or receipt. When IPE including general purpose components of special test equipment is no longer required at the point of acquisition or receipt, the contractor shall prepare a DD 1342 and reflect thereon any changes in original data not previously reported. The contractor shall retain the original of each DD Form 1342 and forward the copies through the property administrator to the NASA Contracting Officer. Use of the DD 1342 as the official property record is optional.

C.307 *Records of Real Property.* In the case of real property furnished by the Government under fixed-price contracts, and in the case of real property furnished by the Government and acquired by the contractor, title to which vests in the Government, under cost-type contracts the contractor shall maintain a continuous itemized record of the description, location, acquisition cost, and disposition of all Government real property including unimproved real property, all alterations and all construction work, and sites connected with such alteration and construction, acquired by purchase, lease or otherwise. The foregoing records will: (i) Be complete, (ii) show the original cost of the property and improvements and the cost of changes and additions thereto, and (iii) be appropriately indexed.

C.308 *Records of Scrap and Salvage.* In the event procedures for the control of scrap and salvage are required (see C.101(c) and except as provided in C.103(b)), the contractor shall maintain records of all scrap and salvage generated.

C.308–1 *Records of Scrap.* The contractor's property control system shall be such as to provide the following minimum information:

(i) Contract number, if practicable, or equivalent code designation;

(ii) Scrap classification (Material content);

(iii) Quantity on hand;

(iv) Unit of measure;

(v) Posting reference and date of transaction; and

(vi) Disposition.

C.308–2 *Records of Salvage.* The contractor's property control system shall be such as to provide the following minimum information:

(i) Contract number, if practicable, or equivalent code designation;

(ii) Nomenclature or description of items;

(iii) Quantity on hand;

(iv) Posting reference and date of transaction; and

(v) Disposition.

C.309 *Records of Related Data and Information.* The contractor shall maintain property control and accountability in accordance with sound business practice with respect to manufacturing or assembly drawings, installations, operation, repair, or maintenance instructions, or other similar data and information furnished to the contractor by the Government. The requirements of this appendix are not otherwise applicable to such property.

C.310 *Records of End Items.* The contractor shall maintain a record of all completed products produced under a contract as follows:

(a) When there is no lapse of time between Government inspection and acceptance of the completed products and shipment from the plantsite, the records shall, as a minimum, consist of a summarization of quantities accepted or shipped. When end items are accepted by the Government and stored with the contractor awaiting shipment, the record shall identify quantities stored, location, and disposition action.

(b) On contracts which provide that completed products are to be retained by the contractor for further use under the contract, or other contracts, such items shall be considered "Government-furnished property" upon acceptance and shall be recorded as prescribed in this subpart.

C.311 *Financial Control Accounts and Reports.*

(a) *Property Accounts.* The contractors property control system shall be such as to provide semiannually the dollar amount of Government facilities and material for which he is accountable in the following classifications:

(i) Land and rights therein;

(ii) Buildings;

(iii) Other structures and facilities;

(iv) Leasehold improvements;

(v) Plant equipment; and

(vi) Material.

(b) *Facilities.* The contractor's accounts covering items (i) through (v) above will be susceptible to local reconciliation in totals and subtotals as to whether contractor-acquired or Government furnished.

(c) *Government Material.* The contractor's property control system shall be such as to provide semiannually the dollar amount of Government material for which he is accountable.

(d) *Reports To Be Prepared.*

(i) The contractor will prepare semiannually, an Analysis of Industrial Facilities and Material Report (NASA Form 1018) in accordance with instructions contained therein. When a contractor has been awarded more than one contract pursuant to which industrial facilities or material, or both are furnished or acquired, a separate report will be prepared for each contract except that, if material is accountable under more than one contract with a single NASA installation, the cognizant NASA installation may authorize one report covering material for all such contracts. (This exception does not eliminate the necessity for separate records of material for each contract.) Property included in one report will not be duplicated in another report.

(ii) The report will include: (a) The cost of Government-owned industrial facilities in the possession of the contractor and subcontractors under each prime contract, or (b) the cost of Government-owned material held in storage for issue by the contractor and subcontractors when the balance on hand at the end of the reporting period is estimated to amount to $25,000 or more for each prime contract, or both.

