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Agencies in this issue—

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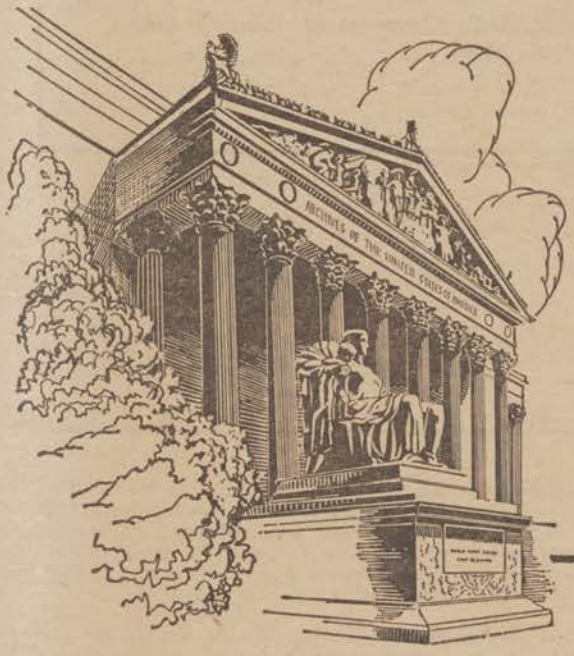

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The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each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

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1971, and specifies how they are affected.

Presidential Documents

Title 3—The President

EXECUTIVE ORDER 11578

Establishment of the Ohio River Basin Commission

WHEREAS the Water Resources Planning Act (79 Stat. 244, 42 U.S.C. 1962 *et seq.*) provides for the establishment of river basin water and related land resources commissions; and

WHEREAS the Governors of the States of the Ohio River drainage basin, excluding the Tennessee River drainage basin, and the Water Resources Council have requested, or concurred in, the establishment of such a commission:

NOW, THEREFORE, by virtue of the authority vested in me by section 201 of the Water Resources Planning Act (42 U.S.C. 1962b), and as President of the United States, it is ordered as follows:

SECTION 1. *Ohio River Basin Commission.* It is hereby declared that the Ohio River Basin Commission is established under the provisions of Title II of the Water Resources Planning Act (42 U.S.C. 1962b *et seq.*).

SEC. 2. *Jurisdiction of the Commission.* It is hereby determined that the jurisdiction of the Ohio River Basin Commission referred to in section 1 of this order shall extend to those portions of the States of Kentucky, Illinois, Indiana, Maryland, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia that are located within the Ohio River drainage basin, excluding the Tennessee River drainage basin.

SEC. 3. *Membership of the Commission.* It is hereby determined that, in accordance with section 202 of the Act (42 U.S.C. 1962b–1), the Commission shall consist of the following members:

(1) a Chairman to be appointed by the President,

(2) one member from each of the following Federal departments and agencies: Department of Agriculture, Department of the Army, Department of Commerce, Department of Health, Education, and Welfare, Department of Housing and Urban Development, Department of the Interior, Department of Transportation, Federal Power Commission, Atomic Energy Commission, and the Environmental Protection Agency,

such member to be appointed by the head of the department or independent agency he represents,

(3) one member from each of the following States: Kentucky, Illinois, Indiana, Maryland, New York, North Carolina, Ohio, Pennsylvania, Tennessee, and West Virginia, and a member from Virginia when authorized by the legislature of that State, and

(4) one member from each interstate agency created by an interstate compact to which the consent of Congress has been given and whose jurisdiction extends to the waters of the area specified in section 2.

SEC. 4. *Functions, Powers, and Duties.* The Commission and its officers, members, and employees shall perform and exercise, with respect to the area specified in section 2 of this order, their respective functions, powers, and duties as set out in Title II of the Water Resources Planning Act.

SEC. 5. *Reporting to the President.* The Chairman of the Commission shall report to the President through the Water Resources Council.

Richard Nixon

THE WHITE HOUSE,
January 13, 1971.

[FR Doc.71-773 Filed 1-15-71;12:35 pm]

Rules and Regulations

Title 7—AGRICULTURE

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

[Lemon Reg. 463]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.763 Lemon Regulation 463.

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

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 12, 1971.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period January 17, 1971, through January 23, 1971, are hereby fixed as follows:

(i) District 1: 30,000 cartons;

(ii) District 2: 55,000 cartons;

(iii) District 3: 110,000 cartons.

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

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

Dated: January 14, 1971.

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

[FR Doc.71-698 Filed 1-15-71;8:52 am]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter I—National Park Service, Department of the Interior

PART 2—PUBLIC USE AND RECREATION

Snowmobiles; Racing and Other Competitive Uses

Pursuant to the authority contained in section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3), § 2.34 is hereby amended as set forth below.

A final notice of rule making regulating snowmobile use in areas of the National Park System, appeared at page 11553 of the FEDERAL REGISTER of July 18, 1970. Subparagraph (2) of paragraph (e) of § 2.34 provided that racing and other competitive uses were prohibited.

A final notice of rule making containing an amendment to § 2.34(e)(2) appeared at page 18915 of the FEDERAL REGISTER of December 12, 1970, which amendment retained the general prohibition against racing and competitive uses but authorized such uses when they were a part of a public spectator event held in a national recreation area in accordance with conditions of a permit issued by the Superintendent.

The purpose of this amendment is to amend subparagraph (2) of paragraph (e) to readopt the regulation which previously appeared as § 2.34(e)(2) and which was in force prior to the FEDERAL REGISTER notice of December 12. The effect of the amendment is to return to the complete prohibition of snowmobile racing and other competitive uses. The amendment will take effect upon publication in the FEDERAL REGISTER (1–16–71).

Section 2.34 is amended as follows:

§ 2.34 Snowmobiles.

* * * * *

(e) *Prohibited operations.* * * *

(2) Racing and other competitive uses are prohibited.

* * * * *

Dated: January 12, 1971.

EDWARD A. HUMMEL,
Acting Director, National Park Service.

[FR Doc.71-744 Filed 1-15-71;9:32 am]

Title 24—HOUSING AND HOUSING CREDIT

Chapter II—Federal Housing Administration, Department of Housing and Urban Development

MISCELLANEOUS AMENDMENTS TO CHAPTER

The following miscellaneous amendments have been made to this chapter to reduce from 8 percent to 7½ percent the maximum rate of interest for certain mortgage and loan insurance programs under the National Housing Act:

SUBCHAPTER C—MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

PART 203—MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

Subpart A—Eligibility Requirements

1. In § 203.20 paragraph (a) is amended to read as follows:

§ 203.20 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not

exceed 7½ percent, except that the mortgage may bear interest at a rate not to exceed 8 percent with respect to mortgages insured pursuant to applications for commitments received by the Secretary before January 13, 1971.

* * * * *

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interpret or apply sec. 203, 52 Stat. 10, as amended; 12 U.S.C. 1709)

2. In § 203.74 paragraph (a) is amended to read as follows:

§ 203.74 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 7½ percent, except that the loan may bear interest at a rate not to exceed 8 percent with respect to loans insured pursuant to applications for commitments received by the Secretary before January 13, 1971.

* * * * *

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interpret or apply sec. 203, 52 Stat. 10, as amended; 12 U.S.C. 1709)

SUBCHAPTER D—RENTAL HOUSING INSURANCE

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

3. In § 207.7 paragraph (a) is amended to read as follows:

§ 207.7 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7½ percent, except that the mortgage may bear interest at a rate not to exceed 8 percent with respect to mortgages insured pursuant to:

(1) Letters issued by the Secretary before January 13, 1971, inviting submission of an application for commitment.

(2) Applications for commitment received by the Secretary before January 13, 1971.

* * * * *

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 207, 52 Stat. 16, as amended; 12 U.S.C. 1713)

SUBCHAPTER E—COOPERATIVE HOUSING INSURANCE

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Projects

4. In § 213.10 paragraph (a) is amended to read as follows:

§ 213.10 Maximum interest rate.

(a) The mortgage or a supplementary loan shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, or the lender and the borrower, which rate shall not exceed 7½ percent, except that the mortgage or supplementary loan may bear interest at a rate not to exceed 8 percent with respect to mortgages or supplementary loans insured pursuant to:

(1) Letters issued by the Secretary before January 13, 1971, inviting submission of an application for commitment.

(2) Applications for commitment received by the Secretary before January 13, 1971.

* * * * *

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interpret or apply sec. 213, 64 Stat. 54, as amended; 12 U.S.C. 1715e)

Subpart C—Eligibility Requirements—Individual Properties Released From Project Mortgage

5. In § 213.511 paragraph (a) is amended to read as follows:

§ 213.511 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7½ percent, except that the mortgage may bear interest at a rate not to exceed 8 percent with respect to mortgages insured pursuant to applications for commitments received by the Secretary before January 13, 1971.

* * * * *

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interpret or apply sec. 213, 64 Stat. 54, as amended; 12 U.S.C. 1715e)

SUBCHAPTER F—URBAN RENEWAL HOUSING INSURANCE AND INSURED IMPROVEMENT LOANS

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

Subpart C—Eligibility Requirements—Projects

6. In § 220.576 paragraph (a) is amended to read as follows:

§ 220.576 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 7½ percent, except that the loan may bear interest at a rate not to exceed 8 percent with respect to loans insured pursuant to:

(1) Letters issued by the Secretary before January 13, 1971, inviting submission of an application for commitment.

(2) Applications for commitment received by the Secretary before January 13, 1971.

* * * * *

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 220, 68 Stat 596, as amended; 12 U.S.C. 1715k)

SUBCHAPTER G—HOUSING FOR MODERATE INCOME AND DISPLACED FAMILIES

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

Subpart C—Eligibility Requirements—Moderate Income Projects

7. In § 221.518 paragraph (a) is amended to read as follows:

§ 221.518 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7½ percent, except that the mortgage may bear interest at a rate not to exceed 8 percent with respect to mortgages insured pursuant to:

(1) Letters issued by the Secretary before January 13, 1971, inviting submission of an application for commitment.

(2) Applications for commitment received by the Secretary before January 13, 1971.

Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

* * * * *

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 221, 68 Stat. 599, as amended; 12 U.S.C. 1715l)

SUBCHAPTER J—MORTGAGE INSURANCE FOR NURSING HOMES AND INTERMEDIATE CARE FACILITIES

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

8. In § 232.29 paragraph (a) is amended to read as follows:

§ 232.29 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7½ percent, except that the mortgage may bear interest at a rate not to exceed 8 percent with respect to mortgages insured pursuant to:

(1) Letters issued by the Secretary before January 13, 1971, inviting submission of an application for commitment.

(2) Applications for commitment received by the Secretary before January, 13, 1971.

* * * * *

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 232, 73 Stat. 663; 12 U.S.C. 1715w)

SUBCHAPTER L—CONDOMINIUM HOUSING INSURANCE

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Individually Owned Units

9. In § 234.29 paragraph (a) is amended to read as follows:

§ 234.29 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 8 percent with respect to mortgage may bear interest at a rate not to exceed 8 percent with respect to mortgages insured pursuant to applications for commitments received by the Secretary before January 13, 1971.

* * * * *

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 234, 75 Stat. 160; 12 U.S.C. 1715y)

SUBCHAPTER M—HOMES FOR LOWER INCOME FAMILIES

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

Subpart D—Eligibility Requirements—Rehabilitation Sales Projects

10. Section 235.540 is amended to read as follows:

§ 235.540 Maximum interest rate.

The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7½ percent, except that the mortgage may bear interest at a rate not to exceed 8 percent with respect to mortgages insured pursuant to:

(a) Letters issued by the Secretary before January 13, 1971, inviting submission of an application for commitment.

(b) Applications for commitment received by the Secretary before January 13, 1971.

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 235, 82 Stat. 477; 12 U.S.C. 1715z)

SUBCHAPTER N—PROJECTS FOR LOWER INCOME FAMILIES

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS

Subpart A—Eligibility Requirements for Mortgage Insurance

11. Section 236.15 is amended to read as follows:

§ 236.15 Maximum interest rate.

The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7½ percent, except that the mortgage may bear interest at a rate not to exceed 8 percent with respect to mortgages insured pursuant to:

(a) Letters issued by the Secretary before January 13, 1971, inviting submission of an application for commitment.

(b) Applications for commitment received by the Secretary before January 13, 1971.

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 236, 52 Stat. 498; 12 U.S.C. 1715z-1)

SUBCHAPTER Q—SUPPLEMENTARY PROJECT LOAN INSURANCE

PART 241—SUPPLEMENTARY FINANCING FOR FHA PROJECT MORTGAGES

Subpart A—Eligibility Requirements

12. Section 241.75 is amended to read as follows:

§ 241.75 Maximum interest rate.

The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 7½ percent, except that the loan may bear interest at a rate not to exceed 8 percent with respect to loans insured pursuant to:

(a) Letters issued by the Secretary before January 13, 1971, inviting submission of an application for commitment.

(b) Applications for commitment received by the Secretary before January 13, 1971.

Interest shall be payable in monthly installments on the principal then outstanding.

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 241, 82 Stat. 508, 12 U.S.C. 1715 z-b)

SUBCHAPTER Q-1—MORTGAGE INSURANCE FOR NONPROFIT HOSPITALS

PART 242—NONPROFIT HOSPITALS

Subpart A—Eligibility Requirements

13. Section 242.33 is amended to read as follows:

§ 242.33 Maximum interest rate.

The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7½ percent, except that the mortgage may bear interest at a rate not to exceed 8 percent with respect to mortgages insured pursuant to:

(a) Letters issued by the Secretary before January 13, 1971, inviting submission of an application for commitment.

(b) Applications for commitment received by the Secretary before January 13, 1971.

Interest shall be payable in monthly installments on the principal then outstanding.

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 242, 82 Stat. 5999; 12 U.S.C. 1715z-7)

SUBCHAPTER V—LAND DEVELOPMENT INSURANCE

PART 1000—MORTGAGE INSURANCE FOR LAND DEVELOPMENT

Subpart A—Eligibility Requirements

14. Section 1000.50 is amended to read as follows:

§ 1000.50 Maximum interest rate.

The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7½ percent, except that the mortgage may bear interest at a rate not to exceed 8 percent with respect to mortgages insured pursuant to:

(a) Letters issued by the Secretary before January 13, 1971, inviting submission of an application for commitment.

(b) Applications for commitment received by the Secretary before January 13, 1971.

(Sec. 1010, 79 Stat. 464; 12 U.S.C. 1749jj)

SUBCHAPTER W—GROUP PRACTICE FACILITIES INSURANCE

PART 1100—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES

Subpart A—Eligibility Requirements

15. In § 1100.45 paragraph (a) is amended to read as follows:

§ 1100.45 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7½ percent, except that the mortgage may bear interest at a rate not to exceed 8 percent with respect to mortgages insured pursuant to:

(1) Letters issued by the Secretary before January 13, 1971, inviting submission of an application for commitment.

(2) Applications for commitment received by the Secretary before January 13, 1971.

(Sec. 1104, 80 Stat. 1275; 12 U.S.C. 1749aaa-3)

Issued at Washington, D.C., January 12, 1971.

EUGENE A. GULLEDGE,
Federal Housing Commissioner.

[FR Doc.71-649 Filed 1-15-71;8:49 am]

Title 32—NATIONAL DEFENSE

Chapter XIV—Renegotiation Board

SUBCHAPTER B—RENEGOTIATION BOARD REGULATIONS UNDER THE 1951 ACT

PART 1472—CONDUCT OF RENEGOTIATION

Commencement of Renegotiation

Section 1472.2 *Commencement of renegotiation* is deleted in its entirety and the following is inserted in lieu thereof:

§ 1472.2 Renegotiation procedure.

(a) *In general.* Subject to the provisions of paragraph (c) of this section, renegotiation will be conducted in the manner outlined in this part.

(b) *Commencement of renegotiation.* Renegotiation proceedings will be commenced by mailing a notice to that effect by registered mail to the contractor. Ordinarily, renegotiation proceedings will not be commenced until after the contractor has filed a Standard Form of Contractor's Report (see § 1470.3(a) of this subchapter) and the case has been assigned to a Regional Board for renegotiation (see § 1471.1 of this subchapter).

(c) *Procedure in special circumstances.* If a contractor fails or refuses to file a Standard Form of Contractor's Report, or other necessary information, records or data requested by the Board or a Regional Board, or if the interests of the Government otherwise so require, any of the steps outlined in this part may be omitted (except the mailing of statutory notices), or may be combined, accelerated or otherwise modified in such manner as may be considered necessary or appropriate to protect the interests of the Government in the particular circumstances.

(Sec. 109, 65 Stat. 22; 50 U.S.C.A., App. sec. 1219)

Dated: January 13, 1971.

LAWRENCE E. HARTWIG,
Chairman.

[FR Doc.71-646 Filed 1-15-71;8:45 am]

Title 29—LABOR

Chapter IV—Office of Labor-Management and Welfare-Pension Reports, Department of Labor

PART 462—VARIATION FROM PUBLICATION REQUIREMENTS

Certain Employee Benefit Plans Utilizing Certain Insurance Companies

On November 10, 1970, there was published in the FEDERAL REGISTER (35 F.R. 17270) notice of a proposed variation under which employee benefit plans which utilize the services of the Hartford Life Insurance Co., the Hartford Life and Accident Insurance Co., and/or the Hartford Accident and Indemnity Co., Hartford Plaza, Hartford, CT 06115, hereinafter referred to as the carrier(s), and which do not maintain separate experience records are excused from the requirement of section 7(d)(2)(A) of the Welfare and Pension Plans Disclosure Act (WPPDA), 29 U.S.C. 306(d)(2)(a), that they attach a copy of the appropriate carrier's financial report to their annual reports. Interested persons were invited to submit objections to the proposed variance within 15 days of the date of publication. No objections have been received. Accordingly, in accordance with section 5(a), WPPDA, 29 U.S.C. 304(a), 29 CFR Part 462, Subpart A, and Secretary's Order No. 16-68 (33 F.R. 15574) the variation to appear as §§ 462.35 and 462.36 of 29 CFR Part 462, Subpart B, with an undesignated centerhead, is granted as follows:

CERTAIN EMPLOYEE BENEFIT PLANS UTILIZING HARTFORD LIFE INSURANCE CO., HARTFORD LIFE AND ACCIDENT INSURANCE CO., AND/OR HARTFORD ACCIDENT AND INDEMNITY CO.

§ 462.35 Rule of variation.

Every employee benefit plan which utilizes the Hartford Life Insurance Co., the Hartford Life and Accident Insurance Co., and/or the Hartford Accident and Indemnity Co. (hereinafter referred to as the carrier(s)) to provide benefits and which presently is required under section 7(d)(2)(A) of the Welfare and Pension Plans Disclosure Act to attach to its annual report filed with the Secretary of Labor pursuant to section 8(b) of the Act, a copy of the financial report of the carrier will no longer be required to do so, subject to the following conditions.

§ 462.36 Condition of variation.

(a) Each carrier shall:

(1) Submit to the Office of Labor-Management and Welfare-Pension Reports, within 120 days after the end of its fiscal year, 10 copies of its latest financial report, including the company's complete name and address in each copy.

(2) Thereafter make timely written notification to each plan administrator of a participating employee benefit plan heretofore required to submit a copy of such financial report under section 7(d)(2)(A) of the Act that the carrier has submitted its latest financial report to the Office of Labor-Management and Welfare-Pension Reports.

(b) In lieu of submitting to the Office of Labor-Management and Welfare-Pension Reports the financial report of the carrier(s), each plan administrator of an employee benefit plan to which this variation applies shall report in part III, section D of Department of Labor Annual Report Form D-2, or attachment thereto, the complete name and address of the carrier and shall place in Item 6 of said part and section the symbol "VAR" in the space provided for the code number.

(c) Each carrier is cautioned that:

(1) This variation does not apply to any employee benefit plan for which the carrier maintains separate experience records, since such plans are not required to file financial reports of the carrier under section 7(d)(2).

(2) This variation does not affect the responsibilities of the carrier to comply with the certification requirements of section 7(g) of the Act (29 U.S.C. 306(g)) and part 461 of this chapter.

This variation shall be effective immediately upon publication in the FEDERAL REGISTER (1-16-71).

(Sec. 5, 72 Stat. 999; 76 Stat. 36; 29 U.S.C. 304)

Signed at Washington, D.C., this 8th day of January 1971.

W. J. USERY, Jr.,
Assistant Secretary for Labor-Management Relations.

[FR Doc.71-654 Filed 1-15-71;8:49 am]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

BYLAWS OF THE BOARD OF GOVERNORS OF THE U.S. POSTAL SERVICE

On January 13, 1971, the Board of Governors of the U.S. Postal Service adopted the Bylaws set out below in Parts 1 through 6. These Bylaws became effective upon adoption.

Since they concern the matter of agency management, notice of proposed rule making and delayed effective date with respect to these Bylaws is unnecessary.

DAVID A. NELSON,
General Counsel, Post Office Department, Secretary to Board of Governors, U.S. Postal Service.

SUBCHAPTER A—THE BOARD OF GOVERNORS OF THE U.S. POSTAL SERVICE

BYLAWS OF THE BOARD OF GOVERNORS

Part

PART 1—GENERAL PROVISIONS [ARTICLE I]

Sec.

AUTHORITY: The provisions of this Part 1 issued under authority of 39 U.S.C. 202, 203, 205(c), 401(2), as enacted by Public Law 91-375.

§ 1.1 Establishment of the U.S. Postal Service.

The U.S. Postal Service was established pursuant to the provisions of the Postal Reorganization Act (hereinafter called the Reorganization Act) of August 12, 1970, Public Law 91-375, 84 Stat. 719, as an independent establishment within the executive branch of the Government of the United States under the direction of a Board of Governors (hereinafter called the Board) with a Postmaster General as the chief executive officer.

§ 1.2 Authority for these bylaws.

These bylaws are adopted by the Board pursuant to the authority conferred upon the Postal Service by 39 U.S.C. section 401(2).

§ 1.3 Severability, amendment, repeal, and waiver of these bylaws.

The invalidity of any section of these bylaws, or of any provision of these bylaws, shall not affect the validity of the remaining provisions and sections, and, for this purpose, these bylaws are declared severable. These bylaws may be amended or repealed at any special or regular meeting of the Board provided that written notice is given to each member containing a statement of the proposed amendment or repeal at least five (5) days prior to such meeting. The 5 days notice may be waived by unanimous consent of the members of the Board; and the operation of any other provision of these bylaws may be waived by unanimous consent of the members of the Board if such action is not prohibited by law.

§ 1.4 Designation of process agent.

The General Counsel of the Postal Service shall act as agent for the receipt of legal process against the Postal Service. The General Counsel shall also act as agent for the receipt of legal process against members of the Board of Governors and all other officers and employees of the Postal Service to the extent that such process arises out of the official functions of such officers and employees.

PART 2—OFFICES AND SEAL [ARTICLE II]

Sec.

AUTHORITY: The provisions of this Part 2 issued under authority of 39 U.S.C. 202, 203, 205(c), 207, 401(2), as enacted by Public Law 91-375.

§ 2.1 Offices.

The principal office of the Postal Service shall be located in Washington, D.C., with such regional and other offices and places of business as the Postmaster General shall from time to time establish or the business of the Postal Service shall require.

§ 2.2 Seal.

The following is a description of the Seal which is hereby adopted for the Postal Service:

(a) A stylized bald eagle poised for flight, fading to the viewer's right and above two horizontal bars between which are the words "U.S. Mail", surrounded by a square border with rounded corners consisting of the words "United States Postal Service" on left, top, and right, and the base consisting of nine five-pointed stars.

(b) The color representation of the Seal shows a white field on which the eagle appears in dark blue, the words "U.S. Mail" in black, the bar above it in red, the bar below in blue, and the border consisting of the words "United States Postal Service" and stars all in ochre.

(c) The Seal, which is required by 39 U.S.C. section 207 to be judicially noticed, shall be filed in the Office of the Secretary of State. The Seal shall be kept in the custody of the General Counsel and shall be affixed by him to all commissions of officers of the Postal Service, and used to authenticate records of the Postal Service and for other official purposes.

PART 3—BOARD OF GOVERNORS [ARTICLE III]

Sec.

AUTHORITY: The provisions of this Part 3 issued under authority of 39 U.S.C. 202, 203, 205(c), 401(2), 402, as enacted by Public Law 91-375.

§ 3.1 Composition and responsibilities of Board of Governors.

The Board of Governors consists of 11 members: Nine (hereinafter called "Governors") appointed by the President of the United States with the advice and consent of the Senate; a Postmaster General, appointed by the nine Governors; and a Deputy Postmaster General, appointed by the nine Governors and the Postmaster General. The Board shall direct the exercise of the powers of the Postal Service, review the practices and policies of the Postal Service, and direct and control the expenditures of the Postal Service. Consistent with the broad delegation of authority to the Postmaster General in § 3.9 of these bylaws, and except for those duties which the Reorganization Act vests in the Governors (as distinguished from the Board of Governors), the Board shall exercise the powers vested in it by establishing basic objectives, broad policies, and long range goals.

§ 3.2 Regular meetings.

Commencing Tuesday, March 2, 1971, regular meetings of the Board shall be held in Washington, D.C., without call or formal notice, every fourth Tuesday if not a legal holiday, but if a legal holiday, then on the next business day following the legal holiday. The regular meeting held in January of each year shall be designated as the Annual Meeting, at which time the Postmaster General shall present to the Board the annual report required by 39 U.S.C. section 2402 for the preceding fiscal year. If two regular meetings are scheduled for January in any year, the second such meeting shall be designated as the Annual Meeting. Any regular meeting may be omitted or rescheduled for a different date by action of the Board at a previous regular meeting.

§ 3.3 Special meetings.

Special meetings of the Board may be held at any place within the United States on call by the Chairman or by any five members of the Board currently in office, with not less than two (2) or more than thirty (30) days notice prior to the meeting. Notice of any special meeting of the Board shall specify a place, date and hour and indicate by whose request the notice is given. Special meetings may be held without call or notice at any time by unanimous consent of the members of the Board, or if the Postmaster General finds that an emergency exists requiring immediate action by the Board.

§ 3.4 Delivery of notice of special meetings.

Notice of special meetings may be either oral or written. Oral notice may be delivered by telephone and shall be deemed sufficient if made to the Board member personally or to a responsible person in the member's home or office. Any oral notice shall subsequently be confirmed by written notice. Written notice may be delivered by telegram or by mail sent by the fastest regular delivery method addressed to the member at his address of record filed with the Secretary of the Board in sufficient time to reach such address at least two (2) days prior to the meeting date under normal conditions of delivery. A member may waive notice of any meeting before or after it is held; and by attending any meeting, a member shall waive notice thereof.

§ 3.5 Continued meetings.

At any meeting of the Board a majority of the members present may adjourn the meeting and continue it at another time and place without notice other than by announcement at the meeting.

§ 3.6 Attendance at meeting by conference telephone call.

Unless otherwise required by law or by these bylaws, members of the Board of Governors or of any committee designated by the Board of Governors, may participate in a meeting of the Board or of such committee by means of conference telephone or similar communication equipment which enables all persons participating in the meeting to hear each other. Participation in a meeting pursuant to this section shall be deemed to constitute presence in person at such meeting except that a Governor shall not be entitled to compensation for any meeting attended pursuant to this section.

