US GOVERNMENT INFORMATION GPO

# FEDERAL REGISTER

VOLUME 33 • NUMBER 235

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Pages 17937–18079

**Agencies in this issue—**

The President
Agricultural Stabilization and Conservation Service
Business and Defense Services Administration
Census Bureau
Civil Aeronautics Board
Civil Service Commission
Commerce Department
Commodity Credit Corporation
Consumer and Marketing Service
Education Office
Federal Aviation Administration
Federal Communications Commission
Federal Power Commission
Federal Reserve System
Federal Water Pollution Control Administration
Fiscal Service
Fish and Wildlife Service
Foreign Direct Investments Office
Forest Service
General Services Administration
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Securities and Exchange Commission
Social and Rehabilitation Service
Social Security Administration
Transportation Department
Veterans Administration
Wage and Hour Division

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THE NATIONAL ARCHIVES OF THE UNITED STATES
LITTERA SCRIPTA MANET
1934

*2-year Compilation*
*Presidential Documents*

# Code of Federal Regulations

TITLE 3, 1964–1965 COMPILATION

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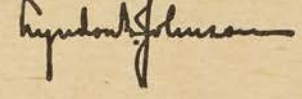
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## Title 3—THE PRESIDENT

### Executive Order 11436

**SUSPENDING THE PROVISIONS OF SECTION 6372 OF TITLE 10 OF THE UNITED STATES CODE, WHICH RELATE TO THE RETIREMENT OR RETENTION ON THE ACTIVE LIST OF CERTAIN REAR ADMIRALS IN THE NAVY**

By virtue of the authority vested in me by section 6386(c) of title 10 of the United States Code, I hereby suspend the provisions of section 6372 of title 10 of the United States Code.



THE WHITE HOUSE,
*December 2, 1968.*

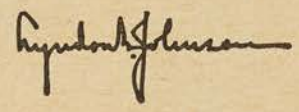
[F.R. Doc. 68-14576; Filed, Dec. 3, 1968; 10:06 a.m.]

## Executive Order 11437

### SUSPENDING THE PROVISIONS OF SECTION 5751(b) OF TITLE 10 OF THE UNITED STATES CODE, RELATING TO SERVICE-IN-GRADE REQUIREMENTS FOR PROMOTION OF OFFICERS OF THE NAVY AND MARINE CORPS

By virtue of the authority vested in me by section 5785(b) of title 10 of the United States Code, I hereby suspend the provisions of section 5751(b) of title 10 of the United States Code.

Executive Order No. 11232 of July 8, 1965, Executive Order No. 11352 of May 22, 1967, and Executive Order No. 11361 of July 6, 1967, are hereby revoked.



THE WHITE HOUSE,
*December 2, 1968.*

[F.R. Doc. 68-14577; Filed, Dec. 3, 1968; 10:06 a.m.]

# Rules and Regulations

## Title 5—ADMINISTRATIVE PERSONNEL

### Chapter I—Civil Service Commission

### PART 294—AVAILABILITY OF OFFICIAL INFORMATION

#### Miscellaneous Amendments

Part 294 of Chapter I is amended in several respects. Specifically, (1) §§ 294.102 (b) and (c) and 294.103 are amended for clarification; (2) §§ 294.105 (a) and (b) and 294.201(b) are amended to reflect change in organization title; (3) § 294.105(c) is amended to reflect changes in address of two regional offices and one branch office; (4) § 294.501(b) is amended to include reference to other lists similar to civil service registers and lists of applications; (5) § 294.601(a) is amended for clarification, and a new paragraph (d) is added to § 294.601 to prohibit disclosure of certain investigative reports if it would violate a pledge of confidence; (6) § 294.702(a)(3) is amended for clarification, and a new paragraph (d) is added to clarify what information in the Official Personnel Folder is not available to the public; and (7) § 294.802(b) is amended to eliminate an unnecessary phrase.

**§ 294.102 Definitions.**

In this part:

* * * * *

(b) "Information available to the public" means information which, on request, may be examined and copied, or of which copies may be obtained in accordance with this part by the public or representatives of the press regardless of interest and without specific justification; and

(c) "Disclose" or "disclosure" means making information available, on request, for examination and copying, or furnishing a copy of the information.

**§ 294.103 General policy.**

The major functions of the Commission relate to the internal personnel rules and practices of the Government, and much of the information in the possession of, or controlled by, the Commission consists of personnel and medical files and similar files. The disclosure of information relative to these functions, or from these files, is exempted from the disclosure requirements in section 552 of title 5, United States Code, by subsection (b) of that section. Notwithstanding the exemptions in section 552(b) of title 5, United States Code, it is the general policy of the Commission to make information available to the public unless the dislosure thereof would constitute a clearly unwarranted invasion of personal privacy or is prohibited under law or Executive order or relates to internal memoranda, letters, or manuals the disclosure of which would interfere with the performance of the functions of the Commission. The Commission reserves the right to make exceptions to the general policy in a particular instance giving due weight to the right of the public to know and the particular governmental or individual interest involved.

* * * * *

**§ 294.105 Places where information may be obtained.**

(a) A request for information should be directed to the bureau or staff office of the Commission, 1900 E Street NW., Washington, D.C. 20415, which is responsible for the subject matter concerned as indicated in this paragraph:

| *Subject matter* | *Bureau of staff office* |
|---|---|
| Policy and interpretations. | Bureau of Policies and Standards. |
| Medical information | Medical Division, Bureau of Retirement and Insurance. |
| Examinations and related subjects. | Bureau of Recruiting and Examining. |
| Investigations | Bureau of Personnel Investigations. |
| Official Personnel Folder. | Bureau of Policies and Standards. |
| Appeals | Do. |
| Retirement, Health Benefits, and Insurance. | Bureau of Retirement and Insurance. |

The bureau or staff office concerned will advise where information that may be disclosed can be examined or copied or copies thereof obtained. A request for information on a subject matter not specifically referred to in this paragraph should be directed to the Office of Public affairs, 1900 E Street NW., Washington, D.C. 20415, which will assist the press and advise other inquirers where contact for the information should be made.

(b) In the event of a difference between an employee of the Commission and a member of the public concerning the availability or disclosure of information under this part, the matter shall be referred by the head of the bureau or staff office concerned, through the Director, Office of Public Affairs, to the Executive Director. The decision of the Executive Director shall be in writing and shall state the reasons for the decision. That decision is the only administrative appeal within the Commission and the obtaining of that decision constitutes the exhaustion of the administrative remedy within the Commission.

(c) Information available to the public is, as far as practical considerations permit, available from each of the following regional and branch offices of the Commission:

REGIONAL OFFICES

Atlanta Merchandise Mart, 240 Peachtree Street NW., Atlanta, Ga. 30303.
Post Office and Courthouse Building, Boston, Mass. 02109.
Main Post Office Building, 433 West Van Buren Street, Chicago, Ill. 60607.
1114 Commerce Street, Dallas, Tex. 75202.
Building 20, Denver Federal Center, Denver, Colo. 80225.
Federal Building, 26 Federal Plaza, New York, N.Y. 10007.
Customhouse, Second and Chestnut Streets, Philadelphia, Pa. 19106.
3004 Federal Office Building, First Avenue and Madison Street, Seattle, Wash. 98104.
Federal Building, Post Office Box 36010, 450 Golden Gate Avenue, San Francisco, Calif. 94102.
1256 Federal Building, 1520 Market Street, St. Louis, Mo. 63103.

* * * * *

Room 802, Federal Building South, 600 South Street, New Orleans, La. 70112.
Suite 100, Hill Building, 632 Sixth Avenue, Anchorage, Alaska 99501.
714 West Olympic Boulevard, Los Angeles, Calif. 90015.
Veterans Administration Building 57, Fort Snelling, Minn. 55111.

* * * * *

**§ 294.201 Public information policy.**

* * * * *

(b) The Director, Office of Public Affairs, is responsible for the furtherance of the public information policy of the Commission. In addition, each employee of the Commission shall cooperate in carrying out this policy in accordance with the Administrative Manual of the Commission.

* * * * *

**§ 294.501 Examinations.**

* * * * *

(b) The names of applicants for civil service positions or eligibles on civil service registers, certificates, employment lists, or other lists of eligibles, or their ratings or relative standings are not information available to the public. However, information of that type may be disclosed to Members of Congress and the press under the specific conditions

prescribed in the Administrative Manual of the Commission.

* * * * *

§ 294.601 Investigative reports.

(a) The Commission or other Government agency will disclose to the parties concerned any report of investigation under its control, or an extract of the report, to the extent the report is involved in a proceeding under Part 352, 353, 771, or 772 of this chapter and the report of investigation or the written summary thereof in a proceeding under Part 713 of this chapter, except when the disclosure would violate the proscription against the disclosure of medical information in § 294.401. For the purpose of this paragraph, the "parties concerned" means the Government employee or former Government employee involved in the proceeding, his representative designated in writing, and the representative of the agency involved in the proceeding.

* * * * *

(d) No report of investigation, or an extract of the report, will be disclosed to the parties concerned in the investigation in any proceeding if it would violate a pledge of confidence.

* * * * *

§ 294.702 Availability of information.

(a) The name, position title, grade, salary, and duty station (which includes the room number, shop designation, or other identifying information regarding the building or place of employment) of a Government employee is information available to the public, except when:

* * * * *

(3) There is reason to believe that the information is sought for political purposes or purposes which may violate the political activity prohibitions in subchapter III of chapter 73 of title 5, United States Code, or which may violate other law.

* * * * *

(c) In addition to the information to be made available under paragraphs (a) and (b) of this section, the home address of an employee shall be made available to a police or court official on receipt of a proper request stating that an indictment has been returned against the employee or that a complaint, information, accusation, or other writ involving nonsupport or a criminal offense, has been filed against him and his address is needed for service of a summons, warrant, subpoena, or other legal process.

(d) Except as provided in paragraphs (a), (b), and (c) of this section, information required to be included in an Official Personnel Folder by the instructions of the Commission is not available to the public.

* * * * *

§ 294.802 Commission appeals.

* * * * *

(b) The Commission will disclose to the parties concerned the information contained in an appeal or complaint file in proceedings under Part 352, 353, 713, or 772 of this chapter, except when the disclosure would violate the proscription against the disclosure of medical information in § 294.401. For the purpose of this section, "the parties concerned" means the Government employee or former Government employee involved in the proceeding, his representative designated in writing, and the representative of the agency or the Commission involved in the proceeding.

* * * * *

(5 U.S.C. 552, 1104)

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

[F.R. Doc. 68-14481; Filed, Dec. 3, 1968; 8:47 a.m.]

# Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

## Chapter 8—Veterans Administration

## PART 8-1—GENERAL

## PART 8-74—SPECIAL PROCUREMENT CONTROLS

### Miscellaneous Amendments

Chapter 8 is amended to read as follows:

1. In § 8-1.310-9, paragraph (c) is added to read as follows:

§ 8-1.310-9 Preaward on-site evaluation.

* * * * *

(c) Prior to any open market purchase of fresh bakery products (such as pies, cakes, cookies), the plant where these products are produced or prepared will be inspected and evaluated as provided in paragraph (a) of this section. On-site evaluation will be made at least annually.

2. A new Part 8-74 is added to read as follows:

Subpart 8-74.1—Special Procurement Controls

Sec.
8-74.112 Subsistence.
8-74.112-6 Frozen processed food products.

AUTHORITY: The provisions of this Subpart 8-74.1 issued under sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); sec. 210(c), 72 Stat. 1114, 38 U.S.C. 210(c).

### Subpart 8-74.1—Special Procurement Controls

§ 8-74.112 Subsistence.

§ 8-74.112-6 Frozen processed food products.

(a) All frozen processed food products procured which contain meat, poultry or a significant proportion of eggs, will be processed or prepared in plants operated under the supervision of the USDA (U.S. Department of Agriculture). The product will be inspected and approved in accordance with the regulations of the USDA governing meat, poultry or egg inspection. A label or seal, affixed to the container, indicating compliance with these regulations will be accepted as evidence of compliance. The product must bear a label complying with the Federal Food, Drug and Cosmetic Act which requires that all ingredients be listed according to the order of their predominance.

(b) All frozen processed food products procured, which contain fish or fish products, will be processed or prepared in plants operated under the supervision of the USDI (U.S. Department of the Interior). The product will be inspected and approved in accordance with the regulations of the USI. A label or seal, affixed to the container, indicating compliance with these regulations will be accepted as evidence of compliance. In lieu thereof, the shipment may be lot inspected by the USDI and containers stamped to indicate acceptance or a Certificate of Inspection issued to accompany the shipment. The product must bear a label complying with the Federal Food, Drug and Cosmetic Act which requires that all ingredients be listed according to the order of their predominance.

(c) Frozen bakery products procured will conform in every respect to the provisions of the Federal Food, Drug and Cosmetic Act. Plants shipping these products in interstate commerce are required to comply with this act. Therefore, it must be verified that the product was in fact shipped interstate; or if it was not, that the producer is permitted to make interstate shipments. In addition, the product must bear a label complying with the act which requires all ingredients be listed according to the order of their predominance.

(Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); sec. 210(c), 72 Stat. 1114, 38 U.S.C. 210(c))

These regulations are effective immediately.

Approved: November 27, 1968.

By direction of the Administrator.

[SEAL] A. W. STRATTON,
*Deputy Administrator.*

[F.R. Doc. 68-14478; Filed, Dec. 3, 1968; 8:47 a.m.]

## Chapter 18—National Aeronautics and Space Administration Procurement Regulation

### MISCELLANEOUS AMENDMENTS

The following amendments to Chapter 18 of Title 41 are prescribed as set forth below. These amendments to Chapter 18 covering changes made by Revision 11 of NASA Procurement Regulations were effective September 30, 1968.

(42 U.S.C. 2473(b)(1))

GEORGE J. VECCHIETTI,
*Director of Procurement, National Aeronautics and Space Administration.*

1. Section 18–1.235 is added:

**§ 18–1.235 Automatic Data Processing Equipment (ADPE).**

"Automatic data processing equipment" means:

(a) Digital and Analog Computer components and systems, irrespective of type of use, size, capacity or price (FSC 7440);

(b) All peripheral, auxiliary, and accessorial equipment used in support of Digital and/or Analog Computers, either cable connected, or "self standing" and whether selected or acquired with the computers or separately (FSC 7410 or 7440);

(c) Punched Card Machines (PCM) and systems used in conjunction with or independently of Digital or Analog Computers (FSC 7410); and

(d) Digital and Analog Terminal and Conversion equipment that is acquired solely or primarily for use with a system which employs a Computer or Punched Card Machines (FSC 7410 or 7440).

2. In section 18–1.305–3(b), clauses (i) and (ii) are revised as follows:

(i) The foregoing delivery requirements are based on the assumption that the Government will make award by (contracting officer, insert calendar date). Each delivery date in the delivery schedule set forth herein will be extended by the number of calendar days after the above date that the contract is in fact awarded. Attention is directed to paragraph 10(d) of the Solicitation Instructions and Conditions, which provides that a written award mailed or otherwise furnished to the successful bidder results in a binding contract. Therefore, in computing the available time for performance, the bidder should take into consideration the time required for notice of award to arrive through the ordinary mails. (July 1968)

(ii) The foregoing delivery requirements are based on the assumption that the successful bidder will receive the notice of award by (contracting officer, insert calendar date). The Government will extend each delivery date in the delivery schedule set forth herein by the number of calendar days after the above date that the contractor receives notice of award: *Provided*, That the contractor promptly acknowledges such receipt. (February 1962)

3. Section 18–1.305–3(c) is revised as follows:

(c) Where the delivery schedule is based on the date of contract (see paragraph (a)(2) of this section) the invitations for bids will include the following provision:

Attention is directed to paragraph 10(d) of the Solicitation Instructions and Conditions, which provides that a written award mailed or otherwise furnished to the successful bidder results in a binding contract. Any award hereunder, or a preliminary notice thereof, will be mailed or otherwise furnished to the bidder the day the award is dated. Therefore, in computing the time available for performance, the bidder should take into consideration the time required for the notice of award to arrive through the ordinary mails. However, a bid offering delivery based on date of receipt by the contractor of the contract or notice of award (rather than the contract date) will be evaluated by adding the maximum number of days normally required for delivery of the award through the ordinary mails. If, as so computed, the delivery date offered is later than the delivery date required in the invitation, the bid will be considered nonresponsive and rejected. (July 1968)

4. Section 18–1.305–5 is added as follows:

**§ 18–1.305–5 Research, exploratory development and advanced development.**

Solicitations shall generally indicate either a desired term of performance or a completion date. In cases where development of a tangible item by a given date is urgent, solicitations shall indicate such urgency. Generally, solicitations to conduct research and exploratory development work will specify a level of effort for a term of performance. However, solicitations calling for a specific item in the category of such exploratory or advanced development will specify a completion date. A contractor may propose an alternate term of performance or completion date without disqualification of his proposal.

5. Section 18–1.307–3 is added as follows:

**§ 18–1.307–3 Inadequate response to solicitations.**

(a) In accordance with the policies and procedures of the Priorities and Allocations System rated contracts and purchase orders or Authorized Controlled Material Orders may be placed on selected suppliers when adequate response to a solicitation is not received. Therefore, when there are no bids or proposals received as a result of a solicitation or if the bids or proposals received do not cover the entire requirement, normal procurement procedures shall be followed in attempting to locate sources, to the extent exigencies of the procurement will permit. If such efforts are unsuccessful, and it is determined at this point in time that the procurement must be accomplished, then rated orders in the form of rated contracts, rated purchase orders or an Authorized Controlled Material Order shall be presented, to one or more (as appropriate) selected suppliers or manufacturers qualified to produce the item or material. This will be accomplished by a cover letter signed by the contracting officer, citing the requirements of the Defense Production Act and BDSA Regulation 2, and requesting timely acceptance thereof by the contractor. The letter shall also request that any reasons for rejection be promptly furnished in writing, as required by the BDSA Regulations. Rated orders will be placed pursuant to appropriate negotiation authority. Contracts and purchase orders shall contain, as a minimum, the following information in addition to normal contractual requirements to be a valid rated order:

(1) DO or DX rating on contracts or purchase orders as appropriate.

(2) DMS allotment number on Authorized Controlled Material Orders.

(3) Certification "Certified for National Defense Use Under DMS Reg 1 or BDSA Reg 2 (as appropriate)."

(4) Delivery schedule.

(5) Signature.

(b) Rated orders or Authorized Controlled Material Orders which are rejected by suppliers shall be forwarded to BDSA, through appropriate priorities assistance channels, for such action as BDSA considers appropriate.

6. Section 18–1.308(b)(11) is revised as follows:

(11) Selection of the successful contractor, including—

(i) The reasons for selection;

(ii) Statement of the Source Evaluation Board;

(iii) The contracting officer's determination of the contractor's responsibility; and

(iv) Any Small Business Administration Certificate of Competency (see § 18–1.705–4);

7. Section 18–1.309 is revised as follows:

**§ 18–1.309 Solicitations for information or planning purposes.**

It is the general policy of the NASA to solicit bids, proposals or quotations only where there is a definite intention to award a contract or purchase order. However, in some cases solicitation for informational or planning purposes may be justified. Invitations for bids and requests for proposals will not be used for this purpose. Requests for quotations may be issued for informational or planning purposes only with prior approval of the Procurement Officer. In such cases, the request for quotation shall clearly state its purpose and, in addition, the following statement in capital letters shall be placed on the face of the request: "The Government does not intend to award a contract on the basis of this request for quotation, or otherwise pay for the information solicited." The foregoing does not prohibit the allowance, in accordance with § 18–15.205–3, of the cost of preparing such quotations.

8. Section 18–1.315 is revised as follows:

**§ 18–1.315 Procurement of jewel bearings.**

(a) It has been determined that the Government's interests require the continued maintenance of an active and versatile mobilization base for the production of jewel bearings. This base has been

established at the Government-owned William Langer Jewel Bearing Plant, Rolla, N. Dak. In support of this policy, Government purchases of jewel bearings shall be made from that plant in all cases where it can meet purchase requirements. Additionally, all procurements of items containing jewel bearings shall provide, in the solicitations and resulting contracts, a requirement that jewel bearings in the quantities, and of the types and sizes necessary for the end items to be supplied under the contract, be purchased from the William Langer Jewel Bearing Plant and be incorporated in the delivered items, subject to the criteria provided in paragraphs (b), (c), and (d) of this section, except:

(1) When quantity requirements, quality standards, or delivery requirements cannot be satisfied by bearings manufactured at the William Langer Jewel Bearing Plant;

(2) For purchases of commercial end items having jeweled components used in commercial end items, when the quantities of such end items or components are such that the contracting officer either knows or reasonably expects that all such commercial end items are already manufactured and available from the stock of any dealer, wholesaler, distributor, or manufacturer; or

(3) For bearings used in items that are to be procured and used outside the United States, its possessions, and Puerto Rico.

(b) In order to assure that all bidders or offerors are competing on the same basis, it is necessary that the solicitation for items containing jewel bearings clearly state:

(1) The successful contractor will be required to purchase (directly or through subcontractors, as appropriate) William Langer Jewel Bearing Plant bearings at prices established in the U.S. Government Jewel Bearing Price List then in effect, and to incorporate such bearings in the items to be delivered; and

(2) Bids or proposals are to be predicated on this requirement.

If it should occur, after award, that the William Langer Jewel Bearing Plant rejects the contractor's (or subcontractor's) purchase order entirely or in part, the contractor (or subcontractor) shall be required to so notify the contacting officer who will effect an equitable adjustment in the contract price to reflect any costs or savings accruing to contractor by reason of any price differential for such bearings, pursuant to the clause of this contract entitled "Changes."

(c) To the extent William Langer Jewel Bearing Plant bearings are fungible with other bearings and it is not practical or would be costly to segregate jewel bearing inventories or work in process for items to be furnished the Government from that to be funrished commercial customers, or for other similar reasons, it may be in the Government's interest to waive the use requirements at the discretion of the contracting officer. No waiver will be granted to prospective contractors prior to award and no assurance will be given prior to award to any prospective contractors that such waiver will be granted after award. Minor inconvenience to contractors alone will not satisfy the need for demonstrating that the Government's interests are served by such waiver. When the use requirement is waived, an equitable adjustment for cost savings resulting therefrom shall be made.

(d) In circumstances where a procurement is not exempt from this procedure but it would be impractical or contrary to the Government's best interest to require actual use of all of the William Langer Jewel Bearing Plant bearings required to be purchased, the contracting officer may provide in the solicitation and resulting contract that a minimum fixed percentage of the total bearings requirements be of William Langer Jewel Bearing Plant origin, or that William Langer Jewel Bearing Plant bearings be purchased for and used in a certain number of the total items to be supplied.

(e) In all procurements subject to these procedures, the following clause is required for use:

REQUIRED SOURCES FOR JEWEL BEARINGS (JULY 1968)

Jewel bearings required in the performance of this contract shall be procured from the William Langer Jewel Bearing Plant, Rolla, N. Dak., at prices established in the Official U.S. Government Jewel Bearing Price List dated (insert latest effective date). The Contractor agrees that the delivery dates specified for the quantities and types of jewel bearings so ordered will be reasonably related to manufacturing schedules and delivery requirements of this contract. The Contractor agrees to notify the Contracting Officer promptly of the rejection of his (or any subcontractor) purchase order in whole or in part by the William Langer Jewel Bearing Plant and further agrees to an equitable adjustment in the contract price pursuant to the "Changes" clause of this contract to reflect any costs or savings to the Contractor (or subcontractor) resulting from such rejection. The Contractor further agrees to incorporate or to have his subcontractors incorporate the purchased William Langer Jewel Bearing Plant jewel bearings in the items to be delivered under this contract.[1] The requirement for use (but not the requirement for purchase) of such bearings may be waived in the discretion of the Contracting Officer when such waiver is determined by him to be in the Government's interest, and where agreement is reached for an equitable adjustment in the contract price by reason of such waiver.

9. Section 18–1.357(a) is revised as follows:

**§ 18–1.357 Procurement of liquid hydrogen.**

(a) To ensure that adequate supplies of liquid hydrogen are readily available to meet current and future program requirements, NASA has established contractual arrangements with primary supply sources located at Michoud, La., and Sacramento, Calif. These contracts will be used to the maximum extent practicable in supplying both in-house and contractor requirements for liquid hydrogen.

[1] Where less than total purchase and usage of William Langer Jewel Bearing Plant bearings is to be required, substitute "The Contractor further agrees to purcahse and incorporate William Langer Jewel Bearing Plant bearings in items to be delivered under this contract equivalent to at least ------% of the total quantity of bearings required to perform this contract." (Percentage to be inserted by Contracting Officer.) In lieu of a percentage, the clause may refer to specific quantities of items listed in the schedule for which William Langer Jewel Bearing Plant bearings must be purchased and used.

10. A new Subpart 18–1.4 is added:

## Subpart 18–1.4—Appointment and Authority of Contracting Officers

Sec.


18–1.400 Scope of subpart.
18–1.401 Authority of contracting officers.
18–1.402 Requirements to be met before entering into contracts.
18–1.403 Selection, appointment and termination of appointment of contracting officers.
18–1.403–1 Selection.
18–1.403–2 Appointment.
18–1.403–3 Termination of appointment.
18–1.403–4 Modification of authority.
18–1.403–5 Assignment of duties to contracting officers.


**§ 18–1.400 Scope of subpart.**

This subpart deals with the appointment and procurement authority of contracting officers. It also imposes limitations upon the authority of contracting officers to enter into contracts. For the purpose of this subpart, the term "contracting officer" does not include representatives of the contracting officer.

**§ 18–1.401 Authority of contracting officers.**

Contracting officers are authorized to enter into or modify contracts for supplies or services, including construction, on behalf of the Government and in the name of the United States of America, by formal advertising, negotiation, or by other authorized method of procurement, and to administer such contracts, in accordance with applicable laws and this chapter. This authorization is subject to the requirements prescribed in § 18–1.402 and any further limitations, consistent with this chapter imposed by the appointing authority.

**§ 18–1.402 Requirements to be met before entering into contracts.**

(a) *General.* Whether the procurement is to be effected by formal advertising or by negotiation, a contract or modification may be entered into by a contracting officer only if:

(1) All applicable requirements of law, NASA regulations, and instructions of the installation have been met;

(2) Required approvals have been obtained from the technical and management authorities at the installation concerned; this includes, prior to the incurrence of an obligation, obtaining approval as to the availability of funds;

(3) The contract is written on a standard or an approved form of contract; and

(4) Approval of deviations from standard or authorized contract clauses has been obtained from the Director of Procurement (see § 18–1.109).

(b) *Special requirements for negotiated contracts.* In addition to the requirements in paragraph (a) of this section, no negotiated contract shall be entered into until the determinations and

findings required by Subparts 18–3.2 and 18–3.3 of this chapter, with respect to the circumstances justifying negotiation and with respect to any use of a special method of contracting have been made.

### § 18–1.403 Selection, appointment and termination of appointment of contracting officers.

The selection, appointment and termination of the appointment of contracting officers shall be made only by the Administrator or his designees, and by subsequent designees to whom such authority has been redelegated.

### § 18–1.403–1 Selection.

(a) *Considerations.* In selecting contracting officers, the appointing authority shall consider experience, training, education, business acumen, judgment, character, reputation, and ethics.

(b) *Evaluation of experience, training, and education.* In considering experience, training, and education, the following shall be evaluated:

(1) Experience in a Government procurement office, commercial procurement, or related fields;

(2) Formal education or special training in business administration, law, accounting, or related fields;

(3) Completion of specialized courses in the field of Government procurement;

(4) Knowledge of the provisions of this regulation and of other applicable regulations; and

(5) Where the appointment of contracting officers for construction contracts is involved, experience in the construction field, including the administration of construction contracts.

### § 18–1.403–2 Appointment.

(a) Except for those individuals who are authorized to enter into contracts by virtue of their position, appointment of contracting officers shall be made on NASA Form 1350, Certificate of Appointment, issued by the appointing official. Any limitations on the scope of the authority to be exercised by the contracting officer, other than those contained in this chapter, shall be entered on the face of the certificate. Certificates may be serially numbered.

(b) The office of each appointing authority shall maintain a file of all documents (such as résumés, references, and records of training) considered in the selection of each contracting officer.

### § 18–1.403–2 Termination of appointment.

(a) *Automatic termination.* Unless the Certificate of Appointment of a contracting officer contains other provision for automatic termination, the appointment shall remain in effect, unless sooner revoked, until the contracting officer is reassigned or his employment is terminated.

(b) *Revocation.* The appointment of a contracting officer may be revoked at any time by the appointing authority, or higher appointing authority, or any successor to either, but no such revocation shall operate retroactively. Revocation of the appointment shall be made by letter, reading substantially as follows:

Date _____.

To: (Name, grade and position title.)
From: (Appointing Authority.)
Subject: Termination of Appointment as Contracting Officer, Certificate of Appointment, Serial No. _____.

Your appointment as Contracting Officer contained in the subject Certificate is hereby terminated effective _____ 19__.

_____
(Signature and Title)

### § 18–1.403–4 Modification of authority.

To accomplish modification of a contracting officer's authority, his present appointment shall be revoked, and a new certificate issued.

### § 18–1.403–5 Assignment of duties to contracting officers.

In assignment of duties including execution and administration of contracts, consideration shall be given to the ability, training, and experience of the contracting officer. Duties, involving contracts of large dollar value and complexity, shall be given only to personnel with commensurate experience, training, and ability.

11. Subpart 18–1.7 is revised as follows:

## Subpart 18–1.7—Small Business Concerns

Sec.


18–1.700 Scope of subpart.
18–1.701 Definitions.
18–1.701–1 Small business concern.
18–1.701–2 Established supplier.
18–1.701–3 Potential supplier.
18–1.701–4 Manufacturing industry employment size standards.
18–1.702 General policies.
18–1.703 Determination of status as small business concern.
18–1.704 Small business officials.
18–1.704–1 NASA headquarters.
18–1.704–2 Field installations.
18–1.704–3 Small business specialists.
18–1.705 Cooperation with Small Business Administration.
18–1.705–1 General.
18–1.705–2 SBA representatives.
18–1.705–3 Access to procurement information.
18–1.705–4 Certificates of competency.
18–1.705–5 Performance of contract by Small Business Administration.
18–1.706 Set-asides for small business.
18–1.706–1 General.
18–1.706–2 Contract authority.
18–1.706–3 Review, withdrawal, or modification of set-asides or set-aside proposals.
18–1.706–4 Reporting for Department of Commerce procurement synopsis.
18–1.706–5 Total set-asides.
18–1.706–6 Partial set-asides.
18–1.706–7 Automatic dissolution of set-asides.
18–1.706–50 Small business class set-asides for construction, repair and alteration work.
18–1.706–51 Maintenance of records.
18–1.707 Subcontracting with small business concerns.
18–1.707–1 General.
18–1.707–2 Small business subcontracting program.
18–1.707–3 Required clauses.
18–1.707–4 Responsibility for reviewing the subcontracting program.
18–1.707–5 Reports on NASA Form 524.
18–1.707–6 Subcontracting studies and surveys.
18–1.707–7 Small Business Administration review of agency records.
18–1.707–8 Purchases under Federal Supply Schedule contracts.


### § 18–1.700 Scope of subpart.

This subpart, which applies only in the United States, its possessions, and Puerto Rico, implements the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451–2459), and the Small Business Act, as amended (15 U.S.C. 631 et seq.), and sets forth policy and procedures governing

(a) Contract awards to small business concerns;

(b) Relationships with the Small Business Administration (SBA);

(c) Small business set-asides; and

(d) Small business subcontracting.

### § 18–1.701 Definitions.

The definitions of small business concerns are promulgated by the Small Business Administration. As used throughout this subpart, the following terms shall have the meanings set forth in this section. When a Procurement Office is in doubt as to the specific small business definition that should apply to a particular procurement, a written determination from the Small Business Administration field office having jurisdiction over the geographical area in which the contracting officer is located will be requested for inclusion in the procurement file.

### § 18–1.701–1 Small business concern.

(a) (1) *General definition.* A small business concern is a concern that is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and with its affiliates, can further qualify under the criteria set forth in subparagraph (2) and (3) of this paragraph. "Concern" means any business entity organized for profit with a place of business in the United States, its possessions or Puerto Rico, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of a procurement of a product classified into two or more industries with different size standards, the smallest of such size standards shall be used in determining a bidder's size status.

(2) *Industry small business size standards.* In addition to being independently owned and operated, and not dominant in the field of operation in which it is bidding on Government contracts, a small business concern in order to qualify as such must meet the criteria established for the industries set forth in this section. Annual sales or annual receipts, as used throughout this subpart means the annual sales or annual receipts, less returns and allowances, of a concern and its affiliates during its most recently completed fiscal year.

(i) *Construction industries.* For construction, alteration, or repair (includ-

ing painting and decorating), of buildings, bridges, roads, or other real property, the average receipts of the concern and its affiliates for its preceding 3 fiscal years must not exceed $7,500,000, except that if the concern is located in Alaska, such receipts must not exceed $9,375,000. For dredging, the average annual receipts of the concern and its affiliates for its preceding 3 fiscal years must not exceed $5 million, except that if the concern is located in Alaska, such receipts must not exceed $6,250,000.

(ii) *Manufacturing industries.* (*a*) *Food canning and preserving industry*—For food canning and preserving, the number of employees of the concern and its affiliates must not exceed 500 persons, exclusive of "agricultural labor" as defined in 26 U.S.C. 3306(k).

(*b*) *Refined petroleum products*—Any concern bidding on a contract for a refined petroleum product other than Paving mixture and blocks, Asphalt felts and coatings, Lubricating oils and greases, or Products of petroleum and coal, not elsewhere classified, is classified as small if:

(*1*) (*i*) Its number of employees does not exceed 1,000 persons;

(*ii*) It does not have more than 30,000 barrels-per-day crude oil or bona fide feed stock capacity from owned or leased facilities; and

(*iii*) The product to be delivered in the performance of the contract will contain at least 90 percent components refined by the bidder from either crude oil or bona fide feed stocks: *Provided, however,* That a petroleum refining concern which meets the requirements in subdivisions (*i*) and (*ii*) of this subdivision (*b*) (*1*) may furnish the product of a refinery not qualified as small business if such product is obtained pursuant to a bona fide exchange agreement, in effect on the date of the bid or offer, between the bidder or offeror and the refiner of the product to be delivered to the Government which require exchanges in a stated ratio on a refined petroleum product for a refined petroleum product basis, and precludes a monetary settlement, and that the products exchanged for the products offered and to be delivered to the Government meet the requirement in subdivision (*iii*) of this subdivision (*b*) (*1*); *And, provided further,* That the exchange of products for products to be delivered to the Government will be completed within 90 days after expiration of the delivery period under the Government contract; or

(*2*) Its number of employees does not exceed 500 persons and the product to be delivered to the Government has been refined by a concern which qualifies under this subdivision (*b*) (*1*).

(*c*) *Pneumatic tires*—For passenger cars, motorcycles, truck, bus, and of-the-road pneumatic tires, a concern is classified as small when bidding on a contract for the above listed items: *Provided,* That—

(*1*) The value of the above types of pneumatic tires which it manufactured in the United States during the preceding calendar year is more than 50 percent of the value of its total worldwide manufacture;

(*2*) The value of these pneumatic tires which it manufactured worldwide during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during said period; and

(*3*) The value of the principal products which it manufactured or otherwise produced or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

(*d*) *Passenger cars*—A company is classified as small if it is bidding on a contract for passenger cars: *Provided,* That—

(*1*) The value of the passenger cars which it manufactured or otherwise produced in the United States during the preceding calendar year is more than 50 percent of the value of its total worldwide manufacture or production of such passenger cars,

(*2*) The value of the passenger cars which it manufactured or otherwise produced during the preceding calendar year was less than 5 percent of the total value of all such cars manufactured or produced in the United States during the said period, and

(*3*) The value of the principal products which it manufactured or otherwise produced or sold during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

(*e*) *Manufacturing industries listed in § 18–1.701–4*—For a product classified within an industry listed in § 18–1.701–4, the number of employees of the concern and its affiliates must not exceed the small business size standard established therein for that industry.

(*f*) *Manufacturing industries not listed in § 18–1.701–4*—For a product classified within an industry not set forth in this paragraph or in § 18–1.701–4, the number of employees of the concern and its affiliates must not exceed 500 persons.

(iii) *Nonmanufacturing industries.* For a product not manufactured by the concern submitting a bid or proposal, other than for a construction or service contract, the number of employees of that concern must not exceed 500 persons, and in the case of a procurement set aside for small business (see § 18–1.706) or involving equal low bids (see § 18–2.407–6), or otherwise involving the preferential treatment of small business, it must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns. However, if the goods to be furnished are wool, worsted, knitwear, duck, or webbing, nonmanufacturers (dealers and converters), shall furnish such products which have been manufactured or produced by a small weaver (small knitter for knitwear) and, if finishing is required, by a small finisher. If the product to be furnished is thread, nonmanufacturers (dealers and converters) shall furnish thread which has been finished by a small finisher. (Finishing of thread is defined as all dyeing, bleaching, glazing, mildew proofing, coating, waxing, and other applications required by the pertinent specification, but excluding mercerizing, spinning, throwing, or twisting operations.)

(iv) *Service industries.* (*a*) For services not elsewhere defined in this subpart, the average annual sales or receipts of the concern and its affiliates for the preceding three fiscal years must not exceed $1 million ($1,250,000 if located in Alaska).

(*b*) Any concern bidding on a contract for engineering services (other than marine engineering services), motion picture production, or motion picture services is classified as small if its average annual sales or receipts for its preceding three fiscal years do not exceed $5 million ($6,250,000 if located in Alaska).

(*c*) Any concern bidding on a contract for naval architectural and marine engineering services is classified as small if its average annual sales or receipts for its preceding three fiscal years do not exceed $6 million.

(*d*) Any concern bidding on a contract for janitorial and custodial services is classified as small if its average annual sales or receipts for its preceding three fiscal years do not exceed $3 million ($3,750,000 if located in Alaska).

(*e*) Any concern bidding on a contract for base maintenance is classified as small if its average annual sales or receipts for its preceding three fiscal years do not exceed $5 million ($6,250,000 if located in Alaska). Base maintenance is defined in footnote 7 at the end of § 18–1.701–4.

(*f*) Any concern bidding on contracts for marine cargo handling services is classified as small if its annual sales or receipts do not exceed $5 million for the preceding 3 fiscal years.

(v) *Transportation industries.* (*a*) *General*—Except as provided in subdivision (*b*) and (*c*) of this subdivision (v), for passenger or freight transportation the number of employees of the concern and its affiliates must not exceed 500 persons.

(*b*) *Air transportation*—For air transportation, the number of employees of the concern and its affiliates must not exceed 1,000 persons.

(*c*) *Trucking (local and long distance), warehousing, packing and crating, and/or freight forwarding*—For trucking (local and long distance), warehousing, packing and crating, and/or freight forwarding, the annual receipts of the concern and its affiliates must not exceed $3 million except that if the concern is located in Alaska, such receipts must not exceed $3,750,000. No such concern, however, will be denied small business status for the purpose of Government procurement solely because of its contractual relationship with a large interstate van line if the concern's annual receipts have not exceeded $3 million during its most recently completed fiscal year ($3,750,000 if located in Alaska).

(vi) *Research, development or testing industries.* For research, development, or testing, which requires delivery of a manufactured product, a concern must

(*a*) Qualify as a small business manufacturer within the meaning of subdivision (ii) of this subparagraph (2) for the industry in which the product is classified, or

(*b*) Qualify as a small business nonmanufacturer within the meaning of subdivision (iii) of this subparagraph (2). For research, development, or testing, which does not require delivery of a manufactured product, the number of employees of the concern and its affiliates must not exceed 500 persons.

(3) *Small business subcontractors.* In connection with subcontracts, of $2,500 or less, any concern will be considered a small business concern if it, with its affiliates, employs not more than 500 employees. In connection with subcontracts exceeding $2,500, any concern shall be considered a small business concern if it qualifies as such under subparagraphs (1) and (2) of paragraph (a).

(b) *Dominance in field of operations.* A concern "is not dominant in its field of operations" when it does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration is given to all appropriate factors including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents and license agreements, facilities, sales territory, and nature of business activity.

(c) *Affiliates.* Business concerns are affiliates of each other when either directly or indirectly

(1) One concern controls or has the power to control the other or

(2) A third party controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships: *Provided, however,* That restraints imposed on a franchisee by its franchise agreement shall not be considered in determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, if the franchisee has the right to profit from his effort, commensurate with ownership, and bears the risk of loss or failure.

(d) *Number of employees.* In connection with the determination of small business status, "number of employees" means the average employment of any concern, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or any other basis during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters. If a concern has not been in existence for four calendar quarters, "number of employees" means the average employment of such concern and its affiliates during the period such concern has been in existence based on the number of persons employed during the pay period ending nearest the last day of each month.

(e) *Small business certificate.* A small business certificate is a certificate issued by SBA pursuant to the authority contained in sections 3 and 8(b)(6) of the Small Business Act certifying that the holder of the certificate is a small business concern for the purpose of Government procurement and in accordance with the terms of the certificate.

### § 18–1.701–2 Established supplier.

An "established supplier" of an item is a concern which has supplied the item satisfactorily to one or more NASA installations, or a concern with which mobilization planning is in effect.

### § 18–1.701–3 Potential supplier.

A "potential supplier" of an item is a concern which is a source of supplies, but, which is not an established supplier.

### § 18–1.701–4 Manufacturing industry employment size standards.

The Standard Industrial Classification Manual (1967 Edition) index provides an alphabetical listing of products and the industry with which the product is associated, which includes references to the following classification code.

| Classification code | Industry | Employment size standard (number of employees)[1] |
|---|---|---|
| | **Major Group 19—Ordnance and Accessories** | |
| 1925 | Guided missiles and space vehicles, completely assembled | 1000 |
| 1931 | Tanks and tank components | 1000 |
| 1951 | Small arms | 1000 |
| 1961 | Small arms ammunition | 1000 |
| | **Major Group 20—Food and Kindred Products** | |
| 2026 | Milk, fluid | 750 |
| 2032 | Canned specialties | 1000 |
| 2043 | Cereal preparations | 1000 |
| 2046 | Wet corn milling | 750 |
| 2052 | Biscuit, crackers, and pretzels | 750 |
| 2062 | Cane sugar refining | 750 |
| 2063 | Beet sugar | 750 |
| 2085 | Distilled, rectified, and blended liquors | 750 |
| 2093 | Vegetable oil mills, except cottonseed and soybean | 1000 |
| 2096 | Shortening, table oils, margarine and other edible fats and oils, not elsewhere classified | 750 |
| | **Major Group 21—Tobacco Manufacturers** | |
| 2111 | Cigarettes | 1000 |
| | **Major Group 22—Textile Mill Products** | |
| 2211 | Broad woven fabric mills, cotton | 1000 |
| 2261 | Finishers of broad woven fabrics of cotton | 1000 |
| 2271 | Woven carpets and rugs | 750 |
| 2295 | Artificial leather, oilcloth, and other impregnated and coated fabrics, except rubberized | 1000 |
| 2296 | Tire cord and fabric | 1000 |
| | **Major Group 26—Paper and Allied Products** | |
| 2611 | Pulp mills | 750 |
| 2621 | Paper mills, except building paper mills | 750 |
| 2631 | Paperboard mills | 750 |
| 2646 | Pressed and molded pulp goods | 750 |
| 2654 | Sanitary food containers | 750 |
| 2661 | Building paper and building board mills | 750 |
| | **Major Group 28—Chemicals and Allied Products** | |
| 2812 | Alkalies and chlorine | 1000 |
| 2813 | Industrial gases | 1000 |
| 2815 | Dyes, dye (cyclic) intermediates, and organic pigments (lakes and toners) | 750 |
| 2816 | Inorganic pigments | 1000 |
| 2818 | Industrial organic chemicals, not elsewhere classified | 1000 |
| 2819 | Industrial inorganic chemicals, not elsewhere classified | 750 |
| 2821 | Plastics materials, synthetic resins, and nonvulcanizable elastomers | 750 |
| 2822 | Synthetic rubber (vulcanizable elastomers) | 1000 |
| 2823 | Cellulose man-made fibers | 1000 |
| 2824 | Synthetic organic fibers, except cellulosic | 1000 |
| 2833 | Medicinal chemicals and botanical products | 750 |
| 2834 | Pharmaceutical preparations | 750 |
| 2841 | Soap and other detergents, except specialty cleaners | 750 |
| 2892 | Explosives | 750 |
| | **Major Group 29—Petroleum Refining and Related Industries** | |
| 2952 | Asphalt felts and coatings | 750 |
| | **Major Group 30—Rubber and Miscellaneous Plastics Products** | |
| 3011 | Aircraft tire and all inner tubes | 1000 |
| 3021 | Rubber footwear | 1000 |
| 3031 | Reclaimed rubber | 750 |
| | **Major Group 32—Stone, Clay, and Glass Products** | |
| 3211 | Flat glass | 1000 |
| 3221 | Glass containers | 750 |
| 3229 | Pressed and blown glass and glassware, not elsewhere classified | 750 |
| 3241 | Cement, hydraulic | 750 |
| 3261 | Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories | 750 |
| 3275 | Gypsum products | 1000 |
| 3292 | Asbestos products | 750 |
| 3296 | Mineral wool | 750 |
| 3297 | Nonclay refractories | 750 |
| | **Major Group 33—Primary Metal Industries** | |
| 3312 | Blast furnace (including coke ovens), steel works, and rolling mills | 1000 |
| 3313 | Electrometallurgical products | 750 |
| 3315 | Steel wire drawing and steel nails and spikes | 1000 |
| 3316 | Cold rolled sheet, strip and bars | 1000 |
| 3317 | Steel pipe and tubes | 1000 |
| 3331 | Primary smelting and refining of copper | 1000 |
| 3332 | Primary smelting and refining of lead | 1000 |
| 3333 | Primary smelting and refining of zinc | 750 |
| 3334 | Primary production of aluminum | 1000 |
| 3339 | Primary smelting and refining of nonferrous metals, not elsewhere classified | 750 |
| 3351 | Rolling, drawing, and extruding of copper | 750 |
| 3352 | Rolling, drawing, and extruding of aluminum | 750 |
| 3356 | Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum | 750 |
| 3357 | Drawing and insulating of nonferrous wire | 1000 |
| 3399 | Primary metal industries, not elsewhere classified | 750 |
| | **Major Group 34—Fabricated Metal Products, Except Ordnance, Machinery, and Transportation Equipment** | |
| 3411 | Metal cans | 1000 |
| 3431 | Enameled iron and metal sanitary ware | 750 |
| | **Major Group 35—Machinery, Except Electrical** | |
| 3511 | Steam engines; steam, gas, and hydraulic turbines; and steam, gas, and hydraulic turbine generator set units | 1000 |

See footnotes at end of table.

| Classification code | Industry | Employment size standard (number of employees)[1] |
|---|---|---|
| 3519 | Internal combustion engines, not elsewhere classified | 1000 |
| 3531 | Construction machinery and equipment | 750 |
| 3562 | Ball and roller bearings | 750 |
| 3571 | Computing and accounting machines, including cash registers | 1000 |
| 3572 | Typewriters | 1000 |
| 3585 | Refrigerators; refrigeration machinery, except household; and complete air conditioning units | 750 |
| | **Major Group 36—Electrical Machinery, Equipment, and Supplies** | |
| 3612 | Power, distribution, and specialty transformers | 750 |
| 3613 | Switchgear and switchboard apparatus | 750 |
| 3621 | Motors and generators | 1000 |
| 3622 | Industrial controls | 750 |
| 3624 | Carbon and graphite products | 750 |
| 3631 | Household cooking equipment | 750 |
| 3632 | Household refrigerators and home and farm freezers | 1000 |
| 3633 | Household laundry equipment | 1000 |
| 3634 | Electric housewares and fans | 750 |
| 3635 | Household vacuum cleaners | 750 |
| 3636 | Sewing machines | 750 |
| 3641 | Electric lamps | 1000 |
| 3651 | Radio and television receiving sets, except communication types | 750 |
| 3652 | Phonograph records | 750 |
| 3661 | Telephone and telegraph apparatus | 1000 |
| 3662 | Radio and television transmitting, signaling, and detection equipment and apparatus | 750 |
| 3671 | Radio and television receiving type electron tubes, except cathode ray | 1000 |
| 3672 | Cathode ray picture tubes | 750 |
| 3673 | Transmitting, industrial, and special purpose electron tubes | 750 |
| 3692 | Primary batteries, dry and wet | 1000 |
| 3694 | Electrical equipment for internal combustion engines | 750 |
| | **Major Group 37—Transportation Equipment** | |
| 3717 | Motor vehicles and parts [3] | 1000 |
| 3721 | Aircraft [4] | 1500 |
| 3722 | Aircraft engines and engine parts [4] | 1000 |
| 3723 | Aircraft propellers and propeller parts | 1000 |
| 3729 | Aircraft parts and auxiliary equipment, not elsewhere classified [5] | 1000 |
| 3731 | Shipbuilding and repairing [6] | 1000 |
| 3741 | Locomotives and parts | 1000 |
| 3742 | Railroad and street cars | 750 |
| | **Major Group 39—Miscellaneous Manufacturing Industries** | |
| 3982 | Linoleum, asphalted-felt-base, and other hard surface floor coverings, not elsewhere classified | 750 |

[1] The "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters.

[2] [Reserved]

[3] The three Standard Industrial Classification industries (3711, 3712, and 3714) have been combined because of a major problem of defining the reporting unit in terms of these industries. This difficulty arises from the fact that many large establishments have integrated operations which include the production of parts or bodies and the assembly of complete vehicles at the same location.

[4] Includes maintenance as defined in the Federal Aviation Regulations (14 CFR 1.1) but excludes contracts solely for preventive maintenance as defined in 14 CFR 1.1. As defined in the Federal Aviation Regulations:

" 'Maintenance' means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance."

" 'Preventive maintenance' means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations."

[5] Guided missile engines and engine parts are classified in SIC 3722. Missile control systems are classified in SIC 3662.

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

[7] Base Maintenance means furnishing at an installation within the several States, Commonwealth of Puerto Rico, Virgin Islands or the District of Columbia three or more of the following services: Janitorial and custodial services, protective guard services, commissary services, fire prevention services, refuse collection services, safety engineering services, messenger services, grounds maintenance and landscaping services, and air conditioning and refrigeration maintenance: *Provided, however*, That whenever the contracting officer determines prior to the issuance of bids that the estimated value of one of the foregoing services constitutes more than 50 percent of the estimated value of the entire contract, the contract shall not be classified as base maintenance but in the industry in which such service is classified.

### § 18–1.702 General policies.

(a) It is the policy of NASA to place a fair proportion of its total purchases and contracts for supplies and services with small business concerns, and to afford small business concerns an equitable opportunity to compete for contract awards. In the area of research and development contracts, it is NASA policy to award such contracts to those organizations determined by responsible personnel to have a high degree of competence in the specific branch of science or technology required for the successful conduct of the work. It is in the national interest that the number of firms engaged in research and development work for NASA be expanded and that there be an increase in the extent of participation in such work by competent small business firms.

(b) Each NASA installation having procurement authority shall implement this policy by:

(1) Maintaining bidders lists on a current basis and reviewing them to ensure that all small business firms who have made acceptable application to NASA or who appear from other information (including recommendation by the SBA) to be qualified are included therein;

(2) Acquiring descriptive data, brochures, or other information concerning small business firms who appear competent to perform research and development work in fields in which NASA is interested and furnish such information to technical personnel;

(3) To the extent feasible—

(i) Dividing procurements of supplies and services into reasonably small lots of not less than economic production runs in order to permit bidding on quantities less than the total requirements;

(ii) Allowing the maximum amount of time practicable for preparation and submission of bids and proposals; and

(iii) Establishing delivery schedules suitable for small business participation.

(4) Providing to authorized SBA representatives, upon request, information necessary to understand NASA needs concerning research and development programs under consideration for specific future procurement actions. The SBA may provide pertinent information concerning potential small business sources developed through its investigation of the capabilities of specific firms in the particular field of research and development covered by the programs. Full evaluation shall be given to any such information in selecting qualified sources;

(5) Disseminating widely information relating to NASA purchasing methods and practices; and

(6) Freely interchanging ideas and information, including statistical data, with appropriate SBA levels, relating to programs for limiting suitable procurements to small business concerns; and making maximum use of the capacity of small firms in such programs in order to accomplish the purpose of this policy. As to subcontracting, see § 18–1.707.

(c) Records of the total value of all contracts placed with small business concerns during each fiscal year, and reports based thereon, are maintained by NASA through its agencywide procurement reporting system described in § 18–16.901.

### § 18–1.703 Determination of status as small business concern.

(a) *General.* Each bidder and offeror shall be required to state in its bid or offer whether or not it is a small business concern. Except as provided in paragraph (b) of this section, the contracting officer shall accept at face value for the particular procurement involved, a representation by the bidder or offeror that it is a small business concern (see § 18–1.701–1).

(b) *Representation by a bidder or offeror.* Representation by a bidder or offeror that it is a small business concern shall be effective, even though questioned in accordance with the terms of this paragraph (b), unless the SBA, in response to such question and pursuant to the procedures in subparagraph (3) of this paragraph (b), determines that the bidder or offeror in question is not a small business concern. The controlling point in time for a determination concerning the size status of a questioned bidder or offeror shall be the date of award, except that no bidder or offeror shall be eligible for award as a small business concern unless he has in good faith represented himself as small business prior to the opening of bids or closing date for submission of offers (see § 18–2.405 with respect to minor informalities and irregularities in bids).

(1) *Protest of small business status.* Any bidder or offeror may, in connection with a contract involving small business set-aside or otherwise involving small business preferential consideration, question the small business status of any apparently successful bidder or offeror by sending a written protest to the contracting officer responsible for the particular procurement. The protest shall contain the basis for the protest together with specific detailed evidence supporting the protestant's claim that such bidder or offeror is not a small business. Such protest must be received by the contracting officer prior to the close of business on the fifth work day exclusive of Saturday, Sunday, and Federal Legal Holidays (hereinafter referred to as a work day) after bid opening date or closing date for the receipt of proposals. A protest received after such time shall be considered timely, if in the case of—

(i) A mailed protest, it is sent by registered or certified mail and the postmark thereon indicates that it would have been

delivered within the time limit except for delays beyond the control of the protestant, or

(ii) A telegraphic protest, the telegram date and time line indicates that it would have been delivered within the time limit except for delays beyond the control of the protestant. The following procedures shall apply:

(a) *Timely protest received prior to award*—When the contracting officer receives a timely protest prior to award, he shall forward the protest record to the Small Business Administration field office serving the area in which the protested concern is located. The Small Business Administration will promptly notify the contracting officer of the date of its receipt of any such protest and will advise the bidder or offeror in question that his small business status is under review;

(b) *Untimely protests received prior to award*—A protest which is not timely, even though received before award, shall be forwarded to the Small Business Administration field office serving the area in which the protested concern is located, with a notation thereon that the protest is not timely. The protestant shall be notified that his protest cannot be considered on the instant procurement but has been referred to SBA for its consideration in any future actions;

(c) *Action on protests received after award*—A protest received after award of a contract shall be forwarded to the Small Business Administration field office serving the area in which the protested concern is located with a notation thereon that award has been made. The protestant shall be notified that award has been made and that his protest has been forwarded to SBA for its consideration in future actions.

(2) *Questioning of status by contracting officer.* A contracting officer may, any time prior to award, question the small business status of the apparently successful bidder or offeror by sending a written notice to the SBA field office of the region in which the bidder or offeror has his principal place of business. Such notice shall contain a statement of the basis for the question, together with available supporting facts. SBA will advise the bidder or offeror in question that his small business status is under review.

(3) *Determination by SBA regional director.* The SBA Regional Director will determine the small business status of the questioned bidder or offeror and notify the contracting officer and the bidder or offeror of his determination, and award may be made on the basis of that determination. This determination is final unless it is appealed in accordance with subparagraph (4) of this paragraph (b), and the contracting officer is notified of the appeal prior to award. If an award was made prior to the time the contracting officer received notice of the appeal, the contract shall be presumed to be valid. Action to be taken on SBA determinations shall be as follows:

(i) If the SBA Regional Director's determination is not received by the contracting officer 10 workdays after SBA's initial receipt of a protest or notice questioning the Small Business status of a bidder or offeror, it shall be presumed that the questioned bidder or offeror is a small business concern. This presumption will not be used as a basis for making an award to the questioned bidder or offeror without first ascertaining when a size determination can be expected from SBA, and where practicable, waiting for such determination, unless further delay in award would be disadvantageous to the Government.

(ii) If an appeal from the SBA Regional Director's determination is made, pursuant to subparagraph (4) of this paragraph (b) to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C. 20416, and the contracting officer is notified prior to award, an additional 20 work days (i.e., 30 workdays inclusive from the time of initial receipt of the case in the SBA field office) shall be allowed for receipt of the SBA size determination.

(iii) If the determination of the Chairman, Size Appeals Board, Small Business Administration, on the appeal is not received by the contracting officer within the 30 workday period, it shall be presumed that the SBA Regional Director's size determination has been sustained.

(iv) Until receipt of the SBA determination of the size status, or expiration of the 10-day period (30 days in case of an appeal to the Chairman, Size Appeals Board), whichever occurs first, procurement action shall be suspended; however, this suspension shall not apply to any urgent procurement action which the contracting officer determines in writing must be awarded without delay to protect the public interest. The contracting officer's determination shall be placed in the contract file.

(4) *Appeal from size determination.* An appeal from a size determination made by an SBA Regional Director may be taken before the close of business on the fifth workday after the receipt of such decision. Unless such written notice of appeal is received by the SBA Size Appeals Board, Washington, D.C., within this time and the contracting officer has been notified of such appeal prior to award, the appellant will be deemed to have waived its rights of appeal insofar as the pending procurement is concerned.

(c) *Product classification*—(1) *Determination by contracting officer.* The contracting officer shall determine the appropriate classification of a product establishing the small business definition to be used in a specific procurement. This classification and the applicable size standard, pursuant to § 18–1.701, shall be set forth in the Schedule of the solicitation. The contracting officer's determination shall be final unless appealed in accordance with subparagraph (2) of this paragraph (c).

(2) *Appeal from classification.* An appeal from a product classification determination by a contracting officer must be taken:

(i) Not less than 10 workdays before the bid opening date or the deadline for submitting proposals or quotations where this date or deadline is more than 30 days after the issuance of the invitation for bids or request for proposals or quotations; or

(ii) Not less than 5 workdays before the bid opening date or the deadline for submitting proposals or quotations where this date or deadline is 30 or less days after the issuance of the invitation for bids or request for proposals or quotations.

Such appeals shall be directed to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C. 20416.

(3) *Action of size appeals board.* The Size Appeals Board will promptly notify the contracting officer of the receipt of a valid appeal and, if possible, will inform the contracting officer prior to the date set for opening of the solicitation of its ruling on the appeal. The SBA decision, if received prior to the opening date, shall be considered final, and solicitations will be modified to reflect such decision, if necessary. Where appropriate, opening dates may be extended. SBA rulings received after the opening date shall not apply to the current procurement but shall apply in future procurements of the product.

### § 18–1.704 Small business officials.

### § 18–1.704–1 NASA headquarters.

The Director of Procurement is responsible for the general supervision and coordination of the NASA Small Business Program. Within the Office of Procurement, the Small Business Advisor is responsible for developing the NASA small business program, advising the Director of Procurement and other NASA officials on small business problems, and representing NASA before other Government agencies on matters primarily affecting small business.

### § 18–1.704–2 Field installations.

The Director of each field installation having procurement responsibilities shall designate a qualified individual in the procurement office as a "small business specialist" to provide a central point of contact to which small business concerns may direct inquiries concerning participation in the NASA procurement program and small business matters. The small business specialist shall also perform such other functions as he is specifically directed to perform by this subpart or which the Procurement Officer may prescribe for the purpose of implementing the small business program, including the assignment of responsibility for the Labor Surplus Area Program described in Subpart 18–1.18 of this chapter. When the Director of a field installation considers that the volume of procurement or the functions relating to procurement at the installation does not warrant a full-time small business specialist, he may assign such duties to procurement personnel on a part-time basis.

**§ 18–1.704–3 Small business specialists.**

The small business specialist appointed pursuant to § 18–1.704–2 of this subpart shall perform the following duties, as determined appropriate to the installation by the Procurement Officer:

(a) He shall maintain a program designed to locate capable small business sources for current and future procurements, through SBA or other methods.

(b) He shall coordinate inquiries and requests for advice from small business concerns on procurement matters.

(c) Prior to issuance of solicitations or contract modification for additional supplies or services in excess of $2,500, he shall determine that small business concerns will receive adequate consideration including initiation of set-asides (§ 18–1.706). This determination may be made jointly with the contracting officer or may be in the form of a recommendation to him. Disagreements between the small business specialist and the contracting officer on proposed set aside action shall be resolved by the Procurement Officer whose decision shall be final except in those cases where an SBA representative intervenes as an interested party. (See § 18–1.706–3 as to resolution of disagreements with SBA recommendations on set-asides.)

(d) He shall review procurement programs for possible breakout of items suitable for procurment from small business concerns.

(e) He shall advise small business concerns with respect to the financial assistance available under existing law and regulations and assist such concerns in applying for financial assistance. He shall also assure that requests by small business concerns for proper assistance are not treated as a handicap in securing the award of contracts.

(f) He shall participate in determinations concerning responsibility of a prospective contractor (see § 18–1.904) whenever small business concerns are involved.

(g) He shall participate in the evaluation of a prime contractor's small business subcontracting program (see § 18–1.707–4).

(h) He shall assure that participation of small business concerns is accurately reported.

(i) He shall make available to SBA copies of solicitations when so requested.

(j) He shall act as liaison between the contracting officer and SBA field offices and representatives in connection with set-asides, certificates of competency and any other matters in which the Small Business Program may be involved. Procurements in which certificates of competency are requested, shall be reported to the Director of Procurement, NASA Headquarters. The report should contain a description of the requirement, a list of the bidders or proposers, and the contract prices specified in the bids or proposals as submitted and the reason for the proposed rejection of an otherwise acceptable small business bid or proposal. Pertinent dates such as the required date for the completion of the procurement, the date of the request for the certificate of competency, etc., should also be furnished.

(k) He shall, in cooperation with the contracting officer and technical personnel, seek and develop information on the technical competence of small business concerns for research and development contracts. He shall regularly bring to the attention of the contracting officers and technical personnel descriptive data, brochures, and other information as to small business concerns that are apparently competent to perform research and development work in fields in which NASA is interested.

**§ 18–1.705 Cooperation with the Small Business Administration.**

**§ 18–1.705–1 General.**

All NASA procurement offices are responsible for consulting and cooperating with the SBA in carrying out the purposes of the Small Business Act.

**§ 18–1.705–2 SBA representatives.**

(a) SBA may assign representatives to any procurement office on a full or part-time basis to carry out SBA policies and programs. In accordance with the procedures of the installation concerned, SBA shall obtain security clearances for each of its representatives. SBA representatives and employees shall comply with NASA directives concerning the conduct of procurement personnel. The duties of the assigned SBA representatives include review of proposed procurements to recommend to the procurement office:

(1) Set-asides on selected procurements not unilaterally set-aside by the small business specialist and the contracting officer;

(2) New qualified potential small business sources; and

(3) Breakout of components for competitive procurement.

(b) The procurement office shall include in the appropriate bidders list or in any group of firms to be solicited in specific procurements, the names of firms submitted by SBA, unless there is a valid reason for not so doing.

**§ 18–1.705–3 Access to procurement information.**

Upon request, and subject to applicable security regulations, the small business specialist shall provide SBA representatives access to available or reasonably obtainable information, including technical data (including drawings and specifications), procurement history, and bidders lists, and to procurement planning information. The SBA representative will be furnished such other available or reasonably obtainable information as may be required for the SBA referral program.

**§ 18–1.705–4 Certificates of competency.**

(a) SBA has statutory authority to certify the competency of any small business concern as to capacity and credit. "Capacity" means the overall ability of a prospective small business contractor to meet quality, quantity, and time requirements of a proposed contract and includes ability to perform, organization, experience, technical knowledge, skills, "knowhow," technical equipment, and facilities or the ability to obtain them. Contracting officers shall accept SBA certificates of competency as conclusive of a prospective contractor's capacity (see § 18–1.903–1(b)) and credit (see § 18–1.903–1(a)) unless the contracting officer has substantial doubt as to the concern's ability to perform, in which case the procedures in paragraphs (f) and (g) of this section apply.

(b) In procurement where the highest competence obtainable or the best scientific approach is needed, as in certain negotiated procurement of research and development, highly complex equipment, or professional services, the certificate of competency procedure is not applicable to the selection of the source offering the highest competence obtainable or best scientific approach. However, if a small business concern has been selected on the basis of the highest competence obtainable or best scientific approach and, prior to award, the contracting officer determines that the concern is not responsible because of lack of capacity or credit, the certificate of competency procedure is applicable.

(c) If a bid or proposal of a small business concern is to be rejected solely because the contracting officer has determined the concern to be nonresponsible as to capacity or credit, the matter shall be referred to the appropriate SBA field office having the authority to process the referral in the geographical area involved. If required, guidance as to the location of the appropriate SBA field office may be obtained from an SBA representative assigned to the procurement office or the nearest SBA field office. This procedure applies only to proposed awards exceeding $2,500. For proposed awards exceeding $2,500, but not exceeding $10,000, its use is within the discretion of the contracting officer. A preaward survey (see § 18–1.905) shall be made prior to a determination by a contracting officer that a small business concern is not responsible because of a lack of capacity or credit on a proposed award of more than $10,000. Concurrent referrals of two or more bids or proposals, rejected because of lack of capacity or credit for a proposed award, shall not be made to SBA by the contracting officer. Final processing of a case, including possible issuance of certificate of competency, must be completed by SBA on each referral before the contracting officer may proceed with an additional referral on the proposed award to SBA. If a partial set-aside is involved and the bid of a small business concern on the unreserved portion is to be rejected for lack of capacity or credit and the same small business concern is entitled to consideration on the reserved portion of the set-aside if a certificate of competency is issued by the SBA, the entire quantity of the procurement (reserved and unreserved) for which that small business concern may be entitled, if competent, shall be referred to SBA and the referral papers so noted. The SBA may then certify the

small business concern for the maximum quantity of the procurement for which it is eligible. The award shall be withheld until SBA action concerning issuance of a certificate of competency, or until 15 working days after the SBA is so notified, whichever is earlier, subcharacter, reputation, and ethics.

(1) Under no circumstances will a referral be made to the SBA prior to a determination by the contracting officer that the bid or proposal of the small business concern is responsive.

(2) The activity performing the preaward survey shall furnish such survey to the contracting officer. If the contracting officer determines, in accordance with § 18–1.904, that the small business concern is not responsible solely by reason of a lack of capacity or credit, he will refer the matter direct to the SBA, or he may notify the pre-award survey activity to refer the matter to the SBA, whichever is the more expeditious (e.g., where the surveying activity is substantially closer to the cognizant SBA office than the procurement office, it may be more expeditious to have the surveying activity refer the matter to the Small Business Administration). A copy of the communication referring the matter to SBA shall be forwarded to the Director of Procurement, NASA Headquarters.

(3) Upon making a determination to refer the matter to the SBA, the contracting officer shall furnish to the SBA, or to the surveying activity, whichever is consistent with the action taken under paragraph (c)(2) of this section, the data prescribed in paragraph (d) of this section. The procurement office that refers the matter to the SBA shall maintain close liaison with the SBA to assure compliance with paragraph (e) of this section. If the procurement office does not hear from the cognizant SBA field office within 5 working days after the matter has been referred, the procurement office will contact the SBA Office to which the matter was referred to determine whether a certificate of competency is being processed. When, in accordance with paragraph (c)(2) of this section the contracting officer has requested the preaward survey activity to refer the matter to SBA, that activity shall keep the contracting officer advised of significant developments, including the results of any inquiry to the SBA at the end of the 5 working day period, and any new or additional facts, learned from the SBA, that warrant reversal of the preaward survey activity's negative finding. The Director of Procurement shall be promptly informed in writing of all cases where (i) the small business concern elects not to file an application for a certificate of competency, or (ii) SBA declines to issue a certificate of competency, or (iii) the procurement office reverses the preaward survey negative finding concerning capacity or credit.

(4) A referral need not be made to the SBA if the contracting officer certifies in writing that the award must be made without delay, includes such certificate and supporting documentation in the contract file, and promptly furnishes a copy to the SBA.

(5) A referral need not be made to the SBA if a contracting officer determines a small business concern nonresponsible for a reason other than lack of capacity or credit, i.e., if a concern does not satisfy the criteria of § 18–1.903–1 (d) or (e). If a contracting officer determines that a concern does not meet the requirements of § 18–1.903–1(c) as to a satisfactory record of performance, the matter must be referred to the SBA only if the unsatisfactory record of performance was due solely to inadequate capacity or credit. If a contracting officer has any doubts as to whether the unsatisfactory record of performance can reasonably be attributed to lack of capacity or credit, he shall forward the matter to the Director of Procurement. The decision of the Director of Procurement shall be final.

(6) A determination by a contracting officer that a small business concern is not responsible for reasons other than deficiencies in capacity or credit (e.g., lack of integrity, business ethics, or persistent failure to apply necessary tenacity or perseverance to do an acceptable job—not whether the bidder can perform but whether he will perform) must be supported by substantial evidence documented in the contract files. These factors of responsibility are not covered by the certificate of competency procedure, but are for determination by the contracting officer alone.

(d) It is the policy of NASA to endeavor to reach agreement with the SBA regarding the lack of capacity or credit of a small business concern. To assist the SBA and to assure that it has the benefit of the views of the NASA, the SBA shall be furnished three copies of the solicitation, one copy of the pertinent drawings and specifications, the preaward survey findings, pertinent technical and financial information, and, if available, the abstract of bids.

(e) SBA field offices will notify the contracting officer of each case where they—

(1) Plan to issue a certificate of competency, or

(2) Are submitting a case to SBA, Washington, D.C., for approval prior to issuance of a certificate of competency, and to provide the contracting officer or his designated representative with a brief written statement citing the reasons for SBA's proposed affirmative action. Prior to final SBA action, the contracting officer will be afforded an opportunity to meet or communicate with SBA field office representatives and furnish to them new or additional information on the case. Copies of significant data developed by SBA that are pertinent to the case will be made available, upon request, to the contracting officer, or his representative, at such meeting or through correspondence. SBA case files may be examined at the meeting and pertinent notes taken by the contracting officer or his representative, but such files will not be released outside of SBA. Personnel from a procurement office, who participated in a preaward survey of the prospective contractor shall be prepared to discuss with the SBA the basis for the preaward findings. Every effort should be made to resolve any differences between the SBA and the NASA through a complete exchange of preaward information developed by each agency.

(f) One of the following courses of action shall be taken subsequent to discussions or a meeting between representatives of the contracting officer and SBA field offices:

(1) If the new and additional facts presented by the SBA field office representatives so warrant, the negative determination as to capacity and credit of the apparent low bidder or offeror shall be reversed, the referral to SBA shall be withdrawn, and the contract award shall be made without the necessity for issuance of a certificate of competency by SBA. The contracting officer shall promptly inform the SBA field office of his intention to take such action and the anticipated date of contract award.

(2) If agreement cannot be reached between the SBA field office and the contracting officer and substantial doubt still exists as to the ability of the contractor to perform, the contracting officer shall request the SBA field office to suspend action to permit referral of the case to the Director of Procurement for review and possible appeal to SBA, Washington, D.C. The contracting officer shall forward through channels on an expedited basis a complete case file to the Director of Procurement with a request that the case be considered for appeal to SBA, Washington, D.C. This file will include the data specified in paragraph (d) of this section, SBA's rationale for proposing affirmative certificate of competency action, and the contracting officer's comments thereon. Procurement action shall be suspended until the contracting officer is informed by the Director of Procurement of the final decision in the case. If the Director of Procurement concludes that the request for certificate of competency action should be withdrawn and a contract awarded without benefit of a certificate of competency, the contracting officer will be so informed and provided written instructions on how to proceed with the procurement. If the Director of Procurement agrees with the recommended appeal action of the contracting officer, he will request in writing the SBA Associate Administrator for Procurement and Management Assistance, Washington, D.C., to review the proposed affirmative certificate of competency action of the SBA field office. If SBA, Washington, D.C., does not concur with the proposed affirmative certificate of competency action of its field office, it shall so inform the Director of Procurement. If SBA, Washington, D.C., concurs with the affirmative certificate of competency action proposed by the SBA field office, it shall so inform the Director of Procurement, giving reasons for its position. The Director of Procurement may then request a meeting with SBA, Washington, D.C., to present an appeal on the proposed certificate of competency action. Following an appeal, the determination made by the SBA

Associate Administrator relative to certificate of competency action shall be considered final and not subject to further appeal by NASA.

(3) If agreement cannot be reached between the contracting officer and the SBA field office, the contracting officer may conclude it would not be practicable to appeal the case to the Washington SBA level nor would it be appropriate to withdraw his request for certificate of competency action. In that case, the contracting officer shall inform the SBA field office that it must issue a certificate of competency as a prerequisite to contract award. However, such action shall not be taken by the contracting officer without prior approval from the Director of Procurement.

(g) If an SBA field office fails to give a contracting officer the opportunity to refer a proposed affirmative certificate of competency action to the Director of Procurement for review and possible appeal, appeal action described in paragraph (f) of this section, may be taken by the contracting officer subsequent to the issuance of a certificate of competency if he has substantial doubt as to the ability of the contractor to perform.

**§ 18–1.705–5 Performance of contract by Small Business Administration.**

In accordance with section 8a of the Small Business Act (15 U.S.C. 637(a)), in any case in which the Administrator, SBA, certifies to the Administrator, NASA, that the SBA is competent to perform any specific contract, the contracting officer is authorized, in his discretion, to award the contract to the SBA upon such terms and conditions, consistent with these regulations, as may be agreed upon between the SBA and the contracting officer.

**§ 18–1.706 Set-asides for small business.**

**§ 18–1.706–1 General.**

(a) Subject to any applicable preference for labor surplus area set-asides (see § 18–1.803(a)(2)) and the following criteria, any individual procurement or class of procurements or an appropriate part thereof, shall be set-aside for the exclusive participation of small business concerns when such action is determined to be in the interest of maintaining or mobilizing the Nation's full productive capacity, or assuring that a fair proportion of Government procurement is placed with small business concerns. The determination to make a set-aside may be unilateral or joint. A unilateral determination is one which is made by the contracting officer normally upon initiation by the small business specialist. If a small business specialist is not assigned or is otherwise not available, the set-aside may be initiated by the contracting officer. A joint determination is one which is made jointly by an SBA representative and the contracting officer. Insofar as practicable, unilateral determinations rather than joint determinations shall be used as the basis for set-asides. SBA recommendations for set-asides will be limited to those proposed procurements over $2,500 which, after review by the small business specialist or the contracting officer, have been determined by either party not to meet the criteria for total or partial restriction to small business concerns.

(b) To provide for SBA consideration of individual set-asides, at the request of its representative, the procurement office shall make available to him for review at such office (to the extent that he has been granted security clearance) all proposed classified and unclassified procurements expected to exceed $2,500 on which unilateral set-asides have not been made by the contracting officer.

(c) In addition to individual procurement set-asides, classes of current and future procurements, or portions thereof, of selected items or services, or groups of like items or services may be set aside for exclusive small business participation. The determination to make a class set-aside may be either unilateral or joint. Unilateral set-asides will normally be initiated by recommendation of the small business specialist, but may also be initiated by the contracting officer. Joint class set-asides may be recommended by SBA representative for only those items or services on which unilateral class set-asides have not previously been made by the contracting officer. The determination to make a class set-aside shall not depend on the existence of a current procurement if future procurements can be clearly foreseen. Class set-asides shall apply only to the procurement office making or participating in the agreement, and shall not apply to an individual procurement for which small purchase procedures are to be used. A class set-aside agreement should specifically identify the items or services subject thereto, and provide for annual joint review by the small business specialist (if unilateral) or the SBA representative (if joint) and the contracting officer, to determine whether it should be withdrawn (see § 18–1.706–3). Any class of procurements proposed to be totally set-aside shall satisfy the requirements of § 18–1.706–5. The set aside determination for any class of procurements proposed to be partially set-aside shall specify that it does not apply to any individual procurement not severable into two or more economic production runs or reasonable lots. Records of individual procurements under each class set-aside shall be maintained by individual procurement offices and shall include the solicitation number and date, item or service, unilateral or joint class set-asides, estimated dollar amount of the procurement, and estimated dollar amount of the set-aside. A copy of each such record shall be made available by each procurement office to the small business specialist or to SBA upon request.

(d) None of the following is, in itself, sufficient cause for not making a set-aside:

(1) A large percentage of previous procurements of the item has been placed with small business concerns;

(2) A period of less than 30 days from date of issuance of solicitations is prescribed for the submission of the bids or proposals;

(3) The procurement is classified;

(4) Small business concerns are considered to be receiving a fair proportion of total contracts for supplies or services;

(5) A class set-aside of the item or service concerned has been made at some other procurement office; or

(6) The item will be described by "brand name or equal."

**§ 18–1.706–2 Contract authority.**

Contracts for total or partial set-asides entered into by conventional negotiation (see § 18–1.706–5(b) and § 18–1.706–6(d)) or by "Small Business Restricted Advertising" (see § 18–1.706–5(b)) are negotiated procurements and shall cite as authority 10 U.S.C. 2304(a)(1) in the case of a unilateral determination, or 10 U.S.C. 2304(a)(17) and section 15 of the Small Business Act in the case of a joint determination (see § 18–3.201–2(b)(2)).

**§ 18–1.706–3 Review, withdrawal, or modification of set-asides or set-aside proposals.**

(a) Prior to issuing solicitations each individual procurement governed by a class set-aside shall be carefully reviewed to ensure that any changes in the magnitude of anticipated requirements, specifications, delivery requirements, or competitive market conditions, since the initial approval of the class set-aside are not of such material nature as to result in the probable payment of unreasonable price by the Government or in a change in small business capability. If, prior to award of a contract involving an individual or class set-aside, the contracting officer considers that procurement of the set-aside from a small business concern would be detrimental to the public interest (e.g., because of unreasonable price), he may withdraw a unilateral or joint set-aside determination by giving written notice to the small business specialist or the SBA representative, as appropriate, stating the reasons for the withdrawal. In a similar manner, a unilateral or joint class set-aside may be modified to withdraw one or more individual procurements.

(b) Upon a recommendation of the small business specialist that an individual procurement or class of procurements, or portion thereof, be set-aside, the contracting officer shall promptly either:

(1) Concur in the recommendation, or

(2) Disapprove, stating in writing his reasons for disapproval.

(c) If the contracting officer disapproves the recommendation of the small business specialist, the case shall be promptly referred to the SBA representative (if one is assigned and available) for his review. The SBA representative will either concur with the decision of the contracting officer or appeal the case to the Director of the installation or to higher authority in accordance with the provisions of paragraph (d) of this section. No further appeal action will be taken by the small business specialist. If an SBA representative is not assigned or available, resolution of disagreements on set-asides between the small business

specialist and the contracting officer shall be accomplished in accordance with the provisions of paragraph (f) of this section.

(d) If the contracting officer disagrees with the recommendation of the SBA representative regarding a small business set-aside for an individual procurement or class of procurements or portion thereof and so notifies the SBA representative in writing, or if the SBA representative disagrees with the contracting officer regarding a withdrawal or modification of a joint set-aside determination, the SBA representative shall be allowed 2 working days to appeal in writing to the Director of the installation or his designee for decision. Within one work day after receipt of a decision from the Director of the installation or his designee approving the action of the contracting officer, the SBA representative may request the contracting officer, in writing, to suspend procurement action pending a further appeal by the Administrator of the SBA to the Administrator of NASA. The SBA shall be allowed 7 working days after making such written request within which—

(1) The Administrator of SBA may appeal to the Administrator of NASA; and

(2) Notify the contracting officer whether the further appeal has in fact been taken.

If notification is not received by the contracting officer within the 7-day period, it shall be deemed that the SBA request to suspend procurement action has been withdrawn and that an appeal to the Administrator of NASA was not taken. Where an appeal to the Administrator of NASA has been taken and the contracting officer has been notified of that fact within the 7-day period, the Director of the installation shall forward the matter to the Administrator of NASA, through the Office of Procurement, NASA Headquarters, with full justification of his decision.

(e) Any procurement action which has been appealed by the SBA representative shall be suspended pending the decision of the Procurement Officer or his designee. If the decision sustains the contracting officer, and if the SBA representative requests further suspension in accordance with paragraph (d) of this section, the suspension shall continue until (1) the SBA appeal is deemed to have been withdrawn (as provided in paragraph (d) of this section), or (2) the matter is determined by the Administrator of NASA. However, this procedure shall not apply to any particular procurement action which the contracting officer determines must be initiated without delay in order to protect the public interest, and as to which he inserts in the contract file a signed statement or justification. The contracting officer shall promptly give written notice to the SBA representative of any such procurement action initiated.

(f) In those cases where an SBA representative is not assigned or available, and the contracting officer disagrees with the recommendation of the small business specialist regarding a small business set-aside for an individual procurement or class of procurements or a portion thereof and so notifies the small business specialist in writing, or if the small business specialist disagrees with the contracting officer regarding a withdrawal or modification of a set-aside determination, the small business specialist may appeal in writing to the Procurement Officer for decision. A memorandum of the decision by the Procurement Officer shall be placed in the contract file. After receipt of a decision from the Procurement Officer, which shall be final, and if the decision approves the action of the contracting officer, the small business specialist shall forward for information and management purposes complete documentation of the case to the Director of Procurement (Code KD–1). Documentation of the case transmitted to the Director of Procurement shall include, as a minimum, a copy of the IFB or RFP, a list of those solicited, indicating if the invitee is small or large business by SBA definition, copies of the reasons, in writing, for or against set-aside or withdrawal or modification of a set-aside submitted by the small business specialist and the contracting officer, a copy of the Procurement Officer's decision and a complete abstract of all bids or proposals received indicating the successful bidder together with any other material considered by the Procurement Officer in arriving at his decision. The small business specialist's transmittal letter or memorandum will contain an affirmative statement that the enclosures constitute the complete file reviewed and considered by the Procurement Officer in making his decision.

(g) A signed memorandum of nonconcurrence in a recommended set-aside action or of any withdrawal or modification shall be made and retained in the contract file.

### § 18–1.706–4 Reporting for Department of Commerce procurement synopsis.

See § 18–1.1003.8.

### § 18–1.706–5 Total set-asides.

(a) Subject to any applicable preference for labor surplus area set-asides the entire amount of an individual procurement or class of procurements (including but not limited to contracts for maintenance, repair, and construction) shall be set aside for exclusive small business participation (see § 18–1.706–1) where there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices. Total set-asides shall not be made unless such a reasonable expectation exists; however, see § 18–1.706–6 as to partial set-asides. While the past procurement history of the item or similar items is important, it is not the only controlling factor which should be considered in determining whether a reasonable expectation exists.

(b) Contracts for total small business set-asides may be entered into by conventional negotiation or by a special method of procurement known as "Small Business Restricted Advertising." The latter method shall be used whenever possible. Invitations for bids shall be restricted to small business concerns. Small Business Restricted Advertising, including awards thereunder, shall be conducted in the same way as prescribed for formal advertising in Part 18–2 of this chapter, except that bids and awards shall be restricted to small business concerns. Bids received from firms which do not qualify as small business concerns shall be considered nonresponsive and shall be rejected.

(c) In procurements involving total set-asides for small business, each invitation for bids or request for proposals shall contain substantially the following notice. The applicable size standard shall be set forth in the Schedule.

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (MAY 1965)

(a) *Restriction.* Bids or proposals under this procurement are solicited from small business concerns only and this procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the contracting officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. Bids or proposals received from firms which are not small business concerns shall be considered nonresponsive and shall be rejected.

(b) *Definition.* A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (Code of Federal Regulations, title 13, section 121.3–8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns: *Provided,* That this additional requirement does not apply in connection with construction or service contracts.

### § 18–1.706–6 Partial set-asides.

(a) Subject to any applicable preference for labor surplus area set-asides as provided in § 18–1.803(a)(2), a portion of a procurement, not including construction, shall be set aside for exclusive small business participation (see § 18–1.706–1) where:

(1) The procurement is not appropriate for total set-aside pursuant to § 18–1.706–5;

(2) The procurement is severable into two or more economic production runs or reasonable lots (see § 18–1.804–1(a)); and

(3) One or more small business concerns are expected to have the technical competency and productive capacity to furnish a severable portion of the procurement at a reasonable price, except that a partial set-aside shall not be made if there is a reasonable expectation

that only two concerns (one large and one small) with technical competency and productive capacity will respond with bids or proposals; when the contracting officer is uncertain whether the latter situation exists, he may make advance written inquiries to all known sources to determine the number of interested concerns.

Similarly, a class of procurements, not including construction, may be partially set-aside in accordance with § 18–1.706–1(c).

(b) Where a portion of a procurement is to be set aside for small business pursuant to paragraph (a) of this section, the procurement shall be divided into a set-aside portion and a non-set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion will be such as to make the maximum use of small business capacity. Delivery and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(c) (1) In advertised procurements involving partial set-asides for small business, each invitation for bids shall contain substantially the following notice. The applicable size standard shall be set forth in the Schedule. In negotiated procurements the notice shall be appropriately modified for use with request for proposals.

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (APRIL 1968)

(a) *General.* A portion of this procurement, as identified elsewhere in the Schedule has been set aside for award only to one or more small business concerns. Negotiations for award of this set-aside portion will be conducted only with responsible small business concerns who have submitted responsive bids on the non-set-aside portion at a unit price within 120 percent of the highest unit price at which an award is made on the non-set-aside portion. Negotiations shall be conducted with such small business concerns in the following order of priority:

Group 1. Small business concerns which are also certified-eligible concerns.

Group 2. Small business concerns which are also persistent labor surplus area concerns.

Group 3. Small business concerns which are also substantial labor surplus area concerns.

Group 4. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, negotiations with such concerns will be in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. The set-aside shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which are considered in evaluating bids on the non-set-aside portion, except where a responsive bid has been submitted on the non-set-aside portion at a unit price which when so adjusted is lower than the adjusted highest unit price awarded on the non-set-aside portion but could not be accepted because of quantity limitations or other consideration (such as the bidder's responsibility). In the latter case if the quantity limitation or other considerations do not preclude consideration of the unit price of such unaccepted bid at the time of negotation for the set-aside portion, a quantity of the set-aside portion equal to the quantity of such unaccepted bid shall be offered to eligible concerns in their order of priority at the adjusted unit price of such unaccepted bid. If no eligible bidder will take the entire quantity so offered at the adjusted unit price of the unaccepted bid, then all eligible concerns in their order of priority shall be offered any lesser portion at the same price. (In the event more than one such unaccepted bid is involved, the same procedure shall be applied successively to each such bid on negotiation for the set-aside portion.) Subject to the conditions set forth below any remaining quantity of the set-aside portion shall be offered to eligible concerns in their order of priority at the adjusted highest unit price awarded on the non-set-aside portion. If such an unaccepted bid is submitted by a concern eligible to participate in the set-aside, such concern must accept a quantity of the set-aside portion equal to the quantity of the unaccepted bid at the adjusted unit price of the unaccepted bid before any portion of the set-aside may be awarded to that concern at a higher price. If such an unaccepted bid is submitted by a concern not eligible to participate in the set-aside a quantity of the set-aside portion equal to the quantity of the unaccepted bid must be awarded at the adjusted unit price of such unaccepted bid before any portion of the set-aside is awarded to any eligible concern at a higher price. The Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion. The partial set-aside of this procurement for small business concerns is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, or in the interest of assuring that a fair portion of Government procurement is placed with small business concerns.

(b) *Definitions.* (1) A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (Code of Federal Regulations, title 13, section 121.3–8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns:

*Provided,* That this additional requirement does not apply in connection with construction or service contracts.

(2) A "labor surplus area" is a geographical area which is:

(i) An appropriate section of a State or "labor area" classified by the Secretary of Labor as a "section of concentrated unemployment or underemployment"; or

(ii) Classified by the Department of Labor as an "Area of Substantial Unemployment" (herein referred to as an area of substantial labor surplus) and listed as such by that Department in its publication "Area Trends in Employment and Unemployment"; or

(iii) Classified by the Department of Labor as "Area of Persistent Unemployment" (herein referred to as an area of persistent labor surplus) and listed as such by that Department in its publication "Area Trends in Employment and Unemployment"; or

(iv) Not classified as in (ii) or (iii) above, but which is individually certified as an area of persistent or substantial unemployment by the Department of Labor at the request of a prospective contractor.

(3) Labor surplus area concern includes certified-eligible concerns, persistent labor surplus area concerns, and substantial labor surplus area concerns, as defined below:

(i) "Certified-eligible concern" means a concern (A) located in or near a section of concentrated unemployment or underemployment which has been certified by the Secretary of Labor in accordance with 29 CFR 8.7(b) with respect to the employment of disadvantaged persons residing within such sections, and (B) which will agree to perform, or cause to be performed by a certified concern, a substantial proportion of a contract in or near such sections; it includes a concern which, though not so certified, agrees to have a substantial proportion of a contract performed by certified concerns in or near such sections. A concern shall be deemed to perform a substantial proportion of a contract in or near sections of concentrated unemployment or underemployment if the costs that the concern will incur on account of manufacturing or production in or near such sections (by itself if a certified concern, or by certified concerns acting as first-tier subcontractors) amount to more than 30 percent of the contract price.

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

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

(4) "Unit price" shall include evaluation factors added for the rent-free use of Government property.

(c) *Identification of Areas of Performance.* Each bidder desiring to be considered for award as a small business labor surplus area concern on the set-aside portion of this procurement shall identify in his bid the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the production of the contract. If the Department of Labor classification of any such area changes after the bidder has submitted his bid, the bidder may change the areas in which he proposes to perform: *Provided,* That he so notifies the Contracting Officer before award of the set-aside portion. Priority for negotiation will be based upon the labor surplus classification of the designated production areas as of the time of the proposed award.

(d) *Agreement.* The bidder agrees that: (i) If awarded a contract as a certified-eligible small business concern under the set-aside portion of this procurement he will perform, or cause to be performed, a substantial proportion of the contract in or near sections of concentrated unemployment or underemployment and, in the performance of such contract or subcontracts, will employ a proportionate number of disadvantaged

persons residing within sections of concentrated unemployment or underemployment in accordance with plans approved by the Secretary of Labor; (ii) if awarded a contract as a small business persistent labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as persistent labor surplus areas; and (iii) if awarded a contract as a small business substantial labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as persistent labor surplus areas.

(e) *Eligibility Based on Certification.* Where eligibility for preference is based upon the status of the bidder or bidder's subcontractors as a "certified-eligible concern," the bidder shall furnish with his bid evidence of certification by the Secretary of Labor.

(2) In requirements contracts involving a partial small business set-aside, add the following to the above notice.

(f) *Requirements Contract.* Only one award will be made for each item or subitem of the non-set-aside portion and only one award will be made for each item or subitem of the set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of partial Small Business Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside contractor to whom the awards are made.

(d) (1) After the award price for the non-set-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 120 percent of the highest award made or to be made on the non-set-aside portion (taking into account the evaluation factors for rent-free use of Government property pursuant to Part 18–13) and who are determined to be responsible prospective contractors for the set-aside portion of the procurement. Negotiations shall be conducted with small business concerns in the order of priority as indicated in the foregoing notices: *Provided*, that, where equal low bids are received on the non-set-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedure of § 18–2.407–6) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion will be awarded at the highest unit price awarded or to be awarded for the non-set-aside portion. A bidder or offeror entitled to receive an award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the set-aside. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds (see § 18–1.312), or the change of prices after award by negotiation of a contract modification.

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

### § 18–1.706–7 Automatic dissolution of set-asides.

If the entire set-aside portion is not procured by the method set forth in § 18–1.706–5, as to total set-asides, or in § 18–1.706–6, as to partial set-asides the determination referred to in § 18–706–1 is automatically dissolved as to the unawarded portion of the set-aside and such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations.

### § 18–1.706–50 Small business class set-aside for construction, repair and alteration work.

A class set-aside for small business is considered to have been made for each proposed procurement for construction, repair and alteration work in an estimated amount ranging from $2,500 to $500,000. Accordingly, the contracting officer shall set aside for small business each such proposed procurement. If, in his judgment, the particular procurement falling within the dollar limits specified above is unsuitable for a set-aside for exclusive small business participation, the procedure set forth in § 18–1.706–3 shall apply. Proposed procurements for construction, repair and alteration work in an estimated amount of more than $500,000 shall be processed on a case-by-case basis pursuant to § 18–1.706–1(a).

### § 18–1.706–51 Maintenance of records.

Records pertaining to the initiation of individual procurements under each class set-aside shall be maintained by small business specialists at each procurement office. Such records shall include:

(a) Invitation for bids or requests for proposals number and date;

(b) Item or service;

(c) Unilateral or joint class set-aside and number;

(d) Estimated amount of procurement; and

(e) Estimated amount of set-aside.

A copy of each such record shall be made available by each procurement office to SBA upon request.

### § 18–1.707 Subcontracting with small business concerns.

### § 18–1.707–1 General.

(a) It is the policy of the Government to enable small business concerns to be considered fairly as subcontractors to contractors performing work or rendering services as prime contractors or subcontractors under Government procurement contracts, and to ensure that prime contractors and subcontractors having small business subcontracting programs will consult through the procurement office with the SBA upon its request.

(b) The SBA is not authorized, however, to prescribe the extent to which any contractor or subcontractor shall subcontract or specify the concerns to which subcontract shall be granted, nor is authority vested in the SBA respecting the administration of individual prime contracts or subcontracts.

### § 18–1.707–2 Small business subcontracting program.

The Government's small business subcontracting program requires Government prime contractors to assume an affirmative obligation with respect to subcontracting with small business concerns. In contracts which range from $5,000 to $500,000, the contractor undertakes the obligation of accomplishing the maximum amount of small business subcontracting which is consistent with the efficient performance of the contract. This undertaking is set forth in the contract clause prescribed in § 18–1.707–3(a). In contracts which may exceed $500,000, the contractor is required, pursuant to the clause set forth in § 18–1.707–3(b), to undertake a number of specific responsibilities designed to ensure that small business concerns are considered fairly in the subcontracting role and to impose similar responsibilities on major subcontractors. (The liaison officer required by the latter clause also may serve as liaison officer for labor surplus area matters.)

### § 18–1.707–3 Required clauses.

(a) The "Utilization of Small Business Concerns" clause which follows shall be included in all contracts in amounts which may exceed $5,000 except contracts which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, and Puerto Rico.

UTILIZATION OF SMALL BUSINESS CONCERNS (JULY 1962)

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

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

(b) The "Small Business Subcontracting Program" clause which follows shall be included in all contracts (except maintenance, repair and construction contracts) which may exceed $500,000,

which contain the clause required by paragraph (a) of this section and which, in the opinion of the contracting officer, offer substantial subcontracting possibilities. Prime contractors who are to be awarded contracts that do not exceed $500,000 but which, in the opinion of the contracting officer, offer substantial subcontracting possibilities, shall be urged to accept the clause.

SMALL BUSINESS SUBCONTRACTING PROGRAM (NOVEMBER 1965)

(a) The Contractor agrees to establish and conduct a small business subcontracting program which will enable small business concerns to be considered fairly as subcontractors and suppliers under this contract. In this connection, the Contractor shall—

(1) Designate a liaison officer who will (i) maintain liaison with the Government on small business matters, (ii) supervise compliance with the "Utilization of Small Business Concerns" clause, and (iii) administer the Contractor's "Small Business Subcontracting Program."

(2) Provide adequate and timely consideration of the potentialities of small business concerns in all "make-or-buy" decisions.

(3) Assure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of small business concerns. Where the Contractor's lists of potential small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(4) Maintain records showing (i) whether each prospective subcontractor is a small business concern, (ii) procedures which have been adopted to comply with the policies set forth in this clause, and (iii) with respect to the letting of any subcontract (including purchase orders) exceeding $10,000, information substantially as follows:

(A) Whether the award went to large or small business.

(B) Whether less than three or more than two small business concerns were solicited.

(C) The reason for nonsolicitation of small business if such was the case.

(D) The reason for small business failure to receive the award if such was the case when small business was solicited.

The records maintained in accordance with (iii) above may be in such form as the individual Contractor may determine, and the information shall be summarized quarterly and submitted by the purchasing department of each individual plant or division to the Contractor's cognizant small business liaison officer. Such quarterly summaries will be considered to be management records only and need not be submitted routinely to the Government; however, records maintained pursuant to this clause will be kept available for review.

(5) Notify the Contracting Officer before soliciting bids or quotations on any subcontract (including purchase orders) in excess of $10,000 if (i) no small business concern is to be solicited, and (ii) the Contracting Officer's consent to the subcontract (or ratification) is required by a "Subcontracts" clause in this contract. Such notice will state the Contractor's reasons for nonsolicitation of small business concerns, and will be given as early in the procurement cycle as possible so that the Contracting Officer may give the Small Business Administration timely notice to permit SBA a reasonable period to suggest potentially qualified small business concerns through the Contracting Officer. In no case will the procurement action be held up when to do so would, in the Contractor's judgment, delay performance under the contract.

(6) Include the "Utilization of Small Business Concerns" clause in subcontracts which offer substantial small business subcontracting opportunities.

(7) Cooperate with the Contracting Officer in any studies and surveys of the Contractor's subcontracting procedures and practices that the Contracting Officer may from time to time conduct.

(8) Submit NASA Form 524 reports to the Office of Procurement, NASA Headquarters, Washington, D.C. 20546, in accordance with the instructions contained therein. The reporting requirements of this subparagraph (8) do not apply to small business contractors or subcontractors.

(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 agrees that, in the event he fails to comply with his contractual obligations concerning the small business subcontracting program, this contract may be terminated, in whole or in part, for default.

(d) The Contractor further agrees to insert, in any subcontract hereunder which is in excess of $500,000 and which contains the "Utilization of Small Business Concerns" clause, provisions which shall conform substantially to the language of this clause, including this paragraph (d), and to notify the Contracting Officer of the names of such subcontractors; except that the subcontractor will submit the NASA Form 524 reports, to NASA Headquarters, Washington, D.C. 20546, in accordance with the instructions contained therein.

(c) The "Small Business Subcontracting Program (Maintenance, Repair and Construction)" clause which follows shall be included in all contracts for maintenance, repair and construction work which may exceed $500,000 which contain the clause required in paragraph (a) of this section and which in the opinion of the contracting officer, offer substantial subcontracting possibilities.

SMALL BUSINESS SUBCONTRACTING PROGRAM (MAINTENANCE, REPAIR AND CONSTRUCTION) (MAY 1965)

(a) The Contractor agrees to establish and conduct a small business subcontracting program which will enable small business concerns to be considered fairly as subcontractors, including suppliers, under this contract. In this connection, the Contractor shall designate an individual to (i) maintain liaison with the Government on small business matters, and (ii) administer the Contractor's Small Business Subcontracting Program.

(b) Prior to completion of the contract and as soon as the final information is available, the Contractor shall submit a completed NASA Form 524 to the Government addresses prescribed thereon. This subparagraph (b) is not applicable if the Contractor is a small business concern.

(c) The Contractor further agrees (i) to insert the "Utilization of Small Business Concerns" clause in subcontracts which offer substantial subcontracting opportunites, and (ii) to insert in each such subcontract exceeding $500,000 a clause conforming substantially to the language of this clause except that subcontractors shall submit NASA Form 524 direct to the Government addressees prescribed on the Form. The Contractor will notify the Contracting Office of the name and address of each subcontractor that will be required to submit a report on NASA Form 524.

### § 18–1.707–4 Responsibility for reviewing the subcontracting program.

To insure compliance with the provisions of the clauses set forth in § 18–1.707–3, the small business specialist at the NASA installation administering the contract is responsible for assisting the contracting officer in reviewing and determining the adequacy of a contractor's small business subcontracting program. When more than one NASA installation is doing business with the same contractor, the Small Business Adviser, NASA Headquarters, will assign the responsibility to an installation to conduct the review. Where the preponderance of Government contracts in a contractor's plant is with the Department of Defense, the Small Business Adviser may arrange to utilize the reviews conducted by the cognizant Military Departments. In those cases where NASA conducts the review, reports of findings shall be forwarded to the Small Business Adviser, NASA Headquarters, and any deficiencies in the contrator's small business subcontracting program will be brought to the attention of the contractor's designated small business liaison officer with a request for corrective action.

### § 18–1.707–5 Reports on NASA Form 524.

In accordance with § 18–1.707–3, all business concerns which participate in the Small Business Subcontracting Program shall furnish the information prescribed on NASA Form 524 in accordance with the instructions provided on the form. The reports shall be submitted directly to the Office of Procurement, NASA Headquarters, Washington, D.C. 20546. Contracting officer shall furnish contractors supplies of NASA Form 524.