(iii) Also, the cost of material will be reported only as of each June 30 except that:

(A) The cost will be reported as of November 30 when all material has been disposed of since the preceding June 30 (for example, due to completion or termination of the contract), or

(B) The amount of increase or decrease since the preceding June 30 is in excess of $100,000.

(iv) The report will not include minor plant equipment; special tooling; special test

equipment; space property; industrial facilities in process of construction or material held for use in construction of industrial facilities; or any of the following types of material: scrap and salvage, items forwarded to the contractor for repair and return to NASA, work in process, material issued for consumption, material held in storage for issue which is estimated to amount to less than $25,000, and NASA shipping containers.

(e) *Submission of Reports.* Six copies of the Analysis of Industrial Facilities and Material Report will be submitted by the contractor to the cognizant property administrator so as to be received by: December 26 covering the period July 1–November 30, and July 26 covering the period December 1–June 30.

C.312 *Records of Property of Misdirected Shipments.* The contractor's property control system shall be such as to provide the following information regarding each misdirected shipment of Government property received:

(i) Identity of shipment (shipping document, bill of lading, etc.);

(ii) Origin of shipment;

(iii) Content (items in the shipment) per shipping document, if available;

(iv) Location; and

(v) Disposition.

Subpart 4—Identification

C.400 *Scope of Subpart.* This subpart establishes minimum requirements for the identification and marking of Government property in the possession or control of the contractor.

C.401 *General.* The contractor shall identify, mark, and record all Government property promptly upon receipt, except as may be exempted by this subpart, and it shall remain so identified so long as it remains in the custody, possession, or control of the contractor. Assigned Government property identification numbers will be recorded on all applicable receiving documents, shipping documents, disposal documents, and any other documents pertaining to the property control system. Such markings shall be removed or obliterated from the property involved when the disposal is by sale, scrap, or through donation.

C.402 *Material and Minor Plant Equipment.* All Government material and minor plant equipment shall be identified as Government property except in those cases where:

(i) No material or minor plant equipment of the same type at the same location is owned by the contractor, his employees, or other contracting agencies;

(ii) Adequate physical control is maintained over tool-crib items, guard force items, protective clothing, and other items issued for use by individuals in the performance of their work under the contract;

(iii) Property is of bulk type or by its general nature of packing or handling precludes adequate marking, as may be determined by the property administrator; and

(iv) Property is commingled, as authorized by C.103.

C.403 *Special Tooling and Special Test Equipment.* Government-owned special tooling and special test equipment shall be marked in accordance with the procedures established by the contractor and approved by the property administrator, unless it is determined by the contractor in an individual case that marking will damage the special tooling or special test equipment or is otherwise impracticable. The contractor shall advise the property administrator, in writing, of any such determination. Identification shall consist of a serial number (identification number) and an indication of NASA ownership, including the NASA installation responsible for funding and control of the property. If an item is already identified as "U.S. Property," the marking shall not be changed solely to the provisions of this paragraph. Components of special test equipment, having an acquisition cost of $1,000 or more and incorporated in such a manner that removal and reutilization is feasible and economical, shall be marked in a manner similar to plant equipment as required by C.404. General purpose components of special test equipment having an acquistion cost of between $200 and $1,000 may be identified in the same manner, when required for effective control, in accordance with the contractor's approval property control system.

C.404 *Plant Equipment.*

(a) Unless already marked in compliance with these instructions, all Government-owned plant equipment, including industrial plant equipment, but excluding minor plant equipment (see C.402 above), shall be marked by the contractor with a NASA identification number, except (i) when the size or nature of the equipment makes it impracticable; or (ii) the equipment is accessory or auxiliary and attached to or otherwise a part of an item of plant equipment and is required for its normal operations, in which case such item shall be entered and described on the record of the equipment to which it is attached or of which it is otherwise a part. Identification shall be effected by affixing a metal, fiber, plastic, or other plate direct to the equipment; by using indelible ink, acid, or electric etch, steel dies, or any other legible, permanent, conspicuous, and tamper-proof method.

(b) Identification by the contractor shall be in accordance with procedures established by the contractor and approved by the property administrator and shall consist of the following:

(i) An indication of NASA ownership. However, if the item is already identified as "U.S. Property," the marking shall not be changed solely to conform to the provisions of this paragraph;

(ii) A two-part identification number. The first part shall be the property account number (contract number) and the second part shall be a contractor assigned serial number.