§ 3.7 Action of Board or Committee without a meeting.

Any action required or permitted to be taken at a meeting of the Board or at a meeting of a committee established by the Board, may be taken without a meeting if all members of the Board or committee consent to such action. Oral consent to action under this section shall be confirmed in writing.

§ 3.8 Quorum and voting.

As provided by 39 U.S.C. section 205 (c) the Board shall act by resolution upon majority vote of those members who are present, and any six members present shall constitute a quorum for the transaction of business by the Board, except:

(a) In the appointment or removal of the Postmaster General, and in setting the compensation of the Postmaster General and Deputy Postmaster General, a favorable vote of an absolute majority of the Governors in office is required by 39 U.S.C. section 205(c)(1);

(b) In the appointment or removal of the Deputy Postmaster General, a favorable vote of an absolute majority of the Governors in office and the member serving as Postmaster General is required by 39 U.S.C. section 205(c)(2);

(c) In the adjustment of the total budget of the Postal Rates Commission, the unanimous vote of the Governors in office is required by 39 U.S.C. section 3604(c);

(d) In the modification of recommended decisions of the Postal Rate Commission, the unanimous vote of the Governors in office is required by 39 U.S.C. section 3625;

(e) In the approval, allowance under protest, or rejection of a recommended

decision of the Postal Rate Commission, the Governors may act upon majority vote of the Governors present and the required quorum of six members shall include at least five Governors.

§ 3.9 Delegation of authority by Board.

Pursuant to 39 U.S.C. section 402, the Postmaster General is hereby delegated the authority to exercise the powers of the Postal Service to the extent that such delegation of authority does not conflict with powers reserved to the Governors or the Board by law, these bylaws, or resolutions adopted by the Board. The Postmaster General may redelegate to any officer, employee, or agency of the Postal Service, such of the powers delegated to him by these bylaws as he deems appropriate.

PART 4—COMMITTEES OF THE BOARD [ARTICLE IV]

Sec.
4.1 Establishment and appointment of committees.
4.2 Committee procedure; compensation of members.

AUTHORITY: The provisions of this Part 4 issued under authority of 39 U.S.C. 202, 203, 204, 205(c), 401(2), as enacted by Public Law 91-375.

§ 4.1 Establishment and appointment of committees.

The Board by resolution may from time to time establish and abolish special and standing committees of one or more members of the Board, and each such committee may exercise such duties, functions, and powers as the Board may from time to time prescribe. The chairman and members of each committee shall be appointed by the Chairman of the Board to serve for terms of not more than 1 year which shall expire at the end of each annual meeting.

§ 4.2 Committee procedure; compensation of members.

Each committee chairman or his designee shall preside at all meetings, and the committee chairman shall assign responsibilities within such committee as he deems appropriate. Each committee shall fix its own rules of procedures, consistent with these bylaws, and shall meet where and as provided by such rules. A majority of members of the committee shall constitute a quorum, and action shall be by a majority of the committee members present. Any member of the Board shall have access to all of the information and records of any committee at any time. The Board may affirm, alter, or revoke any action of any committee. Each Governor shall receive compensation as provided by 39 U.S.C. section 202(a) for attendance at committee meetings and shall be reimbursed for travel and reasonable expenses incurred in attending such meetings. Hearings, whether formal or informal, and investigations conducted by a committee of one Governor are deemed to be meetings within the meaning of 39 U.S.C. section 202(a).

PART 5—OFFICERS [ARTICLE V]

Sec.
5.1 Chairman.
5.2 Vice Chairman.
5.3 Postmaster General.
5.4 Deputy Postmaster General.
5.5 Assistant Postmasters General; General Counsel; Judicial Officer.
5.6 Secretary.

AUTHORITY: The provisions of this Part 5 issued under authority of 39 U.S.C. 202, 203, 204, 205(c), 401(2), as enacted by Public Law 91-375.

§ 5.1 Chairman.

The Chairman of the Board of Governors shall be elected by the Governors from among the members of the Board, and shall:

(a) Act as presiding officer at all regular and special meetings of the Board;

(b) Determine and appoint the chairman and members of committees properly established by the Board;

(c) Serve for a term of 1 year except that the term of the first Chairman shall expire at the end of the first annual meeting after the commencement of the operations of the Postal Service.

If the Postmaster General serves as Chairman of the Board, the Governors shall elect one of their number to serve as presiding officer during proceedings dealing with matters upon which only the Governors may vote.

§ 5.2 Vice Chairman.

The Vice Chairman shall be elected by the Board from among the members of the Board and shall hold office at the pleasure of the Board. He shall perform the duties and exercise the powers of Chairman during the Chairman's absence or disability.

§ 5.3 Postmaster General.

The Governors have the power to appoint and remove a Postmaster General, who is a voting member of the Board. In addition to his responsibilities as a member of the Board, the Postmaster General is the chief executive officer of the Postal Service and, as provided herein, he is authorized to exercise the powers vested in the Postal Service under the general supervision and direction of the Board. The salary of the Postmaster General shall be fixed by the Governors by resolution subject to the limitations of 39 U.S.C. section 1003(a).

§ 5.4 Deputy Postmaster General.

The Governors and the Postmaster General have the power to appoint and remove a Deputy Postmaster General, who is a voting member of the Board. In addition to his responsibilities as a member of the Board, the Deputy Postmaster General is the alternate chief executive officer of the Postal Service. He shall perform all tasks assigned to him by the Postmaster General, and shall act as Postmaster General in the Postmaster General's absence or disability, and when a vacancy exists in the office of Postmaster General. The salary of the Deputy Postmaster General shall be fixed by the Governors by resolution subject to the limitations of 39 U.S.C. section 1003(a).

§ 5.5 Assistant Postmasters General, General Counsel, Judicial Officer.

There shall be within the Postal Service a General Counsel, a Judicial Officer, and such number of Assistant Postmasters General as the Board shall authorize by resolution. The General Counsel, the Assistant Postmasters General, and the Judicial Officer shall be appointed by, and serve at the pleasure of, the Postmaster General. They shall have such powers and duties, consistent with these bylaws, as may be delegated to them by the Postmaster General.

§ 5.6 Secretary.

The Secretary of the Postal Service shall be designated by the Chairman of the Board. The Secretary shall issue notices of meetings of the Board and keep the minutes of all such meetings. He shall perform such other duties as may be assigned to him by the Board or by the Chairman of the Board and, in general, perform all the duties incident to his office. The Chairman may designate such assistant secretaries as he deems appropriate, and they shall have authority to perform all the duties of the Secretary.

PART 6—REPORTS AND RECORDS [ARTICLE VI]

Sec.
6.1 Annual reports.
6.2 Annual budget; financial reports.
6.3 Minutes of Board meetings.

AUTHORITY: The provisions of this Part 6 issued under authority of 39 U.S.C. 202, 203, 205(c), 401(2), as enacted by Public Law 91-375.

§ 6.1 Annual report.

At the annual meeting of the Board held in January of each year, the Postmaster General shall render an annual report to the Board concerning the operations of the Postal Service as required by 39 U.S.C. section 2402. Upon approval thereof, or after making such changes as it considers appropriate, the Board shall transmit the report to the President and the Congress. The Postmaster General shall make the necessary arrangements for the printing and sale of the report to the public.

§ 6.2 Annual budget; financial reports.

The Postmaster General shall annually submit to the Board a budget for the ensuing fiscal year in such form and content and according to such schedule as the Board may require. After review by the Board, the annual budget of the Postal Service shall be submitted to the Office of Management and Budget of the Executive Office of the President in the manner provided by 39 U.S.C. section 2009.

§ 6.3 Minutes of Board meetings.

Minutes of Board meetings prepared by the Secretary shall be preserved in a place of safekeeping and made available by him for public inspection except to the extent that such minutes contain information in the categories specified by 5 U.S.C. section 522(b) or 39 U.S.C. section 410(c) which is not appropriate for public disclosure.

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Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 18—National Aeronautics and Space Administration

REVISION OF REGULATIONS

Parts 18–2, 18–3, and 18–4 are revised to read as follows:

PART 18–2—PROCUREMENT BY FORMAL ADVERTISING

AUTHORITY: The provisions of this Part 18–2 issued under 42 U.S.C. 2473(b)(1).

§ 18–2.000 Scope of part.

This part sets forth the (a) basic requirements for procurement of supplies and services (including construction) by formal advertising, (b) information to be contained in solicitations of bids, (c) methods of soliciting bids, (d) policies with respect to the submission of bids, and (e) requirements with respect to the opening and evaluation of bids and the awarding of contracts.

Subpart 18–2.1—Use of Formal Advertising

§ 18–2.101 Meaning of formal advertising.

Formal advertising means procurement by competitive bids and awards, as prescribed in this part, and involves the following basic steps:

(a) Preparation of the invitation for bids, by describing the requirements of the Government clearly, accurately, and completely, but avoiding unnecessarily restrictive specifications or requirements which might unduly limit the number of bidders. The term "invitation for bids" means the complete assembly of related documents, whether attached or incorporated by reference, provided prospective bidders for the purpose of bidding;

(b) Publicizing the invitation for bids, through distribution to prospective bidders, posting in public places, and such other means as may be appropriate, in sufficient time to enable prospective bidders to prepare and submit bids before the time set for public opening;

(c) Submission of bids by prospective contractors; and

(d) Awarding the contract, after bids are publicly opened, to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered (or rejecting all bids).

§ 18–2.102 Policy.

§ 18–2.102–1 General.

(a) Chapter 137 of title 10 of the United States Code (see 10 U.S.C. 2304(a)), which is applicable to procurements by NASA, provides that purchases of and contracts for supplies or services shall be made by formal advertising in all cases in which the use of such method is feasible and practicable under the existing conditions and strict circumstances. It further provides that, if the use of formal advertising is not feasible and practicable, negotiation of contracts is authorized under certain circumstances enumerated therein. The circumstances are set forth in Subpart 18–3.2, of this chapter. In accordance with this requirement, procurements shall generally be made by soliciting bids from all qualified sources of supplies or services deemed necessary by the contracting officer to assure full and free competition consistent with the procurement of the required supplies or services. Current lists of bidders shall be maintained in accordance with § 18–2.205.

(b) Chapter 137 of title 10 of the United States Code (10 U.S.C. 2306(f)) provides that a contractor or subcontractor shall be required to submit cost or pricing data for certain contract modifications, and shall be required to certify that, to the best of his knowledge and belief, the cost or pricing data he submitted was accurate, complete, and current. To insure compliance with this requirement, contracting officers shall follow the instructions set forth in § 18–3.807–3 before agreeing to a price adjustment of a formally advertised contract.

§ 18–2.102–2 Classified procurements.

Formal advertising shall be used for classified procurements if, after due consideration of security requirements, it is concluded that such requirements will not be violated.

§ 18–2.103 General requirements for formally advertised contracts.

No contract shall be made as a result of formal advertising unless:

(a) Bids have been solicited as required by Subpart 18–2.2;

(b) Bids have been submitted as required by Subpart 18–2.3;

(c) Determination has been made as to the responsible bidder whose bid is responsive to the invitation for bids and is most advantageous to the Government, price and other factors considered, and award is made as prescribed in Subpart 18–2.4;

(d) Such clearances and approvals as are required by this chapter have been obtained.

§ 18–2.104 Types of contracts.

§ 18–2.104–1 General.

Contracts awarded after formal advertising shall be of the firm fixed-price type, except that fixed-price contracts with escalation may be used, subject to the provisions of §§ 18–2.104–3 and 18–2.407–4, where such flexibility is necessary and feasible.

§ 18–2.104–2 Firm fixed-price contracts.

See § 18–3.404–2.

§ 18–2.104–3 Fixed-price contracts with escalation.

Escalation clauses are not normally desirable, but in appropriate cases clauses providing for upward and downward revision of prices may be used, in accordance with § 18–3.404–3, in order to protect the interest of both the Government and contractor. In addition, where the contracting officer, on the basis of his knowledge of the market or previous advertisements for like items, expects that a requirement for firm fixed-price bids will unnecessarily restrict competition or unreasonably increase bid prices, invitation for bids may include an approved escalation clause. Any escalation clause shall provide an escalation ceiling identical for all bidders so that each bidder is afforded an equal opportunity to bid on the escalation basis. In evaluating bids, see § 18–2.407–4.

§ 18–2.104–4 Indefinite delivery-type contracts.

See § 18–3.409.

§ 18–2.105 Solicitation for informational or planning purposes.

See § 18–1.309.

§ 18–2.150 Procurement request.

A procurement request (NASA Form 404 or similar form) will be prepared and processed in accordance with the provisions of § 18–1.356.

Subpart 18–2.2—Solicitation of Bids

§ 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 of this section, 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.

(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 Subpart 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 § 18–10.102–4.

(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).

(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 accepted 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.

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)

(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 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).

(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) [Reserved]

(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.

(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.

(49) If the resulting contract is expected to exceed $100,000, the "Contractor and Subcontractor Certified 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(a).

(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 § 18–12.802–2(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 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.

(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 the 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) [Reserved]

(19) 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.

(20) 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.

(21) 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).

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

(23) 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 substantially 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.

§ 18–2.202 Miscellaneous rules for solicitation of bids.

§ 18–2.202–1 Bidding time.

(a) *Policy.* Consistent with the needs of the Government for obtaining the supplies or services, 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 permit prospective bidders to prepare and submit bids. This will facilitate competition on reasonable and equal terms. Undue limitation of bidding time tends to restrict competition. Also, when prospective bidders do not have adequate time for computing prices and obtaining needed information on which to base their bids, higher prices to the Government may result from inclusion of unnecessary contingency allowances or the unwillingness of some to submit bids.

(b) *Factors to be considered.* The urgency of the Government's need for the items or services, the complexity of the invitation, the extent of subcontracting anticipated, the use of preinvitation notices, the geographic distribution of bidders, the normal time for mail transmission of both invitations and bids, and other related factors must be considered in establishing bidding time. For example, a bidding time of 30 days may be inadequate when bidders are required to prepare special drawings, designs, and samples, or to obtain quotations from several suppliers and subcontractors, as frequently is the case in construction and production contracts. Conversely, a bidding time of 15 days may be adequate when bids would reasonably be expected to be based on stocks on hand, or current regular production, or service personnel and facilities regularly available (as in the case of maintenance and repair of structures, and similar work).

(c) *Minimum bidding time.* As a general rule, bidding time shall be not less than 15 calendar days when procuring standard commercial articles and services and not less than 30 calendar days when procuring other than standard commercial articles or services. This rule need not be observed in special circumstances, or where the urgency for the supplies or services does not permit such delay.

§ 18–2.202–2 **Telegraphic bids.**

As a general rule, telegraphic bids will not be authorized. However, when in the judgment of the contracting officer the date for the receipt of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms, or when prices are subject to frequent changes, telegraphic bids may be authorized. When such bids are authorized, the schedule of the invitation for bids will contain the following provision:

TELEGRAPHIC BIDS (JULY, 1965)

Telegraphic bids may be submitted in response to this Invitation for Bids. Telegraphic bids must be received in this office prior to the time specified for opening of bids. Such bids must specifically refer to this Invitation for Bids; must include the item or subitems, quantities and unit prices for which the bid is submitted and the time and place of delivery; and must contain all the representations and other information required by the Invitation for Bids together with a statement that the bidder agrees to all the terms, conditions and provisions of the invitation. Failure to furnish, in the telegraphic bid, the representations and information required by the Invitation for Bids may necessitate rejection of the bid. Signed copies of the Invitation for Bids must be furnished in confirmation of the telegraphic bids.

§ 18–2.202–3 **Place and method of delivery of supplies.**

(a) Invitations for bids solicited f.o.b. origin shall state that bids will be evaluated on the basis of bid price plus transportation cost to the Government from point of origin to one or more designated destinations. Invitations for bids solicited f.o.b. destination should inform prospective suppliers of any known lack of transportation facilities at destination or other factors which may affect the supplier's transportation costs.

(b) Invitations for bids solicited f.o.b. origin or destination shall include as much of the following information as is pertinent to the particular procurement and shall require bidders to furnish the Government such of the following information as may be appropriate:

(1) Method of shipment, such as rail, water, air, or truck.

(2) When minimum size of shipment requirements are appropriate, a provision substantially as follows:

MINIMUM SIZE OF SHIPMENT (JULY 1965)

The Government desires that the minimum size of shipments be carload or truckload lots. If the bidder is unable to tender delivery in carload or truckload lots, he may set forth below the minimum size of shipments he will tender for delivery:

[Minimum size of shipments to be completed by bidder]

If the bidder does not indicate otherwise, he must tender delivery in carload or truckload lots. Bids will be evaluated to take into account the transportation costs to the Government. If delivery is tendered in smaller quantities than set forth above, the contract price shall be reduced by the difference between the actual cost of transportation and the cost the Government would have incurred had the minimum size of shipment been complied with.

(3) If shipping weights (and dimensions, if applicable) of items to be procured are not shown in the solicitation and may vary among prospective suppliers with a resultant variation in transportation costs and such costs are made a factor in bid evaluation, a provision substantially as follows:

GUARANTEED MAXIMUM SHIPPING WEIGHTS (AND DIMENSIONS IF APPLICABLE) (JULY 1965)

Each bid will be evaluated to the destination specified by adding to the f.o.b. origin price all transportation costs to said destination. The guaranteed maximum shipping weights (and dimensions if applicable) are required for determination of transportation costs. Bidder must state the weights (and dimensions if applicable) in his bid or it will be rejected. If delivered items exceed the guaranteed maximum shipping weights (and dimensions if applicable), the bidder agrees that the contract price shall be reduced by an amount equal to the difference between the transportation costs computed for evaluation purposes based on bidder's guaranteed maximum shipping weights (and dimensions if applicable) and the transportation costs that should have been used for bid evaluation purposes based on correct shipping data.

(4) Packing, crating, and other preparations;

(5) Transit privileges (traffic management personnel can furnish necessary information and analyses of situations where transit privileges may be beneficial).

(6) Any other shipping information required for evaluation.

(c) When the exact destination of the supplies being purchased is not known at the time bids are solicited, but the general geographical section in which delivery will be made is known, such as East Coast, Middle West, or West Coast, for purposes of evaluation of bids only, a definite place(s) or zone(s) shall be designated in the known geographical sector of delivery as the point to which transportation costs will be computed in determining the low bidder. However, the invitation should specify that bids will be submitted f.o.b. origin and that shipment will be made on Government bill of lading. So that prospective bidders may understand the method of evaluation to be used, the invitation shall contain a provision substantially as follows:

For the purpose of evaluating bids (and for no other purpose), the final destinations for the supplies will be considered to be as follows: [insert destination(s)].

Invitations for bids shall contain a statement that bids submitted on a basis other than f.o.b. origin will be rejected as nonresponsive.

§ 18–2.202–4 **Bid samples.**

(a) *Definition.* The term "bid sample" means a sample required by the invitation for bids to be furnished by a bidder as a part of his bid to show the characteristics of a product offered in his bid. Such samples will be used only for the purpose of determining the responsiveness of the bid and will not be considered on the issue of a bidder's ability to produce the required items.

(b) *Policy.* Bidders shall not be required to furnish a bid sample of a product they propose to furnish unless there are certain characteristics of the product which cannot be described adequately in the applicable specification or purchase description, thus necessitating the submission of a sample to assure procurement of an acceptable product. It may be appropriate to require bid samples, for example, where the procurement is of products that must be suitable from the standpoint of balance, facility of use, general "feel", color, or pattern, or that have certain other characteristics which cannot be described adequately in the applicable specifications. Where, however, based on this criteria, the use of bid samples is justified, the samples may be examined for any required characteristics, whether or not such characteristics may be adequately described in the specifications. Invitations shall list all of the characteristics for which the sample will be examined and bids will be rejected as nonresponsive if the sample fails to conform to each of the listed characteristics. Where more than a minor portion of the characteristics of the product cannot be adequately described in the specification, the product should be procured by two-step formal advertising or by negotiation, as appropriate.

(c) *Justification.* The reasons why acceptable products cannot be procured without the submission of bid samples shall be set forth and filed in the contract file, except where such submission is required by the formal specifications (Federal, Military, or other) applicable to the procurement.

(d) *Requirements of invitation for bids.* When bid samples are required, the invitation for bids shall (1) state the number and, if appropriate, the size of the samples to be submitted and otherwise fully describe the samples required, (2) state clearly the purpose for which the samples are needed and the criteria against which they will be tested or evaluated, and (3) include a provision in accordance with paragraph (e) of this section. Where samples are not considered necessary and a waiver of the sample requirements of a specification has been authorized, a statement shall be included in the invitation for bids that notwithstanding the requirements of the specifications, samples will not be required.

(e) *Invitation for bids provision.* When bid samples are required, a provision substantially as follows (modified, if appropriate, in accordance with paragraph (f) of this section), shall be included in the invitation for bids:

BID SAMPLES (JULY 1965)

(a) Bid samples, in the quantities, sizes, etc., required for the items so indicated in this Invitation for Bids, must be furnished as a part of the bid and must be received before the time set for opening bids. Samples will be evaluated to determine compliance with all characteristics listed for examination in the Invitation.

(b) Failure of samples to conform to all such characteristics will require rejection of the bid. Failure to furnish samples by the time specified in the Invitation for Bids will require rejection of the bid, except where a

late sample was transmitted by mail and it is established under the provision for considering late bids, as set forth elsewhere in this Invitation, that the sample was timely mailed.

(c) Products delivered under any resulting contract shall strictly comply with the approved sample as to the characteristics listed for examination and shall conform to the specifications as to all other characteristics.

(f) *Waiver of requirement for bid samples.* (1) The provision prescribed in paragraph (e) of this section may be modified to provide that the requirement for furnishing samples may be waived as to a bidder who offers a product previously or currently being procured or tested by NASA and found to comply with specification requirements conforming in every material respect with those in the current invitation for bids so that further evaluation or testing would not add to the Government's knowledge of the acceptability of the product. When provision is to be made for such waiver, the invitation for bids provision in paragraph (e) of this section shall be modified by adding substantially the following at the end of paragraph (b) thereof:

However, the requirement for furnishing samples may be waived as to a bidder if (i) the bidder states in his bid that the product he is offering to furnish is the same as a product he has offered to [insert name of the NASA installation] on a previous procurement and (ii) the Contracting Officer determines that such product was previously procured or tested by the [insert name of the NASA installation] and found to comply with specification requirements conforming in every material respect to those in this Invitation for Bids. (January 1964)

(2) Where considered necessary because of the nature of the products, the provision in paragraph (f)(1) of this section may be limited to provide for waiving the requirement only if the product offered is produced at the same plant at which the product previously procured or tested was produced.

(g) *Unsolicited samples.* If bid samples are not required by the invitation for bids, but samples are furnished with a bid, they will not be considered as qualifying the bid and will be disregarded, unless it is clear from the bid or accompanying papers that it was the bidder's intention so to qualify the bid.

(h) *Disposition of samples.* Samples, if not destroyed in testing, shall be returned to bidders at their request and expense, unless otherwise specified in the invitation for bids. See paragraph 5(c) of Standard Form 33–A, entitled, "Solicitation, Instructions, and Conditions," (July 1966 Ed.).

§ 18–2.202–5 Descriptive literature.

(a) *Definition.* As used in this § 18–2.202–5, the term "descriptive literature" means information, such as cuts, illustrations, drawings, and brochures, which show the characteristics or construction of a product or explain its operation, furnished by a bidder as a part of his bid to describe the products offered in his bid. The term includes only information required to determine acceptability of the product, and excludes other information such as that furnished in connection with the qualifications of a bidder or for use in operating or maintaining equipment.

(b) *Policy.* Bidders shall not be required to furnish descriptive literature as a part of their bids unless the procurement office deems that such literature is needed to enable it to determine before award whether the products offered meet the specification requirements of the invitation for bids and to establish exactly what the bidder proposes to furnish. It may be appropriate to require descriptive literature in the procurement of highly technical or specialized equipment, or where considerations such as design or style are important in determining acceptability of the product.

(c) *Justification.* The reasons why acceptable products cannot be procured without the submission of descriptive literature shall be set forth and filed in the contract file, except where such submission is required by the formal specifications (Federal, Military, or other) applicable to the procurement.

(d) *Requirements of invitation for bids.* (1) When descriptive literature is required, the invitation for bids shall clearly state what descriptive literature is to be furnished, the purpose for which it is required, the extent to which it will be considered in the evaluation of bids, and the rules which will apply if a bidder fails to furnish it before bid opening or if the literature furnished does not comply with the requirements of the invitation for bids. Where descriptive literature is not considered necessary and a waiver of the literature requirements of a specification has been authorized, a statement shall be included in the invitation for bids that notwithstanding the requirements of the specifications, descriptive literature will not be required.

(2) Except as provided in subparagraph (3) of this paragraph, if bidders are to furnish descriptive literature as a part of their bids, a provision substantially as follows (modified, if appropriate, in accordance with paragraph (e)(1) of this section) shall be included in the invitation for bids:

REQUIREMENT FOR DESCRIPTIVE LITERATURE (JANUARY 1964)

(a) Decriptive literature as specified in this Invitation for Bids must be furnished as a part of the bid and must be received before the time set for opening bids. The literature furnished must be identified to show the item in the bid to which it pertains. The descriptive literature is required to establish, for the purposes of bid evaluation and award, details of the products the bidder proposes to furnish as to [----------[1]].

(b) Failure of descriptive literature to show that the product offered conforms to the specifications and other requirements of this Invitation for Bids will require rejection of the bid. Failure to furnish the descriptive literature by the time specified in the Invitation for Bids will require rejection of the bid, except that if the material is transmitted by mail and is received late, it may be considered under the provisions for considering late bids, as set forth elsewhere in this Invitation for Bids.

(3) When a brand name or equal purchase description is used, the requirements of this § 18–2.202–5 are met by inserting in the invitation for bids the Brand Name or Equal provision authorized by Subpart 18–1.12 of this Regulation.

(e) *Waiver of requirements for descriptive literature.* (1) The provision prescribed in paragraph (d)(1) of this section may be modified to provide that the requirements for furnishing descriptive literature may be waived as to a particular bidder if (i) the bidder states in his bid that the product he is offering to furnish is the same as a product previously or currently being furnished NASA, and (ii) it is determined by the contracting officer that such product complies with the specification requirements of the current invitation for bids. When provision is to be made for such waiver, the invitation for bids provision in paragraph (d)(2) of this section shall be modified by adding substantially the following at the end of paragraph (b) thereof:

However, the requirements for furnishing descriptive literature may be waived as to a bidder if (i) the bidder states in his bid that the product he is offering to furnish is the same as a product he has previously furnished to [insert name of the NASA installation] under a prior contract and the bidder identifies the contract, and (ii) the Contracting Officer determines that such product meets the requirements of this Invitation for Bids. (January 1964)

(2) If the invitation for bids contains a provision for waiver in accordance with paragraph (e)(1) of this section, a bidder may submit his bid either on the basis of the descriptive literature to be furnished or on the basis of a previously procured product. If he elects to submit his bid on one basis, he is precluded from having his bid considered on the alternative basis after bids are opened.