### § 18–1.707–6 Subcontracting studies and surveys.

Each procurement office shall assist the SBA to obtain such reasonably obtainable information and records concerning the subcontracting of its prime contractors and its subcontractors having contracts that contain the Small Business Subcontracting Program clause, as the SBA may deem necessary. Accordingly, the contracting officer or his representative, separately, or together with a representative of the SBA, may periodically conduct studies and surveys of the contractor's subcontracting procedures and practices and those of his subcontractors. Such studies and surveys may originate with the procurement office in order to have available the pertinent data concerning subcontracting by its primes, or, if such data is not currently available, the studies and surveys may originate upon the request of the SBA for such data. On the basis of the foregoing studies, surveys, and records, the SBA may make recommendations to the procurement office regarding methods for increasing small business participation in subcontract awards. The SBA and the procurement office will freely interchange, at the operating level, information resulting from these surveys.

**§ 18-1.707-7 Small business administration review of agency records.**

To the extent that subcontracting records are maintained in procurement offices, such records shall be made available to the Small Business Administration, upon request, for review.

**§ 18-1.708 Purchases under federal supply schedule contracts.**

Where orders are placed under Federal Supply Schedule contracts and one or more of the contractors for an item on a given schedule are small business concerns, the orders shall be placed in accordance with the policies and precedures set forth in § 18-5.101-3.

12. Subpart 18-1.8 is revised to read as follows:

## Subpart 18-1.8—Labor Surplus Area Concerns

Sec.


18-1.800 Scope of subpart.
18-1.801 Definitions.
18-1.801-1 Labor surplus area concern includes.
18-1.801-2 Labor surplus area means a geographical area.
18-1.801-3 Small business concern.
18-1.802 General policy.
18-1.803 Application of policy.
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18-1.804-1 General.
18-1.804-2 Set-aside procedures.
18-1.804-3 Withdrawal of set-asides.
18-1.804-4 Contract authority.
18-1.805 Subcontracting with labor surplus area concerns.
18-1.805-1 General policy.
18-1.805-2 Labor surplus area subcontracting program.
18-1.805-3 Required clauses.
18-1.805-4 Review of subcontracting program.
18-1.806 Depressed industries.
18-1.806-1 General.
18-1.806-2 Apparel industry.
18-1.806-3 Petroleum and petroleum products industry.
18-1.806-4 Shipbuilding and repair industry.
18-1.806-5 Textile industry.


## Subpart 18-1.8—Labor Surplus Area Concerns

**§ 18-1.800 Scope of subpart.**

This subpart sets forth NASA policy and procedures with respect to aiding areas of persistent or substantial labor surplus and sections of concentrated unemployment or underemployment, hereinafter referred to as "labor surplus areas," in the United States, its possessions, and Puerto Rico. This part implements Defense Manpower Policy No. 4 (Revised), October 16, 1967 (32A CFR Chapter 1), and U.S. Department of Labor Regulations, 29 CFR Part 8, as amended, October 16, 1967. Defense Manpower Policy No. 4 states the policy of the Government to encourage the placing of contracts and facilities in labor surplus areas and to assist such areas in making the best use of their available resources.

**§ 18-1.801 Definitions.**

**§ 18-1.801-1 Labor surplus area concern includes:**

(a) Concerns—(1) Located in or near sections of concentrated unemployment or underemployment which have been certified by the Secretary of Labor in accordance with 29 CFR 8.7(b) with respect to the employment of disadvantaged persons residing within such sections; and

(2) Which will agree to perform, or cause to be performed by certified concerns, a substantial proportion of a contract in or near such sections; also concerns which, though not so certified, agree to have a substantial proportion of a contract performed by certified concerns in or near such sections. Such concerns, herein referred to as "certified-eligible concerns," shall be deemed to perform a substantial proportion of a contract in or near sections of concentrated unemployment or underemployment if the costs that the concern will incur on account of manufacturing or production in or near such sections (by itself if a certified concern, or by certified concerns acting as first-tier subcontractors) amount to more than 30 percent of the contract price.

(b) Persistent labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Persistent Labor Surplus." A concern shall be deemed to perform a contract substantially in "Areas of Persistent Labor Surplus" if the costs that it incurs on account of manufacturing or production (by itself or its first-tier subcontractors) in such areas amount to more than 50 percent of the contract price.

(c) Substantial labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Substantial Labor Surplus." A concern shall be deemed to perform a contract substantially in "Areas of Substantial Labor Surplus" if the costs that it incurs on account of manufacturing or production (by itself or its first-tier subcontractors) in such areas or in "Areas of Persistent Labor Surplus" amount to more than 50 percent of the contract price.

*Example A.* ABC Company, manufacturing in a full employment area, bids on a contract at $1,000. ABC Company will incur the following costs:

| | |
|---|---|
| Direct labor | $200 |
| Overhead | 200 |
| Purchase of materials from XYZ, which manufactures the materials in a labor surplus area | 510 |

ABC Company qualifies as a labor surplus area concern.

*Example B.* DEF Company, manufacturing in a labor surplus area, bids on a contract at $1,000. DEF Company will incur the following costs:

| | |
|---|---|
| Direct labor | $200 |
| Overhead | 200 |
| Purchase of materials from UVW, which is located in a labor surplus area but which merely distributes the materials from stocks on hand (the materials having been manufactured by UVW's supplier) | 550 |

DEF Company does not qualify as a labor surplus area concern regardless of whether UVW's supplier manufactures in a labor surplus area.

*Example C.* GHI Company, manufacturing in a labor surplus area, bids on a contract at $1,000. GHI Company will incur the following costs:

| | |
|---|---|
| Direct labor | $230 |
| Overhead | 275 |
| Purchase of materials from RST, which manufactures the materials in a full employment area | 425 |

GHI Company qualifies as a labor surplus area concern.

**§ 18-1.801-2 Labor surplus area means a geographical area which at the time of award is.**

(a) An appropriate section of a State or "labor area" classified by the Secretary of Labor as a "section of concentrated unemployment or underemployment"; or

(b) Classified by the Department of Labor as an "Area of Substantial Unemployment" (herein referred to as an area of substantial labor surplus) and listed as such by that Department in its publication "Area Trends in Employment and Unemployment"; or

(c) Classified by the Department of Labor as an "Area of Persistent Unemployment" (herein referred to as an area of persistent labor surplus) and listed as such by that Department in its publication "Area Trends in Employment and Unemployment"; or

(d) Not classified as in paragraphs (b) and (c) of this section, but which is individually certified as an area of persistent or substantial unemployment by the Department of Labor at the request of a prospective contractor.

**§ 18-1.801-3 Small business concern.**

See Subpart 18-1.7 for definition.

**§ 18-1.802 General policy.**

Except as provided in § 18-1.806 with respect to depressed industries, it is the policy of the National Aeronautics and Space Administration to aid labor surplus areas by placing contracts with labor surplus area concerns, to the extent consistent with procurement objectives and where such contracts can be awarded at prices no higher than those obtainable from other concerns, and by encouraging prime contractors to place subcontracts with concerns which will perform substantially in labor surplus areas. In carrying out this policy, to accommodate the small business policies of Subpart 18-1.7, preference shall be given in the following order of priority to—

(a) Certified-eligible concerns which are also small business concerns;

(b) Other certified-eligible concerns;

(c) Persistent labor surplus area concerns which are also small business concerns;

(d) Other persistent labor surplus area concerns;

(e) Substantial labor surplus area concerns which are also small business concerns;

(f) Other substantial labor surplus area concerns; and

(g) Small business concerns which are not labor surplus area concerns.

But in no case will price differentials be paid for the purpose of carrying out this

policy. Directors of installations and procurement officers are responsible for the effective implementation of the Labor Surplus Area Program within their respective installations. The contracting officer is responsible for compliance with the policy and procedures relating to labor surplus areas and for determining the final action to be taken with respect to individual procurement actions. The labor surplus area functions should generally be performed by the small business specialist or the individual designated to perform the small business functions where a full-time small business specialist is not warranted (see § 18–1.704–2).

**§ 18–1.803 Application of policy.**

(a) Within the policy set forth in § 18–1.802, the following shall be applied to procurements which are estimated to exceed $10,000 and may, if deemed practicable by the contracting officer, be applied to procurements between $2,500 and $10,000:

(1) Negotiated procurements shall, where procurement objectives permit, be awarded to labor surplus area concerns: *Provided,* That in no case shall price differentials be paid for the purpose of carrying out this policy;

(2) Where appropriate, procurements shall be made from labor surplus area concerns by partial set-aside procedures, in accordance with § 18–1.804, and such set-asides shall be given preference over any small business set-aside (but no total set-aside shall be made for labor surplus area concerns);

(3) Information identifying labor surplus areas shall be disseminated promptly to procurement personnel;

(4) Department of Labor certification (see § 18–1.801–2(d)) shall be considered conclusive with respect to the particular procurement concerned;

(5) Even though less than a complete bidders' list is to be used pursuant to § 18–2.205–4, all prospective contractors in labor surplus areas shall be solicited, except that only a pro rata number of prospective labor surplus area concerns may be solicited when the bidders' list is composed predominantly of labor surplus area concerns and the estimated award is not expected to be more than $25,000;

(6) Subcontracting with concerns in labor surplus areas shall be encouraged in accordance with § 18–1.805.

(b) Procurements placed in labor surplus areas as a result of preference procedures shall be reported on NASA Form 507, Individual Procurement Action Report, in accordance with procedures prescribed in § 18–16.9001.

(c) Any preference under the "Buy American Act" due to performance in labor surplus areas (see § 18–6.104–4) shall be in addition to the assistance accorded pursuant to this subpart.

(d) The Office of Procurement shall cooperate with the Departments of Labor and Commerce, the Small Business Administration, and the Office of Emergency Planning to achieve the objectives of this subpart.

**§ 18–1.804 Partial set-asides for labor surplus area concerns.**

**§ 18–1.804–1 General.**

(a) (1) In accordance with the policies and procedures set forth in § 18–1.802 and § 18–1.803, a portion of each procurement shall be set aside for labor surplus area concerns if:

(i) The procurement is severable into two or more economic production runs or reasonable lots; and

(ii) One or more labor surplus area concerns are expected to qualify as labor surplus area concerns and to have the technical competency and productive capacity to furnish a severable portion of the procurement at a reasonable price, except that a partial set-aside shall not be made if there is a reasonable expectation that bids or proposals will be received from only two concerns with technical competency and productive capacity (one concern which will not qualify as a labor surplus area concern and one concern which will qualify as a labor surplus area concern).

(2) In determining whether a proposed procurement is susceptible to division into two or more economic production runs or reasonable lots, consideration should be given to the following factors and any others deemed appropriate:

(i) Price and procurement history of the items;

(ii) Open industry capacity;

(iii) Startup cost including special tooling requirements;

(iv) Delivery schedule; and

(v) Nature of item and quantity being procured.

Before a portion or portions constituting more than 50 percent of the total requirement may be set aside, a determination must be made that there is a reasonable expectation the action proposed will not result in the payment of a price differential. The determination and supporting information will be made part of the contract file.

(3) In furtherance of the policy to assure that a fair proportion of procurement is placed with small business concerns, each labor surplus area set-aside shall provide that, in addition to labor surplus area concerns, small business concerns not performing in such areas are also eligible for participation in the set-aside for such quantities thereof as are not awarded to labor surplus area concerns. In this respect, see applicable provisions of § 18–1.804–2(b) for notice to bidders or offerors, and § 18–1.804–2(c) for conduct of set-aside negotiations.

(b) None of the following is, in itself, sufficient cause for not making a set-aside:

(1) A large part of previous procurements of the item in question has been placed with labor surplus area concerns;

(2) A period of less than 30 days from the date of issuance of invitations for bids or requests for proposals is prescribed for the submission of bids or proposals;

(3) The procurement is classified; or

(4) Labor surplus area concerns are receiving a fair proportion of contracts.

**§ 18–1.804–2 Set-aside procedures.**

(a) Where a portion of a procurement is to be set aside pursuant to § 18–1.804–1, the procurement shall be divided into a non-set-aside portion and a set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion will be such as to make the maximum use of the capacity of labor surplus area concerns. Delivery terms and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(b) (1) In advertised procurements involving set-asides pursuant to this subpart, each invitation for bids shall contain substantially the following notice. In negotiated procurements, the notice shall be appropriately modified for use with requests for proposals. The notice shall be made a part of each contract under the set-aside portion of the procurement.

NOTICE OF LABOR SURPLUS AREA SET-ASIDE (APRIL 1968)

(a) *General.* A portion of this procurement, as identified elsewhere in the Schedule has been set aside for award only to one or more labor surplus area concerns, and, to a limited extent, to small business concerns which do not qualify as labor surplus area concerns. Negotiations for award of the set-aside portion will be conducted only with responsible labor surplus area concerns (and small business concerns to the extent indicated below) who have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 120 percent of the highest unit price at which an award is made on the non-set-aside portion. Negotiations for the set-aside portion will be conducted with such bidders in the following order of priority:

Group 1. Certified-eligible concerns which are also small business concerns.

Group 2. Other certified-eligible concerns.

Group 3. Persistent labor surplus area concerns which are also small business concerns.

Group 4. Other persistent labor surplus area concerns.

Group 5. Substantial labor surplus area concerns which are also small business concerns.

Group 6. Other substantial labor surplus area concerns.

Group 7. Small business concerns which are not labor surplus area concerns.

Within each of the above groups negotiations with such concerns will be in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. The set-aside portion shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which are considered in evaluating bids on the non-set-aside portion except where a responsive bid has been submitted on the non-set-aside portion at a unit price which when so adjusted is lower than the adjusted highest unit price awarded on the non-set-aside portion but could not be accepted because of quantity limitations or other consideration (such as the bidder's responsibility). In the latter case if the quantity limitation or other considerations do not preclude consideration of the unit price of such unaccepted bid at the time of negotiation for the set-aside portion, a quantity of the set-aside portion equal to the quantity of such unaccepted bid shall be offered to eligible concerns in their order

of priority at the adjusted unit price of such unaccepted bid. If no eligible bidder will take the entire quantity so offered at the adjusted unit price of the unaccepted bid, then all eligible concerns in their order of priority shall be offered any lesser portion at the same price. (In the event more than one such unaccepted bid is involved, the same procedure shall be applied successively to each such bid on negotiation for the set-aside portion.) Subject to the conditions set forth below any remaining quantity of the set-aside portion shall be offered to eligible concerns in their order of priority at the adjusted highest unit price awarded on the non-set-aside portion. If such an unaccepted bid is submitted by a concern eligible to participate in the set-aside, such concern must accept a quantity of the set-aside portion equal to the quantity of the unaccepted bid at the adjusted unit price of the unaccepted bid before any portion of the set-aside may be awarded to that concern at a higher price. If such an unaccepted bid is submitted by a concern not eligible to participate in the set-aside, a quantity of the set-aside portion equal to the quantity of the unaccepted bid must be awarded at the adjusted unit price of such unaccepted bid before any portion of the set-aside is awarded to any eligible concern at a higher price. The Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion.

(b) *Definitions.* (1) The term "labor surplus area" means a geographical area which is a section of concentrated unemployment or underemployment, a persistent labor surplus area, or a substantial labor surplus area, as defined below:

(i) "Section of concentrated unemployment or underemployment" means appropriate sections of States or "labor areas" so classified by the Secretary of Labor.

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

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

(2) The term "labor surplus area concern" includes certified-eligible concerns, persistent labor surplus area concerns, and substantial labor surplus area concerns, as defined below:

(i) "Certified-eligible concern" means a concern (A) located in or near a section of concentrated unemployment or underemployment which has been certified by the Secretary of Labor in accordance with 29 CFR 8.7(b) with respect to the employment of disadvantaged persons residing within such sections, and (B) which will agree to perform, or cause to be performed by a certified concern, a substantial proportion of a contract in or near such sections; it includes a concern which, though not so certified, agrees to have a substantial proportion of a contract performed by certified concerns in or near such sections. A concern shall be deemed to perform a substantial proportion of a contract in or near sections of concentrated unemployment or underemployment if the costs that the concern will incur on account of manufacturing or production in or near such sections (by itself if a certified concern, or by certified concerns acting as first-tier subcontractors) amount to more than 30 percent of the contract price.

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

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

(3) A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (Code of Federal Regulations, title 13, section 121.3–8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns: *Provided,* That this additional requirement does not apply in connection with construction or service contracts.

(4) "Unit price" shall include evaluation factors added for the rent-free use of Government property.

(c) *Identification of Areas of Performance.* Each bidder desiring to be considered for award as a labor surplus area concern on the set-aside portion of this procurement shall identify in his bid the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the production of the contract. If the Department of Labor classification of any such area changes after the bidder has submitted his bid, the bidder may change the areas in which he proposes to perform: *Provided,* That he so notifies the Contracting Officer before award of the set-aside portion. Priority for negotiation will be based upon the labor surplus classification of the designated production areas as of the time of the proposed award.

(d) *Eligibility Based on Certification.* Where eligibility for preference is based upon the status of the bidder or bidder's subcontractors as a "certified-eligible concern," the bidder shall furnish with his bid evidence of certification by the Secretary of Labor.

(e) *Agreement.* The bidder agrees that: (i) If awarded a contract as a certified-eligible concern under the set-aside portion of this procurement he will perform, or cause to be performed, a substantial proportion of the contract in or near sections of concentrated unemployment or underemployment and in the performance of such contract or subcontracts, will employ a proportionate number of disadvantaged persons residing within sections of concentrated unemployment or underemployment in accordance with plans approved by the Secretary of Labor; (ii) if awarded a contract as a persistent labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as persistent labor surplus areas; and (iii) if awarded a contract as a substantial labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as persistent labor surplus areas.

(2) In requirements contracts involving a labor surplus area set-aside add the following to the clause in subparagraph (1):

(f) *Requirements Contract.* Only one award will be made for each item or subitem of the non-set-aside portion and only one award will be made for each item or subitem of the set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Labor Surplus Area Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside Contractor to whom the awards are made.

(c) (1) After the award price for the non-set-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 120 percent of the highest award made or to be made on the non-set-aside portion and who are determined to be responsible prospective contractors for the set-aside portion of the procurement. Negotiations shall be conducted in the order of priority indicated in the foregoing notice: *Provided,* That, where equal low bids are received on the non-set-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedures of § 18–2.407–6) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion shall be awarded at the highest unit price awarded or to be awarded for the non-set-aside portion. A bidder or offeror entitled to receive the award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the procurement. This does not prevent acceptance by the contracting officer of voluntary reductions in price prior to award, acceptance of refunds, or the change of prices after award by negotiation of a contract modification. If the entire set-aside portion cannot be awarded by the method described herein, any unawarded portion may be procured

by advertising or negotiations, as appropriate, in accordance with existing regulations (see § 18–3.201–2(i) and § 18–3.210–3 as to negotiation).

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

**§ 18–1.804–3 Withdrawal of set-asides.**

If, prior to the award of a contract involving a labor surplus set-aside, the contracting officer considers that the set-aside is detrimental to the public interest, e.g., because of unreasonable prices, the contracting officer shall withdraw the set-aside and complete the procurement by advertising or negotiation as appropriate in accordance with existing regulations. A signed memorandum setting forth the basis of the withdrawal of any set-aside shall be made and retained.

**§ 18–1.804–4 Contract authority.**

Contracts for set-aside made under this subpart 18–1.8 shall cite as authority 10 U.S.C. 2304(a)(1). For reporting purposes see § 18–3.201–2.

(a) For contracts awarded to labor surplus area concerns and § 18–3.201–2.

(b) For contracts awarded to small business concerns which are not labor surplus area concerns.

**§ 18–1.805 Subcontracting with labor surplus area concerns.**

**§ 18–1.805–1 General policy.**

It is the policy of the Government to promote equitable opportunities for labor surplus area concerns to compete for subcontracts and to encourage placement of subcontracts with concerns which will perform such contracts substantially in labor surplus areas in the order of priority described in § 18–1.802 where this can be done, consistent with efficient performance of contracts, at prices no higher than are obtainable elsewhere.

**§ 18–1.805–2 Labor surplus area subcontracting program.**

The Government's labor surplus area subcontracting program requires Government prime contractors to assume an affirmative obligation with respect to subcontracting with labor surplus area concerns. In contracts which range from $5,000 to $500,000, the contractor undertakes the simple obligation of using his best efforts to place his subcontracts with concerns which will perform such subcontracts substantially in labor surplus areas where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. This undertaking is set forth in the contract clause prescribed in § 18–1.805–3(a). In contracts which may exceed $500,000, the contractor is required, pursuant to the clause set forth in § 18–1.805–3(b), to undertake a number of specific responsibilities designed to insure achievement of the objectives referred to in this § 18–1.805 and to impose similar responsibilities on major subcontractors.

**§ 18–1.805–3 Required clauses.**

(a) The "Utilization of Concerns in Labor Surplus Areas" clause set forth below shall be inserted in all contracts in amounts which may exceed $5,000, except—

(1) Contracts with foreign contractors which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, and Puerto Rico; and

(2) Contracts for construction.

UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS (APRIL 1968)

It is the policy of the Government to place contracts with concerns which will perform such contracts substantially in or near sections of concentrated unemployment or underemployment as a certified-eligible concern or in areas of persistent or substantial labor surplus where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy. In complying with the foregoing and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (i) Certified-eligible concerns which are also small business concerns; (ii) other certified-eligible concerns; (iii) persistent labor surplus area concerns which are also small business concerns; (iv) other persistent labor surplus area concerns; (v) substantial labor surplus area concerns which are also small business concerns; (vi) other substantial labor surplus area concerns; and (vii) small business concerns which are not labor surplus area concerns.

(b) The "Labor Surplus Area Subcontracting Program" clause which follows shall be included in all contracts which may exceed $500,000, but which contain the clause required by paragraph (a) of this section and which, in the opinion of the contracting officer, offer substantial subcontracting possibilities. Prime contractors who are to be awarded contracts that do not exceed $500,000, which in the opinion of the contracting officer offer substantial subcontracting possibilities, shall be urged to accept the following clause:

LABOR SURPLUS AREA SUBCONTRACTING PROGRAM (APRIL 1968)

(a) The Contractor agrees to establish and conduct a program which will encourage labor surplus area concerns to compete for subcontracts within their capabilities. In this connection, the Contractor shall—

(1) Designate a liaison officer who will (i) maintain liaison with duly authorized representatives of the Government on labor surplus area matters, (ii) supervise compliance with the "Utilization of Concerns in Labor Surplus Areas" clause, and (iii) administer the Contractor's Labor Surplus Area Subcontracting Program;

(2) Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;

(3) Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concerns;

(4) Maintain records showing procedures which have been adopted to comply with the policies set forth in this clause; and

(5) Include the "Utilization of Concerns in Labor Surplus Areas" clause in subcontracts which offer substantial labor surplus area subcontracting opportunities.

(b) A "labor surplus area concern" is a concern which will perform, or cause to be performed, a substantial proportion of any contract awarded to it (i) in or near "Sections of concentrated unemployment or underemployment" as a certified-eligible concern, (ii) in "Areas of Persistent Labor Surplus" or (iii) in "Areas of Substantial Labor Surplus," as designated by the Department of Labor. A certified-eligible concern shall be deemed to perform a substantial proportion of a contract in or near sections of concentrated unemployment or underemployment if the costs that the concern will incur on account of manufacturing or production in or near such sections (by itself if a certified concern, or by certified concerns acting as first-tier subcontractors) amount to more than 30 percent of the price of such contracts; a concern shall be deemed to perform a substantial proportion of a contract in a persistent or substantial labor surplus area if the costs that the concern will incur on account of manufacturing or production (by itself or its first-tier subcontractors) in such area amount to more than 50 percent of the price of such contract.

(c) The Contractor further agrees, with respect to any subcontract hereunder which is in excess of $500,000 and which contains the clause entitled "Utilization of Concerns in Labor Surplus Areas," that he will insert provisions in the subcontract which will conform substantially to the language of this clause, including this paragraph (c), and that he will furnish the names of such subcontractors to the Contracting Officer.

**§ 18–1.805–4 Review of subcontracting program.**

The adequacy of the contractor's Labor Surplus Area Subcontracting Program shall be reviewed by the procurement office concerned, and any deficiencies shall be brought to the attention of the contractor's liaison officer with a request for corrective action in accordance with the provisions of § 18–3.903.

**§ 18–1.806 Depressed industries.**

**§ 18–1.806–1 General.**

When an entire industry is depressed, the Office of Emergency Planning may, under Defense Manpower Policy No. 4, establish appropriate measures on an industrywide, rather than on an area, basis. Designations of such industries are made by Office of Emergency Planning Notifications, and such industries will be given special treatment as specified therein. §§ 18–1.806–2 through 18–1.806–5 reflect pertinent requirements of such notifications with respect to the industries indicated. No price differential will be paid to carry out policies of these notifications.

**§ 18–1.806–2 Apparel industry (notification No. 53, 17 F.R. 6675).**

(a) As used in this paragraph the "apparel industry" means all of the industry

identified in the "Standard Industrial Classification Manual" under Major Group 23 except Group No. 239.

(b) There shall be no labor surplus area set-asides in this industry.

**§ 18–1.806–3 Petroleum and petroleum products industry (notification No. 58, 17 F.R. 9053).**

There shall be no labor surplus area set-asides in this industry.

**§ 18–1.806–4 Shipbuilding and repairing industry (notification No. 57, 17 F.R. 7868).**

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

(b) There shall be no labor surplus area set-asides in this industry. In placing contracts, preferences shall be given, where practicable, to contractors who can perform the contracts without substantial use of overtime labor and without constructing new facilities. So as to spread work among a large number of private yards, bids or proposals shall be invited and contracts awarded on a small-lot basis rather than on a large-lot basis, to the extent practicable.

**§ 18–1.806–5 Textile industry (notification No. 38, 17 F.R. 4993).**

(a) As used in this paragraph, the "textile industry" means all of the industry identified in the "Standard Industrial Classification Manual" under Major Group 22 (Textile Mill Products) and Industry Nos. 2391 and 2392 (Curtains and draperies, and house-furnishings), except that it does not include Industry No. 2274 (Linoleum, asphalt-felt base, and other hard-surface floor covering, not elsewhere classified), and Industry No. 2298 (Cordage and twine).

(b) No preference shall be given to any area or city in placing contracts in this industry. For the purpose of maintaining the effective functioning of the textile industry as a whole, procurement offices shall try to place contracts with manufacturers whose weaving operations (in the case of weaving of integrated mills) or whose spinning operations (in the case of spinning mills) during the period of performance of such contracts will not exceed 80 hours per week (not including other supporting activities).

(c) In all procurements from the textile industry which are estimated to exceed $10,000, partial set-asides, exclusively for textile industry concerns whose "weaving" or "spinning" operations (as described in paragraph (b) of this section) will not exceed 80 hours per week, shall be made substantially in accordance with the procedures set forth in § 18–1.804, except that all "textile industry concerns whose weaving or spinning operations will not exceed 80 hours per week" will be treated as "labor surplus area concerns." The notice set forth in § 18–1.804–2(b) shall be designated "Notice of 80-hour week set-aside" and appropriately modified for use in accordance with this subparagraph.

Section 18–1.1313–2(a) is revised as follows:

**§ 18–1.1313–2 Application to commercial bills of lading.**

(a) *Cost-reimbursement type contracts.* Reduced transportation rates accorded the Government under section 22 of the Interstate Commerce Act will be applied to commercial bills of lading, where applicable, covering property moving under cost-reimbursement type Government contracts when the contract provides for direct reimbursement by the Government of all transportation costs and such costs are allowable in accordance with Part 18–15 of this chapter. To properly identify shipments under commercial bills of lading to which such reduced rates apply, the following statement shall be placed on the bill of lading.

Transportation hereunder is for the Government, and the actual, total transportation charges paid to the carrier(s) are to be reimbursed by the Government.

* * * * *

Section 18–1.1313–3 is revised as follows:

**§ 18–1.1313–3 Application to household goods.**

Section 22 quotations will apply, where applicable, on the movement of household goods and personal effects when the relocation of contractor employees is for the convenience of and at the direction of the Government and the total transportation costs are to be reimbursed by the Government. When such reduced rates are applicable:

(a) Contracting officers will insure:

(1) That contract provisions require the contractor to utilize carriers offering acceptable service with application of reduced rates; and

(2) That affected contractors are provided adequate instructions on the household goods program and the name and location of the transportation officer designated to furnish support and guidance.

(b) Transportation officers will:

(1) Provide transportation advice and assistance to contracting officers and affected contractors for shipment of household goods; and

(2) Furnish affected contractors a list of carriers (by place of origin) providing service under special quotations, cite applicable tariffs, and advise them of the statement to be shown on carrier's commercial bill of lading.

15. Section 18–1.1316(b) is revised as follows:

(b) The contracting officer may authorize the contractor to prepay the transportation charges, provided the cost of such transportation charges does not exceed $25. The actual cost of transportation charges, not to exceed $25 per shipment, will be added to contractor's invoice as a separate item. All transportation charges which are added to the contractor's invoice shall be supported by paid freight, express, or parcel post receipts. If paid receipts in support of the invoice are not obtainable, the contractor shall insert the following certificate on his invoice:

I certify that the shipments identified below have been made and transportation charges related thereto have been paid by me and that paid freight, express, or parcel post receipts in support thereof are not obtainable:

Destination _____
Name of Carrier(s) _____
Weight of Shipment _____
Transportation Charges Claimed _____

Insurance and registry fees will not be allowed unless specifically authorized. This procedure will be used only for shipments of unclassified items to domestic destinations.

16. Sections 18–2.201, 18–2.201–1, and 18–2.201–2 are revised to read as follows:

**§ 18–2.201 Preparation of invitation for bids.**

Forms used in inviting bids are prescribed in Subparts 18–16.1 and 18–16.4. Invitation for bids shall contain the applicable information described in §§ 18–2.201–1 and 18–2.201–2, and any other information required for a particular procurement. Pen and ink entries, deletions, or alterations shall not be made in an invitation for bids after it has been prepared for distribution. If a change is necessary after reproduction of the invitation for bids, the Standard Form 30 (Amendment of Solicitation/Modification of Contract) shall be used (see §§ 18–16.101 and 18–16.103).

**§ 18–2.201–1 Supply and service contracts.**

(a) *Supply and service contracts, including construction.* For supply and service contracts, including construction, invitation for bids shall contain the following information if applicable to the procurement involved.

(1) Invitation number. Invitations shall be numbered consecutively, preceded by the applicable letter symbol of the installation concerned (see Subpart 18–50.3).

(2) Name and address of issuing installation.

(3) Date of issuance.

(4) Date, hour, and place of opening. Prevailing local time shall be used, and appropriate identification of the local time system under which the installation is operating shall be included, e.g., 11:30 a.m., E.S.T. (See § 18–2.202–1 concerning bidding time.) The exact location of the bid depository, including the room and building numbers, and a statement that hand-carried bids must be deposited therein.

(5) Number of pages.

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

(7) A description of supplies or services to be furnished under each item, in sufficient detail to permit full and free

competition. Reference to specifications shall include identification of all amendments or revisions thereof, applicable to the procurement and dates of both the specifications and the revisions (see § 18–1.1201(a)). Such description shall comply with Subpart 18–1.12 relating to specifications.

(8) The time of delivery or performance (see § 18–1.305).

(9) Permission, if any, to submit telegraphic bids (see § 18–2.202–2).

(10) Permission, if any, to submit alternate bids, including alternate materials or design and the basis upon which award will be made in such case.

(11) The "Patent Royalties" clause set forth in § 18–9.102(d)(1).

(12) Bid guarantee, performance bond, and payment bond requirements, if any (see Subparts 18–10.1 and 18–16.805). If a bid bond or other form of bid guarantee is required, the solicitation shall include the provisions required by § 18–10.102.

(13) Any offer by the Government to provide Government production and research property for the performance of the contract, and any special provisions relating thereto (see Subpart 18–13.3) (see, for example, § 18–13.202).

(14) Description of the procedures to be followed in obtaining permission to use Government production and research property and in eliminating competitive advantage from the rent-free use thereof (see Subparts 18–13.4 and 18–13.5).

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

BIDS ACCEPTANCE PERIOD (JULY 1965)

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

(22) Where Standard Form 33 (Solicitation, Offer, and Award) (July 1966 edition) is not used and where not contained elsewhere in the invitation, a provision as follows:

ORDER OF PRECEDENCE (JULY 1968)

In the event of an inconsistency between provisions of this Invitation for Bids, the inconsistency shall be resolved by giving precedence in the following order: (a) The Schedule; (b) Bidding Instructions, Terms and Conditions of the Invitation for Bids; (c) General Provisions; (d) other provisions of the contract, whether incorporated by reference or otherwise; and (e) the Specifications.

(23) When considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition such as improper kinds of multiple bidding, a requirement that each bidder submit with his bid an affidavit concerning his affiliation with other concerns. To accomplish the foregoing, a paragraph substantially as follows may be included in the Schedule or other appropriate place in the invitation for bids:

AFFILIATED BIDDERS (JULY 1968)

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

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

(i) Whether the bidder has any affiliates;

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

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

Failure to furnish such an affidavit may result in rejection of the bid.

Failure to furnish such an affidavit shall be treated as a minor informality or irregularity (see § 18–2.405).

In construction contracts, a 30-day bid acceptance period is normal, but may be less, and in unusual circumstances a period of 60 days may be specified.

(16) In unusual cases, where bidders are required to have special technical qualifications due to the complexity of the equipment being purchased or for some other special reason, a statement of such qualifications.

(17) Any authorized special provisions, necessary for the particular procurement, relating to such matters as progress payments, patent licenses, liquidated damages, "Buy American Act," etc.

(18) Any additional contract clauses, provisions or conditions required by law or this regulation.

(19) Any applicable wage determinations of the Secretary of Labor (in the case of procurements of supplies which also involve the performance of construction, alteration or repair work, see § 18–12.402; in the case of service contracts, see Subpart 18–12.11).

(20) A statement of the exact basis upon which bids will be evaluated and award made, to include any Government costs or expenditures (other than bid prices) to be added or deducted, or any provision for escalation as factors for evaluation.

(21) If the schedule contains a price escalation clause, the following provision:

Evaluation of bids subject to escalation. Notwithstanding the provisions of the clause entitled "Price Escalation," bids shall be evaluated on the basis of quoted prices without the allowable escalation being added. Bids which provide for a ceiling lower than that stipulated in the clause will also be evaluated on this basis. Bids which provide for escalation that may exceed the maximum escalation stipulated in the clause, or which limit or delete the downward escalation stipulated in the clause shall be rejected as nonresponsive. (July 1968)

(24) Directions for obtaining copies of any documents, such as plans, drawings, and specifications, which have been incorporated by reference (see § 18–1.1203).

(25) Where Standard Form 33 (Solicitation, Offer, and Award) (July 1966 edition) is not used, a requirement for inclusion of "county" as part of bidder's address will be inserted.

(26) A provision covering the required source for jeweled bearings (see § 18–1.315).

(27) [Reserved]

(28) Information regarding bidding material which shall include Instructions to Bidders, the Bid Form, the Contract Form, the General Provisions, any conditions, the specifications and drawings (see § 18–1.1203).

(29) Where Standard Form 33 (Solicitation, Offer, and Award) (July 1966 edition) is not used, a provision covering parent company and employer identification number (see § 18–1.114).

(30) If the contract is to be conditioned on the availability of funds, a clear statement of such condition (see § 18–1.318).

(31) If the contract is to involve construction work (subject to the Davis-Bacon Act) at Cape Kennedy, Patrick Air Force Base, or Merritt Island Launch Area, the "Employee Compensation" clause and "Table of Employee Compensation".

(32) In accordance with § 18–1.1208, a provision concerning the use of new material (except in the case of construction) and a provision concerning the use of former Government surplus property.

(33) The Certificate of Independent Price Determination as required by § 18–1.115.

(34) Quality assurance requirements applicable to the procurement in accordance with Subpart 18–1.50.

(35) [Reserved]

(36) A statement that prospective bidders may submit inquiries by writing or calling (collect calls not accepted) (insert name and address; telephone area code, number, and extension).

(37) When using Standard Form 33, on the face thereof or on a cover sheet, a brief description of the items being procured, unless the contracting officer considers such to be unnecessary or impractical.

(38) A statement that prospective bidders should indicate in the bid the address to which payment should be mailed, if such address is different from that shown for the bidder. (Contracting officers shall include this information in all resultant contracts which are to be administered by a Defense Contract Administration Services Regional Office.)

(39) A provision covering the required source for aluminum (see § 18–1.327).

(40) [Reserved]

(41) Time of delivery or performance requirements (see § 18–1.305).

(42) A statement that the "Contract Work Hours Standards Act—Overtime Compensation" clause is not applicable to contracts if the aggregate amount of

the bid is $2,500 or less (see § 18–12.302–2).

(43) If the contract is to involve construction work (subject to the Davis-Bacon Act) at the Mississippi Test Facility, the "Employee Compensation" clause and "Table of Employee Compensation".

(44) In procurements involving total set-asides for small business, the Notice set forth in § 18–1.706–5(c).

(45) In procurements involving partial set-asides for small business, the notice requirements as set forth in § 18–1.706–6(c).

(46) In procurements involving partial set-asides for labor surplus area concerns, the notice requirements as set forth in § 18–1.804–2(b).

(47) When the procurement involves a set-aside for small business concerns, the following provision:

This is a _____% set-aside for small business concerns. (July 1965)

(48) When the procurement involves a set-aside for labor surplus area concerns, the following provision:

This is a _____% set-aside for labor surplus area concerns. (July 1965)

(49) If the resulting contract is expected to exceed $100,000, the "Contractor and Subcontractor Cost or Pricing Data" clause (see § 18–3.807–4).

(50) Statement that the selected contractor will or will not require access to classified information (see NASA Management Issuance 1650.1, paragraph 12).

(51) Statement that special instructions for waived inventions will not be applied (see § 18–9.101–3(h)).

(52) If leases are involved, the "Facilities Nondiscrimination" clause set forth in §§ 18–1.350–2 and 18–1.350–4.

(53) If the "Equal Employment" clause is not applicable to the proposed procurement (see § 18–12.803), or if the proposed procurement is exempted from the clause (see § 18–12.804), include a statement substantially as follows:

Representation No. 6, "Equal Opportunity" of Standard Form 33 is not applicable to this Procurement. (July 1965)

(54) A reference prominently placed in the invitation to paragraph 8 entitled, "Late Offers and Modifications or Withdrawals", of Standard Form 33A.

(55) The "Certification of Nonsegregated Facilities" set forth in § 18–12.802–4(c).

(56) The notice regarding the requirement for "Certification of Nonsegregated Facilities" as prescribed in § 18–12.802–4(b).

(57) Where Standard Form 33 (Solicitation, Offer, and Award) (July 1966 Edition) or Standard Form 19–B (Representations and Certifications) (Construction Contract) (December 1965 Edition) is not used, insert the "Equal Opportunity" representation set forth in § 18–12.802–4(a).

(58) Invitation for Bid which will result in the placement of rated orders or Authorized Controlled Material Orders shall contain the following statement.

Contracts or purchases orders to be awarded as a result of this solicitation shall be assigned a (DX or DO as appropriate) rating or DMS allotment number (as appropriate) in accordance with the provisions of BDSA Regulation 2 and/or DMS Regulation 1.

(b) *Supply and service contracts, excluding construction.* For supply and service contracts, excluding construction, invitation for bids shall contain the following in addition to the information required by paragraph (a) of this section, if applicable to the procurement involved.

(1) Discount provisions (see § 18–2.407–3).

(2) The quantity of supplies or services to be supplied under each item, and any provision for extent of quantity variation.

(3) Any requirement for prior testing and qualification of a product.

(4) Where needed for the purpose of bid evaluation, preaward surveys, or inspection, a requirement that all bidders state the place (including the street address) from which the supplies will be furnished or where the services will be performed. Where it is reasonably anticipated that producing facilities will be used in the performance of the contracts, or where Government requires the information, bidders will be required to state (i) the full address of principal producing facilities (if designation of such address is not feasible, a full explanation will be required), and (ii) names and addresses of owner and operator if other than bidder.

(5) Place and method of delivery (see Subpart 18–1.13 and § 18–2.202–3.

(6) Preservation, packaging, packing, and marking requirements, if any (see § 18–1.1204).

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

(8) If no award will be made for less than the full quantities advertised, a statement to that effect.

(9) If award is to be made by specified groups of items or in the aggregate, a statement to that effect.

(10) If the contract is to include option provisions, a clear statement of such provisions (see Subpart 18–1.15 and § 18–12.1106–2).

(11) Any applicable requirements for samples or descriptive literature (see §§ 18–2.202–4 and 18–2.202–5).

(12) When minimum size of shipment requirements are appropriate, a provision substantially as set forth in § 18–2.202–3(b)(2).

(13) When the shipping weights (and dimensions if applicable) of an item are a factor in determining transportation costs for bid evaluation, a provision substantially as set forth in § 18–2.202–3(b)(3).

(14) If the procurement includes the furnishing of electrosensitive initiating devices (squibs) or any other item or component designated in the procurement request as a potentially hazardous item, the requirements set forth in § 18–1.351.

(15) The number of copies of sellers' invoices desired, including original, if more or less than four.

(16) Any requirement for preproduction samples or tests, including a statement that the Government reserves the right to waive the requirement as to those bidders offering a product which has been previously procured or tested by the Government, and a statement that bidders offering such products, who wish to rely on such prior procurement or tests, must furnish with the bid information from which it may be clearly established that prior Government approval is presently appropriate for the pending procurement.

(17) In accordance with § 18–1.1208, a provision concerning the use of new material.

(18) When the contracting officer determines that it is necessary to consider the advantages or disadvantages to the Government that might result from making more than one award (multiple awards) (see § 18–2.407–5(3)), a provision substantially as follows:

EVALUATION OF BIDS (JULY 1965)

In addition to other factors, bids will be evaluated on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards). For the purpose of making this evaluation, it will be assumed that the sum of $50 would be the administrative cost to the Government for issuing and administering each contract awarded under this invitation, and individual awards will be for the items and combination of items which result in the lowest aggregate price to the Government, including such administrative costs.

(19) If the contract involves performance of services on a Government installation, the following provision.

SITE VISIT (JULY 1968)

Bidders are urged and expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the contract, to the extent such information is reasonably obtainable. In no event will a failure to inspect the site constitute grounds for withdrawal of a bid after opening or for a claim after award of the contract.

(20) To insure timely distribution of Material Inspection and Receiving Reports (DD Form 250), include distribution instructions in the Schedule or as an attachment to the contract (see Appendix I).

(21) Where liquidated damages are to be assessed, insert the clause as prescribed by § 18–7.105–5 (see § 18–1.310).

(22) In the procurement of supplies where the award may amount to $1 million or more, include the provision relating to preaward Equal Opportunity Compliance reviews set forth in § 18–12.802–4(d).

**§ 18–2.201–2 Construction contracts.**

In addition to the information required by § 18–2.201–1(a), invitation for bids for construction contracts shall contain the following, if applicable to the procurement involved.

(a) Statement of arrangements to be made for inspecting the site, including designation of the person or persons, if any, with whom such arrangements may

be made and who will answer questions or furnish information.

(b) Information which may affect performance of the work such as boring samples, original boring logs, etc.

(c) Information as to what utilities the Government will furnish during construction, when the contracting officer determines that any utilities are adequate for the needs of both the Government and the contractor. Such information shall specify any special conditions of use to be imposed on the contractor and shall also specify any utilities to be furnished without charge; utilities shall be furnished without charge when the contracting officer determines that this is advantageous to the Government, as when the administrative costs incident to maintaining records and collecting payments will approximate the cost of the utility services to be furnished. Such information may also include any applicable rates to be imposed.

(d) Information concerning prebid conference.

(e) If it is necessary to advertise before receipt of a wage rate determination, a notice that the schedule of minimum wage rates to be paid under the contract will be published as an amendment to the invitation for bids.

(f) A provision substantially as follows:

MODIFICATIONS PRIOR TO DATE SET FOR OPENING BIDS (JULY 1965)

The right is reserved, as the interest of the Government may require, to revise or amend the specifications or drawings or both prior to the date set for opening bids. Such revisions and amendments, if any, will be announced by an amendment or amendments to this Invitation for Bids. If the revisions and amendments are of a nature which requires material changes in quantities or prices bid or both, the date set for opening bids may be postponed by such number of days as in the opinion of the issuing officer will enable bidders to revise their bids. The amendment will include an announcement of the new date for opening bids.

(g) A provision substantiially as follows:

GOVERNMENT'S PRIVILEGE IN MAKING AWARDS (JULY 1965)

The Government reserves the right to make award of any or all Schedules of any bid, unless the bidder qualifies such bid by specific limitation; also to make award to the bidder whose aggregate bid on any combination of bid Schedules is low. For the purpose of this Invitation for Bids, the word "item" as used in paragraph 10(c) of Standard Form 22 shall be considered to mean "Schedule."

(h) A reference prominently placed in the invitation to Instruction 7, "Late Bids and Modifications or Withdrawals," of Standard Form 22.

17. Section 18–2.407–5(c) is revised as follows:

(c) Advantages or disadvantages to the Government that might result from making multiple awards. (See § 18–2.201–1(c)(19).)

18. Section 18–2.407–6 is revised as follows:

**§ 18–2.407–6 Equal low bids.**

(a) (1) Where two or more low bids are equal in all respects, considering all factors except the priorities set forth in (2) below, award shall be made in accordance with the order of priorities therein. Where two or more low bids are equal in all respects, considering all factors including the priorities set forth in paragraph (a)(2) of this section, award shall be made by a drawing by lot which shall be witnessed by at least three persons and which may be attended by the bidders or their representatives, subject to paragraph (a)(3) of this section.

(2) For the purposes of paragraph (a)(1) of this section, preference shall be given in the following order of priority:

(i) Certified-eligible concerns (§ 18–1.801) that are also small business concerns (§ 18–1.701),

(ii) Other certified-eligible concerns,

(iii) Persistent labor surplus area concerns (§ 18–1.801) that are also small business concerns (§18–1.701),

(iv) Other persistent labor surplus area concerns,

(v) Substantial labor surplus area concerns (§ 18–1.801) that are also small business concerns,

(vi) Other substantial labor surplus area concerns,

(vii) Other small business concerns.

(3) If the application of the priorities in paragraph (a)(2) of this section results in two or more bidders being eligible for award, the award shall be made to the concern that will make the most extensive use of small business subcontractors, rather than by drawing lots. If two or more bidders still remain eligible for award, the award shall be made by a drawing by lot limited to such bidders.

(b) When award is to be made by drawing by lot and the information available shows that the product of a particular manufacturer has been offered by more than one bidder, a preliminary drawing by lot shall be made to ascertain which of the bidders offering the product of a particular manufacturer will be included in the final drawing to determine the award.

(c) When an award is determined by drawing by lot, the names and addresses of the three witnesses and the person supervising the drawing shall be placed on all copies of the abstract of bids or otherwise recorded.

(d) In each award where preference is to be given under this part, the contracting officer shall, prior to award, obtain from such concern a written statement that it will perform, or cause to be performed, the contract in accordance with the circumstances justifying the priority.

19. Section 18–3.201–2 is revised as follows:

**§ 18–3.201–2 Application.**

(a) The authority of this § 18–3.201 shall be used only to the extent determined by the Administrator to be necessary in the public interest, and then only in accordance with this § 18–3.201.

(b) For the duration of the national emergency declared pursuant to Presidential Proclamation 2914, dated December 16, 1950, the Administrator, by NASA Management Instruction 5101.6A, has determined that only the following procurements may be made pursuant to the authority of 10 U.S.C. 2304(a)(1):

(1) Procurements made in keeping with—

(i) Labor surplus set-aside programs, including, when no other negotiating authority is appropriate and the use of formal advertising is not feasible and practicable, the placement of contracts for the total or any part of the requirements set-aside which are not filled by awards made in accordance with the provisions of the Notice of Labor Surplus Area Set-Aside (see § 18–1.804), or

(ii) Disaster area programs; and

(2) Procurements made in keeping with the small business programs—

(i) After unilateral determinations for set-aside, or

(ii) To place the total or any part of the requirements set-aside (unilateral or joint) which are not filled by awards to small business concerns, when no other negotiating authority is appropriate and the use of formal advertising is not feasible and practicable (see § 18–1.706–7).

20. Section 18–3.216 is revised as follows:

**§ 18–3.216 Purchases in the interest of national defense or industrial mobilization.**

**§ 18–3.216–1 Authority.**

Pursuant to 10 U.S.C. 2304(a)(16), purchases and contracts may be negotiated if—

"He [the Administrator] determines that (a) it is in the interest of national defense to have a plant, mine, or other facility, or a producer, manufacturer, or other supplier, available for furnishing property or services in case of a national emergency; or (b) the interest of industrial mobilization in case of such an emergency, or the interest of national defense in maintaining active engineering, research, and development, would otherwise be subserved".

**§ 18–3.216–2 Application.**

The authority of this § 18–3.216 may be used to effectuate such plans and programs as may be evolved under the direction of the Administrator to provide incentives to manufacturers to maintain, and keep active, engineering and design staffs and manufacturing facilities available for mass production. The following are illustrative of circumstances with respect to which this authority may be used:

(1) When procurement by negotiation is necessary to keep vital facilities or suppliers in business; or to make them available in the event of a national emergency;

(2) When procurement by negotiation with selected suppliers is necessary in order to train them in the furnishing of critical supplies to prevent the loss of their ability and employee skills, or to maintain active engineering, research, and development work; or

(3) When procurement by negotiation is necessary to maintain properly balanced sources of supply for meeting the requirements of procurement programs in the interest of industrial mobilization. (When the quantity required is substantially larger than the quantity which must be awarded in order to meet the objectives of this authority, that portion not required to meet such objectives will ordinarily be procured by formal advertising or by negotiation under another appropriate negotiation exception.)

**§ 18–3.216–3 Limitation.**

The authority of this § 18–3.216 shall not be used unless and until the Administrator has determined, in accordance with the requirements of Subpart 18–3.3, that:

(1) It is in the interest of national defense to have a particular plant, mine, or other facility or a particular producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency, and negotiation is necessary to that end;

(2) The interest of industrial mobilization, in case of a national emergency would be subserved by negotiation with a particular supplier; or

(3) The interest of national defense in maintaining active engineering, research, and development, would be subserved by negotiation with a particular supplier.

**§ 18–3.216–4 Records and reports.**

Each procurement office is required to maintain a record of the name of each contractor with whom a contract has been entered into pursuant to the authority of this § 18–3.216, together with the amount of the contract and (with due consideration given to the national security) a description of the work required to be performed thereunder. These records, and reports based thereon, are maintained through the NASA procurement reporting system described in §§ 18–1.110 and 18–16.901.

21. Section 18–3.305 is revised as follows:

**§ 18–3.305 Forms of determinations and findings.**

Each determination and findings authorizing negotiation under the authority of 10 U.S.C. 2304(a) (11)–(15) shall set forth the facts and circumstances that are clearly illustrative of the conditions described for use of the particular authority. Determinations and findings authorizing negotiation shall set forth those facts and circumstances that clearly and convincingly establish that formal advertising would not be feasible and practicable. All determinations and findings required to be made by the Administrator or Deputy Administrator, NASA Headquarters pursuant to § 18–3.302 (a) and (c) shall include the following language to be added as a separate paragraph under the Determination portion of the determination and findings:

This determination and findings is not an approval of a program or specific procurements within a program. Such approvals as are required will be obtained in accordance with established Agency procedures.

**§ 18–3.305–1 Individual contracts under 10 U.S.C. 2304(a)(11). (See §§ 18–3.211 and 18–3.301(b).)**

(a) *Findings.* In the first paragraph under "Findings" describe briefly and clearly the scope and nature of the work to be performed. In the second paragraph, set forth the facts and circumstances that are clearly illustrative of the conditions set forth in 10 U.S.C. 2304(a)(11) for use of this authority. (See §§ 18–3.211 and 18–3.211–2.) In the third paragraph, set forth those facts and circumstances that clearly and convincingly establish, with respect to the use of this authority, that formal advertising would not be feasible and practicable.

(b) *Determination.* Following the format set forth in the sample which follows, use the appropriate terms to state precisely whether the proposed procurement is for experimental, developmental, or research work or the making or furnishing of property for experiment, test, development, or research; or for a combination of these.

(c) *Sample format.*

DETERMINATION AND FINDINGS

Decision To Negotiate an Individual Contract Under 10 U.S.C. 2304(a) (11)

FINDINGS

1. The proposed procurement is to develop and obtain a compressor unit to provide high pressure helium to the hypervelocity jets of the Hypersonic Aerothermal Dynamics Facility for the investigation of the aeroelastic problems of Dynasoar-type vehicles during exit and reentry and the reentry problems of other vehicles, such as Apollo or lunar space vehicles, where the largest flight dynamic pressures may be encountered.

2. The proposed contract will require the contractor to do development work in the design and engineering of the compressor unit. Research work will be necessary to support the development stage of the work, primarily to determine the type of components to be included in the unit to insure performance requirements.

3. Formal advertising is not feasible and practicable for this procurement because it is impossible to describe in precise detail or by definite drawings and specifications the nature of the work to be done; only the ultimate objectives and the general scope of the work can be outlined.

DETERMINATION

On the basis of the above findings, I hereby determine that the proposed procurement is for developmental and research work, and for the making of property for research.

Upon the basis of the determination and findings above, I hereby decide that this contract will be negotiated pursuant to 10 U.S.C. 2304(a) (11).

This determination and findings is not an approval of a program or specific procurements within a program. Such approvals as are required will be obtained in accordance with established Agency procedures.

Date _____

**§ 18–3.305–2 Class of contracts under 10 U.S.C. 2304(a)(11).**

(See §§ 18–3.211 and 18–3.301(b).)

(a) *Findings.* In the first paragraph identify the program, the project, and the project number (using the NASA Financial Management Manual, Agency-Wide Coding Structure) to which the contemplated procurements are oriented. A statement also will be included in the first paragraph that the determination and findings cover only the procurement requirements that are provided for and further defined under the program/project cited, except for such items of property or supplies for which formal advertising is feasible and practicable. In the second paragraph under Findings describe briefly and clearly the scope and nature of the work to be performed. When property and services are to be procured under a Class Determination and Findings, a statement will be made that the Determination and Findings does not apply to those items of property or supplies for which formal advertising is feasible and practicable. In the third paragraph, set forth the facts and circumstances that are clearly illustrative of the conditions set forth in 10 U.S.C. 2304(a)(11) for use of this authority (see §§ 18–3.211 and 18–3.211–2). In the fourth paragraph, set forth facts and circumstances that clearly and convincingly establish, with respect to the use of this authority, that formal advertising would not be feasible and practicable.

(b) *Determination.* Following the format set forth in the sample which follows, use the appropriate terms to state whether the proposed class of contracts will be for experimental, developmental, or research work; or the making or furnishing of property or supplies for experiment, test, development, or research; or for a combination of these. A statement of the period (not to exceed 1 year) for which the determination and findings will be effective will be included.

(c) *Sample format.*

DETERMINATION AND FINDINGS

Decision to Negotiate a Class of Contracts under 10 U.S.C. 2304(a)(11)

FINDINGS

1. This procurement will consist of one or more contracts for the accomplishment of the Advanced Technology Program for Liquid Propellant Rocket Engines, except for such items of property or supplies for which formal advertising is feasible and practicable and will cover only procurement requirements that are provided for and further defined under the following project citation:

RA Engine Project—
Project Nr XX–XX–XXX–XXX.

2. The proposed class of contracts is for the Advanced Technology Program for Liquid Propellant Rocket Engines, which has as its goal the development of the necessary technology for reliable rocket engines that are needed for launch vehicles and for spacecraft, except for such items of property or supplies for which formal advertising is feasible and practicable. These procurements will involve study and analysis of problems and possible solutions relating to new and unproven concepts in the field of liquid propellant rocket engine systems, subsystems, components, instruments, propellants, fabrication techniques, materials, storage, and environmental factors, and aerothermochemistry and heat transfer properties. The procurements will also involve the experimental demonstration of the feasibility of new and unproven concepts and development

of the technology required to bring new or uproven concepts into practical use.

3. The proposed procurements will require contractors to study, analyze, and investigate problems in the field of liquid propellant rocket engine systems, and, on the basis of experiments, demonstrate the feasibility of the new concepts which result from these studies.

4. Formal advertising is not feasible and practicable for these procurements because it is impossible to describe in precise detail, or by any definite drawings or specifications, the nature of the work to be performed under the proposed contracts; only the ultimate objective and the general scope of the work can be outlined.

DETERMINATION

On the basis of the above findings, I hereby determine that the proposed class of contracts is for experimental and research work and for the making or furnishing of property for experiment, test, and research.

Upon the basis of the determination and findings above, I hereby decide that this class of contracts will be negotiated pursuant to 10 U.S.C. 2304(a)(11).

This class determination shall remain in effect until June 30, 1968.

This determination and findings is not an approval of a program or specific procurements within a program. Such approvals as are required will be obtained in accordance with established Agency procedures.

Date _____.

**§ 18–3.305–3 Individual contract under 10 U.S.C. 2304(a)(14) (see § 18–3.214).**

(a) *Findings.* In the first paragraph, under Findings, describe briefly and clearly the supplies or property being procured. Such description must include a statement that the supplies or property are technical or specialized in nature and must explain why they are so categorized. The second paragraph must establish either one or, preferably, both of the following:

(1) That furnishing the supplies or property requires a substantial initial investment and that such investment (or a substantial part of it) has already been made by one source (or by the Government in such source), so that procurement by formal advertising would be likely to result in additional cost to the Government by reason of duplication of investment;

(2) That furnishing the supplies or property requires an extended period of preparation for manufacture, that one source has already made such preparation (or a large part of it), and that procurement by formal advertising would result in duplication of necessary preparation which would unduly delay the procurement of the supplies or property.

In the case of paragraph (a)(1) of this section, provide estimates of the original investment and the amount that would have to be duplicated at the expense of the Government. In the case of paragraph (a)(2) of this section, show that such delay would be prejudicial to the mission of NASA. In both cases, use specific facts relating to the particular procurement, not unsupported statements of general applicability.

(b) *Determination.* Use the following Determination in its entirety, where applicable; otherwise delete the inapplicable portions. For example, the supplies might be either technical or specialized, in which case only one term would be used; or the procurement might involve substantial investment but not an extended period of preparation, in which case irrelevant language would be deleted and the remainder combined in one sentence.

DETERMINATION

On the basis of the above findings, I hereby determine that the proposed contract is for supplies or property of a technical and specialized nature requiring a substantial initial investment and an extended period of preparation for manufacture and that procurement by formal advertising:

(i) Would be likely to result in additional cost to the Government by reason of duplication of investment; and

(ii) Would result in duplication of necessary preparation which would unduly delay the procurement.

This determination and findings is not an approval of a program or specific procurements within a program. Such approvals as are required will be obtained in accordance with established Agency procedures.

22. Section 18–3.450(c)(5) is added:

(5) In a support service contract with a firm option and containing a basic incentive structure approved by Headquarters, in the exercise of the option, the incentive plan need not be resubmitted to Headquarters for approval. If the contractual arrangement involves an "agreement-to-agree," rather than a firm option, advance Headquarters approval of the proposed incentive structure will be required in those cases where (i) the nature or scope of the service is changed; or (ii) the concept or criteria of the incentive structure, or both, differ from that previously approved. Where the nature or scope of the services, or the concept or criteria of the incentive structure do not differ from that previously approved, advance Headquarters approval is not required.

23. In section 18–3.450 paragraphs (f) and (g) are revised as follows:

(f) *Administrative requirements as to incentive fees.* The negotiation of a cost-type-incentive contract (CPIF—Cost-Plus-Incentive-Fee, CPAF—Cost-Plus-Award-Fee) will establish the target cost, target fee (basic fee for CPAF contracts), minimum and maximum fee, and the method for computing increases or decreases from target or basic fee, and may provide for a negative fee, if appropriate to the reward and penalty concepts of the incentive arrangements in the contract. The statutory limitations in 10 U.S.C. 2306(d) apply only to fixed-fees. Incentive fee arrangements (CPIF and CPAF) which contain provisions for maximum fees which exceed (i) 15 percent of the target cost in contracts for experimental, developmental, or research work, or (ii) 10 percent of the target cost in other contracts will require the approval of the Director of Procurement prior to award of the contract. Requests for approval of such fees will be submitted to the Director of Procurement through the cognizant Program Director and shall be supported by complete justification, including a discussion of any exceptional circumstances where lower rates of fee will not provide sufficient range for effective operation of the incentive arrangements toward the attainment of procurement objectives. The request for approval of such fees may be included as a part of the request for contract approval under the provisions of § 18–50.105(b)(4). (See § 18–3.450(c)(1) relating to approval of fee in prenegotiation planning.) This paragraph is not applicable to contracts for architect-engineer services.

(g) *Reports on status of incentive contracts.* Quarterly reports on the status of existing and potential incentive contracts will be submitted in accordance with the instructions in § 18–16.903.

24. In paragraph (b) of section 18–3.501, the introductory text and subparagraphs (1), (2), (3), (4), and (5) are revised as follows:

(b) Generally, requests for proposals or quotations shall be in writing. Solicitations shall contain the information necessary to enable a prospective offeror to prepare a proposal or quotation properly. Written requests shall be as complete as possible and normally should contain the following information if applicable to the procurements involved:

(1) Request for proposals or request for quotations number and date of issuance;

(2) Title and/or number of the program or project (e.g., "Apollo S–IC Instrumentation");

(3) Name and address of procurement office issuing the request; identification of the individual responsible for supplying additional information or answering inquiries; complete address of person to receive proposals; number of copies of proposal required to be submitted;

(4) Closing date and time;

(5) With respect to late proposals or modifications, include the provision set forth in § 18–3.802–4(c) (this provision will be appropriately modified in the case of request for quotations); where Standard Form 33 (Solicitation, Offer, and Award) (July 1966 edition) is used, the following notice shall be prominently set forth in the request for proposals:

NOTICE TO OFFERORS—LATE OFFERS AND MODIFICATIONS (JULY 1968)

Paragraph 8, "Late Offers and Modifications or Withdrawals," of Standard Form 33A does not apply to this solicitation. See the special provision in this solicitation entitled "Late Proposals."

25. Section 18–3.501(b)(37) is revised as follows:

(37) Clear statement of option provisions (see Subpart 18–1.15 and § 18–12.1106–2);

26. Section 18–3.501(b)(46) is revised as follows:

(46) Requests for Proposal which will result in the placement of rated orders or Authorized Controlled Material Orders (see § 18–1.307) shall contain the following statement.

Contracts or purchase orders to be awarded as a result of this solicitation shall be assigned a (DX or DO as appropriate) rating or DMS allotment number (as appropriate) in accordance with the provisions of BDSA Regulation 2 and/or DMS Regulation 1.

27. Section 18–3.501(b)(49) is revised as follows:

(49) When the use of Automatic Data Processing Equipment is applicable to the procurement (see § 18–3.804–2(c)(2) and Subpart 18–3.11), inclusion of the following provision:

"The Government reserves the right to require the preparation and submission of feasibility and lease versus purchase studies by the successful contractor if the use of Automatic Data Processing Equipment is proposed."

28. In § 18–3.501(b), subparagraph (61) is deleted and reserved; and new subparagraphs (62) through (77) are added.

(62) Where Standard Form 33 (Solicitation, Offer, and Award) (July 1966 edition) is not used, a statement as follows:

ORDER OF PRECEDENCE (JULY 1968)

In the event of an inconsistency between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following order: (a) The Schedule; (b) Terms and Conditions of the solicitation; (c) General Provisions; (d) other provisions of the contract, where attached or incorporated by reference; and (e) the Specifications.

The foregoing statement may be modified to change the order or to add or delete items to meet the needs of a particular procurement;

(63) Where neither Standard Form 33 (Solicitation, Offer, and Award) (July 1966 edition) nor Standard Form 18 (Request for Quotations) (July 1966 edition) is used, a statement that prospective offerors may submit inquiries by writing or calling (collect calls not accepted) (insert name and address; telephone area code, number, and extension);

(64) Where Standard Form 33 (Solicitation, Offer, and Award) (July 1966 edition) is not used, a statement on the first sheet or on a cover sheet of the Request for Proposals that:

"Proposals must set forth full, accurate, and complete information as required by this request for proposal (including attachments). The penalty for making false statements in proposals is prescribed in 18 U.S.C. 1001." (July 1968).

This statement shall be suitably modified when Quotations are requested;

(65) Where neither Standard Form 33 (Solicitation, Offer, and Award) (July 1966 edition) nor Standard Form 18 (Request for Quotations) (July 1966 edition) is used, a requirement for inclusion of "county" as part of quoter's/offeror's address will be inserted;

(66) Where Standard Form 33 (Solicitation, Offer, and Award) (July 1966 edition) is not used, a statement that prospective offerors should indicate in the offer the address to which payment should be mailed, if such address is different from that shown for the offeror (Contracting officers shall include this information in all resultant contracts which are to be administered by a Defense Contract Administration Services Regional Office.);

(67) Any applicable wage determination of the Secretary of Labor (for construction contracts, see Subpart 18–12.4; for service contracts, see Subpart 18–12.11);

(68) If the contract is to involve construction work (subject to the Davis-Bacon Act) at the Cape Kennedy, Patrick Air Force Base, or Merritt Island Launch Area complex, the "Employee Compensation" clause and "Table of Employee Compensation";

(69) If the contract is to involve construction work (subject to the Davis-Bacon Act) at the Mississippi Test Facility, the "Employee Compensation" clause and "Table of Employee Compensation";

(70) The "Patent Royalties" clause set forth in § 18–9.102(d)(2);

(71) To insure timely distribution of Material Inspection and Receiving Reports (DD Form 250), include distribution instructions in the Schedule or as an attachment to the contract (see Appendix I);

(72) The "Certification of Nonsegregated Facilities" set forth in § 18–12.802–4(c);

(73) The notice regarding the requirement for "Certification of Nonsegregated Facilities" as prescribed in § 18–12.802–4(b);

(74) Where Standard Form 33 (Solicitation, Offer, and Award) (July 1966 Edition) or Standard Form 19–B (Representations and Certifications) (Construction Contract) (December 1965 Edition) is not used, insert the "Equal Opportunity" representation set forth in § 18–12.802–4(a);

(75) If the contract involves performance of services on a Government installation, the following provision:

SITE VISIT (JULY 1968)

Offerors are urged and expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the contract, to the extent such information is reasonably obtainable. In no event will a failure to inspect the site constitute grounds for a claim after award of the contract.

(76) When the procurement involves a set-aside for small business concerns, the following provision:

This is a ———% set-aside for small business concerns.

(77) When the procurement involves a set-aside for labor surplus area concerns, the following provision:

This is a ------% set-aside for labor surplus area concerns.

29. Section 18–3.804–2(c)(2) is revised as follows:

(2) *Automatic data processing equipment.* In evaluating proposals containing a significant amount of cost for Automatic Data Processing Equipment (ADPE) the contracting officer should obtain from the prospective contractor a feasibility study and a lease-versus-purchase study covering the acquisition of such equipment or service. The contracting officer will obtain the recommendations of the price analyst and appropriate ADPE technical personnel as to the adequacy of the studies and the prospective contractor's determinations resulting from the studies. Particular attention should be given to those proposals containing a high dollar amount for rental of ADPE or complete systems to be used solely for performance of the contract. Current Bureau of the Budget criteria (NASA Handbook 2410.1) should be used, where applicable, as a guide in evaluating the contractor's studies (Also see Subpart 18–3.11). Prospective contractors should be encouraged to:

(i) Use ADPE machine time available within a reasonable geographic distance;

(ii) Use telecommunications links to remote Government-owned or leased ADPE systems, and

(iii) Purchase ADPE in preference to leasing the equipment where the financial advantage is the sole or overriding factor.

30. Section 18–3.809 is revised as follows:

### § 18–3.809 Contract audit as a pricing aid.

(a) *General.* Contract audit services are available in two forms:

(1) The submission of audit reports which set forth the results of auditors, reviews and analyses of cost data submitted by contractors as part of pricing proposals, reviews of contractors' accounting systems, estimating methods, and other related matters; and

(2) Personal consultation and advice to procurement and contract administration personnel in connection with analyses of contractors' cost representations and related matters.

Contract auditors are professional accountants who, although organizationally independent, are the principal advisors to contracting officers on contractor accounting and contract audit matters.

(b) *Auditor's reports on contract price proposals.* (1) Prior to negotiation of a contract or modification resulting from a proposal in excess of $100,000 (including initial prices, estimated cost of cost-reimbursement type contracts, interim and final price redeterminations, escalation, target, and settlement of incentive type contracts) where the price will be based on cost or pricing data (§ 18–3.807–3) submitted by the contractor, the contracting officer or his authorized representative shall request an audit review by the contract audit activity. Audits should be requested for proposed contracts or modifications of lesser amount only where a valid need exists. The requirement for audit of proposals which exceed $100,000 may be waived by the contracting officer whenever it is clear that information already available is adequate for the proposed procurement. In such cases, the contract file shall be documented to reflect the reason for any such waiver. The terms "audit review" and "audit" refer to examinations by contract auditors of contractors' statements of actual or estimated costs to the extent deemed appropriate by the auditors in the light of their experience with contractors and relying upon their appraisals of the effectiveness of the contractors' policies, procedures, controls and practices. Such

audit reviews or audits may consist of desk reviews, test checks of a limited number of transactions, or examinations in depth, at the discretion of the auditor.

(2) The contracting officer shall establish the due date for receipt of the auditor's report and in so doing will allow as much time as possible for the audit work. Within the time available, the overall scope and depth of the audit review will be determined by and be the full responsibility of the contract auditor. Any particular areas identified by the contracting officer for special emphasis will be specifically included in the report. Since time is highly important in most negotiation situations, the auditors should give sufficient priority to reports for forward pricing to meet established due dates. If the time available is not adequate to permit satisfactory coverage of the proposal, the auditor will so advise the contracting officer and indicate the additional time needed. The contracting officer will promptly advise the auditor whether the extension of the report due date can be granted.

(3) The contracting officer shall send the request for review and evaluation of the contractor's proposal directly to the cognizant contract administration office (§ 18–51.302), with copy to the contract auditor, and shall identify any areas where he desires particular pricing effort. The contract administration office shall advise the auditor of any additional areas recommended for special emphasis and review. If there are audit work program conflicts involving more than one contracting officer, priorities should be worked out jointly between the auditor and the agencies responsible for contract administration. When only an audit report is desired, the request shall be forwarded to the appropriate contract auditor either directly or through the liaison auditor, with copy to the contract administration office.

(4) During the course of the examination, the auditor should discuss any pertinent matters with the contractor to the extent necessary to enable the auditor to fully understand the basis for each item in the contractor's proposal and to remove any doubts which may exist in the auditor's mind as to the validity and accuracy of his conclusions and audit findings. Before such discussions are concluded, the auditor should have explored and discussed with the contractor any discrepancies noted in his examination involving cost or pricing data. The auditor will exercise care to prevent disclosure of the technical analysis and similar information that would prejudice the Government's negotiating position.

(5) The auditor, as part of his report, shall set forth the basis and method used by the contractor in preparing his proposal. Also, the report shall clearly identify the contractor's original proposal and all subsequent written formal submissions to the contracting officer or to the auditor, of cost or pricing data identified as such by the contractor. In addition, cost or pricing data not submitted by the contractor but otherwise coming to the auditor which have a significant effect on the proposed cost or price shall also be described in the advisory audit report. If the auditor determines that the cost or pricing data submitted by the contractor are not accurate, complete and current, this information will be made known in his audit report. Where the resulting overall effect on the proposed cost or price is of such magnitude that the contractor's proposal is of little use as a basis for negotiation, the contracting officer should be advised. None of the above is intended to relieve the contractor of his obligation to submit accurate, complete and current cost or pricing data.

(6) Reports of technical analysis and review (§ 18–3.804–2(b)) should be furnished by the contracting officer to the auditor at the earliest possible date and at least 5 days prior to the due date of the audit report to enable the auditor to include the financial effect of technical findings in the audit report (for example, the necessary computations of dollar amounts arising from changes in proposed kinds and quantities of materials, labor hours, etc.). In the event the technical analyses are not available in time to be reflected in the audit report, the audit report shall so state. If technical analyses are received later by the auditor, he shall issue a supplemental report if the status of the negotiation is such that a report would serve a useful purpose. A copy of all technical reports received by the auditor shall be made a part of the audit report submitted to the contract administration office.

(7) The audit report, giving the financial effect of related technical and other evaluations, shall be forwarded by the auditor to the contract administration office with an advance copy direct to the contracting officer. The contract administration office shall transmit to the contracting officer its analysis of prices, the original audit report, related technical comments, and any other information or analyses specifically requested by the contracting officer. The contract administration office shall not modify the audit report. If any information disclosed subsequent to the receipt of the audit report is such as to significantly affect the audit findings, the contract administration office should promptly advise the auditor, who shall determine whether to issue a supplemental report. A copy of the contract administration office's submission shall be furnished to the contract auditor. If only an audit report is requested, it shall be transmitted directly, or through the liaison auditor, to the contracting officer, with copy to the contract administration office.

(8) Information generated through sources other than the contractor's records may be available to the contracting officer which may significantly affect the Government's negotiating position. The auditor, therefore, will not disclose to the contractor his conclusions and recommendations to the contracting officer on the contractor's proposed costs or estimates to complete. No portion of the advisory audit report will be furnished to the contractor without the concurrences of the contracting officer. The auditor will not disclose to the contractor results of technical analysis and similar information that would prejudice the Government's negotiating position. The above limitations are not intended to preclude disclosure of discrepancies or mistakes of fact such as duplications, omissions and errors in computations, contained in the contractor's cost or pricing data supporting the proposal.

(9) If, in the opinion of the contracting officer, the contract administration office, or the auditor, the review of a prime contractor's proposal requires audit reviews of subcontractors' cost estimates at the subcontractors' plants (after due consideration of reviews performed by the prime contractor) such reviews should be arranged through audit channels. Criteria as to the necessity for audit of subcontracts shall be in accordance with guidelines applicable to prime contracts. Where technical reviews are needed, they shall be arranged through the contracting officer.

(10) The audit report shall be made a part of the official contract file.

31. Section 18–3.811 is revised as follows:

**§ 18–3.811 Record of negotiation.**

(a) At the conclusion of each negotiation of an initial or a revised price, the contracting officer shall promptly prepare or cause to be prepared, a memorandum, setting forth the principal elements of the negotiation, for inclusion in the contract file and for the use of any reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of the initial or revised price, and other terms of the contract. The memorandum should include an explanation of why cost or pricing data was, or was not, required (see § 18–3.807) and, if it was not required in the case of any price negotiation in excess of $100,000, a statement of the basis for determining that the price resulted from or was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. If cost or pricing data was submitted and a certificate of cost or pricing data was required (§ 18–3.807–3), the memorandum shall reflect the reliance placed upon the factual cost or pricing data submitted and the use of this data by the contracting officer in determining his total price objective. Where the total price negotiated differs significantly from the total price objective, the memorandum shall explain this difference. Whenever cost or pricing data are used in connection with a price negotiation in excess of $100,000, where audit evaluation of the contractor's proposal was provided, the contracting officer shall forward one copy of the memorandum to the cognizant auditor, whether NASA or the Defense Contract Audit Agency, for use by the auditor to improve the usefulness of his audit work and related reports to negotiation officials. Where appropriate, the memorandum should

include or be supplemented by information on how the auditor's advisory services can be made more effective in future negotiations with the contractor.

(b) As part of the requirement in paragraph (a) of this section, determination of the profit or fee objective, in accordance with § 18–3.808, shall be fully documented.

32. Section 18–3.853(b) is revised as follows:

(b) Except as authorized in § 18–16.102–(b)(3), a contract embodying the agreement will be prepared by the procurement office for execution by the contractor and the contracting officer when negotiations have been completed.

33. Subpart 18–3.11 is added as follows:

## Subpart 18–3.11—Acquisition of Automatic Data Processing Equipment

Sec.

18–3.1100 Contractor acquisition of automatic data processing equipment.
18–3.1101 General.
18–3.1102 Review of decision to lease.

### § 18–3.1100 Contractor acquisition of automatic data processing equipment (ADPE).

### § 18–3.1101 General.

(a) This § 18–3.1100 is applicable to all ADPE, as defined in § 18–1.235, except as components of end items to be delivered to the Government.

(b) If ADPE is purchased for the account of the Government or if title to the ADPE will pass to the Government, the acquisition must be approved as required by Part 18–13.

### § 18–3.1102 Review of decision to lease.

(a) If the total cost of leasing the ADPE is to be reimbursed under one or more cost reimbursement type contracts, the contracting officer shall, prior to approval of the proposed lease agreement:

(1) Prepare a lease versus purchase study in accordance with § 18–3.804–2(c)(2);

(2) Survey the GSA ADPE excess lists for availability of excess ADPE which could be issued as GFP (see § 18–13.301) and which would fulfill the contractor's requirements (including timely availability and technical compatibility);

(3) Determine whether, under §18–15.205–48, leasing is the appropriate method of acquisition from the Government's standpoint;

(4) Consider whether the ADPE should be leased under a Federal Supply Schedule Contract (see Subpart 18–5.9);

(5) If the rental of ADPE through a commercial contract is authorized, require the contractor to include a provision in the rental contract stating that the Government will have the initial option to utilize any purchase or other benefits earned through rental payments; and

(6) Obtain approval of the leasing arrangement of the ADPE from the center director of the installation concerned in accordance with the procedures of NHB 2410.1.

(b) If the total cost of leasing ADPE in a single plant, division, or cost center exceeds $500,000 per year and 50 percent or more of the total cost is to be allocated to cost reimbursement type contracts, the contracting officer should arrange for:

(1) An initial review and an annual review thereafter of the contractor's ADPE system for the purpose of evaluating, under § 18–15.205–48, his existing ADPE capability and the need to continue leasing; and

(2) Submission by the contractor to the contracting officer of any proposed lease of a new system and any proposed major changes to an existing system, for advance determination of the validity of the stated requirement and the reasonableness of leasing and resulting cost.

(A major change is any addition or substitution of ADPE which will have an annual cost in excess of $25,000.) After the initial review and after each annual review, and also after review of any proposed lease of a new system or major change, the ACO should either enter into an advance understanding with the contractor (if appropriate) pursuant to § 18–15.107, to provide a basis for concurrence in the proposed lease, or in the alternative notify the contractor of the Government's nonconcurrence and of consequent cost disallowance contemplated under § 18–15.205–48.

(c) In implementing the above, technical ADP assistance will be provided as necessary to the contracting officer by the NASA installation ADP staff.

34. Subpart 18–4.50 is revised as follows:

## Subpart 18–4.50—Utility Services

Sec.

18–4.5000 Scope of subpart.
18–4.5001 Definitions.
18–4.5002 Policy.
18–4.5003 Determination of requirements.
18–4.5004 Headquarters participation in negotiations.
18–4.5004–1 Communications services.
18–4.5004–2 Utilities except communications.
18–4.5005 Contract requirements.
18–4.5005–1 Procurement without contract.
18–4.5005–2 Memorandum of understanding.
18–4.5005–3 GSA area-wide public utility contracts.
18–4.5005–4 DoD area-wide communications contracts.
18–4.5005–5 Negotiated utility service contracts.
18–4.5006 Contracts requiring headquarters approval.
18–4.5007 Headquarters requirement for copies of contracts.
18–4.5008 Changes in rates.
18–4.5009 Sales of utility services.
18–4.5009–1 Eligible purchasers.
18–4.5009–2 Prerequisites.
18–4.5009–3 Headquarters participation in negotiations.

### § 18–4.5000 Scope of subpart.

This subpart prescribes policy and procedures for the procurement and sale of utility services.

### § 18–4.5001 Definitions.

As used in this subpart, the following terms have the meaning stated:

(a) "Utility services" includes electric, gas, water, steam, sewage, and communication services.

(b) "Communications services" include-without limitation the transmission, emission, or reception of signals, signs, writings, images, soundings, or intelligence of any nature by wire, radio, optical, or any electrical or electromagnetic means.

(c) "Telecommunications facilities" includes equipment (modems, terminal and switching facilities) used for such modes of transmission as telephone, telegraph, teletypewriter, data, facsimile, video, audio, and such corollary items as card transceivers, magnetic tape terminals, TV cameras, monitors, distribution systems and communication security facilities.

(d) "Communications security facility" is any facility which is used for the operation, maintenance, and/or storage of any cryptographic document, device or equipment associated with transmission security, cryptosecurity or physical security measures.

(e) "Operational communications" are those lines and facilities carrying mission related information for the conduct of NASA technical missions, programs, and projects. They interconnect such facilities as NASA's foreign and domestic tracking, telemetry, and command control sites; launch areas; test sites; and, mission control centers.

(f) "Administrative communications" are those lines and facilities carrying nonoperational information for the conduct of day-to-day business. They interconnect NASA Headquarters, field installations, and other activities. Also included in this definition are local facilities and field installation communications systems, but not self-contained services such as local fire alarms, warning systems, paging devices, etc.

(g) "General purpose communications" are administrative or operational communications used to meet ordinary requirements for which rates have not been established.

(h) "Special purpose communications" are administrative or operational communications used to meet unique, one of a kind, or project oriented requirements for which rates have not been established.

(i) "Long lines" refers to communication lines extending beyond the boundaries of the installation as opposed to "Local Support" which refers to communications within the boundaries of the installation.

(j) "Standard services" are those services where communications charges are governed by tariff or are otherwise controlled or regulated by a Government agency (either domestic or foreign) or where a previously executed contract is in effect with NASA or another Government agency which defines the services to be provided and the rates to be charged.

(k) "Nonstandard services" are those services where communications charges are not governed by tariffs or are not otherwise controlled or regulated by a Government agency (either domestic or

foreign) or where there is not a previously executed contract in effect with NASA or another Government agency which defines the services to be provided and rates to be charged. Nonstandard services also include those services provided by a company for a single customer and are usually one-of-a-kind.

**§ 18–4.5002 Policy.**

(a) It is NASA policy to obtain utility services from existing sources when such sources are adequate and economical arrangements can be made for their use. In each case and after fully investigating all sources, the required services shall be obtained at the lowest possible cost to the Government. To the extent consistent with this policy, use should be made of:

(1) General Services Administration area-wide utility contracts (see Subpart 18–5.8).

(2) Department of Defense area-wide communication contracts (see Subpart 18–5.8).

(3) Utility services available from other Government agencies, on a cross-servicing basis.

(b) Administrative long-line telephone communications will be obtained by NASA through General Services Administration's Federal Telecommunications System (FTS) (see paragraph (d)(2) of this section).

(c) Generally, leased communication services will be procured from a franchised communication common carrier whenever possible. However, in those areas where nonregulated industry offers the same communications services or equipment as offered by the regulated common carriers, full consideration must be given to competitive procurement.

(d) NASA's policy for providing certain communications services to contractors is as follows:

(1) NASA may provide administrative and operational telephone communications services to industrial and scientific organizations conducting research and development, fabrication of equipment, or operation and maintenance of facilities for NASA.

(2) Where the requirement is for administrative long-line telephone service, the service will be provided through the General Services Administration's Federal Telecommunications System, and may be furnished at no cost to the above mentioned contractors where the circuit terminates on a NASA installation and is determined to be in the best interest of the Government. The Office of Tracking and Data Acquisition (Code TN) will make the implementation arrangements for FTS with the General Services Administration.

(3) When long-line communications services, other than administrative long-line telephone communications services, are furnished at no cost, the contractor will use the services for the conduct of NASA business between:

(i) Locations of the same contractor;

(ii) The contractor and other NASA contractors; and

(iii) The contractor and NASA or other Government agencies.

(4) Local support services to be used solely for the conduct of business may be provided at no cost when it is determined to be in the best interest of the Government. The Office of Tracking and Data Acquisition will also coordinate the implementation for local service as applicable under NASA Management Instruction 2520.1.

(5) Communications services may be provided to contractors in the conduct of NASA business at a minimum total cost consistent with requirements for capacity, effectiveness, efficiency, reliability, and security. The decision to provide communications services to contractors will be made in accordance with the policies established by the NASA installations.

(e) The provisions of paragraphs (a) through (d) of this section do not cover the procurement of communications security facilities. Such facilities, other than crypto equipment will be procured under the supervision of the Director, Security Division (Code BZ). Crypto equipment will be obtained from and through the NASA Crypto Custodian (Code DHA). Reference manual NPC C106 (classified) and NASA Management Instructions 1136.10 and 1136.4A.

**§ 18–4.5003 Determination of requirements.**

Installation requirements for utility services shall be determined by technically qualified personnel. They will furnish the contracting officer with a full description of the load data pertaining thereto as is necessary for the contracting officer to procure the required services. Prior to soliciting the technical assistance of other Government agencies or any private consultant(s), the cognizant field installation technical personnel will contact NASA Headquarters directly; Code TN for communications problems and Code BX for other utilities.

**§ 18–4.5004 Headquarters participation in negotiations.**

**§ 18–4.5004–1 Communications services.**

(a) Except as provided in paragraphs (b), (e), and (f) of this section, the contracting officer shall submit the following information on a proposed procurement to the Office of Tracking and Data Acquisition (Code TN), prior to initiating negotiation procedures:

(1) Lease versus purchase considerations. The guidelines as prescribed by the Office of Tracking and Data Acquisition will apply to all lease versus purchase considerations;

(2) In the case of leased communications services from regulated common carriers, information relative to a common carriers submission of a special construction proposal; the application of the special assembly feature of a tariff; the application of estimated rates (pending tariff filing); and, action taken to cancel or terminate services subject to a termination liability; and

(3) In the case of communications services, information relative to the installation consideration that a separately negotiated contract is more advantageous to the Government than the General Services Administration (GSA) or Department of Defense (DoD) area-wide communication contracts along with a request for a waiver of the requirement to use either the GSA or DoD area-wide communications contract. In determining whether a GSA or DoD area-wide communications contract is adequate to meet the requirements of the using installation, consideration should be given to—

(i) The area-wide contract rates viewed in light of the magnitude of the services required,

(ii) Any unusual characteristics of the service required,

(iii) Any special equipment of facility requirements, and

(iv) Any special technical contracts.

(b) NASA installations are authorized to execute call orders under DoD or GSA area-wide contracts for general purpose or special purpose communications provided:

(1) Charges for communications services do not exceed $150,000 for either nonrecurring charges or termination liability costs;

(2) The annual recurring charge does not exceed $500,000; and

(3) The requirement for such services has previously been approved by the Associate Administrator for Tracking and Data Acquisition.

(c) Based upon a review of the information submitted in accordance with paragraph (a) of this section, the Office of Tracking and Data Acquisition will promptly notify the contracting officer of the desirability of NASA Headquarters participation in the negotiation proceedings in an advisory capacity.

(d) Each NASA installation is responsible for providing the Office of Tracking and Data Acquisition its administrative telecommunications requirements in accordance with NASA Management Instruction 2520.1.

(e) All NASA installations requiring general purpose communications services contracts will submit a written request for the services to the Office of Tracking and Data Acquisition (Code TN) where:

(1) An area-wide contract is not available;

(2) An area-wide contract exists but service requirements involve recurring charges in excess of $500,000 annually, or $150,000 for nonrecurring or termination liability costs; or

(3) Rates have not been established by a Federal, State, or foreign regulatory body.

Where requirements are not within the above limitations, NASA installations are authorized to enter into general purpose contracts. For administrative communications services, the Office of Tracking and Data Acquisition will coordinate with the General Services Administration and two copies of such contracts will be furnished. For operational communications services, a single copy of the contract will be furnished.

(f) All NASA installations requiring special purpose communications services contracts will submit a written request

for the services to the Office of Tracking and Data Acquisition (Code TN) where:

(1) An area-wide contract is not available;

(2) An area-wide contract exists but requirements are for non-standard or special services involving recurring charges in excess of $500,000 annually, or nonrecurring or termination liability charges in excess of $150,000;

(3) It involves new rate centers; or

(4) It involves the establishment of new tariffs.

Where requirements are not within the above limitations, NASA installations are authorized to enter into special purpose contracts. For administrative communications services, the Office of Tracking and Data Acquisition will coordinate with the General Services Administration and two copies of such contracts will be furnished. For operational communications only one copy will be furnished.

**§ 18–4.5004–2 Utilities except communications.**

(a) Except as provided in paragraph (c) of this section, the contracting officer shall submit the following information on a proposed procurement to the Office of Procurement (Code KDR), prior to initiating negotiation procedures:

(1) A full technical description or specification of the type of the services required, including data on estimated maximum demand, average monthly consumption, and duty cycle;

(2) Identification of all available sources of supply and a statement as to the ability of each source to provide the required services;

(3) Location and description of each proposed supplier's facilities at the nearest point of service;

(4) A description of the facilities needed by each proposed supplier and by the Government to obtain the required services from each source of supply;

(5) Copies of all applicable rate schedules, published or unpublished, and any special rate schedules accorded by contract to users with similar requirements;

(6) Date initial service is required;

(7) Known or estimated time schedule for growth to ultimate requirements;

(8) An estimate of the annual cost of the services to be procured;

(9) Lease versus purchase considerations;

(10) Data concerning proposed facilities and related charges or costs:

(i) Refundable or nonrefundable connection charge, termination liability, or other facilities charge, if any, together with a description of the proposed supplier facilities and estimated construction costs entering into a determination of the proposed facilities charge;

(ii) A statement by the supplier that such proposed facilities charge is not in excess of the charge that other customers would be required to pay for like facilities under similar circumstances; and

(iii) The description of the proposed Government-owned facilities and estimated construction costs, if any, needed to procure the required services; and

(11) Identification of any unusual factors affecting the procurement.

(b) Based upon a review of the information submitted in accordance with paragraph (a) of this section, the Office of Procurement (Code KDR) will determine whether NASA Headquarters participation in the negotiation proceedings in an advisory capacity to the contracting officer is considered desirable. The contracting officer will be informed promptly of the decision of the Office of Procurement (Code KDR).

(c) The requirements of paragraph (a) of this section are not applicable when:

(1) The estimated annual cost of the services to be procured is $50,000 or less; or

(2) The proposed connection charge, termination liability, or any other facilities charge to be paid (whether or not refundable) is estimated to be $5,000 or less.

**§ 18–4.5005 Contract requirements.**

**§ 18–4.5005–1 Procurement without contract.**

(a) Electric, gas, water, steam, sewage, and telecommunications services may be procured without a written contract when all the following conditions apply:

(1) The services are to be furnished at rates, terms, and conditions based on an established rate schedule approved by a Federal, State, or other public regulatory body;

(2) The estimated annual cost of the services to be procured is $2,500 or less;

(3) Neither a connection, termination, installation, or similar charge, nor a deposit, other than a meter deposit, required of all customers, is involved;

(4) The utility supplier does not require the execution of a contract or application form; and

(5) It is not deemed advantageous to the Government to negotiate and execute a contract.

**§ 18–4.5005–2 Memorandum of understanding.**

A memorandum of understanding, specifying the services to be provided and the conditions under which they will be supplied, shall be used when procuring utility services from another Government agency by cross-servicing.

**§ 18–4.5005–3 GSA area-wide public utility contracts.**

Policies and procedures governing the procurement of utility services by use of General Services Administration area-wide public utility contracts are set forth in Subpart 18–5.8.

**§ 18–4.5005–4 DoD area-wide communications contracts.**

Policies and procedures governing the procurement of communications services by use of the DoD area-wide communications contracts are set forth in Subpart 18–5.8.

**§ 18–4.5005–5 Negotiated utility services contracts.**

When the conditions set forth in §§ 18–4.5005–1 through 18–4.5005–4 are not applicable to a proposed procurement of utility services, a separate contract may be negotiated using the contract clauses set forth in Subpart 18–7.50 and the contract forms prescribed in Subpart 18–16.5, except in that the contract forms are not applicable to contracts for communication services.

**§ 18–4.5006 Contracts requiring headquarters approval.**

Contracts and supplemental agreements for utility services shall be submitted to the Office of Procurement (Code KDR) for approval in accordance with § 18–50.105(b)(1).

**§ 18–4.5007 Headquarters requirement for copies of contracts.**

Except for communication services, the contracting officer shall forward, promptly after execution, one copy of each contract, service authorization form, memorandum of understanding, or any modification thereto, to the Office of Procurement (Code KDR) and to the Office of Facilities (Code BX). Documents relating to utility services exempt under the provisions of § 18–4.5004–2(c) need not be furnished.

**§ 18–4.5008 Changes in rates.**

(a) Except for communication services when the contractor furnishes written notice to the contracting officer of a filing of an application for rate changes, as provided for in the clause entitled "Public Regulation and Change of Rates" (§ 18–7.5001–11), or whenever the contractor requests that rate changes be negotiated, as provided for in the clause entitled "Change of Rates," (§ 18–7.5003–2), the contracting officer will notify the Office of Procurement (Code KDR) and the Office of Facilities (Code BX). If the rate change affects communications services, he will notify the Office of Tracking and Data Acquisition (Code TN). The notification shall include sufficient information to permit a determination of the monetary effect of the proposed changes and a recommendation of action to be taken under paragraphs (a)(1) or (a)(2) of this section, and the basis therefor.

(1) When a notice is received of a filing of an application for rate changes before the local regulatory body, the contracting officer will make a recommendation as to whether or not the Government should intervene in the hearing on the application. If it is recommended that the Government intervene in the hearing, the recommendation shall be accompanied by a statement setting forth the basis for such intervention and the extent to which the installation can support the intervention through the presentation of testimony, preparation of exhibits, and the furnishing of legal counsel.

(2) When a notice is received that the contractor requests that rate changes be negotiated, the contracting officer will make a recommendation as to the position to be taken by the Government with respect to the rate changes and the extent to which installation personnel are available to support this position.

(b) The Office of Procurement, with the technical assistance of the Office of Facilities for utilities other than communications, will furnish the contracting officer a recommendation concerning the proposed rate changes and the extent to which NASA Headquarters will participate in the intervention before the local regulatory body or in negotiations with the contractor. For proposed communication rate changes, the Office of Tracking and Data Acquisition will furnish the necessary guidance to the contracting officer. Prior to recommending any action concerning the proposed rate changes, the Office of Procurement will, as necessary, coordinate with other staff offices or divisions, or other Government agencies. The contracting officer shall await the recommendations of the Office of Procurement or the Office of Tracking and Data Acquisition for at least 15 days prior to taking any action concerning the proposed rate changes.

**§ 18–4.5009 Sales of utility services.**

Electricity, gas, water, sewage, disposal, and steam may be sold under the conditions specified in the following paragraphs.

**§ 18–4.5009–1 Eligible purchasers.**

The eligibility to buy utility services from a NASA installation is determined as follows:

(a) Any Federal agency, mixed ownership (Government) corporation (as defined in the Government Corporation Control Act, 31 U.S.C. 856), or any bureau or office thereof, located at or in the immediate vicinity of a NASA installation is an eligible purchaser.

(b) The Office of Procurement (Code KDR) will determine the eligibility of all other prospective purchasers. Requests for furnishing utility services to other purchasers, together with complete justification, shall be forwarded to the Office of Procurement (Code KDR) for decision.

**§ 18–4.5009–2 Prerequisites.**

All of the following conditions must be met before an installation is authorized to enter into a specific agreement for the sale of utility services to an eligible purchaser:

(a) The sale will not disrupt present or contemplated service to the installations;

(b) All modifications to existing facilities and installations of additional facilities required to provide service to the purchaser will be made at the purchaser's expense;

(c) The rate charged to the purchaser will cover at least the increased cost to the installation of supplying the service;

(d) The sale of utility services is not prohibited by the contract under which the installation purchases the services; and

(e) The sale of utility services is confined to sales for consumption, not for resale.

**§ 18–4.5009–3 Headquarters participation in negotiations.**

(a) The contracting officer will notify the Office of Procurement (Code KDR) whenever it is desired to sell utility services.

(b) The Office of Procurement (Code KDR) will provide the necessary guidance to consummate the sale.

(c) Each proposed agreement shall be submitted to the Office of Procurement (Code KDR) for approval.

35. Section 18–5.101–1 is revised as follows:

**§ 18–5.101–1 Federal supply schedule contracts.**

The Federal Supply Service, General Services Administration, establishes Federal Supply Schedule Contracts for common use classes of supplies and services available directly from contractors at stated prices for a given period of time subject to stated minimum and maximum order limitations. The Index of National and Regional Federal Supply Schedules (referred to herein as "the Index"), contains a listing of current Schedules and information pertinent thereto. Copies of the Index and Schedules are available to procurement offices from the General Services Administration regional offices upon request. Requests should be submitted on GSA Form 457. In certain cases, individual Federal Supply Schedules will contain further qualifications to the coverage set forth in the Index. In the event of any conflict between the provisions of the Index and those of any Schedule those of the Schedule shall govern.

36. Section 18–5.101–3 is added:

**§ 18–5.101–3 Labor surplus area and small business considerations.**

In furtherance of NASA's policy of fostering labor surplus area and small business opportunities to the maximum extent possible; where two or more items at the same delivered price will meet the requiring activity's needs equally well, selection should be made when ordering against Federal Supply Schedule Contracts, on the basis of preference for the item(s) of a labor surplus area concern or a small business concern. In making the selection on this basis, the order or priority shall be as follows:

(a) Certified-eligible concerns which are also small business concerns;

(b) Other certified-eligible concerns;

(c) Persistent labor surplus area concerns which are also small business concerns;

(d) Other persistent labor surplus area concerns;

(e) Substantial labor surplus area concerns which are also small business concerns;

(f) Other substantial labor surplus area concerns; and

(g) Small business concerns which are not labor surplus area concerns.

37. Section 18–5.704 is revised as follows:

**§ 18–5.704 Acquisition of mercury.**

(a) NASA is prohibited from purchasing mercury in quantities of 76 pounds or more from commercial sources without prior clearance from the General Services Administration.

(b) Mercury, minimum 99.9 percent pure (not triple distilled), in 76-pound flasks, is available for transfer from General Services Administration stocks at fair market value.

(1) Requests for mercury by NASA field installations for their use or for use by their cost-reimbursement type contractors shall be made to the Project Manager, Mineral and Ores, Property Management and Disposal Services, General Services Administration, Washington, D.C. 20405. The Project manager will furnish the current fair market value to NASA. The unit of issue is a 76-pound flask.

(2) Requests for clearance to purchase quantities of 76 pounds or more from sources other than the General Services Administration shall be submitted to the office referred to in paragraph (b)(1) of this section and must be accompanied by a statement of reasons that make the available excess mercury unsuitable for use by the requesting field installation.

38. In section 18–5.801, paragraphs (b), (c), and (d) are revised as follows:

(b) Where an installation considers that a DoD area-wide communications contract is more advantageous to the Government than the GSA area-wide public utility contract, a request for a waiver of the requirement to use the GSA area-wide public utility contract will be submitted to the Office of Tracking and Data Acquisition (Code TN). The request will explain why the use of the DoD area-wide contract is considered to be more advantageous to the Government than the GSA area-wide contract.

(c) Where an installation considers that a separately negotiated contract is more advantageous to the Government than the GSA area-wide public utility contract, for a utility service other than communications, a request will be submitted to the Office of Procurement (Code KDR), for a waiver of the requirement to use the GSA area-wide public utility contract. The request shall explain why the separately negotiated contract is considered to be more advantageous to the Government than the area-wide contract.

(d) Where an installation considers that a separately negotiated contract for communications services is more advantageous to the Government than the GSA area-wide public utility contract or the DoD area-wide communications contract, a request for a waiver of the requirement to use the GSA contract or the DoD contract (in that order) will be submitted to the Office of Tracking and Data Acquisition (Code TN). The request shall explain why the separately negotiated contract is considered to be more advantageous to the Government than either the GSA or DoD area-wide contracts.

39. Section 18–5.902 is revised as follows:

**§ 18–5.902 Limitation.**

Contractors shall not be authorized to utilize General Services Administration supply sources—

(a) In connection with the performance of fixed-price type contracts, even though such contracts provide for price

adjustment, escalation, redetermination, or cost-reduction incentive; or

(b) For the leasing of equipment to be utilized in the performance of cost-reimbursement type contracts, other than automatic data processing equipment for use only in performance of cost-reimbursement contracts where the entire rental cost will be charged to those contracts. Contractors operating under the above types of contracts may, however, if they so desire, utilize GSA supply source listings for price information purposes. Such listings (GSA catalogs and copies of GSA Federal Supply Contracts) as may be readily available in procurement offices will be made available for review by contractors for this purpose.

40. Section 18–5.1002–1(b) is revised as follows:

(b) To obtain materials from the Air Force Missile Procurement Fund, the procedures of § 18–5.701–1 will be followed.

41. Section 18–5.1002–1(d) is revised as follows:

(d) *Instructions for completing NASA Form 523.* The NASA-Defense Purchase Request is to be used by NASA to request the procurement of supplies or services by any activity of the Department of Defense. These instructions pertain to preparation and use of the form by NASA activities.