(iii) Accessory or auxiliary equipment associated with a specific item of plant equipment and recorded on the official records for that item need not be marked with an identification number unless circumstances necessitate marking to assure that the item of accessory and/or auxiliary equipment will be returned to the Government with the basic item with which associated.

(c) Normally, identification number assigned and marking affixed shall be permanent and will not be changed as long as the equipment remains under the control of NASA. However, identification markings may be removed and new identification numbers assigned and appropriate markings affixed in event of transfer of funding and control responsibilities between Government agencies or transfers of the equipments between contractors. The markings so removed shall be shown on the appropriate documents involved.

Subpart 5—Physical Inventories

C.500 *Scope of Subpart.* This subpart establishes minimum requirements for the physical inventory of Government property in the possession or control of the contractor.

C.501 *Periodic Inventories.* The contractor shall periodically physically inventory Government property (except materials issued from stock for performance of manufacturing, research, design, or other services required by the contract) in his possession or control and shall cause his subcontractors to do likewise. Such periodic inventories normally shall be limited to materials, special tooling and minor plant equipment held in stocks and stores, and all special test equipment and other plant equipment. The type and frequency of physical inventory and the procedures therefor shall be established by the contractor and approved by the property administrator. In establishing type and frequency of inventory consideration should be given to contractor's established practices, type, and usage of the Government property in the possession or control of the contractor, amount of Government property involved and their monetary value, and the reliability of contractor's property control system. Type and frequency of physical inventories normally will not vary between contracts being performed by the contractor; however, it may vary with the types of property being controlled. Inventory, as used here, consists of sighting, tagging or marking, describing, recording, and reporting the property concerned and reconciling the property so recorded and reported with the property records.

C.502 *Inventories Upon Termination or Completion.* Immediately upon termination or completion of a contract, the contractor shall perform a physical inventory adequate for disposal purposes, of all Government property applicable to the terminated or completed contract. Further, the contractor shall cause each subcontractor to perform a physical inventory, adequate for disposal purposes, of all Government property in the subcontractor's possession or control which is applicable to the terminated or completed contract.

(a) *Exception.* The requirement for physical inventory of Government property at the completion of a contract may be waived by the property administrator when the property applicable to the completed contract is authorized for use on a follow-on contract, provided:

(i) Past experience has established the adequacy of property controls and an acceptable degree of inventory discrepancies; and

(ii) A statement is provided by the contractor indicating that transfer of record balances has been made in lieu of preparing formal inventory list and the contractor accepts responsibility and accountability for those balances under the terms of the follow-on contract.

(b) *Listings for Disposal Purposes.*

(i) Standard items that have been modified may be described, on listings for disposal purposes, as standard items with a general description of the modification.

(ii) Items that have been fabricated, such as test equipment, shall be described in sufficient detail to permit a potential user to determine whether they are of sufficient interest to warrant further inspection.

C.503 *Reporting Results of Inventories.* The contractor shall, as a minimum, submit to the property administrator: (i) A listing which properly identifies all discrepancies disclosed by a physical inventory, and (ii) a signed statement that physical inventory of all or certain classes of Government property was completed on a given date and that the official property records were found to be in agreement with the physical inventory except for discrepancies reported. The listing and signed statement will be furnished with a minimum of delay after completion of the physical inventory.

C.504 *Quantitative and Monetary Control.* As directed or required by proper authority, contractor's reports of results of physical inventory action shall be prepared on both a quantitative and monetary basis and segregated by categories of property such as material (except material issued from stock for performance of manufacturing, research, design or other services required by the contract), special tooling, special test equipment, plant equipment, etc.

SUBPART 6—CARE, MAINTENANCE AND UTILIZATION

C.600 *Scope of Subpart.* This subpart establishes minimum requirements as to care, maintenance, and utilization of Government proprety in the possession or control of the contractor.

C.601 *General.* The contractor shall be responsible for the proper care, maintenance, and utilization of Government property in his possession or control from the time of receipt of the property until properly relieved of responsibility in accordance with the contract. The removal of Government property to storage, or its contemplated transfer, does not relieve the contractor of these responsibilities.