(f) *Unsolicited descriptive literature.* If the furnishing of descriptive literature is not required by the invitation for bids, but such literature is furnished with a bid, it will not be considered as qualifying the bid, and will be disregarded, unless it is clear from the bid or accompanying papers that it was the bidder's intention so to qualify the bid.

(g) See § 18–2.404–4 for requirements with respect to restrictions on the public disclosure of descriptive literature submitted by a bidder.

§ 18–2.203 Methods of soliciting bids.

§ 18–2.203–1 Mailing or delivering to prospective bidders.

(a) Invitations for bids or pre-invitation notices (see § 18–2.205–4(c)) shall be mailed (or delivered) to a sufficient number of prospective bidders so as to elicit adequate competition. Invitations for bids may be mailed for informational purposes to other Government agencies, including procurement information offices.

[1] The contracting officer shall insert significant elements such as design, materials, components, or performance characteristics; or methods of manufacture, construction, assembly, or operation, as appropriate.

(b) In the case of construction contracts, copies of the invitation for bids, including plans and specifications, if available, may be furnished upon request to nonbidders having a direct interest in the bidding, such as subcontractors, materialmen, and suppliers of equipment for installation or use by the prime contractor on the project. Such copies may also be furnished to any established trade publication or association requesting them, provided that the activities of the publications or associations are not restricted to publishing bid information for which a charge is made.

§ 18–2.203–2 Displaying in public place.

Copies of unclassified invitation for bids shall be displayed at the procurement office of the installation and at such other public places as are determined to be appropriate and desirable. (See § 18–1.1002 with respect to provision of invitations for bids at the procurement office.)

§ 18–2.203–3 Publicity in newspapers and trade journals.

(a) *Free publicity.* A brief announcement of the proposed procurement, or copies of unclassified invitations for bids, may be made available for free publication to newspapers and to trade journals and magazines.

(b) *Paid advertisements.* Use of paid advertisements for procurement purposes is not currently authorized within NASA.

§ 18–2.203–4 Synopses of invitations for bids.

Synopses of invitations for bids shall be prepared and publicized in the Department of Commerce publication, Commerce Business Daily, in accordance with Subpart 18–1.10 of this chapter.

§ 18–2.204 Records of invitations for bids and records of bids.

Each procurement office shall retain a record of every invitation for bids issued and distributed by it and of each abstract or record of bids. The file of the invitation for bids should show the distribution which was made and the date thereof.

§ 18–2.205 Bidders mailing lists.

§ 18–2.205–1 Establishment of lists.

(a) Bidders mailing lists shall be established by each NASA procurement office to assure access to adequate sources of supplies and services except where the requirements of the procurement office can be obtained within the local trade area through utilization of the simplified small purchase procedures (Subpart 18–3.6, of this chapter), or are nonrecurring.

(b) All eligible and qualified suppliers or concerns which have submitted bidders mailing list applications, or which the procurement office considers capable of filling the requirements of a particular procurement, shall be placed on the appropriate bidders mailing list. When new prospective suppliers are placed on the bidders mailing list, they shall be notified. The issuance of a solicitation within a reasonable time may be considered appropriate notification. Also, those suppliers not meeting the criteria for placement on the bidders mailing list shall be notified accordingly.

(c) Bidders Mailing List Application (Standard Form 129) shall be used for obtaining information needed in the establishment and maintenance of bidders mailing lists as prescribed in § 18–16.810.

§ 18–2.205–2 Removal of names from bidders mailing lists.

(a) The name of each concern failing to respond to an invitation for bids or preinvitation notice (see § 18–2.205–4 (c)), may be removed from the bidders mailing list without notice to the concern, but only for the item or items involved in such invitation or notice. When a concern fails to respond to two consecutive invitations for bids or preinvitation notices, its name shall be removed from the bidders mailing list to the extent indicated above, except that, in individual cases, concerns thus failing to respond may be retained on a bidders mailing list if such retention is considered to be in the best interests of the Government. Both actual bids and written requests for retention on the bidders mailing lists are "responses" to invitations for bids or preinvitation notices.

(b) The names of concerns which have been (1) debarred from entering into Government contracts or (2) otherwise determined to be ineligible to receive an award of a Government contract, shall be removed from the bidders mailing lists to the extent required by such debarment or determination of ineligibility.

§ 18–2.205–3 Reinstatement on bidders mailing lists.

Concerns which have been removed from bidders mailing lists may be reinstated upon request or by filing a new application on Standard Form 129. No concern which is debarred or ineligible shall be reinstated during the period of debarment or while ineligible.

§ 18–2.205–4 Excessively long bidders mailing lists.

(a) *General.* To prevent excessive administrative costs of a procurement, mailing lists should be used in a way which will promote competition commensurate with the dollar value of the purchase to be made. As much of the mailing list will be used as is compatible with efficiency and economy in securing adequate competition as required by law. Where the number of bidders on a mailing list is considered excessive in relation to a specific procurement, the number of firms to be solicited may be reduced by any method consistent with the foregoing, including those described in paragraphs (b) and (c) of this section. The fact that less than an entire mailing list is used shall not, in itself, preclude furnishing of bid sets to others upon request therefor, or consideration of bids received from bidders who were not invited to bid.

(b) *Rotation of lists.* Mailing lists may be rotated, but to do so will require considerable judgment as to whether the size of the transaction justifies rotation. Consideration also should be given as to whether time permits utilization of the preinvitation notice under paragraph (c) of this section. In rotating a list, the interests of small business and the existence of labor surplus areas shall be considered. Whenever the rotation method is employed, the successful bidder on the previous procurement for the same or similar items and those prospective suppliers who have been added to the bidders mailing list since the last procurement shall be solicited, in addition to those bidders comprising that segment of the list selected for use in a particular procurement, except where such action would be precluded by use of the small business total set-aside procedures.

(c) *Preinvitation notices.* In lieu of initially forwarding complete bid sets, the procurement office may send preinvitation notices to concerns on the mailing list. The notice shall:

(1) Specify the date by which bidders should return the notice in order to receive a complete bid set;

(2) Describe the requirement, or include the schedule of the invitation for bids, so as to furnish a complete item description and a condensation of other essential information which will provide concerns with an intelligible basis for judging whether they have an interest in the procurement; and

(3) Expressly notify concerns that if no bid is to be submitted, they should notify the issuing office in writing if future invitations are desired for the type of supplies or services involved.

Drawings, plans, and specifications normally will not be furnished with the preinvitation notice. The return date of the notice must be sufficiently in advance of the mailing date of the invitation for bids to permit an accurate estimate of the number of bid sets required. Bid sets will be sent to concerns which request them. This procedure is particularly suitable in procurements where lengthy invitations for bids and long bidders lists are common.

§ 18–2.205–5 Release of bidders mailing lists.

(a) When invitations for bids for construction contracts have been issued, trade journals, prospective subcontractors, material suppliers, and others having a bona fide interest in such information, may be supplied, upon request, with a list of all prospective bidders furnished copies of the plans and specifications.

(b) A list of firms which have submitted acceptable technical proposals in the first step of two-step formal advertising will be listed in the Commerce Business Daily for the benefit of prospective subcontractors in accordance with § 18–1.1003–6(b).

§ 18–2.206 Small business and labor surplus area set-asides.

See Subparts 18–1.7 and 18–1.8.

§ 18–2.207 Amendment of invitations for bids.

(a) If, after issuance of invitations for bids but before the time set for opening of bids, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, such changes shall be accomplished by issuance of an amendment to the invitation for bids. The amendment shall be sent to each concern to whom the invitation for bids has been furnished and shall be displayed in the bid room.

(b) Each amendment issued to an invitation for bids shall:

(1) Be serially numbered, using a separate series of numbers for each invitation for bids concerned;

(2) Include the number of the invitation for bids concerned;

(3) Clearly state the changes made in the invitation for bids and the extension of the opening date, if any. If no extension of the time set for opening is involved, the amendment shall so state;

(4) Include instructions to bidders for acknowledging receipt of the amendment and information concerning the effect of failure to acknowledge or return the amendment.

(c) Before issuing an amendment to an invitation for bids, the period of time remaining until the time set for opening and the need for extending this period by postponing the time set for opening must be considered. Where only a short time remains before the time set for opening, consideration should be given to notifying bidders of an extension of time by telegraph or telephone. Such notification should be confirmed in the amendment.

(d) Any information given to a prospective bidder concerning an invitation for bids shall be furnished promptly to all other prospective bidders, as an amendment to the invitation; if such information is necessary to bidders in submitting bids on the invitation; or if the lack of such information would be prejudicial to uninformed bidders. No award shall be be made on the invitation unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

§ 18–2.208 Cancellation of invitations before opening.

(a) Cancellation of an invitation for bids usually involves the loss of time, effort, and money spent by the Government and bidders in carrying the procurement process up to the point of cancellation. Invitations for bids should not be canceled unless cancellation is clearly in the public interest, such as where there is no longer a requirement for the material or service, or where amendments to the invitation would be of such magnitude that a new invitation is desirable. Where an invitation is canceled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations for bids were issued.

(b) The notice of cancellation shall identify the invitation for bids; briefly explain the reason the invitation is being canceled; and, when appropriate, assure prospective bidders that they will be given an opportunity to bid on any resolicitation of bids for any future requirements for the type of material or services involved. The cancellation of any invitation for bids shall be recorded in accordance with § 18–2.403.

§ 18–2.210 Release of procurement information.

After issuance of the solicitation for bids or publicizing in the Commerce Business Daily, discussions with prospective contractors regarding a potential procurement and the transmission of technical or other information shall be conducted only by the contracting officer or by others specifically authorized. Such personnel shall not furnish any information to a potential supplier which alone or together with other information may afford him an advantage over others. However, general information which would not be prejudicial to other bidders may be furnished upon request, e.g., explanation of a particular contract clause or a particular condition of the schedule in the invitation for bids. When necessary to clarify ambiguities, or correct mistakes or omissions, an appropriate amendment to the solicitation shall be furnished in a timely manner to all to whom the solicitation has been furnished (see § 18–2.207).

Subpart 18–2.3—Submission of Bids

§ 18–2.301 Responsiveness of bids.

(a) To be considered for award, a bid must comply in all material respects with the invitation for bids, so that, both as to the method and timeliness of submission and as to the substance of any resulting contract, all bidders may stand on an equal footing and the integrity of the formal advertising system may be maintained.

(b) Telegraphic bids shall not be considered unless permitted by the invitation for bids.

(c) Bids should be filled out, executed, and submitted in accordance with the instructions which are contained in the invitation for bids. If a bidder uses his own bid form or a letter to submit a bid, the bid may be considered only if (1) the bidder accepts all the terms and conditions of the invitation, and (2) award on the bid would result in a binding contract, the terms and conditions of which do not vary from the terms and conditions of the invitation.

§ 18–2.302 Time of bid submission.

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

§ 18–2.303 Late bids.

§ 18–2.303–1 General.

Bids received at the office designated in the invitation for bids after the exact time set for opening of bids are "late bids." Late bids shall not be considered for award except as authorized in this § 18–2.303.

§ 18–2.303–2 Consideration for award.

A late bid shall be considered for award only if:

(a) It is received before award; and either

(b) It was sent by registered mail, or by certified mail for which an official dated post office stamp (postmark) on the original Receipt for Certified Mail has been obtained, or by telegraph if authorized, and it is determined that the lateness was due solely to a delay in the mails (based on evidence pursuant to § 18–2.303–3), or to a delay by the telegraph company for which the bidder was not responsible; or

(c) If submitted by mail (or by telegram where authorized), it was received at the Government installation in sufficient time to be received at the office designated in the invitation by the time set for opening and, except for delay due to mishandling on the part of the Government at the installation, would have been received on time at the office designated. The only evidence acceptable to establish timely receipt at the Government installation is that which can be established upon examination of an appropriate date or time stamp (if any) of such installation, or of other documentary evidence of receipt at such installation (if readily available) within the control of such installation or of the post office serving it.

§ 18–2.303–3 Mailed bids.

(a) *Registered mail.* The time of mailing of a late bid mailed by registered mail may be determined by the date in the postmark on the registered mail receipt or registered mail wrapper. The time of mailing shall be deemed to be the last minute of the date shown in such postmark unless the bidder furnishes evidence from the post office station of mailing which establishes an earlier time. Such evidence, if appropriately verified in writing by the post office station of mailing, may consist of an entry in ink on the registered mail receipt showing the time of mailing and the initials of the postal employee receiving the item and making the entry. If the postmark does not show a date, the bid shall be deemed to have been mailed too late unless the bidder furnishes evidence from the post office station of mailing which establishes timely mailing.

(b) *Certified mail.* The time of mailing of a late bid mailed by certified mail for which a postmarked Receipt for Certified Mail was obtained shall be deemed to be the last minute of the date shown in the postmark on such receipt except where:

(1) The Receipt for Certified Mail identifies the post office station of mailing and the bidder furnishes evidence from such station that the business day of that station ended at an earlier time, in which case the time of mailing shall be deemed to be the last minute of the business day of that station; or

(2) An entry in ink on the Receipt for Certified Mail, showing the time of mailing and the initials of the postal employee receiving the item and making the entry, is appropriately verified in writing by the post office station of mailing, in which case the time of mailing shall be the time shown in the entry. If the postmark does not show a date, the bid shall be deemed to have been mailed too late.

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

§ 18–2.303–4 Telegraphic bids.

A late telegraphic bid shall be presumed to have been filed with the telegraph company too late to be received in time, except where the bidder demonstrates by clear and convincing evidence, which includes substantiation by an authorized official of the telegraph company, that the bid, as received at the office designated in the invitation for bids, was filed with the telegraph company in sufficient time to have been delivered by normal transmission procedure so as not to have been late (see § 18–2.302).

§ 18–2.303–5 Hand-carried bids.

A late hand-carried bid, or any other late bid not submitted by mail or telegraph, shall not be considered for award.

§ 18–2.303–6 Notification to late bidders.

Where a late bid is received and it is clear from available information that under § 18–2.303–2 such late bid cannot be considered, the contracting officer or his authorized representative shall promptly notify the bidder that his bid was received late and will not be considered. (See also § 18–2.303–7.) However, where a late bid is transmitted by registered mail and received before award but it is not clear from available information whether the bid can be considered, or in any case of a late bid transmitted by certified mail received before award, the bidder shall be promptly notified substantially as follows:

Your bid in response to Invitation for Bids No. ------, dated ----------, was received after the time for opening specified in the Invitation. Accordingly, your bid will not be considered for award unless (1) there is received from you by ---------- clear and convincing evidence from the post office station of mailing which establishes the date (and time, if possible) that the bid was deposited with that station, and (2) it is determined by the Government that late receipt was due solely to a delay in the mail for which you are not responsible. In the case of certified mail, the original postmarked Receipt for Certified Mail must be furnished and is the only evidence acceptable under (1) above, except that, where the Receipt for Certified Mail identifies the post office station of mailing, evidence from such station of its closing time or written verification by such station of an approved time entry on the receipt are also acceptable. (July 1965)

(Date)

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

§ 18–2.303–7 Disposition of late bids.

A late bid which is not for consideration for award shall be held unopened until after award and then returned to the bidder, unless other disposition is requested or agreed to by the bidder. However, an unidentified late bid may be opened solely for purposes of identification as provided in § 18–2.401.

§ 18–2.303–8 Records.

The following, if available, shall be included in the files of the procurement office with respect to each late bid:

(a) A statement of the date and hour of mailing or filing;

(b) A statement of the date and hour of receipt;

(c) The determination of whether or not the late bid was considered for award, with supporting facts;

(d) A statement of the disposition of the late bid; and

(e) The envelope, or other covering, if the late bid was considered for award.

§ 18–2.304 Modification or withdrawal of bids.

(a) Bids may be modified or withdrawn by written or telegraphic notice received in the office designated in the invitation for bids not later than the exact time set for opening of bids. A telegraphic modification or withdrawal of a bid received in such office by telephone from the receiving telegraph office not later than the time set for opening of bids shall be considered if such message is confirmed by the telegraph company by sending a copy of the telegram which formed the basis for the telephone call. Modifications received by telegram (including a record of those telephoned by the telegraph company) shall be sealed in an envelope by a proper official who shall write thereon the date and time of receipt and by whom, the invitation for bid number, and his signature. No information contained therein shall be disclosed before the time set for bid opening. See § 18–2.401 with respect to the receipt and safeguarding of modifications.

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

§ 18–2.305 Late modifications and withdrawals.

(a) Modifications of bids and requests for withdrawal of bids which are received in the office designated in the invitation for bids after the exact time set for opening are "late modifications" and "late withdrawals," respectively. A late modification or late withdrawal shall be subject to the rules and procedures applicable to late bids set forth in § 18–2.303. However, a late modification of the otherwise successful bid shall be opened at any time it is received; and if in the judgment of the contracting officer it makes the terms of the bid more favorable to the Government, it shall be considered.

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

Your (modification) (request for withdrawal) of your bid in response to Invitation for Bids No. ------, dated ----------, was received after the time for opening specified in the Invitation. Accordingly, your (modification) (request for withdrawal) will not be considered effective unless (1) there is received from you by ---------- clear and convincing evidence from the post office station of mailing which establishes the date (and time, if possible) that the (modification) (request for withdrawal) was deposited with that station, and (2) it is determined by the Government that late receipt was due solely to a delay in the mail for which you are not responsible. In the case of certified mail, the original postmarked Receipt for Certified Mail must be furnished and is the only evidence acceptable under (1) above, except that, where the Receipt for Certified Mail identifies the post office station of mailing, evidence from such station of its closing time or written verification by such station of an approved time entry on the receipt are also acceptable. (July 1965)

(Date)

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

(c) Records of late modifications and late withdrawals shall be maintained in accordance with the record requirements for late bids set forth in § 18–2.303–8.

Subpart 18–2.4—Opening of Bids and Award of Contract

§ 18–2.401 Receipt and safeguarding of bids.

(a) All bids (including modifications) received prior to the time set for opening shall be kept unopened, except as stated in paragraph (b) of this section, and secure in a locked bid box or other locked receptacle. Prior to bid opening,

information concerning the identity and number of bids received shall be made available only to Government employees who have a proper need for such information. Descriptive literature or bid samples, when submitted, shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

(b) Unidentified bids may be opened solely for the purpose of identification and then only by a contracting officer or a representative specifically authorized by a contracting officer to open bids. If a sealed bid is opened by mistake, the person who opens the bid shall immediately write his signature and position title on the envelope and deliver it to the contracting officer, who shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bid number, and his signature. Bids opened by mistake or for identification purposes shall be resealed in the envelope and no information contained therein shall be disclosed prior to the public bid opening.

§ 18–2.402 Opening of bids.

§ 18–2.402–1 Unclassified bids.

(a) Only NASA contracting officers or representatives specifically authorized by them to open bids shall act as bid opening officers. The bid opening officer shall decide when the time set for bid opening has arrived and shall so declare to those present. All bids received prior to the time set for opening shall then be publicly opened, and, when practicable, read aloud to the persons present, and be recorded. If it is impracticable to read the entire bid, as where many items are involved, the total amount of the bid shall be read, if feasible. The original of each bid shall be carefully safeguarded, particularly until the abstract of bids required by § 18–2.403 has been made and its accuracy verified.

(b) While the performance of the procedure set forth in paragraph (a) of this section may be delegated to assistants, NASA contracting officers remain fully responsible for the actions of such assistants.

(c) Examination of bids by interested persons shall be permitted if it does not interfere unduly with the conduct of Government business. However, original bids shall not be allowed to pass out of the hands of a Government official unless duplicate copies of such bids are not available for public inspection. In such cases, the original bids may be examined by the public only under the immediate supervision of a Government official and under conditions which preclude possibility of a substitution, addition, deletion, or alteration in the bids. However, see § 18–2.404–4 with respect to public disclosure of descriptive literature submitted by a bidder on a restrictive basis.

§ 18–2.402–2 Classified bids.

The opening of classified bids shall not be accessible to the general public. Such opening may be witnessed and the results recorded by those bidder representatives (a) who have been previously cleared from a security standpoint and (b) who represent bidders which were invited to bid on the procurement. Bids shall be made available only to those persons authorized to attend the opening of bids. The procedures set forth in § 18–2.402–1 for safeguarding unclassified bids are also applicable to classified bids. No public record shall be made of bids or bid prices received on classified invitations for bids.

§ 18–2.403 Recording of bids.

The invitation number, bid opening date, general description of the procurement item, names of bidders, prices bid, and any other information required for bid evaluation, shall be entered in an abstract or record which, except in the case of a classified procurement, shall be available for public inspection. When the items are too numerous to warrant the recording of all bids completely, an entry shall be made of the invitation number, opening date, general description of the procurement items, and the total price bid where definite quantities are involved. The record or abstract shall be completed as soon as practicable after the bids have been opened and read. The bid opening officer shall certify the accuracy of the record or abstract. If the invitation for bids is canceled before the time set for bid opening, this fact shall be recorded, together with a statement of the number of concerns invited to bid and the number of bids received. Copies of the abstract on unclassified bids exhibited to the public shall not contain information such as debarment, failure to meet minimum standards of responsibility, apparent collusion of bidders, or other notations not proper for the knowledge of the general public.

§ 18–2.404 Rejection of bids.

§ 18–2.404–1 Cancellation of invitation after opening.

(a) The preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing unnecessary exposure of bid prices. As a general rule, after opening, an invitation for bids should not be canceled and readvertised due solely to increased requirements for the items being procured. Awards should be made on the initial invitation for bids and the additional quantity should be treated as a new procurement.

(b) Invitations for bids may be canceled after opening but prior to award, and all bids rejected, where such action is consistent with paragraph (a) of this section and the contracting officer determines in writing that cancellation is in the best interest of the Government for reasons such as the following:

(1) Inadequate, ambiguous, or otherwise deficient specifications were cited in the invitation for bids;

(2) The supplies or services are no longer required;

(3) The invitation for bids did not provide for consideration of all factors of cost to the Government, such as cost of transporting Government-furnished property to bidders' plants;

(4) Bids received indicate that the needs of the Government can be satisfied by a less expensive article differing from that on which the bids were invited;

(5) All otherwise acceptable bids received are at unreasonable prices. (See § 18–3.215 concerning authority to negotiate in such situations.);

(6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith. (See § 18–3.215 concerning authority to negotiate in such situations; and §§ 18–1.111 and 18–1.114 for reports to be made to the Department of Justice.);

(7) The bids received did not provide competition which was adequate to insure reasonable prices; or

(8) Specifications have been revised.

Determinations to cancel invitations for bids shall state the reasons therefor.

(c) Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties if any) in order to avoid the need for readvertisement.

§ 18–2.404–2 Rejection of individual bids.

(a) Any bid which fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, or permissible alternates thereto, shall be rejected as nonresponsive.

(b) Ordinarily, a bid shall be rejected where the bidder imposes conditions which would modify requirements of the invitation for bids or limit his liability to the Government so as to give him an advantage over other bidders. For example, bids shall be rejected in which the bidder:

(1) Attempts to protect himself against future changes in conditions such as increased costs if total price to the Government cannot be determined for bid evaluation;

(2) Fails to state a price and, in lieu thereof, states that price shall be "price in effect at time of delivery";

(3) States a price but qualifies such price as being subject to "price in effect at time of delivery";

(4) Where not authorized by the invitation, conditions or qualifies his bid by stipulating that the bid is to be considered only if, prior to date of award, bidder receives (or does not receive) award under a separate procurement;

(5) Limits rights of Government under any contract clause; or

(6) Requires that Government is to determine that bidder's product meets Government specification.

A low bidder may be requested to delete objectionable conditions from his bid provided these conditions do not go to the substance, as distinguished from the form, of the bid, or work an injustice on other bidders. A condition goes to the substance of a bid where it affects price, quantity, quality, or delivery of the items offered.

(c) Any bid may be rejected if the contracting officer determines in writing that it is unreasonable as to price.

(d) Bids received from any person or concern debarred or ineligible shall be rejected if the period of debarment or ineligibility has not expired (see Subpart 18-1.6).

(e) Low bids received from concerns determined to be not responsible, pursuant to Subpart 18-1.9, shall be rejected (but, if the bidder is a small business concern, see § 18-1.705-4 with respect to certificates of competency).

(f) Where a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the invitation for bids, the bid shall be rejected, except as otherwise provided in § 18-10.102-5.

(g) The originals of all rejected bids and any written findings with respect to such rejections shall be preserved with the papers relating to the procurement.

§ 18-2.404-3 Notice to bidders of rejection of all bids.

When it is determined to reject all bids, the contracting officer shall notify each bidder that all bids have been rejected, stating the reason for such action.

§ 18-2.404-4 Restrictions on disclosure of descriptive literature.

(a) When a bid is accompanied by descriptive literature (as defined in § 18-2.202-5(a)), and the bidder imposes a restriction that such literature may not be publicly disclosed, such restriction renders the bid nonresponsive if it prohibits the disclosure of sufficient information to permit competing bidders to know the essential nature and type of the products offered or those elements of the bid which relate to quantity, price and delivery terms. The provisions of this paragraph (a) do not apply to unsolicited descriptive literature submitted by a bidder if such literature does not qualify the bid (see § 18-2.202-5(f)).

(b) Descriptive literature restricted by a bidder against public disclosure shall not be disclosed in a manner which would contravene the restriction without the written permission of the bidder.

§ 18-2.404-5 All or none qualifications.

Unless the invitation for bids so provides, a bid is not rendered nonresponsive by the fact that the bidder specifies that award will be accepted only on all, or a specified group, of the items included in the invitation for bids. However, bidders shall not be permitted to withdraw or modify "all or none" qualifications after bid opening since such qualifications are substantive and affect the rights of other bidders.

§ 18-2.405 Minor informalities or irregularities in bids.

A minor informality or irregularity is one which is merely a matter of form, and not of substance, or pertains to some immaterial or inconsequential defect or variation of a bid from the exact requirement of the invitation for bids, the correction or waiver of which would not be prejudicial to other bidders. The defect or variation in the bid is immaterial and inconsequential when its significance as to price, quantity, quality, or delivery is trivial or negligible when contrasted with the total cost or scope of the supplies or services being procured. The contracting officer shall either give the bidder an opportunity to correct any deficiency resulting from a minor informality or irregularity in a bid or shall waive such deficiency, whichever is to the advantage of the Government. Examples of minor informalities or irregularities include:

(a) Failure of bidder to return the number of copies of signed bids required by the invitation for bids;

(b) Failure of bidder to furnish required information concerning the number of his employees;

(c) Failure of bidder to sign his bid, but only if—

(1) The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid document, such as the submission of a bid guarantee with bid, or a letter signed by the bidder with the bid referring to and clearly identifying the bid itself; or

(2) The firm submitting the bid has formally adopted or authorized, before the date set for opening of bids, the execution of documents by typewritten, printed, or stamped signature, and submits evidence of such authorization and the bid carries such a signature;

(d) Failure of a bidder to acknowledge receipt of an amendment to an invitation for bids, but only if—

(1) The bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the invitation for bid and the bidder submitted a bid thereon, or

(2) The amendment involves only a matter of form or is one which has either no effect or merely a trivial or negligible effect on price, quantity, quality, or delivery of the item bid upon, or the relative standing of bidders, such as an amendment correcting a typographical mistake in the name of the NASA installation.