(1) *Block 5:* The original and five copies of the purchase request, each complete with all attachments, shall be forwarded to the DoD activity shown in this block.

(2) *Block 7b:* Describe the required services or supplies accurately and in sufficient detail to enable the purchasing activity to understand the requirement. When applicable, the particular NASA program and/or project to which the request or amendment pertains shall be indicated. Attachments may be used as required. For items of hardware stocked by the DoD, the item identification of the Army, Navy, or Air Force and the Federal stock number shall be entered if known. When applicable, give the specification number, manufacturer's part number, and other descriptive data, such as the desired grade, style, type, color, size, rating, etc.

(3) *Block 8:* Attachments should be prepared in sufficient quantity so that each copy of a request is complete with a copy of every attachment listed therein.

(i) Shipping instructions. When names and addresses of consignees of all supplies to be delivered are not contained herein, or otherwise furnished, request for the issuance of shipping instructions shall be made to the appropriate NASA originating office not less than 30 days prior to date on which any of the articles is to be ready for shipment. Three copies of shipping documents shall be forwarded to the NASA originating office and each consignee.

(ii) Disposition of property. Include instructions for the disposition of any nonexpendable or other residual property purchased with NASA funds.

(iii) Priority rating. Include applicable priority rating and claimant program identification (example: Priority Rating DO–A2). In procurement for DX programs, identification shall also include the unclassified program name.

(4) *Block 10:* If this request or any part of the supplies or services covered by this request is subject to section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457), a copy of the New Technology or Property Rights in Inventions clause together with appropriate instructions for the inclusion of the clause in contracts shall be furnished the purchasing activity in accordance with § 18–9.101–3(h) or § 18–9.101–5.

(5) *Block 12:* Cite appropriation symbol, cost coding, or any other accounting data to be included in the ensuing documentation.

(6) *Security classification:* If the purchase request or any part thereof is classified, DD Form 254, "Security Requirements Check List," or other written notice of security requirements shall be prepared.

(7) *Changes:* All changes that affect the contents of the purchase request must be processed as a purchase request amendment. This includes such changes as a decrease in quantity, increase or decrease in funds, change in the specifications or in the part, stock or drawing numbers, etc. Such changes may be made initially by expeditious means such as telegraph or telephone communication, but each change shall be confirmed by a purchase request amendment. The original and 5 copies of purchase request amendments shall be forwarded to the DoD recipient of the original purchase request. In preparing an amendment, Blocks 1 through 6 must always be completed. Only those remaining blocks of the form that are applicable to the change or revision of the data in the purchase request or prior amendments thereto need be filled in. The unused blocks, however, should have "N/C" inserted to reflect no change.

42. Subpart 18–6.8 is revised as follows:

## Subpart 18–6.8—Balance of Payments Program—Offshore Procurement

Sec.

18–6.801 Use of excess foreign currencies.
18–6.801–1 Obligations incurred in excess and near-excess currency countries.
18–6.801–2 Designation and announcement of excess currency countries.

### § 18–6.801 Use of excess foreign currencies.

It is the policy of NASA to utilize all possible actions to minimize payments and maximize receipts entering into the balance of payments. In carrying out this policy, procurement offices should, to the maximum extent practicable, ensure that contracts and other obligations incurred in excess and near-excess currency countries are made payable in foreign currencies rather than in U.S. dollars. The expenditure, in these countries, of foreign currencies rather than U.S. dollars provides a saving in the budget and improves the balance of payments situation.

### § 18–6.801–1 Obligations incurred in excess and near-excess currency countries.

NASA procurement offices should establish procedures to ensure that contracts and other obligations incurred in excess and near-excess currency countries are made payable in foreign currencies rather than in U.S. dollars notwithstanding the appropriation or fund that will be used for payment. This should include contracts with American contractors, to the extent that the contractor may be expected to require such currencies for necessary expenses in the country involved.

### § 18–6.801–2 Designation and announcement of excess currency countries.

Excess and near-excess currency countries are designated by the Treasury Department. The list of countries which the Treasury Department has determined are excess or near-excess to the needs of the United States are announced in Bureau of the Budget Bulletins. The current Bulletin is included as an attachment to NASA Management Instruction 9393.2.

43. Subpart 18–6.10 is added:

## Subpart 18–6.10—Exemption of Certain Contracts With Foreign Contractors From the Requirement for an Examination of Records Clause

Sec.

18–6.1000 Scope of subpart.
18–6.1001 Statutory requirements.
18–6.1002 Policy.
18–6.1003 Requests for determinations and findings.
18–6.1004 Determinations of findings.

### § 18–6.1000 Scope of subpart.

This subpart sets forth policies and procedures for exempting the requirement for the Examination of Records clause in contracts with foreign contractors and foreign subcontractors.

### § 18–6.1001 Statutory requirements.

(a) In accordance with 10 U.S.C. 2313(c), the Examination of Records clause may be excluded from negotiated contracts and subcontracts with foreign contractors and foreign subcontractors where:

(1) The Administrator determines, with the concurrence of the Comptroller General or his designee, that inclusion of the clause would not be in the public interest; or

(2) Where

(i) The contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination, and

(ii) The Administrator determines, after taking into account the price and availability of the property or services from U.S. sources, that the public interest would be best served by exclusion of the clause.

(b) A determination of the Administrator under paragraph (a)(2) of this section does not require the concurrence of the Comptroller General or his designee. However, where a determination of the Administrator under paragraph (a)(2) of this section is the basis for exclusion of the Examination of Records clause, the statute requires that a written report be furnished to the Congress. This report, which shall explain the reasons for the determination, shall be prepared in triplicate, signed by the Director of the installation concerned, and forwarded to the Director of Procurement (Code KDP) for processing to the Administrator.

**§ 18–6.1002 Policy.**

The Examination of Records clause shall be included wherever possible. Exclusion of the clause should be allowed only after the contracting officer has made all reasonable efforts to include the clause and has considered such factors as alternate sources of supply, additional cost, and time of delivery. "Foreign Contractor" for purposes of this subpart is defined as "one that is organized or existing under the laws of a country other than the United States, its territories or possessions."

**§ 18–6.1003 Requests for determinations and findings.**

Requests for determinations and findings for exclusion ordinarily will be initiated by the contracting officer. The request shall consist of a letter submitted through normal procurement channels, addressed to the Administrator setting forth all the facts necessary to arrive at an appropriate determination and findings.

**§ 18–6.1004 Determination and findings.**

The determination and findings made by the Administrator to authorize exclusion of the Examination of Records clause from a contract with a foreign contractor or foreign subcontractor under 10 U.S.C. 2313(c) shall:

(a) Identify the contract and its purpose, and state, that it is a contract or subcontract with a foreign contractor or foreign subcontractor, or that the contractor or subcontractor is a foreign government or agency thereof;

(b) Describe the efforts that have been made to include the clause in the contract or subcontract;

(c) State the reasons for the contractor's or subcontractor's refusal to include the clause;

(d) Describe the price and availability of the property or services from United States and other sources; and

(e) Determine that it is in the public interest to exclude the clause pursuant to the provisions of 10 U.S.C. 2313(c).

44. Section 18–7.104–51 is revised as follows:

**§ 18–7.104–51 Approval of contract.**

Insert the following clause in the contract when approval thereof by the Director of Procurement is required.

APPROVAL OF CONTRACT (JULY 1968)

This contract modification shall be subject to the written approval of the Director of Procurement, NASA Headquarters, or his duly authorized representative, and shall not be binding until so approved.

45. Section 18–7.104–56 is revised as follows:

**§ 18–7.104–56 Order of precedence.**

The following clause, which may be modified to change the order or to add to delete items to meet the needs of a particular procurement, shall be included in all contracts which are not preceded by a written solicitation (see §§ 18–2.201(a)(22) and 18–3.501(b)(62)):

ORDER OF PRECEDENCE (NOVEMBER 1965)

In the event of an inconsistency in this contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) The Schedule; (b) General Provisions; (c) the other provisions of the contract whether incorporated by reference or otherwise; and (d) the Specifications.

46. Section 18–7.303–7 is revised 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.

47. Section 18–7.702–10(b) is revised as follows:

(b) In paragraph (f)(ii)(B) of the foregoing clause, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor: *Provided,* That a corresponding increase is made in the period for retention of records required in paragraph (a)(4) of the Records clause prescribed by § 18–7.702–13.

48. Section 18–7.702–12 is revised as follows:

**§ 18–7.702–12 Use and charges.**

USE AND CHARGES (JULY 1968)

(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 the Attachment.

(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 enhance its original capability, the acquisition cost for that item shall include the increased value, as determined by the Contracting Officer, that such rebuilding and modernization represent. The determination made by the Contracting officer under this subparagraph shall be final.

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

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

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

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

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

(5) If the Contractor's failure to submit the statement within the prescribed (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 performanec 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 latter event, the Contractor shall be liable only for the rental that would otherwise be due under this clause. The acceptance of any rental by the Government hereunder shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor growing out of the Contractor's unauthorized use of the Facilities or any other failure to perform this contract according to its terms.

ATTACHMENT

RENTAL RATES

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

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

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

| *Federal supply classification code numbers* | *Description* |
|---|---|
| 3411 through 3419 | Machine Tools. |
| 3441 through 3449 | Secondary Metal-forming Machinery. |

The following rates shall apply:

| *Age of equipment* | *Monthly Rental Rate* |
|---|---|
| 0 to 2 years | 1¾% |
| Over 2 to 6 years | 1½% |
| Over 6 to 10 years | 1% |
| Over 10 years | ¾% |

The age of each item of the Facilities shall be based on the year in which it was manufactured, with an annual birthday on January 1 of each year thereafter. On January 1 following the date of manufacture, the item shall be considered 1 year old; and on each succeeding January 1st, it shall become 1 year older. For example, if a 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.

49. Section 18–7.702–26 is revised as follows:

### § 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 operations;

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

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

(d) If the Contracting Officer fails to give the written notice required by paragraph (c) above within the prescribed 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 severable 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.

50. Section 18–7.702–56 is revised as follows:

### § 18–7.702–56 Property listings.

PROPERTY LISTINGS (JULY 1968)

(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. 3441 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) Electronic test equipment and automotive equipment—total acquisition cost;

(v) Personal property and equipment not covered in (i), (ii), (iii), and (iv) above—total acquisition cost.

Total acquisition cost as referred to 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.

51. Section 18–7.702–59 is revised as follows:

**§ 18–7.702–59 Report on NASA subcontracts.**

In accordance with the requirement of § 18–16.902, insert the appropriate clause set forth therein.

52. Section 18–8.205–50 is revised as follows:

**§ 18–8.205–50 Conduct of termination settlement proceedings.**

Procurement offices shall utilize the services of the Department of Defense and other Government agencies whenever possible in the conduct of termination settlement proceedings. Delegation of termination functions will be made in accordance with the provisions of Subpart 18–51.3.

53. Section 18–8.505 is revised as follows:

**§ 18–8.505 Screening of serviceable and usable property.**

NASA contracting officers shall submit all termination inventory schedules to the cognizant NASA property officer for screening and utilization in accordance with NASA Management Instruction 4310.1. Automatic data processing equipment, including that on lease in which the Government is entitled to rental benefits, shall be reported for screening in accordance with § 18–8.505–1.

**§ 18–8.505–1 Procedures for automatic data processing equipment (ADPE).**

(a) Those items of ADPE as defined in § 18–1.235 (regardless of FSC) which are Government-owned or which are leased by the contractor under terms which provide to the Government an option to purchase or other residual interests (including the right to use until expiration of the lease) will be reported to the Property Management Office of the Installation on Standard Form 120, "Report of Excess Personal Property". Normally the time required for acquisition studies required to select replacement equipment makes it possible to project the anticipated release date 180 days before the equipment is available for transfer. ADPE should be reported as soon as it is possible to project the release date. The following minimum reporting schedule shall, however, apply.

(1) Government-owned ADPE will be reported upon receipt of notice of complete termination or when it is determined that the property will no longer be needed on the contract. The release date assigned will be the last day of the plant clearance period or 180 days after the property becomes inactive. In the event of changes in release date, revised reports will be submitted.

(2) Leased ADPE, the total cost of which is charged to one or more cost-reimbursement type contracts, will be reported when it is determined that the property (or a major portion thereof) will no longer be needed on the contracts. In order to preclude unnecessary lease cost, the release date established shall not extend ADPE on rental beyond the date it can be released to the lessor. Prompt reporting of leased ADPE is necessary in order to afford an opportunity to reutilize the property and protect the Government's equity.

(b) With respect to leased equipment, the total cost of which is charged to one or more cost-reimbursement type contracts, a quotation shall be requested from the lessor projecting the reduced price at which the equipment may be purchased based on accumulated rental credits through the anticipated release date. A copy of this quotation should be attached to the Standard Form 120, but submission of the Standard Form 120 should not be delayed pending receipt of this information. If it is not available at that time, it should be provided when received.

(c) The following information will be reported on Standard Form 120:

(1) A complete list of each equipment item, identified by manufacturer's series and model number, and modifications and attachments applied to each component, including identification number if Government-owned; indicate type of maintenance contract, contractor, and monthly cost;

(2) A separate attachment, showing the time in service for each component, average utilization (hours per month) and average downtime per month for the 12-month period immediately preceding the report (if appropriate, a narrative description of any history of repeated equipment failure shall be included);

(3) A list of compilers and other software packages (such as executive routines), engineering drawings and maintenance manuals available with the equipment; and

(4) In the instances of a complete equipment configuration, information regarding power and air conditioning requirements.

(d) The property management office of the installation shall control ADPE reported excess. Shipments shall be made upon receipt of requests approved by the property management office.

54. Section 18–8.506 is revised as follows:

**§ 18–8.506 Government-furnished property.**

Government-furnished property included in termination inventory, return of which has not been required by the Government, may be disposed of in the same manner as other termination inventory after screening in accordance with the requirements of NASA Management Instruction 4310.1. The contracting officer is required to approve all such dispositions and may specify methods for preparing and routing inventory schedules covering such property.

55. Section 18–9.101–3(h) is revised as follows:

(h) Where NASA requests another Governmental agency to perform work of a type defined in § 18–9.101–2 on behalf of NASA, a copy of the "New Technology" clause set forth in § 18–9.101–4 will be furnished to the agency, and that agency will be requested to include the clause in any contract which it awards for the performance of research, experimental, design, engineering or developmental work for the purpose of fulfilling the NASA request. When it is known that the type of contractor and the work to be performed meet the requirements of § 18–9.101–5, the "Property Rights in Inventions" clause, instead of the "New Technology" clause, shall be furnished to the agency for inclusion in the contract. When the "New Technology" clause is to be furnished, include the following instructions therewith:

56. Section 18–9.102 is added:

**§ 18–9.102 Procurement of patented items by NASA.**

(a) Upon timely notice by a patent owner, including an exclusive licensee or other person legally entitled to license under the patent, that a proposed NASA procurement, either formally advertised or negotiated, will infringe his privately owned U.S. patent, and upon a determination by patent counsel that the procurement will infringe the patent, NASA will enter into a preprocurement license agreement with the patent owner prior to the procurement using NASA Form 1333 "Patent License Agreement" provided the following conditions are satisfied.

(1) The pertinent claim or claims of the patent have not been held invalid by an unappealed or unappealable judgment or decree of a court of competent jurisdiction or determined to be unenforceable, against the Government by any department or agency in an administrative claim procedure;

(2) The patent owner demonstrates that his patent is respected commercially as evidence by one or more royalty-bearing commercial licenses under the patent, or the patent owner shows that his patent has been held valid by an unappealed or unappealable judgment of a court of competent jurisdiction;

(3) The patent owner offers to license NASA for the proposed procurement at a reasonable rate which in no event should exceed the lowest rate at which he has licensed a private concern; and

(4) The contracting officer, in consultation with NASA patent counsel, determines that entering into the license agreement will not unduly delay the procurement.

(b) If the conditions of paragraph (a) of this section are satisfied and a preprocurement license agreement is entered into, royalties which will be payable to the patent owner under the agreement if a contract is awarded to an unlicensed supplier will be considered by the contracting officer as a factor in determining which bid or proposal is most advantageous to the United States. The preprocurement license agreement will apply only to contracts to be awarded under the proposed procurement, and

under the agreement royalties will be payable to the patent owner only if the patented items are procured from an unlicensed source, and only upon acceptance by NASA of the patented item.

(c) Notice that a proposed NASA procurement will infringe a privately owned patent and an offer by the patent owner to enter into a preprocurement license agreement with NASA will be considered by the contracting officer only if the patent owner:

(1) Gives timely notice to the contracting officer in writing of the alleged infringement, identifying the proposed procurement or those portions thereof which he believes will infringe his patent.

(2) Submits a copy of his patent to the contracting officer together with a brief explanation outlining the claim or claims of his patent which he believes will be infringed by the proposed procurement;

(3) Submits evidence showing that his patent is respected commercially, or that it has been held to be valid by an unappealed or unappealable judgment of a court of competent jurisdiction;

(4) Establishes his interest in the patent and that he has the right to enter into a license agreement with NASA; and

(5) Specifies the terms, including the royalty, upon which he will license NASA for the proposed procurement, which royalty shall not exceed the lowest rate at which he has licensed a private concern.

If the contracting officer determines that entering into a preprocurement license agreement would not unduly delay the procurement, he shall refer the matter to patent counsel who shall determine whether the proposed procurement would infringe the patent and if so shall negotiate the terms of such agreement at a royalty rate which in no event shall exceed the rate specified in paragraph (a)(5) of this section. Negotiations regarding the terms of such an agreement shall be coordinated with the Office of General Counsel, NASA Headquarters, and in the case of formally advertised procurements a mutually acceptable royalty rate must be established prior to bid opening. Preprocurement licenses will be binding upon NASA only upon execution thereof by the General Counsel of NASA.

(d)(1) In order to notify prospective bidders in formally advertised procurements that royalties payable to a patent owner may be a factor in evaluating their bids, the following "Patent Royalties" clause should be inserted in all invitations for bids; except (i) when each contract to be awarded is not likely to exceed $2,500; (ii) when the invitation calls for nonpersonal services.

PATENT ROYALTIES (OCTOBER 1966)

Upon timely notice by a patent owner to the Contracting Officer that this procurement will infringe his privately owned U.S. patent, and upon a determination by NASA patent counsel that this procurement will infringe the patent, NASA may enter into a patent license agreement with the patent owner prior to an award of a contract pursuant to this Invitation for Bids provided the following conditions are satisfied:

(i) The pertinent claim or claims of the patent have not been held in invalid by an unappealed or unappealable judgment or decree of a court of competent jurisdiction or determined to be unenforceable against the Government by any department or agency in an administrative claim procedure;

(ii) The patent owner demonstrates that his patent is respected commercially as evidenced by one or more royalty-bearing commercial licenses under the patent, or the patent owner shows that his patent has been held valid by an unappealed or unappealable judgment of a court of competent jurisdiction;

(iii) The patent owner offers to license NASA for the proposed procurement at a reasonable rate which in no event should exceed the lowest rate at which he has licensed a private concern;

(iv) A mutually acceptable royalty rate is established prior to bid opening; and

(v) The Contracting Officer, in consultation with NASA patent counsel, determines that entering into the license agreement will not unduly delay the procurement.

Under the agreement royalties will be payable to the patent owner if the patented item is procured from an unlicensed source and only upon acceptance by NASA of the patented item. These royalties will be considered by NASA as a factor in the evaluation of bids of unlicensed suppliers in determining the bid which is most advantageous to the United States. Before any royalty payments are considered for evaluation purposes, each bidder will be given an opportunity to show that he is a licensee under the patent determined by NASA patent counsel to be infringed by the procurement. Any bidder who fails to show that he is a licensee under such patent will be regarded as an unlicensed supplier for evaluation purposes.

(2) In order to notify prospective offerors in negotiated procurements that royalties payable to a patent owner may be a factor in evaluating their offers or quotations, the following "Patent Royalties" clause should be inserted in all requests for proposals and requests for quotations; except (i) when each contract to be awarded is not likely to exceed $2,500; (ii) when the request calls for nonpersonal services.

PATENT ROYALTIES (OCTOBER 1966)

Upon timely notice by a patent owner to the contracting officer that this procurement will infringe his privately owned U.S. patent, and upon a determination by NASA patent counsel that this procurement will infringe the patent, NASA may enter into a patent license agreement with the patent owner prior to an award of a contract pursuant to this Request provided the following conditions are satisfied:

(i) The pertinent claim or claims of the patent have not been held invalid by an unappealed or unappealable judgment or decree of a court of competent jurisdiction or determined to be unenforceable against the Government by any department or agency in an administrative claim procedure;

(ii) The patent owner demonstrates that his patent is respected commercially as evidenced by one or more royalty-bearing commercial licenses under the patent, or the patent owner shows that his patent has been held valid by an unappealed or unappealable judgment of a court of competent jurisdiction;

(iii) The patent owner offers to license NASA for the proposed procurement at a reasonable rate which in no event should exceed the lowest rate at which he has licensed a private concern; and

(iv) The contracting officer, in consultation with NASA patent counsel, determines that entering into the license agreement will not unduly delay the procurement.

Under the agreement royalties will be payable to the patent owner only if the patented item is procured from an unlicensed source and only upon acceptance by NASA of the patented item. These royalties will be considered by NASA as a factor in determining the proposal which is most advantageous to the United States. Before any royalty payments are considered for evaluation purposes, each offeror will be given an opportunity to show that he is a licensee under the patent determined by NASA patent counsel to be infringed by the procurement. Any offeror who fails to show that he is a licensee under such patent will be regarded as an unlicensed supplier for evaluation purposes.

(e) If NASA does not enter into a preprocurement license agreement with a patent owner prior to the procurement of patented items, competing bids, proposals or quotations will be evaluated without regard to royalties or compensation which may ultimately be payable to the patent owner. In such event, the patent owner may bring a claim for patent infringement in accordance with § 18–9.106.

57. Subpart 18–12.8 is revised as follows:

## Subpart 18–12.8—Equal Employment Opportunity

Sec.


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|---|---|
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| 18–12.801 | Policy. |
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Sec.
18–12.810 Elimination of segregated facilities.
18–12.811 Advising NASA contracts compliance officer of potential program delays arising out of contracts equal employment opportunity program actions.

### § 18–12.800 Scope of subpart.

This subpart sets forth the policies, procedures and clauses for use in contracts and grants to carry out the rules and regulations of the Secretary of Labor. (Nondiscrimination provisions applicable to Government leases are set forth in § 18–1.350.)

### § 18–12.801 Policy.

Parts II and III of Executive Order 11246, dated September 24, 1965, state that discrimination because of race, creed, color or national origin is contrary to the constitutional principles and policies of the United States, and that it is the plain and positive obligation of the U.S. Government to promote and insure equal opportunity for all qualified persons, without regard to race, creed, color or national origin, employed by, or seeking employment with, Government contractors. To carry out this policy, the Secretary of Labor was made responsible by Part II of Executive Order 11246 to provide regulations, guidelines and instructions to Government agencies. The head of each contracting agency was made primarily responsible for obtaining compliance by any contractor or subcontractor with the provisions of the Executive order and the rules, regulations, and orders of the Secretary of Labor. Although initial emphasis for obtaining compliance should be placed upon the methods of conference conciliation, mediation and persuasion, if such measures do not succeed in obtaining the necessary degree of progress, consideration will be given to invoking the appropriate sanctions as set forth in § 18–12.806–7.

### § 18–12.801–1 Definitions.

For the purpose of this Subpart 18–12.8 each of the following terms has the meaning stated:

(a) "Order" means Executive Order 11246 of September 24, 1965 (30 F.R. 12319).

(b) "Contract" means any Government contract or any Federally assisted construction contract.

(c) "Government contract" means any binding legal agreement or modification thereof between the Government and a contractor for supplies or services, including construction, or for the use of Government property, in which the parties, respectively, do not stand in the relationship of employer and employee.

(d) "Federally assisted construction contract" means any binding legal agreement or modification thereof between an applicant and a contractor for construction work which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to any Federal program involving a grant, loan, insurance or guarantee, or undertaken pursuant to any Federal program involving such grant, loan, insurance or guarantee; or any approved application or modification thereof for a grant, loan, insurance or guarantee under which the applicant itself performs construction work other than through the permanent work force directly employed by an agency of Government.

(e) "Modification" means any written alteration in the terms and conditions of a contract accomplished by bilateral action of the parties to the contract.

(f) "Subcontract" means any agreement made or purchase order executed by a prime contractor where a material part of the supplies or services covered by such agreement or purchase order is being obtained for use in the performance of a contract.

(g) "Prime contractor" means any person holding a contract.

(h) "Subcontractor" means any person holding a subcontract. "First-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor. "Second-tier subcontractor" refers to a subcontractor holding a subcontract with a first-tier subcontractor.

(i) "Agency" means any contracting or any administering agency.

(j) "Contracting agency" means any department (including the Departments of the Army, Navy, and Air Force), agency and establishment in the Executive Branch of the Government, including any wholly owned Government corporation, which enters into contracts.

(k) "Administering agency" means any department (including the Departments of the Army, Navy, and Air Force), agency and establishment in the Executive Branch of the Government, including any wholly owned Government corporation, which administers a program involving Federally assisted construction contracts.

(l) "Applicant" means an applicant for Federal assistance or, as determined by regulation of an administering agency, other program participant, with respect to whom an application for any grant, loan, insurance or guarantee, or change therein, is not finally acted upon prior to July 22, 1963, and it includes such an applicant after becoming a recipient of such Federal assistance.

(m) "Equal opportunity clause" means the contract provisions set forth in § 18–12.802–1 or § 18–12.802–2.

(n) "Rules, regulations and relevant orders" of the Committee as used herein mean rules, regulations and relevant orders issued pursuant to the Orders and in effect at the time the particular contract subject to the Orders was entered into.

(o) "United States" as used herein shall include the Commonwealth of Puerto Rico, the Panama Canal Zone and the possessions of the United States.

(p) "Standard commercial supplies" means an article:

(1) Which in the normal course of business is customarily maintained in stock by the manufacturer or any dealer, distributor, or other commercial dealer for the marketing of such article; or

(2) Which is manufactured and sold by two or more persons for general commercial or industrial use or which is identical in every material respect with an article so manufactured and sold.

(q) "Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services.

(r) "Site of construction" means the physical location of any building, highway or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair and any temporary location or facility established by a contractor or subcontractor specifically to meet the demands of his contract or subcontract.

(s) The term "contracting officer" includes the official signing a grant, or any modification thereof, for the Government.

(t) "Grantee" is the institution, State, agency, industrial firm, individual or organization receiving a grant from the Federal Government.

(u) "Contracts equal employment opportunity program" means the program required by the rules and regulations of the Secretary of Labor involving Government contractors and their subcontractors, as implemented by these regulations for accomplishing the objectives of Executive Order 11246.

### § 18–12.801–2 References to terms.

(a) All references in this Subpart 18–12.8 to the "Clause" shall be deemed to refer to the Equal Opportunity clause set forth in § 18–12.802–1, and shall be deemed to include the "Equal Opportunity in Federally Assisted Construction Contracts" clause set forth in § 18–12.802–2, unless not appropriate to the context.

(b) All references in this Subpart 18–12.8 to contracts and subcontracts, or to contractors and subcontractors, shall be deemed to include grants and grantees respectively, when appropriate to the context.

(c) All references to a NASA installation shall be deemed to include any field establishment of NASA having a procurement office, regardless of whether the establishment is designated as a laboratory, center, office, or by any other name; and shall include at NASA Headquarters, the Headquarters Contracts Division (Code DHC); and all reference to the Director of a NASA installation shall be deemed to include the head of such field establishment, and at NASA Headquarters, the Director, Headquarters Administration Office (Code DH).

### § 18–12.802 Clauses for contracts, grants, or other arrangements.

### § 18–12.802–1 NASA contracts.

Except as otherwise provided in § 18–12.802–3, all NASA contracts, including bilateral modifications thereof, shall include the Equal Opportunity clause set

forth below unless exempt under the provisions of § 18–12.803, or exempted pursuant to § 18–12.804.

EQUAL OPPORTUNITY (NOVEMBER 1967)

(The following clause is applicable unless this contract is exempt under the rules and regulations of the Secretary of Labor issued pursuant to Executive Order 11246 of September 24, 1965.)

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant or employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor created thereby.

(e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with this Equal Opportunity clause or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in the said Executive order or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.[1] The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; *provided*, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

### § 18–12.802–2 Federally assisted construction under grants and arrangements.

Unless exempt under the provisions of § 18–12.803 or exempted pursuant to § 18–12.804 each NASA grant or arrangement other than a contract, and bilateral modifications thereof, involving a federally assisted construction contract shall include the following Equal Opportunity in Federally Assisted Construction Contracts clause:

EQUAL OPPORTUNITY IN FEDERALLY ASSISTED CONSTRUCTION CONTRACTS (NOVEMBER 1967)

(The following clause is applicable unless this contract is exempt under the rules and regulations of the Secretary of Labor issued pursuant to Executive Order 11246 of Sept. 24, 1965.)

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

(1) Applicant means an applicant for Federal assistance or, as determined by regulation of an administering agency, other program participant, with respect to whom an application for any grant, loan, insurance or guarantee, or change therein, is not finally acted upon prior to July 22, 1963, and it includes such an applicant after becoming a recipient of such Federal assistance.

(2) Construction work means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services.

(3) Modification means any written alteration in the terms and conditions of a contract accomplished by bilateral action of the parties to the contract, including supplemental agreements and amendments.

(4) Federally assisted construction contract means any binding legal agreement or modification thereof between an applicant and a contractor for construction work which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to any Federal program involving a grant, loan, insurance or guarantee, or undertaken pursuant to any Federal program involving such grant, loan, insurance or guarantee; or any approved application or modification thereof for a grant, loan, insurance or guarantee under which the applicant itself performs construction work other than through the permanent work force directly employed by an agency of Government.

(5) Administering agency means the Government agency administering this Federally assisted construction contract.

(6) Subcontract means any agreement made or purchase order executed by a prime contractor where a material part of the supplies or services covered by such agreement or purchase order is being obtained for use in the performance of a contract.

(7) Prime contractor means any person holding a contract.

(8) Subcontractor means any person holding a subcontract. First-tier subcontractor refers to a subcontractor holding a subcontract with a prime contractor. Second-tier subcontractor refers to a subcontractor holding a subcontract with a first-tier subcontractor.

(9) Site of construction means the physical location of any building, highway or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition or repair, and any temporary location or facility established by a contractor or subcontractor specifically to meet the demands of his contract or subcontract.

(b) The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, loan, insurance or guarantee, or undertaken pursuant to any Federal program involving such grant, loan, insurance or guarantee, the Equal Opportunity clause set forth in paragraph (c) below.

(c) The Equal Opportunity clause is as follows:

EQUAL OPPORTUNITY (NOVEMBER 1967)

(The following clause is applicable unless this contract is exempt under the rules and regulations of the Secretary of Labor issued pursuant to Executive Order 11246 of Sept. 24, 1965.) During the performance of this contract the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor created thereby.

[1] Unless otherwise provided, the Equal Opportunity clause is not required to be inserted in subcontracts below the second tier, except for subcontracts involving the performance of "construction work" at the "site of construction" (as those terms are defined in the Secretary of Labor's rules and regulations) in which case the clause must be inserted in all such subcontracts. Subcontracts may incorporate by reference the Equal Opportunity clause.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with this Equal Opportunity clause or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965 and such other sanctions may be imposed and remedies invoked as provided in the said Executive order or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(d) The applicant further agrees that it will be bound by the above Equal Opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of Government.

(e) The applicant agrees that it will cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for government contracts and federally assisted construction contracts pursuant to Executive Order 11246 and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Executive Order 11246.

(f) In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may cancel, terminate or suspend in whole or in part this grant loan, insurance, guarantee, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from such applicant, or may refer the case to the Department of Justice for appropriate legal proceedings.

### § 18–12.802–3 Other contractual requirements.

(a) All indefinite quantity contracts, which are not exempted pursuant to § 18–12.803(a)(5) shall contain the Equal Opportunity clause prefaced by the following sentence:

The following clause shall be applicable upon written notice by the Contracting Officer. (August 1964)

(b) Prime contractors and subcontractors may make necessary modifications in language in the Equal Opportunity clause as shall be appropriate to identify properly the parties and their undertakings. Subcontractors may incorporate by reference the Equal Opportunity clause.

### § 18–12.802–4 Requirements for invitations for bids, requests for proposals and agreements.

(a) Unless otherwise provided, each invitation for bids, requests for proposals or agreement not exempt from the provisions of the Equal Opportunity clause (§ 18–12.803 or § 18–12.804) shall include the following representation to be accomplished by the bidder, offeror or applicant:

The bidder (offeror or applicant) represents that he [ ] has, [ ] has not, participated in a previous contract or subcontract subject to either the Equal Opportunity clause herein or the clause originally contained in section 301 of Executive Order 10925; that he [ ] has, [ ] has not, filed all required compliance reports; and that representations indicating submission of required compliance reports, signed by proposed subcontractors will be obtained prior to subcontract awards. (The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the clause.) (July 1968)

In any case in which a bidder or prospective contractor or proposed subcontractor which has participated in a previous contract or subcontract subject to the Equal Opportunity clause has not filed a required compliance report, the contracting officer shall require submission thereof (Standard Form 100) prior to the award of the proposed contract or subcontract. In all other cases, the contracting officer shall require the submission of a compliance report (Standard Form 100) by any bidder or prospective contractor or subcontractor prior to the award of the proposed contract or subcontract. Where the circumstances of a particular procurement will not permit the award to be withheld, the contract file shall be documented to show the basis upon which it was determined to make the award to the bidder or offeror without submission by him of the compliance reports or representations. This should not be interpreted to permit award to concerns known to be in established violation.

(b) The face page or cover sheet of each invitation for bids, request for proposals, and agreement not exempt from the provisions of the Equal Opportunity clause under § 18–12.803 or § 18–12.804 shall contain the following notice:

NOTE THE CERTIFICATION OF NONSEGREGATED FACILITIES IN THIS SOLICITATION (MAY 1968)

Bidders, offerors, and applicants are cautioned to note the "Certification of Non-Segregated Facilities" in the solicitation. The certification provides that if the amount of the bid or proposal exceeds $10,000, the bidder, offeror or applicant, by signing this bid or offer certifies that he does not and will not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. Failure of a bidder or offeror to agree to the certification will render his bid or offer nonresponsive to the terms of solicitations involving awards of contracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause.

(c) Each invitation for bids, request for proposals and agreement not exempt from the provisions of the Equal Opportunity clause under § 18–12.803 or § 18–12.804 shall include the following certification to be submitted by bidders, offerors, subcontractors and applicants:

CERTIFICATION OF NONSEGREGATED FACILITIES (MAY 1968)

(Applicable to contracts, subcontracts, and agreements with applicants who are themselves performing federally assisted construction contracts, exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause.)

By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities, as required by the May 9, 1967, order on Elimination of Segregated Facilities, by the Secretary of Labor (32 F.R. 7439, May 19,

1967), must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). (May 1968)

(NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.)

(d) Each Invitation for Bids expected to result in a supply contract of $1 million or more and not otherwise exempt from the provisions of the Equal Opportunity clause pursuant to §§ 18–12.803 and 18–12.804 shall include the following:

PREAWARD EQUAL OPPORTUNITY COMPLIANCE REVIEWS (MAY 1968)

Where the bid of the apparent low responsible bidder is in the amount of $1 million or more, the bidder and his known first-tier subcontractors which will be awarded subcontracts of $1 million or more will be subject to full, preaward equal opportunity compliance reviews before the award of the contract for the purpose of determining whether the bidder and his subcontractors are able to comply with the provisions of the Equal Opportunity clause.

**§ 18–12.803 Applicability and exemptions.**

(a) Subject to the rules, regulations, and relevant orders of the Secretary of Labor, or such further rules, regulations, and relevant orders as he may hereafter issue, the Equal Opportunity clause will not be included in the following:

(1) Contracts and subcontracts not exceeding $10,000, other than Government bills of lading which are required to contain the clause regardless of amount. In determining the applicability of this exemption to any federally assisted construction contract, or subcontract thereunder, the amount of such contract or subcontract rather than the amount of the Federal financial assistance shall govern;

(2) Contracts and subcontracts not exceeding $100,000 for standard commercial supplies or raw materials; except that the Director, Office of Federal Contract Compliance may, whenever he finds it necessary or appropriate to achieve the purposes of the order, withdraw such exemption in whole or in part with regard to any specified articles or raw materials. (Supplies or materials shall not be procured in less than usual quantities to avoid applicability of the Equal Opportunity clause.);

(3) Contracts and subcontracts under which work is to be performed outside the United States and where no recruitment of workers within the United States is involved. (Where a contract involves performance of work or recruitment of workers both within and outside the United States, the Equal Opportunity clause will be included in the contract but will be applicable only to work and recruitment within the United States.);

(4) Contracts for the sale of Government property, where no appreciable amount of work is involved;

(5) Contracts and subcontracts for an indefinite quantity (including, without limitation, open-end contracts, requirement-type contracts, call-type contracts, and blanket purchase agreements), under the following circumstances:

(i) When such contract or subcontract is not to extend for more than 1 year and the contracting officer (or in the case of subcontractors, the prime contractor issuing the subcontract) determines that the amounts to be ordered are not reasonably expected to exceed $100,000 in the case of contracts or subcontracts for standard commercial supplies and raw materials, or $10,000 in the case of all other contracts and subcontracts; or

(ii) When such contract or subcontract is to extend for more than 1 year or continue indefinitely and the contracting officer (or in the case of subcontractors, the prime contractor issuing the subcontract) knows in advance that the amounts to be ordered in any year under such contract or subcontract will not exceed the appropriate dollar limitation set forth in subdivision (i) of this subparagraph (5).

When it has been determined pursuant to subparagraph (5) (i) or (5) (ii) of this paragraph (a), that a contract or subcontract for an indefinite quantity is exempt from the requirements of the Equal Opportunity clause, or that such requirements are not to be applicable in any 1 year, such determination shall be controlling even though the amounts actually ordered exceed the appropriate dollar limitation, unless the scope of the contract or subcontract is increased to exceed the dollar limitations set forth in paragraph (a) (5) (i) of this section, in which case an appropriate determination shall be made for the remaining life of the contract or subcontract, if not otherwise exempt; and

(6) Contracts or subcontracts exempted pursuant to § 18–12.804.

(b) When the Equal Opportunity clause is included in an indefinite quantity contract or subcontract which is not to extend for more than 1 year, the clause shall apply even though the amounts actually ordered do not exceed the appropriate dollar limitation.

(c) When the Equal Opportunity clause is included in an indefinite quantity contract or subcontract which is to extend for more than 1 year, or continue indefinitely, the applicability of the clause shall be determined by the contracting officer (or in the case of subcontractors, the prime contractor issuing the subcontract) at the time of award for the first year, based upon the amounts that are reasonably expected to be ordered during such year. In the event that the clause has been determined not applicable, at the time of award and the contract continues for more than 1 year, the contracting officer (or in the case of subcontractors, the prime contractor issuing the subcontract), shall determine whether the clause applies at the end of each year, based upon the amounts that are reasonably expected to be ordered during the succeeding year. Once the clause is determined to be applicable, the contract or subcontract shall continue for its duration to be subject to such clause, regardless of the amounts ordered, or reasonably expected to be ordered, in any succeeding year. When the clause is determined to be applicable, the contracting officer shall give written notice of such determination to the contractor. In the case of subcontracts, the appropriate determination and notification shall be made by the prime contractor or subcontractor issuing the subcontract.

**§ 18–12.804 Request for exemptions.**

(a) Section 60–1.4(b) of the rules and regulations of the Secretary of Labor (28 F.R. 5671) provides that the Director, Office of Federal Contract Compliance may, with the approval of the Secretary of Labor, exempt an agency from requiring the inclusion of any or all of the Equal Opportunity clause in any specific contract, or subcontract, when he deems that special circumstances in the national interest so require. The Director, Office of Federal Contract Compliance may also, with the approval of the Secretary of Labor, exempt groups or categories of contracts of the same type where he finds it impracticable to act upon each request individually or where group exemptions will contribute to convenience in the administration of the order.

(b) Where special circumstances indicate that the inclusion of the Equal Opportunity clause in any specific contract or subcontract would not be in the national interest, the contracting officer should submit a request through the NASA Contracts Compliance Officer to the Administrator for authority to omit or modify the clause. The Administrator may request an exemption from any or all of the requirements of the clause. Such requests will be directed to the Director of the Office of Federal Contract Compliance, who will rule upon the request. Prior to the submission of such requests, the Director of the NASA installation concerned, or his designee for the purpose, will, in appropriate cases, personally discuss with the head of the company concerned, the inclusion of the clause in the procurement under consideration.

(c) Whenever a bidder or prospective contractor, and any contractor or subcontractor holding a contract or subcontract containing the clause, believes that one or more plants or facilities which he owns, operates, or controls, are in all respects separate and distinct from the plants, facilities, or other activities which will be utilized in the performance of the contract or subcontract, such bidder, prospective contractor, contractor, or subcontractor may request an exemption from the requirements of the clause as to such separate and distinct plants, facilities, or other activities: *Provided*, That such an exemption will not interfere with or impede the effectuation of the orders: *And provided further*, That in the absence of such an exemption, such separate and distinct plants, facilities, and other activities would be subect to the Clause. The request for exemption shall be submitted to the Administrator through the contracting officer and the NASA Contracts

Compliance Officer, in turn, for transmittal to the Director of the Office of Federal Contract Compliance. All such requests shall be forwarded to the Director of the Office of Federal Contract Compliance, but either the contracting officer, the NASA Contracts Compliance Officer, or the Administrator, may recommend against approval of the request.

**§ 18–12.805 Interpretations.**

In the application and enforcement of the provisions of Executive Order 11246, and of the rules and regulations of the Secretary of Labor, the following interpretations are applicable:

(a) If the Secretary of Labor should withdraw any exemption, such withdrawal shall not apply to any contracts or subcontracts entered into prior to the effective date of the withdrawal.

(b) Notwithstanding the inclusion in any contract or subcontract of the Equal Opportunity clause, the contractor or subcontractor shall be exempt from compliance therewith if the contract or subcontract containing such clause is exempt.

(c) The requirement to include the Equal Opportunity clause in federally assisted construction contracts set forth in § 18–12.802–2 is applicable even though the applicant is a state or a subdivision or agency thereof.

**§ 18–12.806 Administration.**

**§ 18–12.806–1 General responsibilities and functions.**

(a) *Administrator of NASA.* The Administrator of NASA is responsible for assuring NASA-wide execution of the NASA Contracts Equal Employment Opportunity Program.

(b) *NASA contracts compliance officer.* The Director of Procurement has been appointed the NASA Contracts Compliance Officer by the Administrator of NASA. The NASA Contracts Compliance Officer is responsible for overall policy coordination and general direction of the NASA Contracts Equal Employment Opportunity Program. In carrying out his responsibilities, the NASA Contracts Compliance Officer will:

(1) Maintain liaison with the Secretary of Labor;

(2) Represent NASA in relations with the Secretary of Labor and other Government agencies on Contracts Equal Employment Opportunity Program matters;

(3) Implement the rules, regulations and orders of the Secretary of Labor pertaining to Parts II and III of Executive Order 11246;

(4) Designate the Deputy Contracts Compliance Officers at NASA Headquarters and the field installations, and

(5) Administer and coordinate the Contracts Equal Employment Opportunity Program within NASA.

(c) *NASA deputy contracts compliance officer.* The NASA Deputy Contracts Compliance Officer is the principal Headquarters staff officer for Contracts Equal Employment Opportunity Program matters, assisting the NASA Contracts Compliance Officer in the administration and coordination of the Contracts Equal Employment Opportunity Program.

(d) *NASA installation directors.* Each NASA Installation Director is responsible for maintaining the installation Contracts Equal Employment Opportunity Program, and carrying out the requirements of this Subpart 18–12.8.

(e) *Procurement officers.* Each procurement officer is responsible for supervising the operations of the Contracts Equal Employment Opportunity Program at the installation, and for nominating the Installation Deputy Contracts Compliance Officer for approval by the NASA Contracts Compliance Officer.

(f) *Installation deputy contracts compliance officer.* Each Installation Deputy Contracts Compliance Officer is responsible for implementation and coordination of the Contracts Equal Employment Opportunity Program at that installation. Other responsibilities include: reviewing the administration of contracts with respect to the Contracts Equal Employment Opportunity Program, developing statistical data and providing advice and assistance to contracting officers and to the Procurement Officer on Contracts Equal Employment Opportunity Program matters.

(g) *Predominant interest agency (PIA).* To avoid duplication of effort by Government contracting agencies and contractors, the Office of Federal Contract Compliance (OFCC) utilizes the Predominant Interest Agency (PIA) method of assigning responsibility for assuring compliance with the Equal Opportunity clause by Government contractors. The agency holding the largest aggregate dollar value of contracts for a contractor or subcontractor at the time of filing the most recent Employer Information Report EEO–1 (Standard Form 100) is normally appointed PIA for that contractor or subcontractor. The PIA represents the Government in administration of the Equal Opportunity clause in all Government contracts with a particular contractor, even though that contractor may hold contracts with other Government agencies. Normally, the PIA for a multidivision corporation is PIA for the entire corporation. However, because of security reasons, contractor operations within a Government-owned facility, or other usual circumstances, an agency may be assigned predominant interest responsibility for a single division or branch, a specific contractor location, or for the performance of a specific project or task in connection with the enforcement of the clause. The Department of Labor publishes an annual "PIA Assignment Listing" of all affected contractors. Copies of the listing may be obtained from the NASA Contracts Compliance Officer.

(h) *Predominant interest installaton (PII).* When NASA is designated the PIA for a contractor or subcontractor facility, the NASA Contracts Compliance Officer will normally assign the predominant interest responsibility to a NASA installation according to the following criteria:

(1) Proximity to the contractor's place of performance;

(2) Largest dollar volume of NASA contracts; and

(3) Other reasons of expediency. The installation assigned the predominant interest responsibility shall be designated as the Predominant Interest Installation (PII). The PII represents NASA in the execution of its PIA responsibilities. The NASA Contracts Compliance Officer will notify NASA installations of the contractor's or subcontractor's facilities over which they have been assigned PII responsibilities.

**§ 18–12.806–2 Educational responsibility.**

(a) The NASA Contracts Compliance Officer is responsible for assuring that Installation Deputy Contracts Compliance Officers receive comprehensive orientation and continuing education relating to the Contracts Equal Employment Opportunity Program, as required by the order, rules, regulations, and relevant orders of the Secretary of Labor.

(b) The Installation Deputy Contracts Compliance Officer will keep the Installation Director, the Procurement Officer, the contracting officers and other personnel concerned with procurement at the installation informed on all matters pertaining to equal employment opportunity.

(c) Contracting officers and other personnel concerned with procurement will publicize the equal opportunity policy and requirements to prospective contractors, and shall make available to contractors and subcontractors information concerning their contractual responsibilities under the Equal Opportunity clause. Installation Deputy Contracts Compliance Officers will assist contracting officers in these responsibilities when requested.

**§ 18–12.806–3 Posting of nondiscrimination notices.**

In the case of each contract containing the Equal Opportunity clause, the contracting officer will furnish to the contractor copies of the notice entitled "Equal Employment Opportunity is the Law," and Standard Form 38, October 1964, entitled "Notice of Nondiscrimination in Employment" for notification to labor unions or other organizations of workers. Procurement offices shall obtain these documents from Federal Supply Service Regional Stores Stock Depots. The GSA Stores Stock Catalog lists two "Equal Employment Opportunity is the Law" posters. One poster, GSA Stock Catalog Item No. 7690–926–8988, is printed in English. The other poster, GSA Stock Catalog Item No. 7690–926–9118, is printed in Spanish. Contracting officers will furnish contractors sufficient copies of the above documents for their subcontractors.

**§ 18–12.806–4 Employer information report.**

(a) *Employer information report EEO–1 (Standard Form 100).* The Joint Reporting Committee represents the

OFCC, the Equal Employment Opportunity Commission and the Plans for Progress program in administering the Employer Information Report EEO–1 reporting system. Employer Information Reports EEO–1 are required to be submitted by March 31 each year by all Government contractors, first-tier subcontractors and federally assisted construction contractors and subcontractors (at any tier) that perform construction work at the construction site; who are subject to Executive Order 11246, and in the payroll period used for reporting have 50 or more employees and hold a contract, subcontract or purchase order amounting to $50,000 or more. In addition, the contracting officer, the NASA Contracts Compliance Officer or the Secretary of Labor may require the submission of the Employer Information Report EEO–1 when necessary to determine a contractor's compliance status.

(b) *Furnishing employer information report forms to contractors.* Upon request, the contracting officer will furnish the prime contractor a sufficient number of the Employer Information Report EEO–1 (Standard Form 100) to satisfy his requirements and the requirements of his subcontractors in accordance with paragraph (a) of this section.

(c) *Submission of preaward information.* If a prospective contractor or subcontractor has previously participated in contracts or subcontracts subject to the Equal Opportunity clause, but did not file all required compliance reports, the contracting officer (or in the case of subcontractors, the prime contractor) shall require him to submit a Standard Form 100 as a condition of meeting the preaward qualifications (see § 18–12.802–4).

(d) *Reporting new or expanded contractor facilities.* The establishment of new facilities or major expansions of old facilities by a contractor may afford him an opportunity to bring about new personnel practices within the new environment. Information regarding a contractor's proposed facilities expansion normally is discussed during contract negotiations, contract administration or prenegotiation planning or programing. Program planners, contracting officers, and other NASA employees whose duties enable them to know of contractor plans for expansion of existing facilities or establishment of new facilities which will result in the addition of 25 or more permanent personnel to the contractor's payroll shall assure that the information is reported to the NASA Contracts Compliance Officer as soon as such information is known. The information shall be reported whether or not the expanded facilities are to be supported by Government funds, and for facilities of the contractor at locations not performing under Government contracts. When NASA is the PIA for the contractor planning the expansion, the NASA Contracts Compliance Officer shall advise the PII of such plans. The Deputy Contracts Compliance Officer at the PII shall set up a conference with the contractor for the purpose of discussing his plans for recruitment of personnel. The contractor shall be given advice and assistance in his plans which will result in personnel policies and procedures which espouse the principles of equal employment opportunities as contained in the orders. He will work with the contractor in establishing patterns of recruitment and personnel placement, based upon merit, which foster a vigorous and continuing application of the clause. He shall offer his assistance on a continuing basis in the implementation of such merit plans. An agreement should be worked out with the contractor whereby he makes progress reports to the Installation Deputy Contracts Compliance Officer. In turn, the Installation Deputy Contracts Compliance Officer shall furnish periodic reports to the NASA Contracts Compliance Officer. In those instances where NASA is not the PIA for the contractor planning the facility expansion, the NASA Contracts Compliance Officer shall assure that the information is reported to the Office of Federal Contract Compliance.

(e) *Plans for progress program.* The Secretary of Labor has established a procedure, known as Plans for Progress Program, which is designed to assist Government contractors in implementing the equal opportunity policy expressed in the order. Government contractors who volunteer to participate in the program enter into a written agreement with the Secretary of Labor to take certain specific steps which may be even more positive than required by the order. The program is also designed to assist companies confronted with practical problems in achieving the objectives of the order. NASA is responsible for furnishing advice and guidance to contractors for which it has been designated PIA. It is the responsibility of the NASA Contracts Compliance Officer to furnish each installation a listing of Plans for Progress Program companies for which NASA is PIA.

(f) *Statement by labor unions.* The contracting officer, at his discretion, or whenever directed by the Director of Procurement or by the Secretary of Labor, will, as a part of the bid or negotiation of a contract, direct a bidder, proposed contractor, or any proposed subcontractor to file a statement in writing (signed by an authorized officer or agent of any labor union or other worker's representative with whom the bidder or prospective contractor or subcontractor deals or has reason to believe he will deal with in connection with performance of the proposed contract), together with supporting information, to the effect that the said labor union's or other workers' representative's practices and policies do not discriminate on the grounds of race, color, creed, or national origin, and that the labor union or other worker's representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of the orders, or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract will be in accordance with the purposes and provisions of the orders. If the union or other worker's representative fails or refuses to execute such a statement, the bidder or proposed contractor or subcontractor will so certify, and state what efforts have been made to obtain such a statement. Upon receipt of such certification, the contracting officer will notify the Director of the Office of Federal Contract Compliance of its receipt through the NASA Contracts Compliance Officer.

(g) *Matters not related to compliance reviews.* When the contracting officer is aware of an apparent violation of the order which does not result in or is not related to a compliance review or complaint investigation, the matter will be processed in the form of a report through the Installation Deputy Contracts Compliance Officer to the NASA Contracts Compliance Officer. The report will be submitted in duplicate and will contain a brief summary of the findings, including a statement of conclusions or recommendations regarding the contractor's or subcontractor's compliance with the order, and a statement of the disposition of the case, including any corrective action taken and any sanctions recommended or penalties imposed. Whenever corrective actions are not taken and it is not within the authority of the NASA installation to impose appropriate sanctions or penalties, the recommended sanctions or penalties will be included in the report.

(h) *Holding information in confidence.* Information submitted by contractors or subcontractors under the Contracts Equal Employment Opportunity Program will be held in confidence and shall not be used in connection with purposes not related to administration of the order or the furtherance of their purpose.

**§ 18–12.806–5 Compliance reviews and investigations.**

(a) *Policy.* It is NASA policy that routine and special on-site compliance reviews and investigations of alleged violations of the Equal Opportunity clause will be conducted as necessary to ascertain the extent to which contractors and subcontractors are complying with the provisions of the clause and to furnish educational data in connection with the Contracts Equal Employment Opportunity Program. Under an agreement between the Department of Defense and NASA, the Department of Defense will conduct compliance reviews and investigations for NASA at contractor facilities for which NASA has been designated the PIA and at NASA prime and subcontractor construction sites.

(b) *Compliance reviews.* (1) A compliance review is a comprehensive on-site review of a contractor's employment and personnel practices and procedures in relation to his compliance with requirements of the Equal Opportunity clause of his Government contracts as imposed by Executive Order 11246.

(2) Compliance reviews are of the following types:

(i) Corporate review—A review of a contractor's total operations, including

the corporate (partnership, company, organization) headquarters, and each separate office, plant operation, or facility location.

(ii) Facility review—A review of a contractor's operation at one plant, office or location, whether or not the contractor has single or multiple facility locations.

(3) Each type of review is categorized as follows:

(i) Routine review—A review conducted as a part of routine contract administration, or according to a planned schedule.

(ii) Special review—A review conducted when special circumstances warrant an immediate or urgent review. Such special circumstances include requests by the OFCC, NASA, or other Government agencies in need of a preaward compliance review, or other review which cannot be satisfied by the planned schedule for routine reviews of a contractor's facility.

(c) *Complaint investigations.* A complaint investigation is a comprehensve investigation of a formal allegation that a contractor has discriminated in his employment practices, based on race, creed, color, or national origin.

(d) *Followup.* A followup is a revisit to a contractor's facility, generally within a period not less than 90 days, following a compliance review or a complaint investigation, to determine progress in corrective actions, such as eliminating deficiencies observed during the review and accomplishing planned affirmative actions.

(e) *Frequency of reviews and investigations*—(1) *Routine reviews.* Under the NASA–DoD agreement, the DoD is expected to conduct routine compliance reviews of NASA PIA facilities at intervals which satisfy the standards established by the OFCC.

(2) *Special reviews.* The DoD is expected to conduct special compliance reviews of NASA PIA contractor facilities, NASA contractor facilities not on the PIA Assignment Listing, and construction site facilities of NASA construction contractors and subcontractors when requested by NASA.

(3) *Complaint investigations.* The DoD is expected to conduct investigations of complaints of discrimination or other violations of the Equal Opportunity clause by NASA PIA contractors when requested by NASA.

(4) *Followup of investigations or compliance reviews.* The DoD is expected to conduct a follow-up of compliance reviews and investigations as necessary to assure that corrective and planned constructive measures are taken, or whenever requested by NASA to obtain the latest compliance posture of a contractor's facility.

(f) *NASA headquarters file of reports of reviews and investigations.* The NASA Contracts Compliance Officer shall maintain a file of the reports of DoD compliance reviews, followup visits and complaint investigations for reference and to satisfy requests for information from NASA installations and other Government agencies. Copies of these reports will be furnished to NASA installations only upon request, except where it is considered that the contracting officers should be made aware of the lack of compliance effort by a particular contractor.

(g) *Requests for compliance reviews and investigations.* NASA Installations may request compliance reviews for use in preaward determinations, contract administration considerations, or for other reasons related to compliance or noncompliance with the Equal Opportunity clause. Requests for compliance reviews of contractors not on the "PIA Assignment Listing," NASA PIA contractors, and NASA construction contractors or subcontractors will be forwarded to the Office of Procurement, NASA Headquarters, Attention: NASA Contracts Compliance Officer (Code KD). Such requests will include the contractor's name and location (or locations), the type and category of compliance review desired, a brief description of the basis for the request, the date by which the review is needed, and the period to be covered by the review. Upon receipt of the request, the NASA Contracts Compliance Officer will furnish a copy of the compliance review report, if a recent report is on record in NASA Headquarters. If a recent report is not available, the DoD will be requested to conduct a compliance review pursuant to the NASA–DoD agreement, and the requesting installation notified accordingly.

(h) *NASA construction contractor and subcontractor facilities report.* To assist DoD in conducting routine compliance reviews of contractor and subcontractor construction sites under the NASA–DoD agreement, DoD must be furnished a list of all NASA prime contractors holding a construction contract of $100,000 or more and first-tier subcontractors holding subcontracts of $50,000 or more. Accordingly, all NASA field installations will submit the following information to the NASA Contracts Compliance Officer within 10 days after award of any NASA construction contract of $100,000 or more and within 20 days after award of any first-tier subcontract for construction work of $50,000 or more:

(1) Name and home office address of prime (or sub) contractor;

(2) Prime contract (or subcontract);

(3) Dollar amount of contract (or subcontract);

(4) Location and description of project, including a brief explanation of the work involved (provide prime contractor's name and contract number, where a subcontract is being reported);

(5) Estimated or actual starting date; and

(6) Estimated or scheduled completion date.

(i) *Complaints and alleged violations.* (1) Any applicant for employment or any employee who believes himself aggrieved, by virtue of a violation of the order by a contractor or subcontractor, may file a complaint of the alleged discrimination. Under rules of the OFCC this complaint may be filed with the Government contracting agency or with the OFCC. When such complaint is filed with a NASA installation, the following actions will be taken within 4 working days after receipt of the complaint:

(i) If NASA is PIA for the contractor, the complaint will be forwarded to the NASA Contracts Compliance Officer, or

(ii) If NASA is not the PIA for the contractor, the complaint will be transferred to the PIA for appropriate action.

(2) The NASA Contracts Compliance Officer will take the following actions with regard to complaints against NASA PIA contractors which are forwarded to him by NASA installations or filed directly with him by the complainants:

(i) A copy of the report will be furnished to the OFCC; and

(ii) The DoD will be requested to investigate the allegation under the NASA-DoD agreement.

(j) *Written reports of reviews, investigations and followups.* (1) Under the NASA/DoD agreement, the DoD will furnish a written report of each compliance review, complaint investigation, or followup review to the NASA Contracts Compliance Officer. If he concurs with the findings and recommendations of the report, the NASA Contracts Compliance Officer will forward a copy of the report, when required by rules and regulations of the Secretary of Labor, to the OFCC, indicating his concurrence.

(2) When a DoD report is considered deficient the deficiencies will be identified and the report will be returned to DoD, requesting (i) correction of the deficiencies, or (ii) if necessary, that a revisit be made to the contractor's facility to verify or obtain additional information pertinent to the review or investigation.

### § 18–12.806–6 Preaward procedures to insure compliance with equal employment opportunity requirements.

(a) *General.* In furtherance of the policy expressed in § 18–12.801, contracts and subcontracts shall be awarded only to those contractors and subcontractors complying with the equal employment opportunity provisions of Executive Order 11246 and the rules and regulations of the Department of Labor as implemented by this Subpart 18–12.8.

(b) *Formally advertised supply contracts.* Before the award of a formally advertised supply contract of $1 million or more which is not exempt pursuant to § 18–12.803 or § 18–12.804, the contracting officer shall determine, in accordance with paragraph (c) of this section, that the prospective contractor and each of his known first-tier subcontractors where the amount of the subcontract is $1 million or more, are able to comply with the Equal Opportunity clause.

(c) *Preaward reviews.* (1) Where NASA is the designated PIA, or a PIA assignment has not been made, the contracting officer shall request a special compliance review from the NASA Contracts Compliance Officer pursuant to § 18–12.806–5(g), specifying that the request is made in accordance with the OFCC Order of May 3, 1966, entitled

"Pre-Award Procedure to Insure Compliance by Government Contractors with Equal Employment Opportunity Requirements". The request shall include the anticipated date of contract award. In the absence of a compliance review conducted within 6 months prior to the anticipated date of contract award, the NASA Contracts Compliance Officer shall initiate action to obtain a compliance review as specified in § 18–12.806–5(g).

(2) Where another Government agency is PIA for the proposed contractor or subcontractor, the contracting officer shall advise the PIA of the anticipated date of contract award and request a copy of the report of any compliance review of that contractor or subcontractor, conducted within 6 months prior to the anticipated date of contract award. In the absence of such a report, the PIA will be requested to conduct a special compliance review and forward a copy of the report of its findings within thirty (30) days of the request, in accordance with the OFCC Order of May 3, 1966.

(3) The preaward compliance review should include a comprehensive examination of the employer's employment policies and practices, with special attention given to those relating to recruitment, placement, promotion and other areas of potential discrimination.

(4) Where the prospective contractor or subcontractor is found to be able to comply with the Equal Opportunity clause pursuant to paragraph (b) of this section, two copies of the report of the review, the contracting officer's findings, his determination and any other pertinent material shall be forwarded to the NASA Contracts Compliance Officer within fifteen (15) days after the award of the contract.

(5) If a prospective contractor or subcontractor is found to be unable to comply with the Equal Opportunity clause pursuant to paragraph (b) of this section, the contracting officer shall give immediate written notice to the prospective contractor or subcontractor of his findings, allowing the prospective contractor or subcontractor a reasonable time in which to submit a written statement of the reasons he considers that he is eligible for award of the contract, notwithstanding the initial determination. If such statement is submitted within the reasonable time specified, two copies of the statement, the contracting officer's response and the documents referred to in paragraph (c)(4) of this section, shall be forwarded to the NASA Contracts Compliance Officer for decision prior to award of the contract. The contracting officer shall be given a written notice of the NASA Contracts Compliance Officer's decision.

(d) *Exemptions from preaward review requirements*—(1) *General.* The Administrator of NASA may exempt any contract award from the notice requirement of § 18–12.802–4(c) and the preaward review and determination requirements of paragraphs (b) and (c) of this section, upon his written determination that award of a contract is essential to the national security and that its award without following such procedures is necessary to the national security.

(2) *Requests for exemptions.* Requests for exemptions shall be accompanied by complete details of the impact upon the national security if the award is delayed or is not made to the proposed contractor. Such requests shall be submitted to the Administrator through the NASA Contracts Compliance Officer by the Installation Director.

### § 18–12.806–7 Sanctions.

(a) *General.* When a compliance review or complaint investigation indicates an apparent violation of the Clause, the installation concerned will make every effort to resolve the matter by informal means. This will include, where appropriate, establishing a program for future compliance and/or action to correct any apparent violations of the Clause. If subsequent to such effort at conciliation, solutions to the problem cannot be found, the report of compliance review or investigation containing recommendations for sanctions, if appropriate, will be submitted to the NASA Contracts Compliance Officer. The report shall identify the highest ranking official of the company with whom conciliation has been undertaken. If the NASA Contracts Compliance Officer concurs, he shall advise the official of the company that NASA proposes to impose or recommend the imposition of sanctions because of the violations. If a contractor or subcontractor, without a hearing, has complied with the recommendations or orders of the PIA, a NASA installation, or the Administrator, but believes such recommendations or orders to be erroneous, he shall, upon filing a request therefor within 10 days after such compliance, be afforded an opportunity for a hearing and review of the alleged erroneous action, under § 18–12.808.

(b) *Termination.* (1) NASA contracts or subcontracts will not be terminated in whole or in part for failure to comply with the provisions of the Clause without the prior approval of the Administrator. Whenever it is proposed to terminate a NASA contract or subcontract, the contractor or subcontractor will be notified in writing of such proposed action and will be given 10 days (or such longer period as the Administrator, with the approval of the Secretary of Labor, may consider appropriate) from the date of receipt of the notice either to comply with the provisions of the contract or to submit a request for a hearing under § 18–12.808.

(2) If the contract or subcontract recommended for termination is not a NASA contract, the recommendation will, upon concurrences of the NASA Contracts Compliance Officer, be referred to the contracting agency, together with a copy of the compliance review, investigation, or other summary of findings upon which the case is based. The contracting agency will be requested to advise NASA within 5 work days after receipt of the recommendations of the action it plans to take. The NASA Contracts Compliance Officer will advise the Secretary of Labor of the action contemplated by the contracting agency, furnishing him with a copy of the findings and recommendations in the case.

(c) *Debarment and suspension.* (1) NASA will not debar or suspend a contractor or subcontractor for failure to comply with the Equal Opportunity clause, except upon approval of the Administrator and the Secretary of Labor. In every case where debarment or suspension is being proposed, the contractor or subcontractor will be notified in writing of the proposal and given 10 days from the date of receipt of such notice in which to mail a request for hearing under § 18–12.808, or for a hearing before the Secretary of Labor. (See §§ 18–1.604–2(c) and 18–1.605–3(b).)

(2) If the NASA Contracts Compliance Officer concurs with the recommendations of the installation for debarment or suspension of a non-NASA contractor or subcontractor, the procedure in paragraph (b) of this section will be followed.

(d) *Criminal prosecution.* An installation may recommend action by the Department of Justice where the compliance review or investigation reveals substantial or material violation or threat of contractual violations or if there is evidence that false information has been furnished during the compliance reviews, investigations or contract management relationships with contractors or subcontractors. Any recommendations for criminal prosecution will be made to the NASA Contracts Compliance Officer. No recommendation for prosecution will be made to the Department of Justice except by the NASA Contracts Compliance Officer, and only after having obtained the advice of the Office of General Counsel or his authorized representative. Also, no recommendation for prosecution will be made to the Department of Justice until the expiration of 10 days (unless a longer period is fixed by the NASA Contracts Compliance Officer with the approval of the Secretary of Labor) from the date of mailing of the notice of such proposed referral to the contractor or subcontractor involved, affording him an opportunity to comply with the provisions of the Order. If a recommendation for referral to the Department of Justice involves a contract or subcontract of an agency other than NASA, the procedures in paragraph (b) of this section will be followed.

### § 18–12.807 Construction contracts in designated geographic areas.

(a) The OFCC has established a program which designates certain geographic areas that require specific actions by Government contracting agencies and construction contractors and subcontractors in the field of equal employment opportunity. The specific actions required within each designated area are set forth in memoranda from the OFCC. Although the details may vary, such memoranda generally prescribe the following special actions concerning construction contracts within the area concerned:

(1) That preaward compliance examinations be performed for all proposed construction contracts exceeding a stated amount (usually $500,000);

(2) That each proposed contractor be required to submit, on behalf of himself and his prospective major subcontractors, written affirmative action programs which will assure that there is minority group representation in all phases of the work, and furnish the Labor Department Area Coordinator a copy of each program;

(3) That the Labor Department Area Coordinator be provided a copy of each solicitation for construction work where the contract amount is anticipated to exceed a stated amount;

(4) That a preaward conference be held with each construction contractor and principal subcontractor where the construction cost exceeds a stated amount, and the Labor Department Area Coordinator and OFCC be furnished an advanced notice of each scheduled preaward conference; and

(5) That the above requirements, as applicable, be applied when making reviews of existing construction projects in the area concerned.

(b) San Francisco, Calif.; Cleveland, Ohio; and St. Louis, Mo., have been designated as areas requiring the special actions as outlined above. Instructions and memoranda governing areas which subsequently may be designated by OFCC will be furnished NASA installations by the NASA Contracts Compliance Officer. NASA installations awarding or administering construction contracts, in OFCC designated areas will comply with the provisions of the applicable OFCC memoranda and implementing instructions. Contracting officers will insure that solicitations contain provisions relating to the required preaward conferences and affirmative action programs. NASA installations requesting preaward compliance reviews will follow the procedures set forth in 18-12.806-5.

### § 18-12.808 Hearings.

### § 18-12.808-1 General.

NASA hearings may be held when approved by the NASA Contracts Compliance Office if an apparent act of discrimination, in violation of the contractual provisions as shown by compliance reviews or investigation, is not resolved informally by conference, conciliation, mediation, persuasion or other means. Hearings will be held when:

(a) A contractor or subcontractor who has complied with the recommendations or orders of the installation, but believes such recommendations or orders to be erroneous, and requests a hearing thereon; or

(b) The NASA Contracts Compliance Officer proposes to debar or suspend a contractor or subcontractor, or to terminate a contract or subcontract and the contractor or subcontractor requests a hearing.

### § 18-12.808-2 Delegation of hearing authority and place of hearing.

(a) The NASA Contracts Compliance Officer may delegate in writing to any individual, individuals or board (hereinafter referred to as the hearing authority) all the authority delegated to him by the Administrator, to give notice of hearings, to conduct hearings, and to make findings of fact and recommendations with respect to determining whether a contractor or subcontractor is or has been in violation of the contract clause. A separate hearing authority will be established for each hearing and will remain established until completion of the hearing and a report of findings and recommendations has been made to the Administrator. Each hearing authority may adopt its own rules of procedure provided they are not inconsistent with this Subpart 18-12.8. The place of the hearing will be established in the letter or document designating the hearing authority. The place of hearing will be one which is considered convenient to the parties involved. Normally, it will be established at an installation meeting the convenience criteria.

(b) If the hearing authority is delegated to a board, the board will be composed normally of not more than five members and one nonvoting recorder. The members will include:

(1) One member experienced in contract management;

(2) One member trained in law, and

(3) Such other members as may be deemed necessary for the particular hearing.

The letter or document establishing the board will designate a chairman, and will set forth his responsibilities and the responsibilities of other members of the board.

### § 18-12.808-3 Notices and contents.

(a) Whenever a hearing is to be held, the hearing authority shall cause a written notice to be served upon the contractor or subcontractor in the manner hereinafter provided. The notice shall include the following items:

(1) A statement of the time, place, and purpose of the hearing, and the authority and jurisdiction under which it will be held. The statement as to purpose need only identify the contract clause, the contracts or subcontracts involved, and the ultimate facts to be determined. The time of the hearing shall not be less than 10 calendar days after service of the notice.

(2) Brief allegations in reasonable detail setting forth the circumstances surrounding the act or acts of discrimination, the name(s) of the complainant(s), and the approximate date and place of each alleged discriminatory act. Such allegations need be only sufficient to apprise the contractor or subcontractor reasonably of the issues involved in the hearing.

(3) A request that the contractor or subcontractor answer in writing, the allegations of the notice, including in his answer such facts or arguments as he may wish, and that he attend the hearings to adduce such evidence with respect to the alleged discrimination as he may desire.

(b) Service shall be made by mailing by registered or certified mail, return receipt requested, a copy of the notice to the contractor or subcontractor.

### § 18-12.808-4 Continuances and delays.

The authority to grant continuances or to adjourn the hearing shall rest with the person presiding at the hearing. Continuances will only be allowed for the most compelling reasons.

### § 18-12.808-5 Parties.

The parties to the hearing will be the contractor or subcontractor concerned with the Government.

### § 18-12.808-6 Representation and hearing assistants.

The parties may be represented at the hearing and proceedings incident thereto by legal counsel. Upon the appearance of record of legal counsel of the contractor and subcontractor in the proceedings, service of papers as may thereafter be required may be made upon such legal counsel. The NASA Contracts Compliance Officer will make the necessary physical arrangements for the hearing and provide such administrative services, including a reporter, secretary or notary, as may be required. NASA Headquarters offices and field installations shall detail such personnel and furnish such other assistance for the conduct of the hearing as is requested by the NASA Contracts Compliance Officer.

### § 18-12.808-7 Transcript.

Testimony and arguments shall be reported verbatim. The reporter or secretary shall make available to the contractor or subcontractor and to the Government transcripts of the proceedings, including all testimony and copies of all documentary exhibits upon the payment of the reasonable costs thereof.

### § 18-12.808-8 Conduct of hearings.

Hearings will be as informal as may be reasonably appropriate under the circumstances. Evidence and testimony not ordinarily admissible under legal rules of evidence may be received subject to the discretion of the person presiding at the hearing. Immaterial, irrelevant, or unduly repetitious evidence shall be excluded. The parties may stipulate as to any facts or testimony. The testimony of witnesses shall be under oath and witnesses shall be subject to cross-examination. The individual presiding at the hearing shall make such rulings with respect to the conduct of hearings as circumstances may require to insure the orderly and expeditious presentation of evidence in a manner fair to the parties and consistent with this Subpart 18-12.8 and requirements of due process of law.

### § 18-12.808-9 Depositions.

Following service of the notice of hearing, depositions may be taken as herein provided, and placed in evidence whenever the ends of justice will be served thereby.

(a) *Notice to take.* When either party desires to take a deposition, unless the parties stipulate as to the time when, and place where, the deposition is to be taken, the name of the officer before

whom it is to be taken, and the names and addresses of the witnesses, the moving party shall give to the opposite party at least 10 days notice of the time when and the place where such deposition will be taken; the name and address and official title of the officer before whom it is proposed to take the deposition, and the names of the witnesses. A deposition may be taken either upon written interrogatories or upon oral examination, as may be specified in the notice. If the deposition is to be taken upon written interrogatories, copies thereof must accompany the notice to take depositions; if the opposite party desires to submit cross-interrogatories, written cross-interrogatories should be served upon the party giving the notice within 5 workdays from the receipt of the notice to take deposition. Notices may be served upon the contractor or subcontractor as provided in § 18–12.808–3 or upon his legal counsel of record. Service upon the Government may be made upon the person signing the notice of hearing or the Government representative of record. If service is made by mail, the mail shall be registered or certified and service will be complete upon mailing.

(b) *Taking depositions.* Depositions may be taken before and authenticated by any officer, authorized by the laws of the United States or by the laws of the place where the deposition is taken, to administer oaths. Witnesses shall be under oath and shall be subject to cross-examination as at the hearing. Any objections to questions shall be noted in the deposition and reserved for determination at the hearing. Each deposition shall show the caption of the proceeding, the place and date of taking, the names of the witnesses, and the party by whom called. The officer taking a deposition shall enclose the original deposition and exhibits, in a sealed packet, with postage or other transportation prepaid, and forward the same to the hearing authority.

(c) *Use of deposition.* Testimony taken by deposition will not be considered until offered in whole or in part and received in evidence. A deposition taken by one party may be offered by the opposite party.

**§ 18–12.808–10 Absence of parties.**

If the contractor or subcontractor fails or refuses to appear, the hearing shall proceed upon such evidence as the Government may offer. The unexcused absence of any party shall not be occasion for delay of the hearing.

**§ 18–12.808–11 Argument.**

Within the discretion of the individual presiding at the hearing, limited oral argument may be presented by the parties upon the completion of the hearing.

**§ 18–12.808–12 Findings and recommendations.**

As soon as practicable after completion of the hearing, the hearing authority shall make written findings and recommendations with respect to all material issues, and shall submit such findings and recommendations to the Administrator, through the NASA Contracts Compliance Officer, for such action as the Administrator deems appropriate. Reasons for the findings will be included at such length as may be appropriate.

**§ 18–12.809 Certificates of merit.**

(a) A U.S. Government Certificate of Merit may be awarded by the Secretary of Labor:

(1) On his own initiative, to employers or employee organizations which are or may hereafter be engaged in work under Government contracts, if he is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the employee organization conform to the purpose and provisions of the order; or

(2) Upon the recommendation of the Administrator. The recommendation should include a statement in sufficient detail to inform the Secretary of Labor of the basis for the recommended award. Whenever an employer or employee organization has practiced policies and procedures conforming to the purposes and provisions of the order, NASA installations may make recommendations through the NASA Contracts Compliance Officer that such employer or employee organizations be awarded a Government Certificate of Merit.

(b) The Secretary of Labor may at any time review the continued entitlement of any employer or employee organization to a Certificate of Merit, and may suspend or revoke the Certificate.

**§ 18–12.810 Elimination of segregated facilities.**

(a) *Policy.* It is the Government's policy (as set forth in Executive Order 11246, dated Sept. 24, 1965) that no person shall be discriminated against because of his race, creed, color, or national origin in any of the conditions of his employment with a Government contractor or subcontractor. To insure that this policy is followed, the Secretary of Labor, by Order No. 169, dated May 9, 1967 (32 F.R. 7439;41 CFR 60–2), placed upon Government contractors an obligation not only to eliminate any written or oral policies and practices they may have which require segregation on a basis of race, creed, color, or national origin; but also to ensure that facilities are provided for their employees in a manner that such segregation cannot result. This obligation also extends to ensuring that their employees are not assigned to perform duties at any location under the employer's control where the facilities are segregated. Each bidder, offeror, and applicant not exempt under §§ 18–12.803 and 18–12.804, shall be required to submit, as part of his bid or offer, the certification set forth in § 18–12.802–4(c).

(b) *Certification.* The following clause shall be included in all contracts and agreements with applicants for federally assisted construction contracts, which include the Equal Opportunity clause in § 18–12.802:

CERTIFICATION OF NONSEGREGATED FACILITIES BY SUBCONTRACTORS AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTORS MAY 1968

Prior to the award of any subcontract, or federally assisted construction contract or subcontract, required to contain the Equal Opportunity clause contained in this contract, the Contractor shall obtain a "Certification of Nonsegregated Facilities" in the same form and content as he was required to submit to the Government. This certification may be required by the Contractor, either for each subcontract or for all subcontracts during a period (*i.e.*, quarterly, semiannually, or annually).

(c) *Sanctions and hearings.* The application of sanctions and the conduct of hearings with respect to maintenance of segregated facilities shall be in accordance with §§ 18–12.806–7 and 18–12.808 respectively, except that the OFCC must be notified before notice of proposed termination or cancellation is given to a contractor or subcontractor under § 18–12.806–7(b), and the approval of the OFCC must be obtained before convening a hearing under § 18–12.808. The application of sanctions and conduct of hearings will be administered by the NASA Contracts Compliance Officer.

**§ 18–12.811 Advising NASA contracts compliance officer of potential program delays arising out of contracts equal employment opportunity program actions.**

(a) It is NASA policy to enforce the provisions of Executive Order 11246 and Orders of the Secretary of Labor issued pursuant thereto as they apply to Government contracts, and to cooperate with the OFCC in such enforcement, including, where appropriate, the withholding of an award or imposition of sanctions set forth in § 18–12.806–7 resulting from noncompliance with those orders. However, should such action seriously and adversely affect the NASA mission, e.g., when there is evidence that OFCC action would result in unacceptable program delays or major additional costs, the NASA Contracts Compliance Officer should be notified immediately so that he may assist in resolving the matter. The notification to the NASA Contracts Compliance Officer should include the following:

(1) Contract Summary.

(i) Contract number, or RFP/IFB identification, as applicable;

(ii) Contractor(s) involved;

(iii) Dollar value of contract or proposed award;

(iv) If a preaward action, the dollar spread between low bidders;

(v) Date bid or offer expires;

(vi) Time constraints imposed by program schedule;

(vii) The space system, equipment, or construction project involved; and

(viii) Impact that delay in contract placement or imposition of sanctions would have on the program, including facts bearing upon the seriousness of impact.

(2) The exact nature of the Equal Employment Opportunity problem including information as to:

(i) Those portions of the contractor's affirmative action program which are considered inadequate, by NASA and/or the OFCC field personnel;

(ii) Difficulties involved in hiring minority people;

(iii) Specific actions taken, or to be taken, by the OFCC in withholding an award or imposing sanctions; and

(iv) Action taken to date by installation management to resolve the matter.

58. Section 18–13.102 is revised as follows:

**§ 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;

(b) A negotiated, fixed-price type procurement contract for which the price is not based on—

(1) Adequate price competition;

(2) Established catalog or market prices of commercial items sold in substantial quantities to the general public (see § 18–3.807–1 (b)); or

(3) Prices set by law or regulation; or

(c) A cost-type procurement contract.

**§ 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 if the prime contract falls under either § 18–13.102–1 (b) or (c), the prime contractor may, with the prior approval of the contracting officer:

(1) Include in any cost-reimbursement type subcontract thereunder provisions similar to those contained in paragraph (g) of the clause in § 18–13.703; and

(2) Include in any fixed-price subcontract meeting the criteria set forth in 13.102–1(ii) a provision similar to that contained in § 18–3.702(b).

Contracting officers shall, prior to approving the inclusion of the provisions referred to above 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.

59. Section 18–13.107 is added as follows:

**§ 18–13.107 Control of government property.**

The control of Government property shall be in accordance with provisions of Appendix B to this regulation except, in contracts with educational or other nonprofit organizations Appendix C to this chapter is applicable; unless otherwise authorized in this Part 18–13.

60. Section 18–13.301(g) is added as follows:

(g) The proposed acquisition of automatic data processing equipment as defined in § 18–1.235 shall be:

(i) Submitted on DD Form 1419 through the contracting officer to the installation ADPE staff, for screening availability; and

(ii) Approved in accordance with the provisions of NHB 2410.1.

61. In § 18–13.307 the introductory text of paragraph (a) is revised to read as follows:

**§ 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 head) 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 the conditions in subparagraphs (1) through (4) of this paragraph have been met.

* * * * *

62. Section 18–13.312 is revised as follows:

**§ 18–13.312 Items to be screened.**

The items to be screened (see Subpart 18–50) in accordance with §§ 18–13.301(f) and 18–13.306–4 are listed in the following Defense Supply Agency Handbooks:

INDEX OF INDUSTRIAL PLANT EQUIPMENT HANDBOOKS

(NOTE—Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402)

| FSC | Title | DSA |
|---|---|---|
| 6625 | Electrical and Electronic Properties, Measuring and Testing Instruments. | DSAH 4215.1 |
| 3220 | Woodworking Machines | DSAH |
| 3411–3419, 3441–3449 | Production Equipment Directory, D1 Metalworking Machinery 1960, Revision Volumes 1 and 2.[1] | DSAH 4215.1 |
| 3411–3419, 3441–3449 | Supplement to Production Equipment, Directory D1 Metalworking, Machinery 1960 Revision.[1] | DSAH 4215.3 |
| 3431, 3432, 3433, 3436, 3438 | Production Equipment Directory, D2 Welding, Heat Cutting and Metallizing Equipment 1961 Edition.[1] | |
| 3424, 3655, 4430 | Industrial Furnaces and Ovens, Volume 1 and 2. | DSAH 4215.4 |
| 3815, 3910, 3920, 3930, 3950, 3990 | Material Handling Equipment and Lifting Electro-Magnets, Volume 1 and 2. | DSAH 4215.5 |
| 6635 | Physical Properties Testing Equipment. | DSAH 4215.6 |
| 3540 | Wrapping and Packaging Machinery. | DSAH 4215.7 |
| 3520, 3530, 3625 | Textile Industries Machinery and Industrial Sewing Machines. | DSAH 4215.8 |
| 6120 | Distribution and Power Station Transformers. | DSAH 4215.9 |
| 6636 | Environmental Chambers | DSAH 4215.10 |
| 6130 | Power Conversion Equipment, Electrical. | DSAH 4215.11 |
| 3422, 3426 | Rolling Mills, Drawing Machines and Metal Finishing Equipment. | DSAH 4215.12 |
| 3450, 3460, 5220 | Portable Machine Tools and Toolroom Layout Plates and Tables. | DSAH 4215.13 |
| 4310 | Compressors and Vacuum Pumps. | DSAH 4215.14 |
| 6680, 6685 | Liquid and Gas, Pressure, Temperature, Humidity, and Mechanical Motion Measuring and Controlling Instruments. | DSAH 4215.15 |
| 3635 | Crystal and Glass Industries Machinery. | DSAH 4215.16 |
| 4440 | Driers, Dehydrators, and Anhydrators. | DSAH 4215.17 |
| 6650, 6670 | Scales, Balances and Optical Instruments. | DSAH 4215.18 |
| 3680 | Foundry Equipment | DSAH 4215.19 |
| 4320 | Pumps | DSAH 4215.20 |
| 6675, 6695 | Combination and Miscellaneous Instruments Including Dynamometers. | DSAH 4215.21 |
| 6105, 6115, 6125 | Motors, Generators and Generator Sets, and Rotating Converters. | DSAH 4215.22 |
| 4920 | Aircraft Maintenance and Repair Shop Specialized Equipment. | DSAH 4215.23 |
| 4330 | Centrifugals, Separators and Filters. | DSAH 4215.24 |
| 4410, 4420 | Industrial Boilers, Heat Exchangers and Steam Condensers. | DSAH 4215.25 |
| 6110 | Electrical Control Equipment | DSAH 4215.26 |
| 4110, 4120 | Refrigeration and Air Conditioning Equipment. | DSAH 4215.27 |
| 5430 | Storage Tanks | DSAH 4215.28 |
| 3610, 6710, 6720, 6730, 6740, 6780 | Photocopying and Photographic Equipment. | DSAH 4215.29 |
| 6630, 6640 | Chemical Analysis and Laboratory Instruments. | DSAH 4215.30 |
| 4140, 4460, 7910 | Air Purification Equipment, Industrial Fans, Blowers, and Vacuum Cleaners. | DSAH 4215.31 |
| 3615 | Materials Feeders | DSAH 4215.32 |
| 3615, 3660 | Pulp and Paper Industries and Size Reduction Machinery. | DSAH 4215.33 |
| 3620 | Rubber and Plastics Working Machinery. | DSAH 4215.35 |
| 3611, 3693 | Industrial Marking and Assembly Machines. | DSAH 4215.36 |
| 3650 | Chemical and Pharmaceutical Products Manufacturing Machinery. | DSAH 4215.37 |
| 4940 | Miscellaneous Maintenance and Repair Shop Specialized Equipment. | DSAH3 4215.38 |
| 3690, 4925, 4933 | Specialized Ammunition and Ordnance Machinery. | DASH 4215.39 |

[1] Production Equipment Directories D1 and D2 for sale by Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Revisions in IPE Handbook format scheduled for publication in FY 68.

63. Section 18–13.402–52(b) is revised as follows:

(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 (JULY 1968)

(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.

64. Section 18–13.704 is revised as follows:

**§ 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 (JULY 1968)

(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 wave 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 which may be issued by the Contracting Officer, and shall promptly deliver such items to the Government 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. To the extent that compliance with such directions under (iii), (1) or (2) above occasions any cost to the Contractor for which he will not otherwise be compensated, the contract price shall be equitably adjusted in accordance with the procedures of the "Changes" clause hereof. 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 directions required under (i)–(v) 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.

65. In § 18–13.5102, paragraph (d) is revised as follows:

(d) Facilities provided under a related procurement contract 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 18–51. When the related procurement contract is awarded, the contracting officer will insure that an appropriate Government Property clause is included.

66. In § 18–13.5103, subparagraphs (2) and (3) of paragraph (a) are revised as follows:

(2) Forward one (1) copy to the Office of Facilities (Code BX).

(3) Forward one (1) copy to the appropriate small business specialist for review (see § 18–1.704–3).

67. In § 18–15.107, a new paragraph (j) is added as follows:

(j) Leasing of automatic data processing equipment (ADPE).

68. Section 18–15.205–31 is revised as follows:

**§ 18–15.205–31 Professional and consultant service costs—legal, accounting, engineering, and other.**

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor are allowable, subject to paragraphs (b), (c), and (d) of this section when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government (but see § 18–15.205–26).

(b) In determining the allowability of costs in a particular case, no single fact or any special combination of factors is necessarily determinative. However, the following factors among others may be relevant:

(1) The nature and scope of the service rendered in relation to the service required;

(2) The necessity of contracting for the service considering the contractor's capability in the particular area;

(3) The past pattern of such costs, particularly in the years prior to the award of Government contracts;

(4) The impact of Government contracts on the contractor's business (i.e., what new problems have arisen);

(5) Whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government contracts;

(6) Whether the service can be performed more economically by employment rather than by contracting;

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on nongovernment contracts;

(8) Adequacy of the contractual agreement for the service (e.g., description of the service; estimate of time required, rate of compensation; termination provisions).

(c) In addition to paragraph (b) of this section, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.

(d) Costs of legal, accounting, and consulting services, and related costs, incurred in connection with organization and reorganization, defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and related costs incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the contract. (See § 18–15.205–23.)

69. Section 18–15.205–48 is added:

**§ 18–15.205–48 Automatic data processing equipment (ADPE) leasing costs.**

(a) This § 18–15.205–48 is applicable to all leased ADPE, as defined in § 18–1.235, except as components of an end item to be delivered to the Government. (Allowability of costs related to contractor-owned ADPE are governed by other provisions of this Subpart 18–2.)

(b) (1) If the contractor leased ADPE but cannot demonstrate, on the basis of the facts existent at the time of the decision to lease or to continue leasing and documented in accordance with paragraph (d) of this section, that leasing will result in less cost to the Government over the anticipated useful life (as those terms are explained in paragraph (c) of this section), then rental costs are allowable only up to the amount that the contractor would be allowed had he purchased the ADPE.

(2) Furthermore, the costs of leasing ADPE are allowable only to the extent that the contractor can annually demonstrate in accordance with paragraph (d) of this section that:

(i) They are reasonable and necessary for the conduct of his business in light of such factors as the contractor's requirements for ADPE, costs of comparable facilities, the various types of leases available and the provisions of the rental agreement;

(ii) They do not give rise to a material equity in the facilities (such as an option to renew or purchase at a bargain rental or price) other than that normally given to industry at large but represent charges only for the current use of the equipment including but not limited to any incidental service costs such as maintenance, insurance, and applicable taxes; and

(iii) If the total cost of leasing the ADPE is to be reimbursed under one or more cost-reimbursement type contracts, or if the total cost of leasing ADPE in a single plant, division or cost center exceeds $500,000 per year and 50 percent or more of the total leasing cost is to be allocated to cost-reimbursement type contracts, the approval of the contracting officer was obtained for the leasing arrangement (see § 18–15.107 and Subpart 18–3.11).

(3) Rental costs under a sale and leaseback arrangement shall be allowable only up to the amount the contractor would be allowed had he retained title to the ADPE, except where it is determined that leasing was the appropriate method of acquisition, and the sale and leaseback (i) immediately followed purchase of the ADPE and results in rental to the Government lower than rental under any other reasonably available leasing arrangements, or (ii) is otherwise in the best interests of the Government.

(4) Allowance for ADPE which is transferred (by purchase or lease) between any divisions, subsidiaries, or affiliates of the contractor under a common control shall be treated in accordance with § 18–15.205–22(e).

(c) (1) An estimate of the anticipated useful life of the property may represent the application life (utility in a given function), technological life (utility before becoming obsolete in whole or in part), or physical life (utility before physically wearing out), depending upon the facts and circumstances and the particular facilities involved. Therefore, each case must be evaluated individually. In estimating anticipated useful life, the contractor may use the application life if he can clearly demonstrate that the facility has utility only in a given function and the duration of the function can be determined. Technological life may be used by the contractor if he can demonstrate that existing facilities must be replaced because of:

(i) Specific program objectives or contract requirements which cannot be accomplished with the existing facilities,

(ii) Cost reductions which will produce identifiable savings in production or overhead costs,

(iii) Increase in workload volume which cannot be accomplished efficiently by modifying or augmenting existing facilities, or

(iv) Consistent pattern of capacity operation (2½–3 shifts) on existing facilities.

Technological advances per se will not justify replacement of existing facilities before the end of their physical life if such existing facilities will be able to satisfy future requirements or demands.

(2) In estimating the least cost to the Government for such useful life, the cumulative costs that would be allowed if the contractor owned the property should be compared with cumulative costs that would be allowed under any of the various types of leasing arrangements

available. For the purposes of this comparison, the costs of ADPE include but are not limited to the costs of operation, maintenance, insurance, depreciation, and rental, and the cost of machine services, as applicable.

(d) The contractor's justification, under paragraph (b) of this section, of his leasing decisions shall consist of but is not limited to the following supporting data, prepared prior to acquisition:

(1) Analysis of utilization of existing ADPE;

(2) Application of the criteria in paragraph (b) of this section;

(3) Specific objectives or requirements, generally in the form of a data system study and data system specification;

(4) Solicitation of proposals from qualified sources based on the data system specification;

(5) Proposals received in response to the solicitation, and reasons for selection of the equipment chosen and for the decision to lease.

The contractor's annual justification, under paragraph (b) of this section, of his decision to retain or change his existing ADPE capability and the need to continue leasing that capability shall consist of but is not limited to current data as specified in subparagraphs (1) through (3) of this paragraph (d).

70. Section 18–16.001 is revised as follows:

**§ 18–16.001 Index of procurement forms for NASA use.**

Listed below in numerical sequence are NASA forms, U.S. standard forms, DoD forms, and certain miscellaneous forms that are authorized for use by this regulation. The current edition of each form is shown in parentheses under the column headed "Date." References to form numbers are to the current editions of the forms identified in the following list, unless otherwise specifically indicated.

(a) *NASA Forms.*

| Number | Date | Title |
|---|---|---|
| 147 | May 1963 | Proposal and Acceptance (Negotiated Supply Contract). |
| 177 | June 1961 | Purchase Order. |
| 177W | August 1965 | Purchase Order—Invoice. |
| 246 | March 1965 | General Provisions for Short Form Fixed-Price Contract with Nonprofit Institutions. |
| 247 | January 1968 | General Provisions for Fixed-Price Research and Development Contract. |
| 250 | May 1966 | Additional General Provisions to U.S. Standard Form 32 (6–64 Ed.). |
| 362 | November 1958 | Agreement for Use of NASA Unitary Plan Wind Tunnel Facilities. |
| 404 | April 1965 | Procurement Request. |
| 417 | March 1967 | General Provisions for Cost-Type Research and Development Contract. |
| 418 | do | General Provisions for Cost-Plus-a-Fixed-Fee Supply Contract. |
| 419 | February 1965 | General Provisions for Cost-Reimbursement Research and Development Contracts with Educational or Nonprofit Institutions. |
| 437 | April 1959 | Cover Page for Negotiated Contract. |
| 437–1 | November 1967 | Signature Page for Negotiated Contract. |
| 446 | August 1960 | Request for Contractor Clearance. |
| 456 | January 1967 | Notice of Costs Supended and/or Disapproved. |
| 456–1 | September 1959 | Notice of Costs Suspended and/or Disapproved Continuation Sheet. |
| 507 | June 1963 | Individual Procurement Action Report. |
| 523 | January 1963 | NASA—Defense Purchase Request. |
| 524 | July 1965 | NASA Small Business Subcontracting Program Quarterly Report of Participating Large Company on Subcontract Commitments to Small Business Concerns. |
| 533 | February 1967 | Contractor Financial Management Report. |
| 533a | do | Monthly Contractor Financial Management Report. |
| 533b | do | Contractor Financial Management Report—Contracts Under $500,000. |
| 533c | do | Contractor Financial Management Report—Support Services Contracts. |
| 543 | do | Contract Fiscal Year Functional Cost/Hour report. |
| 534a | do | Contract Progress Curve Report. |
| 534b | do | Annual Direct, Relatively Fixed Recurring Costs Report. |
| 543 | November 1966 | Justification for Negotiation. |
| 550 | January 1963 | Negotiated Utility Service Contract. |
| 550S | do | Negotiated Utility Service Contract (Short Form). |
| 550A | July 1965 | General Provisions for Negotiated Utility Service Contract. |
| 550A–1 | January 1963 | Electric Service Specifications. |
| 550A–2 | do | Gas Service Specifications. |
| 550A–3 | do | Water Service Specifications. |
| 550A–4 | do | Steam Service Specifications. |
| 550A–5 | do | Sewage Service Specifications. |
| 550B | do | Signature Page. |
| 551 | April 1962 | Cover Page for Letter Contracts. |
| 551–1 | do | Letter of Transmittal for Letter Contracts. |
| 551–2 | December 1962 | Schedule Format for Letter Contracts. |
| 551–3 | (1963) | General Provisions for Letter Contracts. |
| 558 | February 1964 | Materials Requirements Report. |
| 604 | November 1964 | Additional General Provisions to U.S. Standard Form 23A (6–64 Ed.). |
| 667 | November 1966 | Report on NASA Subcontracts. |
| 746 | July 1964 | General Provisions for Cost-Reimbursement Facilities Acquisition Contract. |
| 747 | do | General Provisions for Facilities Use Contract. |
| 748 | March 1963 | General Provisions for Cost-Reimbursement Consolidated Facilities Contract. |
| 778 | January 1963 | Contractor's Release. |
| 779 | do | Assignee's Release. |
| 780 | do | Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts. |
| 781 | do | Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts. |
| 1018 | August 1967 | Analysis of Industrial Facilities and Material Report. |
| 1030 | February 1964 | University and Nonprofit Institution Financial Management Report. |
| 1057 | October 1966 | Forecast of Propellant Requirements. |
| 1098 | June 1964 | Check List for Contract File Content. |
| 1129 | September 1964 | Incentive Contracts Currently Under Administration. |
| 1132 | do | Incentive Contracts Evaluation of Incentive Effectiveness. |
| 1162 | June 1966 | New Technology. |
| 1168 | October 1964 | Procurement Plan Contents Checklist. |
| 1206 | April 1965 | Assurance of Compliance with the National Aeronautics and Space Administration Regulations Under Title VI of the Civil Rights Act of 1964. |
| 1214 | do | MSF Procurement Milestone Status Report. |
| 1333 | September 1966 | Patent License Agreement. |
| 1334 | November 1966 | General Provisions (Time and Material and Labor Hour Contracts). |
| 1350 | May 1967 | NASA Contracting Officer's Certificate of Appointment. |

(b) *U.S. Standard Forms.*

| Number | Date | Title |
|---|---|---|
| 18 | July 1966 | Request for Quotations. |
| 19 | December 1965 | Invitation, Bid, and Award (Construction, Alteration, or Repair). |
| 19–A | April 1965 | Labor Standards Provisions Applicable to Contracts in excess of $2,000. |
| 19–B | December 1965 | Representations and Certifications (Construction Contracts). |
| 20 | January 1961 | Invitation for Bids (Construction Contract). |
| 21 | December 1965 | Bid Form (Construction Contract). |
| 22 | June 1964 | Instructions to Bidders (Construction Contract). |
| 23 | January 1961 | Construction Contract. |
| 23–A | June 1964 | General Provisions (Construction Contract). |
| 24 | do | Bid Bond. |
| 25 | June 1967 | Performance Bond. |
| 25–A | June 1964 | Payment Bond. |
| 25–B | do | Continuation Sheet (For Standard Forms 24, 25, and 25–A). |
| 26 | July 1966 | Award/Contract. |
| 28 | June 1966 | Affidavit of Individual Surety. |
| 30 | July 1966 | Amendment of Solicitation/Modification of Contract. |
| 32 | June 1964 | General Provisions (Supply Contract). |
| 33 | July 1966 | Solicitation, Offer, and Award. |
| 33–A | do | Solicitation Instructions and Conditions. |
| 34 | June 1964 | Annual Bid Bond. |
| 35 | do | Annual Performance Bond. |
| 36 | July 1966 | Continuation Sheet. |
| 38 | October 1964 | Notice of Nondiscrimination in Employment. |
| 44 | June 1964 | Purchase Order—Invoice—Voucher. |
| 98 | June 1966 | Notice of Intention to Make a Service Contract and Response to Notice. |
| 99 | May 1965 | Notice of Award of Contract. |
| 100 | January 1967 | Employer Information Report EEO–1. |
| 119 | December 1952 | Contractor's Statement of Contingent or Other Fees. |
| 120 | April 1957 | Report of Excess Personal Property. |
| 129 | January 1966 | Bidder's Mailing List Application. |
| 147 | June 1964 | Order for Supplies or Services. |
| 148 | do | Continuation Sheet for Standard Form 147. |
| 251 | June 1961 | Architect-Engineer Questionnaire. |
| 1034 | Undated | Public Voucher for Purchases and Services Other than Personal. |
| 1034a | do | Public Voucher for Purchases and Services Other than Personal—Memorandum Copy. |

| | | |
|---|---|---|
| 1035 | ....do.... | Public Voucher for Purchases and Services Other than Personal, Continuation Sheet. |
| 1035a | ....do.... | Public Voucher for Purchases and Services Other than Personal, Continuation Sheet—Memorandum. |
| 1080 | ....do.... | Voucher for Transfers Between Appropriations and/or Funds. |
| 1093 | ....do.... | Schedule of Withholdings under the Davis-Bacon Act. |
| 1094 | ....do.... | U.S. Tax Exemption Certificate. |
| 1165 | March 1952.... | Receipt for Cash—Subvoucher. |

(c) *Department of Defense Forms.*

| Number | Date | Title |
|---|---|---|
| 250 | August 1967.... | Material Inspection and Receiving Report. |
| 250c | October 1966.... | Material Inspection and Receiving Report—Continuation Sheet. |
| 254 | October 1964.... | Security Requirements Checklist. |
| 346 | July 1952.... | Raw (Basic Processed) and Semifabricated Stock Form. |
| 347 | ....do.... | Bill of Materials for Subcontracted Parts—Purchased Parts—Government-Furnished Property. |
| 396 | March 1956.... | Notice of Costs Suspended and/or Disapproved. |
| 441 | May 1954.... | Security Agreement. |
| 448-2 | March 1961.... | Acceptance of MIPR. |
| 492 | December 1960.. | Report of Allotments and Authorized Controlled Materials Orders (Cumulative). |
| 529 | January 1960.... | Allocation Determination. |
| 530 | ....do.... | Return of Controlled Materials Allocations. |
| 540 | April 1957.... | Settlement Proposal (Inventory Basis). |
| 541 | ....do.... | Settlement Proposal (Total Cost Basis). |
| 542 | ....do.... | Inventory Schedule A (Metals in Mill Product Form). |
| 542c | ....do.... | Inventory Schedule A (Continuation Sheet). |
| 543 | ....do.... | Inventory Schedule B (Raw Materials, Purchased Parts, Finished Components, Finished Products, Miscellaneous). |
| 543c | ....do.... | Inventory Schedule B (Continuation Sheet). |
| 544 | ....do.... | Inventory Schedule C (Work in Process). |
| 544c | ....do.... | Inventory Schedule C (Continuation Sheet). |
| 545 | ....do.... | Inventory Schedule D (Dies, Jigs, Fixtures, etc., and Special Tools). |
| 545c | ....do.... | Inventory Schedule D (Continuation Sheet). |
| 546 | ....do.... | Schedule of Accounting Information. |
| 547 | ....do.... | Settlement Proposal for Cost-Reimbursement Type Contracts. |
| 547s | ....do.... | Notice of Audit Status Date. |
| 548 | July 1958.... | Application for Partial Payment. |
| 614 | June 1957.... | Materials Requirements—Steel and Nickel Alloys. |
| 614-1 | ....do.... | Materials Requirements—Copper and Aluminum. |
| 633 | December 1964.. | Contract Pricing Proposal. |
| 784 | April 1959.... | Cost and Price Analysis for Contract Price Redetermination. |
| 831 | October 1959.... | Settlement Proposal (Short Form). |
| 832 | April 1957.... | Termination Inventory Schedule E (Short Form for Use With DD Form 831 Only). |
| 1114 | October 1959.... | Instructions for Use of Contract Termination Settlement and Inventory Schedule Forms. |
| 1342 | March 1961.... | DoD Property Record. |
| 1419 | January 1964.... | DoD Production Equipment Requisition/Non-Availability Certificate. |
| 1524 | January 1966.... | Pre-Award Survey of Prospective Contractor—General. |

(d) *Miscellaneous Forms.*

| Number | Date | Title |
|---|---|---|
| AF-15 | .... | Monthly Report of Letter Contracts. |
| AF-857 | August 1962.... | USAF Propellant Sale, Return Slip. |
| BDSAF-138 | January 1967.... | Request for Special Priorities Assistance. |
| CB 16-19 | February 1962... | Construction Contract Award Notification. |
| DB 11 | July 1964.... | Request for Determination. |
| DJ 1500 | June 1961.... | Identical Bid Report for Procurement. |
| DMS-10 | July 1959.... | Allotment of Controlled Materials (Production). |
| DMS-11 | ....do.... | Allotment Decrease (Production). |
| DMS-12 | ....do.... | Applicant's Return of Allotment. |
| DMS-13 | ....do.... | Allotment of Controlled Materials (Construction). |
| DMS-14 | ....do.... | Allotment Decrease (Construction). |
| GSA-457 | October 1966.... | Request for Federal Supply Schedules and Contractors' Catalogs. |
| GAS-2084 | .... | Clearance to Acquire Correspondence Filing Cabinets. |
| PC 13 | September 1963.. | Poster re Walsh-Healey Public Contracts Act. |
| SC-1 | 1966.... | Notice to Employees Working on Government Service Contracts. |
| SOL-155 | July 1961.... | Wage Rate Information. |
| SOL-184, SOL-185 | .... | Optional Payroll Forms for Use on Federal Construction Contracts Subject to the Davis-Bacon Act and Related Acts. |
| TD 720 | July 1964.... | Quarterly Federal Excise Tax Return. |
| TD 1444 | January 1962.... | Alcohol for Use of the United States. |
| TD 1486 | October 1962.... | Specially Denatured Alcohol for Use of the United States. |
| WH 12 | March 1964.... | Form Letter Explaining Walsh-Healey Public Contracts Act. |

71. Subpart 18–16.1 is revised as follows:

## Subpart 18–16.1—Forms for Advertised and Negotiated Supply and Services Contracts

Sec.