C.602 *Contractor's Maintenance Program.* The contractor's maintenance program (which shall be approved in accordance with C.101) shall be such as to provide for, consistent with the terms of the contract: (i) Disclosure of need for and the performance of normal maintenance, (ii) disclosure and reporting of need for capital type rehabilitation, and (iii) recording of work accomplished under the program.

(a) *Normal Maintenance.* Normal maintenance is maintenance generally performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences. An effective normal maintenance program shall consist of, but not be limited to, the following actions:

(i) Inspecting buildings at such periodic intervals as will assure detection of deterioration and the need for repairs;

(ii) Inspecting plant equipment at such periodic intervals as will assure detection of maladjustment, wear, or impending breakdown;

(iii) Regularly scheduled lubrication of bearings and moving parts in accordance with a lubrication chart or equivalent plan;

(iv) Protection for exposure to deteriorating agents;

(v) Adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration of associated parts;

(vi) Removal of sludge, chips, and cutting oils from equipment which will not be used for a period of time;

(vii) Taking necessary precautions to prevent deterioration from contamination and corrosion; and

(viii) Proper storage and preservation of accessories and special tools furnished with an item of plant equipment but not regularly used with it.

(b) *Capital Type Rehabilitation.* The contractor's maintenance type program shall be such as to provide for the disclosure and reporting of the need for major repair, replacement, and other rehabilitation work for Government property in the possession or control of the contractor.

(c) *Records of Maintenance.* The contractor's maintenance program shall provide for records sufficient to disclose the maintenance actions performed and deficiencies discovered as a result of inspections.

C.603 *Utilization of Government Property.* The contractor's procedures shall be adequate to assure that Government property will be utilized only for those purposes authorized in the contract.

C.604 *Property in Possession of Subcontractors.* The contractor shall require any of his subcontractors having Government property in their possession or control to adequately care for and maintain that property in their possession or control to adequately care for and maintain that property and assure that it is utilized only as authorized by the contract. Procedures necessary to the accomplishment of this responsibility shall be included in the contractor's approved property control system.

Attachment 1 to Appendix C

INSTRUCTIONS FOR THE PREPARATION OF NASA PROPERTY RECORD—DD FORM 1342

1. *Check Boxes Under Title of Form*—The first time an item is acquired by NASA, place an "X" in "Inventory" box. Place an "X" in both "Inventory" and "Change" boxes for all subsequent reports of an acquisition.

2. *Name of Item (Upper right corner of form)*—Enter simple noun name, i.e., Lathe.

SECTION I—INVENTORY CODES

Item 1—Place an "X" in appropriate box to designate code being used. USE PEC when available. When Federal Stock No. (FSN) is used, enter the FSN in the blocks marked FSN. If complete FSN is not available, enter the Federal Supply Classification (FSC) in the first four (4) blocks.

PEC Codes—See "Production Equipment Directory".

SCC Codes—See DSMA–H3, "Department of Defense Classification of Equipment for Inventory Control".

Enter FSN, if available.

Obtain "Production Equipment Directory" and "DoD Classification of Equipment for Inventory Control" from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C.

Item 2—If a PEC commodity code is used, enter the model code shown in the Production Equipment Directory. If an SCC code is used, enter the last two (2) digits of the twelve (12) digit code.

Item 3—If PEC commodity code is used, enter manufacturer's code in Production Equipment Directory. If SCC commodity code is used, enter manufacturer's code in DSMA–H4–1, "Federal Supply Code for Manufacturers". Obtain DSMA–H4–1 from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C.

Item 4—Enter applicable Type code for the equipment indicated below. Type Codes 1, 2 and 3 are to be used for industrial equipment.

Code:	*Type*
1	General Purpose Equipment.
2	General Purpose Equipment with Special Features.
3	Single Purpose Equipment.
4	Other Plant Equipment.

Item 5—Enter complete NASA identification number for the equipment (see B.404). If less than eleven (11) digits are used, make entries to the right.

Item 6—Enter name, city, and State of the manufacturer of the equipment. Do not use distributor's or vendor's name.

Item 7—To be completed by the installation financial management officer. Contractors and/or property administrators leave these blocks blank.

Item 8—Enter, name, street address, city, and State of the actual possessor of the equipment. If in possession of a subcontractor or contractor's secondary site, enter name and address of contractor having the NASA contract which provided the equipment; also, the name and address of the subcontractor or secondary site.