§ 18-2.406 Mistakes in bids.

§ 18-2.406-1 General.

After the opening of bids, contracting officers shall examine all bids for mistakes. In cases of apparent mistakes, and in cases where the contracting officer has reason to believe that a mistake may have been made, he shall request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter shall be processed in accordance with this § 18-2.406. Such actions shall be taken prior to award.

§ 18-2.406-2 Apparent clerical mistakes.

Any clerical mistake, apparent on the face of a bid, may be corrected by the contracting officer prior to award, if he has first obtained from the bidder verification of the bid actually intended. Examples of such apparent mistakes are obvious misplacement of a decimal point; obvious incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days); obvious reversal of the price f.o.b. destination and the price f.o.b. origin; and obvious mistake in designation of unit. Correction shall be reflected in the award document.

§ 18-2.406-3 Other mistakes disclosed before award.

(a) In lieu of submission to the General Accounting Office for decision, the Comptroller General, by Decision B-140233, has granted to NASA the authority to make the administrative determinations described below in connection with mistakes in bids, other than apparent clerical mistakes, alleged after opening of bids and prior to award. The authority contained herein to permit correction of bids is limited to bids which, as submitted, are responsive to the invitation for bids, and may not be used to permit correction of bids to make them responsive. This authority is in addition to that in § 18-2.406-2, or that which may be otherwise available.

(1) A determination may be made permitting the bidder to withdraw his bid where the bidder requests permission to do so and clear and convincing evidence establishes the existence of a mistake. However, if the evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended, and if the bid, both as uncorrected and corrected, is the lowest received, a determination may be made to correct the bid and not permit its withdrawal.

(2) A determination may be made permitting the bidder to correct his bid where the bidder requests permission to do so and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. However, if such correction would result in displacing one or more lower acceptable bids, the determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and bid itself. If the evidence is clear and convincing only as to the mistake, but not as to the intended bid, a determination permitting the bidder to withdraw his bid may be made.

(3) If the evidence does not warrant a determination under subparagraph (1) or (2) of this paragraph, a determination may be made that a bidder may neither withdraw nor correct his bid, and the bid shall be considered for award in the form submitted.

(b) Mistakes in bid cases covered by paragraphs (a) (1), (2), or (3) of this section shall be referred by the contracting officer to the Procurement Office, NASA Headquarters (Code KDA–2) for determination.

(c) Each proposed determination shall have the concurrence of the Office of General Counsel prior to issuance.

(d) Suspected or alleged mistakes in bids shall be processed as follows:

(1) Whenever the contracting officer suspects that a mistake may have been made in a bid, he shall immediately request the bidder to verify the bid. Such request shall inform the bidder why the request for verification is made—that a mistake is suspected and the basis for such suspicion; e.g., that the bid is significantly out of line with the next low or other bids or with the Government's estimate. If the time for acceptance of bids is likely to expire before a decision can be made, the contracting officer shall request all bidders whose bids may become eligible for award to extend the time for acceptance of their bids. If the bidder whose bid is believed erroneous does not grant such extension of time and a decision cannot be reached before expiration of the time for acceptance, even if handled by telegraph or telephone as provided in subparagraph (4) of this paragraph, the bid shall be considered as originally submitted.

(2) If the bidder verifies his bid, the contracting officer shall consider it as originally submitted. If the bidder alleges a mistake, the contracting officer shall advise him to support his allegation by statements concerning the alleged mistake and by all pertinent evidence, such as the bidder's file copy of the bid, his original worksheets and other data used in preparing the bid, subcontractors' and suppliers' quotations, if any, published price lists, and any other evidence which will serve to establish the mistake, the manner in which it occurred, and the bid actually intended.

(3) Where the bidder furnishes evidence in support of an alleged mistake, the case shall be referred to the Procurement Office, NASA Headquarters (Code KDA–2) together with the following data:

(i) All evidence furnished by the bidder including his written request to withdraw or modify the bid;

(ii) A copy of the signed bid, of the invitation for bids, and any specifications or drawings relevant to the alleged mistake;

(iii) An abstract or record of the bids received;

(iv) A written statement by the contracting officer setting forth—

(*a*) The expiration date of the bid in question and of the other bids submitted;

(*b*) Specific information as to how and when the mistake was alleged;

(*c*) A summary of the evidence submitted by the bidder;

(*d*) In the event only one bid was received, a quotation of a recent contract price for the supplies or services involved, or, in the absence of a recent comparable contract, the contracting officer's estimate of a fair price for the supplies or services and the basis for such estimate;

(*e*) Any additional evidence considered pertinent including copies of all correspondence between the contracting officer and the bidder concerning the alleged mistake; and

(*f*) The course of action with respect to the bid that the contracting officer considers proper on the basis of the evidence.

(4) When time is of the essence, because of the expiration of bids or otherwise, the contracting officer may refer the case by telegraph or telephone to the Procurement Office, NASA Headquarters. Ordinarily, contracting officers will not refer mistake in bid cases by telegraph or telephone, particularly when the determinations set forth in paragraph (a) (2) or (3) of this section are applicable, since actual examination of the evidence is generally necessary to determine the proper action to be taken.

(5) Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the contracting officer shall consider the bid as submitted unless the amount of the bid is so far out of line with the amounts of other bids received or with the amount estimated by the Government or determined by the contracting officer to be reasonable, or there are other indications of error so clear, as reasonably to justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders, in which case it may be rejected. The attempts made to obtain the information required and the action taken with respect to the bid shall be fully documented.

(e) Nothing contained in this § 18–2.406–3 shall deprive the Comptroller General of his statutory right to question the correctness of any administrative determination made hereunder nor deprive any bidder of his right to have the matter determined by the Comptroller General should he so request. All doubtful cases will be submitted to the Comptroller General for advance decision.

(f) A record shall be kept of all administrative determinations made in accordance with this § 18–2.406–3, including a complete statment of the facts involved, and the action taken in each case. Copies of all such administrative determinations shall be included in the case file. Where a contract is awarded, a copy of any related determination shall be retained in the contract file.

§ 18–2.406–4 Disclosure of mistakes after award.

(a) When a mistake in a contractor's bid is not discovered until after the award, the mistake may be corrected by supplemental agreement if correcting the mistake would make the contract more favorable to the Government without changing the essential requirements of the contract. All other cases shall be referred to the Procurement Office, NASA Headquarters. They will either be decided by the Director of Procurement under paragraphs (b) and (c) of this section, be referred by the Director of Procurement to the Comptroller General, or be processed in accordance with Part 18–17 of this chapter.

(b) In lieu of submission to the General Accounting Office for decision, the Comptroller General, by Decision B–140233, dated February 3, 1961, has granted to NASA the authority to make the administrative determinations described below in connection with mistakes in bids alleged or disclosed after award. This authority is in addition to that provided by Public Law 85–804 (50 U.S.C. 1431–1435). (See Part 18–17 of this chapter), or that which otherwise may be available.

(1) A determination may be made to rescind a contract where the original contract price does not exceed $1,000.

(2) A determination may be made to reform a contract, irrespective of amount:

(i) To delete the item or items involved in the mistake where such deletion does not reduce the contract price by more than $1,000; or

(ii) To increase the price where such increase does not exceed $1,000 and if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original invitation for bids.

(c) Determinations under paragraph (b) of this section may be made only on the basis of clear and convincing evidence that a mistake in bid was made, and either that the mistake was mutual or that the unilateral mistake made by the contractor was so apparent as to have charged the contracting officer with notice of the probability of the mistake. Relief requested by a contractor due to an alleged mistake may be denied regardless of the monetary amount involved where it is determined the evidence is not clear and convincing:

(1) That a mistake in bid or proposal was made by the contractor, or

(2) That the mistake was mutual or the contracting officer was or should have been on notice of the error prior to the award of the contract.

(d) The Director of Procurement is the NASA official authorized to make determinations under this § 18–2.406–4. This authority may not be redelegated.

(e) Each proposed determination shall have the concurrence of the Office of General Counsel.

(f) Mistakes disclosed after award shall be processed as follows:

(1) Whenever a mistake in bid is alleged or disclosed after award, the contracting officer shall advise the contractor to support the alleged error by written statements and by all pertinent evidence, such as the contractor's file copy of the bid, his original work sheets and other data used in preparing the bid, subcontractors' and suppliers' quotations (if any), published price lists, and any other evidence which will serve to establish the mistake, the manner in which it occurred, and the bid actually intended.

(2) Where the contractor furnishes evidence in support of an alleged mistake, the contracting officer may either correct the mistake if authorized under

paragraph (a) of this section, or refer the case to the Procurement Office, NASA Headquarters (Code KDA–2) together with the following data:

(i) All evidence furnished by the contractor;

(ii) A copy of the contract, including a copy of the bid and any specifications or drawings relevant to the alleged mistake, and any change orders or supplemental agreements thereto;

(iii) An abstract or record of the bids received;

(iv) A written statement by the contracting officer setting forth—

(*a*) Specific information as to how and when the mistake was alleged or disclosed;

(*b*) A summary of the evidence submitted by the contractor;

(*c*) His opinion whether a bona fide mistake was made in the bid and whether he was, or should have been, on constructive notice of the mistake before the award, together with the reasons or data upon which his opinion is based;

(*d*) In the event that only one bid was received, a quotation of a recent contract price for the supplies or services involved, or, in the absence of a recent comparable contract, the contracting officer's estimate of a fair price for the supplies or services, and the basis for such estimate;

(*e*) Any additional evidence considered pertinent, including copies of all relevant correspondence between the contracting officer and the contractor concerning the alleged mistake;

(*f*) The course of action with respect to the alleged mistake that the contracting officer considers proper on the basis of the evidence, and, if other than a change in contract price is recommended, the manner by which the item will otherwise be procured; and

(*g*) The status of performance and payments under the contract, including contemplated performance and payments.

(g) Nothing contained in this § 18–2.406–4 shall deprive the Comptroller General of his statutory right to question the correctness of any administrative determination made hereunder or deprive any contractor of his right to have the matter determined by the Comptroller General should he so request.

(h) The Procurement Office, NASA Headquarters (Code KDA–2) shall maintain a record of all administrative determinations made in accordance with this § 18–2.406–4, the facts involved, and the action taken in each case. A copy of the determination shall be attached to each copy of any contract rescission or reformation resulting therefrom.

(i) When administrative determination is precluded by the limitations set forth in this § 18–2.406–4, the matter may be considered in accordance with Part 18–17 of this chapter, or submitted to the Comptroller General for decision.

(j) Nothing contained in this § 18–2.406–4 shall prevent the submission by the Director of Procurement of any doubtful case to the Comptroller General. If a contractor's request for correction of an alleged mistake is denied by the Director of Procurement, the contracting officer shall so notify the contractor.

§ 18–2.407 Award.

§ 18–2.407–1 General.

Unless all bids are rejected, award shall be made by the contracting officer by written notice, within the time for acceptance specified in the bid or extension thereof, to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered. (For discussion of other factors to be considered, see § 18–2.407–5.) Awards shall not be made until all required approvals have been obtained. Awards shall be made by mailing or otherwise furnishing to the successful bidder a properly executed award document or notice of award. When an advanced notice of award is issued, it shall be followed as soon as possible by the formal award. When more than one award results from any single invitation for bids, separate award documents shall be executed, each bearing its own separate number. When an award is made to a bidder for less than all the items which may be awarded to that bidder and additional items are being withheld for subsequent award, the first award to that bidder shall state that the Government may make subsequent awards on such additional items within the bidder's bid acceptance period. All provisions of the invitation for bids, including any acceptable additions or changes made by a bidder in the bid, shall be clearly and accurately set forth (either expressly or by reference) in the award document, since the award is an acceptance of the bid, and the bid and the award constitute the contract.

§ 18–2.407–2 Responsible Bidder.

Before awarding the contract, the contracting officer shall determine that a prospective contractor is responsible. (See Subpart 18–1.9.)

§ 18–2.407–3 Discounts.

(a) Prior to issuing an invitation for bids (other than for construction), a determination shall be made as to what minimum period for prompt payment discounts will be considered in the evaluation of bids and such minimum period shall be stated in the invitation for bids. In determining the minimum period for a particular procurement, consideration shall be given to:

(1) The place of delivery, inspection, and acceptance in relation to the place of payment of invoices or vouchers;

(2) The number of days required to process invoices or vouchers from receipt through payment in the normal course of business; and

(3) The need for prolonged acceptance testing or other unusual circumstances tending to retard the normal processing of invoices or vouchers.

Generally, the minimum period will be expressed in multiples of 10 days; e.g., "10 calendar days," "20 calendar days," or "30 calendar days," since these time intervals coincide with the discount terms generally offered by industry.

(b) In determining which of several bids received is the lowest, any discount offered shall be deducted from the bid price on the assumption that the discount will be taken, unless the discount offered is for a lesser period than the minimum number of days specified in the invitation for bids. (See § 18–2.407–3 (a).) In evaluating equal bids offering discounts meeting the minimum discount period required by the invitation, a bid offering a longer discount period shall not be considered as being more advantageous to the Government. If a bid offers a prompt payment discount, but fails to specify the period in which the discount may be taken, the discount may be considered since award to the bidder gives the Government the right to deduct the discount from any payment made with reasonable promptness.

(c) If a bid offers a prompt payment discount for a period less than that specified in the invitation for bids, the discount shall not be considered in the evaluation of bids. If a bid would have been the lowest bid received if the discount offered were considered, but award is not made thereon because the offered discount cannot be considered, a notation to that effect shall be made upon the abstract or record of bids.

(d) In any case, the offered discount of the successful bidder shall form a part of the award, whether or not such discount was considered in the evaluation of his bid, and such discount shall be taken if payment is made within the discount period.

§ 18–2.407–4 Price escalation.

(a) Where an invitation for bids does not contain a price escalation clause, bids received which quote a price and contain a price escalation provision, with a ceiling (usually expressed in terms of a maximum percentage increase) above which the price will not escalate, shall be evaluated on the maximum possible escalation of the quoted base price. Bids which contain escalation with no ceiling shall be rejected unless a clear basis for evaluation exists.

(b) Where an invitation for bids contains a price escalation clause and no bidder takes exception to the escalation provisions, bids shall be evaluated on the basis of the quoted prices without the allowable escalation being added. Where a bidder increases the maximum percentage of escalation stipulated in the invitation for bids or limits the downward escalation provisions of the invitation, the bid will be rejected as nonresponsive. Where a bidder deletes the escalation clause from his bid, the bid shall be rejected as nonresponsive since the downward escalation provisions are thereby limited. Where a bidder decreases the maximum percentage of escalation stipulated in the invitation for bids, the bid shall be evaluated at the base price on an equal basis with bids that do not reduce

the stipulated ceiling. However, if after evaluation the bidder offering the lower ceiling is in a position to receive the award, the award shall reflect the lower ceiling.

§ 18–2.407–5 Other factors to be considered.

The factors set forth below, among others, may be for consideration in evaluating bids for award:

(a) Foreseeable cost or delays to the Government resulting from differences in inspection, location of supplies, transportation, etc. If bids are on an f.o.b. origin basis, transportation costs to the designated destination points shall be considered in determining the lowest cost to the Government.

(b) Changes made or requested by the bidder in any of the provisions of the invitation for bids to the extent that any such change does not constitute ground for rejection of the bid under the provisions of § 18–2.404.

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

(d) Federal, State and local taxes (see Part 18–11).

(e) Origin of supplies, whether domestic or foreign, and, if foreign, the application of the Buy American Act or any other prohibition on foreign purchases (See Part 18–6).

§ 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 subparagraph (2) of this paragraph, 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 subparagraph (2) of this paragraph, 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 subparagraph (3) of this paragraph.

(2) For the proposals of subparagraph (1) of this paragraph, 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 subparagraph (2) of this paragraph, results in two or more bidder 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.

§ 18–2.407–7 Requirements in lieu of Standard Form 1036.

(a) Under General Regulation No. 51, Supplement No. 14, dated February 11, 1952, the General Accounting Office discontinued the requirement for preparation of Standard Form 1036, Statement and Certificate of Award, by agencies whose records are subject to site or comprehensive audit by that office. Accordingly, this form is not required in connection with NASA contracts, since NASA is subject to site audit by the General Accounting Office; and the supporting documents which would be used as a basis for preparation of Standard Form 1036 are retained in the procurement office and made available to the General Accounting Office for audit purposes.

(b) While the use of Standard Form 1036 is not required, it is still necessary to record the method of purchase and the basis for award. The contracting officer shall maintain records that will show evidence of compliance with § 18–2.103, and which will state that the accepted bid was the lowest bid received, or list all lower bids and set forth reasons for their rejection. These reasons shall be set forth in such detail as is necessary to justify the award. For the purpose of these records, the lowest bid received is considered to be that bid which is lowest after a consideration of price factors only. The cost of transportation to the destination indicated in the invitation for bids, any acceptable discount offered by a bidder, and if the invitation so specifies any other Government cost factors, shall be considered price factors in determining the lowest bidder for purposes of these records. In each case where an award is made after receipt of equal low bids, the record shall set forth the manner in which the tie was broken. Where an award involves a mistake in bid and the matter has been resolved by administrative action, a copy of the bidder's verification in the case of an apparent mistake, or the written administrative determination concerned, shall be retained in the contract file. Where an award involves a mistake in bid on which the Comptroller General has rendered a decision, the file shall contain a citation by number and date of the decision and a copy thereof shall be retained in the contract file.

§ 18–2.407–8 Protests against award.

(a) *General.* (1) Contracting officers shall consider all protests or objections to the award of a contract, whether received before or after award. If the protest is oral and the matter cannot otherwise be resolved, written confirmation of the protest shall be requested. The protester shall be notified in writing of the final decision on the written protest.

(2) Every effort shall be made to resolve protests at the installation. It is the responsibility of the contracting officer to decide whether a protest has a valid basis and to take appropriate action when possible without referral to NASA Headquarters. Such action may be taken only with the concurrence of local counsel and shall be followed by a written explanation to NASA Headquarters accompanied by a copy of any pertinent correspondence. However, in the following cases written protests received by the contracting officer should be referred to NASA Headquarters:

(i) The protesting party requests referral to higher authority;

(ii) The protest is known to have been lodged directly with the Comptroller General, a member of Congress, the Small Business Administration, or NASA Headquarters;

(iii) The contracting officer entertains some doubt as to proper action regarding the protest or believes it to be in the best interest of the Government that the protest be considered by NASA Headquarters or the Comptroller General.

(3) In referring a protest to NASA Headquarters, a completely documented case shall be submitted to the Procurement Office, NASA Headquarters (Code KDA–2) including the following:

(i) The letter or other document which initiated the protest, together with all supporting evidence submitted by the person making the protest;

(ii) Relevant letters or other written statements, received from other persons or bidders affected by or involved in the protest, that set forth the facts with respect to their position in the matter, together with any additional supporting evidence;

(iii) A copy of the bid of the protesting bidder and a copy of the bid of the bidder to whom award has been made or who is being considered for award, if relevant to the protest;

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

(v) A copy of the abstract of bids;

(vi) Any other documents which are relevant to the protest; and

(vii) A statement signed by the contracting officer setting forth his findings,

actions, and recommendations in the matter, together with any additional information and evidence considered to be necessary in determining the validity of the protest. If the award of a contract was made pending resolution of the protest, the contracting officer's statement shall include the determination prescribed in paragraph (b)(3) of this section.

(4) Where protests are made directly to NASA Headquarters or where NASA Headquarters receives notice of protests made directly to the Comptroller General, a Member of Congress, or the Small Business Administration, the contracting officer shall be requested to furnish information. This will usually require submittal of a completely documented case as prescribed in subparagraph (3) of this paragraph (a).

(5) Protests received by NASA Headquarters, in accordance with paragraph (a) (2) and (4) of this section, will be acted upon by the Procurement Office, NASA Headquarters. Where substantial doubt exists as to the validity of a protest, the views of the Comptroller General will be obtained.

(6) Where a protest affects another bidder, a contractor, or any other party having a legitimate interest, the contracting officer normally should give prompt notice of the protest to such parties in order that they may take appropriate action on their own behalf. The extent of information to be furnished the affected parties in any particular case will be governed by such matters as legal considerations, the interest of the Government, equitable considerations for the interests of affected parties, and mitigation of losses or other injuries to any and all parties concerned. Affected parties shall be advised that such a notice of protest in no way relieves them of any obligations, under a contract or otherwise, but is intended primarily to afford them a fair opportunity to be heard by, and to present evidence for the consideration of, the agency which will render a decision in the case.

(b) *Protests before award.* If award has not been made, the contracting officer may require that written confirmation of an oral protest be submitted by a specified time and inform the protester that award will be withheld until the specified time. If the written protest is not received by the time specified, the oral protest may be disregarded and award may be made in the normal manner unless the contracting officer, upon investigation, finds that remedial action is required, in which event such action shall be taken.

(1) In appropriate cases, notice of a protest will be given to bidders affected thereby. For example, when a protest against the making of an award is received and the contracting officer determines to withhold the award pending disposition of the protest, each bidder to whom award is proposed and each bidder whose bid might become eligible for award should be informed of the protest and requested, before expiration of the time for acceptance of their bids, to extend the time for acceptance (with consent of sureties, if any) in order to avoid the need for readvertisement. In the event of failure to obtain such extension of bids, then consideration should be given to proceeding with award under paragraph (b)(3) of this section.

(2) Where a protest has been lodged with NASA, the views of the Comptroller General regarding the protest may be obtained before award whenever such action is considered to be desirable. Where it is known that a protest against the making of an award has been lodged directly with the Comptroller General, a determination to make award need not be withheld pending final disposition by the Comptroller General of a protest, but a notice of intent to make award in such circumstances shall be furnished the Comptroller General, and formal or informal advice should be obtained concerning the current status of the case prior to making the award.

(3) Where a written protest against the making of an award is received, or if it is known that a protest has been made to the Comptroller General, a member of Congress, the Small Business Administration, or NASA Headquarters, award shall not be made until the matter is resolved, unless the contracting officer determines that:

(i) The items to be procured are urgently required;

(ii) Delivery or performance will be unduly delayed by failure to make award promptly; or

(iii) A prompt award will otherwise be advantageous to the Government.

If award is made under subdivision (i), (ii), or (iii) of this subparagraph (3), the contracting officer shall document the file to explain the need for an immediate award, and shall give written notice of the decision to proceed with the award to the protester and, as appropriate, to others concerned.

(4) The determination required by subparagraph (3) of this paragraph shall be referred to the Procurement Office, NASA Headquarters for approval prior to award if an unresolved protest against such award has been, or is expected to be, referred to NASA Headquarters in accordance with paragraph (a)(2) of this section, or if information on a protest is being prepared by the contracting office at the request of NASA Headquarters in accordance with paragraph (a)(4) of this section.

(c) *Protests after award.* The general instructions in paragraph (a) of this section are applicable to protests received after award.

§ 18–2.408 Information to bidders.

§ 18–2.408–1 Unclassified awards.

In the case of all unclassified formally advertised contracts, the procurement office shall as a minimum (subject to any restrictions in Subpart 18–1.6), (a) notify unsuccessful bidders promptly of the fact that their bids were not accepted, and (b) extend the appreciation of the procurement office for the interest the unsuccessful bidder has shown in submitting a bid. Notification to unsuccessful bidders may be either orally or in writing through the use of a form postal card or other appropriate means. Should additional information be requested, the procurement office shall provide the unsuccessful bidders with the name and address of the successful bidder, together with the contract price, and should also inform the inquirers as to the location where a copy of the abstract of bids is available for inspection. However, when multiple awards have been made and furnishing the names, addresses, and contract prices of the successful bidders would require so large an amount of work as to interfere with normal operations of the procurement office, only information concerning location of the abstract of bids need be given. In addition, when an inquiry is made by an unsuccessful bidder who is lower in price than the successful bidder, sufficient information shall be furnished in the reply to the unsuccessful bidder to fully explain the basis for award. Where request is received concerning an unclassified invitation for bids from an inquirer who is neither a bidder nor a representative of a bidder, the procurement office should make every effort to furnish the names of successful bidders and, if requested, the prices at which awards were made. However, where such requests require so large amount of work as to interfere with the normal operations of the procurement office, the inquirer will be advised where a copy of the abstract of bids may be seen.

§ 18–2.408–2 Classified awards.

In the case of all classified formally advertised contracts, the procurement office shall (a) notify unsuccessful bidders promptly of the fact that their bids were not accepted, and (b) extend the appreciation of the procurement office for the interest the unsuccessful bidder has shown in submitting a bid. Information with respect to the name of the successful bidder and the contract price will be furnished only to unsuccessful bidders or their properly cleared representatives and then only upon request. No information regarding a classified award may be furnished by telephone.

§ 18–2.409 Synopses of contract awards.

See § 18–1.1005–1.

Subpart 18–2.5—Two-Step Formal Advertising

§ 18–2.501 General.

Two-step formal advertising is a method of procurement designed to expand the use and obtain the benefits of formal advertising where inadequate specifications preclude the use of conventional formal advertising. It is especially useful in procurements requiring technical proposals, especially those for complex items. It is conducted in two steps:

(a) Step one consists of the request for, and submission, evaluation, and if necessary, discussion of a technical proposal, without pricing, to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and

includes engineering approach, special manufacturing processes, and special testing techniques. When it is necessary in order to clarify basic technical requirements, related requirements such as management approach, manufacturing plan, or facilities to be utilized may be clarified in this step. Conformity to the technical requirements is resolved in this step, but capacity and credit, as defined in § 18–1.705–4, are not.

(b) Step two is a formally advertised procurement confined to those who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards made in accordance with Subparts 18–2.3 and 4.

Two-step formal advertising requires that the contracting officer work closely with technical personnel and that he utilize their specialized knowledge in determining the technical requirements of the procurement, in determining the criteria to be used in evaluating technical proposals, and in making such evaluation. An objective of this method is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirement, including an adequate technical data package, so the subsequent procurements may be made by conventional formal advertising.

§ 18–2.502 Conditions for use.

Two-step formal advertising shall be used in preference to negotiation when all of the following conditions are present, unless other factors require the use of negotiation;

(a) Available specifications or purchase descriptions are not sufficiently definite or complete or may be too restrictive, and the listing of the salient characteristics in a "brand name or equal" description would likewise be too restrictive, to permit full and free competition without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to insure mutual understanding between each source and the Government;

(b) Definite criteria exist for evaluating technical proposals, such as design, manufacturing, testing, and performance requirements, and special requirements for operational suitability and ease of maintenance;

(c) More than one technically qualified source is expected to be available;

(d) Sufficient time will be available for use of the two-step method; and

(e) A firm fixed-price contract or a fixed-price contract with escalation will be used.

§ 18–2.503 Procedures.

§ 18–2.503–1 Step one.