18–16.100 Scope of subpart.
18–16.101 Forms for advertised supply or service contracts (Standard Forms 33, 33A, 32, 36, 30, 26, and NASA Form 250).
18–16.101–1 General.
18–16.101–2 Conditions for use.
18–16.102 Forms for negotiated supply or services contracts (Sandard Forms 18, 26, NASA Form 250, Standard Form 32, NASA Form 418, and Standard Forms 33, 33A, 36 and 30).
18–16.102–1 Request for quotation (Standard Form 18).
18–16.102–2 Award/Contract (Standard Form 26).
18–16.102–3 Solicitation, offer, and award (Standard Form 33).
18–16.103 Amendment of solicitation/modification of contract (Standard Form 30).
18–16.104 Instructions for preparation of forms for advertised and negotiated supply and service contracts (Standard Forms 33, 26, and 30).
18–16.104–1 Solicitation, offer, and award (Standard Form 33).
18–16.104–2 Award/Contract (Standard Form 26).
18–16.104–3 Amendment of solicitation/modification of contract (Standard Form 30).


### § 18–16.100 Scope of subpart.

This subpart prescribes forms for use in procuring supplies and services either by formal advertising or by negotiation (but see aso Subpart 18–16.2) it is not applicable to specialized procurements for which other instructions are prescribed by this chapter.

### § 18–16.101 Forms for advertised supply or services contracts (standard Forms 33, 33A, 32, 36, 30, 26, and NASA Form 250).

### § 18–16.101–1 General.

The following contract forms shall be used effecting procurements of supplies or services by formal advertising:

(a) Solicitation, offer, and award (Standard Form 33, July 1966 Edition) and the reverse side (representations, certifications, and acknowledgments). Pending the publication of a new edition of Standard Form 33, the "certification of nonsegregated facilities" prescribed in §18–12.802–4(c) shall be made an additional provision of the form;

(b) Solicitation instructions and conditions (Standard Form 33A);

(c) General provisions (supply contract) (Standard Form 32, June 1964 Edition). Pending the publication of a new edition of Standard Form 32, the form is revised as follows:

(1) The clause prescribed in § 18–12.802–1 shall be substituted for the present provisions of Clause 18, "Equal Opportunity."

(2) The clause prescribed in § 18–1.805–3(a) shall be substituted for the present provisions of Clause 22, "Utilization of Concerns in Labor Surplus Areas."

(d) NASA Form 250 (additional general provisions to U.S. Standard Form 32), and any other special terms for the solicitation or additional contract provisions which are prescribed by the NASA Procurement Regulation;

(e) Continuation sheet (Standard Form 36);

(f) Amendment of solicitation/modification of contract (Standard Form 30) when needed (see § 18–16.103);

(g) Award/contract (Standard Form 26) when needed.

### § 18–16.101–2 Conditions for use.

(a) The Solicitation, offer, and award (Standard Form 33) shall be prepared in accordance with § 18–2.201–1. One copy of Standard Form 33A shall accompany each copy of Standard Form 33.

(b) Standard Form 32 and NASA Form 250 may be attached to each copy of the Solicitation. Alternatively, only one copy of Standard Form 32 and NASA

Form 250 need be furnished to each offeror for retention if such provisions are specifically incorporated by reference, including each form name, number and date, in the Schedule. Provisions which are inapplicable to a particular procurement may be deleted by appropriate reference in the alterations in contract clause.

(c) Award of contracts shall be accomplished by completing the Award portion of Standard Form 33 and furnishing a copy of the form, so completed, to each successful offeror. Alternatively, such award may be accomplished by completing the award portion of Standard Form 26 and furnishing it to each successful offeror. Papers previously forwarded to offerors need not accompany the successful offeror's copy of the Award document. The required use of the award portion of Standard Form 33 or Standard Form 26 does not preclude the additional use of informal documents, including telegrams, as notices of awards.

(d) Continuation Sheet (Standard Form 36) shall be used when additional space is required for Schedule, Amendment/Modification, or Award; however, where the columns thereon are not required, a blank sheet may be used. The appropriate identification of the document being continued and page number shall be shown on all continuation sheets.

(e) When it is necessary to issue an amendment to a solicitation for bids, Standard Form 30 shall be used.

### § 18–16.102 Forms for negotiated supply or services contracts (Standard Forms 18, 26, NASA Form 250, Standard Form 32, NASA Form 418, and Standard Forms 33, 33A, 36, and 30).

### § 18–16.102–1 Request for quotation (Standard Form 18).

(a) *General.* Standard Form 18 is prescribed for obtaining price, cost, delivery, and related information from suppliers.

(b) *Conditions for use.* Standard Form 18 is authorized for use when it appears reasonably certain that the procurement will be consummated by—

(1) A fixed-price contract involving extensive negotiation; or

(2) A cost-reimbursement contract.

Continuation Sheet (Standard Form 36) may be used as required. Standard Form 18 may be used for negotiated procurements in excess of $2,500, and for negotiated procurements of $2,500 or less (including purchase orders) when written solicitations (other than by telegram) of quotations are required. A quotation submitted on Standard Form 18 is only informational and is not to be construed as a legal offer, acceptance of which would result in a binding contract. Accordingly, issuance of a purchase order (or other document) pursuant to a supplier's quotation on Standard Form 18 does not constitute acceptance but an offer to buy certain goods or services upon certain specified terms and conditions. Under the procedure of obtaining a quotation on Standard Form 18 and issuing a purchase order, the Government may, at any time prior to acceptance by the contractor of the purchase order, withdraw, amend, or cancel its offer, thereby minimizing disputes and administrative costs. In such cases, a written notice should be given the supplier. Since substantial performance by the supplier, prior to cancellation, may constitute acceptance and hence create a contract, the contracting officer should verify whether or not acceptance of the offer has taken place prior to cancellation of the offer.

### § 18–16.102–2 Award/Contract (Standard Form 26).

(a) *General.* Standard Form 26 is designed for use primarily when entering into contracts resulting from extensive negotiation where the signature of both parties on a single document is appropriate. (See also § 18–16.102–3 for use of this form as an award pursuant to receipt of a firm offer on Solicitation, Offer, and Award (Standard Form 33.)

(b) *Conditions for use.* Standard Form 26, in conjunction with appropriate General Provisions as provided in paragraphs (c), (d), and (e) of this section, is prescribed for use in negotiated contracts except:

(1) Contracts for which Solicitation, Offer, and Award (Standard Form 33) is used in accordance with § 18–16.102–3;

(2) Contracts for the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property;

(3) Procurements for which special contract forms are prescribed; and

(4) Procurements for which purchase order and related forms are authorized by Part 18–3 of this chapter.

(c) *Negotiated fixed-price supply and service contracts.* Except as provided in paragraph (b) of this section, Award/Contract (Standard Form 26) shall be used with Standard Form 32, General Provisions (Supply Contract), supplemented by NASA Form 250 (Additional General Provisions to U.S. Standard Form 32), and any other applicable contract provisions which are prescribed by this regulation for entering into negotiated, fixed-price supply and services contracts.

(d) *Negotiated cost-reimbursement supply and services contracts.* Except as provided in paragraph (b) of this section, Award/Contract (Standard Form 26) shall be used with NASA Form 418, General Provisions (Cost-Plus-a-Fixed-Fee Supply contract) and any other applicable contract provisions which are prescribed by this regulation for entering into negotiated cost-reimbursement type supply contracts.

(e) *Special negotiated contracts.* Award/Contract (Standard Form 26) may be used for special procurements where clauses other than those contained in NASA Form 250, Standard Form 32 or NASA Form 418 have been authorized. For example, cost-reimbursement research and development contracts with clauses prescribed by Subpart 18–7.4; time and material and labor hour contracts with clauses prescribed by Subpart 18–7.9.

(f) *Corporate certificate.* Where a corporate certificate is considered necessary or desirable, it may be executed on a typed sheet, identified by the contract number, and attached to Award/Contract (Standard Form 26).

(g) *Schedule and continuation sheet.* Standard Form 36 (Continuation Sheet) shall be used for the Schedule and Continuation Sheets (see § 18–16.101–2(d)).

### § 18–16.102–3 Solicitation, offer, and award (Standard Form 33).

(a) *General.* The following forms are prescribed for use under the conditions set forth in paragraph (b) of this section in effecting negotiated fixed-price procurement of supplies or services:

(1) Solicitation, Offer, and Award (Standard Form 33);

(2) Solicitation Instructions and Conditions (Standard Form 33A);

(3) General Provisions (Supply Contract) (Standard Form 32) and NASA Form 250 (only when procuring supplies);

(4) Any other forms containing contract provisions which are prescribed by this chapter;

(5) Continuation sheet (see § 18–16.101–2(d));

(6) Amendment of Solicitation/Modification of Contract (Standard Form 30) when needed (see § 18–16.103); and

(7) Award/Contract (Standard Form 26) when needed.

(b) *Conditions for use.* (1) The forms in paragraph (a) of this section (together with authorized contract provisions) shall be used in connection with the negotiation of fixed-price contracts for supplies or services when it appears desirable to commence negotiations by soliciting written offers which, if there is written acceptance by the Government, would create a binding contract without further action.

(2) When offers have been submitted on Solicitation, Offer, and Award (Standard Form 33) and it is in the interest of the Government and is in accordance with § 18–3.102 to accept a prospective contractor's offer without further negotiation, price and other factors considered, award may be made by use of the Award portion of Standard Form 33. In such instances, the contract will consist of the appropriate documents listed in paragraph (a) of this section. Alternatively, award may be made by use of the Award portion of Standard Form 26 (see § 18–16.102–2).

(3) When an offer submitted by a prospective contractor leads to further negotiation, the resulting contract shall be prepared as a bilateral contract document on Award/Contract (Standard Form 26) in accordance with § 18–16.102–2 except that:

(i) If the circumstances are such that the prospective contractor can amend his offer in writing to reflect any necessary changes, the amended offer may be accepted by use of the Award portion of Solicitation, Offer, and Award (Standard Form 33) or the Award portion of Award/Contract (Standard Form 26); or

(ii) If all the terms and conditions agreed to as a result of such further negotiation are specifically and clearly set forth in identifiable writings but such writings are unsuitable or too voluminous to permit acceptance of the

amended offer by use of the Award portion of either Standard Form 33 or 26 and if the circumstances of the procurement require prompt acceptance of the amended offer, such modified offer may be accepted by the issuance of a notice of award in substantially the format set forth below. Each such notice of award shall have the concurrence of the field counsel prior to issuance. In addition, where a notice of award is used, if the dollar value of the procurement is such that Headquarters approval would be required, such approval of the notice of award must be obtained prior to its issuance. The request for approval of the notice of award shall be accompanied by all writings and documents which together establish the terms and conditions of the contract.

In cases of subdivision (i) of paragraph (b)(3), the use of the Award portion of Standard Form 33 or 26 does not preclude the additional use of informal documents, including telegrams, as notices of award. In cases within subdivision (ii) of paragraph (b)(3), all of the terms and conditions of the contract thereby created shall be, without change or modification, promptly consolidated into a bilateral contract document using Award/Contract (Standard Form 26).

FORMS FOR ADVERTISED AND NEGOTIATED SUPPLY AND SERVICES CONTRACTS

NAME AND ADDRESS OF PROCUREMENT OFFICE

Date: _____.

Name and Address of Contractor _____
Contract No. _____.

Gentlemen:

Your offer dated _____, (in response to Solicitation No. _____, dated _____) as amended by [list and identify all documents or portions thereof, such as letters, telegrams, and printed matter, from the prospective contractor and the Government, which together set forth the terms and conditions of the contract] for the furnishing of _____, at a total price of $_____, is accepted and award is hereby made.

A contract in the usual form, dated and numbered as set forth above, incorporating all the terms and conditions of the contract hereby created is being prepared and will be forwarded to you in the near future.

This contract is authorized by and has been negotiated pursuant to 10 U.S.C. 2304 (a)( ).

UNITED STATES OF AMERICA
By _____
(Name) Contracting Officer

(4) Standard Form 32 and NASA Form 250 (Additional General Provisions to U.S. Standard Form 32), if applicable, may be attached to each of the Solicitation, Offer, and Award (Standard Form 33). Alternatively, only one copy of Standard Form 32 and NASA Form 250 need be furnished to each supplier for retention, if such provisions are specifically incorporated by reference in the Schedule including each form name, number and date. Provisions which are inapplicable to a particular procurement generally may be deleted by appropriate reference under the Alterations in Contract clause.

(5) When a cost breakdown is required in connection with an offer, DD Form 633 shall be used to the extent provided in § 18-16.202.

(6) This § 18-16.102-3(b) does not preclude the use of the purchase order forms prescribed in Subpart 18-16.3.

(7) When it is necessary to issue an amendment to a solicitation for offers, Standard Form 30 shall be used.

**§ 18-16.103 Amendment of solicitation/modification of contract (Standard Form 30).**

(a) *General.* This section prescribes a single form for—

(1) Amendment of solicitations (whether advertised or negotiated); and

(2) Modification of contracts (including purchase and delivery orders entered into on Standard Form 147 and NASA Form 177). Use of Standard Form 30 is also required for amendment of solicitation for the procurement of construction.

(b) *Conditions for use.* This form shall be used for:

(1) Any amendment to a solicitation;

(2) Any change order issued pursuant to the changes clause of a contract;

(3) Any other unilateral contract modification (see § 18-1.205), except notices of termination (see § 18-16.701), issued pursuant to a contract provision authorizing such modification without the consent of the contractor;

(4) Administrative changes such as the correction of typographical mistakes, changes in the paying office and changes in accounting and appropriation data; and

(5) Supplemental agreements as defined in § 18-1.232.

(c) *Continuation of amendments/modifications.* Standard Form 36 or a blank sheet of paper may be used for continuation of amendments/modifications (see § 18-16.101-2(d)).

(d) *Modification of construction contracts.* When used to modify a contract for construction, Standard Form 30 may be altered to provide for the contractor's written acknowledgment of the change orders. (See § 18-16.815 for instructions relative to modifying a contract for construction.)

**§ 18-16.104 Instructions for preparation of forms for advertised and negotiated supply and services contracts (Standard Forms 33, 26, and 30).**

**§ 18-16.104-1 Solicitation, offer, and award (Standard Form 33).**

Instructions for block entries requiring clarification are as follows:

| Block No. | Title and/or instructions |
|---|---|
| 2 | *Solicitation No.*—For small business restricted advertising and other types of restricted advertising, the box "Advertised (IFB)" shall be checked. |
| 25 | Although small business restricted advertising and other types of restricted advertising are to be treated as advertised procurements for the purpose of classification in block 2, such procurements are negotiated procurements (see § 18-1.706-2), and require the insertion of the appropriate negotiation authority in Block 25. |

**§ 18-16.104-2 Award/Contract (Standard Form 26).**

Instructions for block entries requiring clarification are as follows:

| Block No. | Title and/or instructions |
|---|---|
| 9 | *Discount for prompt payment*—Percentages will be expressed in whole numbers and decimals; e.g., 3.25%-10 days, 0.50%-20 days. |
| 11 | *Ship to/mark for*—Multiple delivery points shall be shown in the Schedule and this block annotated to that effect. |
| 16 | *Supplies/services*—When used as an acceptance, only the Item numbers of the solicitation need be set forth in the Schedule portion. Any modification made by the offeror to a solicitation which is accepted by the Government will be set forth in the Schedule. |
| 22 | If the form is being used as a negotiated bilateral contract pursuant to receipt of quotations on Request for Quotations (Standard Form 18) or informal means, and subsequent negotiations, if any, the box shall be checked and contractor shall be required to sign this document and return the prescribed number of copies to the issuing office. |
| 26 | If this form is being used as an acceptance (award) pursuant to receipt of a firm offer on Solicitation, Offer, and Award (Standard Form 33), the box shall be checked and contractor will not be required to sign this document. |

**§ 18-16.104-3 Amendment of Solicitation/Modification of Contract (Standard Form 30).**

Instructions for block entries requiring clarification are as follows:

FORMS FOR ADVERTISED AND NEGOTIATED SUPPLY AND SERVICES CONTRACTS

| Block No. | Title and/or Instructions |
|---|---|
| 1 | *Amendment/modification No.*—Amendment to each solicitation shall be numbered consecutively. Modifications to definitive contracts and letter contracts shall be numbered in accordance with §§ 18-50.302-5 and 18-50.302-6(b), respectively. |
| 13 | If the modification is a Change Order (11(a)) or Administrative Change (11(b)), the first box in this block shall be checked, and contractor's signature will not be required. If the modification is a Supplemental Agreement (11(c)), contractor's signature will be required, the second box shall be checked and the number of copies to be returned to issuing office shall be inserted. |
| 17 | Contracting Officer's signature is not required when amending a solicitation. |

72. Subpart 18-16.2 is revised as follows:

## Subpart 18-16.2—Additional for Negotiated Procurements

Sec.


| | |
|---|---|
| 18-16.200 | Scope of subpart. |
| 18-16.201 | Negotiated contract forms. |
| 18-16.201-1 | Contracts not in excess of $2,500 (NASA Form 177, Standard Forms 44 and 147). |
| 18-16.201-2 | Proposal and acceptance (NASA Forms 147, 177). |
| 18-16.201-3 | General provisions—Cost-reimbursement supply contracts (NASA Form 418). |

Sec.
18-16.201-4 General provisions—fixed-price research and development contracts (NASA Form 247).
18-16.201-5 General provisions—fixed-price research contracts with nonprofit institutions—short form (NASA Form 246).
18-16.201-6 General provisions—cost-reimbursement research and development contracts (NASA Form 417).
18-16.201-7 General provisions—cost-reimbursement research and development contracts with educational or nonprofit institutions (NASA Form 419).
18-16.201-8 General provisions—facilities contracts (NASA Forms 746, 747, and 748).
18-16.202 Cost and price analysis.
18-16.203 Cost and price analysis for contract price redetermination.
18-16.204 Justification for negotiation (NASA Form 543).

**§ 18-16.200 Scope of subpart.**

This subpart prescribes additional forms for use, where appropriate in conjunction with negotiated procurements for supplies or services.

**§ 18-16.201 Negotiated contract forms.**

The forms described in this section are authorized for use in negotiated procurements. Instructions for their use are also set forth.

**§ 18-16.201-1 Contracts not in excess of $2,500 (NASA Form 177, Standard Forms 44 and 147).**

(a) For negotiated purchases not in excess of $2,500, NASA Form 177 may be used in lieu of Standard Form 44 or 147. See § 18-3.605-3 for instructions on the use of NASA Form 177.

(b) Standard Form 44 (Purchase Order—Invoice—Voucher) is a small purchases form for transactions not in excess of $2,500 and is authorized for use in accordance with the instructions and limitations set forth in § 18-3.605-1. It is especially useful in over-the-counter transactions, purchases at isolated stations, and purchases away from the procurement office. See § 18-16.302 for use of Standard Form 44 for small purchases.

(c) Standard Form 147 (Order—Invoice—Voucher) is a combination purchase or delivery order, vendor's invoice, receiving report, and public voucher with space for purchase data, vendor's invoicing, and allied budget, accounting, and voucher payment data. It is designed primarily for use when single delivery payment transactions involving amounts not in excess of $2,500 are contemplated. See § 18-3.605-2 for instructions for its use. Standard Form 148 (Order—Invoice—Voucher Continuation Sheet) is authorized for use as required.

**§ 18-16.201-2 Proposal and acceptance (NASA Forms 147, 177).**

NASA Form 147 will normally be used in negotiated supply contracts for standard or commercial type items unless a purchase order form (NASA Form 177) is appropriate for use.

**§ 18-16.201-3 General provisions—cost-reimbursement supply contracts (NASA Form 418).**

The General Provisions contained in NASA Form 418 shall be used in all cost-reimbursement supply contracts, together with Standard Form 26 (award/contract) (see § 18-16.102-2(d)).

**§ 18-16.201-4 General provisions—fixed-price research and development contracts (NASA Form 247).**

Except when NASA Form 246 is used, NASA Form 247 shall be used in all fixed-price research and development contracts, together with either Standard Form 26 (Award/Contract), or NASA Form 437 (Cover Page), a Schedule, and Standard Form 437-1 (Signature Page).

**§ 18-16.201-5 General provisions—fixed-price research contracts with nonprofit institutions—short form (NASA Form 246).**

The general provisions contained in NASA Form 246 are authorized for use in fixed-priced contracts for basic or applied research with nonprofit institutions of higher education, or with nonprofit institutions whose primary purpose is the conduct of scientific research, when a short form is desired. Additional clauses may be added to or substituted for the clauses contained in NASA Form 246 in accordance with § 18-7.350-19. Standard Form 26 (Award/Contract), or NASA Form 437 (Cover Page), a Schedule, and Standard Form 437-1 (Signature Page) shall be used with NASA Form 246.

**§ 18-16.201-6 General provisions—cost-reimbursement research and development contracts (NASA Form 417).**

Except when NASA Form 419 is used pursuant to § 18-16.201-7, NASA Form 417 shall be used in cost-reimbursement type research and development contracts. Standard Form 26 (Award/Contract), or NASA Form 437 (Cover Page), a Schedule, and Standard Form 437-1 (Signature Page) shall be used with NASA Form 417.

**§ 18-16.201-7 General provisions—cost-reimbursement research and development contracts with educational or nonprofit institutions (NASA Form 419).**

NASA Form 419 shall be used in cost-reimbursement type research and development contracts with educational or nonprofit institutions which involve no fee or profit, together with either Standard Form 26 (Award/Contract), or NASA Form 437 (Cover Page), a Schedule, and Standard Form 437-1 (Signature Page).

**§ 18-16.201-8 General provisions—facilities contracts (NASA Forms 746, 747, and 748).**

(a) NASA Form 746 (general provisions for cost-reimbusement 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 and 18-13.303-50 and 18-13.303-51).

**§ 18-16.202 Cost and price analysis.**

Except as provided in § 18-16.203, when cost data are required in connection with a proposal, DD Form 633 shall be used. However, when the contractor's accounting system or the type of procurement involved makes the use of this form impracticable or inappropriate, the contractor may submit the necessary data in a format acceptable to the contracting officer.

**§ 18-16.203 Cost and price analysis for contract price redetermination.**

DD Form 784 shall be prepared by the contractor for the submission of cost data required for contract price redetermination except when the contractor and the contracting officer have agreed upon an alternative method of cost analysis presentation. Contractor reproduction of DD Form 784 is authorized. However, no alternative form for general application shall be used.

**§ 18-16.204 Justification for negotiation (NASA Form 543).**

NASA Form 543 shall be submitted with proposed determination and findings when a determination is required to be made at NASA Headquarters (see § 18-3.306-1).

73 Subpart 18-16.4 is revised as follows:

## Subpart 18-16.4—Forms for Construction Contracts

Sec.
18-16.400 Scope of subpart.
18-16.401 Advertised construction contract forms.
18-16.401-1 General.
18-16.401-2 Conditions for use.
18-16.401-3 Terms, conditions, and provisions.
18-16.402 Negotiated construction contract forms.
18-16.402-1 General.
18-16.402-2 Contracts not to exceed $2,000.

**§ 18-16.400 Scope of subpart.**

This subpart prescribes forms for use in construction contracts, where the work is to be performed in the United States, its possessions, or Puerto Rico. Construction contracts are defined for the purposes of this subpart as contracts for the construction, alteration, or repair (including dredging, excavating, painting and decorating) of buildings, bridges, roads, or other kinds of real property.

### § 18–16.401 Advertised construction contract forms.

### § 18–16.401–1 General.

The following forms are prescribed for use in formally advertised construction contracts where the work is to be performed in the United States, its possessions, or Puerto Rico:

(1) Standard Form 19—Invitation, Bid and Award (Construction, Alteration, or Repair).

(2) Standard Form 19–A—Labor Standards Provisions—Applicable to Contracts in Excess of $2,000.

(3) Standard Form 19–B (December 1965 Edition)—Representations and Certifications (Construction Contract). Pending the publication of a new edition of Standard Form 19–B, the "Certification or Nonsegregated Facilities" prescribed in § 18–12.802–4(c) shall be made an additional provision of the form.

(4) Standard Form 20—Invitation for Bids (Construction Contract).

(5) Standard Form 21—Bid Form (Construction Contract).

(6) Standard Form 22—Instructions to Bidders (Construction Contract).

(7) Standard Form 23—Construction Contract.

(8) Standard Form 23–A—General provisions (Construction Contract). Pending revision of Standard Form 23–A, the June 1964 edition shall be modified by deleting Clause 21, "Equal Opportunity Clause" and by substituting in lieu thereof the clause prescribed in § 18–12.802–1.

(9) NASA Form 604—Additional General Provisions to U.S. Standard Form 23–A.

(10) Standard Form 30—Amendment of Solicitation/Modification of Contract (see § 18–16.103).

(11) Continuation sheet. There is no prescribed form of Continuation Sheet for construction contracts. A blank sheet, incorporating—

(i) The contractor invitation number, as appropriate;

(ii) Page number and number of pages; and

(iii) Name of bidder or contractor may be used for this purpose. Standard Form 36, Continuation Sheet (Supply Contract), shall not be used for construction contracts.

### § 18–16.401–2 Conditions for use.

(a) *Contracts estimated not to exceed $2,000.* Standard Forms 19 and 19–B shall be used for those contracts executed as a result of formal advertising. Standard Form 22 also may be used. Where it is indicated that the low bid may exceed $2,000, Standard Form 19–A should be attached, the specifications should include the appropriate wage rate determination, and the following language shall be inserted in the space provided in the bid portion of Standard Form 19 prior to the issuance of the invitation:

If this bid exceeds $2,000, the bidder shall furnish with his bid a bid guaranty in an amount equal to _____% of his bid; failure to submit the guaranty on time is cause for rejection of the bid. (JULY 1968)

When Standard Form 19 is used, progress payments may be made if the period of performance is greater than 1 month. However, if the period of performance is less than 1 month or the total contract amount does not warrant progress payments, a single payment may be made, in which case the contracting officer may indicate completion and final acceptance of the contract work by a stamped and signed statement to that effect on the face of the standard form and forwarding it to the disbursing officer for payment. The following statement may be used for this purpose:

I certify that the work and services furnished hereunder have been completed, inspected, and accepted as conforming to the contract requirements, and the amount is correct and proper for payment.

---

Signature and Title of Certifying Officer

(b) *Contracts estimated to exceed $2,000 but not to exceed $10,000.* Standard Forms 19, 19–A, and 19–B shall be used for these construction contracts executed as a result of formal advertising. Standard Form 22 also may be used. The additional language set forth in paragraph (a) of this section shall be inserted in the bid portion of Standard Form 19 prior to issuance of the invitation.

(c) *Contracts estimated to exceed $10,000.* Standard Forms 19–A, 19–B, 20, 21, 22, 23, and 23–A shall be used for these construction contracts executed as a result of formal advertising. NASA Form 604 shall be used to supplement Standard Form 23–A. Strict compliance with the following instructions is required.

(1) *Standard Form 19–A.* This form shall be attached to the contract file.

(2) *Standard Form 19–B.* This form shall be completed by the bidder and shall be attached to the contract file.

(3) *Standard Form 20 (Invitation for Bids).* All invitations for bids shall allow sufficient bidding time (i.e., the period of time between the date of distribution of an invitation for bids and the date set for opening of bids) to allow bidders an adequate opportunity to prepare and submit their bids, giving due regard for the construction season, the time necessary for bidders to inspect the site, obtain subcontract bids, examine data concerning the work and prepare estimates from plans and specifications. This form shall be completed by inserting the appropriate data on the face of the form (see §§ 18–2.201–1(a) and 18–2.201–2).

(4) *Standard Form 21 (Bid Form).* This form shall be furnished to all bidders with the invitation for bids. If the work is divided into separate schedules a bidding schedule showing a breakdown for each such separate schedule should be attached to the invitation for bids and a statement referring thereto made on Standard Form 21.

FORMS FOR CONSTRUCTION CONTRACTS—BIDDING SCHEDULE

(To be attached to bid form when required by the Invitation for Bids)

| Item No. | Description | Estimated quantity | Unit | Unit Price | Estimated amount |
|---|---|---|---|---|---|
| | | | | | |

(The following paragraphs shall be printed on the last page of the bidding schedule immediately below the schedule.)

NOTE: Use additional page if necessary. All extensions of the unit prices shown will be subject to verification by the Government. In case of variation between the unit price and the extension, the unit price will be considered to be the bid.

If a modification to a bid based on unit prices is submitted, which provides for a lump sum adjustment to the total estimated cost, the application of the lump sum adjustment to each unit price in the bid schedule must be stated. If it is not stated, the bidder agrees that the lump sum adjustment shall be applied on a pro rata basis to every unit price in the bid schedule.

(5) *Standard Form 22 (Instructions to Bidders).* A copy of this form should accompany each invitation for bids for the information of bidders.

(6) *Standard Form 23 (Construction Contract).* A copy of this form should be furnished bidders with the invitation for bids for information. The form shall be completed after award to the acceptable bidder and executed by the parties as the formal contract instrument.

(7) *Standard Form 23–A (General Provisions).* NASA Form 604 (Additional General Provisions to U.S. Standard Form 23–A) shall be used in conjunction with this form. Standard Form 23–A and NASA Form 604, together with any other special terms or additional contract provisions included on additional sheets, shall be attached to the executed contract.

(8) *Specifications.* Specifications consisting of technical and special provisions pertinent to the particular contract and contract drawings shall, together with the above forms, complete the contract.

### § 18–16.401–3 Terms, conditions, and provisions.

(a) The use of additional contract provisions consistent with those contained in the above forms is authorized, and, where required elsewhere in this regulation, the use of such additional provisions is mandatory. NASA Form 604 shall be used to supplement Standard Form 23–A. The NASA "New Technology" and "Property Rights in Inventions" clauses shall be used as additional required clauses under the circumstances set forth in §§ 18–9.101–2 and 18–9.101–5.

(b) Changes or additional provisions inconsistent with those contained in the standard forms shall be incorporated when required by this Regulation, and may be incorporated when authorized by this Regulation, or when approved pursuant to § 18–1.109. A copy of such approval pursuant to § 18–1.109–2 shall be forwarded by the Office of Procurement to the General Services Administration.

(c) The provisions of paragraphs (a) and (b) of this section shall not be construed to authorize the reinstatement in Standard Form 19 of clauses which appear in Standard Form 23–A and which have either been condensed or omitted in the development of Standard Form 19 in the interests of simplification and uniformity. Where such reinstatement is deemed essential, the matter shall be handled as a deviation as provided in §18–1.109. Deviations are not required for use with Standard Form 19 of clauses which, although not properly a part of Standard Form 23–A, may accompany it when printed for use within NASA.

(d) The "Disputes" clause of Standard Form 19, may be altered by inserting in the Schedule or in the Specifications, the following:

*Alterations.* As used in the "Disputes" clause of the General Provisions, "head of the Federal Agency" means the "Administrator, NASA." (May 1965)

(e) During a period of national emergency, paragraph (d)(1) of the "Termination for Default—Damages for Delay—Time Extensions" clause of Standard Form 23–A may be changed by deleting the words "unforeseeable causes" in the two places where they appear in the first sentence and substituting therefor the words "causes, other than normal weather."

(f) Deletion or modification of provisions in the above forms shall be accomplished in the "alterations" paragraph of Standard Form 23, or in an "alterations" paragraph added in the Schedule of Standard Form 19, or in the Specifications, as may be appropriate.

**§ 18–16.402 Negotiated construction contract forms.**

**§ 18–16.402–1 General.**

Except for Standard Form 30 (see §§ 18–16.103 and 18–16.815), use of the forms prescribed in § 18–16.401 is optional for negotiated construction contracts. When used for negotiated contracts, the forms shall be adapted by lining out or obliterating the words "sealed" and "publicly opened" and adding language to—

(a) Indicate the authority for negotiation, and

(b) Provide that wherever the words "invitation" and "bid" occur they shall be deemed to refer to "solicitation" and "offer", respectively. The box immediately below the title of Standard Form 19, beside the phrase "check if small business set-aside or other negotiated procurement," must be checked when that form is used for negotiated contracts. The appropriate clauses required for negotiated contracts shall be added to the contract forms. For example, whenever Standard Form 23 is used, the "Examination of Records" clause (§ 18–7.104–15) must be added if the negotiated contract exceeds $2,500. In negotiated fixed-price contracts in excess of $10,000 where the contracting officer is not satisfied that the contract price, by virtue of competition or otherwise, excludes contingencies for State and local taxes, Clause 29 of NASA Form 604, entitled "Federal, State and Local Taxes", shall be deleted and the clause set forth in § 18–11.401–2(d) shall be substituted therefor.

**§ 18–16.402–2 Contracts not to exceed $2,000.**

Either Standard Form 19 of NASA Form 177 shall be used for construction contracts of $2,000 or less executed as a result of negotiation, with the appropriate changes indicated in § 18–16.402–1.

74. Section 18–16.501–50 is revised as follows:

**§ 18–16.501–50 NASA Form 550, negotiated utility service contract, NASA Form 550A, general provisions for negotiated utility service contract, and NASA Form 560B, signature page.**

(a) *Required forms.* NASA Form 550 (Negotiated Utility Service Contract) shall be used in all negotiated utility service contracts, except those for which NASA Form 550S (Negotiated Utility Service Contract—Short Form) is used, as authorized by § 18–16.501–51(a), together with NASA Form 550A (General Provisions) and NASA Form 550B (Signature Page).

(b) *Instructions for completion of form.* The required information to be inserted in the various blanks on the first page is self-explanatory, except for the following:

(1) *Term of contract.* The term of the contract shall not exceed 12 months (see also § 18–7.5003–1).

(2) *Service location.* The information to be inserted in the blank designating the service location should consist of the name of the installation to which service is to be furnished, and, as appropriate, any further designation; for example, "Plum Brook Facility," "Area B," or "Building 434."

75. Section 18–16.501–54 is revised as follows:

**§ 18–16.501–54 Terms, conditions, and provisions.**

Detailed instructions for use of the clauses contained in NASA Form 550A are set forth in Subpart 18–7.50 of this chapter.

76. Section 18–16.802 is revised as follows:

**§ 18–16.802 Statement of contingent fees (Standard Form 119).**

Standard Form 119 is prescribed for use in accordance with §§ 18–1.507 through 18–1.509 and 18–1.550.

77. Section 18–16.803–2(c) is revised as follows:

(c) Standard Form 99, Notice of Award of Contract, shall be used in accordance with the provisions of § 18–12.603.

78. Section 18–16.803–4 is added as follows:

**§ 18–16.803–4 Employer information report EEO–1 (Standard Form 100).**

Standard Form 100 shall be used in accordance with the provisions of § 18–12.806–4.

79. Section 18–16.804(b) is revised as follows:

(b) Treasury Department Form 1444 (Alcohol for Use of United States) and Treasury Department Form 1486 (Specially Denatured Alcohol for Use of United States) shall be used in accordance with the provisions of 18–11.250.

80. In section 18–16.805, paragraphs (d) and (e) are revised as follows:

(d) Payment bond (Standard Form 25–A).

(e) Continuation sheet (Standard Form 25–B) (For Standard Forms 24, 25, 25–A).

81. Section 18–16.811–1 is revised as follows:

**§ 18–16.811–1 Security agreement.**

DD Form 441, Security Agreement is authorized for use in connection with the requirements of §§ 18–7.104–12, 18–7.204–12, and 18–7.451.24.

82. Section 18–16.811–2 is revised as follows:

**§ 18–16.811–2 Security requirements checklist.**

DD Form 254, Security requirements checklist, is authorized for use in connection with the notice required by the "Security Requirements" clause (see §§ 18–7.104–12, 18–7.204–12, 18–7.302–25, 18–7.402–24, and 18–7.451–24), which is included in all contracts classified "Confidential" or higher and in other contracts the performance of which may require access to classified information or material. Instructions for preparation are included in the form.

83. Section 18–16.815 is revised as follows:

**§ 18–16.815 Contract modification forms (Standard Forms 30 and 36).**

**§ 18–16.815–1 Modifications pursuant to provisions of contract.**

Modifications affecting the price or time for performance of a construction contract may be made pursuant to the "Changes", "Changed Conditions" and "Termination for Default—Damages for Delay-Time Extensions" clauses of the contract and shall be accomplished on Standard Form 30. Although such modifications may be issued unilaterally by the contracting officer, usually an agreement with the contractor is obtained prior to the issuance of the formal contract modification. The reason for the proposed modification should be stated e.g., reasons for changes, existence of changed conditions, causes of delay and excusability. If the modification is pursuant to the "Changes" clause, the details of the change should be set forth. If the time of performance is increased or decreased, the extension or decrease should be stated definitely or a statement made that the time for performance remains unchanged. If the contract price is increased or decreased the increase or decrease should be stated definitely or a statement made that the contract price remains unchanged. The contractor should be requested to indicate his acceptance on Standard Form 30. (See § 18–16.103.)

**§ 18–16.815–2 Supplemental agreements.**

Amendments of Solicitation/Modification of Contract (Standard Form 30) shall be used to formalize contract modifications providing for work not within the scope of the contract except that provision shall be made for consent of surety in accordance with the format set forth in 10.111. (See § 18–16.103.)

**§ 18–16.815–3 Continuation of modifications.**

Standard Form 36 or blank sheet(s) of paper may be used for continuation of modifications (see § 18–16.101–2(d)).

84. Section 18–16.866 is revised as follows:

**§ 18–16.866 Material inspection and receiving report forms (DD Form 250, and DD Form 250c).**

The Material Inspection and Receiving Report Form (DD Form 250) shall be used in accordance with Appendix I. DD Form 250c is the Continuation Sheet.

85. In § 18–50.105(b)(1) revised as follows:

(1) For utility services when an area-wide contract is not used and either—

(i) The annual cost of the services to be procured is estimated by the using installation, at the time of the initiation of the service or annual renewal of the expenditure, to exceed $50,000; or

(ii) When, except for communication services, a proposed connection charge, termination liability, or any other facilities charge to be paid (whether or not refundable) is estimated to exceed $5,000.

86. In § 18–50.106, paragraph (c) is deleted and paragraph (d) is redesignated as new paragraph (c) as follows:

(c) *Distribution of contract documents.* Upon approval (or disapproval) of the proposed contract or supplemental agreement, the Director of Procurement will forward the original and two executed copies of the contract and the contract file to the Installation Director. An information copy of the approval letter will be sent directly to the Program Director. An executed copy of the contract will be retained by the Director of Procurement. Contracting officers shall make prompt distribution of approved contracts, subject to the provisions of § 18–3.854. Contracting officers shall report contract awards, subject to the Davis-Bacon Act, to the Bureau of Census, Department of Commerce, on CB Form 16–19 (Construction Contract Award Notification) in accordance with § 18–12.404–13. Contracting officers shall report contract awards, subject to the Walsh-Healey Public Contracts Act, to the Department of Labor, on Standard Form 99 (Notice of Award of Contract) in accordance with § 18–12.603(d).

87. Section 18–50.302–5 is revised as follows:

**§ 18–50.302–5 Modifications.**

Modifications of definitive contracts shall

(a) Bear the same identification as the contract which it modifies, and

(b) Be numbered consecutively for each contract, beginning with Modification No. 1, regardless of whether the modification is accomplished by unilateral or bilateral action. Except for Notices of Termination (see § 18–16.701), contract modifications shall be effected by the use of Standard Form 30 (Amendment of Solicitation/Modification of Contract) (see §§ 18–16.103 and 18–16.815).

88. In § 18–50.302–6(b), subparagraph (1) is revised as follows:

(b) *Modifications.* (1) Additions or changes to letter contracts will be accomplished by modification to the letter contract. Modifications shall, (i) bear the same identification as the letter contract which it modifies, and (ii) be numbered consecutively for each letter contract, beginning with Modification No. 1, regardless of whether the modification is accomplished by unilateral or bilateral action.

* * * * *

89. Subpart 18–51.18 is revised as follows:

## Subpart 18–51.18—Miscellaneous Administrative Actions

**§ 18–51.1801 Automatic data processing equipment.**

(a) Contracting officers administering contracts which include significant costs for the acquisition, either through purchase or rental, and operation of Automatic Data Processing Equipment (ADPE) must exercise particular care to prevent excessive costs resulting from unnecessary capacity or sophistication, inadequate usage time recording, extra shift rentals, machine set up and other nonbillable machine time, and inadequate utilization records.

(b) Proposed increases in the capacity or capabilities of existing ADPE systems will be analyzed in detail and justified by the contractor prior to actual acquisition of the increased capacity or capability in accordance with the provisions of Subpart 18–3.11 and § 18–15.205–48.

*90. In Appendix B, the heading is revised:*

## Appendix B; Control of Government Property in Possession of Contractors

*91. Appendices D through H reserved and Appendix I added:*

## Appendix I; Preparation, Reproduction and Distribution of Material Inspection and Receiving Report (MIRR) (DD Forms 250 and 250c)

### Subpart 1—Introduction

I.101 *General.*

(a) This appendix sets forth procedures and instructions for the use, preparation, and distribution of the Material Inspection and Receiving Report (MIRR) (DD Forms 250 series) and suppliers commercial shipping/packing lists used to evidence Government Procurement Quality Assurance (PQA).

(b) MIRRs are used to document Procurement Quality Assurance, Acceptance of supplies and services, and shipments; they are used by receiving, status control, technical, contracting, inventory control, requisitioning, and paying activities. MIRRs are not required to be used for:

(i) Shipments by subcontractors where direct shipment is not made to the Government;

(ii) Shipment of contract inventory (see 8.101–5); or

(iii) Movement of Government property unless for original acquisition.

(c) To preclude delays in shipments, payments, and avoid multiple corrections, contractors are encouraged to consult with the cognizant Government representative regarding implementation of this appendix.

I.102 *Applicability.*

(a) The provisions of this appendix are applicable to all deliveries of supplies or services procured by or for the National Aeronautics and Space Administration. Exceptions are as follows:

(i) Procurements effected under Part 3, Subpart 6;

(ii) Negotiated subsistence procurements;

(iii) Subcontracts where direct shipment is not made to the Government; and

(iv) Contracts for which the end item is a technical or scientific report.

(b) When the National Aeronautics and Space Administration provides PQA and/or Acceptance services for non-NASA activities, the MIRR shall be prepared in accordance with the instructions of this appendix unless otherwise specified in the contract.

I.103 *Use.*

(a) The DD Form 250 is a multipurpose report used for:

(i) PQA—to provide evidence of PQA at origin or destination;

(ii) Acceptance—to provide evidence of acceptance at origin or destination;

(iii) Packing List;

(iv) Receiving;

(v) Shipping;

(vi) Contractor Invoice;

(vii) Contractor Invoice Support; and

(viii) Contractor Internal Use.

I.104 *Application.*

(a) The DD Form 250 shall be used for delivery of contract line, subline, exhibit line or exhibit subline items.

(b) If the "Shipped To," "Marked For," "Shipped From," "PQA," and "'Acceptance" data are the same for more than one shipment made on the same day under the same contract, one MIRR shall be prepared to cover all such shipments, except that, if the volume of the shipments precludes the use of a single car, truck or other vehicle, either a copy of the single MIRR or a separate MIRR shall be provided for each vehicle.

(c) The DD Form 250 may, but is not required for use under: imprest fund purchases, purchase orders, delivery orders placed against Federal Supply Schedule contracts, delivery orders placed against an indefinite delivery type contract, delivery orders placed against a blanket purchase agreement, or, whenever the purchasing, requisitioning or ordering document adequately provides for inspection and/or acceptance.

I.105 *Forms.*

(a) Contractors may obtain from the procurement office upon request and at no cost, MIRR forms required for use in connection with Government contracts.

(b) Contractors may print forms provided that the format and dimensions (DD Forms 250 and 250c–8½" x 11") are identical to the MIRR forms printed by the Government and that the forms are cast to provide for 78 characters per printed image horizontally and 62 lines vertically border to border for the DD Form 250, and 61 lines vertically border to border for the DD Form 250c.

SUBPART 2—PQA ON SHIPMENTS BETWEEN CONTRACTORS

I.201 *PQA on Subcontracts.* The suppliers' shipping/packing list shall be used to document required PQA actions at origin on shipments the prime contractor and his subcontractors/suppliers or between subcontractors/suppliers on the same prime contract if direct shipment is not made to the Government. PQA actions shall be documented by including Block 21A data on the appropriate supplier shipping/packing list (see Block 21A instructions). Distribution for Government purposes shall be one copy:

(i) With shipment;

(ii) For the Government representative at cosignee (via mail); and

(iii) For the Government representative at cosignor.

SUBPART 3.—PREPARATION OF THE DD FORM 250AND DD FORM 250c

I.301 *Preparation Instructions.* DD Form 250 (MIRR) and DD Form 250c (Continuation Sheet) shall be prepared as follows:

(a) General:

(i) The date, where required, shall utilize seven spaces consisting of the last two digits of the year, three alphabetic month abbreviation, and two digits for the day. For example, 67 AUG 07, 67 SEP 24;

(ii) The address, where required, shall consist of the name, street address/Post Office box, city, State, and ZIP code;

(iii) When the DD Form 250c is used, the data entered in the blocks at the top of the form shall be indentical to the comparable entries as shown in Blocks 1, 2, 3, and 6 of the DD Form 250;

(iv) Overflow data of the DD Form 250 shall be entered in Block 16 or in the body of the DD Form 250c with appropriate block cross reference. Additional DD Form 250c sheets, solely for continuation of Block 23 data, shall not be numbered or distributed as part of the MIRR.

(b) Classified information. Classified information shall not be included in or appear on the MIRR, nor shall the MIRR be classified.

*Block 1.—Contract number.*

(a) Enter the contract number as contained in the contractual document, including the applicable call/order number if any.

(b) Enter the name of the procurement office immediately below the contract number. This requirement may be satisfied by inclusion of the approved prefix used in the contract number to identify the procurement office.

*Block 2.—Shipment number.*

(a) The shipment number is composed of a three alpha character prefix and a four numeric or alpha-numeric serial number.

(1) The shipment number prefix shall be controlled and assigned by the prime contractor and shall consist of three alphabetic characters for each "Shipped From" address (Block 11).

(2) The first shipment under a prime contract from each "Shipped From" address shall be numbered 0001; all subsequent shipments under that prime contract shall be consecutively numbered.

a. Alpha-numeric serial numbers shall be used when more than 9,999 numbers are required. Alpha-numeric numbers shall be serially assigned with the alpha in the first position followed by the three position numeric serial number. The following alpha-numeric sequence shall be used (the letters I and O shall not be used):

A001 through A999 (10,001 through 10,999), B001 through B999 (11,001 through 11,999) through Z001 through Z999 (34,001 through 34,999).

b. When this series is completely used, numbering shall revert to 0001.

(b) The shipment number of the initial shipment shall be reassigned where a "Replacement Shipment" is involved (Block 16(b)(4)).

(c) The prime contractor shall control deliveries and on the last shipment of the contract shall suffix the shipment number with a "Z" in addition to that required for line items (see Block 17). Where the contract final shipment is from other than the prime contractor's plant, the prime contractor may elect either to direct the subcontractor to suffix the "Z", or, on receipt of the subcontractor final shipment information, to correct the DD Form 250 (see I. 305) covering the last shipment from the prime contractor's plant by addition of a "Z" to that shipment number.

*Block 3.—Date shipped.* Enter the date the shipment is released to the carrier. If the shipment will be released after the date of PQA and/or Acceptance, enter the estimated date of release. When the date is estimated, enter an "E" after the date. Distribution of the MIRR shall not be delayed for entry of the actual shipping date. Reissuance of the MIRR is not required to show the actual shipping date.

*Block 4.—B/L TCN.* When applicable enter:

(a) The commercial or Government bill of lading number after "B/L"; and

(b) The Transportation Control Number after "TCN".

*Block 5.—Discount terms.* The discount, in terms of percentages and corresponding days allowed, shall be entered as described below:

(a) The contractor may, at his option, enter the discount terms on all copies of the MIRR.

(b) When the MIRR is used as an invoice, see I.306.

*Block 6.—Invoice No./Date.* Enter the invoice number and date as described below:

(a) The contractor may, at his option, enter the invoice number and date on all copies of the MIRR.

(b) When the MIRR is used as an invoice, see I.306.

*Block 7.—Page/of.* Consecutively number the pages comprising the MIRR. On each page enter the total number of pages of the MIRR.

*Block 8.—Acceptance point.* Enter an "S" for Origin or "D" for Destination as specified in the contract as the point of acceptance. Enter an alphabetic "O" for Other if the point of acceptance is not specified in the contract.

*Block 9.—Prime contractor.* Enter the address.

*Block 10.—Administered by.* Enter the address of the Procurement Office cited in the contract.

*Block 11.—Shipped from/f.o.b.*

(a) Enter the code and address of the "Shipped From" location. If identical to Block 9, enter "See Block 9."

(b) Enter on the same line and to the right of "FOB" and "S" for Origin or "D" for Destination as specified in the contract. Enter an alphabetic "O" if the "FOB" point cited in the contract is other than origin or destination.

*Block 12.—Payment will be made by.* Enter the address of the payment office cited in the contract.

*Block 13.—Shipped to.* Enter the address of the consignee as contained in the contract or shipping instructions.

*Block 14.—Marked for.* Enter the "Mark For" address and/or other designation as contained in the contract or shipping instructions.

*Block 15.—Item Number.* Enter the contrast line item, subline line, exhibit line or exhibit subline identification as set forth in the contract. If four or less digits are used, they will be positioned to the left of the vertical dashed line. Where a six digit identification is used, enter the last two digits to the right of the vertical dashed line.

*Block 16.—Stock/part number/Description.*

(a) Enter, as applicable, for each line item, using single spacing between each line item:

(1) The Federal Stock Number (FSN) or noncatalog number and, if applicable, prefix or suffix; when a number is not provided or it is necessary to supplement the number, include other identification, e.g., manufacturer's name or Federal Supply Code, as published in Cataloging Handbook H4–1, and part number; additional part numbers may be shown in parentheses; the descriptive noun of the item nomenclature and, if provided, the Government assigned management/material control code.

The following technique may be used in the case of equal kind supply items: The first entry shall be the description without regard to kind. For example: "Resistor," "Vacuum Tube," etc. Below this description, enter the contract line item number in Block 15 and stock/part number followed by the size or type in Block 16.

(2) On the next printing line; the make, model, series number, lot, batch, hazard indicator and/or similar description.

(3) On the next printing line; the FED STRIP requisition number(s) when provided in the contract or shipping instructions.

(b) In addition to entries required above, enter on the next line the following as appropriate. Where applicable to all line item numbers identified in the MIRR, enter such data only once after the last line item entry. Entries may be extended through Block 20.

(1) Enter in capital letters any special handling instructions/limits for material environmental control, e.g., temperature, humidity, aging, freezing, shock, etc.

(2) When an FSN is required by but not cited in a contract and has not been furnished by the Government, shipment may be made without such FSN at the direction of the contracting officer. Enter the authority for such shipment.

(3) When Government furnished property (GFP) is included with or incorporated into the line item, enter the letters "GFP".

(4) When shipment consists of replacements for supplies previously furnished, enter in capital letters "Replacement Shipment." (See I.301, Block 17 for replacement indicators.)

(5) For items shipped with missing components, enter and complete the following: "Item(s) shipped short of the following component(s): FSN or comparable Identification ------, Quantity ------, Estimated Value ------, Authority ----------."

(6) When shipment is made of components which were short on a prior shipment, enter and complete the following: "These components were listed as shortages on shipment number ------, date shipped ------."

(7) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following: "Return to ----------, Quantity ------, Item ----------, Ownership (Government/contractor)."

(8) Enter shipping container number(s), the type, and the total number of the shipping container(s) included in the shipment.

(9) The MIRR shall be used to record and report the waivers and deviations from contract specifications, including the source and authority for the waiver or deviation. For example, the procuring installation authorizing the waiver or deviation and the identification of the authorizing document.

(10) For shipments involving discount terms, enter "Discount expedite" in at least 1-inch outline type style letters.

(11) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the contracting officer: "NOTE: Acceptance and payment are contingent upon receipt of approved test/evaluation results". The contracting officer shall advise (a) the consignee of the results (approval/disapproval) and (b) the contractor to withhold invoicing pending attachment to his invoice of the approved test/evaluation results.

(12) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of the four with shipment) or ARP origin acceptance (additional copy furnished to the QAR) shall be identified as follows: enter "Payment Copy" in approximately ½-inch outline type style letters with "Forward to Block 12 address" in approximately ¼-inch letters immediately below. Do not obliterate any other entries.

(13) A double line shall be drawn completely across the form following the last entry.

*Block 17.—Quantity shipped/received*

(a) Enter the quantity shipped, using the unit of measure indicated in the contract. When a second unit of measure is used, enter the appropriate quantity directly below in parenthesis.

(b) Enter a "Z" below the first digit of the quantity when:

(1) The total quantity of the line item is delivered, including variations within contract terms.

(2) All shortages on items previously shipped short are delivered.

(c) If a replacement shipment is involved, enter below the first digit of the quantity, the letter "A" to designate first replacement, "B" for second replacement, etc. The final shipment indicator "Z" shall not be used when a final line item shipment is replaced.

*Block 18.—Unit.* Enter the abbreviation of the unit of measure as indicated in the contract. Where a second unit of measure is indicated in the contract or used for shipping purposes, enter the second unit of measure directly below in parenthesis.

*Block 19.—Unit price.* The contractor may, at his option, enter unit prices on all MIRR copies when the MIRR is used as an invoice.

*Block 20.—Amount.* Enter the extended amount when the unit price is entered in Block 19.

*Block 21.*—PROCUREMENT QUALITY ASSURANCE. The words "conform to contract" contained in the printed statements in Blocks A and B related to contract obligations pertaining to quality, and to the quantity of the items on the report. The statements shall not be modified. Notes taking exception shall be entered in Block 16 or on attached supporting documents with appropriate block cross-reference.

"A. Origin."

(1) The authorized Government representative shall:

a. Place an "X" when applicable in the appropriate PQA and/or Acceptance box(es) to evidence origin Procurement Quality Assurance and/or Acceptance. When the contract requires PQA at destination in addition to origin PQA, an asterisk will be entered at the end of the statement and an explanatory note entered in Block 16;

b. Enter the date of signature;

c. Sign; and

d. Enter the typed, stamped, or printed name of the signer and office code.

"B. Destination."

(1) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(2) When PQA and Acceptance or Acceptance is at destination, the authorized Government representative shall:

(a) Place an "X" in the appropriate box(es);

(b) Enter the date of signature;

(c) Sign; and

(d) Enter typed, stamped, or printed name and title.

*Block 22.—Receiver's use.* This block is provided for the use of the receiving activity (Government or contractor) to denote receipt, quantity and condition.

*Block 23.—Contractor use only.* This block is provided and reserved for Contractor use.

I.302 [*Reserved*]

I.303 *Consolidated shipments.* When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single destination, on a single bill of lading, the applicable DD Forms 250 may be prepared at the time of Procurement Quality Assurance or Acceptance prior to the time of actual shipment. (See Block 3).

I.304 [*Reserved*]

I.305 *Correction instructions.* When, because of errors or omissions, it is necessary to correct the MIRR after distribution has been made, a revised MIRR shall be effected by correcting the original master and distributing the corrected form. The corrections shall be made as follows:

(i) Circle the error and place the corrected information in the same block; if space is limited, enter the corrected information in Block 16 referencing the error page and block.

(ii) The words "Corrections Have Been Verified" shall be entered on page 1. The authorized Government representative shall place the date and sign immediately below the statement.

(iii) MIRRs shall not be corrected for Blocks 19 and 20 entries.

(iv) Pages of the MIRR requiring correction shall be clearly marked "Corrected Copy", avoiding obliteration of any other entries. Where corrections are made only on continuation sheets, page No. 1 shall also be marked "Corrected Copy."

(v) Page 1 and only those continuation pages marked "Corrected Copy" shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

I.306 *Invoice instructions.* Contractors are encouraged to use copies of the MIRR as an invoice, in lieu of a commercial form, but are not required to do so. When used as an invoice, four copies shall be prepared and forwarded to the payment office as follows:

(i) Complete Blocks 5, 6, 19, and 20.

(ii) Mark in letters approximately one inch high, first copy: "Original Invoice"; three copies: "Invoice Copy".

(iii) Forward the four copies to the payment office (Block 12 address).

I.307 *Packing list instructions.* Copies of the MIRR may be used as a packing list. When they are used, the packing list copies shall be in addition to the copies of the MIRR required for distribution (I.401) and shall be marked "Packing List".

I.308 *Receiving instructions.* When the MIRR is used for receiving purposes, procedures shall be as prescribed by local directives. If PQA and Acceptance or Acceptance of supplies is required upon arrival at destination, see Block 21B for instructions.

SUBPART 4—DISTRIBUTION OF DD FORM 250 AND DD FORM 250c

I.401 *Distribution.*

(a) Subject to the requirements of paragraph 217 of NASA Handbook 5330.7 (Management of Government Quality Assurance Functions for Supplier Operations), DD Form 250 and 250c shall be distributed in accordance with the procedures prescribed by the installation.

(b) The contractor will be responsible for distributing DD Form 250 and 250c in accordance with the provisions of the contract or the instructions of the contracting officer.

[F.R. Doc. 68-14345; Filed, Dec. 3, 1968; 8:45 a.m.]

# Title 7—AGRICULTURE

## Chapter II—Consumer and Marketing Service (Consumer Food Programs), Department of Agriculture

[Amdt. 9]

## PART 210—NATIONAL SCHOOL LUNCH PROGRAM

### Miscellaneous Amendments

Regulations for the operation of the National School Lunch Program (28 F.R. 1247), as amended (28 F.R. 11531, 29 F.R. 311, 29 F.R. 14619, 30 F.R. 15402, 31 F.R. 14924, 32 F.R. 33, 32 F.R. 12083, 33 F.R. 15631), are hereby revised as follows:

1. In § 210.4, Apportionment of Funds to States, paragraphs (g) and (h) are added as follows:

**§ 210.4 Apportionment of funds to States.**

* * * * *

(g) Supplemental funds made available from Section 32 funds (Act of August 24, 1935, as amended) are to be tentatively allocated as follows: (1) Three percent shall be allocated to Puerto Rico, the Virgin Islands, Guam, and American Samoa, the amount to be allocated to each of those States being an amount which bears the same ratio to the total funds for such States as the number of children aged 3 to 17, inclusive, in each bears to the total number of children of such ages in all of them; and (2) the remaining funds shall be allocated to States other than Puerto Rico, the Virgin Islands, Guam, and American Samoa, in an amount for each State which bears the same ratio to such remaining funds as (i) the number of children in that State aged 3 to 17, inclusive, in families with incomes of less than $3,000 per annum, and (ii) the number of children in that State aged 3 to 17, inclusive, in families receiving an annual income in excess of $3,000 per annum from payments under the program of aid to families with dependent children pursuant to a State plan approved under title IV of the Social Security Act bears to the total number of such children in all such States.

(h) A share of the supplemental funds so allocated to any State shall be withheld by C&MS for the nonprofit private schools of that State, if the State agency does not administer the program in such schools. The withholding of funds for and the disbursement thereof to nonprofit private schools shall be effected in accordance with section 10 of the National School Lunch Act, as amended, exclusive of the matching provision thereof.

* * * * *

2. In § 210.5, Payments to States, a new paragraph (b–1) is added as follows:

§ 210.5 Payments to States.

* * * * *

(b–1) The supplemental funds allocated to any State agency for any fiscal year shall be made available in accordance with the method set forth in this section for general cash-for-food assistance funds, and, to the extent practicable, shall be made available in accordance with the same schedules. Initially, supplemental funds in an amount not to exceed 60 percent of the State's tentative allocation shall so be made available. Final apportionments and increases in amounts made available, up to the amount of the tentative allocation, shall be made on the basis of justifications of the need for additional funds submitted by the States.

* * * * *

3. In § 210.9, Requirements for Lunches, pararaph (d) is added as follows:

§ 210.9 Requirements for lunches.

* * * * *

(d) Substitutions may be made in the foods listed in paragraph (a)(1) of this section if individual participating children are unable, because of medical or other special dietary needs, to consume such foods. Such substitutions shall be made only when supported by a statement from a recognized medical authority.

* * * * *

4. Section 210.10 is revised to read as follows:

§ 210.10 Reimbursement payments.

(a) Reimbursement shall be paid only in connection with lunches meeting the requirements of §§ 210.9.

(b) The maximum rate of reimbursement to schools selected for participation in the general cash-for-food assistance phase of the program shall be 9 cents for a Type A lunch, 7 cents for a Type A lunch which does not include milk, and 2 cents for a Type C lunch, from general cash-for-food assistance funds: *Provided,* That, in situations where it is determined by the State agency, or CFPDO where applicable, that additional assistance is needed in order to meet program requirements, the State agency, or CFPDO where applicable, may make reimbursement at either:

(1) A maximum rate of 20 cents for a Type A lunch and 18 cents for a Type A lunch which does not include milk, from general cash-for-food assistance funds, or,

(2) A maximum rate of 9 cents for a Type A lunch and 7 cents for a Type A lunch which does not include milk, from general cash-for-food assistance funds, and, in addition, for free and reduced-price lunches served to needy children, a maximum rate of 25 cents for a Type A lunch and 23 cents for a Type A lunch which does not include milk, from supplemental funds.

(c) The State agency, or CFPDO where applicable, may reimburse schools selected for participation in the special cash-for-food assistance phase of the program at either:

(1) A maximum rate of 20 cents for a Type A lunch and 18 cents for a Type A lunch which does not include milk, from special cash-for-food assistance funds, or,

(2) A maximum rate of 9 cents for a Type A lunch and 7 cents for a Type A lunch which does not include milk, from general cash-for-food assistance funds, and, in addition, for free and reduced-price lunches served to needy children, a maximum rate of 25 cents for a Type A lunch and 23 cents for a Type A lunch which does not include milk, from special cash-for-food assistance funds.

(d) State agencies, or CFPDO where applicable, in reimbursing schools selected for participation in the special cash-for-food assistance phase of the program for Type A lunches or Type A lunches which do not include milk, may utilize supplemental funds in place of the special cash-for-food assistance funds, to the extent necessary.

(e) In agreements with schools, the State agency, or CFPDO where applicable, shall assign rates of reimbursement within the maximum rates, and any variation between schools in the assigned rates for particular lunch types shall reflect the relative needs of the schools as determined by the State agency, or CFPDO where applicable. The reimbursement rates authorized in this section may be assigned on a school-wide basis or on an individual attendance unit basis at the option of the State agency, or CFPDO where applicable. Assigned rates may be changed by the State agency, or CFPDO where applicable. Notice of any change will be given to the schools.

(f) Schools shall be reimbursed on the basis of the number of lunches served to children times the assigned rate, except that the last claim from a school each fiscal year may be paid at a rate in excess of the assigned rate or the maximum rate: *Provided, however,* That the total reimbursement to a school during any fiscal year shall not exceed the lesser of (1) an amount equal to the number of lunches served to children during the fiscal year times the maximum rate, or (2) the cost of obtaining food.

* * * * *

*Effective date.* This amendment shall be effective upon publication in the FEDERAL REGISTER.

Approved: November 29, 1968.

[SEAL] TED J. DAVIS,
*Assistant Secretary.*

[F.R. Doc. 68–14472; Filed, Dec. 3, 1968; 8:47 a.m.]

## Chapter XIV—Commodity Credit Corporation, Department of Agriculture

### SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

### PART 1464—TOBACCO

### Subpart—Tobacco Loan Program

Set forth below is a schedule of advance rates, by grades, for the 1968 crop of types 21, 22, 23, 35, 36, and 37 tobacco, under the tobacco loan program published July 16, 1966 (31 F.R. 9679).

Sec.

1464.1766 1968 crop—Virginia Fire-cured Tobacco, Type 21, advance schedule.
1464.1767 1968 crop—Kentucky-Tennessee Fire-cured Tobacco, Types 22 and 23, advance schedule.
1464.1769 1968 crop—Dark Air-cured Tobacco, Types 35 and 36, advance schedule.
1464.1770 1968 crop—Virginia Sun-cured Tobacco, Type 37, advance schedule.

AUTHORITY: The provisions of this subpart issued under sec. 4, 62 Stat. 1070, as amended, sec. 5, 62 Stat. 1072, secs. 101, 106, 401, 403, 63 Stat. 1051, as amended, 1054, sec. 125, 70 Stat. 198, 74 Stat. 6; 7 U.S.C. 1441, 1445, 1421, 1423, 7 U.S.C. 1813, 15 U.S.C. 714b, 714c.

### § 1464.1766. 1968 crop—Virginia Fire-cured Tobacco, Type 21, advance schedule.[1]

[Dollars per hundred pounds, farm sales weight]

| Grade | Length 46 | Length 45 | Length 44 | Length 43 |
|---|---|---|---|---|
| A1F | 63.25 | 63.25 | | |
| A2F | 57.25 | 58.25 | | |
| A1D | 62.25 | 62.25 | | |
| A2D | 57.25 | 58.25 | | |
| B1F | 60.25 | 60.25 | | |
| B2F | 56.25 | 56.25 | 50.25 | |
| B3F | 47.25 | 49.25 | 45.25 | 38.25 |
| B4F | 41.25 | 45.25 | 43.25 | 37.25 |
| B5F | 37.25 | 38.25 | 37.25 | 33.25 |
| B1D | 60.25 | 60.25 | | |
| B2D | 56.25 | 56.25 | 49.25 | |
| B3D | 47.25 | 49.25 | 45.25 | 38.25 |
| B4D | 39.25 | 41.25 | 39.25 | 37.25 |
| B5D | 36.25 | 37.25 | 36.25 | 33.25 |
| B3M | 41.25 | 42.25 | 41.25 | 37.25 |
| B4M | 38.25 | 40.25 | 38.25 | 35.25 |
| B5M | 34.25 | 36.25 | 35.25 | 29.25 |
| B3G | 39.25 | 40.25 | 39.25 | 36.25 |
| B4G | 37.25 | 38.25 | 37.25 | 34.25 |
| B5G | 34.25 | 35.25 | 34.25 | 29.25 |
| C1L | 67.25 | 67.25 | | |
| C2L | 63.25 | 63.25 | 55.25 | |
| C3L | 53.25 | 53.25 | 49.25 | |
| C4L | 45.25 | 46.25 | 45.25 | |
| C5L | 40.25 | 41.25 | 40.25 | |
| C1F | 67.25 | 67.25 | | |
| C2F | 63.25 | 63.25 | 55.25 | |
| C3F | 53.25 | 53.25 | 49.25 | |
| C4F | 45.25 | 47.25 | 46.25 | |
| C5F | 40.25 | 43.25 | 41.25 | |
| C2D | 39.25 | 41.25 | 40.25 | |
| C3D | 36.25 | 37.25 | 36.25 | |
| C4D | 34.25 | 35.25 | 34.25 | |
| C5D | 29.25 | 30.25 | 29.25 | |
| C3M | 41.25 | 44.25 | 43.25 | |
| C4M | 39.25 | 41.25 | 40.25 | |
| C5M | 36.25 | 38.25 | 37.25 | |
| C3G | 36.25 | 38.25 | 36.25 | |
| C4G | 33.25 | 35.25 | 33.25 | |
| C5G | 30.25 | 32.25 | 30.25 | |

| Grade | | Grade | |
|---|---|---|---|
| X1L | 49.25 | X3M 45 | 38.25 |
| X2L | 47.25 | X4M | 38.25 |
| X3L | 45.25 | X4M 45 | 35.25 |
| X4L | 42.25 | X5M | 34.25 |
| X5L | 39.25 | X5M 45 | 31.25 |
| X1F | 50.25 | X3G | 37.25 |
| X2F | 48.25 | X3G 45 | 35.25 |
| X3F | 46.25 | X4G | 34.25 |
| X4F | 43.25 | X4G 45 | 31.25 |
| X5F | 40.25 | X5G | 29.25 |
| X1D | 43.25 | X5G 45 | 28.25 |
| X2D | 40.25 | N1L | 28.25 |
| X3D | 38.25 | N1D | 28.25 |
| X4D | 35.25 | N1G | 26.25 |
| X5D | 30.25 | N2 | 18.25 |
| X3M | 40.25 | | |

### § 1464.1767 1968 crop—Kentucky-Tennessee Fire-cured Tobacco, Types 22 and 23, advance schedule.[1]

[Dollars per hundred pounds, farm sales weight]

| Grade | Length 46 | Length 45 | Length 44 | Length 43 |
|---|---|---|---|---|
| A1F | 65 | 65 | | |
| A2F | 61 | 61 | | |
| A3F | 52 | 52 | | |
| A1D | 65 | 65 | | |
| A2D | 61 | 61 | | |
| A3D | 52 | 52 | | |
| B1F | 55 | 55 | 51 | |
| B2F | 52 | 52 | 49 | |
| B3F | 47 | 48 | 46 | 40 |
| B4F | 44 | 45 | 43 | 36 |
| B5F | 41 | 41 | 39 | 33 |
| B3VF | 45 | 45 | 42 | 34 |
| B4VF | 43 | 43 | 41 | 33 |
| B5VF | 39 | 39 | 37 | 29 |
| B1D | 55 | 55 | 51 | |
| B2D | 52 | 52 | 49 | |
| B3D | 50 | 51 | 49 | 42 |
| B4D | 44 | 45 | 43 | 36 |
| B5D | 40 | 40 | 37 | 31 |
| B3M | 45 | 46 | 43 | 37 |
| B4M | 41 | 42 | 39 | 31 |
| B5M | 36 | 36 | 32 | 26 |
| B3G | 46 | 47 | 45 | 35 |
| B4G | 41 | 41 | 38 | 29 |
| B5G | 37 | 37 | 33 | 27 |
| C1L | 56 | 56 | 53 | |
| C2L | 52 | 52 | 50 | |
| C3L | 50 | 50 | 47 | 41 |
| C4L | 47 | 47 | 45 | 39 |
| C5L | 44 | 44 | 43 | 36 |
| C1F | 56 | 56 | 53 | |
| C2F | 52 | 52 | 50 | |
| C3F | 50 | 50 | 48 | 41 |
| C4F | 47 | 47 | 45 | 38 |
| C5F | 45 | 45 | 42 | 35 |
| C3VF | 46 | 47 | 44 | 38 |
| C4VF | 43 | 44 | 42 | 36 |
| C5VF | 42 | 43 | 41 | 32 |
| C1D | 55 | 55 | 51 | |
| C2D | 46 | 46 | 43 | |
| C3D | 43 | 44 | 41 | 35 |
| C4D | 39 | 39 | 37 | 31 |
| C5D | 38 | 38 | 36 | 29 |
| C3M | 46 | 46 | 43 | 37 |
| C4M | 42 | 42 | 40 | 35 |
| C5M | 40 | 40 | 38 | 30 |
| C3G | 42 | 42 | 39 | 34 |
| C4G | 38 | 39 | 35 | 30 |
| C5G | 35 | 35 | 32 | 29 |

| Grade | | Grade | |
|---|---|---|---|
| X1L | 47 | X2D | 43 |
| X2L | 45 | X3D | 40 |
| X3L | 44 | X4D | 37 |
| X4L | 41 | X5D | 34 |
| X5L | 39 | X3M | 40 |
| X1F | 46 | X4M | 38 |
| X2F | 44 | X5M | 34 |
| X3F | 43 | X3G | 38 |
| X4F | 41 | X4G | 34 |
| X5F | 39 | X5G | 31 |
| X3VF | 43 | NIL | 34 |
| X4VF | 40 | N1D | 30 |
| X5VF | 37 | N1G | 29 |
| X1D | 45 | N2 | 24 |

See footnotes at end of table.

### § 1464.1769 1968 crop—Dark Air-cured Tobacco, Types 35 and 36, advance schedule.[1]

[Dollars per hundred pounds, farm sales weight]

| Grade | Length 46 | Length 45 | Length 44 |
|---|---|---|---|
| A1F | 55 | 55 | |
| A2F | 51 | 51 | |
| A3F | 46 | 46 | |
| A1R | 55 | 55 | |
| A2R | 51 | 51 | |
| A3R | 46 | 46 | |
| B1F | 51 | 51 | 48 |
| B2F | 48 | 48 | 47 |
| B3F | 46 | 46 | 44 |
| B4F | 43 | 43 | 42 |
| B5F | 39 | 39 | 38 |
| B1R | 50 | 50 | 48 |
| B2R | 47 | 47 | 46 |
| B3R | 44 | 44 | 43 |
| B4R | 42 | 42 | 41 |
| B5R | 39 | 39 | 38 |
| B1D | 50 | 50 | 48 |
| B2D | 47 | 47 | 46 |
| B3D | 44 | 44 | 43 |
| B4D | 43 | 43 | 42 |
| B5D | 38 | 38 | 37 |
| B3M | 43 | 43 | 42 |
| B4M | 39 | 39 | 38 |
| B5M | 35 | 35 | 34 |
| B3G | 42 | 42 | 41 |
| B4G | 39 | 39 | 38 |
| B5G | 35 | 35 | 34 |
| C1L | 51 | 51 | 50 |
| C2L | 50 | 50 | 49 |
| C3L | 48 | 48 | 47 |
| C4L | 44 | 44 | 43 |
| C5L | 37 | 37 | 35 |
| C1F | 51 | 51 | 50 |
| C2F | 49 | 49 | 48 |
| C3F | 47 | 47 | 45 |
| C4F | 44 | 44 | 43 |
| C5F | 38 | 38 | 37 |
| C1R | 49 | 49 | 48 |
| C2R | 47 | 47 | 46 |
| C3R | 44 | 44 | 42 |
| C4R | 39 | 39 | 38 |
| C5R | 34 | 34 | 33 |
| C3M | 42 | 42 | 41 |
| C4M | 37 | 37 | 36 |
| C5M | 33 | 33 | 32 |
| C3G | 43 | 43 | 42 |
| C4G | 38 | 38 | 37 |
| C5G | 33 | 33 | 32 |

| Grade | | Grade | |
|---|---|---|---|
| T3F | 38 | X4F | 42 |
| T4F | 34 | X5F | 39 |
| T5F | 26 | X1R | 47 |
| T3R | 38 | X2R | 44 |
| T4R | 34 | X3R | 40 |
| T5R | 26 | X4R | 36 |
| T3D | 38 | X5R | 34 |
| T4D | 34 | X3D | 40 |
| T5D | 26 | X4D | 36 |
| T3M | 37 | X5D | 33 |
| T4M | 32 | X3M | 37 |
| T5M | 25 | X4M | 34 |
| T3G | 37 | X5M | 33 |
| T4G | 32 | X3G | 37 |
| T5G | 25 | X4G | 33 |
| X1L | 47 | X5G | 29 |
| X2L | 45 | N1L | 32 |
| X3L | 44 | N1R | 28 |
| X4L | 42 | N1G | 27 |
| X5L | 39 | N2L | 26 |
| X1F | 47 | N2R | 24 |
| X2F | 45 | N2G | 24 |
| X3F | 43 | | |

### § 1464.1770 1968 crop—Virginia Sun-cured Tobacco, Type 37, advance schedule.[1]

[Dollars per hundred pounds, farm sales weight]

| Grade | Length 46 | Length 45 | Length 44 |
|---|---|---|---|
| A1F | 62.25 | 62.25 | 60.25 |
| A2F | 58.25 | 58.25 | 55.25 |
| A3F | 55.25 | 55.25 | 52.25 |

[Dollars per hundred pounds, farm sales weight]

| Grade | Length 46 | Length 45 | Length 44 |
|---|---|---|---|
| A1R | 62.25 | 62.25 | 60.25 |
| A2R | 59.25 | 59.25 | 56.25 |
| A3R | 56.25 | 56.25 | 53.25 |
| B1F | 61.25 | 62.25 | 54.25 |
| B2F | 59.25 | 60.25 | 55.25 |
| B3F | 50.25 | 52.25 | 50.25 |
| B4F | 44.25 | 48.25 | 46.25 |
| B5F | 40.25 | 41.25 | 40.25 |
| B1R | 61.25 | 62.25 | 54.25 |
| B2R | 58.25 | 59.25 | 55.25 |
| B3R | 51.25 | 53.25 | 50.25 |
| B4R | 44.25 | 46.25 | 44.25 |
| B5R | 40.25 | 41.25 | 40.25 |
| B1D | 59.25 | 59.25 | 54.25 |
| B2D | 58.25 | 59.25 | 54.25 |
| B3D | 50.25 | 51.25 | 48.25 |
| B4D | 43.25 | 44.25 | 43.25 |
| B5D | 39.25 | 40.25 | 39.25 |
| B3M | 42.25 | 45.25 | 42.25 |
| B4M | 40.25 | 43.25 | 42.25 |
| B5M | 36.25 | 37.25 | 36.25 |
| B3G | 42.25 | 44.25 | 42.25 |
| B4G | 40.25 | 41.25 | 40.25 |
| B5G | 36.25 | 37.25 | 36.25 |
| C1L | 60.25 | 61.25 | 53.25 |
| C2L | 54.25 | 55.25 | 50.25 |
| C3L | 51.25 | 51.25 | 47.25 |
| C4L | 43.25 | 45.25 | 43.25 |
| C5L | 38.25 | 39.25 | 38.25 |
| C1F | 60.25 | 61.25 | 53.25 |
| C2F | 54.25 | 55.25 | 50.25 |
| C3F | 50.25 | 52.25 | 47.25 |
| C4F | 42.25 | 48.25 | 44.25 |
| C5F | 37.25 | 40.25 | 39.25 |
| C1R | 57.25 | 57.25 | 51.25 |
| C2R | 51.25 | 51.25 | 47.25 |
| C3R | 45.25 | 45.25 | 43.25 |
| C4R | 39.25 | 40.25 | 39.25 |
| C5R | 35.25 | 36.25 | 35.25 |
| C3M | 39.25 | 42.25 | 41.25 |
| C4M | 37.25 | 40.25 | 39.25 |
| C5M | 33.25 | 38.25 | 36.25 |
| C3G | 34.25 | 37.25 | 34.25 |
| C4G | 33.25 | 36.25 | 34.25 |
| C5G | 28.25 | 29.25 | 28.25 |

| Grade | | Grade | |
|---|---|---|---|
| T3F | 42.25 | X4F | 40.25 |
| T4F | 40.25 | X5F | 35.25 |
| T5F | 34.25 | X1R | 46.25 |
| T3R | 42.25 | X2R | 43.25 |
| T4R | 40.25 | X3R | 39.25 |
| T5R | 34.25 | X4R | 38.25 |
| T3D | 40.25 | X5R | 30.25 |
| T4D | 38.25 | X3D | 36.25 |
| T5D | 32.25 | X4D | 34.25 |
| T3M | 40.25 | X5D | 28.25 |
| T4M | 37.25 | X3M | 39.25 |
| T5M | 31.25 | X4M | 36.25 |
| T3G | 39.25 | X5M | 34.25 |
| T4G | 37.25 | X3G | 37.25 |
| T5G | 31.25 | X4G | 34.25 |
| X1L | 46.25 | X5G | 30.25 |
| X2L | 44.25 | N1L | 22.25 |
| X3L | 41.25 | N1R | 22.25 |
| X4L | 39.25 | N1G | 22.25 |
| X5L | 34.25 | N2L | 15.25 |
| X1F | 46.25 | N2R | 15.25 |
| X2F | 45.25 | N2G | 16.25 |
| X3F | 42.25 | | |

Effective date: Date of filing with Office of Federal Register.

Signed at Washington, D.C., on November 25, 1968.

H. D. GODFREY,
*Executive Vice President,*
*Commodity Credit Corporation.*

[F.R. Doc. 68-14332; Filed, Dec. 3, 1968; 8:45 a.m.]

[1] Only the original producer is eligible to receive advances. Tobacco graded "U" (unsound), "No-G" (no grade), or scrap will not be accepted. Cooperatives for types 21, and 37 are authorized to deduct 25 cents

per hundred pounds to apply against overhead costs. Tobacco of types 22, 23, 35, and 36 graded "W" (doubtful keeping order) will be accepted at advance rates 20 percent below the advance rates otherwise applicable. Tobacco of types 21, and 37 graded "W" (doubtful keeping order) will not be accepted. Type 35 grades marked with the special factor "BL" shall have an advance rate 20 percent below the advance rate otherwise applicable without such special factor. Types 35 and 36 grades marked with the special factor "BH" shall have an advance rate 20 percent below the advance rate otherwise applicable without such special factor. Types 21, 22, and 23 grades of 47 length and types 35 and 36 grades of 47 length, except grades A1F, A1R, A2F, and A2R, shall have an advance rate 5 percent below the advance rate otherwise applicable for 46 length of each grade. The advance rates for grades A1F, A1R, A2F, and A2R of types 35 and 36 in 47 length shall be the same as those for such grades in 46 length.

[Amdt. 5]

## PART 1468—MOHAIR

### Subpart—Payment Program for Mohair

PRICE SUPPORT LEVEL FOR 1969 MARKETING YEAR

The regulations issued by Commodity Credit Corporation containing the requirements with respect to the Payment Program for Mohair, as amended (31 F.R. 5817, 15234; 32 F.R. 4568, 16391; 33 F.R. 5208), are further amended by inserting the following new paragraph (e) at the end of § 1468.255:

**§ 1468.255 Price support level.**

* * * * *

(e) *1969 marketing year.* For the 1969 marketing year, the price support level was announced on May 31, 1968, as 77.4 cents per pound of mohair, grease basis.

(Sec. 4, 62 Stat. 1070, sec. 5, 62 Stat. 1072, secs. 702–708, 68 Stat. 910–912, as amended, secs. 401–403, 72 Stat. 994–995, sec. 151, 75 Stat. 306, sec. 201, 79 Stat. 1188; 15 U.S.C. 714b, 15 U.S.C. 714c, 7 U.S.C. 1781–1787, as amended)

*Effective date.* Date of publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on November 27, 1968.

H. D. GODFREY,
*Executive Vice President,*
*Commodity Credit Corporation.*

[F.R. Doc. 68–14526; Filed, Dec. 3, 1968; 8:52 a.m.]

[Amdt 5]

## PART 1472—WOOL

### Subpart—Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool)

PRICE SUPPORT LEVEL FOR 1969 MARKETING YEAR

The regulations issued by Commodity Credit Corporation containing the requirements with respect to the payment program for shorn wool and unshorn lambs (pulled wool), as amended (31 F.R. 4582, 15234; 32 F.R. 4568, 16391; 33 F.R. 5208), are further amended by inserting the following new paragraph (e) at the end of § 1472.1205:

**§ 1472.1205 Price support level.**

* * * * *

(e) *1969 marketing year.* For the 1969 marketing year, the price support level was announced on May 31, 1968, as 69 cents per pound of shorn wool, grease basis.

(Sec. 4, 62 Stat. 1070, sec. 5, 62 Stat. 1072, secs. 702–708, 68 Stat. 910–912, as amended, secs. 401–403, 72 Stat. 994–995, sec. 151, 75 Stat. 306, sec. 201, 79 Stat. 1188; 15 U.S.C. 714b, 15 U.S.C. 714c, 7 U.S.C. 1781–1787, as amended)

*Effective date.* Date of publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on November 27, 1968.

H. D. GODFREY,
*Executive Vice President,*
*Commodity Credit Corporation.*

[F.R. Doc. 68–14527; Filed, Dec. 3, 1968; 8:52 a.m.]

# Title 14—AERONAUTICS AND SPACE

## Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 68–EA–129]

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

### Alteration of Transition Area

The Federal Aviation Administration is amending § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the Erie, Pa., 700-foot transition area.

The name of the Erie RBN has been changed to Cascade RBN effective December 12, 1968, and will require a coincident change when it appears in the description of the transition area.

Since this amendment is minor in nature and imposes no additional burden on any person, notice and public procedure herein are unnecessary and the amendment may be made effective in less than 30 days.

In view of the foregoing, the Federal Aviation Administration having reviewed the airspace requirements in the terminal airspace of Erie, Pa., the amendment is herewith made effective 0901 G.m.t., December 12, 1968, Part 71 is amended as follows:

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to delete in the description of the Erie, Pa., 700-foot transition area the name "Erie RBN" and insert in lieu thereof the name "Cascade RBN".

(Sec. 307(a), Federal Aviation Act of 1958; 72 Stat. 749; 49 U.S.C. 1348)

Issued in Jamaica, N.Y., on November 21, 1968.

R. M. BROWN,
*Acting Director, Eastern Region.*

[F.R. Doc. 68–14439; Filed, Dec. 3, 1968; 8:45 a.m.]

[Airspace Docket No. 68–SO–95]

## 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 alter the Spartanburg, S.C., control zone.

The Spartanburg control zone is described in § 71.171 (33 F.R. 2058).

In the description, an extension is predicated on the Spartanburg VORTAC 194° radial. Since the final approach radial of AL–401–VOR RWY–17 standard instrument approach procedure has changed from 194° to 196°, it is necessary to alter the description accordingly.

Since this amendment is minor in nature, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 71.171 (33 F.R. 2058), the Spartanburg, S.C., control zone is amended as follows:

"* * * Spartanburg VORTAC 194° * * *" is deleted and "* * * Spartanburg VORTAC 196° * * *" is substituted therefor.

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

Issued in East Point, Ga., on November 22, 1968.

JAMES G. ROGERS,
*Director, Southern Region.*

[F.R. Doc. 68–14440; Filed, Dec. 3, 1968; 8:45 a.m.]

[Airspace Docket No. 68–SO–86]

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

### Alteration of Federal Airways

The purpose of these amendments to Part 71 of the Federal Aviation Regulations is to alter V–51E, V–159, and V–267E as follows:

1. Realign a segment of V–51E from Biscayne Bay, Fla., via the INT of Biscayne Bay 348° and Vero Beach, Fla., 178° True radials; to Vero Beach.

2. Realign a segment of V–159 from Miami, Fla., via the INT of Miami 346° and Palm Beach, Fla., 222° True radials; Palm Beach; INT of Palm Beach 321° and Vero Beach 178° True radials; to Vero Beach, and revoke V–159E from Miami to Palm Beach.

3. Realign a segment of V–267E from Miami via Palm Beach; the INT of Palm Beach 321° and Orlando, Fla., 162° True radials; to Orlando.

Aircraft inbound to Miami commence their arrival procedures for eastbound landings to Miami International Airport from one predetermined set of approach fixes, and for westbound landings from a different predetermined set of approach fixes. Unusual meteorological conditions in south Florida during thunder storms and the passage of cold fronts

results in rapid wind changes between the east and west. This requires a rapid reconfiguration of inbound traffic flow between the arrival fixes. Because of the high volume of traffic in the Palm Beach/Miami area such an abrupt change of inbound traffic flow could result in an unsafe operation.

To alleviate this problem, arrival and departure procedures at both Palm Beach and Miami have been revised to permit one predetermined set of approach fixes to accommodate both east and west landings at Miami International Airport. Alteration of the airways, as described herein, will provide the required separation between the revised inbound holding and approach fixes, and the revised departure procedures.

The segment of V–267 south of Orlando is used for inbound traffic to both Palm Beach and Miami. The realignment of V–267E between Palm Beach and V–267 will provide for earlier separation of the Palm Beach traffic from the Miami traffic, provide an inbound route more compatible with Palm Beach arrival procedures and relieve congestion on V–267.

V–295 is designated in part between Vero Beach and Orlando via the Orlando 161° radial. It is intended that this segment follow the direct alignment of V–267 between Orlando and Pahokee which is the Orlando 162° radial. Corrective action is taken herein.

Since these amendments are in the interest of safety, the Administrator has determined that notice and public procedure thereon is impracticable. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, these amendments will become effective more than 30 days after publication.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., February 6, 1969, as hereinafter set forth.

1. In § 71.123 (33 F.R. 2009, 6084, 15544) the following changes are made:

a. In V–51 all between "12 AGL Vero Beach," and "12 AGL Daytona Beach, Fla.;" is deleted and "including a 12 AGL east alternate from Biscayne Bay to Vero Beach via INT Biscayne Bay 348° and Vero Beach 178° radials;" is substituted therefor.

b. In V–159 all before "12 AGL Vero Beach;" is deleted and "From Miami, Fla., 12 AGL INT Miami 346° and Palm Beach, Fla., 222° radials; 12 AGL Palm Beach; 12 AGL INT Palm Beach 321° and Vero Beach, Fla., 178° radials;" is substituted therefor.

c. In V–267 all before "12 AGL Jacksonville, Fla.; is deleted and "From Biscayne Bay, Fla., 12 AGL Miami, Fla.; 12 AGL Pahokee, Fla.; 12 AGL Orlando, Fla.; including a 12 AGL east alternate from Miami to Orlando via Palm Beach, Fla., and INT Palm Beach 321° and Orlando 162° radials;" is substituted therefor.

d. In V–295 "Orlando, Fla., 161° radials;" is deleted and "Orlando, Fla., 162° radials;" is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348; Sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Washington, D.C., on November 26, 1968.

T. McCormack,
*Acting Chief, Airspace and Air Traffic Rules Division.*

[F.R. Doc. 68–14441; Filed, Dec. 3, 1968; 8:45 a.m.]

[Airspace Docket No. 68–AL–13]

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

## PART 75—ESTABLISHMENT OF JET ROUTES

### Designation of Jet Route and Alaskan High Altitude Reporting Point

On September 20, 1968, a notice of proposed rule making was published in the Federal Register (33 F.R. 14238) stating that the Federal Aviation Administration was considering amendments to Parts 71 and 75 of the Federal Aviation Regulations that would designate J–133 and its associated control area outside the continental control area, from Annette Island, Alaska, to Anchorage, Alaska, and that would designate the INT of Yakutat, Alaska, VORTAC 213° radial and Hinchinbrook, Alaska, RR 118° bearing as an Alaskan high altitude reporting point.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. No comments were received.

In consideration of the foregoing, Parts 71 and 75 of the Federal Aviation Regulations are amended, effective 0901 G.m.t., February 6, 1969, as hereinafter set forth.

1. In § 71.161 (33 F.R. 2050) the following is added:

Jet Route No. 133 From Annette Island, Alaska, to Anchorage, Alaska.

2. In § 71.213 (33 F.R. 2294) the following is added:

King Fish INT: INT Yakutat, Alaska, 213° radial and Hinchinbrook, Alaska, 118° bearing (lat. 58°45′ N., long. 140°35′ W.).

3. In § 75.100 (33 F.R. 2349) the following is added:

Jet Route No. 133 (Annette Island, Alaska, to Anchorage, Alaska).

From Annette Island, Alaska, via Biorka Island, Alaska; Hinchinbrook, Alaska, RR; Johnstone Point, Alaska; to Anchorage, Alaska.

(Sec. 307(a), 1110, Federal Aviation Act of 1958; 49 U.S.C. 1348, 1510; Executive Order 10854; 24 F.R. 9565; sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Washington, D.C., on November 26, 1968.

T. McCormack,
*Acting Chief, Airspace and Air Traffic Rules Division.*

[F.R. Doc. 68–14442; Filed, Dec. 3, 1968; 8:54 a.m.]

## Chapter II—Civil Aeronautics Board

### SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. No. ER–547]

## PART 202—TERMS, CONDITIONS, AND LIMITATIONS OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY; INTERSTATE AND OVERSEAS ROUTE AIR TRANSPORTATION

### Specific Economic Data Required in Applications for Change in Service Pattern

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 27th day of November 1968.

Section 202.4(b) presently requires that applications for change in service pattern by local service air carriers shall be supported by a "statement of economic data," or other matters which it is desired the Board officially notice. However, because the nature and extent of the required data are not described, applications frequently contain inadequate data, which necessitates that the staff delay processing the application until it can obtain such information through correspondence with the applicant. In the Board's view, this delay can be minimized by amending the regulation to prescribe the minimum economic data required for a proper evaluation of the application. A similar problem has been encountered in processing applications for temporary route authorizations by exemption, and motions to expedite route applications under Part 302 (14 CFR Part 302), and a parallel amendment to Part 302 is being issued concurrently with this amendment.[1]

Since this amendment involves procedure and practice and codifies present Board practice with respect thereto, notice and public procedure hereon are not required and are unnecessary and the rule will be made effective upon publication in the Federal Register.

Accordingly, the Board hereby amends § 202.4 of Part 202 of the economic regulations (14 CFR 202.4), effective December 4, 1968, by revising paragraph (b) to read as follows:

§ 202.4 **Service pattern change.**

* * * * *

(b) *Application for change in service pattern.* If at any time the holder of such a certificate desires to establish a service pattern omitting one or more of the points served or required to be served pursuant to such condition of the certificate, the holder shall make written application to the Board for approval thereof. Such application shall be conspicuously entitled Application for Change in Service Pattern, and shall set forth the facts relied upon to establish that the proposed service pattern is in the public interest and consistent with the holder's performance of a local air transportation service. Such application shall contain a statement of matters which the

[1] PR–106 adopted Nov. 27, 1968, effective Dec. 4, 1968.

applicant desires the Board to officially notice, and a detailed analysis of the anticipated effect of such authorization on the operating results of the holder, including, but not limited to, the following economic and operating data on an annual basis:

(1) Present and proposed schedules, by type of aircraft;

(2) Number of departures, plane-miles, passengers and passenger-miles;

(3) Estimate of self-diversion or diversion from other carriers, if applicable;

(4) Anticipated operating revenues;

(5) Estimate of impact of proposal on operating expenses, computed according to Subpart K of Part 302 of this chapter;

(6) Estimate of allowance for return on investment and taxes, computed according to Subpart K of Part 302 of this chapter; and

(7) Increase or decrease in subsidy requirements.

The application shall also contain a notice to the persons served that they may, within 20 days of the date the application was filed, file and serve memoranda in support of, or in opposition to, the application. The Board will grant such application to such extent, for such periods of time, and subject to such conditions as the Board deems proper and adequate, if it finds that such conditions and the proposed service pattern are in the public interest and consistent with the holder's performance of a local air transportation service.

(8) Increase or decrease in subsidy payments under the applicable class rate formula.

(Secs. 204(a) and 401 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 754; 49 U.S.C. 1324, 1371)

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON, *Secretary.*

[F.R. Doc. 68-14504; Filed, Dec. 3, 1968; 8:49 a.m.]

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SUBCHAPTER B—PROCEDURAL REGULATIONS

[Reg. No. PR-106]

## PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

### Specific Economic Data Required in Applications for Temporary Route Exemptions and Motions To Expedite Hearings in Route Proceedings of Certificated Carriers

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 27th day of November 1968.

Rule 402(c) of Part 302 presently provides that applications for exemptions under section 416 of the Act shall be supported by a "statement of economic data," or other matters to be officially noticed or established by affidavit, but the nature and extent of the required data are not specified. Applications for temporary route authority by exemption frequently contain insufficient data for the staff to make a proper analysis and evaluation of the proposal. Consequently, the staff must delay processing such applications while it obtains the necessary information through correspondence with the applicant. In our view, this delay can be minimized by amending the regulation to prescribe the minimum economic data that is required to be submitted by air carrier applicants.

Similar problems have been encountered with respect to motions for expedited hearing on applications for new or modified route authority by air carriers.[1] No regulation prescribes the supporting data which should be furnished with respect to motions for expedited hearing on applications for new or modified route authority by nonsubsidized route carriers. While, in the case of such motions on applications involving subsidy, Rule 18(a-2) requires a preliminary analysis of resulting anticipated profit or subsidy obligation, the regulation does not otherwise require specific economic data in support of the motion. We shall, therefore, expand Rule 18(a-2) to cover motions to expedite route applications by all certificated route carriers and shall require specific economic data to be filed in support of the motions by air carriers.[2]

It has also been the Board's experience that certain parties required to be served with motions under Rule 18(a-2) and applications for exemptions under Rule 402 are unfamiliar with the requirements as to the time for filing answers. In order to reduce the filing of untimely answers, Rules 18(a-2) and 402 are being amended to require that the movant or applicant give notice to all parties served as to the time for filing answers.[3]

Since these amendments involve procedure and practice and, in substantial part, merely codify Board practice, notice and public procedure hereon are not required and are unnecessary and the rule will be made effective upon publication in the FEDERAL REGISTER.