Item 9—Enter the last two (2) digits or calendar year equipment was manufactured.

Item 10—Operating Power Code—Enter the applicable two-digit code from DSAM 4215.1 "Defense Industrial Plant Equipment Center Operations".

Item 11—Service Code—Enter the two-digit code "32" to indicate NASA-owned equipment.

Item 12—Enter the cost rounded off to the nearest dollar. Make entries of less than six (6) digits within the blocks to the far right.

Item 13—Enter serial number assigned by the manufacturer. Place number to the far left. Do not add zeros. If equipment has no serial number, enter the word "None".

Item 14—Enter one of the following codes in block to the far left: 1—Active, 2—Leased, 3—Disposal, 4—Other.

Item 15—Enter Condition Code:
S—In service.
N—New or not used.
E—Used, reconditioned;
O—Used, usable without repairs.

Item 16—Leave blank.

Item 17—Leave blank.

SECTION II—INVENTORY DATA

Item 18—Give complete, detailed description. List all sizes, capacities and ranges thereof.

Description will be determined from a physical inspection of the item by qualified technical personnel.

Item 19—Enter manufacturer's model, style, or catalog number of equipment being reported.

Use model number if available.

Item 20—Enter NASA contract number under which contractor is accountable.

Item 21—Designate program, project, or service to which equipment is assigned.

Item 22—Enter NASA installation cognizant of the contract number under which equipment was acquired.

Item 23—Give all dimensions (including skid) to the nearest foot as item is normally stored.

Items 24 and 25—Leave blank.

SECTION III—ACQUISITION AND TRANSFER

Item 26—Enter a reference to approval issued by NASA Contracting Officer for acquisition or transfer of the item.

Item 27—Enter the Government contract number under which the item was purchased by a contractor for the account of the Government.

Item 28—Place an "X" in the applicable box to indicate whether item was new or used when first received by NASA.

Item 29—Enter name and address of the consignor from which the item was shipped.

Item 30—Enter name and address of the consignee at which the item was received.

Item 31—If acquired by purchase, leave blank; otherwise, enter date and voucher number on which item was received (incoming shipping document).

Item 32—Leave blank when reporting acquisition. When reporting a transfer of accountability, insert date and voucher number on which item was shipped (outgoing shipping document).

Item 33—Enter NASA contract number which provides for item being reported. For items transferred to a NASA installation, enter name of the cognizant installation.

Item 34—Enter actual day, month, and year on which item was physically received by the consignee in item 30.

Item 35—Enter amount of increase (to the nearest dollar) to "Acquisition Cost" (Item 12). This will include the addition of attachments and/or accessories. For new purchases, this entry will be identical to amount shown in item 12.

Item 36—Enter amount of decrease (to the nearest dollar) to "Acquisition Cost" (Item 12). This will include the deletion of attachments and/or accessories.

SECTION IV—DISPOSITION DATA

Item 37—Enter name and address of NASA installation, Government agency and activity or contractor to which item is transferred.

Item 38—Enter identification and date of document issued directing disposition.

Item 39—Enter an "X" in appropriate box

to indicate type of disposition. If disposal was by sale, insert amount of proceeds realized.

Item 40—Insert voucher number and date of document which effected the shipment.

Item 41—Enter date title was transferred to donee or purchaser, if readily available; otherwise, enter date of delivery to donee or purchaser.

SECTION V—ELECTRICAL CHARACTERISTICS

Item 42—Self-explanatory.

SECTION VI—PLANNING DATA

Items 43 through 46—Not applicable to NASA.

SECTION VII—CHANGE PROCEDURE

Items 47 through 52—This section is not to be used.

SECTION VIII—THIS SPACE IS PROVIDED FOR CONTINUATION OF ENTRIES OF ITEMS 1 THROUGH 46 WHEN APPLICABLE WHICH MAY NEED MORE SPACE THAN PROVIDED IN ITEM 18

SECTION IX—CERTIFICATION OF INVENTORY

Enter date, signature, and title of the individual certifying that the facts presented are accurate.

SECTION X—VALIDATION OF LAYAWAY

Not applicable to NASA equipment.

[F.R. Doc. 68-4977; Filed, Apr. 25, 1968; 8:45 a.m.]