(a) A request for technical proposals shall be distributed to qualified sources in accordance with § 18–1.302–2. In addition, the request shall be synopsized in accordance with Subpart 18–1.10 of this chapter and publicly posted in accordance with § 18–2.203–2. The request may be in the form of a letter and shall contain, as a minimum, the following information:

(1) The best practicable description of the supplies or services required;

(2) Notification of the intent to conduct the procurement in two steps and the actions involved;

(3) The requirements of the technical proposal, i.e., the necessary details such as drawings, data, presentations, etc., to be submitted;

(4) The criteria for evaluating the technical proposal (§ 18–2.502(b));

(5) A statement that the technical proposals shall not include prices or pricing information;

(6) The date by which the proposal must be deceived and a statement substantially as follows:

LATE TECHNICAL PROPOSALS (JANUARY 1964)

The Government reserves the right to consider technical proposals or modifications thereof received after the date specified for receipt.

(7) A statement that the Government may discuss the technical aspects of the proposal with the concern submitting the proposal;

(8) A statement that in the second step of the procurement only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for award, and that each bid in the second step must be based on the bidder's own technical proposal;

(9) A statement that each source submitting an unacceptable technical proposal will be so notified upon completion of the technical evaluation of his proposal, and final determination of such unacceptability; and

(10) A statement either that only one technical proposal may be submitted by each offeror or that multiple technical proposals may be submitted. When compliance with specifications permits utilization of essentially different technical approaches, it is generally in the interest of the Government to authorize the submission of multiple proposals. If multiple proposals are authorized the request shall include a statement substantially as follows:

MULTIPLE TECHNICAL PROPOSALS (JANUARY 1964)

In the first step of this two-step procurement, offerors are authorized and encouraged to submit multiple technical proposals presenting different basic approaches. Each technical proposal submitted will be separately evaluated and the offeror will be notified as to its acceptability.

(b) Upon the receipt of technical proposals:

(1) Every precaution shall be taken to safeguard technical proposals against disclosure to unauthorized persons;

(2) Technical proposals submitting data marked in accordance with § 18–3.109 of this chapter will be accepted and handled in accordance with that section; and

(3) Any references to price or cost will be removed;

(c) Technical evaluation of the proposals shall be based upon the criteria contained in the request for technical proposals and such evaluation shall not include consideration of capacity or credit (see § 18–1.705–4). Upon completion of the technical evaluation, each proposal shall be categorized as acceptable or unacceptable. Proposals shall not be categorized as unacceptable when a reasonable effort on the part of the Government to obtain clarification or additional information could bring the proposals to an acceptable status and thus increase competition. The contracting officer shall arrange for any necessary discussions with sources submitting technical proposals. When, after discussion, clarification, and submission of necessary documentation for incorporation in the proposal, technical proposals are determined to be acceptable, they shall be so categorized. If, however, it is determined at any time that, a technical proposal is not reasonably susceptible to being made acceptable, it should be classified as unacceptable and further discussion of it is unnecessary.

(d) Upon final determination that a technical proposal is unacceptable, the contracting officer shall promptly notify the source submitting the proposal of that fact. The notice shall state that revision of his proposal will not be considered, and shall indicate, in general terms, the basis for the determination for example, that rejection was based on failure to furnish sufficient information or on an unacceptable engineering approach.

(e) If, as a result of the evaluation of technical proposals, it appears necessary to discontinue two-step formal advertising, a statement setting forth the full facts and circumstances shall be made a part of the contract file. Each source will be notified in writing of the discontinuance and the reason therefor. When step one results in no acceptable technical proposal or only one acceptable technical proposal, the procurement may be continued by negotiation under the authority of § 18–3.210–2(3). (But see § 18–3.210–3.)

§ 18–2.503–2 Step two.

Upon completion of Step One, a formally advertised procurement in accordance with Subparts 18–2.2, 18–2.3, and 18–2.4 will be conducted, except that invitations for bids—

(a) Will be issued only to and considered only from those sources whose technical proposals have been evaluated and determined to be acceptable under Step One;

(b) Will include the following statement:

This invitation for bids is issued pursuant to Two-Step formal advertising set forth in Part 2, Subpart 5, of the NASA Procurement Regulation.

Bids will be considered only from those firms who have submitted acceptable technical proposals pursuant to the first step of such procedures, as initiated by (Identify the request for technical proposals). Any bidder who has submitted multiple technical proposals in the first step of this Two-Step procurement may submit a separate bid covering each technical proposal which has been determined acceptable by the Government. (January 1964)

(c) Will prominently state that the supplies or services to be procured will be in accordance with the specifications and the bidder's technical proposal, as finally accepted, under the request for technical proposals. This may be accomplished in the Schedule item description by a provision substantially in the form of the following example:

Radar Antenna, in accordance with Exhibit No. ------ dated ---------- (use other description of specifications as appropriate) and your Technical Proposal ---------- (insert specific identification of the bidder's proposal including any revision thereof as finally accepted) incorporated herein by reference. Nothing contained in said Technical Proposal shall constitute a waiver of any of the provisions of said Exhibit (or specifications).

(d) Will not be synopsized or publicly posted except that the names of firms which have submitted acceptable technical proposals in the first step of Two-Step formal advertising will be listed in the Commerce Business Daily for benefit of prospective subcontractors in accordance with § 18-1.1003-6(2).

PART 18-3—PROCUREMENT BY NEGOTIATION

AUTHORITY: The provisions of this Part 18–3 issued under 42 U.S.C. 2473(b)(1).

§ 18–3.000 Scope of part.

This part sets forth policies and procedures to be followed in procurements by negotiation, pursuant to the provisions of subsections 203(b)5 and 301(b) of the National Aeronautics and Space Act of 1958 and chapter 137 of title 10 of the United States Code. The following policies and procedures are included:

(a) The basic requirements for the procurement of supplies and services by means of negotiation;

(b) The different circumstances under which negotiation is permitted;

(c) Determinations and findings that may be required before a contract is entered into by negotiation;

(d) Approved types of negotiated contracts and their use;

(e) Procedures for effecting purchases of not more than $2,500;

(f) Price negotiation policies and techniques; and

(g) Subcontracting policies and procedures.

Subpart 18–3.1—Use of Negotiation

§ 18–3.100 Scope of subpart.

This subpart deals with the nature and use of negotiation as distinguished from formal advertising, and with limitations upon that use.

§ 18–3.101 General requirements for negotiation.

(a) Procurement shall be made by formal advertising whenever such method is feasible and practicable under the existing conditions and circumstances, even though negotiation may be authorized under Subpart 18–3.2. Among the factors to be considered in determining whether formal advertising is feasible and practicable are:

(1) The number and location of potential suppliers;

(2) The adequacy of the specifications for advertising;

(3) The nature of the items being purchased;

(4) The time available; and

(5) The type of contract contemplated.

(b) No contract shall be entered into by negotiation unless or until the following requirements have been satisfied:

(1) Formal advertising is not feasible and practicable;

(2) The contemplated procurement comes within one of the circumstances permitting negotiation set forth in 10 U.S.C. 2304(a);

(3) Any necessary determinations and findings have been made;

(4) Prescribed clearances or approvals have been obtained;

(5) The prospective contractor has been determined to be responsible; and

(6) Other requirements of this chapter have been met.

§ 18–3.102 Factors to be considered in negotiated procurements.

(a) In all negotiated procurements in excess of $2,500 in which rates or prices are not fixed by law or regulation and in which time of delivery will permit, proposals shall be solicited from the maximum number of qualified sources consistent with the nature and requirements of the supplies or services to be procured. In any procurement publicized under § 18–1.1003, sources which have not been solicited, but which are not otherwise

barred by law or regulation, shall be promptly furnished a copy of the solicitation on request; and shall be permitted to submit a proposal in response thereto. All proposals shall be supported by statements and analyses of estimated costs or other evidence of reasonable prices and other matters deemed necessary by the contracting officer. In all such negotiated procurements, including those subject to Source Evaluation Board procedures (see § 18-3.804-3), written or oral discussions shall be conducted with all responsible offerors who submit proposals within a competitive range, price and other factors considered: *Provided, however,* That written or oral discussions need not be conducted for:

(1) Procurements in implementation of authorized set-aside programs; or

(2) Procurements where it can be clearly demonstrated, from the existence of adequate competition or accurate prior cost experience with the product, that acceptance of an initial proposal without discussion would result in fair and reasonable prices and where the request for proposals notifies all offerors of the possibility that award may be made without discussion.

For procurements of $2,500 or less, see Subpart 18-3.6.

(b) During the course of negotiations, contracting officers and their negotiators shall give due attention to the following and any other appropriate factors:

(1) Comparison of prices quoted, and consideration of other prices for the same or similar supplies or services, with due regard to production costs, including extra-pay shift, multishift, and overtime costs, and any other factor relating to price, such as profits, costs of transportation, and cash discounts;

(2) Comparison of the business reputations, capabilities, and responsibilities of the respective persons or firms who submit proposals;

(3) Consideration of the quality of the supplies or services offered, or of the quantity of the same or similar supplies or services previously furnished, with particular regard to the satisfaction of technical requirements;

(4) Consideration of delivery requirements;

(5) Discriminating use of price and cost analyses;

(6) Investigation of price aspects of any important subcontract;

(7) Individual bargaining, by mail or by conference;

(8) Consideration of cost sharing;

(9) Effective utilization in general of the most desirable type of contract;

(10) Consideration of the size of the business concern;

(11) Consideration as to whether the prospective supplier requires expansion or conversion of plant facilities;

(12) Consideration as to whether the prospective supplier is located in a surplus labor area;

(13) Consideration as to whether the prospective supplier will have an adequate supply of qualified labor;

(14) Consideration of the extent of subcontracting;

(15) Consideration of the existing and potential workload of the prospective supplier;

(16) Consideration of broadening the industrial base by the development of additional suppliers;

(17) Consideration of whether the contractor requires Government-furnished property, machine tools, or facilities; or Government-operated test facilities; and

(18) Advantages or disadvantages to the Government that might result from making multiple awards.

(19) Consideration of the rules for the avoidance of organizational conflicts of interest (see § 18-1.113-2 and Appendix G).

(20) Consideration of the nature and effectiveness of the prospective contractor's cost reduction program. For those contractors who are participants in the NASA-Contractor Cost Reduction Program, information concerning an evaluation of their cost reduction program may be obtained from the installation cost reduction officer. This information shall be obtained for each proposed procurement in excess of $1 million. In order to obtain this information and evaluate the effectiveness of a prospective contractor's cost reduction program, a statement substantially as follows will be included in the request for proposals:

COST REDUCTION PROGRAM (AUGUST 1969)

Offerors should submit information on their cost reduction programs in sufficient detail to indicate the nature and effectiveness of their programs. Information should be provided on each of the eight criteria contained in paragraph 7 of NASA Management Instruction 1460.3, "Guidelines for the NASA-Contractor Cost Reduction Program." Such information should indicate not only that policies have been established to conform to the eight criteria, but also that those policies have been effectively implemented, with illustrative examples, where appropriate. In lieu of furnishing such information, offerors who are participants in the NASA-Contractor Cost Reduction Program or who have already furnished this information in connection with a previous procurement, may so indicate. Offerors who do not have a cost reduction program should so state.

Copies of the criteria may be obtained from the cost reduction officer and should be included in the request for proposals. On receipt of the proposals, the contracting officer will:

(i) Obtain a documented evaluation from the installation cost reduction officer in those cases where the offeror has indicated that he is a participant in the NASA-Contractor Cost Reduction Program or that such information has previously been furnished, or

(ii) Furnish to the installation cost reduction officer for evaluation the cost reduction information submitted by the offeror(s).

§ 18-3.103 Records and reports of negotiated contracts.

See § 18-1.110.

§ 18-3.104 Aids to small business in negotiated procurement.

See Subpart 18-1.7.

§ 18-3.105 Aids to labor surplus area concerns in negotiated procurement.

See Subpart 18-1.8.

§ 18-3.106 Dissemination of procurement information.

§ 18-3.106-1 Synopses of proposed procurements.

Procedures with regard to synopses of proposed procurements are set forth in § 18-1.1003.

§ 18-3.106-2 Synopses of contract awards.

Procedures with regard to preparation of synopses of contract awards are set forth in § 18-1.1004.

§ 18-3.106-3 Award information to unsuccessful offerors.

(a) *Preaward notice of unacceptable offers.* The following policies and procedures shall be observed in making information available to unsuccessful offerors:

(1) Except as provided in (2) below, in any procurement in excess of $10,000 in which it appears that the period of evaluation of proposals is likely to exceed 30 days or in which a limited number of offerors has been selected for additional negotiation, the contracting officer, upon determination that a proposal is unacceptable, shall provide prompt notice of the fact to the offeror submitting the proposal. Such notice need not be given where disclosure will prejudice the Government's interest or where the proposed contract is:

(i) Negotiated pursuant to 10 U.S.C. 2304(a) (4), (5), or (6) (see § 18-3.204, § 18-3.205, or § 18-3.206);

(ii) Negotiated with a foreign supplier when only foreign sources of supplies or services have been selected.

In addition to stating that the proposal has been determined unacceptable, notice to the offeror shall indicate, in general terms, the basis for such determination and shall advise that, since further negotiation with him concerning this procurement is not contemplated, a revision of his proposal will not be considered.

(2) In the case of procurements for which a Source Evaluation Board has been appointed and one or more than one offeror has been selected for negotiations, those offerors not selected for either preliminary negotiations or final negotiations will be notified, upon elimination by the Source Selection Official, of that fact in writing.

(b) *Postaward notice of unaccepted offers.* (1) Promptly after making all awards in any procurement in excess of $10,000, the contracting officer shall give written notice to the unsuccessful offerors that their proposals were not accepted, except that such notice need not be given where notice has been provided pursuant to paragraph (a) above or the contract is negotiated pursuant to 10 U.S.C. 2304(a) (4), (5), or (6) (see § 18-3.204, § 18-3.205, or § 18-3.206), or is negotiated with a foreign supplier when only foreign sources of supplies or services have been solicited. Such notice shall also include:

(i) The number of prospective contractors solicited;

(ii) The number of proposals received;

(iii) The name and address of each offeror receiving an award; and

(iv) The items, quantities, and unit prices of each award; provided that, where the number of items or other factors makes the listing of unit prices impracticable, only the total contract price need be furnished.

Additional information as to why an offeror's proposal was not accepted should be provided to the offeror upon his written request to the contracting officer, except where the price information in subparagraph (iv) of this paragraph (b)(1) readily reveals such reason, but in no event will any offeror's confidential business information be revealed, nor will a discussion be had of relative merits of the proposals. For guidelines relating to the provision of additional information see paragraph (d) of this section.

(2) In procurements of $10,000 or less and subject to the exceptions in subparagraph (1) of this paragraph (b), the information described in subparagraph (1) shall be furnished to unsuccessful offerors upon request.

(c) *Classified information.* Classified information shall be furnished only in accordance with regulations governing classified information.

(d) *Debriefing.* It is NASA policy to provide a debriefing to unsuccessful offerors in competitive procurements where Source Evaluation Board procedures are employed and when requested in writing. Such debriefing should be confined to a discussion of the unsuccessful offeror's proposal in relation to the Government's requirement. Care should be taken to avoid comparison of one company's proposal with another and disclosure of information contained in other offers or the Government's estimate. The policies and procedures governing debriefing are more fully set forth in NASA Management Instruction 5103.1, "Debriefing of Unsuccessful Companies in Competitive Procurements."

§ 18–3.106–4 Disclosure of information prior to selection of contractor.

The policies and procedures governing the disclosure of information prior to selection of a contractor are set forth in § 18–3.804–4.

§ 18–3.106–5 Release of contractor award information.

The policies and procedures governing the release of contract award information are set forth in § 18–3.854.

§ 18–3.109 Restrictions on data and other information included in solicited proposals.

(a) *Technical data in solicited proposals.* The policies and procedures concerning restrictions on the disclosure and use of technical data in solicited proposals are set forth in § 18–1.304–2(d).

(b) *Privileged business information included in solicited proposals.* The policy governing the treatment of financial and management information in solicited proposals is set forth in § 18–1.304–4.

(c) *Technical and other data involved in formal advertising.* See § 18–2.404–4.

(d) *Technical data in unsolicited proposals.* The policy and procedures concerning restrictions on the disclosure and use of technical data in unsolicited proposals are set forth in § 18–1.304–2(c).

§ 18–3.110 Solicitations for informational or planning purposes.

See § 18–1.309.

§ 18–3.111 Protests against award.

Protests against award of negotiated procurements shall be treated substantially in accordance with § 18–2.407–8 and will be acted upon by the Director of Procurement with the concurrence of the Office of General Counsel. However, when the selection of a contractor has been made by the Administrator, either after proceedings of a Source Evaluation Board or otherwise, the final action will be directed by the Administrator.

§ 18–3.112 Disclosure of mistakes after award.

When a mistake in a contractor's proposal is not discovered until after award, the authority to correct mistakes contained in § 18–2.406–4 may be utilized in accordance with the limitations and procedure set forth therein.

Subpart 18–3.2—Circumstances Permitting Negotiation

§ 18–3.200 Scope of subpart.

Subject to the limitations prescribed in Subpart 18–3.1, 3, and pursuant to the authority of 10 U.S.C. 2304(a), procurement may be effected by negotiation under any one of the exceptions contained in 10 U.S.C. 2304(a) (1) through (17) set forth and discussed in this Subpart 18–3.2.

§ 18–3.201 National emergency.

§ 18–3.201–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(1), purchases and contracts may be negotiated if:

it is determined that such action is necessary in the public interest during a national emergency declared by Congress or the President.

§ 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, "Determination Authorizing Negotiation During National Emergency", 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).

§ 18–3.201–3 Limitation.

(a) This authority shall not be used when negotiation is authorized by the provisions of § 18–3.206.

(b) Each procurement negotiated pursuant to the determination referred to in § 18–3.201–2 shall be supported by a memorandum for the contract file, signed by the contracting officer, specifying the pertinent provision of the determination used as authority for negotiating the contract.

§ 18–3.202 Public exigency.

§ 18–3.202–1 Authority.

Pursuant to the authority of 10 U.S.C. 2304(a)(2), purchases and contracts may be negotiated if:

the public exigency will not permit the delay incident to advertising.

§ 18–3.202–2 Application.

This authority may be used only where the need is compelling and of unusual urgency, as when the Government would be seriously injured, financially or otherwise, if the supplies or services were not furnished by a certain date, and when they could not be procured by that time by means of formal advertising. This authority may be used in appropriate cases even though the urgency could or should have been foreseen. Examples of situations where this authority could be invoked are:

(a) Supplies or services needed at once because of a fire, explosion, or other disaster; and

(b) The breakdown of a piece of operating machinery or equipment requiring immediate repair or replacement in order that a critical research program will not be delayed.

§ 18–3.202–3 Limitation.

Every contract negotiated under this authority shall be accompanied with a determination and findings signed by the contracting officer justifying its use, which shall become part of the contract file. The findings shall 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. The authority of 10 U.S.C. 2304(a)(2) shall not be used if negotiation is authorized under 10 U.S.C. 2304(a)(3) or 2304(a)(6).

§ 18–3.203 Purchases not in excess of $2,500.

§ 18–3.203–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(3), purchases and contracts may be negotiated if:

the aggregate amount involved is not more than $2,500.

§ 18–3.203–2 Application.

Contracts or purchases aggregating $2,500 or less shall be made under this authority rather than under any other authority for negotiation which might otherwise be applicable, except that this authority shall not be used where 10 U.S.C. 2304(a)(6) is applicable. In arriving at the "aggregate amount involved" there must be included all supplies and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising. Purchases or contracts aggregating more than $2,500 shall not be broken down into several purchases or contracts of less than $2,500. (However, see § 18–3.605 for guidance in connection with the use of blanket purchase agreements.)

§ 18–3.204 Personal or professional services.

§ 18–3.204–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(4), purchases and contracts may be negotiated if:

for personal or professional services.

§ 18–3.204–2 Application.

(a) This authority shall be used only when all of the following conditions have been satisfied:

(1) If personal services, they are required to be performed by an individual contractor in person (not by a concern); if professional services, they may be performed either by an individual contractor in person or a concern;

(2) The services are of a professional nature or are to be performed under Government supervision and paid for on a time basis; and

(3) Procurement of the services is authorized by law and is effected in accordance with the requirements of any such law.

(b) Under section 203(b)(9) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(b)(9)), NASA is authorized:

to obtain services as authorized by 5 U.S.C. 55a, at rates not to exceed $100 per diem for individuals.

5 U.S.C. 55a, in turn, provides authority to procure:

the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract * * *.

§ 18–3.204–3 Limitation.

It is NASA policy to obtain the personal services of experts and consultants by appointment rather than by contract. The policies, responsibilities and procedures pertaining to the appointment of experts and consultants are set forth in NASA Federal Personnel Manual (FPM), Supp. 32.

§ 18–3.205 Services of educational institutions.

§ 18–3.205–1 Authority.

Pursuant to the authority of 10 U.S.C. 2304(a)(5), purchases and contracts may be negotiated if:

for any service to be rendered by any university, college, or other educational institution.

§ 18–3.205–2 Application.

The following are illustrative of circumstances with respect to which this authority may be used:

(a) Educational or vocational training services to be rendered by any university, college, or other educational institution in connection with the training and education of personnel, and for necessary material, services, and supplies furnished by any such institution in connection therewith;

(b) Experimental, developmental, or research work (including services, tests, and reports necessary or incidental thereto) to be conducted by any university, college, or other educational institution, and reports furnished in connection therewith; and

(c) Analyses, studies, or reports (statistical or otherwise) to be conducted by any university, college, or other educational institution.

§ 18–3.205–3 Limitation.

This authority shall not be used when negotiation is authorized by the provisions of §§ 18–3.203 and 18–3.206.

§ 18–3.206 Purchases outside the United States.

§ 18–3.206–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(6), purchases and contracts may be negotiated if:

for property or services to be procured and used outside the United States, its possessions, and Puerto Rico.

§ 18–3.206–2 Application.

This authority shall be used only for the procurement of property or services which are actually purchased from sources outside, and used outside, the United States, its possessions, and Puerto Rico (irrespective of the place of negotiation or execution of the contract), such as property or services (including construction) for overseas installations or for the use of overseas personnel. When this authority is available for the negotiation of a contract, no other negotiating authority shall be used.

§ 18–3.207 Medicines or medical supplies.

§ 18–3.207–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(7), purchases and contracts may be negotiated if:

for medicine or medical supplies.

§ 18–3.207–2 Application.

This authority shall be used only when the following two requirements have been satisfied:

(a) Such supplies are peculiar to the field of medicine, including technical equipment such as surgical instruments, surgical and orthopedic appliances, X-ray supplies and equipment, and the like, but not including prosthetic equipment; and

(b) Whenever it is determined to be practicable, such advance publicity as is considered suitable with regard to the supplies involved and other relevant considerations shall be given for a period of at least 15 days before making a purchase of or contract for supplies or services under this authority for more than $10,000.

§ 18–3.207–3 Limitation.

Every contract negotiated under this authority shall be accompanied with a determination and findings, signed by the contracting officer, justifying its use, which shall become part of the contract file. The findings shall 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. This authority shall not be used when negotiation is authorized by the provisions of §§ 18–3.203 or 18–3.206.

§ 18–3.209 Perishable or nonperishable subsistence supplies.

§ 18–3.209–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(9), purchases and contracts may be negotiated if:

for perishable or nonperishable subsistence supplies.

§ 18–3.210 Supplies or services for which it is impracticable to secure competition by formal advertising.

§ 18–3.210–1 Authority.

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

for property or services for which it is impracticable to obtain competition.

§ 18–3.210–2 Application.

The following are illustrative of circumstances with respect to which this authority may be used:

(a) When supplies or services can be obtained from only one person or firm ("sole source of supply");

(b) When competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw material, or similar circumstances (however, the mere existence of such rights or circumstances does not in and of itself justify the use of the authority of this section);

(c) When bids have been solicited pursuant to the requirements of formal advertising, and no responsive bid has been received from a responsible bidder, or when step one of two-step formal advertising results in no acceptable technical proposal or only one acceptable technical proposal;

(d) When bids have been solicited pursuant to the requirements of formal advertising, and the responsive bid or bids do not cover the quantitative requirements of the solicitation of bids, in which case negotiation is permitted for the remaining requirements of the solicitation of bids;

(e) When the contemplated procurement is for electric power or energy, gas (natural or manufactured), water, or other utility services, or when the contemplated procurement is for construction of a part of a utility system and it would not be practicable to allow a contractor other than the utility company itself to work upon the system;

(f) When the contemplated procurement is for training film, motion picture productions, or manuscripts;

(g) When the contemplated procurement is for technical, nonpersonal services in connection with the assembly, installation, or servicing (or the instruction of personnel therein) of equipment of a highly technical or specialized nature;

(h) When the contemplated procurement is for studies or surveys other than those which may be negotiated under §§ 18–3.205 or 18–3.211;

(i) When the contemplated procurement involves maintenance, repair, alterations, or inspection, in connection with any one of which types of services the exact nature or amount of the work is not known;

(j) When the contemplated procurement is for stevedoring, terminal, warehousing, or switching services, and when either the rates are established by law or regulation or the rates are so numerous or complex that it is impracticable to set them forth in the specifications of a formal solicitation of bids;

(k) When the contemplated procurement is for commercial ocean or air transportation, including time charters, space charters, and voyage charters over trade routes not covered by common carriers (as to which, negotiation is authorized under the provisions of § 18–3.217 of this chapter and section 321 of the Transportation Act of Sept. 18, 1940, 49 U.S.C. 65), and including services for the operation of Government-owned vessels or aircraft;

(l) When the contract is for services related to the procurement of perishable subsistence such as protective storage, icing, processing, packaging, handling, and transportation, whenever it is impracticable to advertise for such services a sufficient time in advance of the delivery of the perishable subsistence;

(m) When it is impossible to draft, for a solicitation of bids, adequate specifications or any other adequately detailed description of the required supplies or services;

(n) When the contract is for storage (and related services) of household goods;

(o) When the contemplated procurement is for parts or components being procured as replacement parts in support of equipment specially designed by the manufacturer, where data available is not adequate to assure that the part or component will perform the same function in the equipment as the part or component it is to replace;

(p) When the contract is a facilities contract as defined in § 18–13.101–8 and the performance required can be obtained from only one person or firm; or

(q) When the contemplated procurement involves construction where a contractor or group of contractors is already at work on the site, and it would not be practicable to allow another contractor or an additional contractor to work on the same site or when the amount is too small to interest other contractors to mobilize and demobilize.

§ 18–3.210–3 Limitation.

Every contract that is negotiated under this authority shall be accompanied with a determination and findings signed by the contracting officer justifying its use, which shall become part of the contract file. The findings shall 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. This authority shall not be used when negotiation is authorized by any other authority set forth in §§ 18–3.201 through 18–3.217, except that this authority shall be used in preference to § 18–3.212.

§ 18–3.211 Experimental, developmental, or research work.

§ 18–3.211–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(11), purchases and contracts may be negotiated if:

for property or services that he [the Administrator] determines to be for experimental, developmental, or research work, or for making or furnishing property for experiment, test, development, or research.

§ 18–3.211–2 Application.

The following are illustrative of procurements with respect to which this authority may be used:

(a) Contracts relating to theoretical analysis, exploratory studies, and experiment in any field of science or technology;

(b) Developmental contracts calling for the practical application of investigative findings and theories of a scientific or technical nature;

(c) Contracts for such quantities and kinds of equipment, supplies, parts, accessories, or patent rights thereto, and drawings or designs thereof, as are necessary for experiment, development, research, or test; or

(d) Contracts for services, tests, and reports necessary or incidental to experimental, developmental, or research work.