Accordingly, the Board hereby amends Part 302 of the Procedural Regulations (14 CFR Part 302), effective December 4, 1968, as follows:

1. Amend the title and text of § 302.18 (a-2) to read as follows:

**§ 302.18 Motions.**

* * * * *

(a-2) *Motions to expedite route applications.* (1) Motions for expedited hearing on applications for new or modified certificated route authority shall, be accompanied by a statement of economic data or other matters which the movant desires the Board to officially notice, and by affidavits establishing such other facts as it desires the Board to rely upon. Motions of air carriers for expedited hearing shall contain at least the following economic and operating data on an annual basis:

(i) Present and proposed schedules, by type of aircraft;

(ii) Number of departures, plane-miles, passengers and passenger-miles;

(iii) Estimate of self-diversion or diversion from other carriers, if applicable;

(iv) Anticipated operating revenues; and

(v) Estimate of impact of proposal on operating expenses which, in the case of local service carriers, should be computed in accordance with Subpart K of this part.

In addition, for local service carriers, the following:

(vi) Estimate of allowance for return on investment and taxes, computed according to Subpart K of this part; and

(vii) Increase or decrease in subsidy requirements.

(2) The motion shall contain the names of the parties served and a notice to such parties that they may, within 7 days of the date the motion is served (excluding Saturdays, Sundays, and holidays) file and serve an answer in support of, or in opposition to the motion.

2. Revise paragraphs (c) and (d) of § 302.402 to read as follows:

**§ 302.402 Contents of application.**

* * * * *

(c) *Supporting evidence.* The application shall be accompanied by a statement of economic data or other matters which the applicant desires the Board to officially notice, and by affidavits establishing such other facts as the applicant desires the Board to rely upon. Applications of air carriers for temporary route authority shall contain at least the following economic and operating data on an annual basis:

(1) Present and proposed schedules, by type of aircraft;

(2) Number of departures, plane-miles, passengers and passenger-miles;

(3) Estimate of self-diversion or diversion from other carriers, if applicable;

(4) Anticipated operating revenues; and

(5) Estimate of impact of proposal on operating expenses which, in the case of local service carriers, should be computed according to Subpart K of this part.

In addition, for local service carriers the following:

(6) Estimate of allowance for return on investment and taxes, computed according to Subpart K of this part;

(7) Increase or decrease in subsidy requirements; and

(8) Increase or decrease in subsidy payments under the applicable class rate formula.

(d) *Record of service.* An application shall contain the names of the parties served as required by § 302.403, and a notice to such parties that they may, within 10 days of the date the application was filed, file and serve an answer in support of, or in opposition to, the application.

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[1] Applications for change in service pattern under § 202.4 also present problems with respect to the submission of specified economic data and a parallel amendment to Part 202 is being issued concurrently (ER-547, adopted Nov. 27, 1968, effective Dec. 4, 1968).

[2] It is to be noted that civic bodies would not be required to furnish detailed economic data under either Rule 18(a-2) or Rule 402.

[3] Applications for change in service pattern (§ 202.4) presently contain a similar notice.

(Secs. 204(a), 401, and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 754, 771; 49 U.S.C. 1324, 1371, 1386)

By the Civil Aeronautics Board:

[SEAL] HAROLD R. SANDERSON,
*Secretary.*

[F.R. Doc. 68-14505; Filed, Dec. 3, 1968; 8:50 a.m.]

# Title 18—CONSERVATION OF POWER AND WATER RESOURCES

## Chapter V—Federal Water Pollution Control Administration, Department of the Interior

### PART 620—WATER QUALITY STANDARDS

### Adoption, Identification, and Availability of State Standards

Pursuant to the authority of section 10(c) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 466g(c), the Secrteary of the Interior hereby determines that the water quality standards adopted by the States listed, and contained in the documents identified in section 620.10, except as otherwise indicated, are consistent with paragraph (3) of section 10(c) of the Federal Water Pollution Control Act, as amended, and are such standards as protect the public health or welfare, enhance the quality of water and serve the purposes of the Federal Act; such standards shall hereafter be the standards applicable to the interstate waters for which adopted.

The documents containing such standards are incorporated herein and made a part hereof.

Section 620.10 is amended by adding the following:

TERRITORY OF GUAM

Water quality standards established by the Territory of Guam on December 18, 1967, for interstate waters subject to its jurisdiction and which are contained in the document entitled "Standards of Water Quality for Waters of the Territory of Guam, December, 1967", and which were revised on April 15, 1968, and which are contained as revised, in the document entitled "Standards of Water Quality for Waters of the Territory of Guam, April, 1968".

MAINE

Water quality standards established by Maine on July 5, 1967, for interstate waters subject to its jurisdiction, and which are contained in the following documents:

"Saco River Basin Water Quality Standards";

"Sagadahoc County Tidal Basin Water Quality Standards";

"St. Croix River Basin Water Quality Standards";

"Lincoln County Tidal Basin Water Quality Standards";

"Androscoggin River Water Quality Standards";

"Cumberland County Tidal Basin Water Quality Standards";

"Salmon Falls and Piscataqua River Basin Water Quality Standards";

"Aroostook River Basin Water Quality Standards";

"Meduxnekeag River Basin Water Quality Standards";

"Knox County Tidal Waters Water Quality Standards";

"York County Tidal Basin Water Quality Standards";

"Waldo, Penobscot and Hancock County Tidal Waters Water Quality Standards";

"Washington County Tidal Waters Water Quality Standards";

"Prestile Stream Water Quality Standards";

"State of Maine Material for Implementation Plan Common to All Interstate River and Tidal Waters Water Quality Standards";

all of which as amended; and except for Hancock County interstate waters; and except for pH, temperature and radioactivity criteria for all interstate waters other than those classified as Class "A"; and except for bacteriological criteria for Classes "C", "D", "SC", and "SD"; and except for dissolved oxygen criteria for all fresh waters.

MINNESOTA

Water quality standards established by Minnesota on May 8, 1967, for interstate waters subject to its jurisdiction, and which are contained in the document entitled "Water Quality Standards for the Interstate Waters of Minnesota, June, 1967", as amended; except for the St. Louis River; and except for the criteria of dissolved oxygen of 3 mg/l for interstate waters other than waters which are the subject of recommendations following the conferences on the Red River of the North (September 14–15, 1965) and the Upper Mississippi River (February 7–8, 1964) called pursuant to section 10(d) of the Federal Water Pollution Control Act, as amended; and except for the maximum temperature limit of 93° F. for July and August.

NEVADA

Water quality standards established by Nevada on June 27, 1967, for interstate waters subject to its jurisdiction, and which are contained in the documents entitled "Water Pollution Control Regulations (Exhibit 'A')" and "Interstate Water Quality Standards and Plan of Implementation, 1967".

NEW MEXICO

Water quality standards established by New Mexico on June 6, 1967, for interstate waters subject to its jurisdiction, and which are contained in the following documents:

"The Rio Grande River in New Mexico, Water Quality Standards, June 1967";

"The San Juan, La Plata, and Animas Rivers in New Mexico, Water Quality Standards, June 1967"; except for dissolved oxygen criteria for Navajo Reservoir;

"The Pecos River in New Mexico, Water Quality Standards, June 1967"; except for the temperature change limit for the lower reach of the Pecos River;

"The Gila and San Francisco Rivers in New Mexico, Water Quality Standards, June 1967";

"The Canadian River in New Mexico, Water Quality Standards, June 1967";

And a water quality standards plan of enforcement and implementation established on June 20, 1967, which are contained in the document entitled "Implementation and Enforcement Plan for Water Quality Control in New Mexico, June 1967";

And amendments adopted on March 4, 1968, and contained in the document entitled "Amendments to the Water Quality Standards, March 1968".

VERMONT

Water quality standards established by Vermont on June 15, 1967, for interstate waters subject to its jurisdiction, and which are contained in the document entitled "Plan for Implementation and Water Quality Criteria (Public Law 89-234) Vermont Water Resources Board, June 1967," as amended; except for lower Connecticut River (Wilder Dam to Massachusetts State line), Walloomsac River, and the segment of Battan Kill classified as "C" (Richville Road Bridge to Tanner Brook); and except for dissolved oxygen criteria for all interstate waters classified for Class "C"; and except for dissolved oxygen and temperature change criteria for interstate waters classified for coldwater fish propagation.

(Sec. 1, 70 Stat. 506, as amended; 33 U.S.C. 466i)

Dated: November 26, 1968.

DAVID S. BLACK,
*Acting Secretary of the Interior.*

NOTE: Incorporation by reference provisions in these regulations approved by the Director of the Federal Register on December 3, 1968.

[F.R. Doc. 68-14474; Filed, Dec. 3, 1968; 8:47 a.m.]

# Title 20—EMPLOYEES' BENEFITS

## Chapter III—Social Security Administration, Department of Health, Education, and Welfare

[Regs. No. 4, further amended]

### PART 404—FEDERAL RETIREMENT, SURVIVORS, AND DISABILITY INSURANCE (1950____)

### Subpart D—Old-Age, Disability, Dependents' and Survivors' Insurance Benefits; Period of Disability

MISCELLANEOUS AMENDMENTS

Regulations No. 4 of the Social Security Administration, as amended (20 CFR 404.1 et seq.), are further amended to read as follows:

1. In § 404.323, subparagraphs (1), (3), (4), and (5) of paragraph (a) are amended and new paragraph (c) is added to read as follows:

**§ 404.323 Child's insurance benefits: time at which child must be dependent upon parent.**

(a) *Months after August 1958.* For months after August 1958, the dependency requirement must be met:

(1) If the parent is living, at the time the application for child's insurance benefits is filed, subject to the limitations in subparagraphs (4), (5), and (6) of this paragraph; or

* * * * *

(3) Subject to the limitations in subparagraph (5) of this paragraph, if the parent had a period of disability which continued until he became entitled to disability or old-age insurance benefits (or, if he had died, until the month of his death), at the beginning of such period of disability, or at the time he became entitled to such benefits.

(4) With respect to applications for child's insurance benefits filed before July 30, 1965, if the parent is entitled

to disability insurance benefits, dependency of the child may not be established at the time specified in subparagraph (1) of this paragraph unless such child:

(i) Is the natural child or stepchild of such parent (including a natural child or stepchild of such parent who was legally adopted by such parent); or

(ii) Was legally adopted by such parent before the end of the 24-month period beginning with the month after the month in which the parent most recently became entitled to disability insurance benefits, and (*a*) proceedings for such adoption had been instituted by the parent in or before the month in which such parent's period of disability began, and such period of disability still existed at the time of such adoption, or (*b*) such adopted child was living with such parent in the month in which such period of disability began.

(5) Effective with applications for child's insurance benefits filed on or after July 30, 1965, if the parent is entitled to disability insurance benefits, or is entitled to old-age insurance benefits and was entitled to disability insurance benefits for the month preceding the first month for which he was entitled to old-age insurance benefits, and the child had been adopted by such parent after he became entitled to the disability insurance benefits, such child shall be deemed not to meet the dependency requirements at the times specified in subparagraphs (1) and (3) of this paragraph unless such child:

(i) Is the natural child or stepchild of such parent (including a natural child or stepchild who was legally adopted by such parent), or

(ii) Was legally adopted by such parent before the end of the 24-month period beginning with the month after the month in which such parent most recently became entitled to disability insurance benefits, provided (*a*) the proceedings for the adoption of the child had been instituted by such parent in or before the month in which such parent's period of disability began, and such period of disability still existed at the time of adoption (or, if such child was adopted by the parent after he attained age 65, such period of disability existed in the month before the month in which he attained age 65), or (*b*) such adopted child was living with such parent in the month in which the period of disability began; or

(iii) For benefits for months after January 1968, but only on the basis of an application for child's insurance benefits filed after January 2, 1968, was legally adopted by such parent at any time after he became entitled to disability insurance benefits, and provided that such adoption (*a*) took place under the supervision of a public or private child-placement agency as defined in paragraph (c) of this section, and (*b*) was decreed by a court of competent jurisdiction within the United States and immediately preceding the date of the adoption such parent had continuously resided for not less than 1 year in the United States, and (*c*) took place at a time prior to such child's attainment of age 18.

* * * * *

(c) *Adoption under the supervision of a public or private child-placement agency.* (1) *Public child-placement agency.* For the purposes of paragraph (a)(5)(iii) of this section, the term "public child-placement agency" means any governmental agency authorized by a State (including the District of Columbia and the Commonwealth of Puerto Rico), or local governmental agency or component of either to place children in a private home for adoption. The term does not include a court; it also does not include a court investigator, juvenile officer, probation officer, or other governmental official or agency appointed solely for the purpose of conducting an investigation for the court in an adoption proceeding unless such governmental official or agency has the authority to place children in private homes for adoption.

(2) *Private child-placement agency.* For the purposes of paragraph (a)(5)(iii) of this section, the term "private child-placement agency" means any individual, corporation, organization, or institution licensed or approved by a State or local governmental agency or component of either to place children in a private home for adoption. The term does not include any other individual, corporation, organization, or institution undertaking an investigation or appointed by a court in an adoption proceeding unless such individual or entity is authorized to place children in a private home for adoption.

(3) *Supervision by a child-placement agency.* For purposes of paragraph (a)(5)(iii) of this section, the term "supervision of a public or private child-placement agency" means that such agency as defined in subparagraphs (1) and (2) of this paragraph, prior to the final decree of adoption, was significantly involved in the adoption by making an investigation to determine the suitability of the adopting parent and the eligibility of the child for adoption, or by issuing a report of such suitability and eligibility, or by making recommendations to the court having jurisdiction of the adoption proceedings.

2. *Effective date.* The foregoing regulations shall become effective upon publication in the FEDERAL REGISTER.

(Secs. 202, 205, 1102, 49 Stat. 623, as amended, 53 Stat. 1368, as amended, 49 Stat. 647, as amended, section 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18, 631; 42 U.S.C. 402(d), 405, and 1302)

Dated: November 11, 1968.

[SEAL] ROBERT M. BALL,
*Commissioner of Social Security.*

Approved: November 27, 1968.

WILBUR J. COHEN,
*Secretary of Health, Education, and Welfare.*

[F.R. Doc. 68-145; Filed, Dec. 3, 1968; 8:51 a.m.]

# Title 26—INTERNAL REVENUE

## Chapter I—Internal Revenue Service, Department of the Treasury

[T.D. 6983]

### SUBCHAPTER C—EMPLOYMENT TAXES

### PART 31—EMPLOYMENT TAXES; APPLICABLE ON AND AFTER JANUARY 1, 1955

### SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

### PART 301—PROCEDURE AND ADMINISTRATION

### Regulations Relating to the Federal Insurance Contributions Act

In order to conform the Employment Tax Regulations (26 CFR Part 31) to sections 108(b) (2) to (6), inclusive, 109 (a) (2) and (3), 109(b) (2) and (3), and 403(i) of the Social Security Amendments of 1967 (81 Stat. 821), to sections 107, 111(c) (5) and (6), 311(b) (4) and (5), 316, 317 (b) to (f), inclusive, 320(b) (2) to (6), inclusive, and 321 (b) and (c) of the Social Security Amendments of 1965 (79 Stat. 286), and to section 103 (r) (2), (3), and (4) of the Social Security Amendments of 1960 (74 Stat. 940), and in order to conform the Regulations on Procedure and Administration (26 CFR Part 301) to section 108(b) (5) and (6) of the Social Security Amendments of 1967 (81 Stat. 821) and to sections 107, 317 (d) to (g), inclusive, and 320(b) (5) and (6) of the Social Security Amendments of 1965 (79 Stat. 286) relating to the taxes under the Federal Insurance Contributions Act, such regulations are amended as follows:

PARAGRAPH 1. Section 31.0–2 is amended by adding new subdivisions (vi) and (vii) to paragraph (a)(5) and by revising subparagraphs (3) and (4) of paragraph (b). These added and amended provisions read as follows:

**§ 31.0–2 General definitions and use of terms.**

(a) *In general.* * * *

(5) * * *

(vi) The Social Security Amendments of 1965 means the act approved July 30, 1965 (79 Stat. 286).

(vii) The Social Security Amendments of 1967 means the act approved January 2, 1968 (81 Stat. 821).

* * * * *

(b) *Subpart B.* * * *

(3) Employee tax means the tax (with respect to wages received by an employee after Dec. 31, 1965, the taxes) imposed by section 3101 of the Code.

(4) Employer tax means the tax (with respect to wages paid by an employer after Dec. 31, 1965, the taxes) imposed by section 3111 of the Code.

PAR. 2. Section 31.3101 is amended by revising section 3101 and the historical note to read as follows:

**§ 31.3101 Statutory provisions; rate of tax.**

Sec. 3101. *Rate of tax*—(a) *Old-age, survivors, and disability insurance.* In addition

to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

(1) With respect to wages received during the calendar year 1968, the rate shall be 3.8 percent;

(2) With respect to wages received during the calendar years 1969 and 1970, the rate shall be 4.2 percent;

(3) With respect to wages received during the calendar years 1971 and 1972, the rate shall be 4.6 percent; and

(4) With respect to wages received after December 31, 1972, the rate shall be 5 percent.

(b) *Hospital insurance.* In addition to the tax imposed by the preceding subsection, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

(1) With respect to wages received during the calendar years 1968, 1969, 1970, 1971, and 1972, the rate shall be 0.60 percent;

(2) With respect to wages received during the calendar years 1973, 1974, and 1975, the rate shall be 0.65 percent;

(3) With respect to wages received during the calendar years 1976, 1977, 1978, and 1979, the rate shall be 0.70 percent;

(4) With respect to wages received during the calendar years 1980, 1981, 1982, 1983, 1984, 1985, and 1986, the rate shall be 0.80 percent; and

(5) With respect to wages received after December 31, 1986, the rate shall be 0.90 percent.

[Sec. 3101 as amended by sec. 208(b), Social Security Amendments 1954; sec. 202(b), Social Security Amendments 1956; sec. 401(b), Social Security Amendments 1958; sec. 201(b), Social Security Amendments 1961; secs. 111(c)(5) and 321(b), Social Security Amendments 1965; sec. 109(a)(2) and (b)(2), Social Security Amendments 1967]

PAR. 3. Section 31.3101–2 is amended to read as follows:

**§ 31.3101–2 Rates and computation of employee tax.**

(a) *Old-age, survivors, and disability insurance.* The rates of employee tax for old-age, survivors, and disability insurance with respect to wages received in calendar years after 1954 are as follows:

| Calendar years | Percent |
|---|---|
| 1955 and 1956 | 2 |
| 1957 and 1958 | 2.25 |
| 1959 | 2.5 |
| 1960 and 1961 | 3 |
| 1962 | 3.125 |
| 1963 to 1965, both inclusive | 3.625 |
| 1966 | 3.85 |
| 1967 | 3.9 |
| 1968 | 3.8 |
| 1969 and 1970 | 4.2 |
| 1971 and 1972 | 4.6 |
| 1973 and subsequent calendar years | 5.0 |

(b) *Hospital insurance.* The rates of employee tax for hospital insurance with respect to wages received in calendar years after 1965 are as follows:

| Calendar years | Percent |
|---|---|
| 1966 | 0.35 |
| 1967 | .50 |
| 1968 to 1972, both inclusive | .60 |
| 1973 to 1975, both inclusive | .65 |
| 1976 to 1979, both inclusive | .70 |
| 1980 to 1986, both inclusive | .80 |
| 1987 and subsequent calendar years | .90 |

(c) *Computation of employee tax.* The employee tax is computed by applying to the wages received by the employee the rate in effect at the time such wages are received.

*Example.* In 1965 employee A performed for employer X services which constituted employment (see § 31.3121(b)–2). In 1966 A receives from X $1,000 as remuneration for such services. The tax is payable at the 4.2 percent rate (3.85 percent plus 0.35 percent) in effect for the calendar year 1966 (the year in which the wages are received) and not at the 3.625 percent rate which was in effect for the calendar year 1965 (the year in which the services were performed).

PAR. 4. Section 31.3111 is amended by revising section 3111 and the historical note to read as follows:

**§ 31.3111 Statutory provisions; rate of tax.**

Sec. 3111. *Rate of tax*—(a) *Old-age, survivors, and disability insurance.* In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121(b))—

(1) With respect to wages paid during the calendar year 1968, the rate shall be 3.8 percent;

(2) With respect to wages paid during the calendar years 1969 and 1970, the rate shall be 4.2 percent;

(3) With respect to wages paid during the calendar years 1971 and 1972, the rate shall be 4.6 percent; and

(4) With respect to wages paid after December 31, 1972, the rate shall be 5 percent.

(b) *Hospital insurance.* In addition to the tax imposed by the preceding subsection, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121(b))—

(1) With respect to wages paid during the calendar years 1968, 1969, 1970, 1971, and 1972, the rate shall be 0.60 percent;

(2) With respect to wages paid during the calendar years 1973, 1974, and 1975, the rate shall be 0.65 percent;

(3) With respect to wages paid during the calendar years 1976, 1977, 1978, and 1979, the rate shall be 0.70 percent;

(4) With respect to wages paid during the calendar years 1980, 1981, 1982, 1983, 1984, 1985, and 1986, the rate shall be 0.80 percent; and

(5) With respect to wages paid after December 31, 1986, the rate shall be 0.90 percent.

[Sec. 3111 as amended by sec. 208(c), Social Security Amendments 1954; sec. 202(c), Social Security Amendments 1956; sec. 401(c), Social Security Amendments 1958; sec. 201(c), Social Security Amendments 1961; secs. 111(c)(6) and 321(c), Social Security Amendments 1965; sec. 109(a)(3) and (b)(3), Social Security Amendments 1967]

PAR. 5. Section 31.3111–2 is amended to read as follows:

**§ 31.3111–2 Rates and computation of employer tax.**

(a) *Old-age, survivors, and disability insurance.* The rates of employer tax for old-age, survivors, and disability insurance with respect to wages paid in calendar years after 1954 are as follows:

| Calendar years | Percent |
|---|---|
| 1955 and 1956 | 2 |
| 1957 and 1958 | 2.25 |
| 1959 | 2.5 |
| 1960 and 1961 | 3 |
| 1962 | 3.125 |
| 1963 to 1965, both inclusive | 3.625 |
| 1966 | 3.85 |
| 1967 | 3.9 |
| 1968 | 3.8 |
| 1969 and 1970 | 4.2 |
| 1971 and 1972 | 4.6 |
| 1973 and subsequent calendar years | 5 |

(b) *Hospital insurance.* The rates of employer tax for hospital insurance with respect to wages paid in calendar years after 1965 are as follows:

| Calendar years | Percent |
|---|---|
| 1966 | 0.35 |
| 1967 | .50 |
| 1968 to 1972, both inclusive | .60 |
| 1973 to 1975, both inclusive | .65 |
| 1976 to 1979, both inclusive | .70 |
| 1980 to 1986, both inclusive | .80 |
| 1987 and subsequent calendar years | .90 |

(c) *Computation of employer tax.* The employer tax is computed by applying to the wages paid by the employer the rate in effect at the time such wages are paid.

PAR. 6. Section 31.3121(a)(1) is amended by revising section 3121(a)(1) and the historical note to read as follows:

**§ 31.3121(a)(1) Statutory provisions; definitions; wages; annual wage limitation.**

Sec. 3121. *Definitions*—(a) *Wages.* * * *

(1) That part of the remuneration which, after remuneration (other than remuneration refererd to in the succeeding paragraphs of this subsection) equal to $7,800 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all of the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to $7,800 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

[Sec. 3121(a)(1) as amended by sec. 204(a), Social Security Amendments 1954; sec. 402(b), Social Security Amendments 1958; sec. 320(b)(2), Social Security Amendments 1965; sec. 108(b)(2), Social Security Amendments 1967]

PAR. 7. Section 31.3121(a)(1)–1 is amended by revising paragraph (a), paragraph (b)(1) and the example in paragraph (b)(5). These revised provisions read as follows:

**§ 31.3121(a)(1)–1 Annual wage limitation.**

(a) *In general.* (1) The term "wages" does not include that part of the remuneration paid by an employer to an employee within any calendar year—

(i) After 1954 and before 1959 which exceeds the first $4,200 of remuneration,

(ii) After 1958 and before 1966 which exceeds the first $4,800 of remuneration,

(iii) After 1965 and before 1968 which exceeds the first $6,600 of remuneration, or

(iv) After 1967 which exceeds the first $7,800 of remuneration

(exclusive of remuneration excepted from wages in accordance with paragraph (j) of § 31.3121(a)–1 or §§ 31.3121(a)(2)–1 to 31.3121(a)(13)–1, inclusive) paid within the calendar year by an employer to the employee for employment performed for him at any time after 1936. For provisions relating to the treatment of tips for purposes of the annual wage limitation see § 31.3121(q)–1.

(2) The annual wage limitation applies only if the remuneration received during any 1 calendar year by an employee from the same employer for employment performed after 1936 exceeds the amount of such limitation. The limitation in such case relates to the amount of remuneration received during any 1 calendar year for employment after 1936 and not to the amount of remuneration for employment performed in any 1 calendar year.

*Example.* Employee A, in 1967 receives $7,000 from employer B in part payment of $8,000 due him from employment performed in 1967. In 1968 A receives from employer B the balance of $1,000 due him for employment performed in 1967, and thereafter in 1968 also receives $7,000 for employment performed in 1968 for employer B. The first $6,600 of the $7,000 received during 1967 is subject to the taxes in 1967. The remaining $400 received in 1967 is not included as wages and is not subject to the taxes. The balance of $1,000 received in 1968 for employment during 1967 is subject to the taxes during 1968 as is also the first $6,800 of the $7,000 thereafter received in 1968 ($1,000 plus $6,800 totaling $7,800, which is the annual wage limitation applicable to remuneration received in 1968 by an employee from any one employer). The remaining $200 received in 1968 is not included as wages and is not subject to the taxes.

(3) If during a calendar year the employee receives remuneration from more than one employer, the annual wage limitation does not apply to the aggregate remuneration received from all of such employers, but instead applies to the remuneration received during such calendar year from each employer with respect to employment after 1936. In such case the first $7,800 received in any calendar year after 1967 (the first $6,600 received in any calendar year after 1965 and before 1968, the first $4,800 received in any calendar year after 1958 and before 1966, or the first $4,200 received in any calendar year after 1954 and before 1959) from each employer constitutes wages and is subject to the taxes, even though, under section 6413(c), the employee may be entitled to a special credit or refund of any amount of employee tax deducted from his wages which exceeds the employee tax with respect to the first $7,800 (or $6,600 or $4,800 or $4,200, as the case may be) of wages received during the calendar year from all employers. In this connection and in connection with the two examples immediately following, see § 31.6413(c)–1, relating to special credits or refunds of employee tax. In connection with the annual wage limitation in the cast of remuneration paid for services performed in the employ of the United States or a wholly owned instrumentality thereof, see § 31.3122. In connection with the annual wage limitation in the case of remuneration paid for services performed in the employ of the Government of Guam, the Government of American Samoa, the District of Columbia, a political subdivision of the Government of Guam, or the Government of American Samoa, or any instrumentality of any of the foregoing which is wholly owned thereby, see § 31.3125. In connection with the application of the annual wage limitation, see also paragraph (b) of this section, relating to the circumstances under which wages paid by a predecessor employer are deemed to be paid by his successor.

*Example (1).* During 1968 employee C receives from employer D a salary of $1,300 a month for employment performed for D during the first 7 months of 1968, or total remuneration of $9,100. At the end of the 6th month C has received $7,800 from employer D, and only that part of his total remuneration from D constitutes wages subject to the taxes. The $1,300 received by employee C from employer D in the 7th month is not included as wages and is not subject to the taxes. At the end of the 7th month C leaves the employ of D and enters the employ of E. C receives remuneration of $1,560 a month from employer E in each of the remaining 5 months of 1968, or total remuneration of $7,800 from employer E. The entire $7,800 received by C from employer E constitutes wages and is subject to the taxes. Thus, the first $7,800 received from employer D and the entire $7,800 received from employer E constitute wages.

*Example (2).* During the calendar year 1968 F is simultaneously an officer (an employee) of the X Corporation, the Y Corporation, and the Z Corporation and during such year receives a salary of $7,800 from each corporation. Each $7,800 received by F from each of the Corporations X, Y, and Z (whether or not such corporations are related) constitutes wages and is subject to the taxes.

(b) *Wages paid by predecessor attributed to successor.* (1) If an employer (hereinafter referred to as a successor) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and if immediately after the acquisition the successor employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for purposes of the application of the annual wage limitation set forth in paragraph (a) of this section, any remuneration (exclusive of remuneration excepted from wages in accordance with paragraph (j) of § 31.3121(a)–1 or §§ 31.3121(a)(2)–1 to 31.3121(a)(13)–1, inclusive) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by the predecessor during such calendar year and prior to the acquisition shall be considered as having been paid by the successor.

* * * * *

(5) * * *

*Example.* The Y Corporation in 1968 acquires by purchase all the property of the X Company and immediately after the acquisition employs in its trade or business employee A, who, immediately prior to the acquisition, was employed by the X Company. The X Company has in 1968 (the calendar year in which the acquisition occurs) and prior to the acquisition paid $5,000 of wages to A. The Y Corporation in 1968 pays to A remuneration of $5,000 with respect to employment. Only $2,800 of the remuneration paid by the Y Corporation is considered to be wages. For purposes of the $7,800 limitation, the Y Corporation is credited with the $5,000 paid to A by the X Company. If, in the same calendar year, the Z Company acquires the property by purchase from the Y Corporation and A immediately after the acquisition is employed by the Z Company in its trade or business, no part of the remuneration paid to A by the Z Company in the year of the acquisition will be considered to be wages. The Z Company will be credited with the remuneration paid to A by the Y Corporation and also with the wages paid to A by the X Company (considered for purposes of the application of the $7,800 limitation as having also been paid by the Y Corporation).

PAR. 8. Section 31.3121(b)–1 is amended by revising paragraph (b) to read as follows:

**§ 31.3121(b)–1 Employment; services to which the regulations in this subpart apply.**

* * * * *

(b) The taxes apply with respect to remuneration paid after 1954 for services performed before 1955, as well as for services performed after 1954, to the extent that the remuneration and services constitute wages and employment. See §§ 31.3121(a)–1 to 31.3121(a)(13)–1 relating to wages.

PAR. 9. Section 31.3121(b)(6) is amended by revising subparagraph (C) (iv) and (vi) of section 3121(b)(6) and the historical note to read as follows:

**§ 31.3121(b)(6) Statutory provisions; definitions; employment; services in employ of United States or instrumentality thereof.**

Sec. 3121. *Definitions.* * * *

(b) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed after 1954 * * *; except that * * * such term shall not include—

* * * * *

(6) * * *

(C) Service performed in the employ of the United States or in the employ of any in-

strumentality of the United States, if such service is performed—

* * * * *

(iv) By any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training;

* * * * *

(vi) By any individual to whom subchapter III of chapter 83 of title 5, United States Code, does not apply because such individual is subject to another retirement system (other than the retirement system of the Tennessee Valley Authority);

[Paragraph (7), sec. 3121(b), as redesignated paragraph (6) and amended by sec. 205 (b), (d), Social Security Amendments 1954; sec. 201(d) (1), (2), Social Security Amendments 1956; secs. 104(h), 202(a), Farm Credit Act 1959 (73 Stat. 387, 389); sec. 311(b)(4), Social Security Amendments 1965; sec. 403(i), Social Security Amendments 1967. Sec. 201(d)(1), Social Security Amendments 1956, amended sec. 3121(b)(6)(B)(ii) by inserting "a Federal Home Loan Bank". Such amendment had no effect, however, for the reason that conditions set forth in sec. 104(i)(2) (A) and (B), Social Security Amendments 1956, were not met]

* * * * *

PAR. 10. Section 31.3121(b)(6)–1 is amended by revising paragraph (d) (4) and (6) to read as follows:

**§ 31.3121(b)(6)–1 Services in employ of United States or instrumentality thereof.**

* * * * *

(d) *Special classes of services.* * * *

(4) (i) Except as provided in subdivision (ii) of this subparagraph, services performed by student nurses, medical or dental interns, residents in training, student dietitians, student physical therapists, or student occupational therapists, assigned or attached to a hospital, clinic, or medical or dental laboratory operated by any department, agency, or instrumentality of the U.S. Government, or by certain other student employees described in section 5351(2) of title 5, United States Code.

(ii) The provisions of subdivision (i) of this subparagraph have no application to services performed after 1965 by medical or dental interns or by medical or dental residents in training.

* * * * *

(6) (i) Except as provided in subdivision (ii) of this subparagraph, services performed by an individual to whom subchapter III of chapter 83 of title 5, United States Code (civil service retirement) does not apply because he is, with respect to such services, subject to another retirement system, established either by a law of the United States or by the agency or instrumentality of the United States for which such services are performed.

(ii) The provisions of subdivision (i) of this subparagraph have no application to service performed by an individual to whom subchapter III of chapter 83 of title 5, United States Code (civil service retirement) does not apply because such individual is subject to the retirement system of the Tennessee Valley Authority, if such service is subject to the plan approved by the Secretary of Health, Education, and Welfare on December 28, 1956, pursuant to section 104(i)(2) of the Social Security Amendments of 1956 (70 Stat. 827). See section 201(m)(4) of such amendments for provisions relating to the timeliness of payment of tax with respect to remuneration paid before 1957 for such services, and barring the imposition of interest on the amount of any such tax due for any period before December 28, 1956.

PAR. 11. Section 31.3121(b)(7) is amended to read as follows:

**§ 31.3121(b)(7) Statutory provisions; definitions; employment; services in employ of States or their political subdivisions or instrumentalities.**

Sec. 3121. *Definitions.* * * *

(b) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed after 1954 * * *; except that * * * such term shall not include—

* * * * *

(7) Service performed in the employ of a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this paragraph shall not apply in the case of—

(A) Service which, under subsection (j), constitutes covered transportation service,

(B) Service in the employ of the Government of Guam [see historical note at end of this section] or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this title with respect to the taxes imposed by this chapter—

(i) Any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an employee of the United States or any agency or instrumentality thereof, and

(ii) The remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam [see historical note at end of this section] or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, whichever is appropriate, or

(C) Service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States; except that the provisions of this subparagraph shall not be applicable to service performed—

(i) In a hospital or penal institution by a patient or inmate thereof;

(ii) By any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or as a medical or dental resident in training;

(iii) By any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency; or

(iv) By a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis;

[Sec. 3121(b)(8) redesignated paragraph (7) by sec. 205(b), Social Security Amendments 1954; as amended by sec. 103(n), Social Security Amendments 1960; sec. 317(b), Social Security Amendments 1965; sec. 403 (i), Social Security Amendments 1967. The provisions of section 3121(b)(7)(B) are not applicable to service performed in the employ of the Government of Guam, of any political subdivision thereof, or of any wholly owned instrumentality of one or more of the foregoing, for the reason that a certification by the Governor of Guam, for which there is provision in sec. 103(v)(1), Social Security Amendments 1960, has not been received by the Secretary of the Treasury. Such a certification was made by the Governor of American Samoa and was received by the Secretary of the Treasury on December 29, 1960. Such a certification was made by the Commissioners of the District of Columbia and was received by the Secretary of the Treasury on Aug. 12, 1965]

PAR. 12. Section 31.3121(b)(7)–1 is amended by adding at the end thereof a new paragraph (d) to read as follows:

**§ 31.3121(b)(7)–1 Services in employ of States or their political subdivisions or instrumentalities.**

* * * * *

(d) *District of Columbia.* The exception from employment under section 3121(b)(7) does not apply to services performed after September 30, 1965, in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States. Notwithstanding the preceding sentence the following classes of services performed either in the employ of the District of Columbia or in the employ of any instrumentality which is wholly owned thereby are excepted from employment:

(1) Services performed in a hospital or penal institution by a patient or inmate thereof.

(2) Services performed by student nurses, student dietitians, student physical therapists, or student occupational therapists assigned or attached to a hospital, clinic, or medical or dental laboratory operated by the District of Columbia or by any wholly owned instrumentality thereof, or by certain other student employees described in section 5351(2) of title 5, United States Code. This subparagraph does not apply to services performed by medical or dental interns or by medical or dental residents in training described in such section 5351(2).

(3) Services performed by an individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency.

(4) Services performed by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis.

PAR. 13. Section 31.3121(b)(8)– is amended by revising section 105(b) of the Social Security Amendments of 1960 and

the historical note for such section 105 (b) and by adding section 316(d) of the Social Security Amendments of 1965 and a historical note for such section 316(d). These amended and added provisions read as follows:

**§ 31.3121(b)(8) Statutory provisions; definitions; employment; services performed by a minister of a church or a member of a religious order; services in employ of religious, charitable, educational, or certain other organizations exempt from income tax.**

* * * * *

Sec. 105. [*Social Security Amendments of 1960*]. * * *

(b) (1) If—

(A) An individual performed service in the employ of an organization with respect to which remuneration was paid before the first day of the calendar quarter in which the organization filed a waiver certificate pursuant to section 3121(k)(1) of the Internal Revenue Code of 1954, and such service is excepted from employment under section 210(a)(8)(B) of the Social Security Act,

(B) Such service would have constituted employment as defined in section 210 of such Act if the requirements of section 3121(k)(1) of such Code were satisfied,

(C) Such organization paid, on or before the due date of the tax return for the calendar quarter before the calendar quarter in which the organization filed a certificate pursuant to section 3121(k)(1) of such Code, any amount, as taxes imposed by sections 3101 and 3111 of such Code, with respect to such remuneration paid by the organization to the individual for such service,

(D) Such individual, or a fiduciary acting for such individual or his estate, or his survivor (within the meaning of section 205(c)(1)(C) of such Act), requests that such remuneration be deemed to constitute remuneration for employment for purposes of title II of such Act, and

(E) The request is made in such form and manner, and with such official, as may be prescribed by regulations made by the Secretary of Health, Education, and Welfare,

then, subject to the conditions stated in paragraphs (2), (3), (4), and (5), the remuneration with respect to which the amount has been paid as taxes shall be deemed to constitute remuneration for employment for purposes of title II of such Act.

(2) Paragraph (1) shall not apply with respect to an individual unless the organization referred to in paragraph (1)(A), on or before the date on which the request described in paragraph (1) is made, has filed a certificate pursuant to section 3121(k)(1) of such Code.

(3) Paragraph (1) shall not apply with respect to an individual who is employed by the organization referred to in paragraph (2) on the date the certificate is filed.

(4) If credit or refund of any portion of the amount referred to in paragraph (1)(C) (other than a credit or refund which would be allowed if the service constituted employment for purposes of chapter 21 of such Code) has been obtained, paragraph (1) shall not apply with respect to the individual unless the amount credited or refunded (including any interest under section 6611 of such Code) is repaid before January 1, 1968, or, if later, the first day of the third year after the year in which the organization filed a certificate pursuant to section 3121(k)(1) of such Code.

(5) Paragraph (1) shall not apply to any service performed for the organization in a period for which a certificate filed pursuant to section 3121(k)(1) of such Code is not in effect.

[Sec. 105(b), Social Security Amendments 1960 as amended by sec. 316(c), Social Security Amendments 1965]

* * * * *

Sec. 316. [*Social Security Amendments of 1965*]. * * *

(d) If—

(1) An individual performed service with respect to which remuneration was paid before the date of enactment of this Act [July 30, 1965] by an organization which, before such date, filed a waiver certificate pursuant to section 3121(k)(1) of the Internal Revenue Code.

(2) Such service is excluded from employment under title II of the Social Security Act but would not be excluded therefrom if the requirements of such section 3121(k)(1) had been met with respect to such service,

(3) Such service was performed during the period such certificate was in effect, and

(4) Such individual was listed pursuant to such section 3121(k)(1) at any time during such period and before the date of enactment of this Act as an employee who concurred in the filing of such certificate or such individual filed a request for coverage pursuant to section 105(b) of the Social Security Amendments of 1960, as in effect prior to the enactment of this Act (but such listing or request was not effective with respect to the service described above),

then, subject to the conditions stated in subparagraphs (B), (C), (D), and (E) of paragraph (1), and paragraph (4), of section 105(b) of the Social Security Amendments of 1960, as amended by this section, the remuneration of such individual which was paid with respect to such excluded service shall be deemed to constitute remuneration for employment for purposes of such title II; except that, for purposes of this subsection, in applying subparagraph (C) of paragraph (1) of such section 105(b) the date of enactment of this Act shall be considered to be the date on which the organization filed its certificate under section 3121(k)(1) and any reference, in paragraph (4) of such section, to such paragraph (1) shall be considered a reference to the preceding provisions of this subsection.

* * * * *

[Sec. 316(d), Social Security Amendments 1965]

PAR. 14. Section 31.3121(b)(13) is amended to read as follows:

**§ 31.3121(b)(13) Statutory provisions; definitions; employment; services of student nurse.**

Sec. 3121. *Definitions.* * * *

(b) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed after 1954 * * *; except that * * * such term shall not include—

* * * * *

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law;

[Sec. 3121(b)(14), Internal Revenue Code 1954, redesignated paragraph (13) by sec. 205(b), Social Security Amendments 1954; as amended by sec. 311(b)(5), Social Security Amendments 1965]

PAR. 15. Section 31.3121(b)(13)–1 is amended by revising paragraph (b) to read as follows:

**§ 31.3121(b)(13)–1 Services of student nurse or hospital intern.**

* * * * *

(b) Services performed before 1966 as an intern (as distinguished from a resident doctor), in the employ of a hospital are excepted from employment, if the intern has completed a 4 years' course in a medical school chartered or approved pursuant to State law.

PAR. 16. Section 31.3121(k) is amended by revising paragraph (1)(B)(iii) of section 3121(k), by adding a new subparagraph (H) to section 3121(k)(1) and by revising the historical note. These amended and added provisions read as follows:

**§ 31.3121(k) Statutory provisions; definitions; waiver of exemption by religious, charitable, and certain other organizations.**

Sec. 3121. Definitions. * * *

(k) *Exemption of religious, charitable, and certain other organizations*—(1) *Waiver of exemption by organization.* * * *

(B) * * *

(iii) The first day of any calendar quarter preceding the calendar quarter in which the certificate is filed, except that such date may not be earlier than the first day of the 20th calendar quarter preceding the quarter in which such certificate is filed.

* * * * *

(H) An organization which files a certificate under subparagraph (A) before 1966 may amend such certificate during 1965 or 1966 to make the certificate effective with the first day of any calendar quarter preceding the quarter for which such certificate originally became effective, except that such date may not be earlier than the first day of the 20th calendar quarter preceding the quarter in which such certificate is so amended. If an organization amends its certificate pursuant to the preceding sentence, such amendment shall be effective with respect to the service of individuals who concurred in the filing of such certificate (initially or through the filing of a supplemental list) and who concur in the filing of such amendment. An amendment to a certificate filed pursuant to this subparagraph shall be filed with such official and in such form and manner as may be prescribed by regulations made under this chapter. If an amendment is filed pursuant to this subparagraph—

(i) For purposes of computing interest and for purposes of section 6651 (relating to addition to tax for failure to file tax return), the due date for the return and payment of the tax for any calendar quarter resulting from the filing of such an amendment shall be the last day of the calendar month following the calendar quarter in which the amendment is filed; and

(ii) The statutory period for the assessment of such tax shall not expire before the expiration of 3 years from such due date.

* * * * *

[Sec. 3121(k) as amended by secs. 205(b), 207, and 402, Social Security Amendments, 1954; sec. 201 (k) and (l), Social Security Amendments 1956; sec. 405(a), Social Security Amendments 1958; sec. 105(a), Social Security Amendments 1960; sec. 316 (a) and (b), Social Security Amendments 1965]

* * * * *

PAR. 17. Section 31.3121(k)–1 is amended by revising paragraph (c) (2) and (4) to read as follows:

**§ 31.3121(k)–1 Waiver of exemption from taxes.**

* * * * *

(c) *Effect of waiver.* * * *

(2) *Beginning of effective period of waiver*—(i) *Certificate filed after July 30, 1965.* A certificate filed after July 30, 1965, by an organization pursuant to section 3121(k) shall be in effect for the period beginning with one of the following dates, which shall be designated by the organization on the certificate:

(*a*) The first day of the calendar quarter in which the certificate is filed,

(*b*) The first day of the calendar quarter immediately following the quarter in which the certificate is filed, or

(*c*) The first day of any calendar quarter preceding the calendar quarter in which the certificate is filed, except that such date may not be earlier than the first day of the 20th calendar quarter preceding the quarter in which such certificate is filed. Thus, a certificate filed in December 1965 may be made effective, pursuant to this subdivision (*c*), for the period beginning with the first day of the calendar quarter beginning October 1, 1960, or the first day of any other calendar quarter beginning after October 1, 1960, and before October 1, 1965.

(ii) *Certificate filed after August 28, 1958, and before July 31, 1965.* A certificate filed after August 28, 1958, and before July 31, 1965, by an organization pursuant to section 3121(k) shall be in effect for the period beginning with one of the following dates, which shall be designated by the organization on the certificate:

(*a*) The first day of the calendar quarter in which the certificate is filed,

(*b*) The first day of the calendar quarter immediately following the quarter in which the certificate is filed, or

(*c*) The first day of any calendar quarter preceding the calendar quarter in which the certificate is filed, except that, in the case of a certificate filed before 1960, such date may not be earlier than January 1, 1956, and in the case of a certificate filed after 1959 (but before July 31, 1965), such date may not be earlier than the first day of the fourth calendar quarter preceding the quarter in which the certificate is filed. Thus, a certificate filed in December 1959 may be made effective for the calendar quarter beginning January 1, 1956; but a certificate filed in January 1960 may not be made effective for a calendar quarter beginning before January 1, 1959.

(iii) *Certificate filed after 1956 and before August 29, 1958.* A certificate filed by an organization after 1956 and before August 29, 1958, pursuant to section 3121(k), became effective for the period beginning with one of the following dates, as designated by the organization on the certificate:

(*a*) The first day of the calendar quarter in which the certificate was filed, or

(*b*) The first day of the calendar quarter immediately following the quarter in which the certificate was filed.

(iv) *Certificate filed before 1957.* A certificate filed before 1957 pursuant to section 3121(k) became effective for the period beginning with the first day following the close of the calendar quarter in which the certificate was filed. In no case, however, shall a certificate filed under the provisions of section 3121(k) be in effect with respect to services performed before January 1, 1955. (For regulations relating to waiver certificates filed under section 1426(l) of the Internal Revenue Code of 1939, see 26 CFR (1939) 408.216 (Regulations 128).)

* * * * *

(4) *Administrative provisions applicable when certificate has retroactive effect.* For purposes of computing interest and for purposes of section 6651 (relating to addition to tax for failure to file tax return), in any case in which a certificate filed pursuant to section 3121(k)(1) is effective pursuant to section 3121(k)(1)(B)(iii) (as originally enacted and as amended by section 316(a) of the Social Security Amendments of 1965) for one or more calendar quarters prior to the quarter in which the certificate is filed, the due date for the return and payment of the tax for such prior calendar quarters resulting from the filing of such certificate shall be the last day of the calendar month following the calendar quarter in which the certificate is filed. The statutory period for the assessment of the tax for such prior calendar quarters shall not expire before the expiration of 3 years from such due date.

PAR. 18. Section 3121(k)–2 is amended to read as follows:

**§ 31.3121(k)–2 Waivers of exemption; original effective date changed retroactively.**

(a) *Certificates filed after 1955 and before August 29, 1958.* (1) An organization which filed a certificate under section 3121(k) after 1955 and before August 29, 1958, may file a request on Form SS–15b at any time before 1960 to have such certificate made effective, with respect to the services of individuals who concurred in the filing of such certificate (initially, or by signing a supplemental list on Form SS–15a Supplement which was filed before Aug. 29, 1958) and whose signatures also appeared on such request on Form SS–15b, for the period beginning with the first day of any calendar quarter after 1955 which preceded the first calendar quarter for which the certificate originally was effective.

(2) For purposes of computing interest and for purposes of section 6651 (relating to addition to tax for failure to file tax return), the due date for the return and payment of the tax for any calendar quarter resulting from the filing of a request referred to in subparagraph (1) of this paragraph shall be the last day of the calendar month following the calendar quarter in which the request is filed. The statutory period for the assessment of such tax shall not expire before the expiration of 3 years from such due date.

(b) *Certificate filed before 1966.* (1) An organization which filed a certificate on Form SS–15 under section 3121(k)(1)(A) before January 1, 1966, may amend such certificate during 1965 or 1966 to make the certificate effective beginning with the first day of a calendar quarter preceding the date designated by the organization on the certificate (see paragraph (c)(2) of § 31.3121(k)–1). The amendment of the certificate shall be made by filing a Certificate For Retroactive Coverage on Form SS–15b. A certificate on Form SS–15 may be amended to be effective for the period beginning with the first day of any calendar quarter which precedes the calendar quarter for which the certificate was originally effective, except that such a certificate may not be made effective, through an amendment, for any calendar quarter which begins earlier than the 20th calendar quarter preceding the calendar quarter in which the organization files a Certificate For Retroactive Coverage on Form SS–15b. Thus, if a Certificate For Retroactive Coverage is filed in May 1966 in respect of a certificate on Form SS–15 filed in 1965, the certificate on Form SS–15 may not be made effective for a calendar quarter preceding the quarter beginning April 1, 1961. A certificate on Form SS–15 which is amended by a Certificate For Retroactive Coverage on Form SS–15b will be effective for the period preceding the first calendar quarter for which the certificate originally was effective only with respect to the services of individuals who concurred in the filing of the certificate (initially, or by signing a supplemental list on Form SS–15a Supplement which was filed prior to the date on which the Certificate For Retroactive Coverage was filed) and whose signatures also appear on the Certificate For Retroactive Coverage on Form SS–15b. A Certificate For Retroactive Coverage shall be filed with the district director with whom the related Form SS–15 was filed.

(2) For purposes of computing interest and for purposes of section 6651 (relating to addition to tax for failure to file tax return), the due date for the return and payment of the tax for any calendar quarter resulting from the filing of an amendment referred to in subparagraph (1) of this paragraph shall be the last day of the calendar month following the calendar quarter in which the amendment is filed. The statutory period for the assessment of such tax shall not expire before the expiration of 3 years from such due date.

PAR. 19. Section 31.3122 is amended by revising section 3122 and the historical note to read as follows:

**§ 31.3122 Statutory provisions; Federal service.**

Sec. 3122. *Federal service.* In the case of the taxes imposed by this chapter with respect to service performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including service performed as a member of a uniformed service, to which the provisions of section 3121(m)(1) are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable, the determination whether an

individual has performed service which constitutes employment as defined in section 3121(b), the determination of the amount of remuneration for such service which constitutes wages as defined in section 3121(a), and the return and payment of the taxes imposed by this chapter, shall be made by the head of the Federal agency or instrumentality having the control of such service, or by such agents as such head may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to such service without regard to the $7,800 limitation in section 3121(a)(1), and he shall not be required to obtain a refund of the tax paid under section 3111 on that part of the remuneration not included in wages by reason of section 3121(a)(1). Payments of the tax imposed under section 3111 with respect to service, performed by an individual as a member of a uniformed service, to which the provisions of section 3121(m)(1) are applicable, shall be made from appropriations available for the pay of members of such uniformed service. The provisions of this section shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of this section the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of this section shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of this section the Secretary shall be deemed to be the head of such instrumentality.

[Sec. 3122 as amended by secs. 202(c) and 203(a), Social Security Amendments 1954; sec. 411(b), Servicemen's and Veterans' Survivor Benefits Act (70 Stat. 879); sec. 402(c), Social Security Amendments 1958; sec. 70, Technical Amendments Act 1958 (72 Stat. 1660); sec. 202(a)(3), Peace Corps Act (75 Stat 626); sec. 320(b)(3), Social Security Amendments 1965; sec. 108(b)(3), Social Security Amendments 1967]

PAR. 20. Section 31.3125 is amended by revising the heading thereof, by revising section 3125, and by revising the historical note. These amended and added provisions read as follows:

**§ 31.3125 Statutory provisions; returns in the case of Governmental employees in Guam, American Samoa, and the District of Columbia.**

Sec. 3125. *Returns in the case of Governmental employees in Guam, American Samoa, and the District of Columbia*—(a) *Guam.* The return and payment of the taxes imposed by this chapter on the income of individuals who are officers or employees of the Government of Guam or any political subdivision thereof or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, and those imposed on such Government or political subdivision or instrumentality with respect to having such individuals in its employ, may be made by the Governor of Guam or by such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the $7,800 limitation in section 3121(a)(1).

(b) *American Samoa.* The return and payment of the taxes imposed by this chapter on the income of individuals who are officers or employees of the Government of American Samoa or any political subdivision thereof or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, and those imposed on such Government or political subdivision or instrumentality with respect to having such individuals in its employ, may be made by the Governor of American Samoa or by such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the $7,800 limitation in section 3121(a)(1).

(c) *District of Columbia.* In the case of the taxes imposed by this chapter with respect to service performed in the employ of the District of Columbia or in the employ of any instrumentality which is wholly owned thereby, the return and payment of the taxes may be made by the Commissioners of the District of Columbia or by such agents as they may designate. The person making such return may, for convenience of administration, make payments of the tax imposed by section 3111 with respect to such service without regard to the $7,800 limitation in section 3121(a)(1).

[Sec. 3125 as added by sec. 103(q)(1), Social Security Amendments 1960; amended by secs. 317(c)(1), (2), 320(b)(4), Social Security Amendments 1965; sec. 108(b)(4), Social Security Amendments 1967]

PAR. 21. Section 31.6051 is amended by revising section 6051(c) and the historical note to read as follows:

**§ 31.6051 Statutory provisions; receipts for employees.**

Sec. 6051. *Receipts for employees.* * * *

(c) *Additional requirements.* The statements required to be furnished pursuant to this section in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the Secretary or his delegate may by regulations prescribe. The statements required under this section shall also show the proportion of the total amount withheld as tax under section 3101 which is for financing the cost of hospital insurance benefits under part A of title XVIII of the Social Security Act.

* * * * *

[Sec. 6051 as amended by sec. 412, Servicemen's and Veterans' Survivor Benefits Act (70 Stat. 879); sec. 107, Social Security Amendments 1965]

PAR. 22. Section 31.6051–1 is amended by revising subdivision (*f*) of paragraph (a)(1)(i) and subdivision (iv) of paragraph (b)(1) to read as follows:

**§ 31.6051–1 Statement for employees.**

(a) *Requirement if wages are subject to withholding of income tax*—(1) *General rule.*

(i) * * *

(*f*) The total amount of employee tax under section 3101 deducted and withheld (increased by any adjustment in the calendar year for overcollection, or decreased by any adjustment in such year for undercollection, of such tax during any prior year) and the proportion thereof (expressed either as a dollar amount, as a percentage of the total amount of wages as defined in section 3121(a), or as a percentage of the total amount of employee tax under section 3101) withheld as tax under section 3101 (b) for financing the cost of hospital insurance benefits.

* * * * *

(b) *Requirement if wages are not subject to withholding of income tax*—(1) *General rule.* * * *

(iv) The total amount of employee tax deducted and withheld from such wages (increased by any adjustment in such year for overcollection, or decreased by any adjustment in such year for undercollection, of employee tax during any prior year) and the proportion thereof (expressed either as a dollar amount, as a percentage of the total amount of wages as defined in section 3121(a), or as a percentage of the total amount of employee tax under section 3101) withheld as tax under section 3101(b) for financing the cost of hospital insurance benefits.

* * * * *

PAR. 23. Section 31.6205 is amended by adding a paragraph (4) to section 6205 (a) and by amending the historical note. These added and amended provisions read as follows:

**§ 31.6205 Statutory provisions; special rules applicable to certain employment taxes.**

Sec. 6205. *Special rules applicable to certain employment taxes*—(a) *Adjustment of tax.* * * *

(4) *District of Columbia as employer.* For purposes of this subsection, in the case of remuneration received during any calendar year from the District of Columbia or any instrumentality which is wholly owned thereby, the Commissioners of the District of Columbia and each agent designated by them who makes a return pursuant to section 3125 shall be deemed a separate employer.

[Sec. 6205 as amended by sec. 103(r)(1), Social Security Amendments 1960; sec. 317(d), Social Security Amendments 1965]

PAR. 24. Section 31.6413(a) is amended by adding paragraphs (3) and (4) to section 6413(a) and by adding a historical note. These added provisions read as follows:

**§ 31.6413(a) Statutory provisions; special rules applicable to certain employment taxes; adjustment of tax.**

Sec. 6413. *Special rules applicable to certain employment taxes*—(a) *Adjustment of tax.* * * *

(3) *Guam or American Samoa as employer.* For purposes of this subsection, in the case of remuneration received during any calendar year from the Government of Guam, the Government of American Samoa, a political subdivision of either, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, the Governor of Guam, the Governor of American Samoa, and each agent designated by either who makes a return pursuant to section 3125 shall be deemed a separate employer.

(4) *District of Columbia as employer.* For purposes of this subsection, in the case of remuneration received during any calendar year from the District of Columbia or any instrumentality which is wholly owned thereby, the Commissioners of the District of Columbia and each agent designated by them who makes a return pursuant to section 3125 shall be deemed a separate employer.

[Sec. 6413(a) as amended by sec. 103(r)(2), Social Security Amendments 1960; sec. 317(e), Social Security Amendments 1965]

PAR. 25. Section 31.6413(c) is amended by revising paragraph (1) of section 6413(c), by revising the heading and subparagraph (A) of section 6413(c)(2), by adding subparagraphs (D), (E), and (F) at the end of section 6413(c)(2), and by revising the historical note. These amended and added provisions read as follows:

**§ 31.6413(c) Statutory provisions; special rules applicable to certain employment taxes; special refunds.**

Sec. 6413. *Special rules applicable to certain employment taxes.* * * *

(c) *Special refunds*—(1) *In general.* If by reason of an employee receiving wages from more than one employer during a calendar year after the calendar year 1950 and prior to the calendar year 1955, the wages received by him during such year exceed $3,600, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 1400 of the Internal Revenue Code of 1939 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first $3,600 of such wages received; or if by reason of an employee receiving wages from more than one employer (A) during any calendar year after the calendar year 1954 and prior to the calendar year 1959, the wages received by him during such year exceed $4,200, or (B) during any calendar year after the calendar year 1958 and prior to the calendar year 1966, the wages received by him during such year exceed $4,800, or (C) during any calendar year after the calendar year 1965 and prior to the calendar year 1968, the wages received by him during such year exceed $6,600, or (D) during any calendar year after the calendar year 1967, the wages received by him during such year exceed $7,800, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 3101 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first $4,200 of such wages received in such calendar year after 1954 and before 1959, or which exceeds the tax with respect to the first $4,800 of such wages received in such calendar year after 1958 and before 1966, or which exceeds the tax with respect to the first $6,600 of such wages received in such calendar year after 1965 and before 1968, or which exceeds the tax with respect to the first $7,800 of such wages received in such calendar year after 1967.

(2) *Applicability in case of Federal and State employees, employees of certain foreign corporations, and Governmental employees in Guam, American Samoa, and the District of Columbia*—(A) *Federal employees.* In the case of remuneration received from the United States or a wholly owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall, for purposes of this subsection, be deemed a separate employer, and the term "wages" includes for purposes of this subsection the amount, not to exceed $3,600 for the calendar year 1951, 1952, 1953, or 1954, $4,200 for the calendar year 1955, 1956, 1957, or 1958, $4,800 for the calendar year 1959, 1960, 1961, 1962, 1963, 1964, or 1965, $6,600 for the calendar year 1966 or 1967, or $7,800 for any calendar year after 1967, determined by each such head or agent as constituting wages paid to an employee.

* * * * *

(D) *Governmental employees in Guam.* In the case of remuneration received from the Government of Guam or any political subdivision thereof or from any instrumentality of any one or more of the foregoing which is wholly owned thereby, during any calendar year, the Governor of Guam and each agent designated by him who makes a return pursuant to section 3125(a) shall, for purposes of this subsection, be deemed a separate employer.

(E) *Governmental employees in American Samoa.* In the case of remuneration received from the Government of American Samoa or any political subdivision thereof or from any instrumentality of any one or more of the foregoing which is wholly owned thereby, during any calendar year, the Governor of American Samoa and each agent designated by him who makes a return pursuant to section 3125(b) shall, for purposes of this subsection, be deemed a separate employer.

(F) *Governmental employees in the District of Columbia.* In the case of remuneration received from the District of Columbia or any instrumentality wholly owned thereby, during any calendar year, the Commissioners of the District of Columbia and each agent designated by them who makes a return pursuant to section 3125(c) shall, for purposes of this subsection, be deemed a separate employer.

[Sec. 6413(c) as amended by sec. 202(a)(1), Social Security Amendments of 1954; sec. 402(d), Social Security Amendments 1958; sec. 103(r)(3), (4), Social Security Amendments 1960; sec. 317(f)(1), (2), sec. 320(b)(5), (6), Social Security Amendments 1965; sec. 108(b)(5), (6), Social Security Amendments 1967. The provisions of section 6413(c)(2)(D) are not applicable, for the reason that a certification by the Governor of Guam, for which there is provision in sec. 103(v)(1), Social Security Amendments 1960, has not been received by the Secretary of the Treasury. Such a certification was made by the Governor of American Samoa and was received by the Secretary of the Treasury on Dec. 29, 1960. Such a certification was made by the Commissioners of the District of Columbia and was received by the Secretary of the Treasury on Aug. 12, 1965]

PAR. 26. Section 31.6413(c)-1 is amended by revising paragraph (a)(1) and (2), and by adding new subparagraphs (5) and (6) at the end of paragraph (a). These amended and added provisions read as follows:

**§ 31.6413(c)-1 Special refunds.**

(a) *Who may make claims*—(1) *In general.*

(i) If an employee receives wages, as defined in section 3121(a), from two or more employers in any calendar year:

(*a*) After 1954 and before 1959 in excess of $4,200,

(*b*) After 1958 and before 1966 in excess of $4,800,

(*c*) After 1965 and before 1968 in excess of $6,600, or

(*d*) After 1967 in excess of $7,800, the employee shall be entitled to a special refund of the amount, if any, by which the employee tax imposed by section 3101 with respect to such wages and deducted therefrom (whether or not paid) exceeds the employee tax with respect to the first $4,200, $4,800, $6,600, or $7,800, whichever is appropriate, of such wages. Employee tax imposed by section 3101 with respect to tips reported by an employee to his employer and collected by the employer from funds turned over by the employee to the employer (see section 3102(c)) shall be treated, for purposes of this paragraph, as employee tax deducted from wages received by the employee. If the employee is required to file an income tax return for such calendar year (or for his last taxable year beginning in such calendar year) he may obtain the benefit of the special refund only by claiming credit as provided in § 1.31-2 of this chapter (Income Tax Regulations).

(ii) The application of this subparagraph may be illustrated by the following examples:

*Example (1).* Employee A in the calendar year 1968 receives taxable wages in the amount of $5,000 from each of his employers, B, C, and D, for services performed during such year (or at any time after 1936), or a total of $15,000. Employee tax (computed at 4.4 percent, the aggregate employee tax rate in effect in 1968) is deducted from A's wages in the amount of $220 by B and $220 by C, or a total of $440. Employer D pays employee tax in the amount of $220 without deducting such tax from A's wages. The employee tax with respect to the first $7,800 of such wages is $343.20. A is entitled to a special refund of $96.80 ($440 minus $343.20). The $5,000 of wages received from employer D and the $220 of employee tax paid with respect thereto have no bearing in computing A's special refund since such tax was not deducted from his wages.

*Example (2).* Employee E in the calendar year 1968 performs services for employers F and G, for which E is entitled to wages of $7,800 from each employer, or a total of $15,600. On account of such services, E in 1967 received an advance payment of $1,800 of wages from F; and in 1968, receives wages in the amount of $6,000 from F and $7,800 from G. Employee tax was deducted as follows: In 1967, $79.20 ($1,800 × 4.4 percent, the aggregate employee tax rate in effect in 1967) by employer F; and in 1968, $264.00 ($6,000 × 4.4 percent, the aggregate employee tax rate in effect in 1968) by employer F, and $343.20 ($7,800 × 4.4 percent) by employer G. Thus, E in the calendar year 1968 received $13,800 in wages from which $607.20 of employee tax was deducted. The amount of employee tax with respect to the first $7,800 of such wages received in 1968 is $343.20. E is entitled to a special refund of $264.00 ($607.20 minus $343.20). The $1,800 advance of wages received in 1967 from F, and the $79.20 of employee tax with respect thereto, have no bearing in computing E's special refund for 1968, because the wages were not received in 1968. Such amounts could not form the basis for a special refund unless E during 1967 received from F and at least one more employer wages totaling more than $6,600.

(2) *Federal employees.* For purposes of special refunds of employee tax, each head of a Federal agency or of a wholly owned instrumentality of the United States who makes a return pursuant to section 3122 (and each agent designated by a head of a Federal agency or instrumentality who makes a return pursuant to such section), is considered a separate employer. For such purposes, the term "wages" includes the amount which each such head (or agent) determines to constitute wages paid an employee, but not in excess of $4,200 paid in any calendar year after 1954 and before 1959, $4,800 paid in any calendar year after 1958 and before 1966, $6,600 paid in any calendar year after 1965 and before 1968, or $7,800 paid in any calendar year after 1967. For example, if wages received by an employee during any calendar year after 1967 are reportable by two or more agents of one or more Federal agencies and the amount of such wages is in excess of $7,800, the employee shall be entitled to a special refund of the amount, if any, by which the employee tax imposed with respect to such wages and deducted therefrom exceeds the employee tax with respect to the first $7,800 of such wages. Moreover, if an employee receives wages during any calendar year from an agency or wholly owned instrumentality of the United States and from one or more other employers, either private or governmental, the total amount of such wages shall be taken into account for purposes of the special refund provisions.

* * * * *

(5) *Governmental employees in American Samoa.* For purposes of special refunds of employee tax, the Governor of American Samoa and each agent designated by him who makes a return pursuant to section 3125(b) (see § 31.3125) is considered a separate employer. For such purposes, the term "wages" includes the amount which the Governor (or any agent) determines to constitute wages paid an employee, but not in excess of $4,800 paid in any calendar year after 1960 and before 1966, $6,600 paid in any calendar year after 1965 and before 1968, or $7,800 paid in any calendar year after 1967. For example, if wages received by an employee during any calendar year after 1967 are reportable by two or more agents pursuant to section 3125(b) and the total amount of such wages is in excess of $7,800, the employee shall be entitled to a special refund of the amount, if any, by which the employee tax imposed with respect to such wages and deducted therefrom exceeds the employee tax with respect to the first $7,800 of such wages. Moreover, if any employee receives wages during any calendar year from the Government of American Samoa, from a political subdivision thereof, or from any wholly owned instrumentality of such government or political subdivision and from one or more other employers, either private or governmental, the total amount of such wages shall be taken into account for purposes of the special refund provisions.

(6) *Governmental employees in the District of Columbia.* For purposes of special refunds of employee tax, the Commissioner of the District of Columbia (or, prior to the transfer of functions pursuant to Reorganization Plan No. 3 of 1967 (81 Stat. 948), the Commissioners of the District of Columbia) and each agent designated by him who makes a return pursuant to section 3125(c) (see § 31.3125) is considered a separate employer. For such purposes, the term "wages" includes the amount which the Commissioner (or any agent) determines to constitute wages paid an employee, but not in excess of $4,800 paid in the calendar year 1965, $6,600 paid in any calendar year after 1965 and before 1968, or $7,800 paid in any calendar year after 1967. For example, if wages received by an employee during any calendar year after 1967 are reportable by two or more agents pursuant to section 3125(c) and the total amount of such wages is in excess of $7,800, the employee shall be entitled to a special refund of the amount, if any, by which the employee tax imposed with respect to such wages and deducted therefrom exceeds the employee tax with respect to the first $7,800 of such wages. Moreover, if an employee receives wages during any calendar year from the Government of the District of Columbia or from a wholly owned instrumentality thereof and from one or more other employers, either private or governmental, the total amount of such wages shall be taken into account for purposes of the special refund provisions.

* * * * *

PAR. 27. Section 301.6051 is amended by revising section 6051(c) and the historical note to read as follows:

**§ 301.6051 Statutory provisions; receipts for employees.**

Sec. 6051. *Receipts for employees.* * * *

(c) *Additional requirements.* The statements required to be furnished pursuant to this section in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the Secretary or his delegate may by regulations prescribe. The statements required under this section shall also show the proportion of the total amount withheld as tax under section 3101 which is for financing the cost of hospital insurance benefits under part A of title XVIII of the Social Security Act.

* * * * *

[Sec. 6051 as amended by sec. 412, Servicemen's and Veterans' Survivor Benefits Act (70 Stat. 879); sec. 107, Social Security Amendments 1965 (79 Stat. 337)]

PAR. 28. Section 301.6205 is amended by adding a paragraph (4) to section 6205(a) and by amending the historical note. These added and amended provisions read as follows:

**§ 301.6205 Statutory provisions; special rules applicable to certain employment taxes.**

Sec. 6205. *Special rules applicable to certain employment taxes*—(a) *Adjustment of tax.* * * *

(4) *District of Columbia as employer.* For purposes of this subsection, in the case of remuneration received during any calendar year from the District of Columbia or any instrumentality which is wholly owned thereby, the Commissioners of the District of Columbia and each agent designated by them who makes a return pursuant to section 3125 shall be deemed a separate employer.

[Sec. 6205 as amended by sec. 103(r)(1), Social Security Amendments 1960 (74 Stat. 940); sec. 317(d), Social Security Amendments 1965 (79 Stat. 389)]

PAR. 29. Section 301.6413 is amended by adding a paragraph (4) to section 6413(a), by revising paragraph (1) of section 6413(c), by revising the heading and subparagraph (A) of section 6413(c)(2), by adding a subparagraph (F) at the end of section 6413(c)(2), and by revising the historical note. These amended and added provisions read as follows:

**§ 301.6413 Statutory provisions; special rules applicable to certain employment taxes.**

Sec. 6413. *Special rules applicable to certain employment taxes*—(a) *Adjustment of tax.* * * *

(4) *District of Columbia as employer.* For purposes of this subsection, in the case of remuneration received during any calendar year from the District of Columbia or any instrumentality which is wholly owned thereby, the Commissioners of the District of Columbia and each agent designated by them who makes a return pursuant to section 3125 shall be deemed a separate employer.

* * * * *

(c) *Special refunds*—(1) *In general.* If by reason of an employee receiving wages from more than one employer during a calendar year after the calendar year 1950 and prior to the calendar year 1955, the wages received by him during such year exceed $3,600, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 1400 of the Internal Revenue Code of 1939 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first $3,600 of such wages received; or if by reason of an employee receiving wages from more than one employer (A) during any calendar year after the calendar year 1954 and prior to the calendar year 1959, the wages received by him during such year exceed $4,200, or (B) during any calendar year after the calendar year 1958 and prior to the calendar year 1966, the wages received by him during such year exceed $4,800, or (C) during any calendar year after the calendar year 1965 and prior to the calendar year 1968, the wages received by him during such year exceed $6,600, or (D) during any calendar year after the calendar year 1967, the wages received by him during such year exceed $7,800, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 3101 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first $4,200 of such wages received in such calendar year after 1954 and before 1959, or which exceeds the tax with respect to the first $4,800 of such wages received in such calendar year after 1958 and before 1966, or which exceeds the tax with respect to the first $6,600 of such wages received in such calendar year after 1965 and before 1968, or which exceeds the tax with respect to the first $7,800 of such wages received in such calendar year after 1967.

(2) *Applicability in case of Federal and State employees, employees of certain foreign corporations, and Governmental employees in Guam, American Samoa, and the District of Columbia*—

(A) *Federal employees.* In the case of remuneration received from the United States or a wholly owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall, for purposes of this subsection, be deemed a separate employer, and the term "wages" includes for purposes of this subsection the amount, not to exceed $3,600 for the calendar year 1951, 1952, 1953, or 1954, $4,200 for the calendar year 1955, 1956, 1957, or 1958, $4,800 for the calendar year 1959, 1960, 1961, 1962, 1963, 1964, or 1965, $6,600 for the calendar year 1966, or 1967, or $7,800 for any calendar year after 1967, determined by each such head or agent as constituting wages paid to an employee.

* * * * *

(F) *Governmental employees in the District of Columbia.* In the case of remuneration received from the District of Columbia or any instrumentality wholly owned thereby, during any calendar year, the Commissioners of the District of Columbia and each agent designated by them who makes a return pursuant to section 3125(c) shall, for purposes of this subsection, be deemed a separate employer.

* * * * *

[Sec. 6413 as amended by sec. 202(a)(1), Social Security Amendments 1954 (68 Stat. 1089); sec. 402(d), Social Security Amendments 1958 (72 Stat. 1043); sec. 103(r) (2), (3), and (4), Social Security Amendments 1960 (74 Stat. 940); sec. 317 (e) and (f) (1) and (2), sec. 320(b) (5) and (6), Social Security Amendments 1965 (79 Stat. 389); sec. 108(b) (5) and (6), Social Security Amendments 1967 (81 Stat. 835). The provisions of section 6413(c) (2) (D) are not applicable, for the reason that a certification by the Governor of Guam, for which there is a provision in sec. 103(v)(1), Social Security Amendments 1960, has not been received by the Secretary of the Treasury. Such a certification was made by the Governor of American Samoa and was received by the Secretary of the Treasury on Dec. 29, 1960. Such a certification was made by the Commissioners of the District of Columbia and was received by the Secretary of the Treasury on Aug. 12, 1965]

Because this Treasury decision amends existing regulations relating to the Federal Insurance Contributions Act merely to reflect statutory changes made by the Social Security Amendments of 1960, the Social Security Amendments of 1965, and the Social Security Amendments of 1967 in the annual wage limitation from $4,800 to $6,600, and from $6,600 to $7,800 (with conforming change in the area of special refunds); in the rates of employee and employer tax; in the definition of employment (1) to accord employees of the District of Columbia Government substantially comparable treatment to that previously accorded Governmental employees in Guam and American Samoa; and (2) to extend coverage to certain service performed by certain interns and residents in training; and in the period for which a certificate of an exempt organization may be effective; none of which require regulatory provisions of a substantive nature, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

SHELDON S. COHEN,
*Commissioner of Internal Revenue.*

Approved: November 29, 1968.

STANLEY S. SURREY,
*Assistant Secretary of the Treasury.*

[F.R. Doc. 68-14513; Filed, Dec. 3, 1968; 8:50 a.m.]

# Title 29—LABOR

## Chapter V—Wage and Hour Division, Department of Labor

## MINIMUM WAGES FOR CERTAIN INDUSTRIES IN PUERTO RICO; WAGE ORDER

Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, and 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and by means of Administrative Order No. 603 (33 F.R. 12103), the Secretary of Labor appointed and convened Industry Committee No. 76–C to investigate conditions in the industry comprising the 1966 coverage classification of the shoe and related products industry in Puerto Rico, as defined in 29 CFR 601.2(b); 1966 coverage classifications of the leather, leather goods, and related products industry in Puerto Rico, as defined in 29 CFR 602.2(c); 1966 coverage classifications of the fabric and leather glove industry in Puerto Rico, as defined in 29 CFR 603.2(c); 1966 coverage classification of the metal, machinery, transportation equipment, and allied products industry in Puerto Rico, as defined in 29 CFR 604.2(c); 1966 coverage classification of the electrical, instrument, and related products industry in Puerto Rico, as defined in 29 CFR 606.2(c); 1966 coverage classifications of the handkerchief, scarf, and art linen industry in Puerto Rico, as defined in 29 CFR 608.2(c); 1966 coverage classifications of the women's and children's underwear and women's blouse industry in Puerto Rico, as defined in 29 CFR 609.2(c); 1966 coverage classification of the children's dress and related products industry in Puerto Rico, as defined in 29 CFR 610.2(c); 1966 coverage classification of the sweater and knit swimwear industry in Puerto Rico, as defined in 29 CFR 611.2(b); 1966 coverage classification of the needlework and fabricated textile products industry in Puerto Rico, as defined in 29 CFR 612.2(h); 1966 coverage classifications of the straw, hair, and related products industry in Puerto Rico, as defined in 29 CFR 613.2(c); 1966 coverage classification of the corsets, brassieres, and allied garments industry in Puerto Rico, as defined in 29 CFR 614.2(c); 1966 coverage classifications of the men's and boys' clothing and related products industry in Puerto Rico, as defined in 29 CFR 615.2(c); 1966 coverage classifications of the button, jewelry, and lapidary work industry in Puerto Rico, as defined in 29 CFR 616.2(c); 1966 coverage classification of the alcoholic beverage and industrial alcohol industry in Puerto Rico, as defined in 29 CFR 619.2 (b); 1966 coverage classification of the tobacco industry in Puerto Rico, as defined in 29 CFR 657.2(c); 1966 coverage classification of the banking, insurance and finance industry in Puerto Rico, as defined in 29 CFR 661.2(b); 1966 coverage classifications of the chemical, petroleum, and related products industry in Puerto Rico, as defined in 29 CFR 670.2(d); 1966 coverage classification of the communications, utilities, and transportation industry in Puerto Rico, as defined in 29 CFR 671.2(c); 1966 coverage classification of the construction, business service, motion picture, and miscellaneous industry in Puerto Rico, as defined in 29 CFR 672.2(b); 1966 coverage classification of the food and related products industry in Puerto Rico, as defined in 29 CFR 673.2(q); 1966 coverage classification of the lumber and wood products industry in Puerto Rico, as defined in 29 CFR 675.2(e); 1966 coverage classification of the paper, paper products, printing, and publishing industry in Puerto Rico, as defined in 29 CFR 677.2(c); 1966 coverage classifications of the stone, clay, glass, cement, and related products industry in Puerto Rico, as defined in 29 CFR 678.2(d); 1966 coverage classification of the retailing, wholesaling, and warehousing industry in Puerto Rico, as defined in 29 CFR 683.2 (d); 1966 coverage classifications of the hosiery industry in Puerto Rico, as defined in 29 CFR 687.2(c); 1966 coverage classification of the artificial flower, decoration, and party favor industry in Puerto Rico, as defined in 29 CFR 688.2 (c); 1966 coverage classification of the sugar manufacturing industry in Puerto Rico, as defined in 29 CFR 689.2(b); 1966 coverage classification of the fabricated plastic products industry in Puerto Rico, as defined in 29 CFR 690.2(c); 1966 coverage classifications of the textile and textile products industry in Puerto Rico, as defined in 29 CFR 699.2(c); and for the 1966 coverage classification of the rubber products industry in Puerto Rico, as defined in 29 CFR 720.2(c).

The Secretary of Labor referred to the Committee the question of the minimum wage rate or rates to be paid under section 6(c) of the Act to employees in the industries described and defined in the preceding paragraph and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee filed with the Administrator of the Wage and Hour and Public Contracts Divisions of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization

Plan No. 6 of 1950 and pursuant to 29 CFR 511.18, the recommendations of Industry Committee No. 76–C are published in this order. Title 29 CFR Chapter V is hereby amended effective December 20, 1968, as set forth below:

## PART 601—SHOE AND RELATED PRODUCTS INDUSTRY IN PUERTO RICO

1. Subparagraph (1) of 29 CFR 601.2 (b) is revised to read as follows:

§ 601.2 Wage rates.

* * * * *

(b) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

* * * * *

## PART 602—LEATHER, LEATHER GOODS, AND RELATED PRODUCTS INDUSTRY IN PUERTO RICO

2. Paragraph (c) of 29 CFR 602.2 is revised to read as follows:

§ 602.2 Wage rates.

* * * * *

(c) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

(2) This classification is defined as all activities of employees in the leather, leather goods, and related products industry in Puerto Rico by which section 6 of the Act applies solely by reason of the Fair Labor Standards Amendments of 1966.

## PART 603—FABRIC AND LEATHER GLOVE INDUSTRY IN PUERTO RICO

3. Subparagraph (1) of 29 CFR 603.2(c) is revised to read as follows:

§ 603.2 Wage rates.

* * * * *

(c) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

## PART 604—METAL, MACHINERY, TRANSPORTATION EQUIPMENT, AND ALLIED PRODUCTS INDUSTRY IN PUERTO RICO

4. Subparagraph (1) of 29 CFR 604.2(c) is revised to read as follows:

§ 604.2 Wage rates.

* * * * *

(c) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

* * * * *

## PART 606—ELECTRICAL, INSTRUMENT, AND RELATED PRODUCTS INDUSTRY IN PUERTO RICO

5. Subparagraph (1) of 29 CFR 606.2(c) is revised to read as follows:

§ 606.2 Wage rates.

* * * * *

(c) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

* * * * *

## PART 608—HANDKERCHIEF, SCARF, AND ART LINEN INDUSTRY IN PUERTO RICO

6. Paragraph (c) of 29 CFR 608.2 is amended to read as follows:

§ 608.2 Wage rates.

* * * * *

(c) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

(2) This classification is defined as all activities in the handkerchief, scarf, and art linen industry in Puerto Rico to which section 6 of the Act applies solely by reason of the Fair Labor Standards Amendments of 1966.

## PART 609—WOMEN'S AND CHILDREN'S UNDERWEAR AND WOMEN'S BLOUSE INDUSTRY IN PUERTO RICO

7. Paragraph (c) of 29 CFR 609.2 is revised to read as follows:

§ 609.2 Wage rates.

* * * * *

(c) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

(2) The classifications in this paragraph include all activities in the women's and children's underwear and women's blouse industry in Puerto Rico to which section 6 of the Act applies solely by reason of the Fair Labor Standards Amendments of 1966.

## PART 610—CHILDREN'S DRESS AND RELATED PRODUCTS INDUSTRY IN PUERTO RICO

8. Paragraph (c) of 29 CFR 610.2 is revised to read as follows:

§ 610.2 Wage rates.

* * * * *

(c) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period commencing February 1, 1969 and ending January 31, 1970; and $1.45 per hour thereafter.

(2) This classification is defined as all activities in the children's dress and related products industry in Puerto Rico to which section 6 of the Act applies solely by reason of the Fair Labor Standards Amendments of 1966.

## PART 611—SWEATER AND KNIT SWIMWEAR INDUSTRY IN PUERTO RICO

9. Subparagraph (1) of 29 CFR 611.2 (b) is revised to read as follows:

§ 611.2 Wage rates.

* * * * *

(b) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

* * * * *

## PART 612—NEEDLEWORK AND FABRICATED TEXTILE PRODUCTS INDUSTRY IN PUERTO RICO

10. Subparagraph (1) of 29 CFR 612.2(h) is revised to read as follows:

§ 612.2 Wage rates.

* * * * *

(h) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

* * * * *

## PART 613—STRAW, HAIR, AND RELATED PRODUCTS INDUSTRY IN PUERTO RICO

11. Paragraph (c) of 29 CFR 613.2 is revised to read as follows:

§ 613.2 Wage rates.

* * * * *

(c) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

(2) This classification is defined as all activities of employees in the straw, hair, and related products industry in Puerto Rico to which section 6 of the Act applies solely by reason of the Fair Labor Standards Amendments of 1966.

## PART 614—CORSETS, BRASSIERES, AND ALLIED GARMENTS INDUSTRY IN PUERTO RICO

12. Subparagraph (1) of 29 CFR 614.2(c) is revised to read as follows:

§ 614.2 Wage rates.

* * * * *

(c) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

* * * * *

## PART 615—MEN'S AND BOYS' CLOTHING AND RELATED PRODUCTS INDUSTRY IN PUERTO RICO

13. Paragraph (c) of 29 CFR 615.2 is revised to read as follows:

§ 615.2 Wage rates.

* * * * *

(c) *1966 coverage classifications.* The classifications in this paragraph (c) include only those activities in the men's and boys' clothing and related products industry in Puerto Rico to which section 6 of the Act applies solely by reason of the Fair Labor Standards Amendments of 1966.

(1) *Trousers classification.* (i) The minimum wage for this classification is $1 per hour for the period ending January 31, 1969; $1.15 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.30 per hour thereafter.

(ii) This classification is defined as the manufacture of men's, youths' and boys' work pants and separate trousers and slacks.

(2) *General classification.* (i) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

(ii) This classification is defined as all activities in the men's and boys' clothing and related products industry in Puerto Rico except those included in the trouser classification of this subparagraph (1) of this paragraph (c).

## PART 616—BUTTON, JEWELRY, AND LAPIDARY WORK INDUSTRY IN PUERTO RICO

14. Paragraph (c) of 29 CFR 616.2 is revised to read as follows:

§ 616.2 Wage rates.

* * * * *

(c) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

(2) This classification is defined as all activities in the button, jewelry, and lapidary work industry in Puerto Rico to which section 6 of the Act applies solely by reason of the Fair Labor Standards Amendments of 1966.

## PART 619—ALCOHOLIC BEVERAGE AND INDUSTRIAL ALCOHOL INDUSTRY IN PUERTO RICO

15. Subparagraph (1) of 29 CFR 619.2(b) is revised to read as follows:

§ 619.2 Wage rates.

* * * * *

(b) *1966 coverage classification.* (1) The minimum rate for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969 and ending January 31, 1970; and $1.45 per hour thereafter.

* * * * *

## PART 657—TOBACCO INDUSTRY IN PUERTO RICO

16. Subparagraph (1) of 29 CFR 657.2 (c) is revised to read as follows:

§ 657.2 Wage rates.

* * * * *

(c) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

* * * * *

## PART 661—BANKING, INSURANCE AND FINANCE INDUSTRY IN PUERTO RICO

17. Suparagraph (1) of 29 CFR 661.2 (b) is revised to read as follows:

§ 661.2 Wage rates.

* * * * *

(b) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969 and ending January 31, 1970; and $1.45 per hour thereafter.

* * * * *

## PART 670—CHEMICAL, PETROLEUM, AND RELATED PRODUCTS INDUSTRY IN PUERTO RICO

18. Paragraph (d) of 29 CFR 670.2 is revised to read as follows:

§ 670.2 Wage rates.

* * * * *

(d) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

(2) This classification is defined as all activities in the chemical petroleum, and related products industry in Puerto Rico to which section 6 of the Act applies solely by reason of the Fair Labor Standards Amendments of 1966.

## PART 671—COMMUNICATIONS, UTILITIES, AND TRANSPORTATION INDUSTRY IN PUERTO RICO

19. Subparagraph (1) of 29 CFR 671.2 (c) is revised to read as follows:

§ 671.2 Wage rates.

* * * * *

(c) *1966 coverage classic fiction.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

* * * * *

## PART 672—CONSTRUCTION, BUSINESS SERVICE, MOTION PICTURE, AND MISCELLANEOUS INDUSTRY IN PUERTO RICO

20. Subparagraph (1) of 29 CFR 672.2 (b) is revised to read as follows:

§ 672.2 Wage rates.

* * * * *

(b) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

* * * * *

## PART 673—FOOD AND RELATED PRODUCTS INDUSTRY IN PUERTO RICO

21. Subparagraph (1) of 29 CFR 673.2(q) is revised to read as follows:

§ 673.2 Wage rates.

* * * * *

(q) *1966 coverage classification.* (1) The minimum wage for this classification is $1 per hour for the period ending January 31, 1969; $1.15 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.30 per hour thereafter.

* * * * *

## PART 675—LUMBER AND WOOD PRODUCTS INDUSTRY IN PUERTO RICO

22. Subparagraph (1) of 29 CFR 675.2(e) is amended to read as follows:

§ 675.2 Wage rates.

* * * * *

(e) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for

the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

* * * * *

## PART 677—PAPER, PAPER PRODUCTS, PRINTING, AND PUBLISHING INDUSTRY IN PUERTO RICO

23. Subparagraph (1) of 29 CFR 677.2(c) is revised to read as follows:

§ 677.2 Wage rates.

* * * * *

(c) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

* * * * *

## PART 678—STONE, CLAY, GLASS, CEMENT, AND RELATED PRODUCTS INDUSTRY IN PUERTO RICO

24. Paragraph (d) of 29 CFR 678.2 is revised to read as follows:

§ 678.2 Wage rates.

* * * * *

(d) *1966 coverage classifications.* The classifications in this paragraph (d) include only those activities in the stone, clay, glass, cement, and related products industry in Puerto Rico, to which section 6 of the Act applies solely by reason of the Fair Labor Standards Amendments of 1966.

(1) *Terrazzo and marble tiles classification.* (i) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

(ii) This classification is defined as the manufacture of terrazzo and marble tiles.

(2) *General classification.* (i) The minimum wage for this classification is $1 per hour for the period ending January 31, 1969; $1.15 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.30 per hour thereafter.

(ii) This classification is defined as all activities in the stone, clay, glass, cement, and related products industry in Puerto Rico, except those activities included in the terrazzo and marble tiles classification of this industry.

## PART 683—RETAILING, WHOLESALING, AND WAREHOUSING INDUSTRY IN PUERTO RICO

25. Subparagraph (1) of 29 CFR 683.2 (d) is revised to read as follows:

§ 683.2 Wage rates.

* * * * *

(d) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

* * * * *

## PART 687—HOSIERY INDUSTRY IN PUERTO RICO

26. Paragraph (c) of 29 CFR 687.2 is revised to read as follows:

§ 687.2 Wage rates.

* * * * *

(c) *1966 coverage classifications.* The classifications in this paragraph (c) include only those activities in the hosiery industry in Puerto Rico, to which section 6 of the Act applies solely by reason of the Fair Labor Standards Amendments of 1966.

(1) *Women's hosiery classification.* (i) The minimum wage for this classification is $1.11 per hour for the period ending January 31, 1969; $1.26 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.41 per hour thereafter.

(ii) This classification is defined as the manufacture and processing of women's hosiery, both seamless and full fashion, including among other processes knitting, seaming, looping, dyeing, clocking, and all phases of finishing.

(2) *All other hosiery classification.* (i) The minimum wage for this classification is $1.07½ per hour for the period ending January 31, 1969; $1.22½ per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.37½ per hour thereafter.

(ii) This classification is defined as all activities in the hosiery industry in Puerto Rico, except those activities included in the women's hosiery classification of this industry.

## PART 688—ARTIFICIAL FLOWER, DECORATION, AND PARTY FAVOR INDUSTRY IN PUERTO RICO

27. Subparagraph (1) of 29 CFR 688.2(c) is revised to read as follows:

§ 688.2 Wage rates.

* * * * *

(c) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

* * * * *

## PART 689—SUGAR MANUFACTURING INDUSTRY IN PUERTO RICO

28. Subparagraph (1) of 29 CFR 689.2(b) is revised to read as follows:

§ 689.2 Wage rates.

* * * * *

(b) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

* * * * *

## PART 690—FABRICATED PLASTIC PRODUCTS INDUSTRY IN PUERTO RICO

29. Subparagraph (1) of 29 CFR 690.2 (c) is revised to read as follows:

§ 690.2 Wage rates.

* * * * *

(c) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

* * * * *

## PART 699—TEXTILE AND TEXTILE PRODUCTS INDUSTRY IN PUERTO RICO

30. Paragraph (c) of 29 CFR 699.2 is revised to read as follows:

§ 699.2 Wage rates.

* * * * *

(c) *1966 coverage classifications.* The classifications in this paragraph (c) include only those activities in the textile and textile products industry in Puerto Rico, to which section 6 of the Act applies solely by reason of the Fair Labor Standards Amendments of 1966.

(1) *Mattresses without springs, quilts, pillows, and related products classification.* (i) The minimum wage for this classification is $1.10 per hour for the period ending January 31, 1969; $1.25 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.40 per hour thereafter.

(ii) This classification is defined as the manufacture of mattresses without springs, quilts, cushions of all kinds from any material, excluding leather or furs or imitations thereof, pillows (including those made of foam rubber), and other retail products.

(2) *General classification.* (i) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

(ii) This classification is defined as all activities in the textile and textile products industry in Puerto Rico, except those activities included in the mattresses without springs, quilts, pillows, and related products classification of this industry.

## PART 720—RUBBER PRODUCTS INDUSTRY IN PUERTO RICO

31. Subparagraph (1) of 29 CFR 720.2 (c) is revised to read as follows:

§ 720.2 Wage rates.

* * * * *

(c) *1966 coverage classification.* (1) The minimum wage for this classification is $1.15 per hour for the period ending January 31, 1969; $1.30 per hour for the period beginning February 1, 1969, and ending January 31, 1970; and $1.45 per hour thereafter.

* * * * *

(Secs. 5, 6, 8, 52 Stat. 1062, 1064 as amended; 29 U.S.C. 205, 206, 208)

Signed at Washington, D.C., this 29th day of November 1968.

CLARENCE T. LUNDQUIST,
*Administrator, Wage and Hour and Public Contracts Divisions.*

[F.R. Doc. 68-14471; Filed, Dec. 3, 1968; 8:47 a.m.]

# Title 36—PARKS, FORESTS, AND MEMORIALS

## Chapter II—Forest Service, Department of Agriculture

## PART 221—TIMBER

### Appraisal and Contract Conditions

In Part 221 of Title 36, Code of Federal Regulations, paragraph (f) of § 221.7 is amended to read as follows:

**§ 221.7 Appraisal and contract conditions.**

* * * * *

(f) All sale contracts exceeding 7 years in duration, and those of shorter duration to the extent found desirable by the officer authorizing the sale, will provide for the redetermination of rates for stumpage and for required deposits at intervals of not more than 5 years, exclusive of any period allowed for the construction of improvements; but contracts for large sales in Alaska, involving installation of extensive manufacturing facilities, may provide that the first redetermination of rates and deposits will be made after not more than 10 years, exclusive of any period allowed for the construction of improvements.

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

(30 Stat. 35 as amended, 16 U.S.C. 476, 551)

Dated: November 29, 1968.

ORVILLE L. FREEMAN,
*Secretary of Agriculture.*

[F.R. Doc. 68-14473; Filed, Dec. 3, 1968; 8:47 a.m.]

# Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

## Chapter I—Veterans Administration

## PART 36—LOAN GUARANTY

### Miscellaneous Amendments

1. In § 36.4320(h), that portion of subparagraph (5) preceding subdivision (*a*) is amended to read as follows:

**§ 36.4320 Sale of security.**

* * * * *

(h) * * *

(5) Each conveyance or transfer of real property to the Administrator pursuant to this section shall be acceptable if the holder thereby covenants or warrants against the acts of himself and those claiming under him (e.g., by special warranty deed) and if it vests in the Administrator or will entitle him to such title as is or would be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated: *Provided,* That, as to home loans guaranteed or insured subsequent to February 15, 1950, any title which is subject to restrictions against sale or occupancy on the ground of race, color, or creed, which have been created and filed of record subsequent to that date shall not be acceptable under this section, unless such restrictions are void under applicable State law, or an employee designated in § 36.4342 determines in a specific case or cases that the objectives of Executive Order 11063 (27 F.R. 11527; 3 CFR 1962 Supp.) on Equal Opportunity in Housing will be achieved if such restrictions are disregarded for the purposes of determining acceptability of title and the lender making the loan in the specific case or cases is advised of such determination in writing prior to loan closing. Any title so acceptable will not be unacceptable to the Administrator by reason of any of the limitations on the quantum or quality of the property or title stated in § 36.4350(b): *Provided,* That (i) at the time of conveyance or transfer to the Administrator there has been no breach of any conditions affording a right to the exercise of any reverter, except that title will not be unacceptable to the Administrator by reason of a violation of a restriction based on race, color, creed, or national origin, whether or not such restriction provides for reversion or forfeiture of title or a lien for liquidated damages in the event of a breach. (ii) With respect to any such limitations which came into existence subsequent to the making of the loan, full compliance was had with the requirements of § 36.4324. The acceptability of a conveyance or transfer pursuant to the requirements of this paragraph will be established by delivery to the Administrator of any of the following evidences of title issued by an institution or person satisfactory to the Administrator, in form satisfactory to him, showing that title to the property of the quality specified in this paragraph is or will be vested in the Administrator:

* * * * *

2. In § 36.4350, paragraph (b) is amended and paragraph (c) is added to read as follows:

**§ 36.4350 Estate of veteran in real property.**

* * * * *

(b) Any such property or estate will not fail to comply with the requirements of paragraph (a) of this section by reason of the following:

(1) Encroachments;

(2) Easements;

(3) Servitudes;

(4) Reservations for water, timber, or subsurface rights;

(5) Right in any grantor or cotenant in the chain of title, or a successor of either, to purchase for cash, which right by the terms thereof is exercisable only if—

(i) An owner elects to sell,

(ii) The option price is not less than the price at which the then owner is willing to sell to another, and

(iii) Exercised within 30 days after notice is mailed by registered mail to the address of optionee last known to the then owner of the then owner's election to sell, stating his price and the identity of the proposed vendee;

(6) Building and use restrictions whether or not enforceable by a reverter clause if there has been no breach of the conditions affording a right to an exercise of the reverter;

(7) Violation of a restriction based on race, color, creed or national origin, whether or not such restriction provides for reversion or forfeiture of title or a lien for liquidated damages in the event of a breach;

(8) Any other covenant, condition, restriction, or limitation approved by the Administrator in the particular case. Such approval shall be a condition precedent to the guaranty or insurance of the loan;

*Provided,* That the limitations on the quantum or quality of the estate or property that are indicated in this paragraph, insofar as they may materially affect the value of the property for the purpose for which it is used, are taken into account in the appraisal of reasonable value required by 38 U.S.C. ch. 37: *And provided further,* That, as to home loans guaranteed or insured subsequent to February 15, 1950, the title to any such property or estate shall not be acceptable under § 36.4320(h) if it is subject to restrictions against sale or occupancy on the ground of race, color, or creed, which have been created and filed of record subsequent to that date, unless such restrictions are void under applicable State law, or an employee designated in § 36.4342 determines in a specific case or cases that the objectives of Executive Order 11063 (27 F.R. 11527; 3 CFR 1962 Supp.) on Equal Opportunity in Housing will be achieved if such restrictions are disregarded for the purposes of determining acceptability of title and the lender making the loan in the specific case or cases is advised of such determination in writing prior to loan closing.

(c) The following limitations on the quantum or quality of the estate or property shall be deemed for the purposes of paragraph (b) of this section to have been taken into account in the appraisal of residential property and determined by the Administrator as not materially affecting the reasonable value of such property:

(1) *Building or use restrictions.* Provided, (i) no violation exists, (ii) the

proposed use by a veteran does not presage a violation of a condition affording a right of reverter, and (iii) any right of future modification contained in the building or use restrictions is not exercisable, by its own terms, until at least 10 years following the date of the loan.

(2) *Violations of racial and creed restrictions.* Violations of a restriction based on race, color, creed, or national origin, whether or not such restriction provides for reversion or forfeiture of title or a lien for liquidated damages in the event of a breach.

(3) *Violations of building or use restrictions of record.* Violations of building or use restrictions of record which have existed for more than 1 year, are not the subject of pending or threatened litigation, and which do not provide for a reversion or termination of title, or condemnation by municipal authorities, or, a lien for liquidated damages which may be superior to the lien of the guaranteed or insured mortgage.

(4) *Easements.* (i) Easements for public utilities along one or more of the property lines, provided the exercise of the rights thereof do not interfere with the use of any of the buildings or improvements located on the subject property.

(ii) Mutual easements for joint driveways located partly on the subject property and partly on adjoining property, provided the agreement is recorded in the public records.

(iii) Easements for underground conduits which are in place and which do not extend under any buildings in the subject property.

(5) *Encroachments.* (i) On the subject property by improvements on the adjoining property where such encroachments do not exceed 1 foot within the subject boundaries, provided such encroachments do not touch any buildings or interfere with the use or enjoyment of any building or improvement on the subject property.

(ii) By hedges or removable fences belonging to subject or adjoining property.

(iii) Not exceeding 1 foot on adjoining property by driveways belonging to subject property, provided there exists a clearance of at least 8 feet between the buildings on the subject property and the property line affected by the encroachment.

(6) *Variations of lot lines.* Variations between the length of the subject property lines as shown on the plot plan or other exhibits submitted to Veterans Administration and as shown by the record or possession lines, provided such variations do not interfere with the current use of any of the improvements on the subject property and do not involve a deficiency of more than 2 percent with respect to the length of the front line or more than 5 percent with respect to the length of any other line.

3. In § 36.4515, paragraph (b) is amended to read as follows:

**§ 36.4515 Estate of veteran in real property.**

* * * * *

(b) Any such property or estate will not fail to comply with the requirements in paragraph (a) of this section by reason of the following:

(1) Encroachments;

(2) Easements;

(3) Servitudes;

(4) Reservations for water, timber, or subsurface rights;

(5) Right in any grantor or cotenant in the chain of title, or a successor of either, to purchase for cash, which right by the terms thereof is exercisable only if—

(i) An owner elects to sell,

(ii) The option price is not less than the price at which the then owner is willing to sell to another, and

(iii) Exercised within 30 days after notice is mailed by registered mail to the address of optionee last known to the then owner, of the then owner's election to sell, stating his price and the identity of the proposed vendee;

(6) Building and use restrictions whether or not enforceable by a reverter clause if there has been no breach of the conditions affording a right to an exercise of the reverter;

(7) Violation of a restriction based on race, color, creed, or national origin, whether or not such restriction provides for reversion or forfeiture of title or a lien for liquidated damages in the event of a breach;

(8) Any other covenant, condition, restriction, or limitation approved by Veterans Administration in the particular case.

The limitations on the quantum or quality of the estate or property that are indicated in this paragraph, insofar as they may materially affect the value of the property for the purpose for which it is used, shall be taken into account in the appraisal of reasonable value.

* * * * *

(72 Stat. 1114; 38 U.S.C. 210)

These VA regulations are effective upon publication in the FEDERAL REGISTER.

Approved: November 26, 1968.

By direction of the Administrator.

[SEAL] A. W. STRATTON,
*Deputy Administrator.*

[F.R. Doc. 68-14477; Filed, Dec. 3, 1968; 8:47 a.m.]

# Title 39—POSTAL SERVICE

## Chapter I—Post Office Department

## MISCELLANEOUS AMENDMENTS TO CHAPTER

Chapter I of Title 39 is amended as set forth below.

## PART 812—DELEGATIONS OF AUTHORITY

I. In § 812.5 paragraph (a)(2) is updated to correct the titles of officials authorized to approve and sign POD Form 50.

**§ 812.5 Authority to effect personnel actions.**

(a) Delegation. * * *

(2) *Regional headquarters.*

Regional Director.
Deputy Regional Director.
Director, Industrial Relations Division.
Chief, Personnel Programs Branch.

* * * * *

NOTE: The corresponding Postal Manual section is 812.51b.

**§ 812.6 [Amended]**

II. In § 812.6 *Authority to administer oaths of office,* the following changes are made:

a. The section caption is amended to read: "§ 812.6 Authority to administer oaths."

b. Paragraph (a) is updated to add, and correct the titles of, officials authorized to administer oaths of office.

(a) *Delegation.* The following officials are authorized to administer oaths of office in connection with employment:

(1) *Regional headquarters.*

Regional Director.
Deputy Regional Director.
Director, Industrial Relations Division.
Regional Controller.
Chief, Personnel Programs Branch Manager, Personnel Services Section.
Employment and Placement Officers.
Personnel Assistant.
Postal Service Officer.

(2) *Postal data centers.*

Director, Postal Data Center.
Director, Systems and Planning Division.

(3) *Postal installations.*

Postmasters.
Assistant Postmasters.
Chief, Administrative Service, or Director, Office of Administrative Services, only to Contractors, Contract Stations and Branches.
Superintendent and Administrative Assistant, Mail Bag Depository.
Superintendent, Assistant Superintendent (where authorized) and Administrative Assistant of Combined Mail Bag Depository and Mail Bag Repair Center.
Supervisor assigned to Personnel Office in postal installation.
Executive Secretary, Postal Board of Civil Service Examiners.
Area Supply Manager; Deputy Area Supply Manager; Superintendent and Personnel Officer, Supply Center.
Manager, Assistant Manager, and Administrative Assistant, Mail Equipment Shops.
U.S. Stamped Envelope Agent.

(4) *Inspection service.*

Postal Inspector in Charge.
Deputy Postal Inspector in Charge.
Assistant Postal Inspector in Charge.
Postal Inspector.
Area Manager, Internal Audit Division.

(5) *Automatic data processing center.*

Director, Automatic Data Processing Center.

* * * * *

c. The caption of paragraph (c) is changed to read: (c) *Administering oaths.*

d. Subparagraph (3) is added to paragraph (c), and states that postal inspectors may administer oaths in proper cases; and subparagraph (4) is added

to paragraph (c), and authorizes members of the Board of Appeals and Review, and hearing officers, to administer oaths to witnesses in personnel cases involving appeals from adverse decisions.

(c) *Administering oaths.* * * *

(3) Postal inspectors may administer oaths required or authorized by law or regulation with respect to any matter coming before them in the performance of their official duties. This authority is conferred by 39 U.S.C. 3112.

(4) Pursuant to authority in 5 U.S.C. 2103, each member of the Board of Appeals and Review of the Post Office Department, and each person who is or may be assigned to conduct a hearing of an appeal from an adverse decision, as the same is defined from time to time in regulations issued by this Department, are authorized to administer the oath to any and all witnesses who give testimony at such hearing.

NOTE: The corresponding Postal Manual sections are 812.61 and 812.633, 634.

## PART 821—OFFICE OF THE POSTMASTER GENERAL AND DEPUTY POSTMASTER GENERAL

III. In § 821.9 paragraph (c) is amended to revise and expand the functional statement for the Office of Headquarters Services.

**§ 821.9 Executive Assistants to the Deputy Postmaster General.**

* * * * *

(c) *Office of Headquarters Services.* Provides plans, policies, and programs for and appraises the effectiveness of office communications and building services; graphics, printing, and distribution services; mail and messenger services; parking space and permits; develops, justifies, administers and accounts for the budget of the Office of Headquarters Services. Directs staffs of the Operating Services Division, the Graphic Arts Division, and the Library Division. Maintains liaison on policy and planning matters with the General Services Administration concerning headquarters building and cafeteria; and with the Government Printing Office, the General Services Administration, and the Congressional Joint Committee on Printing for all printing of the Postal Establishment, except for accountable paper. Administers a personnel program for the Office. Serves as deputy defense coordination representative for the Office of the Postmaster General and the Deputy Postmaster General.

(1) *Operating Services Division.* (i) Plans, programs, and directs the Headquarters supplies, equipment, and services procurement program. Directs continuing appraisal of furniture and equipment condition and use.

(ii) Provides telephone and related services for Headquarters, Washington Region, Washington Supply Center, Washington, D.C. Post Office, and Mail Equipment Shops; develops communication layouts, and analyzes and reports communication costs; assures timely preparation and issuance of the Departmental telephone directory; maintains liaison with the telephone company and the General Services Administration (GSA) on communication matters.

(iii) Approves requests and arranges with GSA for building maintenance, repairs, and alterations; coordinates maintenance and repair services in the Post Office Department Building and other quarters occupied by Headquarters personnel.

(iv) Plans, provides and directs a program to maintain and repair all office equipment.

(v) Analyzes and plans space requirements for Headquarters personnel and negotiates with GSA for space allocations.

(vi) Provides automotive transportation and delivery services for Headquarters; manages the official parking facilities; serves as parking control office for matters concerned with employee parking privileges.

(vii) Plans and directs property surveys for maintenance of Headquarters property accountability.

(viii) Directs the program to furnish carpentry, machine shop, and labor services.

(ix) Organizes and directs the physical arrangement of facilities for movies, television and press conferences, and other ceremonies; handles receipt and shipment of Post Office Department exhibits.

(x) Plans for and provides the Headquarters mail and messenger services.

(xi) Administers the Headquarters records storage and disposal program within the policies and guidelines of the Federal Government, and implementation procedures established by the Forms and Records Management Branch, Management Systems Division, Bureau of Finance and Administration.

(xii) Prepares and presents annual budget estimates to the Director, Office of Headquarters Services, consistent with element manager responsibilities under the PPBS program; justifies personnel and funds for all procurement and supply activities of the Division.

(2) *Graphic Arts Division.* (i) Serves as printing technician for the Department; renders technical advisory services to all components of the Department on printing and duplicating plans and projects.

(ii) Administers Headquarters reproduction plant, personnel, and facilities; determnes how and when equipment may be procured, maintained, operated, and disposed of; initiates actions for acquisition, use, and maintenance of reproduction equipment.

(iii) Plans, organizes, coordinates, and controls all reproduction needs for Headquarters; recommends policies effecting programs of the Division; formulates and installs work methods and procedures.

(iv) Provides technical coordination of field reproduction activities of the Department; provides technical service to bureaus and offices for field printing and duplicating needs and participates in surveys; provides technical coordination of field reproduction activities for field printing and duplicating needs.

(v) Serves as the official Post Office Department liaison with the Congressional Joint Committee on Printing, the Government Printing Office, and the General Services Administration on printing and duplicating matters, Headquarters and field, and is responsible for:

(*a*) Application and enforcement of Joint Committee on Printing regulations on purchase, rental, exchange, or transfer of equipment.

(*b*) Coordination for the Department of all reproduction and reports required by Committee regulations.

(*c*) Approving or disapproving, for the Deputy Postmaster General, the procurement of duplicating and printing (and related) equipment, and its transfer, for Headquarters and the postal field service.

(vi) Acquires and controls the distribution of specified nonpostal publications to Headquarters Bureaus and Offices.

(3) *Library Division.* (i) Selects, acquires, organizes, and preserves a Collection of general, technical, and legal materials to support the missions and programs of the Department.

(ii) Maintains for use by the Department and the public a special collection of current and historical materials on postal subjects.

(iii) Informs Department employees of library resources.

(iv) Circulates library materials. Lends to and borrows from other libraries.

(v) Provides department-wide reference, research and bibliographic services; provides postal history reference services to educational and research institutions, and the general public.

(vi) Coordinates with Department officials the selection and acquisition of materials for field installations.

* * * * *

NOTE: The corresponding Postal Manual section is 821.93.

## PART 822—BUREAUS AND OFFICES

IV. In § 822.5 subparagraph (7) of paragraph (c) is revised and updated to show new organizational changes and functional statements for the Office of ADP Management.

**§ 822.5 Bureau of Finance and Administration.**

* * * * *

(c) *Office of the Deputy Assistant Postmaster General and Controller.* * * *

(7) *Office of ADP Management*—(i) *Director.* (*a*) Develops policy recommendations and plans for the Post Office Department's automatic data processing program.

(*b*) Administers the design, development and implementation of automatic data processing systems in the Department and the postal field service.

(*c*) Administers Headquarters data processing operations and the automatic data processing centers.

(d) Provides technical guidance to the postal data centers on matters concerning automatic data processing.

(e) Develops the budget for departmental and field service automatic data processing progams.

(f) Determines departmental and field service expenditures for automatic data processing equipment, supplies and services.

(g) Directs the review and evaluation of departmental and field service automatic data processing programs.

(h) Administers a program of ADP research.

(i) Directs an ADP standards program.

(j) Makes the selection and approves the release of all ADP equipment.

(k) Performs other duties and responsibilities as would normally fall within the scope of the position.

(ii) *Deputy Director.* (a) Assists the Director in accomplishing the above; acts for the Director in his absence or when requested.

(b) Administers the long-range planning.

(c) Evaluates equipment requirements.

(d) Directs the development of equipment specifications.

(e) Establishes equipment selection procedures.

(iii) *ADP Planning Staff.* (a) Conducts research in all aspects of ADP methodology for purposes of developing ways of improving Post Office Department ADP programs.

(b) Maintains liaison with other Government agencies, ADP equipment manufacturers, and other organizations engaged in the development and application of ADP equipment and methods for purposes of advising the Director of trends and developments that can be used to improve the Post Office Department ADP program.

(c) Provides technical guidance and overall coordination of research projects designed to improve the Post Office Department's ADP program; participate in the development of and reviews the budget for research in automatic data processing; and reviews Post Office Department expenditures for research in automatic data processing.

(d) Serves as a technical consultant to ADP feasibility study teams to assure full consideration of new ADP capabilities.

(e) Provides an ADP consultant and advisory service to the Bureaus and Offices.

(f) Establishes equipment specifications for all automatic data processing equipment for the Department and evaluates equipment proposals to assure that specifications are met.

(iv) *Postal Source Data System Management Division.* (a) Provides technical guidance for operating the postal source data system and administrative guidance to the automatic data processing centers.

(b) Recommends policies and coordinates the development of system, program and procedural requirements of the postal source data system.

(c) Develops physical plant requirements for the postal source data system.

(d) Installs and tests equipment for the postal source data system and provides technical guidance in developing machine training needs for system users.

(e) Maintains liaison with commercial contractors for the postal source data system.

(f) Directs the maintenance of the postal source data system.

(g) Establishes and disseminates standards for all peripheral devices employed in the postal source data system.

(h) Establishes training requirements for all divisions and peripheral user personnel.

(i) Develops and maintains all on-line software for the postal source data system.

(j) Provides management with system status information and critical areas of implementation using modified PERT systems.

(v) *ADP Financial Systems Division.* (a) Directs and coordinates ADP feasibility studies at Headquarters and in the field on all financial systems.

(b) Develops and documents ADP concepts and specifications concerning all financial systems.

(c) Designs, develops, and documents all ADP financial systems programing in the Post Office Department. This includes any related programs for the off-line PSDS.

(d) Directs, coordinates, and performs maintenance programing and effects program changes resulting from financial systems modifications.

(e) Coordinates and assigns postal data center systems and programing.

(f) Responsible for the distribution and implementation of programs to postal data centers.

(g) Develops systems and programing training requirements.

(h) Conducts systems and programing training classes.

(i) Develops advanced software to be implemented by Headquarters and the postal data centers.

(j) Assists in preparing equipment specifications and the selection process for acquiring new ADP and related equipment, in its areas of responsibility.

(vi) *ADP Information Systems Division.* (a) Directs and coordinates ADP feasibility studies for Headquarters for all ADP systems except those dealing with financial matters and the on-line postal data system.

(b) Develops and documents ADP systems concepts and specifications for all ADP systems except those dealing with financial matters and on-line PSDS.

(c) Designs, develops, and documents all ADP systems programing in the Post Office Department, except those dealing with financial matters and on-line PSDS.

(d) Directs, coordinates, and performs maintenance and effects program changes resulting from systems modifications to all systems except those dealing with financial matters and on-line PSDS.

(e) Establishes systems, programing and documentation standards.

(f) Assists in preparing equipment specifications and the selection process for acquiring new ADP and related equipment, in its areas of responsibility.

(vii) *ADP Budget and Resources Division.* (a) Prepares, justifies, and administers the annual ADP budget and 5-year plan.

(b) Prescribes procedures for recording ADP equipment utilization and evaluates reports.

(c) Evaluates the need for ADP contractual services for Headquarters' and automatic data processing center applications; verifies fulfillment of contractual requirements; and authorizes billings for such services.

(d) Maintains liaison with the General Services Administration and the Bureau of the Budget on ADP standards and reporting matters, and with ADP manufacturers and contractors as required in the exercise of other assigned functions.

(e) Coordinates training programs established by other Division Directors with the Bureau of Personnel.

(f) Coordinates equipment installation and release in all postal installations.

(g) Provides the Director, Office of ADP Management, the status of personnel resources and recommends alternatives for the effective use of these resources.

(h) Coordinates standardization programs developed by division directors.

(i) Develops, publishes, and maintains a manual of data processing methods and standards.

(j) Coordinates the audit of all data processing activities and reporting results to the Director, Office of ADP Management.

(viii) *Computer Operations Division.* The Division provides data processing service to the Post Office Department Headquarters and on occasion data processing assistance to postal data centers.

(a) Directs the data preparation, computer, and punchcard accounting machine operations at Headquarters.

(b) Schedules and controls the use of Headquarters and contractual ADP equipment and prepares reports on its ulitization.

(c) Maintains a central library of operational programs and program documentation.

(d) Coordinates with and maintains software supplied by manufacturers.

(e) Establishes operational standardards.

(f) Recommends policies concerning the operation of all computers within the Post Office Department except for computers dedicated to the PSDS.

* * * * *

NOTE: The corresponding Postal Manual section is 822.537.

(5 U.S.C. 301, 39 U.S.C. 501)

TIMOTHY J. MAY,
*General Counsel.*

[F.R. Doc. 68-14466; Filed, Dec. 3, 1968; 8:47 a.m.]

# Title 45—PUBLIC WELFARE

## Subtitle A—Department of Health, Education, and Welfare, General Administration

## PART 5—AVAILABILITY OF INFORMATION TO THE PUBLIC PURSUANT TO PUBLIC LAW 90–23

### Miscellaneous Amendments

The regulation of the Department of Health, Education, and Welfare pursuant to the Public Information Act, Public Law 90–23 (32 F.R. 9315 and 14894), is amended to reflect the recent reorganizations of the Public Health Service (33 F.R. 4894, 5426, and 6891), as follows:

1. Section 5.3 is amended to read as follows:

**§ 5.3 Operating agency.**

As used in this part, "operating agency" means the constituent operating agencies of the Department, i.e., the Consumer Protection and Environmental Health Services, the Health Services and Mental Health Administration, the National Institutes of Health, the Office of Education, the Social Security Administration, and the Social and Rehabilitation Service. Three operating agencies, the Consumer Protection and Environmental Health Services, the Health Services and Mental Health Administration, and the National Institutes of Health, constitute the Public Health Service.

2. Section 5.4(a) is amended to read as follows:

**§ 5.4 Heads of Office of Secretary and operating agencies.**

(a) The heads of the Office of the Secretary, the Public Health Service, and the operating agencies are the following:

Office of the Secretary—Secretary of Health, Education, and Welfare.
Public Health Service—Assistant Secretary (Health and Scientific Affairs).
Consumer Protection and Environmental Health Services—Administrator, Consumer Protection and Environmental Health Services.
Health Services and Mental Health Administration—Administrator, Health Services and Mental Health Administration.
National Institutes of Health—Director, National Institutes of Health.
Office of Education—Commissioner of Education.
Social Security Administration—Commissioner of Social Security.
Social and Rehabilitation Service—Administrator, Social and Rehabilitation Service.

3. Section 5.11 is amended to read as follows:

**§ 5.11 Purpose and scope.**

This part constitutes the regulation of the Department respecting the availability to the public, pursuant to the Act, of records of the Department. It informs the public about what records are available and where and how they may be obtained. It does not revoke, modify, or supersede the following regulations of the Public Health Service, of the operating agencies or of subsidiaries of operating agencies:

Public Health Service—42 CFR Part 1.
Food and Drug Administration, CP&EHS, PHS—21 CFR Part 4.
St. Elizabeths Hospital, NIMH, PHS—42 CFR Part 300.
Social Security Administration—20 CFR Part 401.
Bureau of Federal Credit Unions, SSA—45 CFR Part 320.

4. Section 5.31(c) is amended to read as follows:

**§ 5.31 Information centers or facilities.**

(c) Centers are maintained for the Office of the Secretary and the operating agencies, or subsidiaries thereof, at the following locations:

| | |
|---|---|
| Office of the Secretary | HEW North Building, 330 Independence Avenue SW., Washington, D.C. 20201. |
| Consumer Protection and Enviromental Health Services, Public Health Service (for the Food and Drug Administration). | Federal Office Building No. 8, 200 C Street SW., Washington, D.C. 20204. |
| Health Services and Mental Health Administration, Public Health Service. | HEW South Building, 330 C Street SW., Washington, D.C. 20201. |
| St. Elizabeths Hospital, National Institute of Mental Health, Public Health Service. | Administration Building, St. Elizabeths Hospital, Nichols Avenue beyond Anacostia Avenue SE., Washington, D.C. 20032. |
| Office of Education | Federal Office Building No. 6, 400 Maryland Avenue SW., Washington, D.C. 20202. |
| Social Security Administration | Social Security Building, 6401 Security Boulevard, Baltimore, Md. 21235 (as set forth in 20 CFR Part 401). |
| Social and Rehabilitation Services | HEW North Building, 330 Independence Avenue SW., Washington, D.C. 20201. |

* * * * *

5. Section 5.32 is amended to read as follows:

**§ 5.32 Information center officers.**

(a) The Associate Director of Information for Public Services shall serve as the Department's Central Information Center Officer and shall be responsible for determining whether records of the Office of the Secretary (including its staff offices) must be withheld from disclosure and shall have authority to deny requests for records of the Office of the Secretary.

(b) The Regional Information Center Officer in each region shall have a like responsibility for records of the Office of the Secretary in his region. The Regional Information Center Officer in each region shall be the Assistant to the Regional Director (for Information).

(c) The Information Center Officer for each of the operating agency information centers shall have, concurrently with other duly authorized officers, a like responsibility for the records of his operating agency. The Information Center Officer for the respective operating agencies shall be as follows:

| | |
|---|---|
| Consumer Protection and Environmental Health Services.<br>Health Services and Mental Health Administration.<br>National Institutes of Health | The Associate Director of Information for Public Services (the Central Information Center Officer). |
| Office of Education | Assistant Commissioner for Public Information. |
| Social Security Administration | Assistant Commissioner for Public Affairs. |
| Social and Rehabilitation Service | Assistant Administrator, Office of Public Affairs. |

6. Section 5.82 is revised to read as follows:

**§ 5.82 By whom review is made.**

Review shall be made by the Assistant Secretary for Administration, or his designee, in respect to records of the Office of the Secretary, by the Assistant Secretary for Health and Scientific Affairs, or his designee, as to records of the three operating agencies comprising the Public Health Service, and, as to the records of other operating agencies, by the head of that operating agency, or his designee. Requests for review shall be addressed to the officers.

WILBUR J. COHEN,
*Secretary.*

NOVEMBER 27, 1968.

[F.R. Doc. 68–14519; Filed, Dec. 3, 1968; 8:51 a.m.]

## Chapter I—Office of Education, Department of Health, Education, and Welfare

## PART 125—CENTERS AND SERVICES FOR DEAF-BLIND CHILDREN

The regulations in this part are applicable to the program of Centers and Services for Deaf-Blind Children authorized by Part C of the Education of the Handicapped Act (20 U.S.C. 877b). Activities undertaken pursuant to the Act are subject to the provisions thereof and to the regulations in this part.

Payments pursuant to the regulations in this part are subject to the regulation in 45 CFR Part 80, issued by the Secretary of Health, Education, and Welfare and approved by the President, to effectuate the provisions of section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d).

Sec.
125.1 Definitions.
125.2 Scope and purpose.
125.3 Grants to or contracts with eligible parties.
125.4 Services to be provided by centers.
125.5 Location of services.
125.6 Grants or contracts for related activities.
125.7 Determination of deaf-blind children.
125.8 Further information.

AUTHORITY: The provisions of this Part 125 issued under Part C, Education of the Handicapped Act (20 U.S.C. 877b).

§ 125.1 Definitions.

As used in this part:

(a) "Construction" means (1) erection of new or expansion of existing structures, and the acquisition and installation of equipment therefor; or (2) acquisition of existing structures not owned by any agency or institution making application for assistance under this part; or (3) remodeling or alteration (including the acquisition, installation, modernization, or replacement of equipment) of existing structures; or (4) a combination of any two or more of the foregoing. In addition, "construction" means the construction of residential facilities; and the cost of construction shall be deemed to include the cost of acquisition of land in connection with any of the foregoing, but not the cost of off-site improvements. (20 U.S.C. 877b(f)).

(b) "Eligible party" means any public or nonprofit private agency, organization, or institution. (20 U.S.C. 877b(b)).

(c) "Secretary" means the Secretary of Health, Education, and Welfare. (20 U.S.C. 877b(i)).

§ 125.2 Scope and purpose.

The regulations in this part govern programs of financial assistance, pursuant to Part C of the Education of the Handicapped Act, the purpose of which is to provide, through a limited number of model centers for deaf-blind children, a program designed to develop and bring to bear upon such children, beginning as early as feasible in life, those specialized, intensive professional and allied services, methods and aids that are found to be most effective to enable them to achieve their full potential for communication with and adjustment to the world around them, for useful and meaning participation in society, and for self-fulfillment. These programs of financial assistance will be carried out through grants and contracts with eligible parties. (20 U.S.C. 877b (a), (b), (e)).

§ 125.3 Grants to or contracts with eligible parties.

The Secretary may make grants to or contracts with eligible parties to pay part or all of the cost of establishment (including, when necessary, construction) or operation, or both, of centers for deaf-blind children. In determining whether to make such a grant or contract the Secretary will take into consideration the need for a center for deaf-blind children in the light of the general availability and quality of existing services for such children in the part of the country involved. (20 U.S.C. 877b (b), (c)).

§ 125.4 Services to be provided by centers.

No grant or contract will be made pursuant to § 125.3 unless the Secretary determines that there is satisfactory assurance that the center will provide the following services:

(a) Comprehensive diagnostic and evaluative services for deaf-blind children;

(b) A program for the adjustment, orientation, and education of deaf-blind children which integrates all the professional and allied services necessary therefor; and

(c) Effective consultative services for parents, teachers, and others who play a direct role in the lives of deaf-blind children to enable them to understand the special problems of such children and to assist in the process of their adjustment, orientation, and education. (20 U.S.C. 877b(d)(1)).

§ 125.5 Location of services.

Services to be provided pursuant to grants or contracts made under § 125.3 may be provided to deaf-blind children (and, where applicable, other persons) regardless of whether they reside in the center, may be provided at some place other than the center, and may include the provision of transportation for any such children (including an attendant) and for parents. (20 U.S.C. 877b(d)(2)).

§ 125.6 Grants or contracts for related activities.

The Secretary may, either as a part of a grant or contract under § 125.3, or by separate grant to or contract with an eligible party operating a center meeting the requirements of § 125.4, provide for the payment of all or part of the cost of activities such as the following:

(a) Research to identify and meet the full range of needs of deaf-blind children;

(b) Development or demonstration of new, or improvements in existing, methods, approaches, or techniques which would contribute to the adjustment and education of deaf-blind children;

(c) Training (either directly or otherwise) of professional and allied personnel engaged or preparing to engage in programs specifically designed for deaf-blind children, including payment of stipends for trainees and allowances for travel and other expenses for them and their dependents; and

(d) Dissemination of materials and information about practices found effective in working with deaf-blind children. (20 U.S.C. 877b(e).)

§ 125.7 Determination of deaf-blind children.

As used in this part, the term "deaf-blind child" means a child who has auditory and visual handicaps the combination of which causes such severe communication and other developmental and educational problems that he cannot properly be accommodated in special education programs either for the hearing handicapped child or for the visually handicapped child. In recognition of the inherent and special difficulties attendant to the making of the determination of whether a child is deaf and blind within the meaning of the preceding sentence, that determination shall be made by the grantee or contractor on the basis of an extended period of evaluation, conducted in the center or elsewhere by a team consisting of specialists, at least in the fields of hearing, vision, and education of the handicapped, who shall make appropriate recommendations to the grantee or contractor as to whether a child is deaf and blind within the meaning of this definition. (20 U.S.C. 877b(h)).

§ 125.8 Further information.

Additional information concerning the program described in this part is provided in guidelines which may be obtained from the Project Centers Branch, Bureau of Education for the Handicapped, U.S. Office of Education, 400 Maryland Avenue SW., Washington, D.C. 20202.

Dated: September 23, 1968.

HAROLD HOWE II,
*U.S. Commissioner of Education.*

Approved: November 27, 1968.

WILBUR J. COHEN,
*Secretary of Health, Education, and Welfare.*

[F.R. Doc. 68-14520; Filed, Dec. 3, 1968; 8:51 a.m.]

# Title 42—PUBLIC HEALTH

## Chapter I—Public Health Service, Department of Health, Education, and Welfare

### SUBCHAPTER G—PREVENTION, CONTROL AND ABATEMENT OF AIR POLLUTION

## PART 81—AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES

On September 28, 1968, notice of proposed rule making was published in the FEDERAL REGISTER (33 F.R. 14601) to amend Part 81 by designating the Metropolitan Chicago Interstate Air Quality Control Region (Indiana-Illinois).

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments, and a consultation with appropriate State and local authorities pursuant to section 107(a) of the Clean Air Act (42 U.S.C. 1857c-2(a)) was held on October 21, 1968. Due consideration has been given to all relevant material presented.

In consideration of the foregoing and in accordance with the statement in the notice of proposed rule making, the Metropolitan Chicago Interstate Air Quality Control Region (Indiana-Illinois) is hereby designated and Part 81, as set forth below, is hereby amended effective on publication.

**§ 81.14 Metropolitan Chicago Interstate Air Quality Control Region (Indiana-Illinois).**

The Metropolitan Chicago Interstate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Illinois:

| | |
|---|---|
| McHenry County. | Cook County. |
| Lake County. | DuPage County. |
| Kane County. | Will County. |

In the State of Indiana:

| | |
|---|---|
| Lake County. | Porter County. |

(Secs. 107(a) and 301(a), 81 Stat. 490, 504; 42 U.S.C. 1857c-2(a), 1857g(a))

Dated: November 29, 1968.

WILBUR J. COHEN,
*Secretary.*

[F.R. Doc. 68-14518; Filed, Dec. 3, 1968; 8:51 a.m.]

# Title 47—TELECOMMUNICATION

## Chapter I—Federal Communications Commission

[FCC 68-1149]

## PART 73—RADIO BROADCAST SERVICES

## PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

### Retention Period for Certain Records Required To Be Kept by Stations

In the matter of Amendment of §§ 73.119(f), 73.289(f), 73.654(f), 73.789(f), and 74.437(j) of the Commission's rules so as to specify a retention period for certain records required to be kept by stations.

1. Section 73.119(f) of the Commission's rules provides, for standard broadcast (AM) stations, that the station shall keep and make available a list of the chief executive officers or members of the executive committee or board of directors of any corporation, association, etc., which sponsors or furnishes material for a program other than a regular commercially sponsored program. Sections 73.289(f), 73.654(g), and 73.789(f) set forth the same requirement for FM, television, and international broadcast stations, respectively. Section 74.437(j), dealing with low-power broadcast auxiliary stations (wireless microphones, etc.) provides for the keeping of records as to the use of these facilities.

2. None of these sections presently specifies a period during which such records shall be retained by the station. In order to remove uncertainty and make definite the requirement of these rules, it is desirable to amend them to specify a definite period for retention of this material. It appears that the same 2-year period generally provided in the rules for retention of logs and other material required to be kept is appropriate in these cases.

3. This action merely extends into these areas established Commission policy in other matters concerning record retention. Also, since these rules now do not specify any particular retention period and thus appear to require retention indefinitely, this action is a relaxation of an existing requirement. Therefore the prior rule making proceedings and waiting period following publication normally required by the Administrative Procedure Act (5 U.S.C. 553) are unnecessary. The new rules are effective 15 days after the date of this action. Authority for this action is contained in sections 4(i), 303 (f), (j), and (r) of the Communications Act of 1934, as amended.

4. In view of the foregoing: *It is ordered,* That, §§ 73.119(f), 73.289(f), 73.654(g), 73.789(f), and 74.437(j) of the Commission's rules are amended, as set forth below. This action is effective December 11, 1968.

Adopted: November 26, 1968.

Released: November 29, 1968.

(Secs. 4, 303, 48 Stat., as amended 1006, 1082; 47 U.S.C. 154, 303)

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
*Secretary.*

1. Sections 73.119(f), 73.289(f), 73.654(g), and 73.789(f) are amended to read as follows:

**§ 73.119 Sponsored programs, announcement of.**

* * * * *

(f) In the case of any program, other than a program advertising commercial products or services, which is sponsored, paid for, or furnished, either in whole or in part, or for which material or services referred to in paragraph (d) of this section are furnished, by a corporation, committee, association, or other unincorporated group, the announcement required by this section shall disclose the name of such corporation, committee, association, or other unincorporated group. In each such case the station shall require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association, or other unincorporated group shall be made available for public inspection at the studios or general offices of one of the standard broadcast stations carrying the program in each community in which the program is broadcast. Such lists shall be kept and made available for a period of 2 years.

* * * * *

**§ 73.289 Sponsored programs, announcement of.**

* * * * *

(f) In the case of any program, other than a program advertising commercial products or services, which is sponsored, paid for, or furnished, either in whole or in part, or for which material or services referred to in paragraph (d) of this section are furnished, by a corporation, committee, association, or other unincorporated group, the announcement required by this section shall disclose the name of such corporation, committee, association, or other unincorporated group. In each such case the station shall require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committtee, association, or other unincorporated group shall be made available for public inspection at the studios or general offices of one of the FM broadcast stations carrying the program in each community in which the program is broadcast. Such lists shall be kept and made available for a period of 2 years.

* * * * *

**§ 73.654 Sponsored programs, announcement of.**

* * * * *

(g) In the case of any program, other than a program advertising commercial products or services, which is sponsored, paid for, or furnished, either in whole or in part, or for which material or services referred to in paragraph (d) of this section are furnished, by a corporation, committee, association, or other unincorporated group, the announcement required by this section shall disclose the name of such corporation, committee, association, or other unincorporated group. In each such case the station shall require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association, or other unincorporated group shall be made available for public inspection at the studios or general offices of one of the television broadcast stations carrying the program in each community in which the program is broadcast. Such lists shall be kept and made available for a period of 2 years.

* * * * *

**§ 73.789 Sponsored programs, announcement of.**

* * * * *

(f) In the case of any program, other than a program advertising commercial products or services, which is sponsored, paid for, or furnished, either in whole or in part, or for which material or services referred to in paragraph (d) of this section are furnished, by a corporation, committee, association, or other unincorporated group, the announcement required by this section shall disclose the name of such corporation, committee, association, or other unincorporated group. In each such case the station shall require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association, or other unincorporated group shall be made available for public inspection at the studios or general offices of one of the

[1] Commissioner Wadsworth absent. Commissioner Johnson concurring in the result.

international broadcast stations carrying the program in each community in which the program is broadcast. Such lists shall be kept and made available for a period of 2 years.

* * * * *

2. Section 74.437(j) of the Commission's rules is amended to read as follows:

§ 74.437 Special rules relating to low power broadcast auxiliary stations.

* * * * *

(j) The licensee of each low power broadcast auxiliary station shall maintain adequate records at the main studio or transmitter of the broadcast station with which the auxiliary is principally used, which will accurately show the current location of all transmitting units, the periods of operation at such locations and any other pertinent remarks concerning transmissions. These records shall be retained for a period of 2 years.

[F.R. Doc. 68-14507; Filed, Dec. 3, 1968; 8:50 a.m.]

# Title 50—WILDLIFE AND FISHERIES

## Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

## PART 32—HUNTING

### Tennessee National Wildlife Refuge, Tenn.

The following addendum is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

TENNESSEE

TENNESSEE NATIONAL WILDLIFE REFUGE

Public hunting of deer on the Tennessee National Wildlife Refuge, Tenn., is permitted only on the areas designated by signs as open to hunting. These open areas, comprising about 4,000 acres for gun and bow hunting are delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, Ga. 30323. Hunting shall be in accordance with all applicable State regulations governing the hunting of deer subject to the following special conditions:

(1) Open season: December 27–30, 1968 inclusive.

(2) Bag limit: One deer of either sex.

(3) A refuge hunting permit is required.

(4) Hunters must check in and out at a designated checking station.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge area generally which are set forth in Title 50, Code of Federal Regulations, Part 32 and are effective through December 30, 1968.

W. L. TOWNS,
*Acting Regional Director, Bureau of Sport Fisheries and Wildlife.*

NOVEMBER 25, 1968.

[F.R. Doc. 68-14475; Filed, Dec. 3, 1968; 8:47 a.m.]

## PART 33—SPORT FISHING

### Long Lake National Wildlife Refuge, N. Dak.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NORTH DAKOTA

LONG LAKE NATIONAL WILDLIFE REFUGE

Sport fishing on the Long Lake National Wildlife Refuge, Moffit, N. Dak., is permitted on refuge waters. These open areas, comprising 3,625 acres, are delineated on maps available at refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 1006 West Lake Street, Minneapolis, Minn. 55408. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for winter sport fishing on the refuge extends from December 15, 1968, to March 15, 1969.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuges generally which are set forth in Title 50, Part 33, and are effective through March 15, 1969.

MARVIN MANSFIELD,
*Refuge Manager, Long Lake National Wildlife Refuge, Moffit, N. Dak.*

NOVEMBER 25, 1968.

[F.R. Doc. 68-14476; Filed, Dec. 3, 1968; 8:47 a.m.]

# Proposed Rule Making

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

[ 26 CFR Part 1 ]

### TAX ON SELF-EMPLOYMENT INCOME

### Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in quadruplicate, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] SHELDON S. COHEN,
*Commissioner of Internal Revenue.*

In order to conform the Income Tax Regulations (26 CFR Part 1) under chapter 2 of the Internal Revenue Code of 1954, relating to the tax on self-employment income, to sections 111(c)(4), 312(b), 319, 320(b)(1) and 321(a) of the Social Security Amendments of 1965 (79 Stat. 342, 381, 390, 393, 394) and sections 108(b)(1), 109 (a)(1) and (b)(1), and 501 of the Social Security Amendments of 1967 (81 Stat. 835, 933) such regulations are amended as follows:

PARAGRAPH 1. Section 1.1401 is amended by revising section 1401 and the historical note. These amended provisions read as follows:

**§ 1.1401 Statutory provisions; rate of tax on self-employment income.**

Sec. 1401. *Rate of tax*—(a) *Old-age, survivors, and disability insurance.* In addition to other taxes, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax as follows:

(1) In the case of any taxable year beginning after December 31, 1967, and before January 1, 1969, the tax shall be equal to 5.8 percent of the amount of the self-employment income for such taxable year;

(2) In the case of any taxable year beginning after December 31, 1968, and before January 1, 1971, the tax shall be equal to 6.3 percent of the amount of the self-employment income for such taxable year;

(3) In the case of any taxable year beginning after December 31, 1970, and before January 1, 1973, the tax shall be equal to 6.9 percent of the amount of the self-employment income for such taxable year; and

(4) In the case of any taxable year beginning after December 31, 1972, the tax shall be equal to 7.0 percent of the amount of the self-employment income for such taxable year.

(b) *Hospital insurance.* In addition to the tax imposed by the preceding subsection, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax as follows:

(1) In the case of any taxable year beginning after December 31, 1967, and before January 1, 1973, the tax shall be equal to 0.60 percent of the amount of the self-employment income for such taxable year;

(2) In the case of any taxable year beginning after December 31, 1972, and before January 1, 1976, the tax shall be equal to 0.65 percent of the amount of the self-employment income for such taxable year;

(3) In the case of any taxable year beginning after December 31, 1975, and before January 1, 1980, the tax shall be equal to 0.70 percent of the amount of the self-employment income for such taxable year;

(4) In the case of any taxable year beginning after December 31, 1979, and before January 1, 1987, the tax shall be equal to 0.80 percent of the amount of the self-employment income for such taxable year; and

(5) In the case of any taxable year beginning after December 31, 1986, the tax shall be equal to 0.90 percent of the amount of the self-employment income for such taxable year.

[Sec. 1401 as amended by sec. 208(a), Social Security Amendments 1954 (68 Stat. 1093); sec. 202(a), Social Security Amendments 1956 (70 Stat. 845); sec. 401(a), Social Security Amendments 1958 (72 Stat. 1041); sec. 201(a), Social Security Amendments 1961 (75 Stat. 140); secs. 111(c) and 321(a), Social Security Amendments 1965 (79 Stat. 342, 394); sec. 109 (a)(1) and (b)(1), Social Security Amendments 1967 (81 Stat. 835)]

PAR. 2. Section 1.1401–1 is amended to read as follows:

**§ 1.1401–1 Tax on self-employment income.**

(a) There is imposed, in addition to other taxes, a tax upon the self-employment income of every individual at the rates prescribed in section 1401 (a) (old-age, survivors, and disability insurance) and (b) (hospital insurance). (See subparagraphs (1) and (2) of paragraph (b) of this section.) This tax shall be levied, assessed, and collected as part of the income tax imposed by subtitle A of the Code and, except as otherwise expressly provided, will be included with the tax imposed by section 1 or 3 in computing any deficiency or overpayment and in computing the interest and additions to any deficiency, overpayment, or tax. Since the tax on self-employment income is part of the income tax, it is subject to the jurisdiction of the Tax Court of the United States to the same extent and in the same manner as the other taxes under subtitle A of the Code. Furthermore, with respect to taxable years beginning after December 31, 1966, this tax must be taken into account in computing any estimate of the taxes required to be declared under section 6015.

(b) The rates of tax on self-employment income are as follows:

(1) For old-age, survivors, and disability insurance:

| *Taxable Year* | *Percent* |
|---|---|
| Beginning before January 1, 1957 | 3 |
| Beginning after December 31, 1956 and before January 1, 1959 | 3.375 |
| Beginning after December 31, 1958 and before January 1, 1960 | 3.75 |
| Beginning after December 31, 1959 and before January 1, 1962 | 4.5 |
| Beginning after December 31, 1961 and before January 1, 1963 | 4.7 |
| Beginning after December 31, 1962 and before January 1, 1966 | 5.4 |
| Beginning after December 31, 1965 and before January 1, 1967 | 5.8 |
| Beginning after December 31, 1966 and before January 1, 1968 | 5.9 |
| Beginning after December 31, 1967 and before January 1, 1969 | 5.8 |
| Beginning after December 31, 1968 and before January 1, 1971 | 6.3 |
| Beginning after December 31, 1970 and before January 1, 1973 | 6.9 |
| Beginning after December 31, 1972 | 7.0 |

(2) For hospital insurance:

| *Taxable Year* | *Percent* |
|---|---|
| Beginning after December 31, 1965 and before January 1, 1967 | 0.35 |
| Beginning after December 31, 1966 and before January 1, 1968 | .50 |
| Beginning after December 31, 1967 and before January 1, 1973 | .60 |
| Beginning after December 31, 1972 and before January 1, 1976 | .65 |
| Beginning after December 31, 1975 and before January 1, 1980 | .70 |
| Beginning after December 31, 1979 and before January 1, 1987 | .80 |
| Beginning after December 31, 1986 | .90 |

(c) In general, self-employment income consists of the net earnings derived by an individual (other than a nonresident alien) from a trade or business carried on by him as sole proprietor or by a partnership of which he is a member, including the net earnings of certain employees as set forth in § 1.1402(c)–3, and of crew leaders, as defined in section 3121(o) (see such section and the regulations thereunder in Part 31 of this chapter (Employment Tax Regulations)). See, however, the exclusions, exceptions, and limitations set forth in §§ 1.1402(a)–1 through 1.1402(h)–1.

PAR. 3. Section 1.1402(a) is amended by revising subdivisions (i) through (iv)

of that portion of section 1402(a) which follows paragraph (9) thereof and the historical note. These amended provisions read as follows:

**§ 1.1402(a) Statutory provisions; definitions; net earnings from self-employment.**

Sec. 1402. *Definitions*—(a) *Net earnings from self-employment.* * * *

(i) In the case of an individual, if the gross income derived by him from such trade or business is not more than $2,400, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be 66⅔ percent of such gross income; or

(ii) In the case of an individual, if the gross income derived by him from such trade or business is more than $2,400 and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than $1,600, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be $1,600; and

(iii) In the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is not more than $2,400, his distributive share of income described in section 702(a)(9) derived from such trade or business may, at his option, be deemed to be an amount equal to 66⅔ percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) In the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is more than $2,400 and his distributive share (whether or not distributed) of income described in section 702(a)(9) derived from such trade or business (computed under this subsection without regard to this sentence) is less than $1,600, his distributive share of income described in section 702(a)(9) derived from such trade or business may, at his option, be deemed to be $1,600.

* * * * *

[Sec. 1402(a) as amended by sec. 201 (a) and (c)(4), Social Security Amendments 1954 (68 Stat. 1087, 1089); sec. 201 (e)(2), (g), and (i), Social Security Amendments 1956 (70 Stat. 840–842); sec. 5(b), Act of Aug. 30, 1957 (Public Law 85–239, 71 Stat. 523); sec. 103(k), Social Security Amendments 1960 (74 Stat. 938); sec. 227, Rev. Act 1964 (78 Stat. 97); sec. 312(b), Social Security Amendments 1965 (79 Stat. 381)]

PAR. 4. Section 1.1402(a)–15 is amended by revising subparagraphs (1) and (2) of paragraph (a) and by revising paragraph (d). These revised provisions read as follows:

**§ 1.1402(a)–15 Options available to farmers in computing net earnings from self-employment for taxable years ending on or after December 31, 1956.**

(a) *Computation of net earnings.* * * *

(1) *In case of an individual*—(i) *Gross income of less than specified amount.* If the gross income, computed as provided in paragraph (b) of this section, from such trade or business is $2,400 or less ($1,800 or less for a taxable year ending on or after Dec. 31, 1956, and beginning before Jan. 1, 1966), the taxpayer may, at his option, treat as net earnings from self-employment from such trade or business an amount equal to 66⅔ percent of such gross income. If the taxpayer so elects, the amount equal to 66⅔ percent of such gross income shall be used in computing his self-employment income in lieu of his actual net earnings from such trade or business, if any.

(ii) *Gross income in excess of specified amount.* If the gross income, computed as provided in paragraph (b) of this section, from such trade or business is more than $2,400 ($1,800 for a taxable year ending on or after Dec. 31, 1956, and beginning before Jan. 1, 1966), and the net earnings from self-employment from such trade or business (computed without regard to this section) are less than $1,600 ($1,200 for a taxable year ending on or after Dec. 31, 1956, and beginning before Jan. 1, 1966), the taxpayer may, at his option, treat $1,600 ($1,200 for a taxable year ending on or fater Dec. 31, 1956, and beginning before Jan. 1, 1966) as net earnings from self-employment. If the taxpayer so elects, $1,600 ($1,200 for a taxable year ending on or after Dec. 31, 1956, and beginning before Jan. 1, 1966) shall be used in computing his self-employment income in lieu of his actual net earnings from such trade or business, if any. However, if the taxpayer's actual net earnings from such trade or business, as computed in accordance with the applicable provisions of §§ 1.1402(a)–1 to 1.1402(a)–13, inclusive, are $1,600 or more ($1,200 or more for a taxable year ending on or after Dec. 31, 1956, and beginning before Jan. 1, 1966) such actual net earnings shall be used in computing his self-employment income.

(2) *In case of a member of a partnership*—(i) *Distributive share of gross income of less than specified amount.* If a taxpayer's distributive share of the gross income of a partnership (as such gross income is computed under the provisions of paragraph (b) of this section) derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is $2,400 or less ($1,800 or less for a taxable year ending on or after Dec. 31, 1956, and beginning before Jan. 1, 1966), the taxpayer may, at his option, treat as his distributive share of income described in section 702(a)(9) derived from such trade or business an amount equal to 66⅔ percent of his distributive share of such gross income (after such gross income has been reduced by the sum of all payments to which section 707(c) applies). If the taxpayer so elects, the amount equal to 66⅔ percent of his distributive share of such gross income shall be used by him in the computation of his net earnings from self-employment in lieu of the actual amount of his distributive share of income described in section 702(a)(9) from such trade or business, if any.

(ii) *Distributive share of gross income in excess of specified amount.* If a taxpayer's distributive share of the gross income of the partnership (as such gross income is computed under the provisions of paragraph (b) of this section) derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is more than $2,400 ($1,800 for a taxable year ending on or after Dec. 31, 1956, and beginning before Jan. 1, 1966) and the actual amount of his distributive share (whether or not distributed) of income described in section 702(a)(9) derived from such trade or business (computed without regard to this section) is less than $1,600 ($1,200 for a taxable year ending on or after Dec. 31, 1956, and beginning before Jan. 1, 1966), the taxpayer may, at his option, treat $1,600 ($1,200 for a taxable year ending on or after Dec. 31, 1956, and beginning before Jan. 1, 1966) as his distributive share of income described in section 702(a)(9) derived from such trade or business. If the taxpayer so elects, $1,600 ($1,200 for a taxable year ending on or after Dec. 31, 1956, and beginning before Jan. 1, 1966) shall be used by him in the computation of his net earnings from self-employment in lieu of the actual amount of his distributive share of income described in section 702(a)(9) from such trade or business, if any. However, if the actual amount of the taxpayer's distributive share of income described in section 702(a)(9) from such trade or business, as computed in accordance with the applicable provisions of §§ 1.1402(a)–1 to 1.1402(a)–13, inclusive, is $1,600 or more ($1,200 or more for a taxable year ending on or after Dec. 31, 1956, and beginning before Jan. 1, 1966), such actual amount of the taxpayer's distributive share shall be used in computing his net earnings from self-employment.

(iii) *Cross reference.* For a special rule in the case of certain deceased partners, see paragraph (c) of § 1.1402(f)–1.

* * * * *

(d) *Examples.* The application of this section may be illustrated by the following examples:

*Example (1).* F is engaged in the business of farming and computes his income under the cash receipts and disbursements method. He files his income tax returns on the basis of the calendar year. During the year 1966, F's gross income from the business of farming (computed in accordance with paragraph (b)(1) of this section) is $2,325. His actual net earnings from self-employment derived from such business are $1,250. As his net earnings from self-employment, F may report $1,250 or, by the optional computation method, he may report $1,550 (66⅔ percent of $2,325).

*Example (2).* G is engaged in the business of farming and computes his income under the accrual method. His income tax returns are filed on the calendar year basis. For the year 1966, G's-gross income from the operation of his farm (computed in accordance with paragraph (b)(2) of this section) is $2,800. He has actual net earnings from self-employment derived from such farm in the amount of $1,250. As his net earnings from self-employment derived from his farm, G may report his actual net earnings of $1,250, or by the optional method he may report $1,600. If G's actual net earnings from self-employment from his farming activities for 1966 were in an amount of $1,600 or more,

he would be required to report such amount in computing his self-employment income.

*Example* (3). M, who files his income tax returns on a calendar year basis, is one of the three partners of the XYZ Company, a partnership, engaged in the business of farming. The taxable year of the partnership is the calendar year, and its income is computed under the cash receipts and disbursements method. For M's services in connection with the planting, cultivating, and harvesting of the crops during the year 1966 the partnership agrees to pay him $500, the full amount of which is determined without regard to the income of the partnership and constitutes a guaranteed payment within the meaning of section 707(c). This guaranteed payment to M is the only such payment made during such year. The gross income derived from the business for the year 1966 computed in accordance with paragraph (b)(1) of this section and after being reduced by the guaranteed payment of $500 made to M, is $3,000. One-third of the $3,000 ($1,000), is M's distributive share of such gross income. Under paragraph (c) of this section, the guaranteed payment ($500) received by M and his distributive share of the partnership gross income ($1,000) are deemed to have been derived from one trade or business, and such amounts must be aggregated for purposes of the optional method of computing net earnings from self-employment. Since M's combined gross income from his two agricultural businesses ($1,000 and $500) is not more than $2,400 and since such income is deemed to be derived from one trade or business, M's net earnings from self-employment derived from such farming business may, at his option, be deemed to be $1,000 (66⅔ percent of $1,500).

*Example* (4). A is one of the two partners of the AB partnership which is engaged in the business of farming. The taxable year of the partnership is the calendar year and its income is computed under the accrual method. A files his income tax returns on the calendar year basis. The partnership agreement provides for an equal sharing in the profits and losses of the partnership by the two partners. A is an experienced farmer and for his services as manager of the partnership's farm activities during the year 1966 he receives $6,000 which amount constitutes a guaranteed payment within the meaning of section 707(c). The gross income of the partnership derived from such business for the year 1966, computed in accordance with paragraph (b)(2) of this section and after being reduced by the guaranteed payment made to A, is $9,600. A's distributive share of such gross income is $4,800 and his distributive share of income described in section 702(a)(9) derived from the partnership's business is $1,900. Under paragraph (c) of this section, the guaranteed payment received by A and his distributive share of the partnership gross income are deemed to have been derived from one trade or business, and such amounts must be aggregated for purposes of the optional method of computing his net earnings from self-employment. Since the aggregate of A's guaranteed payment ($6,000) and his distributive share of partnership gross income ($4,800) is more than $2,400 and since the aggregate of A's guaranteed payment ($6,000) and his distributive share ($1,900) of partnership income described in section 702(a)(9) is not less than $1,600, the optional method of computing net earnings from self-employment is not available to A.

*Example* (5). F is a member of the EFG partnership which is engaged in the business of farming. F files his income tax returns on the calendar year basis. The taxable year of the partnership is the calendar year, and its income is computed under a cash receipts and disbursements method. Under the partnership agreement the partners are to share equally the profits or losses of the business. The gross income derived from the partnership business for the year 1966, computed in accordance with paragraph (b)(1) of this section is $7,500. F's share of such gross income is $2,500. Due to drought and an epidemic among the livestock, the partnership sustains a net loss of $7,800 for the year 1966 of which loss F's share is $2,600. Since F's distributive share of gross income derived from such business is in excess of $2,400 and since F does not receive income described in section 702(a)(9) of $1,600 or more from such business, he may, at his option, be deemed to have received $1,600 as his distributive share of income described in section 702(a)(9) from such business.

PAR. 5. Section 1.1402(b) is amended by revising subparagraph (C), of section 1402(b)(1), by adding new subparagraphs (D) and (E) to section 1402(b)(1), and by revising the historical note. These amended and added provisions read as follows:

**§ 1.1402(b) Statutory provisions; definitions; self-employment income.**

Sec. 1402. *Definitions.* * * *

(b) *Self-employment income.* * * *

(1) That part of the net earnings from self-employment which is in excess of—* * *

(C) For any taxable year ending after 1958 and before 1966, (i) $4,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(D) For any taxable year ending after 1965 and before 1968, (i) $6,600, minus (ii) the amount of wages paid to such individual during the taxable year; and

(E) For any taxable year ending after 1967, (i) $7,800, minus (ii) the amount of the wages paid to such individual during the taxable year; or

* * * * *

[Sec. 1402(b) as amended by sec. 201(b), Social Security Amendments 1954 (68 Stat. 1088); sec. 402(a), Social Security Amendments 1958 (72 Stat. 1042); sec. 103(1), Social Security Amendments 1960 (74 Stat. 938); sec. 320(b)(1), Social Security Amendments 1965 (79 Stat. 393); sec. 108(b)(1), Social Security Amendments 1967 (81 Stat. 835)]

PAR. 6. Paragraphs (b)(1) and (c) of § 1.1402(b)-1 are amended to read as follows:

**§ 1.1402(b)-1 Self-employment income.**

* * * * *

(b) *Maximum self-employment income.* (1) The maximum self-employment income of an individual for any taxable year (whether a period of 12 months or less) is the excess of—

(i) For taxable years ending before 1955, $3,600,

(ii) For taxable years ending after 1954 and before 1959, $4,200,

(iii) For taxable years ending after 1958 and before 1966, $4,800,

(iv) For taxable years ending after 1965 and before 1968, $6,600,

(v) For taxable years ending after 1967, $7,800,

over the amount of any wages (as defined in section 3121(a)) received by such individual in such taxable year. For example, if during the taxable year ending in 1968 no such wages are paid and the individual has $8,000 of net earnings from self-employment, he has $7,800 of self-employment income for such taxable year. If, in addition to having $8,000 of net earnings from self-employment, such individual is paid $1,000 of such wages, he has only $6,800 of self-employment income for the taxable year.

* * * * *

(c) *Minimum net earnings from self-employment.* Self-employment income does not include the net earnings from self-employment of an individual when the amount of such earnings for the taxable year is less than $400. Thus, an individual having only $300 of net earnings from self-employment for the taxable year would not have any self-employment income. However, an individual having net earnings from self-employment of $400 or more for the taxable year may have less than $400 of self-employment income. This could occur in a case in which the amount of the individual's net earnings from self-employment is $400 or more for a taxable year and the amount of such net earnings from self-employment plus the amount of the wages received by the individual during that taxable year exceed $7,800 ($3,600 for taxable years ending before 1955, $4,200 for taxable years ending after 1954 and before 1959, $4,800 for taxable years ending after 1958 and before 1966, or $6,600 for taxable years ending after 1965 and before 1968). For example, if an individual has net earnings from self-employment of $1,000 for 1968, and also receives wages of $7,500 during that taxable year, his self-employment income for that taxable year is $300.

* * * * *

PAR. 7. There is inserted immediately after § 1.1402(c)-6 the following new section:

**§ 1.1402(c)-7 Members of religious groups opposed to insurance.**

The performance of service by an individual—

(a) Who is a member of a recognized religious sect or division thereof, and

(b) Who is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act),

during any taxable year for which he is granted a tax exemption, pursuant to section 1402(h), does not constitute a trade or business within the meaning of section 1402(c) and § 1.1402(c)-1. See also §§ 1.1402(h) and 1.1402(h)-1.

PAR. 8. Paragraph (b)(2) of § 1.1402(f)-1 is amended to read as follows:

**§ 1.1402(f)-1 Computation of partner's net earnings from self-employment for taxable years ending as result of his death.**

* * * * *

(b) *Options available to farmers*—(1) *Special rule.* * * *

(2) *Examples.* The principles set forth in this paragraph may be illustrated by the following examples:

*Example (1).* X, an individual who files his income tax returns on a calendar year basis, is a member of the XYZ farm partnership, the taxable year of which ends on March 31. X dies on May 31, 1967, and his estate succeeds to his partnership interest and continues as a partner in its own right under local law until March 31, 1968. X's distributive share of the partnership's ordinary income, determined under paragraphs (d) to (g), inclusive, of § 1.1402(a)–2, for the taxable year of the partnership ended March 31, 1967, is $1,600. His distributive share, including the share of his estate, of such partnership's ordinary loss as determined under paragraphs (d) to (g), inclusive, of § 1.1402 (a)–2 (with the exception of paragraph (e)), for the taxable year of the partnership ended March 31, 1968, is $1,200. The portion of such $1,200 attributable to an interest in the partnership prior to the month following the month in which he died is $1,200 × 2/12 (2 being the number of months in the partnership taxable year in which X died which precede the month following the month of his death and 12 being the number of months in such partnership taxable year in which X and his estate had an interest in the partnership) or $200. X is also a member of the ABX farm partnership, the taxable year of which ends on May 31. His distributive share of the partnership loss described in section 702(a)(9) for the partnership taxable year ending May 31, 1967, is $300. Section 1402(f) and this section do not apply with respect to such $300 since X's last taxable year ends, as a result of his death, with the taxable year of the ABX partnership. Under this paragraph the $200 loss must be included in determining X's distributive share of XYZ partnership income described in section 702 (a)(9) for the purpose of applying the optional method available to farmers for computing net earnings from self-employment. Further, the resulting $1,400 of income must be aggregated, pursuant to paragraph (c) of § 1.1402(a)–15, with the $300 loss, X's distributive share of ABX partnership loss described in section 702(a)(9), for purposes of applying such option. The representative of X's estate may exercise the option described in paragraph (a)(2)(ii) of § 1.1402 (a)–15, provided the portion of X's distributive share of XYZ partnership gross income for the taxable year ended March 31, 1968, attributable to an interest in the partnership prior to the month following the month in which he died (the allocation being made in the manner prescribed for allocating his $1,200 distributive share of XYZ partnership loss for such year), when aggregated with his distributive share of XYZ partnership gross income for the partnership taxable year ended March 31, 1967, and with his distributive share of ABX partnership gross income for the partnership taxable year ended May 31, 1967, results in X having more than $2,400 of gross income from the trade or business of farming. If such aggregate amount of gross income is not more than $2,400, the option described in paragraph (a)(2)(i) of § 1.1402(a)–15, is available.

*Example (2).* A, a sole proprietor engaged in the business of farming, files his income tax returns on a calendar year basis. A is also a member of a partnership engaged in an agricultural activity. The partnership files its returns on the basis of a fiscal year ending March 31. A dies June 29, 1967. A's gross income from farming as a sole proprietor for the 6-month period comprising his taxable year which ends because of death is $1,600 and his actual net earnings from self-employment based thereon are $400. As of March 31, 1967, A's distributive share of the gross income of the farm partnership is $2,200 and his distributive share of income described in section 702(a)(9) based thereon is $1,000. The amount of A's distributive share of the partnership's ordinary income for its taxable year ended March 31, 1968, which may be included in his net earnings from self-employment under section 1402(f) and paragraph (a) of this section is $300. The amount of the deceased partner's distributive share of partnership gross income attributable to an interest in the partnership prior to the month following the month of his death as is determined, pursuant to subparagraph (1) of this paragraph, under paragraph (a) of this section is $2,000. An aggregation of the above figures produces a gross income from farming of $5,800 and actual net earnings from self-employment of $1,700. Under these circumstances none of the options provided by section 1402(a) may be used. If the actual net earnings from self-employment had been less than $1,600, the option described in paragraph (a)(2)(ii) of § 1.1402(a)–15 would have been available.

PAR. 9. The following sections are inserted immediately after § 1.1402(g)–1:

**§ 1.1402(h) Statutory provisions; definitions; members of certain religious faiths.**

Sec. 1402. *Definitions.* * * *

(h) *Members of certain religious faiths*—(1) *Exemption.* Any individual may file an application (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) for an exemption from the tax imposed by this chapter if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act). Such exemption may be granted only if the application contains or is accompanied by—

(A) Such evidence of such individual's membership in, and adherence to the tenets or teachings of, the sect or division thereof as the Secretary or his delegate may require for purposes of determining such individual's compliance with the preceding sentence, and

(B) His waiver of all benefits and other payments under titles II and XVIII of the Social Security Act on the basis of his wages and self-employment income as well as all such benefits and other payments to him on the basis of the wages and self-employment income of any other person,

and only if the Secretary of Health, Education, and Welfare finds that—

(C) Such sect or division thereof has the established tenets or teachings referred to in the preceding sentence,

(D) It is the practice, and has been for a period of time which he deems to be substantial, for members of such sect or division thereof to make provision for their dependent members which in his judgment is reasonable in view of their general level of living, and

(E) Such sect or division thereof has been in existence at all times since December 31, 1950.

An exemption may not be granted to any individual if any benefit or other payment referred to in subparagraph (B) became payable (or, but for section 203 or 222(b) of the Social Security Act, would have become payable) at or before the time of the filing of such waiver.

(2) *Time for filing application.* For purposes of this subsection, an application must be filed—

(A) In the case of an individual who has self-employment income (determined without regard to this subsection and subsection (c)(6)) for any taxable year ending before December 31, 1967, on or before December 31, 1968, and

(B) In any other case, on or before the time prescribed for filing the return (including any extension thereof) for the first taxable year ending on or after December 31, 1967, for which he has self-employment income (as so determined), except that an application filed after such date but on or before the last day of the third calendar month following the calendar month in which the taxpayer is first notified in writing by the Secretary or his delegate that a timely application for an exemption from the tax imposed by this chapter has not been filed by him shall be deemed to be filed timely.

(3) *Period for which exemption effective.* An exemption granted to any individual pursuant to this subsection shall apply with respect to all taxable years beginning after December 31, 1950, except that such exemption shall not apply for any taxable year—

(A) Beginning (i) before the taxable year in which such individual first met the requirements of the first sentence of paragraph (1), or (ii) before the time as of which the Secretary of Health, Education, and Welfare finds that the sect or division thereof of which such individual is a member met the requirements of subparagraphs (C) and (D), or

(B) Ending (i) after the time such individual ceases to meet the requirements of the first sentence of paragraph (1), or (ii) after the time as of which the Secretary of Health, Education, and Welfare finds that the sect or division thereof of which he is a member ceases to meet the requirements of subparagraph (C) or (D).

(4) *Application by fiduciaries or survivors.* In any case where an individual who has self-employment income dies before the expiration of the time prescribed by paragraph (2) for filing an application for exemption pursuant to this subsection, such an application may be filed with respect to such individual within such time by a fiduciary acting for such individual's estate or by such individual's survivor (within the meaning of section 205(c)(1)(C) of the Social Security Act).

[Sec. 1402(h) as added by sec. 319(c), Social Security Amendments 1965 (79 Stat. 391); as amended by sec. 501(a), Social Security Amendments 1967 (81 Stat. 933)]

(a) *In general.* An individual—(1) Who is a member of a recognized religious sect or division thereof and

(2) Who is an adherent of established tenets or teachings of such sect or division and by reason thereof is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act),

may file an application for exemption from the tax under section 1401. The form of insurance to which section 1402(h) and this section refer does not include liability insurance of a kind that provides only for the protection of other persons, or property of other persons, who may be injured or damaged by or on

property belonging to, or by an action of, an individual who otherwise meets the requirements of this section. An application for exemption under section 1402(h) and this section shall be made in the manner provided in paragraph (b) of this section and within the time specified in paragraph (c) of this section. For provisions relating to the filing of an application for exemption by a fiduciary or survivor, see paragraph (d) of this section.

(b) *Application for exemption.* The application for exemption shall be filed on Form 4029 in duplicate with the district director of internal revenue for the internal revenue district in which is located the legal residence or principal place of business of the individual who executed the application. If such individual has no legal residence or principal place of business in any internal revenue district, the application for exemption shall be filed with the Director of International Operations, Internal Revenue Service, Washington, D.C. 20225, or at such other address as is designated in instructions relating to the application. The filing of a return by a member of a religious group opposed to insurance showing no self-employment income or self-employment tax shall not be construed as an application for exemption referred to in paragraph (a) of this section.

(c) *Time limitation for filing application for exemption*—(1) *Taxable years ending before December 31, 1967.* A member of a religious group opposed to insurance within the meaning of paragraph (a) of this section—

(i) Who has self-employment income (determined without regard to subsections (c)(6) and (h) of section 1402 and this section) for one or more taxable years ending before December 31, 1967, and

(ii) Who desires to be exempt from the payment of the self-employment tax under section 1401,

must file the application for exemption on or before December 31, 1968.

(2) *Taxable year ending on or after December 31, 1967*—(i) *General rule.* Except as provided in subdivision (ii) of this subparagraph, a member of a religious group opposed to insurance within the meaning of paragraph (a) of this section—

(*a*) Who has no self-employment income (determined without regard to subsections (c)(6) and (h) of section 1402 and this section) for any taxable year ending before December 31, 1967, and

(*b*) Who desires to be exempt from the payment of the self-employment tax under section 1401 for any taxable year ending on or after December 31, 1967,

must file the application for exemption on or before the due date of the income tax return (see section 6072), including any extension thereof (see section 6081), for the first taxable year ending on or after December 31, 1967, for which he has self-employment income (determined without regard to subsections (c)(6) and (h) of section 1402 and this section.

(ii) *Exception to general rule.* If an individual to whom subdivision (i) of this subparagraph applies—

(*a*) Is notified in writing by a district director of internal revenue or the Director of International Operations that he has not filed the application for exemption on or before the date specified in such subdivision (i), and

(*b*) Files the application for exemption on or before the last day of the third calendar month following the calendar month in which he is so notified,

such application shall be considered a timely filed application for exemption.

(d) *Application by fiduciary or survivor.* If an individual who was a member of a religious group opposed to insurance dies before the expiration of the time prescribed in section 1402(h)(2) and paragraph (c) of this section during which an application could have been filed by him, an application for exemption with respect to such deceased individual may be filed by a fiduciary acting for such individual's estate or by such individual's survivor within the meaning of section 205(c)(1)(C) of the Social Security Act. An application for exemption with respect to a deceased individual executed by a fiduciary or survivor may be approved only if it could have been approved if the individual were not deceased and had filed the application on the date the application was filed by the fiduciary or executor.

(e) *Approval of application for exemption*—(1) *In general.* The filing of an application for exemption on Form 4029 by a member of a religious group opposed to insurance does not constitute an exemption from the payment of the tax on self-employment income. An individual who files such an application is exempt from the payment of the tax only if the application is approved by the official with whom the application is required to be filed (see paragraph (b) of this section).

(2) *Conditions relating to approval or disapproval of application.* An application for exemption on Form 4029 will not be approved unless the Secretary of Health, Education, and Welfare finds with respect to the religious sect or division thereof of which the individual filing the application is a member—

(i) That the sect or division thereof has the established tenets or teachings by reason of which the individual applicant is conscientiously opposed to the benefits of insurance of the type referred to in section 1402(h) (see paragraph (a) of this section),

(ii) That it is the practice, and has been for a period of time which the Secretary of Health, Education, and Welfare deems to be substantial, for members of such sect or division thereof to make provisions for their dependent members which, in the judgment of such Secretary, is reasonable in view of the general level of living of the members of the sect or division thereof; and

(iii) That the sect or division thereof has been in existence continuously since December 31, 1950.

In addition, an application for exemption on Form 4029 will not be approved if any benefit or other payment under title II of title XVIII of the Social Security Act became payable (or, but for section 203, relating to reduction of insurance benefits, or 222(b), relating to reduction of insurance benefits on account of refusal to accept rehabilitation services, of the Social Security Act would have been payable) at or before the time of the filing of the application for exemption. Any determination required to be made pursuant to the preceding sentence will be made by the Secretary of Health, Education, and Welfare.

(f) *Period for which exemption is effective*—(1) *General rule.* An application for exemption shall be in effect (if approved as provided in paragraph (e) of this section) for all taxable years beginning after December 31, 1950, except as otherwise provided in subparagraph (2) of this paragraph.

(2) *Exceptions.* An application for exemption referred to in subparagraph (1) of this paragraph shall not be effective for any taxable year which—

(i) Begins (*a*) before the taxable year in which the individual filing the application first met the requirements of subparagraphs (1) and (2) of paragraph (a) of this section, or (*b*) before the time as of which the Secretary of Health, Education, and Welfare finds that the sect or division thereof of which the individual is a member met the requirements of subparagraphs (C) and (D) of section 1402(h)(1) (see subdivisions (i) and (ii) of paragraph (e)(2) of this section), or

(ii) Ends (*a*) after the time at which the individual filing the application ceases to meet the requirements of subparagraphs (1) and (2) of paragraph (a) of this section, or (*b*) after the time as of which the Secretary of Health, Education, and Welfare finds that the sect or division thereof of which the individual is a member ceases to meet the requirements of subparagraphs (C) and (D) of section 1402(h)(1) (see subdivisions (i) and (ii) of paragraph (e)(2) of this section).

(g) *Refund or credit.* An application for exemption on Form 4029 filed on or before December 31, 1968 (if approved as provided in paragraph (e) of this section), shall constitute a claim for refund or credit of any tax on self-employment income under section 1401 (or under section 480 of the Internal Revenue Code of 1939) paid or incurred in respect of any taxable year beginning after December 31, 1950, and ending before December 31, 1967, for which an exemption is granted. Refund or credit of any tax referred to in the preceding sentence may be made, pursuant to the provisions of section 501(c) of the Social Security Amendments of 1967 (81 Stat. 933), notwithstanding that the refund or credit would otherwise be prevented by operation of any law or rule of law. No interest shall be allowed or paid in respect of

any refund or credit made or allowed in connection with a claim for refund or credit made on Form 4029.

[F.R. Doc. 68-14514; Filed, Dec. 3, 1968; 8:50 a.m.]

## Internal Revenue Service

## [ 26 CFR Part 1 ]

## DEDUCTION FOR INTEREST ON INSTALLMENT PURCHASES

### Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601 (b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] SHELDON S. COHEN,
*Commissioner of Internal Revenue.*

In order to conform the Income Tax Regulations (26 CFR Part 1) under section 163 of the Internal Revenue Code of 1954 to section 224(c) of the Revenue Act of 1964 (78 Stat. 79) and to make a clarifying change therein, such regulations are amended as follows:

PARAGRAPH 1. Section 1.163 is amended by revising section 163(b)(1) and the historical note to read as follows:

**§ 1.163 Statutory provisions; interest.**

Sec. 163. *Interest.* * * *

(b) *Installment purchases where interest charge is not separately stated*—(1) *General rule.* If personal property or educational services are purchased under a contract—

(A) Which provides that payment of part or all of the purchase price is to be made in installments, and

(B) In which carrying charges are separately stated but the interest charge cannot be ascertained,

then the payments made during the taxable year under the contract shall be treated for purposes of this section as if they included interest equal to 6 percent of the average unpaid balance under the contract during the taxable year. For purposes of the preceding sentence, the average unpaid balance is the sum of the unpaid balance outstanding on the first day of each month beginning during the taxable year, divided by 12. For purposes of this paragraph, the term "educational services" means any service (including lodging) which is purchased from an educational institution (as defined in section 151(e)(4)) and which is provided for a student of such institution.

* * * * *

[Sec. 163 as amended by sec. 1 (a) and (c), Act of Apr. 10, 1963 (Public Law 88-9, 77 Stat. 6); sec. 224(c), Rev. Act 1964 (78 Stat. 79)]

PAR. 2. Section 1.163-2 is amended by revising paragraph (a), by adding examples (4) and (5) to paragraph (d), and by revising paragraph (e). These amended and added provisions read as follows:

**§ 1.163-2 Installment purchases where interest charge is not separately stated.**

(a) *In general.* (1) Whenever there is a contract with a seller for the purchase of personal property providing for payment of part or all of the purchase price in installments and there is a separately stated carrying charge (including a finance charge, service charge, and the like) but the actual interest charge cannot be ascertained, a portion of the payments made during the taxable year under the contract shall be treated as interest and is deductible under section 163 and this section. Section 163(b) contains a formula, described in paragraph (b) of this section, in accordance with which the amount of interest deductible in the taxable year must be computed. This formula is designed to operate automatically in the case of any installment purchase, without regard to whether payments under the contract are made when due or are in default. For applicable limitations when an obligation to pay is terminated, see paragraph (c) of this section.

(2) Whenever there is a contract with an educational institution for the purchase of educational services providing for payment of part or all of the purchase price in installments and there is a separately stated carrying charge (including a finance charge, service charge, and the like) but the actual interest charge cannot be ascertained, a portion of the payments made during the taxable year under the contract shall be treated as interest and is deductible under section 163 and this section. See paragraphs (b) and (c) of this section for the applicable computation and limitations rules. For purposes of section 163(b) and this section, the term "educational services" means any service (including lodging), which is purchased from an educational institution (as defined in section 151(e)(4) and paragraph (c) of § 1.151-3) and which is provided for a student of such institution.

(3) Section 163(b) and this section do not apply to a contract for the loan of money, even if the loan is to be repaid in installments and even if the borrowed amount is used to purchase personal property or educational services. In cases to which the preceding sentence applies, the portion of the installment payment which constitutes interest (as distinguished from payments of principal and charges such as payments for credit life insurance) is deductible under section 163(a) and § 1.163-1.

* * * * *

(d) *Illustrations.* * * *

*Example (4).* (i) On September 15, 1968, C registered at X University for the 1968-69 academic year. C entered into an agreement with the X University for the purchase during such academic year of educational services (including lodging and tuition) for a total fee of $1,000, including a separately stated carrying charge of $50. Under the terms of the agreement, an initial payment of $200 was to be made by C on September 15, 1968, and the balance was to be paid in 8 monthly installments of $100 each, on the 15th day of each month commencing with October 1968. C made all of the required 1968 payments. Assuming that C is a cash method, calendar year taxpayer and that no other installment purchases of services or property were made, the amount to be treated as interest in 1968 is $10.50, computed as follows:

YEAR 1968

| First day of: | *Unpaid balance outstanding* |
|---|---|
| January-September | $0 |
| October | 800 |
| November | 700 |
| December | 600 |
| | 2,100 |

The sum of unpaid balances ($2,100) divided by 12 is $175; 6 percent thereof is $10.50. The carrying charges attributable to 1968 are $18.75 (i.e., the total carrying charges ($50), divided by the total number of payments (8), multiplied by the number of payments made in 1968 (3)). Since the amount to be treated as interest in 1968 ($10.50) does not exceed the carrying charges attributable to 1968 ($18.75), the limitation set forth in paragraph (c) of this section is not applicable.

(ii) The result in this example would be the same even if the X University assigned the agreement to a bank or other financial institution and C made his payments directly to the bank or other financial institution.

*Example (5).* On September 15, 1968, D registered at Y University for the 1968-69 academic year. The tuition for such year was $1,500. In order to pay his tuition, D borrowed $1,500 from the M Corporation, a lending institution, and remitted that sum to the Y University. The loan agreement between M Corporation and D provided that D was to repay the loan, plus a service charge, in 10 equal monthly installments, on the first day of each month commencing with October 1968. The service charge consisted of interest and the cost of credit life insurance on D's life. Since section 163(b) and this section do not apply to a contract for the loan of money, D is not entitled to compute his interest deduction with respect to his loan from M Corporation under such sections. D may deduct that portion of each installment payment which constitutes interest (as distinguished from payments of principal and the charge for credit life insurance) under section 163(a) and § 1.163-1, provided that the amount of such interest can be ascertained.

(e) *Effective date.* Except in the case of payments made under a contract for educational services, the rule provided

in section 163(b) and this section applies to payments made during taxable years beginning after December 31, 1953, and ending after August 16, 1954, regardless of when the contract of sale was made. In the case of payments made under a contract for educational services, the rule provided in section 163(b) and this section applies to payments made during taxable years beginning after December 31, 1963, regardless of when the contract for educational services was made.

[F.R. Doc. 68-14513; Filed, Dec. 3, 1968; 8:50 a.m.]

# DEPARTMENT OF AGRICULTURE

## Agricultural Stabilization and Conservation Service

## [ 7 CFR Part 812 ]

## SUGAR REQUIREMENTS AND QUOTAS FOR LOCAL CONSUMPTION FOR CALENDAR YEAR 1969

### Hawaii and Puerto Rico

Notice is hereby given that the Secretary of Agriculture, pursuant to authority vested in him by the Sugar Act of 1948, as amended (61 Stat. 922, as amended), is considering the determination of sugar requirements and the establishment of quotas for local consumption in Hawaii and Puerto Rico for the calendar year 1969.

In accordance with the rule making requirements in 5 U.S.C. 553, all persons who desire to submit written data, views, or arguments for consideration in connection with the proposed regulation may file the same in duplicate with the Director, Sugar Policy Staff, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250, on or before December 16, 1968. All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

The proposed determination of sugar requirements and quotas for Hawaii and Puerto Rico for the calendar year 1969, set forth in form and language appropriate for issuance if adopted by the Secretary, is as follows:

*Basis and purpose.* The purpose of Sugar Regulation 812 is to determine pursuant to sections 201 and 203 of the Sugar Act of 1948, as amended (hereinafter referred to as the "Act"), the amount of sugar needed to meet the requirements of consumers in Hawaii and in Puerto Rico and to establish quotas for local consumption in such areas for the calendar year 1969. To the extent required by Section 201 of the Act, this regulation establishes sugar requirements based on official estimates of the Department of Agriculture and on statistics published by other agencies of the Government.

Since the Act provides that the Secretary of Agriculture determine sugar requirements for local consumption in Hawaii and in Puerto Rico and establish local consumption quotas to be effective on January 1, 1969, it is found to be impracticable and not in the public interest to comply with the 30-day effective date requirements in 5 U.S.C. 553(d) (80 Stat. 378), and these regulations shall be effective January 1, 1969.

Sec.
812.1 Sugar requirements and quota—Hawaii.
812.2 Sugar requirements and quota—Puerto Rico.
812.3 Restrictions on marketing.

### § 812.1 Sugar requirements and quota—Hawaii.

It is hereby determined, pursuant to section 203 of the Act, that the amount of sugar needed to meet the requirements of consumers in Hawaii for the calendar year 1969 is 55,000 short tons, raw value, and a quota of 55,000 short tons, raw value, is hereby established for Hawaii for local consumption for the calendar year 1969.

### § 812.2 Sugar requirements and quota—Puerto Rico.

It is hereby determined, pursuant to section 203 of the Act, that the amount of sugar needed to meet the requirements of consumers in Puerto Rico for the calendar year 1969 is 130,000 short tons, raw value, and a quota of 130,000 short tons, raw value, is hereby established for Puerto Rico for local consumption for the calendar year 1969.

### § 812.3 Restrictions on marketing.

Pursuant to section 209 of the Act, for the calendar year 1969 all persons are hereby prohibited from marketing, pursuant to Part 816 of this chapter (33 F.R. 8495), in Hawaii or in Puerto Rico, for consumption therein, any sugar or liquid sugar after the quota for the area for the calendar year 1969 has been filled. Pursuant to section 211(c) of the Act, the quota for each area may be filled only with sugar produced from sugarcane grown in the respective area.

*Statement of bases and considerations.* Pursuant to section 203 of the Act, the provisions of section 201 of the Act deemed applicable to the determination of the amounts of sugar needed to meet the requirements of consumers in Hawaii and in Puerto Rico relate to (1) the quantities of sugar distributed for local consumption in Hawaii and in Puerto Rico during the 12-month period ended September 30, 1968, (2) deficiencies or surpluses in inventories of sugar, and (3) changes in consumption because of changes in population and demand conditions.

The quantities of sugar distributed for consumption in Hawaii and in Puerto Rico, including that which was lost in refining after charge to the local quotas, during such 12-month period are estimated to have been approximately 45,000 short tons of sugar, raw value, and 125,000 short tons of sugar, raw value, respectively.

The provisional estimate by the Bureau of Census of the total population for Hawaii as of July 1, 1968, is 778,000. No provisional estimate of the 1968 population for Puerto Rico is available. However, the 1967 population was 2,697,000.

In Hawaii industrial use accounts for a substantial portion of the total consumption of sugar and this demand is a significant factor in the total sugar requirements. During the period 1960 through 1967 sugar consumption in this area has varied from approximately 118 to 138 pounds, raw value, per person. These wide year-to-year variations suggest the possibility that sugar marketings could be higher in 1969 than in the 12-month period ended September 30, 1968, when such marketings approximated 45,000 short tons, raw value.

In Puerto Rico during the 12 months ended September 30, 1968, marketings of sugar for local consumption totaled approximately 125,000 short tons, raw value. After making allowance for possible consumption increases in 1969 resulting from probable population increases, the total sugar needed to meet requirements for local consumption in Puerto Rico in 1969 is estimated at 130,000 short tons, raw value.

Circumstances prevailing in the utilization of quota for local consumption in Hawaii and Puerto Rico are such that no special problems arise nor are the objectives of the Act jeopardized if the 1969 local quota is not completely filled. It is, therefore, desirable to establish the 1969 requirements and quotas sufficiently high initially so that later adjustments may be avoided.

In accordance with the above, the requirements for local consumption in Hawaii and Puerto Rico for 1969 have been determined to be 55,000 and 130,000 short tons, raw value, respectively.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153, secs. 201, 203, 209, 211; 61 Stat. 923, as amended, 925, 928; 7 U.S.C. 1111, 1113, 1119, 1121)

Signed at Washington, D.C., on November 29, 1968.

ORVILLE L. FREEMAN,
*Secretary.*

[F.R. Doc. 68-14522; Filed, Dec. 3, 1968; 8:51 a.m.]

## Consumer and Marketing Service

## [ 7 CFR Part 51 ]

## GLOBE ARTICHOKES [1]

### Standards for Grades

Notice is hereby given that the U.S. Department of Agriculture is considering the revision of U.S. Standards for Grades of Globe Artichokes (7 CFR §§ 51.3785-51.3795) pursuant to the Agricultural Marketing Act of 1946 (60 Stat. 1087, as amended; 7 U.S.C. 1621-1627).

All persons who desire to submit written data, views, or arguments for consideration in connection with the proposal should file the same in duplicate,

[1] Packing of the product in conformity with the requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or with applicable State laws and regulations.

not later than January 15, 1969, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, where they will be available for public inspection during official hours of business (paragraph (b) of § 1.27, as amended at 29 F.R. 7311).

*Statement of considerations leading to the proposed revision of the grade standards.* These grade standards are proposed under authority of the Agricultural Marketing Act of 1946 which provides for the issuance of official U.S. grades to designate different levels of quality for the voluntary use of producers, buyers and consumers. Official grading service is also provided under this act upon request of the applicant and upon payment of a fee to cover cost of the service.

The existing U.S. Standards for Grades of Globe Artichokes have been in effect since February 10, 1926. The present standards do not provide a tolerance for decay. Industry representatives have questioned the lack of a tolerance for decay and Inspection Service personnel have pointed out the difficulties it has caused. The proposed revision would include a 2 percent tolerance for decay, within the overall tolerance for defects. Other changes proposed include:

(1) The designation "Unclassified", often misunderstood and rarely used, would be deleted.

(2) "Size", section 51.3788, would be deleted and a "fairly uniform size" requirement substituted. The present standards permit three-fourths inch variation in diameter. The proposal would reduce the allowed variation to one-half inch. This would correspond to the requirement in the Agricultural Code of California. The marking requirements provided in the present standards are considered superfluous and would be deleted.

(3) An "Application of Tolerances" section would be added to conform to most other grade standards for fresh fruits and vegetables.

(4) The standards would be presented in a new format which should be more readily understood. Minor changes in wording would be made in the interest of clarity.

(5) A "Metric Conversion Table" would be added to provide a means of comparing measurements in terms of inches with their equivalents in terms of millimeters.

The proposed standards, as revised, are as follows:


Sec.

GRADES

51.3785 U.S. No. 1.
51.3786 U.S. No. 2.

TOLERANCES

51.3787 Tolerances.

APPLICATION OF TOLERANCES

51.3788 Application of tolerances.

DEFINITIONS

51.3789 Properly trimmed.
51.3790 Fairly well formed.
51.3791 Fairly compact.
51.3792 Overdeveloped.
51.3793 Damage.
51.3794 Fairly uniform in size.
51.3795 Serious damage.

METRIC CONVERSION TABLE

51.3796 Metric conversion table.


AUTHORITY: The provision of this subpart issued under secs. 203, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624.

GRADES

### § 51.3785 U.S. No. 1.

"U.S. No. 1" consists of artichokes which meet the following requirements:

(a) Basic requirements:
(1) Properly trimmed;
(2) Fairly well formed;
(3) Not overdeveloped; and,
(4) Fairly compact.
(b) Free from decay.
(c) Not damaged by any other cause.
(d) Fairly uniform in size.
(e) For tolerances see § 51.3787.

### § 51.3786 U.S. No. 2.

"U.S. No. 2" consists of artichokes which meet the following requirements:

(a) Basic requirements:
(1) Not overdeveloped; and,
(2) Not badly spread.
(b) Free from decay.
(c) Not seriously damaged by any other cause.
(d) Fairly uniform in size.
(e) For tolerances see § 51.3787.

TOLERANCES

### § 51.3787 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified:

(a) 10 percent for artichokes in any lot which fail to meet the requirements for the grade, including not more than 2 percent for artichokes affected by decay.

APPLICATION OF TOLERANCES

### § 51.3788 Application of tolerances.

The contents of individual packages in the lot, based on sample inspection, are subject to the following limitations:

(a) For a tolerance of 10 percent or more, individual packages shall have not more than 1½ times the tolerance specified, and for a tolerance of less than 10 percent individual packages shall have not more than double the tolerance specified: *Provided,* That at least one defective specimen may be allowed in any package: *And provided further,* That the averages for the entire lot are within the tolerances specified for the grade.

DEFINITIONS

### § 51.3789 Properly trimmed.

"Properly trimmed" means that the stem is short and smoothly cut.

### § 51.3790 Fairly well formed.

"Fairly well formed" means that the artichoke is not excessively long and pointed.

### § 51.3791 Fairly compact.

"Fairly compact" means that the artichoke is reasonably firm and not more than slightly spread.

### § 51.3792 Overdeveloped.

"Overdeveloped" means that the artichoke has a brownish color; that the scales are tough, leathery, and stringy; and, that the flower in the center of the bud has turned dark pink or purple and become fuzzy.

### § 51.3793 Damage.

"Damage" means any defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the artichoke.

### § 51.3794 Fairly uniform in size.

"Fairly uniform in size" means that not more than 10 percent, by count, of the artichokes in any container may vary more than one-half inch in diameter.

(a) "Diameter" means the greatest dimension measured at right angles to a line from the stem to the opposite end of the artichoke.

### § 51.3795 Serious damage.

"Serious damage" means any defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the artichoke.

METRIC CONVERSION TABLE

### § 51.3796 Metric conversion table.

| *Inches* | *Millimeters (mm)* |
|---|---|
| ⅛ equals | 3.2 |
| ¼ equals | 6.4 |
| ½ equals | 12.7 |
| ¾ equals | 19.1 |
| 1 equals | 25.4 |
| 1½ equals | 38.1 |
| 2 equals | 50.8 |
| 3 equals | 76.2 |
| 4 equals | 101.6 |
| 5 equals | 127.0 |
| 6 equals | 152.4 |
| 7 equals | 177.8 |
| 8 equals | 203.2 |
| 9 equals | 228.6 |

Dated: November 27, 1968.

G. R. GRANGE,
*Deputy Administrator,*
*Marketing Services.*

[F.R. Doc. 68-14470; Filed, Dec. 3, 1968; 8:47 a.m.]

# DEPARTMENT OF COMMERCE

## Office of Foreign Direct Investments

## [ 15 CFR Part 1000 ]

## FOREIGN DIRECT INVESTMENT REGULATIONS

### Notice of Proposed Rule Making

Notice is hereby given that the Office of Foreign Direct Investments (the "Office") proposes to amend the Foreign Direct Investment Regulations effective as to direct investments occurring on or

after January 1, 1969. These proposed amendments reflect a target of aggregate direct investment by all persons within the United States for 1969 of approximately $2,900,000,000 as set by the Cabinet Committee on the Balance of Payments. This is an increase of approximately $250 million over the target for 1968. The proposed amendments will become effective when adopted and published in final form. They will not affect permissible transactions for 1968.

Interested persons are invited to submit written comments, suggestions, or objections concerning the proposed amendments to the Chief Counsel, Legal Division, Office of Foreign Direct Investments, Department of Commerce, Washington, D.C. 20230. Communications concerning the proposed amendments will be considered if received within 30 days after publication of this notice in the FEDERAL REGISTER. Subsequent to such time, the amendments will be published in the FEDERAL REGISTER in final form as proposed or as changed in the light of comments received.

EDITORIAL NOTE: The Foreign Direct Investment Regulations appear in Title 15, Chapter X, Part 1000 of the Code of Federal Regulations ("CFR"). Thus, all sections of the regulations contained in the CFR are preceded by the designation "1000" (e.g., § 1000.201). The "1000" prefix has for convenience been eliminated from the section reference contained in this notice. The term "part" when used in the regulations means the entire regulations (i.e., Part 1000). References to sections of General Bulletins published by the Office are preceded by the designation "B" (e.g., § B201). The section numbers used in the Bulletins correspond to sections of the regulations which are discussed in the Bulletins. The terms "DI" and "AFN" are used in the General Bulletins and this notice to refer to "direct investor" and "affiliated foreign national".

The proposed amendments are described below.

1. § *503 Allowable.* The § 503 allowable for 1969 has been increased from $200,000 to $300,000. Section 503(b) has been amended by substituting "total losses" [1] for "negative reinvested earnings". This substitution of terms does not represent any change in substance in the position of the Office with respect to the limitation on positive direct investment in Schedule C. No change has been made with respect to carry-forward of § 503 allowables. Under both present § 503 and proposed § 503, any § 503 allowable not used in the current year may not be carried forward to a succeeding year. A new subsection (d) has been added to § 503 to make clear the effect on any schedular § 504 carry-forwards in the event that a direct investor makes worldwide positive direct investment in any year not in excess of the amount authorized by § 503.

[1] 1. For purposes of § 503(b) and § 504(e), "total losses" in any scheduled area means the amount by which the sum of losses of all incorporated affiliated foreign nationals in that scheduled area exceeds the sum of earnings of all affiliated foreign nationals in that scheduled area. See § 306(c) of the regulations and Gen. Bull. No. 1, § B306(c).

2. § *504 Allowables.* Under proposed § 504, a direct investor must compute his historical allowables for Schedules A, B, and C in the same manner as now provided in § 504(a) (1)(i), (2)(i), and (3)(i) of the regulations. Such computations are based on the base period years 1965–1966 (and also 1964 with respect to the reinvestment ratio in Schedule C). However, paragraph (b) of proposed § 504, when read with paragraphs (a)(1)(ii), (a)(2)(ii), and (a)(3)(ii), provides an alternative elective allowable, and paragraph (c) of proposed § 504 permits limited "upstream" use of historical allowables (e.g., the use of a Schedule B historical allowable in Schedule C), both provisions being based on 20 percent of the "annual earnings" of the preceding year. These new provisions afford new options to direct investors who have unusually low historical allowables in relation to the earnings of their affiliated foreign nationals or whose allowables are unevenly distribtued among the three scheduled areas. The new provisions are based on 20 percent of the direct investor's share of 1968 "annual earnings" in each scheduled area of both incorporated affiliated foreign nationals (subsidiaries) and unincorporated affiliated foreign nationals (such as branches, partnerships, and joint ventures). Earnings of Canadian affiliated foreign nationals are excluded in calculating annual earnings in Schedule B. Losses of both incorporated and unincorporated affiliated foreign nationals in any schedule should be netted against earnings in such schedule in determining 1968 "annual earnings".

The major features of proposed § 504 (b) and (c) are described below:

(a) *20 Percent Earnings Allowable.* As an alternative to its historical allowables, a direct investor may elect under § 504(b) a "20 percent earnings allowable" for 1969 for each of the three scheduled areas in an amount equal to 20 percent of its share of the 1968 annual earnings of its affiliated foreign nationals in each schedule. The election, if made, must be made with respect to all three scheduled areas and, if made in 1969, must be made on the first quarterly report for 1969 (FDI–102) filed with the Office on or before May 15, 1969. Once the election is made, the direct investor may not return to the historical allowables provided in § 504(a) in any subsequent year without the express permission of the Director.

The following example is illustrative of the "20 percent earnings allowable".

*Example (1).* DI's share of the 1968 "annual earnings" of its Schedule C AFNs is $1 million and of its Schedule A AFNs is $1,500,000; its Schedule B AFNs incurred total losses of $200,000. If DI makes the election under § 504(b), for 1969 on its first quarter FDI–102, its 1969 § 504(b) allowables will be $200,000 in Schedule C (20 percent of $1 million), zero in Schedule B (since DI had total losses in Schedule B in 1968), and $300,000 in Schedule A (20 percent of $1,500,000).

(b) *Upstream Use of § 504 Historical Allowable.* If the above election is not made, the historical allowable, calculated as presently provided in § 504(a) (1)(i), (2)(i), and (3)(i), will govern. In that event, however, a direct investor is authorized under proposed § 504(c) to use in 1969 or succeeding years a portion of its Schedule B § 504(a) historical allowable for 1969 in Schedule C, or a portion of its Schedule A § 504(a) historical allowable in Schedule B or Schedule C. Historical allowables may not, however, be used "upstream" unless, and only to the extent that, 20 percent of the direct investor's share of 1968 annual earnings in the "upstream" scheduled area exceeds the § 504(a) historical allowable in that scheduled area. Note that for purposes of proposed § 504(c), historical allowables under § 504(a) (1)(i), (2)(i), and (3)(i) do not include allowables carried forward from previous years and that the latter cannot be used upstream.

The following examples are illustrative of the 20 percent earnings allowable and the "upstream" use of § 504(a) historical allowable:

*Example (2).* In 1969, DI has a § 504(a) (1)(i), (2)(i), and (3)(i) historical allowable of $50,000 in Schedule C, $200,000 in Schedule B, and $400,000 in Schedule A, respectively. In 1968, DI's share of annual earnings of its Schedule C AFNs is $1 million, of its Schedule B AFNs is $400,000, and of its Schedule A AFNs is $200,000. During 1969, DI is authorized under § 504(c) to use $150,000 of its Schedule A allowable in Schedule C, as shown in the following table:

| | (000 omitted) | | | |
|---|---|---|---|---|
| | Schedule C | Schedule B | Schedule A | Total allowables |
| (1) § 504(a) historical allowables | 50 | 200 | 400 | 650 |
| (2) 1968 annual earnings | 1,000 | 400 | 200 | |
| (3) 20 percent of line 2 | 200 | 80 | 40 | 320 |
| (4) 1969 § 504(a) historical allowables after maximum upstream adjustments | 200 | 200 | 250 | 650 |

In the above table, DI has used in Schedule C $150,000 of its Schedule A historical allowable. This amount can be used in Schedule C in 1969 or carried forward in Schedule A for use in Schedule C in succeeding years. DI could alternatively have chosen to use $150,000 of its Schedule B historical allowables in Schedule C currently or in succeeding years, or to use a part of its allowables up to $150,000 from both Schedules A and B.

Since DI has an historical allowable in Schedule C of $50,000, the maximum that may be used in Schedule C from Schedules A or B is $150,000, i.e., the difference between 20 percent of 1968 earnings in Schedule C and the historical allowable in Schedule C.

Note that DI will presumably decide to use historical allowables and the "upstream" provisions of § 504(c) rather than elect the 20 percent earnings allowable under § 504(b) since the total historical allowables ($650,000) under § 504 (a) and (c) exceed the total allowables

available to DI ($320,000) if DI elected to compute its 1969 allowables as 20 percent of its share of 1968 annual earnings in each scheduled area under the § 504 (b) election provision.

*Example* (3). DI has the same historical allowables as in Example (2), but DI's share of annual earnings in 1968 is $2 million in Schedule C, $800,000 in Schedule B, and $500,000 in Schedule A. On its first quarterly report (FDI–102), DI will presumably elect under § 504(b)(2) to compute his 1969 allowables based on the 20 percent earnings allowable (see line (3) below):

| | (000 omitted) | | | |
|---|---|---|---|---|
| | Schedule C | Schedule B | Schedule A | Total allowables |
| (1) § 504(a) Historical allowables | 50 | 200 | 400 | 650 |
| (2) 1968 Annual earnings | 2,000 | 800 | 500 | ------- |
| (3) 20 percent of line 2 | 400 | 160 | 100 | 660 |
| (4) 1969 § 504(a) Historical allowables after maximum upstream adjustments | 400 | 200 | 50 | 650 |

Note that the total allowables available to DI under the 20 percent earnings allowable ($660,000) exceeds the total historical allowables available to DI ($650,000) under § 504 (a) and (c) in 1969 and that the 20 percent earnings allowables are divided among the scheduled areas to reflect DI's share of 1968 annual earnings in each schedule.

*Example* (4). DI has no historical allowables under § 504(a)(1)(i), (2)(i), and (3)(i), and during 1968 made positive direct investment under § 503 in its AFNs of $200,000. In 1968, DI's Schedule C AFN had earnings of $1 million, its Schedule B AFN had earnings of $600,000, and its Schedule A AFN had earnings of $100,000. On its first quarterly report (FDI–102) DI will elect under § 504(b)(2) to compute its 1969 allowables based on the 20 percent earnings allowable (see line 3 below):

| | (000 omitted) | | | |
|---|---|---|---|---|
| | Schedule C | Schedule B | Schedule A | Total Allowables |
| (1) § 504(a) Historical allowables | 0 | 0 | 0 | 0 |
| (2) 1968 Annual earnings | 1,000 | 600 | 100 | ------- |
| (3) 20 percent of line 2 | 200 | 120 | 20 | 340 |
| (4) 1969 § 504(a) Historical allowables after maximum upstream adjustments | Not applicable | | | ------- |

Note that § 504(c) would not apply since DI has no historical allowable under § 504(a)(1)(i), (2)(i), or (3)(i) to use under § 504(c). Note also that DI during 1969 may make (as also provided by current regulations) positive direct investment in Schedule B or Schedule A in excess of the amounts indicated in line 3 above if DI makes use of the "downstream" carry-over provisions of § 504. In other words, DI can "carry down" all or part of its Schedule B allowable to Schedule A under proposed § 504(d)(2), and all or part of its Schedule C allowable from Schedule C to B or A under proposed § 504(d)(3).

3. *Relationship of proposed § 504 to Incremental Earnings Allowable.* The "incremental earnings" allowable was first incorporated in the regulations as § 506 by amendments published in the FEDERAL REGISTER on November 9, 1968. The following specific points should be noted with respect to the incremental earnings allowable under § 506 and the "20 percent earnings allowable" in proposed § 504.

(a) Section 506 authorizes additional positive direct investment, beginning in 1970, to the extent that 40 percent of "excess" or "incremental earnings" (for 1970, the difference between 1970 earnings and the average annual earnings for the years 1966–67) exceeds the § 503 or 504 allowables, whichever is applicable. The elective 20 percent earnings allowable set forth in proposed § 504, on the other hand, provides an alternative allowable for positive direct investment, beginning in 1969. For direct investors who would otherwise use the § 503 allowable ($300,000) or § 504(a) historical allowables.

(b) Under § 506 "excess" or "incremental earnings" are computed on a worldwide basis and additional positive direct investment is authorized on a worldwide basis. The 20 percent earnings allowables under proposed § 504, on the other hand, are based on a schedular rather than on a worldwide basis, both as to "annual earnings" used to compute this allowable and as to the use of the allowable itself.

(c) The proposed § 504(b) 20 percent earnings allowable, the § 504(a) historical allowable, and the § 506 incremental earnings allowable may all be carried forward to subsequent years to the extent not used. While the incremental earnings allowable is not available for positive direct investment in 1969, it will afford some additional leeway in 1969 for borrowings and the filing of certificates under Subpart J.

4. *Downstream Use of Allowables in 1969 Under § 504.* While there is a limit under proposed § 504(c) on the "upstream" use of § 504(a) historical allowables, proposed § 504(d)(2) and (3) preserve the present provisions for use "downstream" of the entire amount of § 504 allowables (that is, Schedule B allowables may be used in Schedule A, and Schedule C allowables may be used in Schedules B or A). As provided in the present regulations, the one exception is that total losses of incorporated affiliated foreign nationals in Schedule C may only be used in succeeding years in Schedule C for reinvestment of earnings.

5. *Positive Direct Investment in Schedule C.* The proposed amendments to § 504 adopt for Schedule C the present modified positive direct investment concept of § 503. In other words, under the proposed amendments, the § 504 allowables, like the § 503 allowable and the § 506 incremental earnings allowable, are not limited to reinvested earnings of incorporated affiliated foreign nationals in Schedule C; rather positive direct investment can be made in the form of a positive net transfer of capital to unincorporated affiliated foreign nationals in Schedule C, or in the form of a positive net transfer of capital to, or reinvested earnings of, incorporated affiliated foreign nationals in Schedule C. In calculating positive direct investment in Schedule C for purposes of §§ 503, 504, and 506, however, total losses of incorporated affiliated foreign nationals in Schedule C may not be offset against a positive net transfer of capital to Schedule C. The provisions in proposed § 504 based on 20 percent of the earnings of the previous year (including branch earnings), and the "upstream" carry-over provisions of § 504(c) which are also based on previous year earnings, will permit in certain circumstances a positive net transfer of capital to Schedule C regardless of earnings in 1969 of incorporated affiliated foreign nationals in Schedule C.