§ 18–3.211–3 Limitation.

(a) This authority shall not be used for negotiated contracts with educational institutions where the authority provided by 10 U.S.C. 2304(a)(5) is applicable.

(b) This authority shall not be used for quantity production, except that such quantities may be purchased hereunder as are necessary to permit complete and adequate experiment, development, research, or test. Accordingly, research or development contracts which call for the production of a reasonable number of experimental or test models, or prototypes, shall not be regarded as contracts for quantity production.

(c) This authority shall not be used when negotiation is authorized by the provisions of § 18–3.203 or § 18–3.206.

(d) In order for this authority to be used, the required determination must be made in accordance with the requirements of Subpart 18–3.3. Where property or supplies are procured under this authority, the findings required by Subpart 18–3.3 shall 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.

§ 18–3.211–4 Reports.

For implementation of the statutory reporting requirement to Congress, see § 18–1.110.

§ 18–3.212 Classified purchases.

§ 18–3.212–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(12), purchases and contracts may be negotiated if:

for property or services whose procurement he [the Administrator] determines should not be publicly disclosed because of their character, ingredients, or components.

§ 18–3.212–2 Application.

This authority may be used for purchases or contracts classified "Confidential" or higher.

§ 18–3.212–3 Limitation.

In order for this authority to be used, the required determination and findings must be made in accordance with the requirements of Subpart 18–3.3. The determination and findings shall set forth those facts and circumstances that are clearly illustrative of the conditions described for use of this authority. The determination and findings shall also set forth those facts and circumstances that clearly and convincingly establish that formal advertising would not be feasible and practicable. This authority shall not be used when negotiation is authorized by any other authority set forth in §§ 18–3.201 through 18–3.217.

§ 18–3.213 Technical equipment requiring standardization and interchangeability of parts.

§ 18–3.213–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(13), purchases and contracts may be negotiated if:

for equipment that he [the Administrator] determines to be technical equipment whose standardization and the interchangeability of whose parts are necessary in the public interest and whose procurement by negotiation is necessary to assure that standardization and interchangeability.

§ 18–3.213–2 Application.

(a) This authority may be used for procuring additional units and replacement items of technical equipment and spare parts by negotiation in order to assure standardization of equipment and interchangeability of parts where, in special situations or in particular localities, such standardization and interchangeability are determined necessary. For example, this authority could be utilized whenever it is necessary:

(1) To limit the variety and quantity of spare parts that must be carried in stock;

(2) To make possible, by standardization, the availability of spare parts that may be interchanged among items of damaged or worn equipment; or

(3) To procure from selected suppliers technical equipment which is available from a number of suppliers, but which would have such varying performance characteristics (notwithstanding detailed specifications and rigid inspection) as would prevent standardization and interchangeability of parts.

(b) Before making a determination to procure specified makes and models under this authority, consideration shall be given to:

(1) The practicability of interchanging parts and cannibalizing equipment;

(2) The probability that future procurement of the selected item of equipment can be effected at reasonable prices;

(3) Whether the standardization will appreciably reduce the variety and quantity of parts that must be carried in stock;

(4) The value of similar equipment and its supporting parts on hand;

(5) Possible savings in training personnel and publishing technical literature;

(6) Whether the standardization will adversely affect existing specifications and standards; and

(7) The degree to which the current design of the specified make and model has been changed from the design of equipment of the same make and model now in the supply system.

(c) Actions taken under this authority shall be reviewed at least once every 2 years to determine whether the standardization should be continued, revised, or canceled.

(d) This authority may be used in situations where only one or a limited quantity of a particular item is to be purchased and where compatibility with existing equipment and interchangeability of parts is essential. The fact that this authority is used in such a case does not mean that a subsequent purchase of similar equipment will necessarily require the use of negotiation for purposes of standardization. The facts involved in each such case must be examined to determine whether compatibility with other equipment and interchangeability of parts are essential objectives.

§ 18–3.213–3 Limitation.

This authority shall not be used for initial procurements of equipment and spare parts, or for the purpose of selecting arbitrarily the equipment of certain suppliers; nor shall it be used unless the Administrator has determined, in accordance with the requirements of Subpart 18–3.3, that:

(a) The equipment constitutes technical equipment;

(b) Standardization of such equipment and interchangeability of its parts are necessary in the public interest; and

(c) Procurement of such equipment or of its parts by negotiation is necessary to assure that standardization and interchangeability.

§ 18–3.214 Technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture.

§ 18–3.214–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(14), purchases and contracts may be negotiated if:

for technical or special property that he [the Administrator] determines to require a substantial initial investment or an extended period of preparation for manufacture, and for which he determines that formal advertising would be likely to result in additional cost to the Government by reason of duplication of investment or would result in duplication of necessary preparation which would unduly delay the procurement of the property.

§ 18–3.214–2 Application.

This authority may be used for the procurement of technical or specialized supplies or equipment or major components thereof, and any supplies of a technical or specialized nature which may be necessary for the use or operation of such supplies or equipment. Such procurement generally involves:

(a) High starting costs which already have been paid for by the Government or by the supplier;

(b) Preliminary engineering and development work that would not be useful to or usable by any other supplier;

(c) Elaborate special tooling already acquired;

(d) Substantial time and effort already expended in developing a prototype or an initial production model; and

(e) Important design changes which will continue to be developed by the supplier.

In general, this authority shall be used in situations where it is preferable to place a production contract with the supplier who had developed the equipment, and thereby either assure to the Government the benefit of the techniques, tooling, and equipment already acquired by that supplier, or avoid undue delay arising from a new supplier having to acquire such techniques, tooling, and equipment. However, this exception should not be used to avoid duplication of private investment unless this duplication would be likely to result in additional cost to the Government or would result in duplication of necessary preparation which would unduly delay the procurement.

§ 18–3.214–3 Limitation.

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

(a) The supplies are of a technical or specialized nature requiring a substantial investment or an extended period of preparation for manufacture; and

(b) Procurement by formal advertising either—

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

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

§ 18–3.215 Negotiation after advertising.

§ 18–3.215–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(15), purchases and contracts may be negotiated if:

for property or services for which he [the Administrator] determines that the bid prices received after formal advertising are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which (i) he has notified each responsible bidder of intention to negotiate and given him reasonable opportunity to negotiate; (ii) the negotiated price is lower than the lowest rejected bid of any reasonable bidder, as determined by the head of the agency; and (iii) the negotiated price is the lowest negotiated price offered by any responsible supplier.

§ 18–3.215–2 Limitation.

This authority shall not be used unless the Administrator has determined, in accordance with the requirements of Subpart 18–3.3, that the bid prices, after formal advertising for such supplies or services, are unreasonable or were not independently reached in open competition. Also, after such determination by the Administrator and after rejection of all bids, no contract shall be negotiated under this authority unless:

(a) Prior notice of intention to negotiate and a reasonable opportunity to negotiate have been given by contracting officer to each responsible bidder who submitted a bid in response to the invitation for bids;

(b) The negotiated price is lower than the lowest rejected bid price of a responsible bidder, as determined by the Administrator; and

(c) The negotiated price is the lowest negotiated price offered by any responsible supplier.

Moreover, any evidence of bids not independently reached shall be forwarded to the Department of Justice (see § 18–1.111).

§ 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 observed.

§ 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:

(a) 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;

(b) 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

(c) 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:

(a) 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;

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

(c) 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.

§ 18–3.217 Otherwise authorized by law.

§ 18–3.217–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(17), purchases and contracts may be negotiated if:

otherwise authorized by law.

§ 18–3.217–2 Application.

The following are examples of other statutes which authorize negotiation:

(a) *Small Business Act (Public Law 85–536).* Contracts for partial or total set-asides for small business made pursuant to a joint determination by the NASA and Small Business Administration (including contracts entered into pursuant to "Small Business Restricted Advertising") shall cite as authority 10 U.S.C. 2304(a)(17) and section 15 of the Small Business Act.

(b) *Section 321 of the Transportation Act of 1940 (49 U.S.C. 65).* This law permits negotiation for transportation services when the services required can be procured from any common carrier.

§ 18–3.218 Construction work.

§ 18–3.218–1 Application.

Contracts to construct or repair any building, road, sidewalk, sewer, main, or similar item are subject to 10 U.S.C. 2304(c).

§ 18–3.218–2 Limitation.

(a) *Work in the United States.* Contracts for construction work to be performed within the United States shall be formally advertised and may not be negotiated unless authorized pursuant to 10 U.S.C. 2304(a) (1), (2), (3), (10), (11), (12), or (15).

(b) *Work outside of the United States.* Contracts for construction work to be performed outside of the United States shall be formally advertised and may not be negotiated unless authorized pursuant to subsections (1) through (17) of 10 U.S.C. 2304(a), as appropriate (note that such contracts to be performed in possessions of the United States or Puerto Rico may not be negotiated pursuant to 10 U.S.C. 2304(a)(6).

§ 18–3.218–3 Citation of authority to negotiate.

Negotiated contracts for construction work shall cite as authority for their negotiation the applicable subsection of 10 U.S.C. 2304(a).

Subpart 18–3.3—Determinations and Findings

§ 18–3.300 Scope of subpart.

This subpart enumerates the procedures to be followed in making the determinations and findings referred to in 10 U.S.C. 2304(a) and subpart 18–3.2 of this chapter.

§ 18–3.301 Nature of determinations and findings.

(a) Determinations and findings required in connection with negotiated contracts fall into three categories, based on the official authorized to make such determinations and findings:

(1) Those which the Administrator or Deputy Administrator must make;

(2) Those to be made by the Director of Procurement; and

(3) Those which may be made by a contracting officer.

The determinations and findings which fall into each of the above categories are listed in §§ 18–3.302, 18–3.303, and 18–3.304.

(b) Determinations and findings ordinarily will be made only with respect to individual purchases or contracts. However, in special cases, based on the recommendation of the head of a field installation and with the concurrence of the Director of Procurement, the Administrator may make determinations and findings for classes of purchases or contracts. Class determinations and findings shall be restricted to circumstances where greater operational flexibility in the processing of determinations and findings is necessary to minimize delays to a research and development project or program where several negotiated contracts may be issued in furtherance of the project or program. Before negotiating a contract under the authority of a class determination and findings, for procurements under 10 U.S.C. 2304(a)(11) for property and supplies, and for any procurements under 10 U.S.C. 2304(a)(12), the contracting officer shall establish that procurement by formal advertising is not feasible and practicable (see § 18–3.101 (b)). Each class determination and findings shall specify an effective period, which shall not exceed 1 year except that it will continue in effect for those contracts for which negotiations have been substantially completed and the resulting contract is expected to be awarded in a timely manner.

§ 18–3.302 Determinations and findings to be made by the Administrator.

The following determinations (or similar approvals) and written findings in support thereof are required to be made by the Administrator or Deputy Administrator.

(a) The determinations required by 10 U.S.C. 2304(a) (1) and (11) through (16) except that determinations under section 2304(a)(11) with respect to contracts requiring the expenditure of not more than $100,000 may be made by the contracting officer (see § 18–3.304);

(b) The determinations required under 10 U.S.C. 2306(f) with respect to waiving the requirement for submission by contractors and subcontractors of cost and pricing data and the certification thereof (except that in the case of a contract with a foreign government or agency thereof, the Assistant Administrator for Industry Affairs and the Director of Procurement are each dele-

gated the authority to make these determinations); and

(c) Determinations and findings for classes of purchases or contracts.

§ 18–3.303 Determinations and findings to be made by the Director of Procurement.

The following individual determinations (or similar approvals) and written findings in support thereof are authorized to be made by the Director of Procurement:

(a) Determinations with respect to advance payments as required by 10 U.S.C. 2307(c) and 2310(b);

(b) Determinations required under 10 U.S.C. 2306(f) with respect to waiving the requirement for submission of cost and pricing data and the certification thereof in the case of a contract with a foreign government or agency thereof; and

(c) Any other determinations and findings not required to be made by higher authority.

§ 18–3.304 Determinations and findings to be made by a contracting officer.

The following individual determinations and findings may be made by a contracting officer, subject to any limitations imposed by the designating official:

(a) Determinations and findings under 10 U.S.C. 2304(a)(11) with respect to contracts requiring the expenditure of not more than $100,000;

(b) Determinations and findings justifying negotiation on the basis of public exigency under 10 U.S.C. 2304(a)(2) as required by § 18–3.202–3;

(c) Determinations and findings justifying negotiation under 10 U.S.C. 2304(a)(7) as required by § 18–3.207–3;

(d) Determinations and findings required by 10 U.S.C. 2306(c) prior to the making of any cost, cost-plus-fixed-fee, or incentive contract shall set forth those facts and circumstances that clearly indicate why the type of contract selected is likely to be less costly than any other type or that it is impracticable to obtain property or services of the kind or quality required except under such a contract;

(e) Determinations and findings required by 10 U.S.C. 2306(d) of the estimated costs of contracts or projects on the basis of which maximum allowable fee percentages are measured;

(f) Determinations and findings required by 10 U.S.C. 2306(f) with respect to significant sums by which contracts may be adjusted; and

(g) Any other determinations and findings called for by this chapter and not required to be made by higher authority.

§ 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 preamble and shall be inserted immediately preceding the word "Findings".

This determination and findings is not an approval of a program or of specific procurements. It authorizes procurement by negotiation, in lieu of formal advertising, of the property or services described, only if, in accordance with established agency regulations and procedures, the procurement has been authorized and funds have been made available for the purpose.

§ 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 below, 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.*

DETERMINATIONS AND FINDINGS

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

This determination and findings is not an approval of a program or of specific procurements. It authorizes procurement by negotiation, in lieu of formal advertising, of the property or services described, only if, in accordance with established agency regulations and procedures, the procurement has been authorized and funds have been made available for the purpose.

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).

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 below, 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)

This determination and findings is not an approval of a program or of specific procurements. It authorizes procurement by negotiation, in lieu of formal advertising, of the property or services described, only if, in accordance with established agency

regulations and procedures, the procurement has been authorized and funds have been made available for the purpose.

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 unproven 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.

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 (for 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.

§ 18-3.305-4 Advance payments under the letter of credit procedure.

When requesting authorization to provide advance payment provisions in a contract with a nonprofit institution (including an educational institution), insert the appropriate words and phrases in the form set forth below and submit to the Director of Procurement for approval.

FINDINGS, DETERMINATION, AND AUTHORIZATION FOR ADVANCE PAYMENTS

1. I hereby find that:

a. The National Aeronautics and Space Administration, ---------- and
(Field installation)
---------- have entered (pro-
(Contractor)
pose to enter) into negotiated Contract No. ------ for ----------
----
(Purpose of the contract)
(Summary of the specific facts and significant circumstances concerning the contract and Contractor, which, together with the other findings, will clearly support the determinations below.)

b. Advance payments in an amount not to exceed $------, are required by the Contractor in order to perform under the contract. Such amount does not exceed the unpaid contract price.

c. The advance payments are necessary for prompt and efficient performance of the contract, which will benefit the Government.

d. The "Contractor Financing by Letter of Credit" clause contains appropriate provisions for the protection of the Government's interest. This includes provisions that the Government will have a lien, paramount to all other liens, upon (i) the supplies contracted for, and (ii) any material or property acquired for the performance of the contract. Such security is deemed to be adequate.

e. The Contractor is a nonprofit (educational) (and) (research) institution, and the contract is for (experimental) (,) (research and development) work, without profit to the Contractor.

DETERMINATION

2. Upon the basis of the above findings, I hereby determine that the making of advance payments, without interest, is in the public interest.

AUTHORIZATION

Advance payments in the amount of $----- are hereby authorized pursuant to 10 U.S.C. 2307. Outstanding payments may at no time exceed the unpaid contract price.

(Director of Procurement)

Date ----------

Instructions:

(a) A request for advance payment provisions will be prepared in final form (original and two copies) and forwarded to the Procurement Office, NASA Headquarters (Code KDP-3) for submission to the Director of Procurement for approval.

(b) A separate "Findings, Determination, and Authorization for Advance Payments" will be prepared for each request for authorization of advance payments.

(c) Modifications to adapt to special facts and circumstances are permitted provided that they do not conflict with the statutory requirements set forth in 10 U.S.C. 2307.

(d) 10 U.S.C. 2307 will be the statutory authority cited for authorizing advance payments.

§ 18-3.305-5 Cost, cost-plus-a-fixed-fee, or incentive contracts under 10 U.S.C. 2306(c).

(a) *Findings.* In the first paragraph under "Findings", describe briefly and clearly the scope of the work to be performed. In the second paragraph, set forth the magnitude of the contract in terms of estimated cost, including profit or fee, and period of performance. In the third paragraph, set forth the type of contract to be used and the facts and circumstances that clearly indicate why the type of contract selected is likely to be less costly than any other type or that it is impracticable to obtain property or services of the kind or quality required without the use of the contract selected.

(b) *Determination.* Following the format set forth in the sample below, use the appropriate terms to state precisely whether the proposed type of contract

is likely to be less costly than any other type of contract, or that it is impracticable to obtain the property or services of the kind or quality required without the use of the proposed type of contract.

(c) *Sample format.*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

(Insert the name of the installation)

DETERMINATION AND FINDINGS

METHOD OF CONTRACTING

FINDINGS

1. The National Aeronautics and Space Administration proposes to procure (describe briefly and clearly the scope of work in a manner sufficient to identify the property or services called for).

2. The estimated cost of the proposed procurement is $------, including estimated costs and profit or fee. The period of performance contemplated is from ---------- to ----------.

3. The use of a (insert here the type of contract to be used) contract is appropriate because (set forth such pertinent facts as are available and relevant to support the determination to be made).

DETERMINATION

Upon the basis of the findings set forth above, I hereby determine that pursuant to 10 U.S.C. 2306(c) and paragraph 3.304(iv) of the NASA Procurement Regulation, the use of a (insert type of contract, using complete description name, without abbreviations), (a) is likely to be less costly to the United States than any other kind of contract or (b) that it is impracticable to obtain property or services of the kind and quality required except under such a contract.

(Signature) ----------

(Title) ----------

(Date)

NOTE: Before preparing the Findings, the contracting officer must decide which of the two alternative grounds in the Determination he is going to use for this Determination and Findings. However, where the facts adequately support alternative determinations, they should be set forth conjunctively when conjunctive determinations are to be used.

§ 18–3.306 Procedure with respect to determinations and findings.

Determinations and Findings for authority to negotiate required by §§ 18–3.202, 18–3.207 and 18–3.210 through 18–3.215 shall be signed by the appropriate official prior to issuance of a request for proposals or quotations. Any modifications of such Determinations and Findings subsequently found to be necessary will not require cancellation of the request for proposals or quotations, provided the Determinations and Findings as modified, support negotiation under any one of the authorities cited in §§ 18–3.201 through 18–3.217. Where the facts continue to support the negotiation but under an exception for which Determination and Findings is not required, cancellation of the Determination and Findings will not require cancellation of the request for proposals or quotations. Where a Determination and Findings is executed by the Administrator or Deputy Administrator, NASA, and is not used, the initiating activity should return the Determination and Findings to the Director of Procurement (Code KDR), explaining the circumstances why the Determination is no longer required.

§ 18–3.306–1 Justification required.

When a determination for authority to negotiate is required to be made in NASA Headquarters pursuant to the provisions of Subparts 18–3.2 and 18–3.3, including authority to negotiate a class of contracts, an original and one copy of NASA Form 543, "Justification for Negotiation," shall be submitted with the proposed determination and findings. The original shall be returned to the installation with the determination and findings and the copy shall be retained for Headquarters files. However, when the determination required to be made in NASA Headquarters is for authority to negotiate procurements resulting from unsolicited proposals, in lieu of attaching to NASA Form 543 a "Justification for Noncompetitive Procurement" as required under Item 10 of the Form when only one source is to be solicited, a "Justification for Acceptance of Unsolicited Proposal," as required under Subpart 18–4.4 shall be attached to NASA Form 543. In addition, the unsolicited proposal control number assigned by the Office of University Affairs shall be set forth in Item 11 of the NASA Form 543.

§ 18–3.306–2 Preparation and submission.

(a) Procurement offices shall submit four copies of the proposed determination and findings with two copies of the NASA Form 543, "Justification for Negotiation" and two copies of any required procurement plan (see § 18–3.852–1) to the Director of Procurement for review and signature of appropriate authorities.

(b) When approval of the procurement plan by NASA Headquarters is required (see § 18–3.852–2), the submission of the determination and findings under § 18–3.306–1 shall be made concurrently with the submission of the procurement plan for approval by NASA Headquarters, with two copies of the procurement plan designated for use with the determination and findings.

§ 18–3.307 Filing of determinations and findings.

A copy of each determination and findings shall be filed with the contract to which it applies. Each determination and findings made pursuant to the authority of sections 2304(a) (11) through (16), 2306(c), and 2307(c) of title 10 United States Code shall be retained in the files of the NASA installation concerned for a period of 6 years following the date of each respective determination.

§ 18–3.308 Retention of data with respect to negotiation.

In each case where a purchase or contract is negotiated except under §§ 18–3.202 to 18–3.206 inclusive, data with respect to the negotiation shall be preserved in the files of the NASA installation concerned for a period of 6 years following final payment on such contract. With respect to the retention of data to support small purchases, see § 18–3.603(f).

Subpart 18–3.4—Types of Contracts

§ 18–3.400 Scope of subpart.

This subpart (a) describes and defines the types of contracts approved for procurement by negotiation, (b) defines the areas of applicability in which each type of contract is appropriate for use, (c) sets forth considerations and policies governing the choice of type of contract, and (d) imposes conditions on the use of certain of the available types of contracts.

§ 18–3.401 Types of contracts.

(a) To provide the flexibility needed in the purchase of a large variety and volume of complex equipment, supplies and services, including research and development, a wide selection of types of contracts is available to the contracting parties. The respective contract types vary as to (1) the degree and timing of responsibility assumed by the contractor for the costs of performance, and (2) the amount and type of profit incentive offered the contractor to achieve or exceed specified standards or goals. With regard to degree of cost responsibility, the various types of contracts may be arranged in order of decreasing contractor responsibility for the costs of performance. At one end is the firm fixed-price contract under which the parties agree that the contractor assumes full responsibility in the form of profits or losses, for all costs under or over the firm fixed-price. At the other end of this range is the cost-plus-a-fixed-fee contract where profit, rather than price, is fixed and the contractor's cost responsibility is therefore minimal. In between are the various incentive contracts which provide for varying degrees of contractor cost responsibility, depending upon the degree of uncertainty involved in contract performance.

(b) Pursuant to the authority of 10 U.S.C. 2306, a contract negotiated under this Part 18–3 may be of any type or combination of types described herein which will promote the best interests of the Government, subject to the restrictions described in this subpart. Types of contracts not described herein shall not be used, unless pursuant to a deviation under § 18–1.109. The cost-plus-a-percentage-of-cost system of contracting shall not be used. Accordingly, all prime contracts (including letter contracts) on other than a firm fixed-price basis shall prohibit cost-plus-a-percentage-of-cost subcontracts by an appropriate clause.

§ 18–3.402 Basic principles for use of contract types.

(a) *General.* (1) Profit, generally, is the basic motive of business enterprise. Both the Government and its contractors should be concerned with harnessing this motive to work for the truly effective and economical contract performance required in the national interest. To this end, the parties should seek to

negotiate and use the contract type best calculated to stimulate outstanding performance. The objective should be to insure that outstandingly effective and economical performance is met by high profits, mediocre performance by mediocre profits, and poor performance by low profits or losses. The proper application of these objectives on a contract by contract basis should normally result in a range of profit rates.

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

(3) The policies in subparagraphs (1) and (2) of this paragraph require that the contractor assume a reasonable degree of cost responsibility as early in contract performance as is possible. This can be achieved only through vigorous contract administration and effort on the part of both parties to assure timely pricing. Particularly in fixed-price type contracts providing for price revisions, delays in pricing actions by either party may distort the type of contract which has been agreed upon, and such delays must be avoided.

(4) Where a contract type providing for a reasonable degree of contractor cost responsibility cannot be negotiated on a timely basis, due to the contractor's unwillingness to assume reasonable risk, profits should be negotiated so as to reflect this fact (see § 18–3.808).

(b) *Preferred contract types.* (1) The firm fixed-price contract is the most preferred type because the contractor accepts full cost responsibility, and the relationship between cost control and profit dollars is established at the outset of the contract. Accordingly, whenever a reasonable basis for firm pricing exists (see § 18–3.404–2), the firm fixed-price contract shall be used, because its use under these circumstances will provide the contractor with a maximum profit incentive to control the costs of performance. Similarly, a profit incentive to control costs can be achieved through use of the fixed-price incentive contract, and to a lesser degree, the cost-plus-incentive-fee contract, where appropriate target costs and incentive arrangements can be negotiated (see §§ 18–3.404–4 and 18–3.405–4).

(2) In many procurement situations objectives other than cost control, for example, performance and time goals in the case of development projects, may also be significant. Such objectives may be (i) performance with a view toward a better or more reliable product; (ii) delivery when it is necessary to obtain supplies or services with the utmost speed to meet operational needs; or (iii) a combination of any of the objectives of cost, performance, and delivery (see § 18–3.407). A contractual arrangement can be used to provide incentive to obtain these objectives in addition to effective cost control. Thus, by providing for increased profit for exceeding predetermined target levels and decreased profit for failing to meet target levels, an additional incentive is created for maximum effort on the part of the contractor to accomplish the desired objectives. When additional objectives are made a part of the various types of incentive contracts described in this Subpart 18–3.4 (§§ 18–3.404–4 and 18–3.405–4), particular care must be taker by the contracting officer to maintain an appropriate balance between the various incentives, by weighing incentive objectives to apportion the total incentive profits or fee in accordance with the emphasis desired, by and maximum benefit to, the Government. Without proper balancing of the incentive objectives, the Government may receive at unwarranted expense, a product of greater quality than desired or delivery before needed. Additional guidance on the selection, approval and administration of incentive contract provisions is set forth in § 18–3.450.

§ 18–3.403 Negotiation of contract type.

(a) *General.* The selection of contract type is generally a matter for negotiation and requires the exercise of judgment. Type of contract and pricing are interrelated and should be considered together in negotiation in accordance with § 18–3.803. Because the type of contract affects the resulting price to the Government, use of an appropriate type is of primary importance in obtaining fair and reasonable prices. Each contract file shall include documentation to show why the particular contract type was used, except for the following:

(1) Small purchases (Subpart 18–3.6);

(2) Repetitive types of procurement usually accomplished on a firm fixed-price basis, such as subsistence procurement; or

(3) Awards made on the set-aside portion of formally advertised procurements partially set aside for either small business, labor surplus or disaster areas.

Although no absolute rules can be laid down, there are many factors which should be considered in the use of an appropriate type of contract, including those which follow.

(i) *Price analysis.* See § 18–3.807–2(b). Price analysis may provide a basis for selection of contract type. The degree to which price analysis can provide a realistic pricing standard should be carefully considered, even where there may not be full and free competition.