The following example is illustrative:

*Example* (5). DI's sole Schedule C AFN is a branch which had earnings of $100,000 in 1968. DI has no historical allowables under § 504(a)(3)(i). Positive direct investment in the branch is not authorized under § 504 in 1968 since present § 504(a)(3) is limited to reinvestment of current year earnings of incorporated AFNs. In 1969, however, DI is authorized to make a positive net transfer of capital to its Schedule C branch of $20,000 (20 percent of $100,000) under the 20 percent earnings allowable of proposed § 504(b) or, if DI does not elect under § 504(b), it may use "upstream" a portion of its unused Schedule B or A allowables, if any, under proposed § 504(c) up to that amount.

6. *Additional amendments.* The Office is considering additional revisions of the regulations, applicable to 1969, to simplify certain of the concepts and accompanying reporting requirements. Any substantive amendments will be issued in proposed form before adoption in final form. Written comments or suggestions with respect to suggested additional amendments to the regulations should be addressed to the Chief Counsel, Legal Division, Office of Foreign Direct Investments, Department of Commerce, Washington, D.C. 20230.

The text of the proposed amendments is as follows:

1. Section 1000.503 is revised to read as follows:

**§ 1000.503 Positive direct investment not exceeding $300,000.**

(a) Positive direct investment by a direct investor during any year is authorized in each scheduled area: *Provided,* That, positive direct investment in any one scheduled area shall not exceed $300,000; *And provided further,* That the positive direct investments in each scheduled area, when added together, shall not exceed $300,000.

(b) If the incorporated affiliated foreign nationals of a direct investor in Schedule C have total losses during any year (calculated as provided in § 1000.306 (c)), such losses shall, for purposes of this section, be disregarded in calculating the direct investment by the direct investor in Schedule C for the year involved.

(c) If positive direct investment by a direct investor during any year in any scheduled area exceeds $300,000, or if the positive direct investments made by the direct investor in each scheduled area during such year, when added together, exceed $300,000, no positive direct investment made by the direct investor during such year in any scheduled area shall be authorized by this section.

(d) Positive direct investment made during any year which is authorized by this § 1000.503 shall reduce the amount of positive direct investment authorized to be made in such year under § 1000.504 (a), (d), or (f). Such reduction shall first be made in the scheduled area in which such positive direct investment is made, and to the extent that the amount of positive direct investment made in such scheduled area exceeds the amount of positive direct investment authorized to be made in such scheduled area under § 1000.504 (a), (d), or (f), further reductions shall be made in the amount of positive direct investment authorized under § 1000.504 (a), (d), or (f) during such year in Schedules C, B, and A, in that order, until such reductions shall equal in the aggregate the lesser of (1) the amount of positive direct investment made or (2) the aggregate amount of positive direct investment authorized under § 1000.504 (a), (d) and (f).

2. Section 1000.504 is revised to read as follows:

**§ 1000.504 Authorized positive direct investment in scheduled areas.**

(a) Subject to the provisions of paragraphs (b), (c), (d), (e), and (f) of this section, positive direct investment by a direct investor during any year is authorized as follows:

(1) Positive direct investment in Schedule A during any year is authorized in an amount not exceeding (i) 110 percent of the average of direct investment by the direct investor in Schedule A during the years 1965 and 1966, or (ii) if the direct investor makes the election provided in paragraph (b) of this section, 20 percent of the annual earnings in Schedule A during the immediately preceding year.

(2) Positive direct investment in Schedule B during any year is authorized in an amount not exceeding (i) 65 percent of the average of direct investment by the direct investor in Schedule B during the years 1965 and 1966, or (ii) if the direct investor makes the election provided in paragraph (b), 20 percent of the annual earnings in Schedule B during the immediately preceding year.

(3) Positive direct investment in Schedule C during any year is authorized in an amount not exceeding (i) the lesser of (*a*) 35 percent of the average of direct investment by the direct investor in Schedule C during the years 1965 and 1966, or (*b*) an amount computed by multiplying the direct investor's share in the total earnings (calculated as provided in § 1000.306(c)) of all incorporated affiliated foreign nationals in Schedule C during such year by a fraction, the numerator of which is the portion of the direct investor's share in the total earnings (calculated as provided in § 1000.306(c)) of incorporated affiliated foreign nationals in Schedule C which was reinvested during the years 1964, 1965, and 1966, and the denominator of which is the direct investor's share in the total earnings (calculated as provided in § 1000.306(c)) during such years of such incorporated affiliated foreign nationals, or (ii) if the direct investor makes the election provided in paragraph (b), 20 percent of the annual earnings in Schedule C during the immediately preceding year.

(4) For purposes of this § 1000.504, the term "annual earnings" of the direct investor in any scheduled area means the direct investor's share of total earnings during a year of all of the direct investor's incorporated and unincorporated affiliated foreign nationals in such scheduled area (excluding Canadian affiliated foreign nationals from Schedule B), determined in accordance with the provisions of § 1000.306(c).

(b) (1) Each direct investor may elect, commencing with the year 1969, to be governed by the provisions of paragraphs (a) (1) (ii), (a) (2) (ii), and (a) (3) (ii) of this section.

(2) The election shall be made on the first quarterly report on Form FDI–102 (for 1969 or any subsequent year) timely filed by the direct investor pursuant to § 1000.602(b) (2). An election made pursuant to paragraph (b) (1) shall be binding and effective as to all (and not less than all) scheduled areas, and as to the year in which the election is made and all succeeding years. Such an election may not thereafter be changed without the consent of the Secretary. Until such an election is made, a direct investor shall be governed by and shall be authorized to make positive direct investment as provided in paragraphs (a) (1) (i), (a) (2) (i), and (a) (3) (i) of this section.

(c) (1) If during any year commencing with the year 1969, the amount of positive direct investment authorized to a direct investor in Schedule A under paragraph (a) (1) (i) of this section exceeds the amount of direct investment (whether positive or negative) made by the direct investor during such year in Schedule A, the direct investor is authorized to make additional positive direct investment in Schedule B or C during the current year or succeeding years: *Provided,* That the aggregate of additional positive direct investment authorized by this paragraph (c) (1) shall not be more than the amount of such excess or the amount of positive direct investment so authorized under paragraph (a) (1) (i) of this section, whichever is less; *And provided further,* That the additional positive direct investment authorized by this paragraph (c) (1) in Schedule B or C shall be authorized only to the extent that 20 percent of annual earnings in the scheduled area in which such direct investment is to be made in the year immediately preceding the current year exceeds the amount of positive direct investment authorized under paragraph (a) (2) (i) or (a) (3) (i) of this section in such scheduled area during the current year; *And provided further,* That the direct investor has not made the election provided in paragraph (b) of this section.

(2) If during any year commencing with the year 1969, the amount of positive direct investment authorized to a direct investor in Schedule B under paragraph (a) (2) (i) of this section exceeds the amount of direct investment (whether positive or negative) made by the direct investor during such year in Schedule B, the direct investor is authorized to make additional positive direct investment in Schedule C during the current year or succeeding years: *Provided,* That the aggregate of additional positive direct investment authorized by this paragraph (c) (2) shall not be more than the amount of such excess or the amount of positive direct investment so authorized under paragraph (a) (2) (i) of this section, whichever is less; *And provided further,* That the additional positive direct investment authorized by this paragraph (c) (2) in Schedule C shall be authorized only to the extent that 20 percent of annual earnings in Schedule C in the year immediately preceding the current year exceeds the amount of positive direct investment authorized under paragraph (a) (3) (i) of this section in Schedule C during the current year: *And provided further,* That the direct investor has not made the election provided in paragraph (b) of this section.

(d) (1) If, during any year commencing with the year 1969, the amount of positive direct investment authorized to a direct investor in Schedule A under paragraph (a) (1) of this section exceeds the amount of direct investment (whether positive or negative) made by the direct investor during such year in Schedule A (or in Schedules B or C under paragraph (c) (1) of this section), or if no positive direct investment is so authorized to the direct investor in Schedule A during such year but the direct investment by the direct investor in Schedule A during such year is negative, the direct investor is authorized to make additional positive direct investment in Schedule A during succeeding years in an aggregate amount which is not more than the amount of such excess, or the amount of such negative direct investment, as the case may be.

(2) If during any year commencing with the year 1969, the amount of positive direct investment authorized to a direct investor in Schedule B under paragraph (a) (2) of this section exceeds the amount of direct investment (whether positive or negative) made by the direct investor during such year in Schedule B (or in Schedule C under paragraph (c) (2) of this section), or if no positive direct investment is so authorized to the direct investor in Schedule B during such year but the direct investment by the direct investor in Schedule B during such year is negative, the direct investor is authorized to make additional positive direct investment in Schedule A during the current year, and, to the extent additional positive direct investment in

Schedule A is not made during the current year, the direct investor is authorized to make additional positive direct investment in Schedules A or B during succeeding years: *Provided,* That the aggregate of additional positive direct investment authorized by this paragraph (d)(2) shall not be more than the amount of such excess, or the amount of such negative direct investment, as the case may be.

(3) If, during any year commencing with the year 1969, the amount of positive direct investment authorized to a direct investor in Schedule C under paragraph (a)(3) of this section exceeds the amount of direct investment (whether positive or negative) made by the direct investor during such year in Schedule C, or if no positive direct investment is so authorized to the direct investor in Schedule C during such year but the direct investment by the direct investor in Schedule C during such year is negative, the direct investor is authorized to make additional positive direct investment in Schedule A or B during the current year, and, to the extent additional positive direct investment in Schedule A or B is not made during the current year, the direct investor is authorized to make additional positive direct investment in Schedule A, B, or C during succeeding years: *Provided,* That the aggregate of additional positive direct investment authorized by this paragraph (d)(3) shall not be more than the amount of such excess, or the amount of such negative direct investment, as the case may be.

(e) If the incorporated affiliated foreign nationals of a direct investor in Schedule C have total losses during any year commencing with the year 1969 (calculated as provided in § 1000.306(c)), such losses shall, for purposes of this section, be disregarded in calculating the direct investment (whether positive or negative) made by the direct investor in Schedule C for such year: *Provided,* That the direct investor shall be authorized in such event to reinvest additional earnings of incorporated affiliated foreign nationals in Schedule C during the succeeding years in an aggregate amount which is not more than the direct investor's share of such total losses.

(f)(1) A direct investor authorized under former § 1000.504(b)(1), as in effect on December 31, 1968, to make positive direct investment in Schedule A during 1969 is authorized to make positive direct investment in Schedule A during 1969 and succeeding years in an aggregate amount not to exceed the amount of positive direct investment so authorized to be made during 1969 under said former § 1000.504(b)(1).

(2) A direct investor authorized under former § 1000.504(b)(2), in effect on December 31, 1968, to make positive direct investment in Schedule B during 1969 is authorized to make positive direct investment in Schedules A and/or B during 1969 and succeeding years in an aggregate amount not to exceed the amount of positive direct investment so authorized to be made during 1969 under said former § 1000.504(b)(2).

(3)(i) A direct investor authorized under former § 1000.504(c)(1) or (c)(2), as in effect on December 31, 1968, to make positive direct investment in Schedule A, B, or C during 1969 (in the form of reinvested earnings and/or a positive net transfer of capital) is authorized to make positive direct investment in Schedule A, B, or C during 1969 and succeeding years (in the form of reinvested earnings and/or a positive net transfer of capital) in the manner, and in the aggregate amount, so authorized to be made during 1969 under said former § 1000.504(c)(1) or (c)(2).

(ii) A direct investor authorized under former § 1000.504(c)(3), as in effect on December 31, 1968, to reinvest earnings of incorporated affiliated foreign nationals in Schedule C during 1969 shall be authorized to reinvest earnings of incorporated affiliated foreign nationals in Schedule C during 1969 or succeeding years in an aggregate amount not to exceed the amount of reinvested earnings so authorized under said former § 1000.504(c)(3).

3. The amendments hereby adopted shall be effective as of the date of publication in the FEDERAL REGISTER and shall apply to all direct investment occurring during 1969.

(Sec. 5, Act of Oct. 6, 1917, 40 Stat. 415, as amended, 12 U.S.C. 95a; E.O. 11387, Jan. 1, 1968, 33 F.R. 47)

CHARLES E. FIERO,
*Director, Office of Foreign Direct Investments.*

NOVEMBER 29, 1968.

[F.R. Doc. 68-14479; Filed, Dec. 3, 1968; 8:47 a.m.]

# DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## Social and Rehabilitation Service

## [ 45 CFR Part 407 ]

## DEAF-BLIND YOUTHS AND ADULTS

### Proposed National Center

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Administrator, Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare. The proposed regulations pertain to the entry into an agreement for and payment of the costs of the establishment of a center for vocational rehabilitation of handicapped individuals who are both deaf and blind, to be known as the National Center for Deaf-Blind Youths and Adults, authorized by section 16 of the Vocational Rehabilitation Act (29 U.S.C. 42a).

Any public or nonprofit private agency or organization interested in submitting a proposal for an agreement under section 16 of the Act shall notify the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, Washington, D.C. 20201 in writing within thirty (30) days from the date of publication of this notice, together with a statement of its qualifications. Agencies or organizations responding to this invitation will be further notified regarding submission of proposals.

Prior to the adoption of the proposed regulations, consideration will be given to any comments, suggestions, or objections thereto which are submitted in writing to the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, 330 Independence Avenue SW., Washington, D.C. 20201, within a period of 30 days from the date of publication of this notice in the FEDERAL REGISTER.

The proposed regulations are to be issued under the authority contained in section 7(b), 68 Stat. 658, 29 U.S.C. 37(b); section 16, 81 Stat. 251, 82 Stat. 304, 29 U.S.C. 42a.

Dated: October 31, 1968.

MARY E. SWITZER,
*Administrator, Social and Rehabilitation Service.*

Approved: November 27, 1968.

WILBUR J. COHEN,
*Secretary.*

Chapter IV of Title 45 of the Code of Federal Regulations is amended by adding a new Part 407.

This part is added to provide regulations pertaining to the entry into an agreement for and payment of the costs of the establishment of a center for vocational rehabilitation of handicapped individuals who are both deaf and blind, to be known as the National Center for Deaf-Blind Youths and Adults, authorized by section 16 of the Vocational Rehabilitation Act (29 U.S.C. 42a).

Federal financial assistance extended under this part is subject to the regulations in 45 CFR Part 80, issued by the Secretary of Health, Education, and Welfare, and approved by the President, to effectuate the provisions of section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d).

## PART 407—NATIONAL CENTER FOR DEAF-BLIND YOUTHS AND ADULTS

§ 407.1 Terms.

For the purposes of this part—

(a) "Administrator" means the Administrator, Social and Rehabilitation Service;

(b) The terms "Secretary" and "Act" have the same meanings as set forth in § 401.1 of this chapter;

(c) "Center" means the National Center for Deaf-Blind Youths and Adults;

(d) "Construction" means construction of new buildings, acquisition of existing buildings, and expansion, remodeling, alteration, and renovation of existing buildings, and initial equipment of such new, newly acquired, expanded, remodeled, altered, or renovated buildings; and includes the cost of architects' fees and acquisition of land in connection with any of the foregoing, but does not include the cost of off-site improvements;

(e) "Deaf-blind" and "deaf and blind" refer to persons who have substantial visual and hearing losses, such that the combination of the two causes extreme difficulty in learning;

(f) "Grantee" means the public or nonprofit private agency or organization selected as the party to the agreement to receive funds for the construction and operation of the National Center for Deaf-Blind Youths and Adults.

§ 407.2 Purpose.

An agreement is authorized for the purpose of paying all or part of the costs of the establishment and operation, including construction and equipment, of a center for the vocational rehabilitation of handicapped individuals who are both deaf and blind and to accomplish the purposes of section 16(a) of the Act, which shall be known as the National Center for Deaf-Blind Youths and Adults.

§ 407.3 Proposals.

The scope of the commitment in the proposal for an agreement under section 16 of the Act shall extend at least to the following areas of activity:

(a) The construction of a facility for the vocational rehabilitation of handicapped individuals who are deaf and blind, which will be especially adapted to the needs of the deaf-blind and in compliance with appropriate safety standards, and which in its construction and operation will meet applicable labor standards and other pertinent Federal statutory and regulatory requirements;

(b) the provision of services, particularly specialized intensive services, for vocational rehabilitation of the deaf-blind;

(c) the provision of training for professional personnel and allied personnel needed to staff facilities specially designed to provide such services;

(d) the conduct of research with respect to the problems of the deaf-blind and their rehabilitation;

(e) aid in activities for the expansion and improvement of services for the deaf-blind; and

(f) aid in activities for improvement of public understanding about the problems of the deaf-blind.

§ 407.4 Agreement.

The agreement shall:

(a) Provide that Federal funds paid to the grantee for the Center will be used only for the purposes for which paid and in accordance with the applicable provisions of section 16 of the Act, these regulations, and the terms and conditions of the agreement;

(b) Provide that the grantee will make an annual report to the Administrator;

(c) Provide that any laborer or mechanic employed by any contractor or subcontractor in the performance of work in the construction of the Center will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5); with the Secretary of Labor having, with respect to the labor standards specified in this paragraph, the authority and functions set forth in Reorganization Plan Number 14 of 1950 (15 F.R. 3176) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c);

(d) Include such other terms and conditions as the Administrator may deem necessary to carry out the purposes of section 16 of the Act.

§ 407.5 Right of Government to recover funds.

(a) If within 20 years after the completion of any construction (except minor remodeling or alteration) for which funds have been paid pursuant to the agreement the facility constructed ceases to be used for the purposes for which it was constructed or the agreement is terminated, the United States, unless the Administrator determines that there is good cause for releasing the grantee from its obligation, shall be entitled to recover from the grantee or other owner of the facility an amount which bears the same ratio to the then value of the facility as the amount of such Federal funds bore to the cost of the portion of the facility financed with such funds. Such value shall be determined by agreement of the parties or by action brought in the U.S. district court for the district in which the facility is situated.

(b) In determining whether there is good cause for releasing the grantee or other owner of the facility from its obligation, the Administrator shall take into consideration the extent to which:

(1) The facility will be devoted by the grantee or other owner to use for another public or nonprofit purpose which will promote the purposes of section 16(a) of the Act; or

(2) There are reasonable assurances that for the remainder of the 20-year period other public or nonprofit facilities not previously utilized for the purpose for which the facility was constructed will be so utilized and are substantially equivalent in nature and extent for such purposes.

§ 407.6 Selection of grantee.

Fully developed proposals submitted to the Administrator will be presented to the Study Section on the National Center for Deaf-Blind Youths and Adults for advice and recommendation. Final selection of the grantee will be made by the Administrator. In evaluating proposals, preference will be given to those which:

(a) give promise of maximum effectiveness in the organization and operation of the Center, and

(b) give promise of offering the most substantial skill, experience and capability in providing a broad program of service, research, training, and related activities in the field of rehabilitation of the deaf-blind.

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

[F.R. Doc. 68-14521; Filed, Dec. 3, 1968; 8:51 a.m.]

# DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## [ 14 CFR Part 71 ]

[Airspace Docket No. 68-SO-85]

## CONTROL ZONES AND TRANSITION AREAS

### Proposed Alteration, Designation, and Revocation

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Fayetteville, Simmons Army Air Field, and Fort Bragg, N.C., control zones; designate the Fayetteville, N.C., transition area, and revoke the Fort Bragg and Simmons Army Air Field, N.C., transition areas.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Area Manager, Atlanta Area Office, Attention: Chief, Air Traffic Branch, Federal Aviation Administration, Post Office Box 20636, Atlanta, Ga. 30320. 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 hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Air Traffic Branch. 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 proposals contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Southern Regional Office, Federal Aviation Administration, Room 724, 3400 Whipple Street, East Point, Ga.

The Fayetteville control zone described in § 71.171 (33 F.R. 2058 and 2627) would be altered by deleting "* * * within 2 miles each side of the Fayetteville ILS localizer southwest course, extending from the 5-mile radius zone to the LOM."

The Simmons Army Air Field control zone described in § 71.171 (33 F.R. 2058) would be redesignated as:

Within a 5-mile radius of Simmons AAF (lat. 35°07'55" N., long. 78°56'05" W.); within 2 miles each side of the Simmons VOR 085° radial, extending from the 5-mile radius zone to 8 miles east of the VOR, excluding the portion northwest of a line extending from lat. 35°11'15" N., long. 78°56'05" W. to lat. 35°05'55" N., long. 79°00'50" W.

The Fort Bragg control zone described in § 71.171 (33 F.R. 2058) would be redesignated as:

Within a 5-mile radius of Pope AFB (lat. 35°10'15" N., long. 79°00'55" W.); within 2 miles each side of Pope VOR 226° radial, extending from the 5-mile radius zone to 1 mile southwest of the VOR, excluding the portion within R-5311 and the portion south-

west of a line extending from lat. 35°11'15" N., long. 78°56'05" W., to lat. 35°05'55" N., long. 79°00'50" W.

The Fayetteville 700-foot transition area would be designated as:

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Fayetteville Municipal Airport (Grannis Field) (lat. 34°59'25" N., long. 78°52'50" W.); within a 10-mile radius of Pope AFB (lat. 35°10'15" N., long. (79°00'55" W.); within 8 miles northwest and 5 miles southeast of the Pope AFB ILS localizer northeast course, extending from the 10-mile radius area to 12 miles northeast of the LOM; within 2 miles each side of the 266° bearing from Simmons RBN, extending from the Pope AFB 10-mile radius area to 1 mile west of the Simmons RBN; excluding the portion within R-5311.

The Fort Bragg and Simmons AAF transition areas described in § 71.181 (33 F.R. 2137) would be revoked.

Since the last alteration of controlled airspace at the Fayetteville terminal complex, turbojet aircraft have begun utilizing Fayetteville Municipal Airport (Grannis Field). Criteria appropriate to this airport requires the establishment of a 700-foot transition area. Criteria appropriate to Pope AFB requires an increase in the transition area basic radius circle from 8 to 10 miles. The proposed actions permit the revocation of the Fort Bragg and Simmons AAF transition areas and the inclusion of them into the proposed Fayetteville transition area. Additionally, the proposed actions permit the revocation and reduction of numerous control zone and transition area extensions.

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

Issued in East Point, Ga., on November 25, 1968.

JAMES G. ROGERS,
*Director, Southern Region.*

[F.R. Doc. 68-14443; Filed, Dec. 3, 1968; 8:45 a.m.]

## [ 14 CFR Part 71 ]

[Airspace Docket No. 68-SO-93]

## CONTROL ZONE AND TRANSITION AREA

### Proposed Alteration and Designation

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the New Bern, N.C., control zone and designate the New Bern, N.C., transition area.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Area Manager, Atlanta Area Office, Attention: Chief, Air Traffic Branch, Federal Aviation Administration, Post Office Box 20636, Atlanta, Ga. 30320. 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 hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Air Traffic Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Southern Regional Office, Federal Aviation Administration, Room 724, 3400 Whipple Street, East Point, Ga.

The New Bern control zone described in § 71.171 (33 F.R. 2058) would be altered by deleting "* * * long. 77°02'35" W. * * *" and substituting "long. 77°-02'38" W. * * *" therefor.

The New Bern transition area would be designated as:

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Simmons-Nott Airport (lat. 35°04'20" N., long. 77°02'38" W.); excluding the portion within R-5306A.

The proposed transition area is required for the protection of IFR operations at Simmons-Nott Airport in climb from 700 to 1,200 feet above the surface and in descent to 1,000 feet above the surface.

This amendment is proposed under the authority of sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)).

Issued in East Point, Ga., on November 25, 1968.

JAMES G. ROGERS,
*Director, Southern Region.*

[F.R. Doc. 68-14444; Filed, Dec. 3, 1968; 8:45 a.m.]

## [ 14 CFR Part 71 ]

[Airspace Docket No. 68-CE-106]

## FEDERAL AIRWAY SEGMENTS

### Proposed Designation

The Federal Aviation Administration (FAA) is considering amendments to Part 71 of the Federal Aviation Regulations that would designate a segment of VOR Federal airway No. 450, between Muskegon, Mich., and the Pompeii, Mich., intersection and the U.S. portion of a segment of VOR Federal airway No. 337, between Windsor, Ontario, Canada, and Saginaw, Mich.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and 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 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. The proposals contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20590. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The FAA proposes the following airspace actions.

1. Extend V-450 airway from Muskegon with a 12 AGL floor direct to the intersection of the Muskegon 088° T (089° M) and Lansing 358° T (360° M) radials.

This proposed airway segment would provide a transition route for high altitude air traffic routed eastbound via Jet Route No. 16.

2. Extend V-337 from Windsor with a 12 AGL floor to Saginaw via the intersection of Windsor 335° T (338° M) and Saginaw 131° T (134° M) radials, excluding the portion within Canada.

This proposed airway segment will provide for segregated departure and arrival routes in the Saginaw/Flint terminal area and a transition route for high altitude traffic to the Saginaw Airport.

These amendments are proposed under the authority of sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on November 26, 1968.

T. MCCORMACK,
*Acting Chief, Airspace and Air Traffic Rules Division.*

[F.R. Doc. 68-14445; Filed, Dec. 3, 1968; 8:45 a.m.]

## [ 14 CFR Parts 71, 75 ]

[Airspace Docket No. 68-WE-82]

## JET ROUTE SEGMENT AND REPORTING POINT

### Proposed Alteration and Designation

The Federal Aviation Administration (FAA) is considering amendments to Parts 71 and 75 of the Federal Aviation Regulations that would realign the segment of Jet Route No. 84 from Currant, Nev., direct to Delta, Utah, and designate the Delta VORTAC as a high altitude reporting point.

J-84 segment between Currant and Delta is presently aligned via the intersection of the Currant 087° T (070° M) and the Delta 243° T (227° M) radials. This alignment was made to avoid a military Special Operations Area (SOA).

Utilization of the SOA has now declined to a point where the FAA believes that the direct alignment of J-84 between Currant and Delta would provide for better utilization of the airspace by the flying public. Accordingly, it is proposed to realign J-84 segment from Currant direct to Delta.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and 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 amendments. The proposals contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20590. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

These amendments are proposed under the authority of sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on November 26, 1968.

T. MCCORMACK,
*Acting Chief, Airspace and Air Traffic Rules Division.*

[F.R. Doc. 68-14446; Filed, Dec. 3, 1968; 8:45 a.m.]

# FEDERAL COMMUNICATIONS COMMISSION

## [ 47 CFR Part 21 ]

[Docket No. 18384; FCC 68-1131]

## DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

### Transmitter Frequency Tolerance Requirements

In the matter of amendment of § 21.101 of Part 21 of the Commission's rules and regulations concerning transmitter frequency tolerance requirements.

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. The Commission is proposing to amend § 21.101 of its rules and regulations, which prescribes frequency tolerance requirements for radio transmitters authorized in the Domestic Public Radio Services, to conform to the requirements of paragraph 671 of the International Radio Regulations, Geneva (1959) to which the United States of America is a party.

3. Section 21.101 of Part 21 of the Commission's rules now requires that transmitting equipment used for service within the frequency range 2,200–10,500 MHz maintain operating frequency within 0.05 percent of the assigned frequency, and within the frequency range 10,500–40,000 Mc/s, within 0.75 percent of the assigned frequency. Under the more stringent Geneva regulations, the transmitter frequency in these frequency ranges must be maintained, respectively, within tolerances of 0.03 percent and 0.05 percent of the assigned frequency. We propose to require the new standards to be met on and after the effective date of the rules by all facilities in the frequency range 10,500–40,000 MHz since, from a review of our station authorizations, it appears that all common carrier transmitters presently licensed in the frequency range 10,500 to 40,000 MHz are type accepted to meet the new tolerance requirement and no hardship would be imposed on such licensees. With respect to equipment authorized before the effective date of the proposed rules in the frequency range 2,450–10,500 MHz we intend to defer for a short period of time, i.e., until February 1, 1971, the next common carrier microwave renewal date, the applicability of the new frequency tolerance standard. This delay in imposition of the new standard in this area of the radio spectrum is proposed in consideration of the number of transmitters authorized therein which may require replacement or modification. The proposed rule change is set forth in Appendix I hereto. Appendix II lists the presently type accepted equipment which would not comply with the tolerances proposed.[1]

4. In order to ensure that the continued utilization of this nonconforming equipment will not cause problems—e.g., harmful interference—to any other conforming or nonconforming licensees, the proposed rule change also directs all nonconforming licensees to remedy any problems which arise from their nonconformance.

5. Authority for the rule amendment proposed herein is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

6. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on the proposed amendment on or before January 10, 1969, and reply comments on or before January 20, 1969. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

7. In accordance with the provisions of § 1.419 of the rules, an original and fourteen (14) copies of all comments, replies, pleadings, briefs, or other documents shall be furnished the Commission.

Adopted: November 26, 1968.

Released: November 29, 1968.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
*Secretary.*

APPENDIX I

Section 21.101 of the Commission's rules is amended to retitle the headnote and amend the table in paragraph (a) to read as follows:

§ 21.101 Frequency tolerance.

(a) * * *

| Frequency range (MHz) | Frequency tolerance (percent): All fixed and base stations | Mobile stations over 3 watts [1] | Mobile stations 3 watts or less [1] |
|---|---|---|---|
| 25 to 50 | 0.002 | 0.002 | 0.005 |
| 50 to 450 | .0005 | .0005 | .005 |
| 450 to 470 | .00025 | .0005 | .005 |
| 470 to 1,000 | .0005 | .0005 | .005 |
| 2,110 to 2,200 | .001 | | |
| 2,450 to 10,500 | [2] 0.03 | [2] 0.03 | [2] 0.03 |
| 10,500 to 40,000 | 0.05 | 0.05 | 0.05 |

[1] Below 470 Mc/s, transmitter plate power input to the final frequency stage, as specified in the Commission's Radio Equipment List. Above 470 Mc/s, transmitter power output, as specified in the Commission's Radio Equipment List.

[2] Beginning this tolerance requirement will govern the issuance of all authorizations for radio equipment. However, a frequency tolerance requirement of 0.05 percent will apply until February 1, 1971, to radio equipment which was authorized before. Licensees of radio equipment not immediately subject to the frequency tolerance requirement of 0.03 percent, and their successors or assigns in business, may continue to use such nonconforming equipment until February 1, 1971, *Provided*, That, operation of the nonconforming equipment does not adversely affect the operations of any other conforming or nonconforming licensees, and, *Provided further*, That licensees shall take prompt and effective remedial and preventive measures where any problems are or may be caused by the operation of such nonconforming equipment. All licensees of nonconforming equipment are instructed to take immediate steps toward its timely re-type acceptance or replacement.

* * * * *

[F.R. Doc. 68-14508; Filed, Dec. 3, 1968; 8:50 am.]

[1] Appendix II filed as part of the original document.

## [ 47 CFR Part 73 ]

[Docket No. 18389; FCC 68-1147]

## FM BROADCAST STATIONS

### Table of Assignments for Porterville, Calif. et al.

In the matter of amendment of § 73.202, Table of Assignments, FM Broadcast Stations. (Porterville, Calif.; Bottineau, N. Dak.; Rhinelander, Wis.; Scobey, Mont.; and Humboldt, Iowa), Docket No. 18389, RM-1335, RM-1338, RM-1339, RM-1347, RM-1351.

1. Notice is hereby given of proposed rule making in the above-entitled matter, concerning amendments of the FM Table of Assignments in § 73.202 of the rules. All proposed assignments are alleged and appear to meet the minimum separation requirements of the rules. All proposed assignments which are within 250 miles of the United States-Canadian border require coordination with the Canadian Government, under the terms of the Canadian-United States FM Agreement of 1947 and the Working Arrangement of 1963. Except as otherwise noted, all channels proposed for shift or deletion are unoccupied and not applied for, and all population figures are from the 1960 U.S. Census.

2. *RM-1335. Porterville, Calif.* In a petition filed July 30, 1968, Gateway Broadcasters, Inc., requests assignment of a

Class B FM channel to Porterville, Calif., as follows:

| City | Channel No. | |
|---|---|---|
| | Present | Proposed |
| Porterville, Calif. | 240A | 283 or alternatively, 240A, 283. |

3. Porterville, located about 45 miles north of Bakersfield, has a population of 7,991 and its county (Tulare) has a population of 168,403. The community has one AM station, KTIP, Class IV, which is licensed to petitioner; the existing Class A FM assignment is unoccupied. According to data furnished by petitioner, as of June 1967, the population of Tulare County was 198,722, of which 123,117 was contained in unincorporated areas. Data is also included indicating that the area within 6 miles of the Porterville city hall includes 30,000 people.[1]

4. In support of its request for a Class B channel, petitioner states that it desires to provide a better FM service to the mountainous area to the east of Porterville than can be provided by the limited facilities obtainable from the presently assigned Class A channel. It is submitted that the present nighttime limitation of the single local outlet for Porterville, KTIP(AM), extends only 5.3 miles, which encompasses little more than the city limits, thereby failing to serve the total trading area of Porterville, which is alleged by petitioner to contain 50,000 persons. It is claimed that a Class A operation would not appreciably improve this situation.

5. Based on an assumed site about 3 miles north of Porterville, petitioner has determined that a maximum Class A facility would provide service to an area of 640 square miles containing 33,049 persons compared to an area of 3,440 square miles with a population of 179,038 obtainable by a maximum Class B operation. It is further shown by petitioner's study that the anticipated Class B operation would serve a "white area" of 165 square miles and would provide a second service to an additional area of 400 square miles. The study is based on FM stations either authorized or in actual operation in the area. However, it appears that if the remaining unoccupied assignments listed in the table are properly considered as well, there would be no "white or gray area" gain from the anticipated operation.[2]

6. Tulare County presently has assigned a total of six FM channels (five Class B and one Class A), only three of which are operating. One Class B channel operates at Visalia (15,791) and two at Tulare (13,824). Dinuba (6,103) has been assigned two Class B channels, neither of which is occupied. Our review of the Dinuba assignments reveals that assignment of Channel 262 there[3] was without the knowledge that it is located about 9 miles less than the minimum separation required with Station KBAY–FM, Channel 262, San Jose. Further study, however, indicates that Channel 262 could be used in Porterville and its surrounding area and meet all spacing requirements of the rules if it were deleted from Dinuba. Our preclusion study for Channel 283 proposed herein by petitioner shows that its assignment to Porterville would preclude certain other communities without FM assignments having nearly the same population as Porterville in San Luis Obispo County.[4] Accordingly, we are of the opinion that if a Class B channel should be assigned to Porterville, it would be preferable to do so by reassignment of Channel 262 from Dinuba instead of assigning Channel 283 proposed by petitioner. We also consider that if the Class B assignment is made, Channel 240A should be deleted from Porterville in order to be consistent with our general policy of avoiding intermixture of classes of FM stations in the same community where possible. Our counterproposal would retain the same exact Class B assignments in Tulare County, eliminate an undesirable short assignment, and release a Class A assignment for future use in another community in the general area. Furthermore, considering the relative populations of Dinuba and Porterville, removing the Dinuba channel and assigning it to Porterville would result in a better distribution of existing assignments between the two communities and within Tulare County.

7. In light of the above, we are of the view that we should institute rule making on the request to assign a Class B channel to Porterville in order that interested parties may submit their comments and relevant data. Comments are therefore requested on petitioner's proposal, except as modified by our counterproposal, as follows:

| City | Channel No. | |
|---|---|---|
| | Present | Proposed |
| Dinuba, Calif. | 255, 262 | 255 |
| Porterville, Calif. | 240A | 262 |

8. *RM–1338 and 1347. Bottineau, N. Dak., and Scobey, Mont.* A petition was filed on June 24, 1968, by Bottineau Broadcasting Corp. requesting assignment of Channel 270 to Bottineau, N. Dak. A similar petition was filed by Larry C. Bowler on August 16, 1968, for assignment of Channel 239 to Scobey, Mont. Both communities are located within 16 miles of the United States-Canadian border and each is the largest community and county seat of its respective county. Bottineau has a population of 2,613 and Scobey's population is 1,726. There are no AM or FM assignments located in the county of either community.

9. The petitioners support their respective requests for a Class C channel by engineering showings which indicate that substantial "white areas" would be included within the predicted 1 mv/m contours of assumed Class C facilities as compared with maximum Class A facilities. The showings are based on actual facilities each petitioner intends to file an application for if the assignments are made as requested.

10. Ordinarily, only Class A channels would be considered for assignment to communities of the sizes involved here. However, in view of the remote locations of the areas with respect to other broadcast services and showings by petitioners as to "white areas" that would be served by the respective Class C assignments, we are of the view that comments should be invited on the proposals outlined above.

11. *RM–1339. Rhinelander, Wis.* Charles K. Heath, a potential FM applicant, filed a petition on August 13, 1968, supplementing it on September 4, 1968, requesting assignment of Channel 248 to Rhinelander, Wis., by reassigning that channel from Duluth, Minn., and substituting Channel 268 therefor at Duluth, as follows:

| City | Channel No. | |
|---|---|---|
| | Present | Proposed |
| Duluth, Minn. | 235, 248, 255, 273, 277, 286 | 235, 255, 268. 273, 277, 286 |
| Rhinelander, Wis. | 300 | 248, 300 |

12. Rhinelander is located in north central Wisconsin and has a population of 8,790. It is the largest city and county seat of Oneida County, population 22,112. The presently assigned Channel 300 and the one AM station (unlimited-time) at Rhinelander, the only radio assignments in Oneida County, are operated by a common licensee (WOBT AM/FM). Channel 248, which petitioner proposes be deleted from Duluth, is neither occupied nor has an application pending.

13. Petitioner states that if the Rhinelander assignment is made he intends to file an application for maximum power (100 kw) and an antenna height of at least 500 feet. Based on the predicted 1 mv/m contour from such facilities, petitioner's supplemental engineering study shows a "white area" gain of approximately 1,453 square miles. The coverage from Channel 244A assigned to Iron River, Mich., is not included. Moreover, the showing is not in accord with the criteria previously indicated as acceptable for purposes of determining "white area" gain in cases of this sort. The submitted preclusion study for Channel 248 indicates that the only community affected that does not have an FM assignment would be Crandon, Wis. (population 1,679). A preclusion showing is not provided by petitioner for the pertinent six adjacent channels.

[1] Petitioner cites following as sources of data: California State Department of Finance and Chambers of Commerce of Tulare County and Tulare County Planning Commission.

[2] See further notice of proposed rule making, RM–1034, Docket 17095, June 9, 1967, FCC 67–665, for criteria considered acceptable for "white area" showings.

[3] The Dinuba assignments were adopted in third report, memorandum opinion and order, Docket 14185, Aug. 1, 1963, FCC 63–735 (23 R.R. 1859).

[4] Two of the larger precluded communities are El Paso de Robles (6,677) and Atascadero (5,983).

14. Although we are not convinced by petitioner's showings that a community the size of Rhinelander merits the assignment of a second FM channel, we are of the view that the request warrants rule making so that interested parties may have an opportunity to file comments and additional data. Our ultimate decision in this case will depend largely on a proper showing of "white or gray areas," including populations, that would be served by the requested assignment and an evaluation of the preclusion impact on other communities on the pertinent adjacent channels, 245–251. See "Policy to Govern Requests for Additional FM Assignments" in public notice released May 12, 1967 (FCC 67–577). Also, see notice of proposed rule making, issued June 9, 1967, Docket 17095, RM–1034, (FCC 67–665), for an outline of acceptable criteria for "white and gray area" showings.

15. *RM–1351. Humboldt, Iowa.* On September 24, 1968, a petition was filed by Stephen Dinkel of Ames, Iowa, requesting assignment of Channel 249A as a first FM channel to Humboldt, Iowa. Humboldt, the largest community of its county, has a population of 4,031 persons and is located adjacent to Dakota City (706), county seat of Humboldt County (13,156). Humboldt County has neither an FM nor AM assignment. A letter supporting the assignment was submitted by the Humboldt Chamber of Commerce. Humboldt appears to warrant the proposed assignment and we therefore invite comments on the petitioner's proposal to assign Channel 249A to the community.

16. Authority for the adoption of the amendments proposed herein is contained in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

17. Pursuant to applicable procedures set out in § 1.415 of the Commission's rules, interested parties may file comments on or before January 10, 1969, and reply comments on or before January 20, 1969. All submissions by parties to this proceeding or by persons acting in behalf of such parties must be made in written comments, reply comments or other appropriate pleadings.

18. In accordance with the provisions of § 1.419 of the rules, an original and 14 copies of all written comments, replies, pleadings, briefs, or other documents shall be furnished the Commission.

Adopted: November 26, 1968.

Released: November 29, 1968.

FEDERAL COMMUNICATIONS COMMISSION,[5]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 68–14509; Filed, Dec. 3, 1968; 8:50 a.m.]

[5] Commissioner Wadsworth absent.

## [ 47 CFR Part 73 ]

[Docket No. 18390, RM–1354; FCC 68–1148]

## EDUCATIONAL NONCOMMERCIAL RESERVATION IN NEW ORLEANS, LA.

### Table of Assignments

In the matter of amendment of § 73.606(b) of the Commission's rules and regulations, Television Table of Assignments (New Orleans, La.).

1. Notice is hereby given of proposed rule making to change the educational noncommercial reservation from Channel 8 to Channel 12 at New Orleans, La. We also propose, if this rule change is adopted, to simultaneously modify the licenses of the affected stations on Channels 8 and 12.

2. This change is proposed in a joint petition filed on September 30, 1968, by The Greater New Orleans Educational Television Foundation, Inc., and Screen Gems Broadcasting of Louisiana, Inc.,[1] respectively licensees of ETV Station WYES–TV (Channel *8), and WVUE (Channel 12). The petitioners have agreed—contingent on the reassignment and appropriate license modifications being made—that Screen Gems (a) lease to the Foundation the Chalmette Tower from which Station WVUE transmits, for $50 per month for 99 years; (b) contribute $700 thousand to the Foundation; (c) reimburse the Foundation for operating expenses (up to 145 man-hours per week for transmitter operations, and repairs and maintenace, which is estimated at a value of $35,000 per year); (d) pay for the cost of moving the Foundation's transmitter equipment to the Chalmette site; and (e) to make available to the Foundation at no charge certain documentary programing suitable for educational broadcast use to which Screen Gems, Inc., the parent of the licensee of Station WVUE, has television rights in the New Orleans market. The parties also ask that, simultaneously with the decision after rule-making changing the channel reserved for education, the Commission modify the licenses of WYES–TV and WVUE to specify the new channels, and issue other new and changed authorizations to accomplish the changeover, including authorization to WVUE to construct a new tower near its present Chalmette tower which WYES–TV would now use.

3. Screen Gems is motivated by a desire to provide service including ABC network programing and of a local nature (e.g., news) to areas beyond the New Orleans Metropolitan Area where it is unable to serve because of the protection it must give to cochannel Station WJTV, Jackson, Miss., due to a mileage separation shortage (about 30 miles less than the 190 miles required by § 73.610(b)).[2] It would thus become more competitive with Stations WWL–TV and WDSU–TV.[3]

4. The proposed channel exchange, it is said, would substantially relieve ETV Station WYES–TV from its present plight, which it is anticipated will worsen. While Station WYES–TV has operated at maximum power (316 kw.) since September 16, 1965, it does not provide satisfactory service because its antenna atop the Hibernia Bank Building in downtown New Orleans is only 400 feet above average terrain. This inadequacy will increase because current buildings and proposed construction in the immediate vicinity are and will be at greater heights. The Foundation's desire to obviate this problem and to provide better service including color broadcast (the latter alone at an estimated cost of at least $1.8 million) is unlikely to bear fruition in the light of the lack of an increased funding over the years. It received $238,644 in supporting contributions and operating revenues in 1967 [4]; $264,621 in fiscal 1966; $197,496 in fiscal 1965; $313,727 in 1964; $245,068 in 1963; and $221,948 in 1962. During these fund raising campaigns, an oft-repeated inquiry is when Station WYES–TV will commence regular color broadcasting. This fluctuation of receipts, the Foundation states, has precluded it from planning an expanded operation each successive year. If the exchange is permitted, however, the immediate benefits are a $4,200 per year saving for rent, about $35,000 per year for costs of operation, $700,000 cash over a 4-year period, and, more importantly, an improved broadcasting facility serving a greater area and population with the capability to broadcast in color. The Foundation

[1] The petitioners hereafter are sometimes referred to as the "Foundation" or "Screen Gems". No statements supporting or opposing the petition were filed.

[2] For background and history, see Memorandum Opinion and Order, Docket 13340, adopted Dec. 6, 1961, 21 R.R. 1710a, 1710f; and New Orleans Television Corp., 23 R.R. 1113, aff'd sub nom. Capitol Broadcasting Co. v. FCC, 324 F. 2d 402 (C.A.D.C.).

[3] The following from the current Television Factbook (No. 38) and the APB 1968 Television Market Analysis is pertinent:

| | Network base hourly rate | Total households | TV homes | Net weekly circulation | Average daily circulation |
|---|---|---|---|---|---|
| WVUE | $950 | 510, 500 | 473, 100 | 371, 200 | 245, 600 |
| WWL–TV | 1150 | 607, 000 | 555, 400 | 428, 100 | 312, 800 |
| WDSU–TV | 1400 | 562, 400 | 516, 200 | 438, 100 | 323, 700 |

[4] The total of funds for support for 1967 was $433,484. The source of the remainder is not stated, and we assume that it represents amounts received from the Ford Foundation and like sources.

feels that in these circumstances it will be better able to fulfill its role as an ETV outlet in one of the South's outstanding centers of higher education [5] and an area of substantial growth.[6] The Foundation, as concerns WYES–TV's needs and opportunities, points to New Orleans as a center of education and cultural organizations, musicians, world trade associations, and a famous mecca for tourists.

5. If the proposed change is made, Station WYES–TV's coverage as compared to the present would be:

| | Present | Proposed |
|---|---|---|
| Grade A: | | |
| Area | 2,364 sq. mi. | 3,527 sq. mi. |
| Population | 937,031 | 968,031. |
| Grade B: | | |
| Area | 5,986 sq. mi. | 7,304 sq. mi. |
| Population | 1,125,909 | 1,224,385. |

While the population gain is small compared to the area gain, the areas of gain—particularly to the northeast—are where the population is increasing. The comparable showing of Station WVUE is as follows:

| | Present | Proposed |
|---|---|---|
| Grade A: | | |
| Area | 3,529 sq. mi. | 4,838 sq. mi. |
| Population | 968,031 | 1,943,218. |
| Grade B: | | |
| Area | 7,304 sq. mi. | 8,923 sq. mi. |
| Population | 1,224,385 | 1,280,637 |

6. There are a number of tangible benefits that would accrue to the Foundation: Additional production facilities and additional program staff personnel. The Foundation intends to supplement much of its programing from outside sources with its own productions, and feels that it would have an opportunity to develop innovative programing. Station WYES–TV's management and staff in a statement entitled "Areas of Future Programing Interest" contemplate various specified significant program undertakings which cannot be broadcast with present staff time, and monetary limitations.

7. It is urged that the exchange to better technical facilities and the availability of additional financing would enable Station WYES–TV in large measure to attain the hallmarks of what the Carnegie Commission on Educational Television stated were needed by ETV stations generally; see Public Television, A Program For Action, pp. 34, 79, and 91. Station WYES–TV, in this respect, would qualify as a "key station", one located in a large metropolitan area capable of producing an hour per week of national programing in color and 10 hours of local and exchange programing in color. The change in WYES–TV's facilities certainly would put it in a better position to overcome unfavorable community reactions to its present limitations. While the Foundation's agreement with Screen Gems will not completely obviate Station WYES–TV's financial problems, the fact that the station will be able to do more, it is felt, would enhance the likelihood of support from the community at large and local groups—foundations, school boards, and institutions.

8. From the foregoing, it tentatively appears that the public interest, convenience, and necessity would be served by the proposed interchange of the educational noncommercial reservation at New Orleans from Channel 8 to Channel 12. On the one hand, the Foundation, licensee of ETV Station WYES–TV, would be given an enhanced facility without cost to it, a reduction in operating cost through subsidy, and $700,000 in cash over a 4-year period. On the other hand, Screen Gems, licensee of Station WVUE, would be able to obtain a channel without the need to provide equivalent protection to the north and east, in the direction of New Orleans population growth, thus enabling it to become more competitive with Stations WWL–TV (CBS) and WDSU–TV (NBC). The change would also increase the competitive equality of the third national network, ABC, in a major market. While we are reluctant to take steps which limit the potential development of educational television (here, reserving a "short-spaced" channel with limited coverage because of protection requirements), under the particular circumstances here it appears that the public interest will be served by the proposed change. The ETV station will get facilities apparently more than it would otherwise be able to afford at present or in the near future, and in other respects significantly improve its service to the public. Under the particular circumstances here, it appears that the change in the educational reservation at New Orleans would serve the public interest, and it is proposed herein. If we finally adopt the proposed channel changes, we would also take action simultaneously to modify the licenses of WYES–TV and WVUE to specify Channels 12 and 8 respectively, in lieu of their present channel assignments.

9. Accordingly, pursuant to authority in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended, it is proposed to amend § 73.606 (b) of the Commission's rules and regulations by changing the educational noncommercial reservation at New Orleans from Channel 8 to Channel 12.

10. Pursuant to applicable procedures set out in § 1.415 of the Commission's rules, interested parties may file comments on or before January 10, 1969, and reply comments on or before January 20, 1969. All submissions by parties to this proceeding or by persons acting in behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings.

11. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all written comments, replies, pleadings, briefs, or other documents shall be furnished the Commission.

Adopted: November 26, 1968.

Released: November 29, 1968.

FEDERAL COMMUNICATIONS COMMISSION,[7]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 68–14510; Filed, Dec. 3, 1968; 8:50 a.m.]

[5] Accredited collegiate and graduate schools include: Tulane University; Loyola University; Louisiana State University in New Orleans; H. Sophie Newcomb College for Women; St. Mary's Dominican College; Dillard University; Xavier University; Southern University; Delgado College; Tulane University Medical School; and the Medical School of Louisiana State University. There also are more than 380 private, parochial, public, and business schools in metropolitan New Orleans.

[6] The 1960 Census reports an SMSA population of 868,480. It was 685,405 in 1950. According to Sales Management Survey of Buying Power (June 1968), it had increased to 1,075,400 as of Dec. 31, 1967.

[7] Commissioner Wadsworth absent. Commissioner Johnson concurring in the result.

# SECURITIES AND EXCHANGE COMMISSION

## [ 17 CFR Part 240 ]

[Release 34–8455]

## BROKER-DEALER ADVERTISING, SALES COMMUNICATIONS AND RELATED RULES

### Extension of Period for Comments

Pursuant to requests from several interested individuals and groups, the Securities and Exchange Commission has extended to December 16, 1968, the period within which to submit views and comments upon its proposals of October 10, 1968, contained in Securities Exchange Act Release No. 8425, and in the FEDERAL REGISTER of October 23, 1968 (33 F.R. 15668), to adopt Rule 10b–15 (17 CFR 240.10b–15), and to amend Rules 17a–3 and 17a–4 (17 CFR 240.17a–3 and 17a–4) under the Securities Exchange Act of 1934. The proposed rules would establish standards for the preparation of market letters, sales literature and advertisements disseminated by brokers and dealers.

By the Commission.

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

NOVEMBER 19, 1968.

[F.R. Doc. 68–14463; Filed, Dec. 3, 1968; 8:47 a.m.]

## [ 17 CFR Part 275 ]

[Release IA–238]

## COMMUNICATIONS BY INVESTMENT ADVISERS

### Extension of Period for Comments

Pursuant to requests from several interested individuals and groups, the Securities and Exchange Commission has extended to December 16, 1968, the period within which to submit views and comments upon its proposals of October 10, 1968, contained in Investment

Advisers Act Release No. 231, and in the FEDERAL REGISTER of October 23, 1968, (33 F.R. 15670), to adopt Rule 206(4)-3 (17 CFR 275.206(4)-3), and to amend Rule 206(4)-1 (17 CFR 275.206(4)-1), under the Investment Advisers Act of 1940. The proposed rules would establish standards for investment advisory communications published, circulated or distributed by investment advisers.

By the Commission.

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

NOVEMBER 19, 1968.

F.R. Doc. 68-14464; Filed, Dec. 3, 1968; 8:47 a.m.]

# Notices

## FEDERAL POWER COMMISSION

[Docket No. RI69-241]

### MOBIL OIL CORP.

### Order Providing for Hearing on and Suspension of Proposed Change in Rate, and Allowing Rate Change To Become Effective Subject to Refund

NOVEMBER 21, 1968.

Respondent named herein has filed a proposed change in rate and charge of a currently effective rate schedule for the sale of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon a hearing regarding the lawfulness of the proposed change, and that the supplement herein be suspended and its use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, a public hearing shall be held concerning the lawfulness of the proposed change.

(B) Pending hearing and decision thereon, the rate supplement herein is suspended and its use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act: *Provided, however,* That the supplement to the rate schedule filed by Respondent shall become effective subject to refund on the date and in the manner herein prescribed if within 20 days from the date of the issuance of this order Respondent shall execute and file under its above-designated docket number with the Secretary of the Commission its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of a copy thereof upon the purchaser under the rate schedule involved. Unless Respondent is advised to the contrary within 15 days after the filing of its agreement and undertaking, such agreement and undertaking shall be deemed to have been accepted.

(C) Until otherwise ordered by the Commission, neither the suspended supplement, nor the rate schedule sought to be altered, shall be changed until disposition of this proceeding or expiration of the suspension period.

(D) Notices of intervention 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 and 1.37(f)) on or before January 8, 1969.

By the Commission.

[SEAL] KENNETH F. PLUMB,
*Acting Secretary.*

APPENDIX A

| Docket No. | Respondent | Rate schedule No. | Supplement No. | Purchaser and producing area | Amount of annual increase | Date filing tendered | Effective date unless suspended | Date suspended until— | Cents per Mcf: Rate in effect | Cents per Mcf: Proposed increased rate | Rate in effect subject to refund in dockets Nos. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| RI69-241 | Mobil Oil Corp., Post Office Box 1774, Houston, Tex. 77001. | [1] 340 | 5 | Kansas-Nebraska Natural Gas Co., Inc. (Syracuse Field, Hamilton County, Kans.). | $749 | 10-25-68 | [2] 12-1-68 | [3] 12-2-68 | [6] 12.568 | [4 5 6] 13.574 | |

[1] Basic contract dated after Sept. 28, 1960, the date of issuance of the Commission's statement of general policy No. 61-1. Area initial rate ceiling is 16.087 cents at 14.73 p.s.i.a.
[2] The stated effective date is the effective date requested by Respondent.
[3] The suspension period is limited to 1 day.
[4] Periodic rate increase.
[5] Pressure base is 14.73 p.s.i.a.
[6] Subject to a downward B.t.u. adjustment.

The contract related to Mobil Oil Corp.'s (Mobil) rate filing was executed subsequent to September 28, 1960, the date of issuance of the Commission's statement of general policy No. 61-1, as amended, and the proposed increased rate of 13.574 cents per Mcf exceeds the area increased rate ceiling of 11.06 cents per Mcf for the Kansas area but does not exceed the initial service ceiling of 16.087 cents per Mcf at 14.73 p.s.i.a. established for the area involved. We believe, in this situation, Mobil's proposed rate filing should be suspended for one day from December 1, 1968, the proposed effective date.

[F.R. Doc. 68-14320; Filed, Dec. 3, 1968; 8:45 a.m.]

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[Docket Nos. RI69-227 etc.]

### PAN AMERICAN PETROLEUM CORP. ET AL.

### Order Providing for Hearings on and Suspension of Proposed Changes in Rates [1]

NOVEMBER 21, 1968.

The Respondents named herein have filed proposed increased rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR, Ch. I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention 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 and 1.37(f)) on or before January 8, 1969.

By the Commission.

[SEAL] KENNETH F. PLUMB,
*Acting Secretary.*

[1] Does not consolidate for hearing or dispose of the several matters herein.

APPENDIX A

| Docket No. | Respondent | Rate schedule No. | Supplement No. | Purchaser and producing area | Amount of annual increase | Date filing tendered | Effective date unless suspended | Date suspended until— | Cents per Mcf: Rate in effect | Cents per Mcf: Proposed increased rate | Rate in effect subject to refund in dockets Nos. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| RI69-227 | Pan American Petroleum Corp., Post Office Box 1410, Fort Worth, Tex. 76101. | 296 | 4 | Transwestern Pipeline Co. (Mocane Field, Beaver County, Okla.) (Panhandle Area). | $6,900 | 10-25-68 | [2] 11-25-68 | 4-25-69 | [5] 17.0 | [3 4 5] 18.0 | |
| | do | 299 | 1 | do | 1,520 | 10-25-68 | [2] 11-25-68 | 4-25-69 | [5] 17.0 | [3 4 5] 18.0 | |
| | do | 300 | 3 | do | 190 | 10-25-68 | [2] 11-25-68 | 4-25-69 | [5] 17.0 | [3 4 5] 18.0 | |
| | do | 516 | 1 | Texas Gas Transmission Corp. (North Shongaloo-Red Rock Field, Webster Parish La.) (North Louisiana Area). | 14,640 | 11- 4-68 | [6] 12- 5-68 | 5- 5-69 | [5] 18.75 | [5 7 8] 19.75 | |
| RI69-228 | Pan American Petroleum Corp. (Operator) et al. | 330 | [9] 35 | Michigan Wisconsin Pipe Line Co. (Woodward Gas Area, Major County, Okla.) (Oklahoma "Other" Area), and (Woodward County, Okla.) (Panhandle Area). | 1,590 | 10-30-68 | [2] 11-30-68 | 4-30-69 | [9 11 12] 16.5 | [4 10 11 12] 19.5 | |
| | | | | | 200 | 10-30-68 | [2] 11-30-68 | 4-30-69 | [9 13 14] 18.5 | [4 10 13 14] 19.5 | |
| RI69-229 | James W. Witherspoon, Post Office Box 1818, Hereford, Tex. 79045. | 1 | 2 | El Paso Natural Gas Co. (West Panhandle Field, Donley County, Tex.) (RR. District No. 10). | 113 | 11- 4-68 | [6] 12- 5-68 | 5- 5-69 | 13.0 | [4 15] 14.0 | RI63-196. |
| RI69-230 | Champlin Petroleum Co. (Operator) et al., Post Office Box 9365, Fort Worth, Tex. 76107. | 75 | 1 | Lone Star Gas Co. (Hugoton Field, Finney County, Kans.). | 4,250 | 10-31-68 | [2] 12- 1-68 | 5- 1-69 | [5] 11.0 | [4 5 15] 12.0 | |
| RI69-231 | Atlantic Richfield (Operator) et al., Post Office Box 2819, Dallas, Tex. 75221. | 216 | 7 | Northern Natural Gas Co. (Guymon-Hugoton Field, Beaver County, Okla.) (Panhandle Area). | 617 | 11- 1-68 | [2] 1- 1-69 | 6- 1-69 | [5 16] 17.515 | [4 5 15 16] 18.515 | RI68-91. |
| RI69-232 | Wood Oil Co., 800 Thurston National Bldg., Tulsa, Okla. 74103. | 7 | 2 | Plateau Natural Gas Co. (Hugoton Field, Kearny County, Kans.). | 514 | 11- 4-68 | [2] 1- 1-69 | 6- 1-69 | 13.5 | [4 15] 14.5 | RI68-262. |
| RI69-233 | Amerada Petroleum Corp. (Operator), et al., Post Office Box 2040, Tulsa, Okla. 74102. | 105 | 5 | Panhandle Eastern Pipe Line Co. (South Dacoma Field, Woods County, Okla.). | 303 | 11- 4-68 | [6] 12- 5-68 | 5- 5-69 | [17 18] 18.052 | [4 15 17 18] 20.704 | RI68-120. |
| RI69-234 | Union Oil Co. of California, Union Oil Center, Los Angeles, Calif. | 155 | 2 | Arkansas Louisiana Gas Co. (Southeast Ames Field, Major County, Okla.) (Oklahoma "Other" Area). | 550 | 11- 4-68 | [2] 12-11-68 | 5-11-69 | 15.0 | [4 15] 16.0 | |
| RI69-235 | Gulf Oil Corp. (Operator) et al., Post Office Box 1589, Tulsa, Okla. 74102. | 314 | 1 | Michigan Wisconsin Pipe Line Co. (Northeast Cheyenne Valley Field, Major County, Okla.) (Oklahoma "Other" Area). | 28,125 | 11- 1-68 | [2] 12- 1-68 | 5- 1-69 | [20] 16.28 | [4 19 20] 18.53 | |
| RI69-236 | Champlin Petroleum Co., Post Office Box 9365, Fort Worth, Tex. 76107. | 72 | 3 | Panhandle Eastern Pipe Line Co. (Hugoton Field, Texas County, Okla.) (Panhandle Area). | 420 | 10-31-68 | [2] 12- 1-68 | 5- 1-69 | 13.0 | [4 15] 14.0 | RI64-282. |
| RI69-237 | Investors Oil & Gas, Inc., Post Office Box 1214, Liberal, Kans. 67901. | 1 | 2 | Cities Service Gas Co. (Logan County, Okla.) (Oklahoma "Other" Area). | 78 | 11- 4-68 | [6] 12- 5-68 | 5- 5-68 | [5] 12.0 | [4 5 15] 13.0 | |
| RI69-238 | Gulf Oil Corp., Pos Office Box 1589, Tulsa, Okla. 74102, Attn: Arthur F. Whitt, Esq. | | 9 | Florida Gas Transmission Co. (East Corpus Christi Bay Field et al., Nueces County, Tex.) (RR. District No. 4). | 35,588 | 10-28-68 | [2] 12- 1-68 | 5- 1-69 | [5 23] 16.5 | [4 5 21 22] 17.8 | RI65-599. |
| | | | | | 114,975 | 10-28-68 | [2] 12- 1-68 | 5- 1-69 | [5 24] 16.0 | [4 5 21 22] 17.8 | |
| RI69-239 | Gulf Oil Corp. et al | 241 | 7 | Natural Gas Pipeline Co. of America (Escobas and Martinez Fields, Jim Hogg and Zapata Counties, Tex.) (RR. District No. 4). | 41,875 | 10-28-68 | [2] 12- 1-68 | 5- 1-69 | [25] 16.0 | [4 25] 18.5 | |
| RI69-240 | Northern Pump Co. (Operator) et al., 1915 51st Ave. North, Minneapolis, Minn. 55430. | 34 | 3 | Texas Eastern Transmission Corp. (Mercedes Field, Hidalgo County, Tex.) (RR. District No. 4). | 1,650 | 10-31-68 | [2] 12- 1-68 | 5- 1-69 | [5] 15.6 | [4 5 15] 16.6 | RI64-434. |

[2] The stated effective date is the effective date requested by Respondent.
[3] "Fractured" rate increase. Respondent contractually due 19.5 cents per Mcf.
[4] Pressure base is 14.65 p.s.i.a.
[5] Subject to a downward B.t.u. adjustment.
[6] The stated effective date is the first day after expiration of the statutory notice.
[7] Filing from initial certificated rate of 17 cents plus 1.75 cents tax reimbursement to initial contract rate of 18 cents plus 1.75 cents tax reimbursement.
[8] Pressure base is 15.025 p.s.i.a.
[9] Pertains only to acreage added by Supplements Nos. 27 and 30.
[10] Filing from initial certificated base rate to a fractured rate. Initial contract base rate is 19.5 cents and Respondent is now contractually due periodic increase to 22 cents base rate.
[11] Includes base rate of 15 cents before increase and base rate of 18 cents after increase plus 1.5 cents upward B.t.u. adjustment (1,150 B.t.u. gas). Base rates subject to upward and downward B.t.u. adjustment.
[12] Oklahoma "Other" Area.
[13] Includes base rate of 17 cents before increase and base rate of 18 cents after increase plus 1.5 cents upward B.t.u. adjustment (1,150 B.t.u. gas). Base rate subject to upward and downward B.t.u. adjustment.
[14] Oklahoma Panhandle Area.
[15] Periodic rate increase.
[16] Includes 0.015 cent tax reimbursement.
[17] Includes base rate of 17 cents plus 1.037 cents upward B.t.u. adjustment (1,061 B.t.u. gas) plus 0.015 cent tax reimbursement before increase and base rate of 19.5 cents plus 1.189 cents upward B.t.u. adjustment plus 0.015 cent tax reimbursement after increase.
[18] Subject to upward and downward B.t.u. adjustment.
[19] "Fractured" rate increase. Respondent due a base rate of 19.5 cents per Mcf.
[20] Includes base rate of 15 cents before rate increase and base rate of 17.25 cents after increase plus 1.28 cents upward B.t.u. adjustment. Base rate subject to upward and downward B.t.u. adjustment.
[21] "Fractured" rate increase. Respondent contractually due a rate of 18.5 cents per Mcf.
[22] Rate applicable to gas produced from deeper reserves in Corpus Christi Bay and Encinal Channel Fields.
[23] Applicable to basic acreage.
[24] Conditioned initial rate for acreage added by Supplement No. 6.
[25] "Fractured" rate increase. Respondent contractually due a rate of 19 cents per Mcf.
[26] Initial "in-line" rate as provided by Opinion No. 422, issued Mar. 23, 1964, in Docket Nos. CI62-1544 et al.

James W. Witherspoon requests a retroactive effective date of January 1, 1968, for his proposed rate increase. Amerada Petroleum Corp. (Operator) et al., request that their propopsed rate increase be permitted to become effective as of December 1, 1968. Pan American Petroleum Corp. requests an effective date of December 1, 1968, for Supplement No. 1 to its FPC Gas Rate Schedule No. 516. Investors Oil and Gas, Inc., requests a retroactive effective date of May 22, 1968, for its proposed rate increase. Good cause has not been shown for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to permit earlier effective dates for the aforementioned producers' rate filings and such requests are denied.

All of the producers' proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's statement of general policy No. 61-1, as amended (18 CFR 2.56).

[F.R. Doc. 68-14319; Filed, Dec. 3, 1968; 8:45 a.m.]

[Dockets Nos. RI69–242 etc.]

## PAN AMERICAN PETROLEUM CORP. ET AL.

### Order Providing for Hearings on and Suspension of Proposed Changes in Rates [1]

NOVEMBER 21, 1968.

The Respondents named herein have filed proposed increased rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR, Ch. I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention 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 and 1.37(f)) on or before January 8, 1969.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

[1] Does not consolidate for hearing or dispose of the several matters herein.

APPENDIX A

| Docket No. | Respondent | Rate schedule No. | Supplement No. | Purchaser and producing area | Amount of annual increase | Date filing tendered | Effective date unless suspended | Date suspended until— | Cents per Mcf: Rate in effect | Cents per Mcf: Proposed increased rate | Rate in effect subject to refund in dockets Nos. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| RI69-242 | Pan American Petroleum Corp. et al., Post Office Box 1410, Fort Worth, Tex. 76101. | 68 | 11 | El Paso Natural Gas Co. (Kelly Snyder Plant, Scurry County, Tex.) (RR. District No. 8–A). | 810 | 10–23–68 | [2] 11–23–68 | 4–23–69 | [5] 16.20 | [3 4] 17.11 | |
| RI69-243 | do | 133 | 10 | El Paso Natural Gas Co. (Cogdell Field, Scurry County, Tex.) (RR. District No. 8–A). | 1,903 | 10–23–68 | [2] 11–23–68 | 4–23–69 | [6] 15.74 | [3 4] 17.00 | |

[2] The stated effective date is the effective date proposed by Respondent.
[3] Increase from applicable area ceiling rate to contract rate.
[4] Pressure base is 14.65 p.s.i.a.
[5] Previous rate of 17.1114 cents, effective subject to refund in Docket No. RI65–110; reduced to applicable area ceiling rate of 16.20 cents per Mcf by order issued Aug. 9, 1968, implementing Opinion Nos. 468 and 468–A.
[6] Previous rate of 17 cents, effective subject to refund in Docket No. RI65–111, reduced to applicable area ceiling rate of 15.74 cents by order issued Aug. 9, 1968, implementing Opinion Nos. 468 and 468–A.

Pan American Petroleum Corp. et al., and Pan American Petroleum Corp.'s proposed increased rates and charges relating to sales in the Permian Basin Area exceed the just and reasonable rates established by the Commission in Opinion No. 468, as amended, and should be suspended for 5 months from November 23, 1968, the proposed effective date, as ordered herein.

[F.R. Doc. 68–14321; Filed, Dec. 3, 1968; 8:45 a.m.]

[Docket No. RI69–244, etc.]

## PAN AMERICAN PETROLEUM CORP. ET AL.

### Order Providing for Hearings on and Suspension of Proposed Changes in Rates [1]

NOVEMBER 22, 1968.

The Respondents named herein have filed proposed increased rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders: (A) Under the Natural Gas Act, particularly Sections 4 and 15, the regulations pertaining thereto [18 CFR, Ch. I], and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention 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 and 1.37 (f)] on or before January 8, 1969.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

[1] Does not consolidate for hearing or dispose of the several matters herein.

| Docket No. | Respondent | Rate schedule No. | Supplement No. | Purchaser and producing area | Amount of annual increase | Date filing tendered | Effective date unless suspended | Date suspended until— | Cents per Mcf: Rate in effect | Cents per Mcf: Proposed increased rate | Rate in effect subject to refund in dockets Nos. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| RI69-244 | Pan American Petroleum Corp., Post Office Box 1410, Fort Worth, Tex. 76101. | 20 | 14 | El Paso Natural Gas Co., (Payton Field, Pecos County, Tex.) RR. District No. 8). | $1,137 | 10-25-68 | [2] 11-25-68 | 4-25-69 | [5] 13.69 | [3] [4] 15.72 | |
| | do | 101 | 10 | El Paso Natural Gas Co. (Justis Field, Lea County, N. Mex.). | 59 | 10-25-68 | [2] 11-25-68 | 4-25-69 | [7] 14.53 | [4] [6] 16.50 | |
| | do | 218 | 7 | El Paso Natural Gas Co. (South Andrews Devonian Field, Andrews County, Tex.) (RR. District No. 8). | 1,361 | 10-25-68 | [2] 11-25-68 | 4-25-69 | [9] 12.81 | [4] [8] 14.97 | |
| | do | 271 | 9 | El Paso Natural Gas Co. (Blinebry Field, Lea County, N. Mex.). | 260 | 10-25-68 | [2] 11-25-68 | 4-25-69 | [12] 14.88 | [4] [6] [10] [11] 16.88 | |
| | | | | | 47 | 10-25-68 | [2] 11-25-68 | 4-25-69 | [12] 14.88 | [4] [6] [11] [13] 16.43 | |
| | do | 316 | 10 | El Paso Natural Gas Co. (Spraberry Field, Reagan County, Tex.) (RR. District No. 7-C). | 220 | 10-25-68 | [2] 11-25-68 | 4-25-69 | [15] 14.5 | [4] [14] 16.5 | |
| | do | 369 | [17] 5 | Northern Natural Gas Co. (North Puckett Field, Pecos County, Tex.) (RR. District No. 8). | 2,150 | 10-25-68 | [2] 11-25-68 | 4-25-69 | [17] [18] 15.0 | [4] [16] [17] 16.0 | |
| | do | 328 | 3 | Northern Natural Gas Co. (Yates Gasoline Plant, Pecos County, Tex.) (RR. District No. 8). | 140 | 10-25-68 | [2] 11-25-68 | 4-25-69 | 14.5 | [4] [6] 15.0 | |
| | do | 495 | 3 | El Paso Natural Gas Co. (Sonora Field, Sutton County, Tex.) (RR. District No. 7-C). | 6,300 | 10-25-68 | [2] 11-25-68 | 4-25-69 | 17.34 | [4] [6] 17.5 | |
| RI69-245 | Pan American Petroleum Corp. (Operator). | 315 | 8 | Northern Natural Gas Co. (Prentice Gasoline Plant, Yokum County, Tex.) (RR. District No. 8). | [10] 2,223 | 10-30-68 | [2] 12- 1-68 | 5- 1-69 | 14.5 | [4] [6] 15.06 | |
| RI69-246 | P. F. Brown, Post Office Box 1642, Midland, Tex. 79701. | 1 | 4 | do | 1,030 | 10-30-68 | [2] 12- 1-68 | 5- 1-69 | 14.5 | [4] [6] 15.06 | |
| RI69-247 | Ethyl Jo Davis, c/o Great Western Drilling Co., Post Office Box 1659, Midland, Tex. 79701. | 1 | 4 | do | 1,030 | 10-30-68 | [2] 12- 1-68 | 5- 1-69 | 14.5 | [4] [6] 15.06 | |
| RI69-248 | J. A. Daugherty, c/o Great Western Drilling Co., Post Office Box 1659, Midland, Tex. 79701. | 1 | 4 | do | 1,030 | 10-30-68 | [2] 12- 1-68 | 5- 1-69 | 14.5 | [4] [6] 15.06 | |
| RI69-249 | Warren Scarbrough, c/o Great Western Drilling Co., Post Office Box 1659, Midland, Tex. 79701. | 1 | 4 | do | 1,030 | 10-30-68 | [2] 12- 1-68 | 5- 1-69 | 14.5 | [4] [6] 15.06 | |
| RI69-250 | D. H. Thornbury, c/o Great Western Drilling Co., Post Office Box 1659, Midland, Tex. 79701. | 1 | 4 | do | 1,030 | 10-30-68 | [2] 12- 1-68 | 5- 1-69 | 14.5 | [4] [6] 15.06 | |
| RI69-251 | K. W. Davis, Jr., c/o Great Western Drilling Co., Post Office Box 1659, Midland, Tex. 79701. | 1 | 4 | do | 1,030 | 10-30-68 | [2] 12- 1-68 | 5- 1-69 | 14.5 | [4] [6] 15.06 | |

[2] The stated effective date is the effective date requested by Respondent.
[3] "Fractured" rate increase. Contract provides for 16.5 cents rate effective Aug. 1, 1964.
[4] Pressure base is 14.65 p.s.i.a.
[5] Previous rates of 16.7228 cents for high pressure gas and 16.2160 cents for low pressure gas effective subject to refund in Docket No. RI65-117, reduced to applicable area ceiling rate of 13.69 cents by order issued Aug. 9, 1968, implementing Opinion Nos. 468 and 468-A.
[6] Increase from applicable area ceiling rate to contract rate.
[7] Previous rate of 16.5 cents suspended in Docket No. RI65-111 disallowed by order issued Aug. 9, 1968, implementing Opinion Nos. 468 and 468-A.
[8] "Fractured" rate increase. Contract provides for rate of 15.2025 cents effective Aug. 1, 1964.
[9] Previous rate of 15.2025 cents effective subject to refund in Docket No. RI65-117 reduced to applicable area ceiling rate of 12.81 cents by order issued Aug. 9, 1968, implementing Opinion Nos. 468 and 468-A.
[10] High pressure gas not requiring compression.
[11] Includes partial reimbursement for the full 2.55 percent New Mexico Emergency School Tax.
[12] Previous rates of 16.8793 cents for high pressure gas and 16.4223 cents for low pressure gas, effective subject to refund in Docket No. RI65-115, reduced to applicable area ceiling rate of 14.88 cents by order issued Aug. 9, 1968, implementing Opinion Nos. 468 and 468-A.
[13] Low pressure gas requiring compression.
[14] "Fractured" rate increase. Contract provides for 18-cent rate effective Aug. 1, 1964.
[15] Previous rate of 18.2430 cents effective subject to refund in Docket No. RI65-473 reduced to applicable area ceiling rate of 14.5 cents by order issued Aug. 9, 1968, implementing Opinion Nos. 468 and 468-A.
[16] Periodic rate increase.
[17] Applicable to casinghead gas only.
[18] Initial rate.
[1] Applicable to Pan American's interest only.

Pan American Petroleum Corp.'s (Pan American) proposed rate increases contained in Supplement No. 9 to its FPC Gas Rate Schedule No. 271 reflect partial reimbursement for the full 2.55 percent New Mexico Emergency School Tax which was increased from 2 percent to 2.55 percent on April 1, 1963. The buyer, El Paso Natural Gas Co. (El Paso), in accordance with its policy of protesting tax filings proposing reimbursement for the New Mexico Emergency School Tax in excess of 0.55 percent, is expected to file a protest to these rate increases. El Paso questions the right of the producer under the tax reimbursement clause to file a rate increase reflecting tax reimbursement computed on the basis of an increase in tax rate by the New Mexico Legislature in excess of 0.55 percent. While El Paso concedes that the New Mexico tax legislation effected a higher rate of at least 0.55 percent, it claims there is controversy as to whether or not the new legislation effected an increased rate in excess of 0.55 percent. In view of the contractual problem presented, we shall provide that the hearing herein shall concern itself with the contractual basis for the rate filing, as well as the statutory lawfulness of Pan American's proposed increased rates and charges.

All of the producers' proposed increased rates and charges relating to sales in the Permian Basin Area exceed the just and reasonable rates established by the Commission in Opinion No. 468, as amended, and should be suspended for five months as ordered herein.

[F.R. Doc. 68-14367; Filed, Dec. 3, 1968; 8:45 a.m.]

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[Docket No. RP66-7]

## OHIO FUEL GAS CO.

### Notice of Motion To Amend Rate Settlement Order and Agreement

NOVEMBER 25, 1968.

Notice is hereby given that The Ohio Fuel Gas Co. (Ohio Fuel) on November 20, 1968, filed a motion to amend the Commission's order issued in the above proceeding on January 25, 1968, and to effectuate a modification of the settlement agreement approved by that order.

One of the provisions of the settlement agreement requires Ohio Fuel to reduce its settlement rates to reflect future gas pipeline supplier rate reductions in the level of the rates effective at the time of settlement. The modification of the settlement agreement sought by the motion would allow Ohio Fuel to adjust the settlement rates to reflect gas pipeline supplier rate increases over and above the supplier rates included in the settlement cost of service. As modified in this manner, the agreement would allow Ohio Fuel to reflect both decreases and increases in supplier rates in accordance with the procedures contained in the approved agreement.

Ohio Fuel states that two of its principal pipeline suppliers have filed pro-

posed rate increases and that other suppliers may also be expected to file rate increases. The granting of the motion, Ohio Fuel urges, is critical both to the company and to its customers for two basic reasons: (1) the avoidance of successive, pyramided formal rate proceedings, and (2) the assurance of Ohio Fuel's ability to finance construction required to meet expanding customer needs.

Protests, objections, or comments may be filed with the Federal Power Commission, Washington, D.C. 20426, pursuant to the Commission's rules of practice and procedure, on or before December 4, 1968.

GORDON M. GRANT,
*Secretary.*

[F.R. Doc. 68-14459; Filed, Dec. 3, 1968; 8:46 a.m.]

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[Docket No. CP69-139]

### TEXAS GAS TRANSMISSION CORP.

#### Notice of Application; Correction

NOVEMBER 21, 1968.

In the notice of application, issued November 18, 1968, and published in the FEDERAL REGISTER November 23, 1968 (F.R. 33 (17377)), page 1, line 18, change "office" to read "orifice".

GORDON M. GRANT,
*Secretary.*

[F.R. Doc. 68-14458; Filed, Dec. 3, 1968; 8:45 a.m.]

# DEPARTMENT OF THE TREASURY

## Fiscal Service

[Dept. Circ. 570, 1968 Rev., Supp. No. 6]

### GUARANTEE COMPANY OF NORTH AMERICA, NEW YORK

#### Termination of Authority To Qualify as Surety on Federal Bonds

Notice is hereby given that the certificate of authority issued by the Secretary of the Treasury to The Guarantee Company of North America, New York, New York, N.Y., under sections 6 to 13 of title 6 of the United States Code, to qualify as an acceptable surety on recognizances, stipulations, bonds and undertakings permitted or required by the laws of the United States, is hereby terminated.

The Treasury has been advised that The Guarantee Company of North America, New York changed its name to Leatherby Insurance Co. and has discontinued writing fidelity and surety business.

Bond-approving officers of the Government should, in instances where such action is necessary, secure new bonds with acceptable sureties in lieu of bonds executed by The Guarantee Company of North America, New York.

Dated: November 29, 1968.

[SEAL] JOHN K. CARLOCK,
*Fiscal Assistant Secretary.*

[F.R. Doc. 68-14516; Filed, Dec. 3, 1968; 8:51 a.m.]

# DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[A 1096]

### ARIZONA

#### Notice of Proposed Classification of Public Lands for Disposal by Exchange

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411–18) it is proposed to classify the public lands described below for disposal by exchange in aid of a Federal land program. The transfer will be accomplished under the authority of section 8(b) of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272) as amended, or under the Act of October 8, 1964 (16 U.S.C. 460n) in favor of the Lake Mead National Recreation Area. Publication of this notice has the effect of segregating the described lands from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, excepting exchanges as indicated above. As used herein, the term "public lands" means any lands withdrawn or reserved by Executive No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

2. The public lands proposed for classification in this notice are shown on maps on file and available for inspection, in the Phoenix District Office, and Land Office, Bureau of Land Management, Federal Building, Phoenix, Ariz.

3. The lands involved are described as follows:

MOHAVE COUNTY

GILA AND SALT RIVER MERIDIAN, ARIZONA

T. 21 N., R. 21 W.,
Sec. 3, excepting those lands in patented mining claims.

The area described aggregates approximately 670 acres, more or less.

4. For a period of 60 days from the date of publication of this notice in the FEDERAL REGISTER, all persons who wish to submit comments, suggestions, or objections in connection with the proposed classification may present their views in writing to the Phoenix District Manager, Bureau of Land Management, Federal Building, Phoenix, Ariz. 85025.

GLENDON E. COLLINS,
*Acting State Director.*

NOVEMBER 26, 1968.

[F.R. Doc. 68-14462; Filed, Dec. 3, 1968; 8:47 a.m.]

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## National Park Service

### CHALMETTE NATIONAL HISTORICAL PARK, LA.

#### Exclusive Jurisdiction Over Certain Lands Added to Park

Notice is hereby given that effective as of the first day of December 1968, at 12 p.m., c.s.t., the United States has accepted exclusive jurisdiction over all lands added to Chalmette National Historical Park after February 1, 1940, under authority of the act of August 10, 1939 (53 Stat. 1342; 16 U.S.C. section 231), subject to certain provisions of the Act of the Legislature of the State of Louisiana of July 5, 1942 (La. Rev. Stat. ch. 52, section 1), ceding such jurisdiction. This acceptance was effected by letter of October 18, 1968, from the Secretary of the Interior to the Governor of the State of Louisiana, receipt of which was acknowledged by the governor's office on October 21, 1968.

The effect of the acceptance is to place the entire area within Chalmette National Historical Park under the exclusive jurisdiction of the United States.

Done at the City of Washington, D.C., this 22d day of November 1968.

GEORGE B. HARTZOG, Jr.,
*Director, National Park Service.*

[F.R. Doc. 68-14455; Filed, Dec. 3, 1968; 8:46 a.m.]

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## Office of the Secretary

### WATCHES AND WATCH MOVEMENTS

#### Proposed Formula for Allocation of Quotas for Calendar Year 1969 Among Producers Located in the Virgin Islands, Guam, and American Samoa

CROSS REFERENCE: For a document issued jointly by the Department of Commerce and the Department of the Interior relating to allocation of quotas of watches and watch movements for the calendar year 1969 among producers located in the Virgin Islands, Guam, and American Samoa, see F.R. Doc. 68-14572, Commerce Department, *infra.*

# DEPARTMENT OF AGRICULTURE

## Agricultural Stabilization and Conservation Service

### SUGARCANE CROP IN PUERTO RICO

#### 1969–70 Crop Proportionate Shares; Notice of Hearing

Notice is hereby given that the Secretary of Agriculture, acting pursuant to the Sugar Act of 1948, as amended, is preparing to conduct a public hearing to receive views and recommendations from all interested persons on the possible need for establishing proportionate shares for the 1969–70 sugarcane crop in Puerto Rico.

In accordance with the provisions of paragraph (1), subsection (b) of section 302 of the Sugar Act of 1948, as amended, the Secretary must determine for each crop year whether the production of sugar from any crop of sugarcane in Puerto Rico will, in the absence of proportionate shares, be greater than the quantity needed to enable the area to meet its quota and provide a normal carryover inventory, as estimated by the Secretary for such area for the calendar year during which the larger part of

the sugar from such crop normally would be marketed. Such determination may be made only after due notice and opportunity for an informal public hearing.

The hearing on this matter will be conducted in Room 2–W, Administration Building, U.S. Department of Agriculture, Washington, D.C., beginning at 10 a.m. on December 19, 1968.

Views and recommendations are desired on all phases of the proportionate share program. They may be submitted in writing, in triplicate, at the hearing, or may be mailed to the Director, Sugar Policy Staff, Agricultural Stablization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250, postmarked not later than December 31, 1968. Interested persons will be given the opportunity at the hearing to appear and submit orally data, views, and arguments in regard to the establishment of proportionate shares.

Restrictions on the marketing of sugarcane in Puerto Rico have not been in effect since the 1955–56 crop. The area has not marketed all of its mainland basic sugar quota in recent years. Prospects for the 1968–69 crop indicate that production will again fall short of the area's mainland basic quota.

All written submissions made pursuant to this notice will be made available for public inspection at such times and places in a manner convenient to the public business (7 CFR 1.27(b)).

Signed at Washington, D.C., on November 27, 1968.

H. D. GODFREY,
*Administrator, Agricultural Stabilization and Conservation Service.*

[F.R. Doc. 68–14523; Filed, Dec. 3, 1968; 8:51 a.m.]

## Commodity Credit Corporation

[No. Ca–245, Sub. 1]

### CONTROLLER, COMMODITY CREDIT CORPORATION (DIRECTOR, FISCAL DIVISION, AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE)

### Delegation of Authority Relating to Claims by or Against Commodity Credit Corporation

Pursuant to Delegation of Authority No. Ca–245, from the Executive Vice President, Commodity Credit Corporation, published concurrently herewith, I hereby delegate to the Controller, Commodity Credit Corporation, who is Director, Fiscal Division, Agricultural Stabilization and Conservation Service, without regard to monetary limitation, the authority to determine claims uncollectible, subject to and in accordance with applicable rules and regulations promulgated by Commodity Credit Corporation. The authority delegated herein shall not be redelegated.

*Effective date:* This delegation of authority shall be effective upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on November 22, 1968.

ROLAND F. BALLOU,
*Vice President, Commodity Credit Corporation, and Deputy Administrator, Commodity Operations.*

[F.R. Doc. 68–14528; Filed, Dec. 3, 1968; 8:52 a.m.]

[No. Ca–245]

### VICE PRESIDENT, COMMODITY CREDIT CORPORATION (DEPUTY ADMINISTRATOR, COMMODITY OPERATIONS, AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE)

### Delegation of Authority Relating to Claims by or Against Commodity Credit Corporation

Pursuant to the authority vested in the Executive Vice President, Commodity Credit Corporation, by the Board of Directors of the Commodity Credit Corporation, there is hereby delegated to the Vice President, Commodity Credit Corporation, who is Deputy Administrator, Commodity Operations, Agricultural Stabilization and Conservation Service, with authority to redelegate, the following responsibilities with respect to claims by or against Commodity Credit Corporation, subject to and in accordance with applicable rules and regulations promulgated by Commodity Credit Corporation:

1. Concurrence in the interpretation of all claims policies affecting programs and functions of Commodity Credit Corporation.

2. Approval or disapproval of proposed claims actions to be taken by Commodity Credit Corporation when approval of the Executive Vice President is required for such actions.

3. Settling or adjusting any claims which the Executive Vice President may specify.

4. Settling or adjusting any claims which the director of an Agricultural Stabilization and Conservation Service division or office or a State executive director requests the Executive Vice President to settle or adjust.

5. Coordination and supervision of Commodity Credit Corporation claims activities in the Agricultural Stabilization and Conservation Service commodity offices and the divisions and offices of the Agricultural Stabilization and Conservation Service in Washington that report to the Deputy Administrator, Commodity Operations.

*Effective date:* This delegation of authority shall be effective upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on November 26, 1968.

H. D. GODFREY,
*Executive Vice President, Commodity Credit Corporation.*

[F.R. Doc. 68–14529; Filed, Dec. 3, 1968; 8:52 a.m.]

[No. Ca–246]

### VICE PRESIDENT, COMMODITY CREDIT CORPORATION (DEPUTY ADMINISTRATOR, STATE AND COUNTY OPERATIONS, AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE)

### Delegation of Authority Relating to Claims by or Against Commodity Credit Corporation

Pursuant to the authority vested in the Executive Vice President, Commodity Credit Corporation, by the Board of Directors of the Commodity Credit Corporation, there is hereby delegated to the Vice President, Commodity Credit Corporation, who is Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, with authority to redelegate, the following responsibilities with respect to claims by or against Commodity Credit Corporation, subject to and in accordance with applicable rules and regulations promulgated by the Commodity Credit Corporation:

The over-all coordination and supervision of claims activities and operations in the Agricultural Stabilization and Conservation Service, State and county offices, and in divisions of the Agricultural Stabilization and Conservation Service in Washington that report to the Deputy Administrator, State and County Operations. All matters involving the interpretation of claims policies affecting programs and functions of Commodity Credit Corporation shall require the concurrence of the Vice President, Commodity Credit Corporation, who is Deputy Administrator, Commodity Operations, Agricultural Stabilization and Conservation Service, before being put into effect.

*Effective date:* This delegation of authority shall be effective upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on November 25, 1968.

H. D. GODFREY,
*Executive Vice President, Commodity Credit Corporation.*

[F.R. Doc. 68–14530; Filed, Dec. 3, 1968; 8:52 a.m.]

[No. Ca–247]

### VICE PRESIDENT, COMMODITY CREDIT CORPORATION (DEPUTY ADMINISTRATOR, MANAGEMENT, AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE)

### Delegation of Authority Relating to Claims by or Against Commodity Credit Corporation

Pursuant to the authority vested in the Executive Vice President, Commodity Credit Corporation, by the Board of Directors of the Commodity Credit Corporation, there is hereby delegated to the Vice President, Commodity Credit Corporation, who is Deputy Administrator,

Management, Agricultural Stabilization and Conservation Service, with the authority to redelegate, the following responsibilities with respect to claims by or against Commodity Credit Corporation, subject to and in accordance with applicable rules and regulations promulgated by Commodity Credit Corporation:

The over-all coordination and supervision of claims activities and operations in the Kansas City Data Processing Center, the Management Field Office, Kansas City, the New York Field Office, and the divisions of the Agricultural Stabilization and Conservation Service in Washington that report to the Deputy Administrator, Management. All matters involving the interpretation of claims policies affecting programs and functions of Commodity Credit Corporation shall require the concurrence of the Vice President, Commodity Credit Corporation, who is Deputy Administrator, Commodity Operations, Agricultural Stabilization and Conservation Service, before being put into effect.

*Effective date:* This delegation of authority shall be effective upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on November 26, 1968.

H. D. GODFREY,
*Executive Vice President,*
*Commodity Credit Corporation.*

[F.R. Doc. 68-14531; Filed, Dec. 3, 1968; 8:52 a.m.]

## Consumer and Marketing Service

### GRAIN STANDARDS

### Grain Inspection Points in Louisiana

*Statement of considerations.* On November 6, 1968, there was published in the FEDERAL REGISTER (33 F.R. 16306) a notice announcing that the Louisiana Department of Agriculture advised that, effective December 1, 1968, it would no longer be able to provide grain inspection service at Myrtle Grove, and that a request was received from Sidney W. Provensal, Jr., asking that he be authorized to operate an official inspection agency under the U.S. Grain Standards Act (7 U.S.C. 71 et seq.) at Myrtle Grove, Plaquemines Parish, La.

Opportunity was afforded interested parties to submit written data, views, or arguments, with respect to the request to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by November 26, 1968. Some responses were received favoring the request and no responses were received opposing the request, nor did any other inspection agency request authorization to operate an official inspection agency at Myrtle Grove.

After reviewing and considering the comments, it was decided that the request should be approved. Therefore, pursuant to the U.S. Grain Standards Act, as amended the Delta Weighing and Inspection Bureau, Inc., operated by Sidney W. Provensal, Jr., is hereby authorized to operate an official inspection agency at Myrtle Grove, and the authorization to the Louisiana Department of Agriculture to operate an official inspection agency at Myrtle Grove is rescinded without prejudice.

Since the Louisiana Department of Agriculture plans to discontinue grain inspection services at Myrtle Grove effective December 1, 1968, it is essential that authorization be given to the Delta Weighing and Inspection Bureau, Inc., as soon as possible so that necessary arrangements can be made to provide inspection service on that date or as soon thereafter as possible. Therefore, under the administrative procedures provisions in 5 U.S.C., section 553, good cause is found for making this action effective less than 30 days after publication in the FEDERAL REGISTER.

This action shall become effective December 1, 1968.

(Sec. 8, 39 Stat. 485; 7 U.S.C. 84)

Done at Washington, D.C., this 29th day of November 1968.

JOHN C. BLUM,
*Acting Deputy Administrator,*
*Marketing Services.*

[F.R. Doc. 68-14524; Filed, Dec. 3, 1968; 8:51 a.m.]

## Packers and Stockyards Administration

### FARMERS' AND RANCHERS' LIVESTOCK MARKET ET AL.

### Posted Stockyards

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), on the respective dates specified below, it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302.

*Name, location of stockyard, and date of posting*

ALABAMA

Farmers' and Ranchers' Livestock Market, Uniontown, Nov. 15, 1968.

COLORADO

Livestock Exchange, Inc., Brush, Nov. 14, 1968.

MISSISSIPPI

Alcorn County Stockyard, Corinth, Oct. 25, 1968.

MISSOURI

Horsemans Paradise Barn, Raymondville, Nov. 18, 1968.

NEW YORK

Condon's Auction Market, Cherry Creek, Nov. 4, 1968.
East Winfield Livestock Market, West Winfield, Nov. 14, 1968.

PENNSYLVANIA

Cowanesque Valley Livestock Market, Knoxville, Oct. 31, 1968.

Done at Washington, D.C., this 27th day of November 1968.

G. H. HOPPER,
*Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.*

NOVEMBER 29, 1968.

[F.R. Doc. 68-14525; Filed, Dec. 3, 1968; 8:51 a.m.]

# DEPARTMENT OF COMMERCE

## Business and Defense Services Administration

### ALABAMA EDUCATIONAL TV COMMISSION

### Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 68-00676-99-69900. Applicant: Alabama Educational TV Commission, 2101 Magnolia Avenue, Suite 512, Birmingham, Ala. 35205. Article: Radio repeater units. Manufacturer: Standard Telephone & Cables Pty., Ltd., Australia. Intended use of article: The equipment is composed of spare modules for existing microwave radio equipment and are sole-source items obtainable only from the original equipment manufacturer. Application received by Commissioner of Customs: April 23, 1968. Denied without prejudice to resubmission, June 11, 1968. Resubmitted June 26, 1968. Decision: The determination required of the Secretary of Commerce by the Act cannot be made with respect to this application. Reasons: Public Law 89-651 provides, inter alia, for duty-free treatment with respect to—

> Articles entered for the use of any nonprofit institution, whether public or private, established for educational or scientific purposes * * * if no instrument or apparatus of equivalent scientific value for the purposes for which the instrument or apparatus is intended to be used is being manufactured in the United States. (Sec. 6(c)(1).)

Under the Act, the only function of the Secretary of Commerce is to determine

> whether an instrument or apparatus of equivalent scientific value to (the foreign) article, for the purposes for which the instrument or apparatus is intended to be used, is being manufactured in the United States. (Sec. 6(c)(3), headnote 6(c).)

The article which is the subject of this application is Microwave Studio-Transmitter Link equipment. This equipment

is a normal component of TV systems whether used to broadcast educational material or entertainment. The characteristics of the equipment are not dictated in any way by the nature of the material being broadcast or by the purpose for which it is being broadcast. The educational contribution of the equipment is closely analogous to that of a printing press or duplicating machine used to prepare textual material for use by students.

For the foregoing reasons, it has been determined that the foreign article does not possess any scientific value for the purposes for which it is intended to be used.

Therefore, it is not possible to make the determination of equivalency of scientific value required by the above-quoted headnote 6(c) of section 6(c)(3) of the Act.

CHARLEY M. DENTON,
*Assistant Administrator for Industry Operations, Business and Defense Services Administration.*

[F.R. Doc. 68-14451; Filed, Dec. 3, 1968; 8:46 a.m.]

## BATTELLE MEMORIAL INSTITUTE

### Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 68-00637-50-02000. Applicant: Battelle Memorial Institute, Pacific Northwest Laboratory, Post Office Box 999, Richland, Wash. 99352. Article: Sonic anemometer and anemometer-thermometer, Models PA-311 and PAT 311-1. Manufacturer: Kaijo Denki Co., Ltd., Japan. Intended use of article: The articles will be used for precise measurement of the turbulent character of the atmosphere to determine correlations between temperature fluctuation and wind fluctuation for the same point in the atmosphere as well as correlations between wind fluctuation components at a number of points. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was available within a reasonable delivery time when the applicant ordered the foreign article. Reasons: The foreign article consists of of a sonic anemometer combined with two anemometer thermometers, which measure wind and temperature variations simultaneously. The applicant's purposes include the determination of correlations between variations in wind velocity and concomitant variations in temperature occurring at the same time and at the same location, as well as correlations between wind fluctuations occurring at several different points. For this purpose, the signal from the anemometer sensor must be compatible with the thermometer sensors. Moreover, the foreign article had to be installed on location and operative by September 1, 1968. The contract for the research program was awarded to the applicant on April 25, 1968. Therefore, the delivery time is pertinent to the determination of domestic availability. One domestic manufacturer offered to furnish an anemometer without the associated temperature measuring devices, with a reported delivery time of 210 days. Another domestic manufacturer offered to build an instrument comparable to the foreign article. However, this domestic instrument was still undergoing development and, at the time of the offer, no working model was available. For the foregoing reasons, we find that no instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured and was made available to the applicant within a reasonable delivery time.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured and made available to the applicant within a reasonable delivery time.

CHARLEY M. DENTON,
*Assistant Administrator for Industry Operations, Business and Defense Services Administration.*

[F.R. Doc. 68-14450; Filed, Dec. 3, 1968; 8:46 a.m.]

## UNIVERSITY OF CALIFORNIA

### Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69-00066-00-46040. Applicant: University of California, Purchasing Department, 405 Hilgard Avenue, Los Angeles, Calif. 90024. Article: Exposure meter for Siemens Elmiskop IA Electron Miscroscope. Manufacturer: Siemens A.G., West Germany. Intended use of article: The article will be used as an accessory to an existing electron microscope to accurately preset exposure of photoplates. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: The foreign article, an exposure meter, is an accessory to an electron microscope now in the applicant's possession which was manufactured by Siemens Aktiengesellschaft, West Germany.

The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with the foreign article.

CHARLEY M. DENTON,
*Assistant Administrator for Industry Operations, Business and Defense Services Administration.*

[F.R. Doc. 68-14452; Filed, Dec. 3, 1968; 8:46 a.m.]

## UNIVERSITY OF CALIFORNIA

### Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69-00016-00-46040. Applicant: University of California, San Francisco Medical Center, 1438 South 10th Street, Richmond, Calif. 94804. Article: Short focal length. Manufacturer: Siemens AG, West Germany. Intended use of Article: The article will be used as an attachment to an existing electron microscope to improve the resolution power. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: The foreign article is a modification kit for the purpose of improving the resolution of an Elmiskop IA electron microscope now in the applicant's possession, which was manufactured by Siemens AG.

The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with the foreign article.

CHARLEY M. DENTON,
*Assistant Administrator for Industry Operations, Business and Defense Services Administration.*

[F.R. Doc. 68-14453; Filed, Dec. 3, 1969; 8:46 a.m.]

## Bureau of the Census

## RETAILERS' INVENTORIES, SALES, NUMBER OF ESTABLISHMENTS, CAPITAL EXPENDITURES, CHANGES IN FIXED ASSETS, AND RENTAL PAYMENTS

### Notice of Consideration

Notice is hereby given that the Bureau of the Census is considering a proposal to repeat in 1969 the Annual Retail Trade Survey which has been conducted each year under title 13, United States Code, sections 181, 224, and 225, to collect data covering yearend inventories, annual sales, and number of retail stores operated at the end of the year. Additional items requesting capital expenditures, changes in fixed assets, and rental payments are included as supplemental data for the 1967 Census of Business. Since only national statistics are required for these subjects, they can be obtained more efficiently from the annual retail trade sample rather than on a complete Census basis.

This survey, covering 1968, which provides important information on retail inventories and sales-inventory ratios, is the only continuing source available on a comparable classification basis and on a sufficiently timely basis for use as the benchmark for monthly inventory estimates. It also assists in establishing a benchmark for the geographic area distribution of sales. The capital expenditures data, which are collected as part of the Economic Census program at 5 year intervals, will provide a continuation on a similar classification basis with the capital expenditures data similarly collected as part of the 1963 Census of Business.

On the basis of information and recommendations received by the Bureau of the Census, the data will have significant application to the needs of the public, the distributive trades, and Government agencies, and are not publicly available from nongovernment or other Government sources.

Such a survey, if conducted, shall begin not earlier than 30 days after the publication of this notice in the FEDERAL REGISTER.