(ii) *The cost estimate.* In the absence of effective price competition and where price analysis is not sufficient, the cost estimates of the offeror and of the Government are the bases for negotiation of many pricing arrangements. As a minimum, the uncertainties involved in performing at the cost estimated, and their possible impact on costs, must be identified and evaluated so that a pricing arrangement can be negotiated which imposes a reasonable degree of cost responsibility upon the contractor. The following are some of the considerations which may influence the estimate and hence, the selection of contract type:

(*a*) Type and complexity of the item;

(*b*) Stability of design, which in turn may influence such subordinate considerations as the adequacy and firmness of specifications, and the availability of relevant historical pricing data and prior production experience;

(*c*) Prospective period of contract performance and length of production run at the time of negotiation;

(*d*) Extent and nature of subcontracting contemplated; and

(*e*) Adequacy of the contractor's estimating system.

(iii) *Urgency of the requirement.* In certain procurements the best interests of the Government may dictate that the urgency of the requirement be a primary consideration in selection of contract type.

(iv) *Technical capability and financial responsibility of the contractor.*

(v) *Adequacy of the contractor's accounting system.* Before reaching agreement on price and contract type, determination should be made that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated. This may be particularly critical where the contract type requires revision of price while performance is in progress, or where a cost-reimbursement type of contract is being considered and all current or past experience with the contractor has been on a fixed-price basis (see § 18–3.809).

(vi) *Other concurrent contracts.* If performance under a proposed procurement involves operations which concurrently are required in performance of other work, the nature of the pricing arrangements on the other work may be important in selecting the contract type for the proposed procurement. This factor may not be so important where close controls exist that will assure proper allocation of costs.

(b) *Research.* In the majority of research programs, including preliminary explorations and studies, the work to be performed cannot be described precisely. Hence, the negotiation of cost-plus-a-fixed-fee or cost-sharing contracts frequently is necessary. However, where the level of contractor effort desired can be identified and agreed upon in advance of performance, negotiation of a firm fixed-price contract should be considered.

(c) *Development and test.* Where possible, a final commitment to undertake specific product development and test should be avoided until preliminary exploration and studies have indicated a high degree of probability that the development is feasible and the Government generally has determined both its minimum requirements for product performance and schedule completion and its desired performance and schedule completion objectives. The precision with which the performance objectives can be defined will largely determine the type of contract employed, with firm-fixed-price contracts receiving first consideration. In all major system developments, and in other development programs where use of cost and performance incentives are considered desirable and administratively practicable, fixed-price-incentive and cost-plus-incentive-fee contracts are to be considered in that order of preference. The solicitation should describe the Government's minimum requirements for product performance and schedule completion, its desired performance and schedule completion objectives, and the type of contract contemplated. The Government's minimum requirements for product performance and schedule completion generally should not be considered subject to negotiation. The solicitation should emphasize the factors for which evaluation information is essential to the Government's rating of the proposal and those factors which are considered most important. When incentive contracts are to be used, contractors shall be required to submit targets and incentive sharing arrangements for meeting or surpassing the Government's requirements for performance and for schedule completion, together with an estimate of the cost thereof. The targets proposed by each offeror, the estimated cost thereof, and the sharing arrangements proposed should, to the extent practical, be considered by the Government in the contractor selection process. When this approach to contractor selection has been used, the resulting development program should be performed under an incentive contract which includes performance, schedule completion, and cost targets, the requisite test procedures by which attainment of performance targets will be measured, and provisions for varying profits to the extent targets are or are not met. In order to provide maximum incentive, the swing of profit variation should in each case be as wide as practical (see § 18-3.405-4(b)). The introduction of incentives into development is of such compelling importance that, to the extent practical, firms not willing to negotiate appropriate incentive provisions may be excluded from consideration for the award of development contracts.

§ 18-3.404 Fixed-price contracts.

§ 18-3.404-1 General.

Fixed-price contracts are of several types so designed as to facilitate proper pricing under varying circumstances. The fixed-price type contracts provide for a firm price, or under appropriate circumstances may provide for an adjustable price, for the supplies or services which are being procured. In providing for an adjustable price, the contract may fix a ceiling price, target price (including target cost), or minimum price. Unless otherwise provided in the contract, any such ceiling, target, or minimum price is subject to adjustment only if required by the operation of any contract clause which provides for equitable adjustment, escalation, or other revision of the contract price upon the occurrence of an event or a contingency.

§ 18-3.404-2 Firm fixed-price contract.

(a) *Description.* The firm fixed-price contract provides for a price which is not subject to any adjustment by reason of the cost experience of the contractor in the performance of the contract. This type of contract, when appropriately applied as set forth in paragraph (b) of this section, places maximum risk upon the contractor. Because the contractor assumes full responsibility, in the form of profits or losses, for all costs under or over the firm fixed price, he has a maximum profit incentive for effective cost control and contract performance. Use of the firm fixed-price contract imposes a minimum administrative burden on the contracting parties.

(b) *Application.* The firm fixed-price contract is suitable for use in procurements when reasonably definite design or performance specifications are available and whenever fair and reasonable prices can be established at the outset, such as where:

(1) Adequate competition has made initial proposals effective;

(2) Prior purchases of the same or similar supplies or services under competitive conditions or supported by valid cost or pricing data provide reasonable price comparisons;

(3) Cost or pricing information is available permitting the development of realistic estimates of the probable costs of performance;

(4) The uncertainties involved in contract performance can be identified and reasonable estimates of their possible impact on costs made, and the contractor is willing to accept a firm fixed price at a level which represents assumption of a reasonable proportion of the risk involved; or

(5) Any other reasonable basis for pricing can be used consistent with the purpose of this type of contract.

The firm fixed-price contract is particularly suitable in the purchase of standard or modified commercial items, or aerospace items for which sound prices can be developed.

§ 18-3.404-3 Fixed-price contract with escalation.

(a) *Description.* The fixed-price contract with escalation provides for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies which are specifically defined in the contract. The risks in a fixed-price contract are reduced by the inclusion of escalation provisions in which the parties agree to revise the stated price upon the happening of a prescribed contingency. Where escalation is agreed upon, upward adjustments shall be limited by the establishment of a reasonable ceiling, and provisions will be included for downward adjustments in those instances where the prices or rates fall below the base levels provided in the contract. In the establishment of the base levels from which escalation will operate, contingency allowances shall be eliminated from the base to be set forth in the contract to the extent that escalation is provided for any particular contingency. Generally, escalation provisions are of two broad types:

(1) Price escalation provides for adjustment of the contract price on the basis of increases or decreases from an agreed upon level in published or established prices of specific items or in price levels of the contract end items.

(2) Labor and material escalation provides for adjustment of the contract price on the basis of increases or decreases from agreed standards or indices in wage rates, specific material costs, or both.

(b) *Application.* Use of this type of contract is appropriate where serious doubt exists as to the stability of market and labor conditions which will exist during an extended period of production and where contingencies which would otherwise be included in a firm fixed-price contract are identifiable and can be covered separately by escalation. Its usefulness is limited by the difficulties inherent in its administration. To the extent possible, escalation should be restricted to industry-wide contingencies, and labor and material escalation should be limited to contingencies beyond the normal control of the contractor.

§ 18-3.404-4 Fixed-price incentive contracts.

(a) *Description*—(1) *General.* The fixed-price incentive contract is a fixed-price type contract with provision for adjustment of profit and establishment of the final contract price by a formula based on the relationship which final negotiated total cost bears to total target costs.

(2) *Firm target.* Under this type of incentive contract there is negotiated at the outset a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a formula for establishing final profit and price. After performance of the contract, the final cost is negotiated and the final contract price is then established in accordance with the formula. Where the final cost is less than target cost, application of the formula

results in a final profit greater than the target profit; conversely, where final cost is more than target cost, application of the formula results in a final profit less than the target profit, or even a net loss. Thus, within the price ceiling, the formula provides for the Government and the contractor to share the responsibility for costs greater or less than those originally estimated, as determined by a comparison of negotiated final cost with target cost. Because the profit resulting from application of the formula is in inverse relationship to costs, the formula provides the contractor in advance with a calculable profit incentive to control costs. To provide an incentive consistent with the circumstances, the formula should reflect the relative risks involved in contract performance. Thus, it is appropriate in certain procurements to establish a formula which provides for contractor assumption of a considerable or major share of total cost responsibility. In such circumstances, when a major share of total cost responsibility is assumed by the contractor, every consideration will be given to establishing target profits which reflect assumption of such responsibility.

(3) *Successive targets.* Under this type of incentive contract, there is negotiated at the outset an initial target cost, an initial target profit, a price ceiling, a formula for fixing the firm target profit, and a production point at which the formula will be applied. Generally, the production point will be prior to delivery or shop completion of the first item. This formula does not apply for the life of the contract but simply is used to fix the firm target profit for the contract. The initial formula shall also provide for a ceiling and floor on the firm target profit. To provide an incentive consistent with the circumstances, the formula for fixing the firm target profit should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset (see paragraph (b)(3) of this section). Thus it normally will not provide for as great a degree of contractor cost responsibility as would a formula for establishing final profit and price. When the production point for applying the formula is reached, the firm target cost is then negotiated, consideration being given to experienced cost and all other pertinent factors, and the firm target profit is automatically determined in accordance with the formula. At this point, two alternatives are possible. First, a firm fixed price may be negotiated using as a guide the firm target cost plus the firm target profit. Second, if use of the firm fixed price is determined to be inappropriate, a formula for establishing final profit and price may be negotiated, using the firm target profit and the firm target cost. As in the firm target type of contract described in paragraph (a)(2) of this section, the final cost is negotiated at the completion of the contract and the final contract price is then established in accordance with the formula for establishing final profit and price.

(4) *Billing price.* In either of the above types of contract, a billing price will be established as an interim basis for payment. This billing price may be adjusted within the ceiling limits, upon request of either party to the contract, when it becomes apparent that final negotiated costs will be substantially different from the target cost.

(b) *Application.* (1) Fixed-price incentive contracts are appropriate for use when design, specifications and performance requirements are reasonably firm, end item performance levels and scheduled deliveries are known to be attainable without extensive research and development effort or advancement of the state of the art, but cost and production experience are insufficient for the establishment of reasonable firm fixed prices, and the supplies or services being procured are of such a nature that assumption of a degree of cost responsibility by the contractor is likely to provide him with a positive profit incentive for effective cost control and contract performance. It may also be appropriate to negotiate additional incentive provisions covering performance levels and more timely delivery (see § 18–3.407–2). Contract performance requirements must be such that there is reasonable opportunity for the incentive provisions to have a meaningful impact on the manner in which the contractor manages the work.

(2) The firm target type of incentive contract, described in paragraph (a)(2) of this section, is appropriate for use whenever a firm target and a formula for establishing final profit and price can be negotiated at the outset which will provide a fair and reasonable incentive.

(3) The successive targets type of incentive contract, described in paragraph (a)(3) of this section, is appropriate for use whenever available cost and pricing information is not sufficient to permit the negotiation of realistic firm targets at the outset. However, enough information should be available to permit negotiation of initial targets, and there should be reasonable assurance that additional reliable information will be available at an early point in the performance of the contract so as to permit negotiation of either a firm fixed price, or firm targets and a formula for establishing final profit and price, which will provide a fair and reasonable incentive. The additional information need not in all cases come from experience under the contract itself, but may be drawn from experience on any other contracts for the same or similar items.

(c) *Limitations.* Fixed-price incentive contracts shall not be used unless the contractor's accounting system is adequate for price revision purposes and permits satisfactory application of the profit and price adjustment formulas. In no case should such contracts be used where (1) cost or pricing information adequate for firm targets is not available at the time of initial contract negotiation or at a very early point in performance, or (2) the sole or principal purpose is to shift substantially all cost responsibility to the Government. In no case shall the firm target profit or the formula for final profit and price be established prior to the negotiation of the firm target cost. Neither type of fixed-price incentive contract shall be used unless a determination has been made, in accordance with the requirements of Subpart 18–3.3, that:

(1) Such method of contracting is likely to be less costly than other methods, or

(2) It is impractical to secure supplies or services of the kind or quality required without the use of such type of contract.

Additional guidance on the selection, approval, and administration of incentive contract provisions is set forth in § 18–3.450.

§ 18–3.404–5 Prospective price redetermination at a stated time or times during performance.

(a) *Description.* This type of contract provides for a firm fixed price for an initial period of contract deliveries or performance and for prospective price redetermination either upward or downward at a stated time or times during the performance of the contract. It also may provide for a price ceiling, where appropriate. Once established, ceiling prices are subject to adjustment only by reason of the operation of other contract clauses (see § 18–3.404–1).

(b) *Application.* This type of contract is appropriate in procurements calling for quantity production or services where it is possible to negotiate fair and reasonable firm fixed prices for an initial period, but not for subsequent periods of contract performance. This initial period should be the longest period for which it is possible to establish fair and reasonable firm fixed prices at the time of original negotiation. The length of the prospective pricing periods should depend on the circumstances of each case and should generally be at least 12 months each. Ceiling prices, where appropriate, should be based on the evaluation of the uncertainties involved in contract performance, and their possible impact on cost, and should be negotiated at a level which represents contractor assumption of a reasonable degree of risk.

(c) *Limitations.* This type of contract shall not be used unless:

(1) It has been established through negotiations that a firm fixed-price contract does not fulfill the requirements established by the conditions surrounding the procurement;

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

(3) The prospective pricing period can be made to conform with the operation of the contractor's accounting system; and

(4) Reasonable assurance exists that price redetermination action will be taken promptly at the time or times specified.

§ 18–3.404–7 Retroactive price redetermination after completion.

(a) *Description.* This type of contract provides for a ceiling price and retro-

active price redetermination after completion of the contract. The redetermined price should be negotiated so as to give weight to the management effectiveness and ingenuity exhibited by the contractor during performance, and the basis for such negotiation should be fully discussed with the contractor when this type of contract is negotiated. Because the price is redetermined on a completely retroactive basis, this contract type (except for the price ceiling) does not provide the contractor with a calculable incentive for effective cost control. Once established, the ceiling price is subject to adjustment only if required by the operation of other contract clauses (see § 18-3.404-1).

(b) *Application.* This type of contract is appropriate in procurements where it is established at the time of negotiation that a fair and reasonable firm fixed price cannot be negotiated and the amount involved is so small or the time for performance so short that use of any other type of contract is impracticable. Even in these situations, however, it should be used only after negotiation of a billing price as fair and reasonable as the circumstances of the particular procurement permit. Based on an evaluation of the circumstances involved in contract performance, and their possible impact on cost, the ceiling price should be negotiated at a level which represents contractor assumption of a reasonable degree of risk.

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

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

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

(3) A ceiling price is established; and

(4) Written approval has been received from the Procurement Officer.

§ 18-3.405 Cost-reimbursement type contracts.

§ 18-3.405-1 General.

(a) *Description.* The cost-reimbursement type of contract provides for payment to the contractor of allowable costs incurred in the performance of the contract, to the extent prescribed in the contract. This type of contract establishes an estimate of total cost for the purpose of (1) obligation of funds, and (2) establishing a ceiling which the contractor may not exceed (except at his own risk) without prior approval or subsequent ratification of the contracting officer.

(b) *Application.* The cost-reimbursement type contract is suitable for use only when the uncertainties involved in contract performance are of such magnitude that cost of performance cannot be estimated with sufficient reasonableness to permit use of any type of fixed-price contract. In addition, it is essential that (1) the contractor's cost accounting system is adequate for the determination of costs applicable to the contract and (2) appropriate surveillance by Government personnel during performance will give reasonable assurance that inefficient or wasteful methods are not being used. While cost-reimbursement contracts are particularly useful for procurements involving substantial amounts, e.g., estimated cost of $100,000 or more, the parties may agree in a given case to use this type of contract to cover transactions in which the estimated costs are less than $100,000.

(c) *Limitations.* The cost-reimbursement type contract may be used only after a determination, in accordance with the requirements of Subpart 18-3.3, that—

(1) Such method of contracting is likely to be less costly than other methods, or

(2) It is impractical to secure supplies or services of the kind or quality required without the use of such type of contract.

§ 18-3.405-2 Cost contract.

(a) *Description.* The cost contract is a cost-reimbursement type contract under which the contractor receives no fee.

(b) *Application.* The following are illustrative situations in which the use of this type of contract may be appropriate:

(1) Research and development work, particularly with nonprofit educational institutions or other nonprofit organizations; and

(2) Facilities contracts.

§ 18-3.405-3 Cost sharing contract.

(a) *Definition.* A cost sharing contract is a type of contract, used for research and development projects jointly sponsored by the Government and the contractor, under which the contractor receives no fee and is reimbursed only for an agreed portion of allowable costs.

(b) *Policy.* (1) It is the policy of NASA to utilize this form of contract only in research and development projects sponsored jointly by the Government and the contractor when it is probable that the contractor will receive contribution in the form of present or future commercial benefits, except in the case of contracts with nonprofit institutions and foreign governments. It is the responsibility of the Procurement Officer to develop evidence to assure that commercial benefits may reasonably be expected to result, such as: increased technical knowledge useful in commercial operations; adding to technical know-how and training to employees; opportunity to benefit through patent rights; and use of background knowledge in future production contracts.

(2) The application of cost sharing principles and the negotiation of cost sharing provisions are in no way precluded by the above stated restriction when, for example: incentive provisions in a contract include an arrangement whereby the contractor's profit or fee is decreased if costs exceed a stipulated target amount; costs are to be incurred by a contractor in the performance of a contract which are in excess of a mutually agreed upon ceiling cost; in a CPFF contract cost overrun situation, or in any situation where such cost sharing principles can be applied and negotiated without violating the integrity of the competitive procurement processes.

(3) Competition in procurement and support of the Small Business Program are two prime objectives of NASA. In consonance with these objectives, awards of cost sharing contracts should not be made solely on the basis of ability or willingness to cost share but should be made primarily on the basis of the contractor's competence only after adequate competition among large and small business.

(4) To insure against any implication of inviting or inducing contractors to cost share, installations will avoid formal or informal statements wherein a specified amount is announced as available for a development when the request for proposals clearly indicates a scope of work which may require a larger amount of funds than the announced available funding. Additionally, prospects of preferred consideration for award of a possible future contract should not be offered as an inducement to contractors to enter into cost sharing arrangements.

(c) *Approval.* Cost sharing contracts will not be used unless the decision to use a cost sharing contract has been individually approved by the Procurement Officer.

§ 18-3.405-4 Cost-plus-incentive-fee contract.

(a) *Description.* The cost-plus-incentive-fee contract is a cost-reimbursement type contract with provision for a fee which is adjusted by formula in accordance with the relationship which total allowable costs bear to target cost. Under this type of contract, there is negotiated initially a target cost, a target fee, a minimum and maximum fee, and a fee adjustment formula. After performance of the contract, the fee payable to the contractor is determined in accordance with the formula. The formula provides, within limits, for increases in fee above target fee when total allowable costs are less than target costs, and decreases in fee below target fee when total allowable costs exceed target costs. The provision for increase or decrease in the fee is designed to provide an incentive for maximum effort on the part of the contractor to manage the contract effectively.

(b) *Application.* The cost-plus-incentive-fee contract is suitable for use primarily for development and test when a cost-reimbursement type of contract is found necessary in accordance with § 18-3.405-1(b), and when a target and a fee adjustment formula can be negotiated which are likely to provide the contractor with a positive profit incentive for effective management. In particular, where it is highly probable that the development is feasible and the Government generally has determined its desired performance objectives, the cost-plus-incentive-fee contract should be used in conjunction with performance incentives in the development of major systems, and in other development programs where use of the cost and performance incentive approach

is considered both desirable and administratively practical (see §§ 18–3.403(c) and 18–3.407–2(b)). Range of fee and the fee adjustment formula should be negotiated so as to give appropriate weight to basic procurement objectives. For example, in an initial product development contract, it may be appropriate to negotiate a cost-plus-incentive-fee contract providing for relatively small increases or decreases in fee tied to the cost incentive feature, balanced by the inclusion of performance incentive provisions providing for significant upward or downward fee adjustment as an incentive for the contractor to meet or surpass negotiated performance targets. Conversely, in subsequent development and test contracts, it may be more appropriate to negotiate an incentive formula where the opportunity to earn additional fee is based primarily on the contractor's success in controlling costs. With regard to the cost incentive provisions of a contract, the minimum and maximum fees, and the fee adjustment formula, should be negotiated so as to provide an incentive which will be effective over variations in costs throughout the full range of reasonably foreseeable variations from target cost. Whenever this type of contract, with or without the inclusion of performance incentives, is negotiated so as to provide incentive up to a high maximum fee, the contract also shall provide for a low minimum fee, which may even be a "zero" fee or, in rare cases, a "negative" fee.

§ 18–3.405–5 Cost-plus-a-fixed-fee contract.

(a) *Description.* The cost-plus-a-fixed-fee contract is a cost reimbursement type of contract which provides for the payment of a fixed fee to the contractor. The fixed fee once negotiated does not vary with actual cost, but may be adjusted as a result of any subsequent changes in the work or services to be performed under the contract. Because the fixed fee does not vary in relation to the contractor's ability to control costs, the cost-plus-a-fixed-fee contract provides the contractor with only a minimum incentive for effective management control of costs.

(b) *Application.* The cost-plus-a-fixed-fee contract is suitable for use when:

(1) A cost-reimbursement type of contract is found necessary in accordance with § 18–3.405–1(b);

(2) The parties agree that the contract should be fee bearing;

(3) The contract is for the performance of research, or preliminary exploration or study, where the level of effort required is unknown; or

(4) The contract is for development and test where the use of a CPIF is not practical.

(c) *Limitations.* (1) This type of contract normally should not be used in the development of space systems and equipment, once preliminary exploration and studies have indicated a high degree of probability that the development is feasible and the Government generally has determined its desired performance objectives and schedule of completion (see § 18–3.405–4).

(2) 10 U.S.C. 2306(d) provides that in the case of a cost-plus-a-fixed-fee contract the fee shall not exceed ten percent (10%) of the estimated cost of the contract, exclusive of the fee, as determined by the Administrator at the time of entering into such contract (except that a fee not in excess of fifteen percent (15%) of such estimated cost is authorized in any such contract for experimental, developmental, or research work and that a fee inclusive of the contractor's cost and not in excess of six percent (6%) of the estimated cost, exclusive of fees, as determined by the Administrator at the time of entering into the contract, of the project to which such fee is applicable is authorized in contracts for architectural or engineering services relating to any public works or utility projects).

(3) In addition to the statutory limitations, fees under cost-plus-a-fixed-fee type contracts, except for Architect-Engineer contracts, are subject to the administrative limitations set forth below:

(i) Ten percent of the estimated cost, exclusive of fee, of any cost-plus-a-fixed-fee contract for experimental, developmental, or research work; or

(ii) Seven percent of the estimated cost, exclusive of fee, of any other cost-plus-a-fixed-fee contract.

(4) Fixed-fees within the limitations imposed by 10 U.S.C. 2306(d) and in excess of those cited in subparagraph (3) of this paragraph will be submitted to the Director of Procurement for approval. The request for approval shall include a detailed justification setting forth the rationale supporting the proposed fee in terms of the factors prescribed in § 18–3.808–2.

(5) Pursuant to 10 U.S.C. 2311, authority to make the determinations of the estimated costs of a contract or project on which the allowable fee percentage is measured, has been delegated to the contracting officer (see § 18–3.304(v)).

(6) The administrative limitations on subcontract fees are set forth in § 18–3.807–10(d).

(d) *Completion or term form.* The cost-plus-a-fixed-fee contract can be drawn in one of two basic forms, Completion or Term.

(1) The Completion form is one which describes the scope of work to be done as a clearly defined task or job with a definite goal or target expressed and with a specific end-product required. This form of contract normally requires the contractor to complete and deliver the specified end-product (in certain instances, a final report of research accomplishing the goal or target) as a condition for payment of the entire fixed-fee established for the work and within the estimated cost if possible; however, in the event the work cannot be completed within the estimated cost, the Government can elect to require more work and effort from the contractor without increase in fee provided it increases the estimated cost.

(2) The Term form is one which describes the scope of work to be done in general terms and which obligates the contractor to devote a specified level of effort for a stated period of time for the conduct of research and development. Under this form, the fixed-fee is payable at the termination of the agreed period of time on certification of the contractor that he has exerted the level of effort specified in the contract in performing the work called for, and such performance is considered satisfactory by the Government. Renewals for further periods of performance are new procurement and involve new fee and cost arrangements.

(3) The Completion form of contract, because of differences in obligation assumed by the contractor, is to be preferred over the Term form whenever the work itself or specific milestones can be defined with sufficient precision to permit the development of estimates within which prospective contractors can reasonably be expected to complete the work. A milestone is a definable point in a program when certain objectives can be said to have been accomplished.

(4) In the case of research and exploratory development work, it is rarely possible to define the scope of work with the degree of precision necessary for contracting on a Completion basis because of the nature of the work to be performed. Hence in such cases, the Term form of contract may be considered preferable in that it provides more flexibility for effective conduct of the research effort.

(5) In no event should the Term form of contract be used unless the contractor is obligated by the contract to provide a specific level-of-effort within a definite period of time.

§ 18–3.405–6 Cost-plus-award-fee contract.

(a) *Description.* The cost-plus-award-fee contract is a cost reimbursement type contract with incentive fee provision which includes:

(1) A target cost;

(2) A base fee commensurate with minimum acceptable performance;

(3) Criteria against which the contractor's performance will be evaluated;

(4) An additional adjustment to the base fee, not to exceed a stipulated maximum, which is awarded on the basis of the subjective evaluation by NASA of contractor performance; and

(5) Specific provision that the determination of fee adjustment shall not be subject to the contract article entitled "Disputes."

(b) *Application.* The cost-plus-award-fee contract is suitable for use when:

(1) A cost reimbursement type of contract is found necessary in accordance with § 18–3.405–1;

(2) The work to be performed is such that specific quantitative or objective measurement is not feasible and effective incentive arrangements cannot be devised on the basis of cost (§ 18–3.405–4), performance (§ 18–3.407–2) or schedule (§ 18–3.407–2);

(3) NASA procurement objectives will be advanced if the contractor is effectively motivated to exceptional performance; and

(4) Any added administrative effort and costs required to monitor and evaluate performance are justified by the benefits expected.

(c) *Considerations of concept.* The opportunity for increase in earned fees is intended to motivate the contractor to effectively manage the required work, to control costs, and to improve the timeliness, quality, and quantity of performance. Where cost is of primary concern to NASA, the contract may provide for a combination incentive fee—award fee arrangement by setting forth a cost-based incentive separately stated from the award fee arrangement, which would then be concentrated on performance aspects. The award fee should be earned by the contractor by exceptional performance, surpassing minimum acceptable levels, and should be commensurate with the benefits accruing to NASA from the contractor's performance. The contract terms generally obligate the contractor to devote a specified level of effort for a stated period of time to satisfy the various areas of the scope of the work; it follows that the award of additional fee for exceptional performance in designated areas should be contingent upon an acceptable level of performance for all other contract requirements. Although the determination of the amount of award fee earned is a unilateral one based on subjective evaluations, the decision may be aided by such quantifying devices as adjectival ratings, point systems, or percentages of achievement. Ordinarily, the award fee adjustments will be increases only, and contract arrangements for decrease adjustment of base fee (e.g., if certain criteria or levels of performance are not met) must be carefully scrutinized prior to approval for use. Such arrangement must provide that the contractor will be informed of the reasons for decrease in fee, and will be given specific opportunity to submit information in his behalf prior to decision by the official responsible for adjustment of fee.