Reports will be required only from a selected sample of retail establishments in the United States. The sample will provide, with measurable reliability, statistics on the subjects specified above. Reports will be requested from sample stores on the basis of their sales size, selection in Census list sample mail panel, and location in Census sample areas. A group of the largest firms, in terms of number of retail stores, will be requested to report their sales and number of stores by county; but those firms which are participants in the Bureau's monthly survey will be asked to report at the national level only.

Copies of the proposed forms and a description of the collection methods are available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

Any suggestions or recommendations concerning the subject matter of the proposed survey, submitted in writing to the Director of the Bureau of the Census within 30 days after the date of this publication, will receive consideration.

Dated: November 19, 1968.

A. ROSS ECKLER,
*Director, Bureau of the Census.*

[F.R. Doc. 68-14448; Filed, Dec. 3, 1968; 8:45 a.m.]

## SURVEY OF DISTRIBUTORS STOCKS OF CANNED FOODS

### Notice of Determination

In conformity with title 13, United States Code, sections 181, 224, and 225, and due notice of consideration having been published October 31, 1968 (33 F.R. 16032), I have determined that year-end data on stocks of 30 canned and bottled products, including vegetables, fruits, juices, and fish, are needed to aid the efficient performance of essential governmental functions, and have significant application to the needs of the public and industry and are not publicly available from nongovernmental or other governmental sources. This is a continuation of the survey conducted in previous years.

All respondents will be required to submit information covering their December 31, 1968, inventories of 30 canned and bottled vegetables, fruits, juices, and fish. Reports will not be required from all firms but will be limited to a scientifically selected sample of wholesalers and retail multiunit organizations handling canned foods, in order to provide year-end inventories of the specified canned food items with measurable reliability. These stocks will be measured in terms of actual cases with separate data requested for "all sizes smaller than No. 10" and for "sizes No. 10 and larger." (In addition, multiunit firms reporting separately by establishment will be requested to update the list of their establishments maintaining canned food stocks.)

Report forms will be furnished to firms covered by the survey. Additional copies of the forms are available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have, therefore, directed that this annual survey be conducted for the purpose of collecting these data.

Dated: November 19, 1968.

A. ROSS ECKLER,
*Director, Bureau of the Census.*

[F.R. Doc. 68-14449; Filed, Dec. 3, 1968; 8:45 a.m.]

## Office of the Secretary

## WATCHES AND WATCH MOVEMENTS

### Proposed Formula for Allocation of Quotas for Calendar Year 1969 Among Producers Located in the Virgin Islands, Guam, and American Samoa

Pursuant to the authority granted the Secretaries by Public Law 89-805 the Departments of Commerce and the Interior are considering rules which will govern the allocation of duty-free quotas of watches and watch movements among producers in the Virgin Islands, Guam, and American Samoa for calendar year 1969.

The Departments will issue these proposed rules not less than 30 days subsequent to the filing of this notice with the FEDERAL REGISTER. Interested parties may participate in the proposed rule making by submitting such written data, views or arguments as they may desire regarding the proposed rules set out below. All communications should be submitted within 15 days from the filing date of this notice in the FEDERAL REGISTER, and addressed to the:

Business and Defense Services Administration, U.S. Department of Commerce, Washington, D.C. 20230, Attention: Scientific and Business Equipment Division.

Such communications shall be submitted to an original and three copies and must include the following information:

(a) The name, address, and telephone number of the party submitting the brief.

(b) The name, address, telephone number, and official position of the person submitting the brief on behalf of the party referred to in subparagraph (a).

SECTION 1. Upon effective date of these rules, or as soon thereatfer as practicable, each watch producer located in the Virgin Islands, Guam, and American Samoa which received a duty-free watch quota allocation for calendar year 1968, will receive an initial quota allocation for calendar year 1969 equal to 50 percent of the number of watch units assembled by such firm in the particular territory and entered duty-free into the customs territory of the United States during the first 10 months of calendar year 1968, or 5,000 units, whichever is greater.

SEC. 2. Each firm to which an initial quota has been allocated pursuant to section 1, hereof must, on or before April 1, 1969, have assembled and entered duty-free into the customs territory of the United States at least 30 percent of its initial quota allocation. Any firm failing to enter duty-free into the customs territory of the United States on or before April 1, 1969, a number of watch units assembled by it in a particular territory equal to, or greater than, 30 percent of the number of units initially allocated to such firm for duty-free entry from that territory will, upon receipt of a show cause order from the Departments, be given an opportunity, within 30 days from such receipt, to show cause why the duty-free quota which it would otherwise be entitled to receive should not be cancelled or reduced by the Departments.

Such a show cause order may also be issued whenever there is reason to believe that shipments through December 31, 1969, by any firm under the quota allocated to it for calendar year 1969 will be less than 80 percent of the number of units allocated to it.

Upon failure of any such firm to show good cause, deemed satisfactory by the Departments, why the remaining, unused portion of the quota to which it would otherwise be entitled should not be cancelled or reduced, said remaining, unused portion of its quota shall be either cancelled or reduced, whichever is appropriate under the show cause order. In the event of a quota cancellation or reduction under this section, the Departments shall promptly reallocate the quota involved, in a manner best suited to contribute to the economy of the islands, among the remaining firms; provided, however that, if in the judgment of the Departments it is appropriate, competitive bids from new firms may, in lieu of such reallocation, be invited for any part or all of any unused portions of quotas remaining unallocated as a result of cancellation or reduction hereunder.

Every firm to which a quota is granted is required to file a report on April 15, July 15, and on October 15, of each year covering the periods January 1 to March 31, April 1 to June 30, and July 1 to October 30 respectively via registered mail on a form which will be forwarded to each firm at its territorial address of record, at least 15 days prior to the required reporting date, and will also be available during office hours at the offices of the Scientific and Business Equipment Division, Business and Defense Services Administration, U.S. Department of Commerce, Washington, D.C. 20230, which will provide the Departments with information regarding the firm's watch movement assembly operation in the insular possessions. Such information may include the status of beginning and ending finished watch movement and component parts inventories, scheduled delivery dates and number of watch movement parts and components ordered, number of watch movements assembled, number of watch movements entered into the customs territory of the United States, and a list of confirmed orders for shipment of finished watch movements into the customs territory of the United States prior to December 31, 1969.

SEC. 3. The annual quotas for calendar year 1969 will be allocated as soon as practicable after April 1, 1969, on the basis of the number of units assembled by each firm in the particular territory and entered by it duty-free into the customs territory of the United States during calendar year 1968, and the total dollar amount of wages subject to FICA taxes paid by such firm in the particular territory during calendar year 1968 which are attributable to its watch operation. In making allocations under this formula, equal weight will be assigned to production and shipment history and to wages subject of FICA taxes. Since the total 1968 American Samoan quota was awarded to a single firm this section shall not apply to that territory.

SEC. 4. Application forms will be mailed to recipients of initial quota allocations as soon as practicable and must be filed with the Departments on or before January 31, 1969. All data required must be supplied as a condition for annual allocations and are subject to verification by the Departments. In order to accomplish this verification it will be necessary for representatives of the Departments to meet with appropriate officials of quota recipients in the insular possessions in order to have access to company records. Representatives of the Departments plan to perform this verification beginning on or about February 10, 1969 in Guam and American Samoa and beginning on or about March 3, 1969, in the Virgin Islands; and will contact each firm locally regarding the verification of its data.

SEC. 5. The rules restricting transfers of duty-free quotas issued on January 29, 1968, and published in the FEDERAL REGISTER on January 31, 1968 (33 F.R. 2399), are hereby incorporated by reference as applicable to transfers of quotas issued during calendar year 1969.

SEC. 6. Any interested party has the right to petition for the amendment or repeal of these rules and may seek relief from the application of any of their provisions upon a showing of good cause under the procedures relating to reviews by the Secretaries of Commerce and the Interior which were published in the FEDERAL REGISTER on November 17, 1967 (32 F.R. 15818).

WALTER A. HAMILTON,
*Deputy Assistant Secretary for Domestic Business Policy, Department of Commerce.*

ROBERT E. VAUGHAN,
*Deputy Assistant Secretary for Public Land Management, Department of the Interior.*

DECEMBER 2, 1968.

[F.R. Doc. 68-14572; Filed, Dec. 3, 1968; 10:02 a.m.]

# DEPARTMENT OF TRANSPORTATION

## National Transportation Safety Board

[Docket No. SA-407]

### ACCIDENT OCCURRING AT COMPTON, CALIF.

### Notice of Hearing

In the matter of investigation of accident involving Los Angeles Airways, Inc., Sikorsky Helicopter S-61L, N300Y, Compton, Calif., August 14, 1968.

Notice is hereby given that an Accident Investigation Hearing on the above matter will be held commencing at 9 a.m. (local time) on December 11, 1968, in the Admiralty Room, Marina Del Rey Hotel, 13534 Bali Way, Marina Del Rey, Calif.

Dated this 27th day of November 1968.

[SEAL] RICHARD G. RODRIGUEZ,
*Hearing Officer.*

[F.R. Doc. 68-14454; Filed, Dec. 3, 1968; 8:46 a.m.]

## Office of the Secretary

### ASSISTANT ADMINISTRATOR, OFFICE OF PROGRAM OPERATIONS, URBAN MASS TRANSPORTATION ADMINISTRATION

### Redelegation of Authority With Respect to Urban Mass Transportation Program

Pursuant to the authority delegated to me by S 1.4(e) of the regulations of the Office of the Secretary of Transportation (49 CFR 1.4(e)), the Assistant Administrator, Office of Program Operations, Urban Mass Transportation Administration, is hereby authorized to execute grant contracts and contract amendments for approved grant or loan projects under section 3, for approved technical studies projects under section 9, and for approved grants for managerial training under section 10 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1607a, and 1607b); and is further authorized in connection with the administration of such contracts to approve requisitions for funds; third-party contracts; and project budget amendments within previously approved project limits.

The Assistant Administrator, Office of Program Operations, is further authorized to redelegate to one or more employees under his jurisdiction the authority redelegated herein.

This redelegation of authority becomes effective November 26, 1968.

Issued in Washington, D.C., on November 26, 1968.

PAUL L. SITTON,
*Urban Mass Transportation Administrator.*

[F.R. Doc. 68-14456; Filed, Dec. 3, 1968; 8:46 a.m.]

### ASSISTANT ADMINISTRATOR, OFFICE OF RESEARCH, URBAN MASS TRANSPORTATION ADMINISTRATION

### Redelegation of Authority With Respect to Urban Mass Transportation Program

Pursuant to the authority delegated to me by S 1.4(e) of the regulations of the Office of the Secretary of Transportation (49 CFR 1.4(e)), the Assistant Administrator, Office of Research, Urban Mass Transportation Administration, is hereby authorized to execute grant contracts and contract amendments for approved demonstration projects under section 6(a) and for approved grants for

research and training under section 11 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1605(a) and 1607c); and is further authorized in connection with the administration of such contracts to approve requisitions for funds; third-party contracts; and project budget amendments within previously approved project limits.

The Assistant Administrator, Office of Research, is further authorized to redelegate to one or more employees under his jurisdiction the authority redelegated herein.

This redelegation of authority becomes effective on November 26, 1968.

Issued in Washington, D.C., on November 26, 1968.

PAUL L. SITTON,
*Urban Mass Transportation Administrator.*

[F.R. Doc. 68-14457; Filed, Dec. 3, 1968; 8:46 a.m.]

# FEDERAL COMMUNICATIONS COMMISSION

[FCC 68-1141]

## STANDARD BROADCAST APPLICATION READY AND AVAILABLE FOR PROCESSING

NOVEMBER 27, 1968.

The following application was tendered October 29, 1968, and seeks essentially the same facilities now licensed to WKRZ, Oil City, Pa., except that a different transmitter site is proposed. The proposal is mutually exclusive with the WKRZ application for renewal of license, File No. BR-1239, now on file.

New, Oil City, Pa.
Brinsfield Broadcasting Co.
Req: 1340 kc, 250 w, 1 kw-LS, DA-Day, U, Class IV.

This proposal involves prohibited overlap with established facilities, but in each case, the overlap is no greater than presently existing with WKRZ. Thus, we have waived the provisions of § 73.37 to the extent necessary to accept this application for filing, and similarly, waive the provisions of this section for any other application proposing essentially the same facilities.

Pursuant to §§ 1.227(b)(1), 1.591(b), and Note 2 to § 1.571, an application, in order to be considered with this application must be in direct conflict and tendered no later than January 6, 1969.

The attention of any party in interest desiring to file pleadings concerning this application pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's rules for the provisions governing the time of filing and other requirements relating to such pleadings.

Action by the Commission November 26, 1968. Commissioners Hyde (Chairman), Bartley, Robert E. Lee, Cox, Johnson, and H. Rex Lee.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
*Secretary.*

[F.R. Doc. 68-14511; Filed, Dec. 3, 1968; 8:50 a.m.]

# CIVIL AERONAUTICS BOARD

[Docket No. 19255]

## EAST COAST POINTS-EUROPE SERVICE INVESTIGATION

### Notice of Postponement of Prehearing Conference

Interested parties have previously been notified that a prehearing conference in the above-entitled proceeding will be held on December 3, 1968. The Bureau of Operating Rights was requested to submit certain preliminary matters on November 18, 1968, and interested parties were requested to respond to the Bureau's filing by November 29, 1968.

The 1967 O&D Survey which is presently available contains only March and September samples and does not provide detailed flow data. The 1968 Survey, on the other hand, will contain detailed traffic flow data and will therefore be more useful for the record.

Since it now appears that the 1968 data will not be available in usable form until sometime after the first of the year, the Examiner has decided to postpone the prehearing conference previously scheduled for December 3, 1968, in order to obtain more useful and accurate data for the record.

All parties will be subsequently notified of the new dates set for the prehearing conference, for the Bureau's information requests, and for the replies of the parties thereto.

Dated at Washington, D.C., November 26, 1968.

[SEAL] ROSS I. NEWMANN,
*Hearing Examiner.*

[F.R. Doc. 68-14506; Filed, Dec. 3, 1968; 8:50 a.m.]

# FEDERAL RESERVE SYSTEM

## MIDDLE TENNESSEE BANK

### Order Approving Acquisition of Bank's Assets

In the matter of the application of The Middle Tennessee Bank for approval of acquisition of assets of The Hampshire Bank.

There has come before the Board of Governors, pursuant to the Bank Merger Act (12 U.S.C. 1828(c)), an application by The Middle Tennessee Bank, Columbia, Tenn., a State member bank of the Federal Reserve System, for the Board's prior approval of its acquisition of assets and assumption of depost liabilities of The Hampshire Bank, Hampshire, Tenn., and, as an incident thereto, The Middle Tennessee Bank has applied, under section 9 of the Federal Reserve Act, for the Board's prior approval of the establishment by that bank of a branch at the location of the sole office of The Hampshire Bank. Notice of the proposed acquisition of assets and assumption of deposit liabilities, in form approved by the Board, has been published pursuant to said Act.

Upon consideration of all relevant material in the light of the factors set forth in said Act, including reports furnished by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Attorney General on the competitive factors involved in the proposed transaction.

*It is hereby ordered*, for the reasons set forth in the Board's statement[1] of this date, that said applications be and hereby are approved, provided that said acquisition of assets and assumption of deposit liabilities and establishment of the branch 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 Atlanta pursuant to delegated authority.

Dated at Washington, D.C., this 25th day of November 1968.

By order of the Board of Governors.[2]

[SEAL] ROBERT P. FORRESTAL,
*Assistant Secretary.*

[F.R. Doc. 68-14460; Filed, Dec. 3, 1968; 8:46 a.m.]

## MERRILL BANKSHARES CO.

### Order Approving Application Under Bank Holding Company Act

In the matter of the application of Merrill Bankshares Co., Bangor, Maine, for approval of action to become a bank holding company through the acquisition of up to 100 percent of the voting shares of The Merrill Trust Co., Bangor, Maine, and Washburn Trust Co., Washburn, Maine.

There has come before the Board of Governors, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(a)(1)), and § 222.3(a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by Merrill Bankshares Co., Bangor, Maine, for the Board's prior approval of action whereby Applicant would become a bank holding company through the acquisition of up to 100 percent of the voting shares of The Merrill Trust Co., Bangor, Maine,

[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 Atlanta.

[2] Voting for this action: Chairman Martin and Governors Robertson, Mitchell, Daane, Maisel, Brimmer, and Sherrill.

and Washburn Trust Co., Washburn, Maine.

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the office of the Bank Commissioner for the State of Maine, and requested views and recommendation thereon. The office of the Bank Commissioner stated that it had no objection to approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on July 27, 1968 (33 F.R. 10768), providing an opportunity for interested persons to submit comments and views with respect to the proposed transaction. A copy of the application was forwarded to the United States 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 action 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 the order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Boston pursuant to delegated authority.

Dated at Washington, D.C., this 25th day of November 1968.

By order of the Board of Governors.[2]

[SEAL] ROBERT P. FORRESTAL,
*Assistant Secretary.*

[F.R. Doc. 68-14461; Filed, Dec. 3, 1968; 8:47 a.m.]

# GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regs.; Temporary Reg. D-10]

## SECRETARY OF DEFENSE

### Delegation of Authority Regarding Leases

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to lease space in the northern Virginia area of the National Capital Region.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, authority is delegated to the Secretary of Defense to perform all functions in connection with the leasing of laboratory and related office and special purpose space in the northern Virginia area of the National Capital Region, as he may deem necessary for use by the Defense Communications Agency System Engineering Facility and the Defense Communications Engineering Office of said Department.

b. This delegation includes authority to lease the required space and to assign, reassign, operate, maintain, control, and protect the demised space. This authorization shall extend to leasing space under authority contained in section 210(h)(1) of the above-cited Act for a firm period not to exceed 5 years.

c. The Secretary of Defense may redelegate this authority to any officer or employee of the Department of Defense.

d. This authority shall be exercised in accordance with the limitations and requirements of the above-cited Act, section 322 of the Act of June 30, 1932, as amended (40 U.S.C. 278a), and other applicable statutes and regulations.

LAWSON B. KNOTT, Jr.,
*Administrator of General Services.*

NOVEMBER 27, 1968.

[F.R. Doc. 68-14532; Filed, Dec. 3, 1968; 8:52 a.m.]

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[Federal Property Management Regs., Temporary Reg. F-31]

## SECRETARY OF DEFENSE

### Delegation of Authority Regarding Communications Service Rate Proceeding

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the customer interest of the Federal Government in a communications service rate proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d), authority is delegated to the Secretary of Defense to represent the interests of the Federal Government before the Hawaii Public Utilities Commission in an investigatory proceeding involving intrastate rates for communications services provided by the Hawaiian Telephone Co. (Docket No. 1814).

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and further, shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

LAWSON B. KNOTT, Jr.,
*Administrator of General Services.*

NOVEMBER 27, 1968.

[F.R. Doc. 68-14533; Filed, Dec. 3, 1968; 8:52 a.m.]

# SECURITIES AND EXCHANGE COMMISSION

[70-4699]

## COMMONWEALTH EDISON CO.

### Notice of Filing Regarding Acquisition by Exempt Holding Company of Common Stock of Associate Company

NOVEMBER 27, 1968.

Notice is hereby given that commonwealth Edison Co. ("Edison"), 72 West Adams Street, Chicago, Ill. 60690, an Illinois public-utility company and an exempt holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") regarding its proposed acquisition of all the common stock of Mid-Illinois Gas Co. ("Mid-Illinois"), an Illinois corporation recently organized by Edison, in exchange for certain gas and heating properties of Edison, designating sections 9 and 10 of the Act 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.

Edison is engaged primarily in the production, purchase, transmission, distribution, and sale of electricity. Pursuant to authorization of the Federal Power Commission ("FPC") (Docket No. E-7275 Dec. 2, 1966) on December 9, 1966, Central Illinois Electric and Gas Co. ("Central") was merged into Edison. As the surviving corporation in such merger, Edison succeeded to all of the rights, privileges, franchises, and properties of Central and assumed all of Central's debts and obligations. Edison's electric service territory includes Chicago, most of northern Illinois, and the areas in central and southern Illinois formerly served by Central. Since the merger, Edison has carrier on the gas utility business previously conducted by Central, by furnishing gas service to approximately 96,000 customers in Rockford, Lincoln, and 68 neighboring communities and surrounding areas in Illinois. As of September 30, 1968, Edison's gas utility properties represented, on a consolidated basis, approximately $50 million or 1.5 percent of its gross utility plant and accounted for approximately $22 million or 2.9 percent of its total operating revenues for the 12 months ended that date. Edison also concurrently provides steam heating service to about 370 customers in Rockford and water service to about 5,000 customers in Lincoln, both of which services were also formerly supplied by Central.

In its opinion and order authorizing the merger the FPC retained jurisdiction over, among other things, Edison's "continued operation of the gas distribution facilities of Central, for final determination by subsequent order." Edison has consented in this proceeding that, pending a decision and order by the FPC, this Commission may, as a condition for approving the proposed acquisition, reserve

[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 Boston.

[2] Voting for this action: Chairman Martin and Governors Robertson, Mitchell, Daane, Maisel, and Brimmer. Absent and not voting: Governor Sherrill.

jurisdiction to require Edison, after notice and opportunity for hearing, to divest itself of its interest in Mid-Illinois.

Mid-Illinois was organized by Edison on November 1, 1968, to acquire the gas and heating properties of Edison together with certain related inventories and other assets. The transfer of these properties will be made pursuant to a separation agreement between Edison and Mid-Illinois. The pro forma capitalization of Mid-Illinois, as of September 30, 1968, giving effect to the proposed transactions will be as follows:

| | Amount to be outstanding | Percent of total |
|---|---|---|
| Notes payable to banks | $25,000,000 | 67.2 |
| Common stock, $5 par value per share (3,000,000 shares authorized, 1,225,000 shares outstanding) | 6,125,000 | 16.4 |
| Premium on common stock | 6,125,000 | 16.4 |
| | 12,250,000 | 32.8 |
| Total capitalization | 37,250,000 | 100.0 |

The notes will mature on December 31, 1973, will bear interest at a rate equal to one-fourth of 1 percent per annum above the prime rates of interest charged from time to time by the respective banks on 90-day loans to commercial borrowers and will require principal payments of $1 million annually, with a final principal payment of $21 million at maturity. If Mid-Illinois shall cease to be a subsidiary company of Edison (except in the case of the consolidation of Mid-Illinois with, or its merger or liquidation into, Edison), such notes are payable in full within 10 days thereafter. The net assets to be transferred to Mid-Illinois by Edison are expected, depending on certain adjustments, to be greater in amount at the time of the transfer than as of September 30, 1968, and accordingly the amount of common stock to be issued to Edison will be increased over the 1,225,000 shares presently proposed.

Pursuant to the separation agreement Edison will borrow $25 million from certain banks. Edison will deposit the proceeds of such borrowings with the indenture trustee and certify to such trustee certain bondable property additions in an amount sufficient, together with such proceeds, to procure the release of the gas and heating properties from the liens of Edison's existing mortgage and the existing mortgage and the existing mortgage of Central, which Edison assumed at the time of the merger. Upon acquiring the properties and assets from Edison, Mid-Illinois (1) will assume the primary obligation under the promissory notes to banks without, however, releasing Edison from its secondary obligations thereunder; (2) will assume certain other liabilities of Edison; and (3) will issue and deliver to Edison all of the common stock of Mid-Illinois to be outstanding.

It is stated that the technical and operating problems of the electric and gas businesses are entirely different; that their separation, as indicated, would be beneficial to the operations of both businesses; and that such separation may also facilitate the disposition of the properties to be transferred to Mid-Illinois.

It is stated that the proposed transactions are subject to the jurisdiction of the Illinois Commerce Commission and any order issued by that Commission approving the transactions will be supplied by amendment. No other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed acquisition of common stock.

Notice is further given that any interested person may, not later than December 18, 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 filed or as it may be 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. 68-14465; Filed, Dec. 3, 1968; 8:47 a.m.]

# INTERSTATE COMMERCE COMMISSION

[S.O. 1002; Car Distribution Direction No. 25]

## ATCHISON, TOPEKA AND SANTA FE RAILWAY CO. ET AL.

### Car Distribution

Pursuant to section 1 (15) and (17) of the Interstate Commerce Act and authority vested in me by Interstate Commerce Commission Service Order No. 1002.

*It is ordered,* That:

(1) Each common carrier by railroad subject to the Interstate Commerce Act shall comply with the following distribution directions:

(a) The Atchison, Topeka and Santa Fe Railway Co. shall deliver to the Chicago, Burlington & Quincy Railroad Co. a weekly total of 175 empty plain serviceable boxcars with inside length less than 44 feet 8 inches and doors less than 8 feet wide. Exception: Canadian ownerships.

(b) The Chicago, Burlington & Quincy Railroad Co. shall deliver to the Northern Pacific Railway Co. a weekly total of 175 empty plain serviceable boxcars with inside length less than 44 feet 8 inches and doors less than 8 feet wide. Exception: Canadian ownerships.

*It is further ordered,* That the rate of delivery specified in this direction shall be maintained within weekly periods ending each Sunday at 11:59 p.m., so that at the end of each 7 days the full delivery required for that period shall have been made.

*It is further ordered,* That cars applied under this direction shall be so identified on empty car cards, movement slips, and interchange records as moving under the provisions of this direction.

(c) The carriers delivering the empty boxcars as described above must advise Agent R. D. Pfahler each Wednesday as to the number of cars, covered by this direction, delivered during the preceding week, ending each Sunday at 11:59 p.m.

(d) The carriers receiving the cars described above must advise Agent R. D. Pfahler each Wednesday as to the number of cars received during the preceding week, ending each Sunday at 11:59 p.m.

(2) Regulations suspended: The operation of all rules and regulations, insofar as they conflict with the provisions of this direction, is hereby suspended.

(3) Effective date: This direction shall become effective at 12:01 a.m., December 1, 1968.

(4) Expiration date: This direction shall expire at 11:59 p.m., December 15, 1968, unless otherwise modified, changed, or suspended by order of this Commission.

*It is further ordered,* That a copy of this direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this direction be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 29, 1968.

INTERSTATE COMMERCE COMMISSION,

[SEAL] R. D. PFAHLER, *Agent.*

[F.R. Doc. 68-14497; Filed, Dec. 3, 1968; 8:49 a.m.]

[S.O. 1002; Car Distribution Direction No. 8, Amdt. 3]

## BOSTON AND MAINE CORP. ET AL.

### Car Distribution

Upon further consideration of Car Distribution Direction No. 8 (Boston and Maine Corp.; Penn Central Co.; Chicago and North Western Railway Co.) and good cause appearing therefor:

*It is ordered,* That:

Car Distribution Direction No. 8 be, and it is hereby amended by substituting the following paragraph (4) for paragraph (4) thereof:

(4) *Expiration date.* This direction shall expire at 11:59 p.m., December 15, 1968, unless otherwise modified, changed, or suspended.

*It is further ordered,* That this amendment shall become effective at 11:59 p.m., November 30, 1968, and that it shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 27, 1968.

[SEAL] INTERSTATE COMMERCE COMMISSION, R. D. PFAHLER, *Agent.*

[F.R. Doc. 68-14486; Filed, Dec. 3, 1968; 8:48 a.m.]

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[S.O. 1002; Car Distribution Direction No. 19, Amdt. 1]

## CHESAPEAKE AND OHIO RAILWAY CO. AND CHICAGO AND NORTH WESTERN RAILWAY CO.

### Car Distribution

Upon further consideration of Car Distribution Direction No. 19 (The Chesapeake and Ohio Railway Co.; Chicago and North Western Railway Co.) and good cause appearing therefor:

*It is ordered,* That:

Car Distribution Direction No. 19 be, and it is hereby amended by substituting the following paragraph (4) for paragraph (4) thereof:

(4) *Expiration date.* This direction shall expire at 11:59 p.m., December 15, 1968, unless otherwise modified, changed, or suspended.

*It is further ordered,* That this amendment shall become effective at 11:59 p.m., November 30, 1968, and that it shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 27, 1968.

[SEAL] INTERSTATE COMMERCE COMMISSION, R. D. PFAHLER, *Agent.*

[F.R. Doc. 68-14491; Filed, Dec. 3, 1968; 8:48 a.m.]

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[S.O. 1002; Car Distribution Direction No. 4, Amdt. 3]

## ERIE-LACKAWANNA RAILROAD CO. AND ILLINOIS CENTRAL RAILROAD CO.

### Car Distribution

Upon further consideration of Car Distribution Direction No. 4 (Erie-Lackawanna Railroad Co.; Illinois Central Railroad Co.) and good cause appearing therefor:

*It is ordered,* That:

Car Distribution Direction No. 4 be, and it is hereby amended by substituting the following paragraph (4) for paragraph (4) thereof:

(4) *Expiration date.* This direction shall expire at 11:59 p.m., December 15, 1968, unless otherwise modified, changed, or suspended.

*It is further ordered,* That this amendment shall become effective at 11:59 p.m., November 30, 1968, and that it shall be served upon the Association of American Railroads Car Service Division as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 27, 1968.

[SEAL] INTERSTATE COMMERCE COMMISSION, R. D. PFAHLER, *Agent.*

[F.R. Doc. 68-14484; Filed, Dec. 3, 1968; 8:47 a.m.]

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[S.O. 1002; Car Distribution Direction No. 21]

## FLORIDA EAST COAST RAILWAY CO. ET AL.

### Car Distribution

Pursuant to section 1 (15) and (17) of the Interstate Commerce Act and authority vested in me by Interstate Commerce Commission Service Order No. 1002.

*It is ordered,* That:

(1) Each common carrier by railroad subject to the Interstate Commerce Act shall comply with the following distribution directions:

(a) The Florida East Coast Railway Co. shall deliver to the Seaboard Coast Line Railroad Co. a weekly total of 175 empty plain serviceable boxcars with inside length less than 44 feet 8 inches and doors less than 8 feet wide. Exceptions: Canadian ownerships.

(b) The Seaboard Coast Line Railroad Co. shall deliver to the Illinois Central Railroad Co. a weekly total of 175 empty plain serviceable boxcars with inside length less than 44 feet 8 inches and doors less than 8 feet wide. Exceptions: Canadian ownerships.

*It is further ordered,* That the rate of delivery specified in this direction shall be maintained within weekly periods ending each Sunday at 11:59 p.m., so that at the end of each 7 days the full delivery required for that period shall have been made.

*It is further ordered,* That cars applied under this direction shall be so identified on empty car cards, movement slips, and interchange records as moving under the provisions of this direction.

(c) The carriers delivering the empty boxcars as described above must advise Agent R. D. Pfahler each Wednesday as to the number of cars, covered by this direction, delivered during the preceding week, ending each Sunday at 11:59 p.m.

(d) The carriers receiving the cars described above must advise Agent R. D. Pfahler each Wednesday as to the number of cars received during the preceding week, ending each Sunday at 11:59 p.m.

(2) *Regulations suspended:* The operation of all rules and regulations insofar as they conflict with the provisions of this direction, is hereby suspended.

(3) *Effective date:* This direction shall become effective at 12:01 a.m., December 1, 1968.

(4) *Expiration date:* This direction shall expire at 11:59 p.m., December 15, 1968, unless otherwise modified, changed, or suspended by order of this Commission.

*It is further ordered,* That a copy of this direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this direction be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 27, 1968.

[SEAL] INTERSTATE COMMERCE COMMISSION, R. D. PFAHLER, *Agent.*

[F.R. Doc. 68-14493; Filed, Dec. 3, 1968; 8:48 a.m.]

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[S.O. 1002; Car Distribution Direction No. 12, Amdt. 2]

## KANSAS CITY SOUTHERN RAILWAY CO. AND CHICAGO AND NORTH WESTERN RAILWAY CO.

### Car Distribution

Upon further consideration of Car Distribution Direction No. 12 (The Kansas City Southern Railway Co.; Chicago and

North Western Railway Co.) and good cause appearing therefor:

*It is ordered,* That:

Car Distribution Direction No. 12 be, and it is hereby amended by substituting the following paragraph (4) for paragraph (4) thereof:

(4) *Expiration date.* This direction shall expire at 11:59 p.m., December 15, 1968, unless otherwise modified, changed, or suspended.

*It is further ordered,* That this amendment shall become effective at 11:59 p.m., November 30, 1968, and that it shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 27, 1968.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
*Agent.*

[F.R. Doc. 68-14487; Filed, Dec. 3, 1968; 8:48 a.m.]

[S.O. 1002; Car Distribution Direction No. 20]

## LEHIGH VALLEY RAILROAD CO. ET AL.

### Car Distribution

Pursuant to section 1 (15) and (17) of the Interstate Commerce Act and authority vested in me by Interstate Commerce Commission Service Order No. 1002.

*It is ordered,* That:

(1) Each common carrier by railroad subject to the Interstate Commerce Act shall comply with the following distribution directions:

(a) The Lehigh Valley Railroad Co. shall deliver to The Chesapeake and Ohio Railway Co. a weekly total of 175 empty plain serviceable boxcars with inside length less than 44 feet 8 inches and doors less than 8 feet wide. Exception: Canadian ownerships.

(b) The Chesapeake and Ohio Railway Co. shall deliver to the Chicago and North Western Railway Co. a weekly total of 175 empty plain serviceable boxcars with inside length less than 44 feet 8 inches and doors less than 8 feet wide. Exception: Canadian ownerships.

(c) The Chicago and North Western Railway Co. shall deliver to the Great Northern Railway Co. a weekly total of 175 empty plain serviceable boxcars with inside length less than 44 feet 8 inches and doors less than 8 feet wide. Exception: Canadian ownerships.

*It is further ordered,* That the rate of delivery specified in this direction shall be maintained within weekly periods ending each Sunday at 11:59 p.m., so that at the end of each 7 days the full delivery required for that period shall have been made.

*It is further ordered,* That cars applied under this direction shall be so identified on empty car cards, movement slips, and interchange records as moving under the provisions of this direction.

(d) The carriers delivering the empty boxcars as described above must advise Agent R. D. Pfahler each Wednesday as to the number of cars, covered by this direction, delivered during the preceding week, ending each Sunday at 11:59 p.m.

(e) The carriers receiving the cars described above must advise Agent R. D. Pfahler each Wednesday as to the number of cars received during the preceding week, ending each Sunday at 11:59 p.m.

(2) Regulations suspended: The operation of all rules and regulations, insofar as they conflict with the provisions of this direction, is hereby suspended.

(3) Effective date: This direction shall become effective at 12:01 a.m., December 1, 1968.

(4) Expiration date: This direction shall expire at 11:59 p.m., December 15, 1968, unless otherwise modified, changed, or suspended by order of this Commission.

*It is further ordered,* That a copy of this direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this direction be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 27, 1968.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
*Agent.*

[F.R. Doc. 68-14492; Filed, Dec. 3, 1968; 8:48 a.m.]

[S.O. 1002; Car Distribution Direction No. 16, Amdt. 2]

## LOUISVILLE AND NASHVILLE RAILROAD CO. AND CHICAGO, BURLINGTON & QUINCY RAILROAD CO.

### Car Distribution

Upon further consideration of Car Distribution Direction No. 16 (Louisville and Nashville Railroad Co.; Chicago, Burlington & Quincy Railroad Co.) and good cause appearing therefor:

*It is ordered,* That:

Car Distribution Direction No. 16 be, and it is hereby amended by substituting the following paragraph (4) for paragraph (4) thereof:

(4) *Expiration date.* This direction shall expire at 11:59 p.m., December 15, 1968, unless otherwise modified, changed, or suspended.

*It is further ordered,* That this amendment shall become effective at 11:59 p.m., November 30, 1968, and that it shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 27, 1968.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
*Agent.*

[F.R. Doc. 68-14489; Filed, Dec. 3, 1968; 8:48 a.m.]

[S.O. 1002; Car Distribution Direction No. 24]

## PENN CENTRAL CO. ET AL.

### Car Distribution

Pursuant to section 1 (15) and (17) of the Interstate Commerce Act and authority vested in me by Interstate Commerce Commission Service Order No. 1002.

*It is ordered,* That:

(1) Each common carrier by railroad subject to the Interstate Commerce Act shall comply with the following distribution directions:

(a) The Penn Central Co. shall deliver to the Chicago, Burlington & Quincy Railroad Co. a weekly total of 175 empty plain serviceable boxcars with inside length less than 44 feet 8 inches and doors less than 8 feet wide. Exception: Canadian ownerships.

(b) The Chicago, Burlington & Quincy Railroad Co. shall deliver to the Northern Pacific Railway Co. a weekly total of 175 empty plain serviceable boxcars with inside length less than 44 feet 8 inches and doors less than 8 feet wide. Exception: Canadian ownerships.

*It is further ordered,* That the rate of delivery specified in this direction shall be maintained within weekly periods ending each Sunday at 11:59 p.m., so that at the end of each 7 days the full delivery required for that period shall have been made.

*It is further ordered,* That cars applied under this direction shall be so identified on empty car cards, movement slips, and interchange records as moving under the provisions of this direction.

(c) The carriers delivering the empty boxcars as described above must advise Agent R. D. Pfahler each Wednesday as to the number of cars, covered by this direction, delivered during the preceding week, ending each Sunday at 11:59 p.m.

(d) The carriers receiving the cars described above must advise Agent R. D. Pfahler each Wednesday as to the number of cars received during the preceding week, ending each Sunday at 11:59 p.m.

(2) Regulations suspended: The operation of all rules and regulations, insofar as they conflict with the provisions of this direction, is hereby suspended.

(3) Effective date: This direction shall become effective at 12:01 a.m., December 1, 1968.

(4) Expiration date: This direction shall expire at 11:59 p.m., December 15, 1968, unless otherwise modified, changed, or suspended by order of this Commission.

*It is further ordered,* That a copy of this direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this direction be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 27, 1968.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
*Agent.*

[F.R. Doc. 68-14496; Filed, Dec. 3, 1968; 8:49 a.m.]

[S.O. 1002; Car Distribution Direction No. 23]

## READING CO. ET AL.

### Car Distribution

Pursuant to section I (15) and (17) of the Interstate Commerce Act and authority vested in me by Interstate Commerce Commission Service Order No. 1002.

*It is ordered,* That:

(1) Each common carrier by railroad subject to the Interstate Commerce Act shall comply with the following distribution directions:

(a) The Reading Co. shall deliver to the Western Maryland Railway Co. a weekly total of 175 empty plain serviceable boxcars with inside length less than 44 feet 8 inches and doors less than 8 feet wide. Exception: Canadian ownerships.

(b) The Western Maryland Railway Co. shall deliver to the Norfolk and Western Railway Co. a weekly total of 175 empty plain serviceable boxcars with inside length less than 44 feet 8 inches and doors less than 8 feet wide. Exception: Canadian ownerships.

(c) The Norfolk and Western Railway Co. shall deliver to the Chicago, Rock Island and Pacific Railroad Co. a weekly total of 175 empty plain serviceable boxcars with inside length less than 44 feet 8 inches and doors less than 8 feet wide. Exception: Canadian ownerships.

(d) The Chicago, Rock Island and Pacific Railroad Co. shall deliver to the Great Northern Railway Co. a weekly total of 175 empty plain serviceable boxcars with inside length less than 44 feet 8 inches and doors less than 8 feet wide. Exception: Canadian ownerships.

*It is further ordered,* That the rate of delivery specified in this direction shall be maintained within weekly periods ending each Sunday at 11:59 p.m., so that at the end of each 7 days the full delivery required for that period shall have been made.

*It is further ordered,* That cars applied under this direction shall be so identified on empty car cards, movement slips, and interchange records as moving under the provisions of this direction.

(e) The carriers delivering the empty boxcars as described above must advise Agent R. D. Pfahler each Wednesday as to the number of cars, covered by this direction, delivered during the preceding week, ending each Sunday at 11:59 p.m.

(f) The carriers receiving the cars described above must advise Agent R. D. Pfahler each Wednesday as to the number of cars received during the preceding week, ending each Sunday at 11:59 p.m.

(2) Regulations suspended: The operation of all rules and regulations, insofar as they conflict with the provisions of this direction, is hereby suspended.

(3) Effective date: This direction shall become effective at 12:01 a.m., December 1, 1968.

(4) Expiration date: This direction shall expire at 11:59 p.m., December 15, 1968, unless otherwise modified, changed, or suspended by order of this Commission.

*It is further ordered,* That a copy of this direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this direction be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 27, 1968.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
*Agent.*

[F.R. Doc. 68-14495; Filed, Dec. 3, 1968; 8:49 a.m.]

[S.O. 1002; Car Distribution Direction No. 5, Amdt. 3]

## SEABOARD COAST LINE RAILROAD CO. AND ILLINOIS CENTRAL RAILROAD CO.

### Car Distribution

Upon further consideration of Car Distribution Direction No. 5 (Seaboard Coast Line Railroad Co.; Illinois Central Railroad Co.) and good cause appearing therefor:

*It is ordered,* That:

Car Distribution Direction No. 5 be, and it is hereby amended by substituting the following paragraph (4) for paragraph (4) thereof:

(4) *Expiration date.* This direction shall expire at 11:59 p.m., December 15, 1968, unless otherwise modified, changed, or suspended.

*It is further ordered,* That this amendment shall become effective at 11:59 p.m., November 30, 1968, and that it shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 27, 1968.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
*Agent.*

[F.R. Doc. 68-14485; Filed, Dec. 3, 1968; 8:48 a.m.]

[S.O. 1002; Car Distribution Direction No. 18, Amdt. 1]

## SEABOARD COAST LINE RAILROAD CO. ET AL.

### Car Distribution

Upon further consideration of Car Distribution Direction No. 18 (Seaboard Coast Line Railroad Co.; Louisville and Nashville Railroad Co.; Chicago & Eastern Illinois Railroad Co.) and good cause appearing therefor:

*It is ordered,* That:

Car Distribution Direction No. 18 be, and it is hereby amended by substituting the following paragraph (4) for paragraph (4) thereof:

(4) *Expiration date.* This direction shall expire at 11:59 p.m., December 15, 1968, unless otherwise modified, changed, or suspended.

*It is further ordered,* That this amendment shall become effective at 11:59 p.m., November 30, 1968, and that it shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 27, 1968.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
*Agent.*

[F.R. Doc. 68-14490; Filed, Dec. 3, 1968; 8:48 a.m.]

[S.O. 1002; Car Distribution Direction No. 15, Amdt. 2]

## SOUTHERN PACIFIC CO. AND CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD CO.

### Car Distribution

Upon further consideration of Car Distribution Direction No. 15 (Southern Pacific Co.; Chicago, Rock Island and Pacific Railroad Co.) and good cause appearing therefor:

*It is ordered,* That:

Car Distribution Direction No. 15 be, and it is hereby amended by substituting the following paragraph (4) for paragraph (4) thereof:

(4) *Expiration date.* This direction shall expire at 11:59 p.m., December 15, 1968, unless otherwise modified, changed, or suspended.

*It is further ordered,* That this amendment shall become effective at 11:59 p.m., November 30, 1968, and that it shall be

served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 27, 1968.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
*Agent.*

[F.R. Doc. 68-14488; Filed, Dec. 3, 1968; 8:48 a.m.]

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[S.O. 1002; Car Distribution Direction No. 2, Amdt. 3]

## SOUTHERN RAILWAY CO. AND CHICAGO, BURLINGTON & QUINCY RAILROAD CO.

### Car Distribution

Upon further consideration of Car Distribution Direction No. 2 (Southern Railway Co.; Chicago, Burlington & Quincy Railroad Co.) and good cause appearing therefor:

*It is ordered,* That:

Car Distribution Direction No. 2 be, and it is hereby amended by substituting the following paragraph (4) for paragraph (4) thereof:

(4) *Expiration date.* This direction shall expire at 11:59 p.m., December 15, 1968, unless otherwise modified, changed, or suspended.

*It is further ordered,* That this amendment shall become effective at 11:59 p.m., November 30, 1968, and that it shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 27, 1968.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
*Agent.*

[F.R. Doc. 68-14482; Filed, Dec. 3, 1968; 8:47 a.m.]

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[S.O. 1002; Car Distribution Direction No. 22]

## ST. LOUIS-SAN FRANCISCO RAILWAY CO. AND CHICAGO AND NORTH WESTERN RAILWAY CO.

### Car Distribution

Pursuant to section I (15) and (17) of the Interstate Commerce Act and authority vested in me by Interstate Commerce Commission Service Order No. 1002.

*It is ordered,* That:

(1) Each common carrier by railroad subject to the Interstate Commerce Act shall comply with the following distribution directions:

(a) The St. Louis-San Francisco Railway Co. shall deliver to the Chicago and North Western Railway Co. a weekly total of 175 empty plain serviceable boxcars with inside length less than 44 feet 8 inches and doors less than 8 feet wide. Exception: Canadian ownerships.

*It is further ordered,* That the rate of delivery specified in this direction shall be maintained within weekly periods ending each Sunday at 11:59 p.m., so that at the end of each 7 days the full delivery required for that period shall have been made.

*It is further ordered,* That cars applied under this direction shall be so identified on empty car cards, movement slips, and interchange records as moving under the provisions of this direction.

(b) The carrier delivering the empty boxcars as described above must advise Agent R. D. Pfahler each Wednesday as to the number of cars, covered by this direction, delivered during the preceding week, ending each Sunday at 11:59 p.m.

(c) The carrier receiving the cars described above must advise Agent R. D. Pfahler each Wednesday as to the number of cars received during the preceding week, ending each Sunday at 11:59 p.m.

(2) Regulations suspended: The operation of all rules and regulations, insofar as they conflict with the provisions of this direction, is hereby suspended.

(3) Effective date: This direction shall become effective at 12:01 a.m., December 1, 1968.

(4) Expiration date: This direction shall expire at 11:59 p.m., December 15, 1968, unless otherwise modified, changed, or suspended by order of this Commission.

*It is further ordered,* That a copy of this direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this direction be given to the general public by depositing a copy in the Office of the Secretary of the Commission in Washington, D.C., and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 27, 1968.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
*Agent.*

[F.R. Doc. 68-14494; Filed, Dec. 3, 1968; 8:48 a.m.]

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[S.O. 1002; Car Distribution Direction No. 3, Amdt. 3]

## TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS AND ILLINOIS CENTRAL RAILROAD CO.

### Car Distribution

Upon further consideration of Car Distribution Direction No. 3 (Terminal Railroad Association of St. Louis; Illinois Central Railroad Co.) and good cause appearing therefor:

*It is ordered,* That:

Car Distribution Direction No. 3 be, and it is hereby amended by substituting the following paragraph (4) for paragraph (4) thereof:

(4) *Expiration date.* This direction shall expire at 11:59 p.m., December 15, 1968, unless otherwise modified, changed, or suspended.

*It is further ordered,* That this amendment shall become effective at 11:59 p.m., November 30, 1968, and that it shall be served upon the Association of American Roalroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 27, 1968.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
*Agent.*

[F.R. Doc. 68-14483; Filed, Dec. 3, 1968; 8:47 a.m.]

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[Notice 527]

## MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

NOVEMBER 29, 1968.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission, under the Commission's Deviation Rules Revised, 1957 (49 CFR 211.1 (c)(8)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 211.1(d)(4)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 211.1(e)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Deviation Rules Revised, 1957, will be numbered consecutively for convenience in identification and protests if any should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC 59680 (Deviation No. 74), STRICKLAND TRANSPORTATION CO., INC., Post Office Box 5689, Dallas, Tex. 75222, filed November 20, 1968. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over a deviation route as follows: From Cleveland, Ohio, over U.S. Highway 21 to the Ohio Turnpike, thence over the Ohio Turnpike to Exit 14 and Ohio Highway 82, thence over Ohio Highway 82 to junction Ohio Highway 7 near Brookfield, Ohio, thence over Ohio Highway 7 to junction Interstate Highway 80, thence

over Interstate Highway 80 to junction Interstate Highway 79, thence over Interstate Highway 79 to junction U.S. Highway 422, thence over U.S. Highway 422 to Belsano, Pa., thence over Pennsylvania Highway 271 to junction U.S. Highway 22 near Mundys Corner, Pa., thence over U.S. Highway 22 to Harrisburg, Pa., thence over access roads to the Pennsylvania Turnpike, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Cleveland, Ohio, over U.S. Highway 21 to the Ohio Turnpike, thence over the Ohio Turnpike to the Pennsylvania Turnpike, thence over the Pennsylvania Turnpike to the New Jersey Turnpike, thence over the New Jersey Turnpike to Newark, N.J., and return over the same route.

No. MC 108298 (Deviation No. 8), ELLIS TRUCKING CO., INC., 1600 Oliver Avenue, Indianapolis, Ind. 46221, filed November 18, 1968. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) Between Indianapolis, Ind., and Marshall, Ill., over Interstate Highway 70, and (2) between Indianapolis, Ind., and Dayton, Ohio, over Interstate Highway 70, for Operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From South Bend, Ind., over U.S. Highway 31 to Indianapolis, Ind., thence over U.S. Highway 40 to Marshall, Ill., and (2) from Indianapolis, Ind., over U.S. Highway 40 to junction U.S. Highway 35, thence over U.S. Highway 35 to Dayton, Ohio, thence over U.S. Highway 25 to Cincinnati, Ohio, and return over the same routes.

MOTOR CARRIERS OF PASSENGERS

No. MC 1515 (Deviation No. 489) (Cancels Deviation No. 467), GREYHOUND LINES, INC. (Southern Division), 219 East Short Street, Lexington, Ky. 40507, filed November 15, 1968. Carrier proposes to operate as a *common carrier* by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over deviation routes as follows: (1) From junction U.S. Highway 41 and Georgia Highway 81 over Georgia Highway 81 to junction Interstate Highway 75, thence over Interstate Highway 75 to junction Georgia Highway 18; with the following access routes: (a) From junction Interstate Highway 75 and Georgia Highway 81 over Georgia Highway 81 to McDonough, Ga., and (b) from McDonough, Ga., over Georgia Highway 155 to junction Interstate Highway 75, and (2) from junction Georgia Highway 148 and Interstate Highway 75 over Interstate Highway 75 to junction U.S. Highway 90 at or near Lake City, Fla.; with the following access routes: (a) From junction Interstate Highway 75 and Georgia Highway 257 over Georgia Highway 257 to Cordele, Ga., thence over U.S. Highway 280 to junction Interstate Highway 75, (b) from junction Interstate Highway 75 and U.S. Highway 82 west of Tifton, Ga., over U.S. Highway 82 to Tifton, Ga., (c) from junction Interstate Highway 75 and Georgia Highway 94 over Georgia Highway 94 to junction U.S. Highway 84, thence over U.S. Highway 84 to Valdosta, Ga., thence over U.S. Highway 84 to junction Interstate Highway 75, and (d) from junction Interstate Highway 75 and 475 over Interstate Highway 475 to junction Interstate Highway 75, and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over pertinent service routes as follows: (1) From Chattanooga, Tenn., over U.S. Highway 41 via Macon, Ga., to Lake City, Fla., thence over U.S. Highway 90 to Jacksonville, Fla., and (2) from junction Georgia Highways 87 and 148 north of Macon, Ga., over Georgia Highway 148 to junction Interstate Highway 75, thence over Interstate Highway 75 to junction Georgia Highway 18, thence over Georgia Highway 18 to junction U.S. Highway 41 south of Forsyth, Ga., and return over the same routes.

No. MC 1515 (Deviation No. 490), GREYHOUND LINES, INC. (Southern Division), 219 East Short Street, Lexington, Ky. 40507, filed November 15, 1968. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: Between Jacksonville, Fla., and junction Interstate Highway 95 and U.S. Highway 17, south of the Florida-Georgia State line, over Interstate Highway 95, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a permanent service route as follows: Between Brunswick, Ga., and Jacksonville, Fla., over U.S. Highway 17.

No. MC 1515 (Deviation No. 491) (Cancels Deviation No. 144), GREYHOUND LINES, INC. (Southern Division), 219 East Short Street, Lexington, Ky. 40507, filed November 15, 1968. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From junction U.S. Highway 60 and Interstate Highway 64, south of Ashland, Ky., over Interstate Highway 64 to Charleston, W. Va., with the following access routes: (1) From junction U.S. Highway 60 and West Virginia Highway 75 near the Kentucky-West Virginia State line, over West Virginia Highway 75 to junction Interstate Highway 64; (2) from Hurricane, W. Va., over West Virginia Highway 34 to junction Interstate Highway 64, at the Hurricane, W. Va., Interchange; and (3) from junction West Virginia Highway 10A and Interstate Highway 64 over West Virginia Highway 10A to junction U.S. Highway 60, and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over pertinent service routes as follows: (1) From Charleston, W. Va., over U.S. Highway 60 to junction unnumbered highway near Barboursville, W. Va., thence over unnumbered highway to Barboursville, W. Va., thence return over said unnumbered highway to junction U.S. Highway 60, thence over U.S. Highway 60 to Huntington, W. Va., thence across the Ohio River Bridge to Chesapeake, Ohio, thence over U.S. Highway 52 to Coal Grove, Ohio (also from junction U.S. Highway 60 and West Virginia Highway 34 over West Virginia Highway 34 to Hurricane, W. Va., thence over unnumbered highway to junction U.S. Highway 60 slightly southwest of Hurricane; also from Huntington, W. Va., over U.S. Highway 60 to Ashland, Ky.; and (2) from Huntington, W. Va., over U.S. Highway 60 to Louisville, Ky., thence over U.S. Highway 31W via West Point, Ky., to Tip Top, Ky., thence over U.S. Highway 60 to Henderson, Ky., and return over the same routes.

No. MC 1515 (Deviation No. 492) (Cancels Deviation No. 321), GREYHOUND LINES, INC. (Southern Division), 219 East Short Street, Lexington, Ky. 40507, filed November 22, 1968. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers*, in the same vehicle with passengers, over deviation routes as follows: (1) From Jacksonville, Fla., over Interstate Highway 95 to junction U.S. Highway 92, west of Daytona Beach, Fla., thence over U.S. Highway 92 to Daytona Beach, Fla., with the following access routes: (a) From junction Interstate Highway 95 and Florida Highway 16 over Florida Highway 16 to St. Augustine, Fla.; (b) from junction Interstate Highway 95 and Florida Highway 207 over Florida Highway 207 to St. Augustine, Fla.; and (c) from junction Interstate Highway 95 and Florida Highway 100 over Florida Highway 100 to Bunnell, Fla.; and (2) from Scottsmoor, Fla., over Interstate Highway 95 to junction Florida Highway 514, thence over Florida Highway 514 to Malabar, Fla., with the following access routes: (a) From Mims, Fla., over Florida Highway 46 to junction Interstate Highway 95; (b) from junction Interstate Highway 95 and Florida Highway 406 over Florida Highway 406 to Titusville, Fla.; (c) from junction Interstate Highway 95 and Florida Highway 405 over Florida Highway 405 to Titusville, Fla.; (d) from junction Interstate Highway 95 and Florida Highway 528 over Florida Highway 528 to junction U.S. Highway 1 north of Cocoa, Fla.; (e) from junction Interstate Highway 95 and Florida Highway 520 over Florida Highway 520 to Cocoa, Fla.; and (f) from junction Interstate Highway 95 and U.S. Highway 192 over U.S. Highway 192 to Melbourne, Fla., and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over pertinent service routes as follows: (1)

From Jacksonville, Fla., over U.S. Highway 1 via Bunnell and Daytona Beach, Fla., to Key West, Fa.; and (2) from Jacksonville, Fla., over U.S. Highway 90 to Jacksonville Beach, Fla., thence over Florida Highway A1A via St. Augustine, Fla., to Daytona Beach, Fla., and return over the same routes.

No. MC 54591 (Sub-No. 4) (Deviation No. 2), WESSON COMPANY, 205 North Senate Avenue, Indianapolis, Ind. 46202, filed November 15, 1968. Carrier's representative: Harry J. Harman, 1110–1112 Fidelity Building, Indianapolis, Ind. 46204. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From junction U.S. Highway 40 and Interstate Highway 465 (located west of Indianapolis, Ind., city limits) over Interstate Highway 465 to junction Interstate Highway 70, thence west over Interstate Highway 70 to junction U.S. Highway 41, thence over U.S. Highway 41 to Terre Haute, Ind., with the following access routes: (1) From junction Interstate Highway 70 and Indiana Highway 267 over Indiana Highway 267 to Plainfield, Ind.; (2) from junction Indiana Highway 39 and Interstate Highway 70 over Indiana Highway 39 to Belleville, Ind.; (3) from junction Indiana Highway 42 (U.S. Highway 231) and Interstate Highway 70 over Indiana Highway 43 (U.S. Highway 231) to Greencastle, Ind.; (4) from junction Indiana Highway 59 and Interstate Highway 70 over Indiana Highway 59 to Brazil, Ind.; and (5) from junction Indiana Highway 46 and Interstate Highway 70 over Indiana Highway 46 to junction U.S. Highway 40, and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over pertinent service routes as follows: (1) From Indianapolis, Ind., over U.S. Highway 40 to junction Greencastle-Stilesville County Road, located a short distance west of Stilesville, thence northwest over the Greencastle-Stilesville County Road to Greencastle, Ind., thence southwest over Greencastle-Manhattan County Road to Manhattan, Ind., thence over U.S. Highway 40 to Terre Haute, Ind.; (2) from Belleville, Ind., over Indiana Highway 39 to Clayton, Ind., thence over county road via Pecksburg, Amo, Coatesville, and Fillmore, to junction Greencastle-Stilesville County Road; and (3) from Manhattan, Ind., over U.S. Highway 40 to junction Greencastle-Stilesville Road, west of Stilesville, Ind., and return over the same routes.

No. MC 107109 (Deviation No. 10), INDIANAPOLIS AND SOUTHEASTERN TRAILWAYS, INC., 205 North Senate Avenue, Indianapolis, Ind. 46202, filed November 15, 1968. Carrier's representative: Harry J. Harman, 1110–1112 Fidelity Building, Indianapolis, Ind. 46204. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From junction Interstate Highways 465 and 74 (located southeast of Indianapolis, Ind.), over Interstate Highway 465 to junction Interstate Highway 65 (U.S. Highway 52) (located northwest of Indianapolis, Ind.), and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and same property, over pertinent service routes as follows: (1) From Whiting, Ind., over U.S. Highway 12 to Gary, Ind., thence over Indiana Highway 55 to junction U.S. Highway 6, thence over U.S. Highway 6 to junction Indiana Highway 130, thence over Indiana Highway 130 to Valparaiso, Ind., thence over U.S. Highway 30 to junction Indiana Highway 43, thence over Indiana Highway 43 to Lafayette, Ind., thence over U.S. Highway 52 to Indianapolis, Ind.; and (2) from Indianapolis, Ind., over Indiana Highway 29 via Greensburg, Ind., to junction unnumbered highway (old Indiana Highway 46) approximately 6 miles southeast of Greensburg, Ind., thence over unnumbered highway to New Point, Ind., thence over Indiana Highway 46 to junction Indiana Highway 101, thence over Indiana Highway 101 to junction Indiana Highway 48, thence over Indiana Highway 48 to junction Indiana Highway 148, thence over Indiana Highway 148 to Aurora, Ind., thence over U.S. Highway 50 to Elizabethtown, Ohio, thence over old U.S. Highway 50 to Cleves, Ohio, thence over Ohio Highway 264 to junction U.S. Highway 52, thence over U.S. Highway 52 to Cincinnati, Ohio, and return over the same routes.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 68–14498; Filed, Dec. 3, 1968; 8:49 a.m.]

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[Notice 741]

## MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 29, 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 1936 (Sub-No. 33 TA), filed November 22, 1968. Applicant: B & P MOTOR EXPRESS, INC., 720 Gross Street, Pittsburgh, Pa. 15224. Applicant's representative: William J. Lavelle, 2310 Grant Building, Pittsburgh, Pa. 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe and pipe fittings* which are unloaded by carrier's trailer-mounted mechanical unloading devices, from the plantsite of the Wheatland Tube Co. at Wheatland, Pa., to points in Kentucky, Michigan, New York, and Washington, D.C., and its commercial zone as defined by the Commission, for 180 days. Supporting shipper: Wheatland Tube Co., Independence Square, 272 Public Ledger Building, Philadelphia, Pa. 19106. Send protests to: John J. England, District Supervisor, 2109 Federal Building, 1000 Liberty Avenue, Interstate Commerce Commission, Bureau of Operations, Pittsburgh, Pa. 15222.

No. MC 17867 (Sub-No. 4 TA), filed November 25, 1968. Applicant: MERION J. BRENAMAN, doing business as BRENAMAN AND SON, Post Office Box 9, Chariton, Iowa 50049. Applicant's representative: Kenneth F. Dudley, 901 South Madison Avenue, Post Office Box 279, Ottumwa, Iowa 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sewage disposal equipment*, from Chariton, Iowa, to points in Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia, for 180 days. Supporting shipper: Johnson Machine Works, Chariton, Iowa 50049. Send protests to: Ellis L. Annett, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 96770 (Sub-No. 3 TA), filed November 25, 1968. Applicant: ARTHUR N. LLOYD, INC., Post Office Box 1906, Clear Lake Road, Cocoa, Fla. 32923. Applicant's representative: J. B. Rodgers, Jr., 100 South Orange Avenue, Orlando, Fla. 32801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, and commodities requiring special equipment), between points in Brevard County, Fla., for 180 days. NOTE: Applicant intends to interline this freight with other motor common carrier, and also provide pickup and delivery service

for freight forwarders on shipments having immediate, prior or subsequent physical interstate move. Supporting shipper: Republic Car Loading and Distributing Co., Inc., 1540 Marietta Road NW., Atlanta, Ga. 30318. Send protests to: District Supervisor G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, 400 West Bay Street, Jacksonville, Fla. 32202.

No. MC 97009 (Sub-No. 16 TA), filed November 25, 1968. Applicant: VINCENT J. HERZOG, 200 Delaware Street, Honesdale, Pa. 18431. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fireplace equipment*, from Greentown, Pa., to Binghamton, N.Y.; (2) Automobile accessories and supplies, from Teterboro, N.J., to Lenoxville and Le Roysville, Pa.; and (3) *General commodities*, except household goods, commodities in bulk and those requiring special equipment, from Binghamton, N.Y., to South Canaan, Pa., for 150 days. Supporting shipper: S. F. Williams, Inc., Le Roysville, Pa. 18829. Send protests to: District Paul J. Kenworthy, 309 U.S. Post Office Building, Scranton, Pa. 18503.

No. MC 116544 (Sub-No. 102 TA), filed November 25, 1968. Applicant: WILSON BROTHERS TRUCK LINE, INC., 700 East Fairview Avenue, Post Office Box 636, Carthage, Mo. 64836. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, and articles* distributed by meat packinghouses, as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. and 766 (except commodities in bulk, in tank vehicles, and hides), from Guymon, Okla., to points in Tennessee, for 180 days. Supporting shipper: Swift & Co., Post Office Box 68, Guymon, Okla. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1100 Federal Office Building, 911 Walnut Street, Kansas City, Mo. 64106.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 68-14501; Filed, Dec. 3, 1968; 8:49 a.m.]

## NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

NOVEMBER 29, 1968.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by special rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

State Docket No. MC 4470 (Sub-No. 6) (Correction), filed October 22, 1968, published in the FEDERAL REGISTER issue of November 6, 1968, and republished as corrected, this issue. Applicant: POTTER FREIGHT LINES, INC., Post Office Box 428, Sparta, Tenn. 38583. Applicant's representative: Clarence Evans, 1800 Third National Bank Building, Nashville, Tenn. 37219. Certificate of Public Convenience and Necessity sought to operate a freight service as follows: Transportation of *General commodities*, excluding used household goods and commodities in bulk, between Nashville, and Memphis, Tenn., via Interstate Highway 40, with this authority to be used in both interstate and intrastate commerce and to be used with all of applicant's existing authority so as to provide service between all points served by applicant and Memphis, Tenn. Both intrastate and interstate authority sought. NOTE: The purpose of this republication is to include the point of Memphis, Tenn., which was inadvertently omitted from the previous publication.

*HEARING:* Wednesday, December 11, 1968, at 9:30 a.m., Tennessee Public Service Commission Court Room, C-1 Cordell Hull Building, Nashville, Tenn.

Requests for procedural information including the time for filing protests concerning this application should be addressed to the Tennessee Public Service Commission, C-1 Cordell Hull Building, Nashville, Tenn. 37219, and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 68-14499; Filed, Dec. 3, 1968; 8:49 a.m.]

[Notice 740]

## MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 27, 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 Apuril 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 32882 (Sub-No. 42 TA), filed November 25, 1968. Applicant: MITCHELL BROS. TRUCK LINES, 3841 North Columbia Boulevard, Portland, Oreg. 97217. Applicant's representative: Norman E. Sutherland, 1200 Jackson Tower, Portland, Oreg. 97205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Helium*, from Otis, Kans., to Portland, Oreg., in specially designed shipper-owned trailers, and *shipper's trailers*, on return, for 150 days. Supporting shipper: Industrial Air Products Co., 3200 Northwest Yeon Avenue, Portland, Oreg. 97210. Send protests to: District Supervisor W. J. Huetig, Interstate Commerce Commission, Bureau of Operations, 450 Multnomah Building, 120 Southwest Fourth Avenue, Portland, Oreg. 97204.

No. MC 85465 (Sub-No. 14 TA), filed November 25, 1968. Applicant: WEST NEBRASKA EXPRESS, INC., Post Office Drawer 350, 709 Mill Drive, Scottsbluff, Nebr. 69361. Applicant's representative: Stockton and Lewis, The 1650 Grant Street Building, Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fresh hams*, from Kansas City, Trenton and St. Louis, Mo.; Austin, Minn.; Sioux Falls, and Huron, S. Dak.; Wichita, Kans.; Chicago, Ill.; and Ottumwa, Des Moines, Cedar Rapids, Fort Dodge, Cherokee, Sioux City, Mason City, Davenport, and Storm Lake, Iowa, to Scottsbluff, Nebr. and thence to Delphos, Ohio, for 180 days. Supporting shipper: Great Western Packing Company of Nebraska, Scottsbluff, Nebr. Send protests to: District Supervisor Max H. Johnston, Bureau of Operations, Interstate Commerce Commission, 315 Post Office Building, Lincoln, Nebr. 68508.

No. MC 114533 (Sub-No. 178 TA), filed November 22, 1968. Applicant: BANKERS DISPATCH CORPORATION, 4970 South Archer Avenue, Chicago, Ill. 60632. Applicant's representative: Stanley Komosa (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: *Small parts, electronic components and supplies*, as used in the repair, maintenance, and operation of photocopying equipment, (1) between Chicago, Ill., on the one hand, and, on the other, points in Wisconsin, Michigan, Indiana, Missouri, and Toledo, Ohio; (2) between St. Louis, Mo., on the one hand, and, on the other, Coffeyville, Emporia, Great Bend, Hutchinson, Junction City, Kansas City, Lawrence, Leavenworth,

Manhattan, Overland Park, Pittsburg, Salina, Topeka, and Wichita, Kans., for 180 days. Supporting shipper: Xerox Corp., Rochester, N.Y. 14603. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 219 South Dearborn Street, Room 1086, Chicago, Ill. 60604.

No. MC 124078 (Sub-No. 352 TA), filed November 25, 1968. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, Wis. 53246. Applicant's representative: Richard H. Prevette (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand*, from Sewanee, Tenn., to points in Arkansas, Indiana, North Carolina, Ohio, and South Carolina, for 150 days. Supporting shipper: Sewanee Silica Co., Division of Wedron Silica Co., 135 South La Salle Street, Chicago, Ill. 60603 (Thomas A. Mitropoulos, Traffic Manager). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 124679 (Sub-No. 18 TA), filed November 25, 1968. Applicant: C. R. ENGLAND & SONS, INC., 228 West Fifth South Street, Salt Lake City, Utah 84101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Packinghouse products*, from points in the Boston, Mass., commercial zone, to points in the Philadelphia, Pa., commercial zone and Thoroughfare, N.J., for 180 days. Supporting shippers: Denver Meat Brokerage Co., Inc., 130 Newmarket Square, Boston, Mass. 02118; Colonial Beef Co., Food Distribution Center, Philadelphia, Pa. 19148; Columbia Packing Co., 155 Southampton Street, Boston, Mass. 02118; Fleekop's Midtown Meats, Inc., 3101 South Third Street, Philadelphia, Pa. 19148. Send protests to: John T. Vaughan, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 6201 Federal Building, Salt Lake City, Utah 84111.

No. MC 124735 (Sub-No. 9 TA), filed November 25, 1968. Applicant: R. C. KERCHEVAL, JR., 4424 Fourth Avenue South, Seattle, Wash. 98134. Applicant's representative: Joseph A. Earp, 411 Lyon Building, 607 Third Avenue, Seattle, Wash. 98104. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Beverages, carbonated, and beverage extracts*, (1) from Seattle and Tacoma, Wash., to points in Washington, Oregon, Idaho, and Montana; and (2) from Berkeley, Calif., to Seattle and Tacoma, Wash., for 150 days. Supporting shipper: Canada Dry Corp., 1811 Rainier Avenue South, Seattle, Wash. 98144. Send protests to: E. J. Casey, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 6130 Arcade Building, Seattle, Wash. 98101.

No. MC 124908 (Sub-No. 9 TA), filed November 25, 1968. Applicant: IRON & METAL TRUCKING SERVICE, INC., 9101 St. Stephens Avenue, Detroit, Mich. 48210. Applicant's representative: Clark Klein, 1600 First Federal Building, 1001 Woodward Avenue, Detroit, Mich. 48226. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *No. 2 foundry steel (scrap)*, in dump vehicles, from points in the Lower Peninsula of Michigan to the port of entry on the international boundary line between the United States and Canada at or near Port Huron, Mich., for 150 days. Under a continuing contract with Benlee Industrial Salvage Co. Supporting shipper: Benlee Industrial Salvage Co., 9101 St. Stephens, Detroit, Mich. 48210. Send protests to: District Supervisor Gerald J. Davis, Bureau of Operations, Interstate Commerce Commission, 1110 Broderick Tower, Detroit, Mich. 48226.

No. MC 133297 (Sub-No. 1 TA), filed November 25, 1968. Applicant: NATIONAL OIL & SUPPLY COMPANY, a corporation, 2345½ West Kearney, Springfield Mo. 65803. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Liquid animal feeds and ingredients*, in bulk, in tank vehicles, from Cargill, Inc., plantsite in Memphis, Tenn., to points in Arkansas, Louisiana, Mississippi, Georgia, Tennessee, Oklahoma, Illinois, and Missouri, for 150 days. Supporting shipper: Cargill, Inc., Cargill Building, Minneapolis, Minn. 55402. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1100 Federal Office Building, 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 133298 (Sub-No. 1 TA), filed November 25, 1968. Applicant: JAMES TRUSSELL, doing business as TRUSSELL TRUCKING COMPANY, Post Office Box 395, Decherd, Tenn. 37324. Applicant's representative: Walter Harwood, Suite 1822, Parkway Towers, 404 James Robertson Parkway, Nashville, Tenn. 37219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand*, from facilities of Sewanee Silica Co., near Sewanee, Tenn., to points in Alabama, Georgia, Kentucky, Indiana, Mississippi, North Carolina, South Carolina, and Ohio, for 180 days. Supporting shipper: Sewanee Silica Co., Division of Wedron Silica Co., 135 South La Salle Street, Chicago, Ill. 60603. Send protests to: J. E. Gamble, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 803, 1808 West End Building, Nashville, Tenn. 37203.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary*.

[F.R. Doc. 68-14500; Filed, Dec. 3, 1968; 8:49 a.m.]

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[Notice 1244]

## MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

NOVEMBER 29, 1968.

The following publications are governed by the new Special Rule 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

### APPLICATIONS ASSIGNED FOR ORAL HEARING

#### MOTOR CARRIERS OF PROPERTY

No. MC 41608 (Sub-No. 1) (Republication), filed January 2, 1966, published in the FEDERAL REGISTER issue of January 27, 1966, and republished this issue. Applicant: CORRIGAN MOVING AND STORAGE CO., a corporation, 5755 Shaefer Road, Dearborn, Mich. Applicant's representative: Robert A. Sullivan, 1800 Buhl Building, Detroit, Mich. 48226. By application filed January 2, 1966, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, transporting: Used household goods, between Detroit, Mich., and points within the Detroit commercial zone, on the one hand, and, on the other, points in Michigan within 50 miles of Detroit, restricted to shipments having an immediately prior or subsequent line-haul movement by rail, water, motor, or air; and to shipments moving on through bills of lading for a forwarder operating under section 402(b)(2) exemption. A report of the Commission, Review Board Number 4, decided November 15, 1968, and served November 22, 1968, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, transporting: *Used household goods*, between Detroit, Mich., on the one hand, and, on the other, points in Genesee, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties, Mich.; restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such traffic, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the

authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 74745 (Sub-No. 2) (Republication) filed April 21, 1967, published in the FEDERAL REGISTER issue of May 18, 1967, and republished this issue. Applicant: THE ATLAS MOVING & STORAGE COMPANY, a corporation, 1500 Eastwood Avenue, Columbus, Ohio 43203. Applicant's representative: Earl M. Merwin, 85 East Gay Street, Columbus, Ohio 43215. By application filed April 21, 1967, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, transporting: Used household goods between points in Delaware, Franklin, Fairfield, Guernsey, Licking, Logan, Madison, Muskingum, Pickaway, and Union Counties, Ohio, restricted to shipments having an immediately prior or subsequent line-haul movement by rail, water, motor, or air; to shipments moving on through bills of lading for a forwarder operating under section 402(b)(2) exemption; and, to providing a local service for a forwarder of used household goods.

A report of the Commission, Review Board Number 4, decided November 15, 1968, and served November 22, 1968, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, transporting: *used household goods*, between points in Delaware, Fairfield, Franklin, Guernsey, Licking, Madison, Muskingum, Pickaway, and Union Counties, Ohio, restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 127193 (Republication) filed April 20, 1965, published in the FEDERAL REGISTER issue of May 13, 1965, and republished this issue. Applicant: LEONARD BROS. VAN & STORAGE CO., a corporation, 7040 West Fort Street, Detroit, Mich. 48209. By application filed April 20, 1965, as amended, applicant seeks a certificate of public convenience and necessity, authorizing operation in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, transporting: Used household goods, between Detroit, Mich., and points within the Detroit commercial zone, on the one hand, and, on the other, points in Michigan within 50 miles of Detroit, restricted to shipments having an immediately prior or subsequent line-haul movement by rail, water, motor, or air and further restricted to shipments moving on through bills of lading for a forwarder operating under section 402(b)(2) exemption. A report of the Commission, Review Board Number 4, decided November 15, 1968, and served November 22, 1968, finds that the present and future public convenience and necessity require operation by applicant as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, of *used household goods*, between Detroit, Mich., on the one hand, and, on the other, points in Macomb and Wayne Counties, Mich., restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 127202 (Sub-No. 1) (Republication) filed May 10, 1965, published in the FEDERAL REGISTER issue of June 3, 1965, and republished this issue. Applicant: STEVENS VAN LINES-PONTIAC, INC., 3565 Elizabeth Lake Road, Pontiac, Mich. Applicant's representative: Alan F. Wohlstetter, 1 Farragut Square South, Washington, D.C. 20006. By application filed May 10, 1965, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier, by motor vehicle, over irregular routes, transporting: Household goods as defined by the Commission (1)(a) between points in Oakland, Wayne, Macomb, Washtenaw, Livingston, Shiawassee, Genesee, Lapeer, Sanilac, and St. Clair Counties, Mich.; and (b) between points in the above counties, on the one hand, and, on the other, points in Michigan, restricted to shipments having a prior or subsequent movement beyond said points. A report of the Commission, Review Board Number 4, decided November 15, 1968, and served November 22, 1968, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, transporting:

*Used household goods*, (a) between points in Genesee, Lapeer, Livingston, Macomb, Oakland, St. Clair, Sanilac, Washtenaw, and Wayne Counties, Mich.; and (b) between the points described in (a) above, on the one hand, and, on the other, points in Calhoun, Ingham, Jackson, Saginaw, Shiawassee, and Tuscola Counties, Mich., restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 127211 (Sub-No. 2) (Republication) filed April 18, 1967, published in the FEDERAL REGISTER issue of May 11, 1967, and republished this issue. Applicant: UNITED MOVING AND STORAGE, INC. OF DAYTON, 1728 Troy Street, Dayton, Ohio 45404. Applicant's representative: Earl N. Merwin, 85 East Gay Street, Columbus, Ohio 43215. By application filed April 18, 1967, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier, by motor vehicle, over irregular routes, transporting: Used household goods, between points in Allen, Auglaize, Adams, Brown, Butler, Clermont, Champaign, Clinton, Clark, Darke, Fayette, Greene, Hamilton, Hardin, Highland, Logan, Montgomery, Madi-

son, Miami, Mercer, Marion, Pike, Preble, Pickaway, Ross, Shelby, Scioto, Union, Van Wert, and Warren Counties, Ohio, restricted to (1) shipments moving on through bills of lading for a forwarder operating under section 402(b)(2) exemption, (2) to shipments having an immediately prior or subsequent line-haul movement by rail, motor, water, or air, and, (3) to providing a local service for a forwarder of used household goods.

A report of the Commission, Review Board Number 4, decided November 15, 1968, and served November 22, 1968, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier,* by motor vehicle, over irregular routes, of *used household goods,* between points in Butler, Champaign, Clark, Clinton, Darke, Greene, Hamilton, Logan, Miami, Montgomery, Preble, Shelby, and Warren Counties, Ohio, restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 127255 (Republication) filed May 10, 1965, published in FEDERAL REGISTER issue of May 26, 1965, and republished this issue. Applicant: STEVENS VAN LINES-BAY CITY, INC., 1220 North Sheridan Street, Bay City, Mich. Applicant's representative: Alan F. Wohlstetter, 1 Farragut Square South, Washington, D.C. 20006. By application filed May 10, 1965, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, transporting: Household goods, as defined by the Commission, (a) between points in Bay, Huron, Tuscola, Saginaw, Gratiot, Midland, Isabella, Clare, Gladwin, Arenac, Ogemaw, Iosco, Oscoda, Alcona, and Alpena Counties, Mich.; and (b) between points in the above counties, on the one hand, and, on the other, points in Michigan, restricted to shipments having a prior or subsequent movement beyond said counties. A report of the Commission, Review Board Number 4, decided November 15, 1968, and served November 22, 1968, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, transporting *used household goods,* (a) between points in Arenac, Bay, Clare, Gladwin, Huron, Iosco, Isabella, Midland, Ogemaw, Saginaw, and Tuscola Counties, Mich.;

(b) Between the points described in (a) above, on the one hand, and, on the other, points in Genesee, Lapeer, Macomb, Osceola, Roscommon, Sanilac, and St. Clair Counties, Mich., restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 128998 (Republication) filed April 6, 1967, published FEDERAL REGISTER issue of April 20, 1967, and republished this issue. Applicant: VANWAYS, INC., 1230 West River Road, Oscoda, Mich. Applicant's representative: Alan F. Wohlstetter, 1 Farragut Square South, Washington, D.C. 20006. By application filed April 6, 1967, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicles, over irregular routes, transporting: Household goods, as defined by the Commission, (1) between points in the Upper Peninsula, and the counties of Emmet and Cheboygan, Mich., and (2) between points in Arenac, Iosco, Ogemaw, Oscoda, Alcona, Alpena, Presque Isle, Cheboygan, and Emmet Counties, Mich., on the one hand, and, on the other, those counties in the Lower Peninsula of Michigan in and north of Bay, Midland, Isabella, Mecosta, Newaygo, and Oceana Counties, Mich., restricted to shipments having a prior or subsequent movement beyond said points in containers, and further restricted to pickup and delivery services incidental to and in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such shipments.

A report of the Commission Review Board Number 4, decided November 15, 1968, and served November 22, 1968, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, transporting *used household goods,* (a) between points in Chippewa, Luce, Mackinac, and Schoolcraft Counties, Mich.; (b) between points in Alcona, Alpena, Arenac, Iosco, Ogemaw, and Oscoda Counties, Mich.; (c) between the points described in (b) above, on the one hand, and, on the other, points in Bay, Charlevoix, Gladwin, Isabella, Midland, Montmorency, and Otsego Counties, Mich., restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act, and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 129321 (Republication), filed August 10, 1967, published FEDERAL REGISTER issue of August 25, 1967, and republished this issue. Applicant: HERLIHY MOVING AND STORAGE, INC., 87 South Walnut Street, Chillicothe, Ohio 45601. Applicant's representative: Earl N. Merwin, 85 East Gay Street, Columbus, Ohio 43215. By application filed August 10, 1967, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, transporting: Used household goods, between points in Adams, Athens, Fairfield, Fayette, Franklin, Highland, Hocking, Jackson, Meigs, Pickaway, Pike, Scioto, and Vinton Counties, Ohio. Restricted: (1) To shipments moving on through bills of lading for a forwarder operating under section 402(b)(2) exemption; (2) to shipments having an immediately prior or subsequent line-haul movement by rail, motor, water, or air; (3) to providing a local service for a forwarder of used household goods. A Report of the Commission, Review Board Number 4, decided November 15, 1968, and served November 22, 1968, finds that

the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, transporting *used household goods*, between points in Franklin, Pickaway, Pike, Ross, and Scioto Counties, Ohio, restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such traffic; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 129453 (Republication), filed October 11, 1967, published FEDERAL REGISTER issue of November 16, 1967, and republished this issue. Application: STARCK VAN LINES OF COLUMBUS, INC., 425 Goshen Lane, Gahanna, Ohio 43020. Applicant's representative: Clarence S. Bowser, Sr., 9616 Woodside Drive, Pataskala, Ohio 43062. By application filed October 11, 1967, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of used household goods, moving on a through bill of lading of freight forwarders operating under the exemption of section 402(b)(2) of the Interstate Commerce Act, and having an immediate prior or subsequent out of State line haul movement by rail, motor, water or air, between points in Ohio. A Report of the Commission, Review Board Number 4, decided November 15, 1968, and served November 22, 1968, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of used household goods, between points in Athens, Belmont, Carroll, Coshocton, Crawford, Delaware, Fairfield, Franklin, Gallia, Guernsey, Harrison, Hocking, Holmes, Jackson, Jefferson, Knox, Licking, Madison, Marion, Meigs, Monroe, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Richland, Ross, Seneca, Tuscarawas, Union, Vinton, Washington, and Wyandot Counties, Ohio, restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such traffic, that applicant is fit, willing, and able properly to perform the operations and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other persons, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 133015 (Republication), filed July 1, 1968, published in FEDERAL REGISTER issue of July 25, 1968, and republished this issue. Applicant: JAMES G. LYNCH, Rural Delivery 1, Carbondale, Pa. Applicant's representatives: James K. Peck and James K. Peck, Jr., 912 Northeastern National Bank Building, Scranton, Pa. 18503. By application filed July 1, 1968, applicant seeks a permit authorizing operations, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of natural cleft split faced veneer and sawed split faced veneer, irregular stone (also called rubble and sawed treads), sills and patterns and crushed stone, from sites of Laurel Mountain Stone Corp. quarries at or near Newton Road, Scranton, Lackawanna County, Pa., to points in Pennsylvania, New York, New Jersey, Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine, Vermont, Maryland, Virginia, Ohio, Delaware, and Washington, D.C., under contract with Laurel Mountain Stone Corp. An order of the Commission, Operating Rights Board, dated October 31, 1968, and served November 19, 1968, finds that operation by applicant, in interstate or foreign commerce, as a *contract carrier* by motor vehicle, over irregular routes, of *stone and stone products* from the facilities of Laurel Mountain Stone Corp. at or near Scranton, Pa., to points in Pennsylvania, New York, New Jersey, Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine, Vermont, Maryland, Virginia, Ohio, Delaware, and Washington, D.C., under a continuing contract with Laurel Mountain Stone Corp., will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform with the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other persons, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and an issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

NOTICE OF FILING OF PETITION

Nos. MC 78786 (Sub-No. 21) and MC 78786 (Sub-No. 151) (Notice of Filing of Petition for Leave To File Petition for Reopening and Reconsideration), filed November 18, 1968 (Embraces Petition of PACIFIC MOTOR TRUCKING COMPANY for Reopening and Reconsideration for the Purpose of Modifying Restrictions at Calistoga, Calif., and at Points Between St. Helena and Calistoga, Calif., Also Statement and Argument of Same Petitioner in Support of Said Petition). Petitioner: PACIFIC MOTOR TRUCKING COMPANY, San Francisco, Calif. Petitioner's representative: W. A. Gregory, 65 Market Street, San Francisco, Calif. 94105. (1) By its petition for leave to file petition for reopening and reconsideration, filed November 18, 1968, Petitioner states that for more than 23 years it has provided a motor common carrier service in interstate commerce for general commodities without exceptions to points on Southern Pacific Co.'s Calistoga branch in Napa County, Calif. This service has been subject to "auxiliary and supplemental" service restrictions which limit the service provided to that provided for the account of Southern Pacific Co. or Railway Express Agency. Neither key-point nor prior or subsequent rail haul conditions have ever been imposed on these authorities; however, at the time the authorities were granted, all of the service points involved were stations on the line of Southern Pacific Co. Southern Pacific has now filed its petition with the Interstate Commerce Commission for authority to abandon the last 6.916 miles at the end of the branch, comprising the territory north of Krug, near St. Helena, Calif. If such abandonment is authorized, the point of Calistoga, Calif., and intermediate points on the branch line (and on paralleling California Highway 29) between St. Helena, Calif., and Calistoga, Calif., 9 miles, will no longer be stations on the line of Southern Pacific Co.

By this petition, Petitioner requests leave to file petitions for modification of existing restrictions to enable Pacific Motor Trucking Co. to continue providing motor service at Calistoga, Calif., and at points between St. Helena and Calistoga, Calif., exactly in the same manner as it has for more than 23 years, last past. Such service shall as a practical matter be confined to that handled under joint rates with Southern Pacific Co. and subject to substantially the identical

functional restrictions as at present because the route which must be traversed to reach points north of St. Helena will continue to be subject to existing "auxiliary or supplemental" service restrictions. (2) By its concurrently filed petition for reopening and reconsideration for the purpose of modifying restrictions at Calistoga, Calif., and at points between St. Helena and Calistoga, Calif., including its statement and argument in support thereof, filed November 18, 1968, the same petitioner, as here pertinent, seeks to reopen the above-entitled proceedings for the purpose of reconsidering and thereafter modifying certain restrictions in the operating rights granted as such restrictions apply at Calistoga, Calif., and at points intermediate between Calistoga and St. Helena, Calif., after abandonment of the 6.916 miles of track as described above. Petitioner states that at the present time it has interstate authority to transport general commodities without exceptions over California Highway 29 between Napa, Calif., and Calistoga, Calif., a distance of approximately 27 miles, subject to certain auxiliary and supplemental service restrictions. California Highway 29 is very closely parallel for this entire distance to the Calistoga branch of Southern Pacific, and all points on California Highway 29, Napa to St. Helena, inclusive, and within the present pickup and delivery limits of a station on the lines of Southern Pacific. Petitioner states that the points involved are, with exception of Calistoga, very small points with negligible population, and even at Calistoga there will be no material change in the competitive situation between Petitioner and other carriers. Petitioner would simply continue an existing service of long-standing, and even if auxiliary and supplemental restrictions are lifted at Calistoga and at points intermediate between Napa and St. Helena, approximately 18 miles, will remain subject to auxiliary and supplemental restrictions which will as a practical matter continue the same functional limitation on the service as now obtains at Calistoga. Any person desiring to participate, may file an original and six copies of his written representations, views, or argument in support of, or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

### APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240.)

### MOTOR CARRIERS OF PROPERTY

No. MC-F-10290. (Correction) (BILL BILYEU—Lease—NORTH CENTRAL TRUCK LINES, INC.) published in the November 6, 1968, issue of the FEDERAL REGISTER, on page 16319. This corrected notice is to delete a portion of the authority sought to be leased which was erronously included: *The authority to be deleted* reads: *Stock in trade of drug stores,* as a *common carrier,* over irregular routes, between points in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin.

No. MC-F-10312. Authority sought for purchase by SPEAR TRUCKING CORPORATION, 4 Ship Avenue, Medford, Mass. 02155, of the operating rights of STATE TRANSPORT, INC., 118 Russell Street, Woburn, Mass., and for acquisition by LARICH TRANSPORTATION CORP., 1390 Broadway, Hewlett, N.Y., and, in turn by IRVING GILBERT, also of Medford, Mass., of control of such rights through the purchase. Applicants' attorneys and representative: George C. O'Brien, John F. Curley, both of 15 Court Square, Boston, Mass. 02108, and Frederick T. O'Sullivan, 372 Granite Avenue, Milton, Mass. 02186. Operating rights sought to be transferred: Under a certificate of registration, in Docket No. MC-99350 Sub-1, covering the transportation of general commodities, as a common carrier, in intrastate commerce, within the State of Massachusetts. Vendee is authorized to operate as a *common carrier* in New York, New Jersey, and Massachusetts. Application has not been filed for temporary authority under section 210a(b). NOTE: MC-106961 Sub 1 is a matter directly related.

No. MC-F-10313. Authority sought for purchase by JACOBS TRANSFER, INC., 61 Pierce Street NE., Washington, D.C. 20002, of the operating rights of STANDARD TRANSFER AND STORAGE, INC., Fourth and Bryant Streets NE., Washington, D.C. 20002, and for acquisition by H. LINDLEY GRUBBS, 1245 Fourth Street SW., Washington, D.C., of control of such rights through the purchase. Applicants' attorney: Francis W. McInerny, 1000 16th Street NW., Washington, D.C. Operating rights sought to be transferred: *General commodities,* excepting, among others, household goods and commodities in bulk, as a *common carrier,* over a regular route, between Washington, D.C., and Baltimore, Md., serving all intermediate points; and the off-route point of Fort Meade, Md., and those in the Washington, D.C., commercial zone, as defined by the Commission in 3 M.C.C. 243; *general commodities,* except livestock, and classes A and B explosives, over irregular routes, from Washington, D.C., to points in St. Marys and Charles Counties, Md., with restriction; and *general commodities,* excepting, among others, household goods and commodities in bulk, between Washington, D.C., on the one hand, and, on the other, points in Charles and St. Marys Counties, Md., with restriction. Vendee is authorized to operate as a *common carrier* in Delaware, Maryland, Virginia, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC-F-10314. Authority sought for control by SMITHSONS HOLDINGS LIMITED, 150 Commissioners Street, Toronto, Ontario, Canada, of SMITH TRANSPORT (U.S.) LIMITED, 20 Toronto Street, Toronto, Ontario, Canada, and for acquisition by CANADIAN PACIFIC RAILWAY COMPANY, Windsor Station, Montreal, Quebec, Canada, of control of SMITH TRANSPORT (U.S.) LIMITED, through the acquisition by SMITHSONS HOLDINGS LIMITED. Applicants' attorney: David G. MacDonald, 1000 16th Street NW., Washington, D.C. 20036. Operating rights sought to be controlled: *General commodities,* excepting, among others, household goods and commodities in bulk, as a *common carrier,* over regular routes, between New York, N.Y., and Albany, N.Y., serving all intermediate points, and the off-route points in New York and New Jersey within 25 miles of New York, N.Y., with restriction; between points in New York, serving all intermediate points, with restriction; over numerous alternate routes for operating convenience only; *general commodities,* in foreign commerce only, between certain specified points in New York, on the one hand, and, on the other, the boundary of the United States and Canada, serving all intermediate points without restriction as to commodity; and the off-route point of Natural Bridge, N.Y., restricted to the pickup of limestone, and off-route points within 15 miles of Gouverneur, N.Y., restricted to the pickup of talc; *wood pulp,* over irregular routes, from Rouses Point and Rooseveltown, N.Y., to points in Vermont, New Hampshire, Massachusetts, New York, and New Jersey, with restriction; *newsprint,* in foreign commerce only, from the ports of entry on the United States-Canada boundary line at or near Rouses Point, Rooseveltown, and Alexandria Bay, N.Y., to Olean, N.Y.; *talc,* from Balmat and Hailesboro, N.Y., to points in Connecticut, Delaware, Maryland, New Jersey, New York, Ohio, and Pennsylvania; *newsprint,* from ports of entry on the United States-Canada boundary line, at or near Rouses Point, Rooseveltown, Alexandria Bay, Niagara Falls, and Buffalo, N.Y., to Dunkirk, N.Y., with restrictions; and *silver bullion,* from Perth Amboy, N.J., to the port of entry on the United States-Canada boundary line located at or near Alexandria Bay, N.Y. Application has not been filed for temporary authority under section 210a(b). NOTE: This application includes a motion to dismiss for lack of jurisdiction.

No. MC-F-10315. Authority sought for control and merger by CENTRAL TRANSFER COMPANY, 1 Runiak Avenue, Newark, N.J. 07114, of the operating rights and property of BERNSIE'S EXPRESS, 186 Meadow Road, Rutherford, N.J. 07070, and for acquisition by PASQUALE A. ALBANESE, 12 Eaton Drive North, Caldwell, N.J., of control of such rights and property through the transaction. Applicants' attorneys: Edward F. Bowes, 744 Broad Street, Newark, N.J. 07102, and Herman B. J. Weckstein, 60 Park Place, Newark, N.J. 07102. Operating rights sought to be controlled and merged: *General commodities,* except those of unusual value, classes A and B explosives, livestock, fish, poultry, lumber, films, structural iron and steel,

household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment or temperature control, and those injurious or contaminating to other lading, as a *common carrier*, over regular routes between Philadelphia, Pa., and Princeton, N.J., serving certain intermediate points; *general commodities*, excepting, among others household goods and commodities in bulk, over irregular routes, between New York, N.Y., on the one hand, and, on the other, certain specified points in New Jersey; and *steamship signal devices and parts, strainers, gauges, valves, and valve parts*, from Lyndhurst, N. J., to Philadelphia, Pa., and Annapolis, Md. CENTRAL TRANSFER COMPANY is authorized to operate as a *common carrier* in New Jersey, New York, and Pennsylvania. Application has been filed for temporary authority under section 210a(b).

No. MC–F–10316. Authority sought for purchase by MERCHANTS TRUCK LINE, INC., 100 Sumner Street, Post Office Box 209, New Albany, Miss., of a portion of the operating rights of GULF TRANSPORT COMPANY, 505 South Conception Street, Mobile, Ala., and for acquisition by BEN A. KITCHENS, Post Office Box 209, New Albany, Miss., of control of such rights through the purchase. Applicants' attorney: Rubel L. Phillips, Post Office Box 22533, Jackson, Miss. 39205. Operating rights sought to be transferred: *General commodities*, except dangerous explosives, as a *common carrier*, over regular routes, between West Point, Miss., on the one hand, and, on the other Coden, Ala., serving all intermediate points. Vendee is authorized to operate as a *common carrier* in Tennessee and Mississippi. Application has not been filed for temporary authority under section 210a(b). NOTE: Applicants request the authority sought to specifically name Mobile, Ala., as an intermediate point on the route between Waynesboro, Miss., and Coden, Ala.

No. MC–F–10317. Authority sought for purchase by GRAIN BELT TRANSPORTATION COMPANY, 347 North James, Kansas City, Kans. 66118, of the operating rights of PAUL BERKENMEIER, 1530 Wilson Street, Parsons, Kans. 67357, and for acquisition by M. E. GJOVIG, also of Kansas City, Kans., of control of such rights through the purchase. Applicants' attorney and representative: Carll V. Kretsinger, 450 Professional Building, Kansas City, Mo. 64106, and John B. Manges, 115½ South 18th Street, Parsons, Kans. 67357. Operating rights sought to be transferred: *Fertilizer* and *corrugated roofing*, as a *common carrier*, over irregular routes, from Kansas City, Mo., to South Mound, Kans.; *livestock*, from Erie, Kans., and points within 20 miles of Erie, on the one hand, and, on the other, Kansas City, Mo., and Kansas City, Kans.; *cheese*, from Erie, Kans., to Springfield, Mo.; *empty cheddar boxes*, and *returned and processed cheese*, from Springfield, Mo., to Erie, Kans.; *seed, feed, wire, roofing material, moulding*, and *nails;* and *creamery supplies*, viz; *neutrilizers, washing powder, tubs, barrels*, and *fiber boxes*, from points in the *Kansas City, Mo., Kansas City, Kans., commercial zone*, as defined by the Commission in 31 M.C.C. 5, to Erie, Kans.; and *prefabricated buildings*, knocked down, or in sections, from points in the Kansas City, Mo.-Kans., commercial zone, as defined by the Commission, to points in Nebraska, Iowa, Missouri, Oklahoma, Texas, and Colorado. Vendee is authorized to operate as a *common carrier* in Kansas, Nebraska, Arkansas, Louisiana, Mississippi, Missouri, Illinois, Iowa, Montana, North Dakota, South Dakota, Wyoming, Texas, Oklahoma, and Tennessee. Application has been filed for temporary authority under section 210 a(b).

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 68–14502; Filed, Dec. 3, 1968; 8:49 a.m.]

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[Notice 256]

## MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 29, 1968.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 279), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC–FC–70716. By order of November 19, 1968, the Transfer Board approved the transfer to William Remines, Jr., doing business as Wm. Remines, Jr., Post Office Box 352, Bluefield, Va. 24605, of the operating rights in certificates Nos. MC–119987 (Sub-No. 5), MC–119987 (Sub-No. 7), MC–119987 (Sub-No. 8), and MC–119987 (Sub-No. 11) issued February 23, 1965, November 13, 1964, March 9, 1965, and October 18, 1967, respectively, to Frank Russell Crockett, doing business as F. R. Crockett, R.F.D. No. 2, North Tazewell, Va. 24630, authorizing the transportation of lime, from points in Tazewell County, Va., to Spruce Pine, N.C., and various other points in North Carolina and West Virginia, and to Wheelwright, Ky.; and fruit juices, dairy products, fruit and milk beverages, frozen confections, and advertising matter, between Bluefield, Va., and Pikeville, Ky., serving the intermediate points of Richlands and Grundy, Va.; between Bluefield, Va., and Beckley, W. Va., and between Bluefield, Va., on the one hand, and, on the other, Prestonsburg and Pikeville, Ky., and Richlands and Grundy, Va.

No. MC–FC–70786. By order of November 19, 1968, the Transfer Board approved the transfer to Barstow Death Valley Freight Lines, a corporation, Barstow, Calif., of certificate in No. MC–104094, and certificates of registration in Nos. MC–104094 (Sub-No. 4) and MC–56617 (Sub-No. 2) each issued August 17, 1965, to William G. Webster, doing business as Bill Webster & Sons, Barstow, Calif., authorizing the transportation of: Passengers and freight, from, to, or between specified points in California. Conrad E. Mahlum, 240 East William Street, Barstow, Calif. 92311; attorney for applicants.

No. MC–FC–70927. By order of November 25, 1968, the Transfer Board approved the transfer to Dickinson Brothers Lumber Co., Inc., Route 3, Box 132, Spotsylvania, Va. 22553, of permits Nos. MC–119028 and MC–119028 (Sub-No. 2), issued March 7, 1967, and October 30, 1968, respectively, to Vivian Earl Dickinson and Robert Ezra Dickinson, a partnership, doing business as Dickinson Brothers Lumber Co., Spotsylvania, Va., authorizing the transportation of: Forklift trucks, from the sites of the plants of Hyster Co., at Peoria and Danville, Ill., to the sites of establishments of Virginia Bearings & Supply Co., Inc., or its subsidiaries, at Richmond, Roanoke, and Norfolk, Va., and from the plantsites of the Hyster Co. at Kewanee, Ill., to points in Virginia, and from the plantsites of the Hyster Co. at Danville and Peoria, Ill., to points in Virginia (except Norfolk, Richmond, and Roanoke). The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with Virginia Bearings & Supply Co., Inc., of Richmond, Va.

No. MC–FC–70928. By order of November 25, 1968, the Transfer Board approved the transfer to R. J. Trucking Co., Inc., North Arlington, N.J., of certificate No. MC–45476, issued June 16, 1941, to Elmer Van Valen, doing business as M & L Transportation Co., Closter, N.J., authorizing the transportation of: General commodities, with usual exceptions, between points in Bergen County, N.J., on the one hand, and, on the other, New York, N.Y. Robert B. Pepper, 297 Academy Street, Jersey City, N.J. 07306; practitioner for applicants.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 68–14503; Filed, Dec. 3, 1968; 8:49 a.m.]

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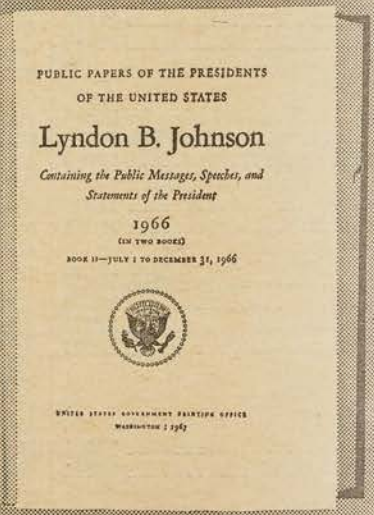
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