(d) *Limitations.* (1) The cost-plus-award-fee contract shall not be used (i) in procurements in which all factors affected by the incentive (e.g., cost, delivery performance) can be measured or objectively evaluated, or (ii) where the contract amount, term of performance or the benefits expected of the incentive are insufficient to warrant the additional administrative effort or cost.

(2) The maximum fee, which is the total of base fee, award fee, and any other incentive fee payable under the contract, is subject to the administrative limitations in § 18–3.450(f).

(e) *Cost plus award fee contracting guide (NHB 5104.4).* Additional guidance on the negotiation and administration of cost-plus-award-fee contracts is contained in the "Cost Plus Award Fee Contracting Guide" (NHB 5104.4).

§ 18–3.406 Other types of contracts.

§ 18–3.406–1 Time and materials contracts.

(a) *Description.* The time and materials type of contract provides for the procurement of supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates (which rates include direct and indirect labor, overhead, and profit) and (2) material at cost. Material handling costs may be included in the charge for "material at cost," to the extent they are clearly excluded from any factor of the charge computed against direct labor hours. This type of contract does not afford the contractor with any positive profit incentive to control the cost of materials or to manage his labor force effectively.

(b) *Application.* The time and materials contract is used only where it is not possible at the time of placing the contract to estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. Particular care should be exercised in the use of this type of contract since its nature does not encourage effective management control. Thus it is essential that this type of contract be used only where provision is made for adequate controls, including appropriate surveillance by Government personnel during performance, to give reasonable assurance that inefficient or wasteful methods are not being used. This type of contract may be used in the procurement of (1) engineering and design services in connection with the production of supplies; (2) the engineering, design and manufacture of dies, jigs, fixtures, gauges, and special machine tools; (3) repair, maintenance, or overhaul work; and (4) work to be performed in emergency situations.

(c) *Limitation.* Because this type of contract does not encourage effective cost control and requires almost constant Government surveillance, it may be used only after determination that no other type of contract will suitably serve. This type of contract shall establish a ceiling price which the contractor exceeds at his own risk. The contracting officer shall document the contract file to show valid reasons for any change in the ceiling and to support the amount of such change.

(d) *Optional method of pricing material.* When the nature of the work to be performed requires the contractor to furnish material which is regularly sold to the general public in the normal course of business by the contractor, the contract may provide for charging material on a basis other than at cost if:

(1) The total estimated contract price does not exceed $25,000 or the estimated price of material so charged does not exceed twenty percent (20%) of the estimated contract price;

(2) The material to be so charged is identified in the contract;

(3) No element of profit on material so charged is included in the profit in the fixed hourly labor rates; and

(4) The contract provides that the price to be paid for such material shall be on the basis of an established catalog or list price, in effect when material is furnished, less all applicable discounts to the Government: *Provided,* That in no event shall such price be in excess of the contractor's sales price to his most favored customer for the same item in like quantity, or the current market price, whichever is lower.

§ 18–3.406–2 Labor-hour contract.

(a) *Description.* The labor-hour type of contract is a variant of the time and materials type contract differing only in that materials are not supplied by the contractor.

(b) *Application.* See § 18–3.406–1(b).

(c) *Limitations.* See § 18–3.406–1(c).

§ 18–3.407 Additional incentives.

§ 18–3.407–1 General.

In addition to the profit incentives to control costs, inherent in many of the contract types, and combinations thereof, described in §§ 18–3.404 through 18–3.406, there are other means of providing profit incentives to contractors, which are described below, to obtain extra management attention and effort. Increases in profits or fees resulting from the use of incentive provisions are made only because cost, performance, or other contractual goals or standards have been surpassed.

§ 18–3.407–2 Contracts with performance incentives.

(a) *Description.* A contract with a performance incentive is one which incorporates an incentive to the contractor to surpass stated performance targets by providing for increases in the fee or profit to the extent that such targets are surpassed and for decreases to the extent that such targets are not met. Salient features and considerations in the use of this type of contract are as follows:

(1) "Performance", as used in this § 18–3.407–2, refers not only to the performance of the article being procured, but to the performance of the contractor as well. Performance which is the minimum which the Government will accept shall be mandatory under the terms of the Completion form contract and shall warrant only the minimum profit or fee related thereto. Performance which meets the stated targets will warrant the "target" profit or fee. Performance which surpasses these targets will be rewarded by additional profit or fee. The incentive feature (providing for increases or decreases, as appropriate) is applied to performance targets rather than performance requirements.

(2) The incentive, when applied to the product, should relate to specific performance characteristics, such as thrust of an engine, maneuverability of a vehicle, and fuel economy. However, high overall performance of the end item is the primary objective of such contracts. Accordingly, the incentive feature should reflect a balancing of the various characteristics which together account for overall performance so that no one characteristic will be exaggerated to the

detriment of the end item as a whole. When applied to the performance of the contractor, the incentive should relate to specific performance areas or milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.

(3) Since performance tests generally are essential in order to determine the degree of attainment of performance targets, the contract must be as specific as possible in establishing test criteria, such as conditions of testing, precision of instrumentation, and interpretation of test data.

(4) It is essential that there be explicit agreement between the Government and the contractor as to the effect on performance of contract changes (e.g., pursuant to the Changes clause).

(5) Care must be exercised, in establishing performance criteria, to give recognition to the fact that the contractor should not be rewarded or penalized for attainments of Government-furnished components.

(6) In establishing incentives in connection with delivery schedules, it is important to determine the Government's primary objectives in a given contract. In some instances, earliest possible delivery is of paramount importance. In others, early quantity production is essential. On the other hand, it may be that maintaining an established delivery schedule is all that is desired, and that a bettering of such schedule may disrupt continuity of production or run counter to funding limitations.

(b) *Application.* Contracts with performance incentives are suitable for use in procurements where it is desired to provide the contractor with an incentive in the form of financial reward for surpassing stated performance targets, counterbalanced by a penalty in the form of decreased profit or fee for failure to achieve such targets. Performance incentives are particularly appropriate for inclusion in contracts for major equipment, both in development when desired performance objectives are known and the fabrication of prototypes for test and evaluation is required, and in production where there is potential for improved performance that would be highly desirable to the Government. Effort always should be made in these procurement situations to include a performance incentive in the contract. Performance incentives present complex problems in contract administration and should be negotiated and administered by contracting officers with the full cooperation of Government engineering and pricing specialists.

(c) *Limitations.* Performance incentives, when related to the performance of the product, may result in increased costs and shall always be coupled with a balancing of range of fee or profit on the cost and performance aspects, negotiated so as to give appropriate weight to basic procurement objectives. Where incentives relating to the performance of the product are included in a contract, and earliest possible delivery is of considerable importance to the Government, the contract normally should include a performance incentive relating to time of performance or for expedited delivery schedules.

§ 18–3.408 Letter contract.

(a) *Definition.* A letter contract is a written preliminary contractual instrument which authorizes immediate commencement of work or services.

(b) *Policy.* The policy of the National Aeronautics and Space Administration is not to issue letter contracts. Exceptions to this policy will be permitted only in those cases where all matters of a substantive nature, such as statements of work, delivery schedules, general and special clauses, and estimated costs and fee, have been resolved and agreed upon.

(c) *Application.* A letter contract may be entered into only when: (1) The urgency of the requirement necessitates that the contractor be given a binding commitment so that work can commence immediately, (2) preparation of a definitive contract in sufficient time to meet mission requirements is not possible, and (3) prior approval of the Administrator or Deputy Administrator has been obtained (see § 18–50.105(c)).

(d) *Limitations.* (1) A letter contract shall not be entered into without competition when competition is practicable;

(2) A letter contract shall be superseded by a definitive contract at the earliest practicable date; and

(3) The maximum fund liability of the Government stated in the letter contract will be limited to only that amount determined essential to cover the contractor's requirements for funds prior to definitization. In no event shall total funds placed on a letter contract exceed fifty percent (50%) of the estimated total amount of the definitive contract.

(e) *Information to be furnished when requesting authority to issue a letter contract.* Request for authority to issue a letter contract shall be forwarded by the head of the field installation, with his concurrence in the request, to the cognizant Program Director for submission to the Administrator or Deputy Administrator via the Director of Procurement and shall include the following:

(1) Name and address of proposed contractor;

(2) Location where contract is to be performed;

(3) Contract number, including modification number if applicable;

(4) Brief description of the work or services to be performed;

(5) Performance or delivery schedule;

(6) Amount of letter contract;

(7) Estimated total amount of definitive contract;

(8) Type of definitive contract to be executed (fixed-price, cost-plus-incentive-fee, etc.);

(9) Statement that the definitive contract will contain all required clauses or that deviations therefrom have been approved;

(10) Statement by the contracting officer that all matters of a substantive nature have been resolved. This statement will be made a part of the Headquarters procurement file and must be received prior to the issuance of any approval to the requesting installation; and

(11) Statement as to the necessity and advantage to the Government of the use of the proposed letter contract.

Promptly upon receipt of a request to issue a letter contract, the Program Director will obtain the concurrence or comments of the cognizant Institutional Director and forward the request with his recommendations to the Director of Procurement. The Director of Procurement will review the request, confer with the Program Director as necessary, and, if both he and the Program Director concur with the request, forward it to the Administrator or Deputy Administrator for approval.

(f) *Approval for modifications to letter contracts.* Letter contracts shall not be modified to extend the period of performance or to increase the dollar amount without the prior approval of the Administrator or Deputy Administrator. Requests for authority to issue such modifications to letter contracts shall be processed in the same manner as requests for authority to issue letter contracts (see paragraph (e) of this section) and shall include the following:

(1) Name and address of the contractor;

(2) Description of the work or services to be performed;

(3) Date originally approved;

(4) Date letter contract was executed; and

(5) Complete justification for the requested modification to include the reasons why the definitive contract cannot be executed without such amendment.

§ 18–3.409 Indefinite delivery type contracts.

One of the following indefinite delivery type contracts may be used for procurement where the exact time of delivery is not known at time of contracting.

(a) *Definite quantity contracts*—(1) *Description.* This type of contract provides for a definite quantity of specified supplies or for the performance of specified services for a fixed period, with deliveries or performance at designated locations upon order. Depending on the situation, the contract may provide for (i) firm fixed-prices, (ii) price escalation, or (iii) price redetermination.

(2) *Applicability.* This type of contract is particularly suitable for use where it is known in advance that a definite quantity of supplies or services will be required during a specified period and are regularly available or will be available after a short lead time. Advantages of this type of contract are that it permits stocks to be maintained at minimum levels and permits direct shipment to the user.

(b) *Requirements contract*—(1) *Description.* This type of contract provides for filling all actual purchase requirements of specific supplies or services of designated activities during a specified contract period with deliveries to be scheduled by the timely placement of orders upon the contractor by activities

designated either specifically or by class. Depending on the situation, the contract may provide for (i) firm fixed prices, (ii) price escalation, or (iii) price redetermination. An estimated total quantity is stated for the information of prospective contractors, which estimate should be as realistic as possible. The estimate may be obtained from the records of previous requirements and consumption, or by other means. Care should be used in writing and administering this type of contract to avoid imposition of an impossible burden on the contractor. Therefore, the contract shall state, where feasible, the maximum limit of the contractor's obligation to deliver and, in such event, shall also contain appropriate provision limiting the Government's obligation to order. When large individual orders or orders from more than one activity are anticipated, the contract may specify the maximum quantities which may be ordered under each individual order or during a specified period of time. Similarly, when small orders are anticipated, the contract may specify the minimum quantities to be ordered.

(2) *Applicability.* A requirements contract may be used for procurements where it is impossible to determine in advance the precise quantities of the supplies or services that will be needed by designated activities during a definite period of time. Advantages of this type of contract are:

(i) Flexibility with respect to both quantities and delivery scheduling;

(ii) Supplies or services need be ordered only after actual needs have materialized;

(iii) Where production lead time is involved, deliveries may be made more promptly because the contractor is usually willing to maintain limited stocks in view of the Government's commitment;

(iv) Price advantages or savings may be realized through combining several anticipated requirements into one quantity procurement; and

(v) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

Generally, the requirements contract is appropriate for use when the item of service is commercial or modified commercial in type and when a recurring need is anticipated.

(c) *Indefinite quantity contract*—(1) *Description.* This type of contract provides for the furnishing of an indefinite quantity, within stated limits, of specific supplies or services, during a specified contract period, with deliveries to be scheduled by the timely placement of orders upon the contractor by activities designated either specifically or by class. Depending on the situation, the contract may provide for (i) firm fixed prices; (ii) price escalation; or (iii) price redetermination. The contract shall provide that during the contract period the Government shall order a stated minimum quantity of the supplies or services and that the contractor shall furnish such stated minimum and, if and as ordered, any additional quantities not exceeding a stated maximum which should be as realistic as possible. The maximum may be obtained from the records of previous requirements and consumption, or by other means. When large individual orders or orders from more than one activity are anticipated, the contract may specify the maximum quantities which may be ordered under each individual order or during a specified period of time. Similarly, when small orders are anticipated, the contract may specify the minimum quantities to be ordered.

(2) *Applicability.* An indefinite quantity contract may be used where it is impossible to determine in advance the precise quantities of the supplies or services that will be needed by designated activities during a definite period of time and it is not advisable for the Government to commit itself for more than a minimum quantity. Advantages of this type of contract are:

(i) Flexibility with respect to both quantities and delivery scheduling;

(ii) Supplies or services need be ordered only after actual needs have materialized;

(iii) The obligation of the Government is limited; and

(iv) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

The indefinite quantity contract should be used only when the item or service is commercial or modified commercial in type and when a recurring need is anticipated.

§ 18–3.410 Other types of agreements.

§ 18–3.410–1 Basic agreement.

(a) *Description.* A basic agreement is not a contract. It is a written instrument of understanding executed between NASA and a contractor which sets forth the negotiated contract clauses which shall be applicable to future procurements entered into between the parties during the term of the basic agreement. A basic agreement will apply to a particular procurement by the execution of a formal contractual document which will provide for the scope of the work, price, delivery, and additional matters peculiar to the requirements of the specific procurement involved, and shall incorporate by reference or append the contract clauses agreed upon the basic agreement as required or applicable. Basic agreements may be used with fixed-price or cost-reimbursement type contracts.

(b) *Applicability.* (1) Basic agreements are appropriate for use when (i) past experience and future plans indicate that a substantial number of separate contracts may be entered into with a contractor during the term of the basic agreement, and (ii) substantial recurring negotiating problems exist with a particular contractor.

(2) A basic agreement shall be modified only by a modification of the basic agreement itself and shall not be modified or superseded by individual contracts or purchase orders entered into under and subject to the terms of such basic agreement. To minimize modification, revisions to this chapter involving changes in authorized contract clauses utilized in basic agreements will provide appropriate direction with respect to any required modifications of basic agreements and to the extent possible, modifications will be required only in matters resulting from changes in statutes or Executive orders. As a minimum, basic agreements shall be reviewed annually before the anniversary of their effective date and revised to conform with the current requirements of this chapter. Modifications shall not have retroactive effect.

(3) Basic agreements shall provide for discontinuance of their future application upon 30 days written notice by either party. Discontinuance of a basic agreement will not affect any individual contract referencing the basic agreement (or the clauses appended thereto) entered into prior to the effective date of discontinuance.

(4) A basic agreement shall be used to cover all subsequent procurements which fall within its scope. Provisions of the basic agreement, including supplements thereto, shall be incorporated into the formal contractual document covering the particular procurement by referring therein to the number of the basic agreement and each of its supplements.

(5) Except as provided below when an existing contract is amended to effect new procurement, the supplemental agreement shall:

(i) Incorporate the most recent basic agreement, including supplements thereto, to apply only to the work added by the supplemental agreement; or

(ii) If it is in the interest of the Government, incorporate the most recent basic agreement, including supplements thereto, to apply to the entire contract as of the date of the supplemental agreement.

An existing contract may be amended by a supplemental agreement effecting new procurement without incorporating the most recent basic agreement only if all clauses then required by statute, Executive order, and this chapter are included in the contract or the proposed supplemental agreement.

(6) Supplemental agreements negotiated pursuant to the terms of an existing contract and not involving new procurement may, if determined to be in the interest of the Government, amend the existing contract to conform to a subsequently executed or supplemented basic agreement.

(7) Clauses pertaining to subjects not covered in a basic agreement but applicable to the contract being negotiated and clauses required by statute Executive order or this chapter which have become effective after the making of the basic agreement shall be included in the contract as if no basic agreement existed.

(8) Where a clause which was included in the basic agreement pursuant to a deviation must be replaced by a revised clause, the revised clause may deviate to the same extent as the original clause if the revision is not related to the

deviation, and if the deviation has not expired or been rescinded.

(9) If a letter contract has been entered into under a basic agreement which thereafter was superseded by a new basic agreement, or amended by supplemental agreement, the contractual instrument which definitizes such letter contract shall incorporate the superseding basic agreement or supplemental agreement, as applicable. If the basic agreement has been terminated without being superseded, or has expired, the definitive contract which supersedes the letter contract shall incorporate the clauses required by statute, Executive order, or this chapter.

(c) *Content and form.* Basic agreements shall contain a set of "General Provisions." These general provisions shall include three groups of clauses. The first group, identified as "Section A," shall include all of the clauses made mandatory by statute, Executive order, and this chapter for use in negotiated research and development contracts. The second group, identified as "Section B," shall add clauses and/or modifications to the "Section A" clauses made mandatory by statute, Executive order, and this chapter for use in negotiated supply contracts. The third group, identified as "Section C", shall consist of clauses which may be made a part of each formal contractual document, depending upon their applicability to the particular procurement. The format set forth below may be adapted to fit specific circumstances.

BASIC AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND _____

This Agreement is entered into as of the _____ day of _____ 19__ between the United States of America, hereinafter called the "Government," represented by the Contracting Officer, _____ and _____, a corporation organized and existing under the laws of the State of _____, hereinafter called "Contractor."

The clauses and provisions of Sections A, B, and C hereinafter set forth have been agreed upon by the parties hereto for use in negotiated _____ type contracts between the parties, entered into on or after the date of this Agreement, and prior to its termination. It is further agreed that (i) the clauses and provisions set forth in Sections A and B are mandatory clauses and shall, by reference or attachment, be incorporated in every contract which makes reference to this Agreement, and (ii) the clauses and provisions set forth in Section C are to be incorporated in individual contracts only when applicable and agreed to by the parties.

This Agreement, including Sections A, B, and C hereof, may be amended only by mutual agreement of the parties, and the Agreement may be terminated in its entirety by either party upon thirty (30) days written notice to the other party, except that this Agreement may be terminated by the Government at any time if the parties fail to agree upon any deletion, amendment, or addition to this Agreement which is required by statute, Executive order, or the NASA procurement regulation. No deletion, modification, addition to, or termination of this Agreement shall affect any contracts heretofore entered into between the parties in which this Agreement or a portion thereof has been incorporated by reference.

This Agreement shall be reviewed, as a minimum, annually before the anniversary of its effective date, and revised to conform with all requirements of statutes, Executive orders, and the NASA procurement regulation. This revision shall be evidenced by an agreement modifying this Basic Agreement or by the issuance of a superseding Basic Agreement.

This Agreement shall not be referred to by the Contractor in bids submitted in response to invitations for bids nor become a part of any contract placed through the process of formal advertising.

In witness whereof, the parties hereto have executed this Agreement as of the day and year first above written:

UNITED STATES OF AMERICA
By _____
(Signature of Contracting Officer)
_____
(Typed or printed name)
_____
(Name of company)
By _____
(Signature of authorized individual)
_____
(Typed or printed name)
Title _____

(d) *Limitations.* (1) Basic agreements shall neither cite appropriations to be charged nor be used alone for the purpose of obligating funds.

(2) Basic agreements shall not in any manner provide for or imply any agreement on the part of the Government to place future orders or contracts with the contractor involved, nor shall they be used in any manner to restrict competition.

(e) The Director of Procurement, NASA Headquarters, is responsible for negotiation of all basic agreements. Procurement offices may not enter into basic agreements without the prior written authorization of the Director of Procurement.

(f) Where a procurement office is authorized to enter into a basic agreement with a particular contractor, an introductory paragraph to the basic agreement shall include the "Approval of Contract" clause set forth in § 18-7.104-51 with the word "contract" deleted from the title and text of the clause and the word "basic agreement" inserted in lieu thereof.

(g) Proposed basic agreements together with the contractor's comments shall be coordinated with all other field installation procurement offices and with Headquarters Contracts Division (Code DHC) for comments.

(h) Basic agreements submitted to the Director of Procurement for approval, shall include the following information:

(1) A memorandum of negotiation describing each deviation from the NASA Procurement Regulation as it appears in the basic agreement together with supporting data required by § 18-1.109-3 (a), (b), (d), and (e);

(2) A listing of all nonstandard clauses used, the genesis of such clauses, and the reasons for use in the basic agreement;

(3) A résumé of all salient features of the agreement which will facilitate the review and approval consideration, and

(4) Documentation of the coordination effected between the negotiator and the procurement offices of other NASA field installations.

§ 18-3.410-2 Basic ordering agreement.

(a) *Description.* A basic ordering agreement is not a contract. It is an agreement which is similar to a basic agreement (see § 18-3.410-1) except that it also includes a description, as specific as practicable, of the supplies to be furnished or services to be performed when ordered and a description of the method for determination of the prices, consistent with the contract types authorized by this part, to be paid to the contractor for such supplies of services. Either the specific terms and conditions of delivery or a description of the method for their determination shall be set forth in the basic ordering agreement. The basic ordering agreement shall list one or more installations which are authorized to issue orders under the agreement. Any installation so named may issue orders specifying the supplies or services required, which orders may be accepted by the contractor by whatever manner of acceptance is indicated in the basic ordering agreement. Each order will incorporate by reference the provisions of the basic ordering agreement.

(b) *Applicability.* The basic ordering agreement may be used as a means of expediting procurement where specific items, quantities, and prices are not known at the time of execution of the agreement but where past experience or future plans indicate that a substantial number of requirements for items or services of the type covered by the basic ordering agreement will result in procurements from the contractor during the term of the agreement. Under proper circumstances, use of the procedures under the agreement is advantageous and economical in ordering parts for equipment support since such procedures substantially shorten the administrative time required for placing such articles in a production status, thereby not only decreasing the amount of support inventory required to be carried but also decreasing the possibility that parts procured will become obsolete as a result of design changes in the equipment.

(c) *Limitations.* (1) Supplies or services may be ordered under a basic ordering agreement only if it is determined at the time the order is placed that it is impracticable to obtain competition by either formal advertising or negotiation for such supplies or services.

(2) The Government shall neither make any final commitment nor authorize any work by the contractor pursuant to an order under a basic ordering agreement until prices have been established, unless the order establishes a monetary limitation on the obligation of the Government and either—

(i) The order is subject to provisions contained in the basic ordering agreement which set forth adequate proce-

dures for arriving at prices as early in contract performance as practical, but in no event shall such procedures permit the price of the entire order to be established on a retroactive basis (however, incentive provisions consistent with this part are permitted); or

(ii) The need for the supplies or services is compelling and of unusual urgency, as when the Government would be seriously injured, financially or otherwise, if the supplies or services were not furnished by a certain date and when they could not be furnished by that date if the contractor is not allowed to proceed with work until prices have been established. The circumstances listed in § 18-3.202-2 are indicative of instances in which the contractor may be permitted to proceed with work prior to establishment of prices.

As a general rule, prices should be established prior to authorizing the contractor to begin work. However, where the contractor is allowed to begin work prior to pricing in accordance with this section, the contractor and the contracting officer shall proceed with pricing as soon as practicable. The basic ordering agreement shall provide that failure to reach agreement on price in such circumstances will constitute a dispute subject to the procedures of the "Disputes" clause.

(3) Each order issued under a basic ordering agreement shall be subject to such reviews, approvals, and determinations and findings (including those pertaining to types of contracts) specified in this chapter as would be applicable if the order were a contract entered into apart from the basic ordering agreement.

(4) Basic ordering agreements shall not be modified or superseded by an individual order issued thereunder except that:

(i) Individual orders issued under a basic ordering agreement must contain all clauses required by statutes or executive orders which have become effective after the making of the basic ordering agreement.

(ii) All cross references to the clauses which are made obsolete by the clauses referred to in subparagraph (i) shall be appropriately modified to correct the cross references.

(iii) Individual orders must contain all clauses promulgated by regulations after the effective date of the basic ordering agreement which the Director of Procurement has directed to be included in all existing contracts by amendment at the time of promulgation of such clauses, or has specifically directed to be included in all existing basic ordering agreements by amendment.

(iv) New Technology clause may be included in an order issued under a basic ordering agreement when the contractor requests its inclusion.

Basic ordering agreements shall be reviewed at least annually, before the anniversary of their effective dates, and revised to conform with the current requirements of this chapter. Modifications shall not have retroactive effect.

(5) The contracting officer issuing an order under a basic ordering agreement shall be responsible for assuring compliance with the provisions of paragraph (c) (1), (2), (3), and (4) of this section.

§ 18-3.450 Incentive contracts.

(a) *Policy.* It is NASA policy to make judicious and effective use of incentive contracts of both the cost and the performance type. Particular care and judgment are required in choosing procurements appropriate for incentive contracts; and in framing and negotiating the specific incentive terms. The procedures set forth in this § 18-3.450 are established to:

(1) Effectively seek out procurements that lend themselves to the use of contract incentive provisions;

(2) Avoid the use of incentive provisions in situations where they are unsuited and where their use could have adverse results; and

(3) Insure, in connection with contracts in which incentive provisions are to be included, that the skills necessary to draft and negotiate the appropriate incentive provisions are available to NASA procurement offices.

(b) *Responsibilities of the director of procurement.* In order to implement the policy objectives of paragraph (a) of this section for use of incentive contracts, the Director of Procurement will perform the following functions:

(1) Review, with Headquarters Program Offices and with NASA field installations, as necessary, forthcoming procurements in order to select, well in advance, those procurements which appear to lend themselves to the inclusion of incentive features;

(2) Provide or arrange for guidance and technical assistance to procurement offices in connection with the drafting and negotiation of incentive provisions in those contracts approved in advance by the Director of Procurement, for application of incentive provisions;

(3) Review and make recommendations to field installations with regard to proposals made by them as to the use of incentive provisions in forthcoming contracts;

(4) Appraise the capability within NASA to select, negotiate, and administer incentive contracting and assist in making required training arrangements;

(5) Study, in conjunction with the Director of Financial Management, Office of Administration, and the Director, Management Information Systems Division, NASA Headquarters, the linking of incentive provisions to PERT-Cost;

(6) Maintain close contact with the Department of Defense in the incentives field and keep informed of other studies, literature, or developments within the Government and industry bearing on incentive contracting;

(7) Develop more precise policy guidelines governing use of incentive provisions; and

(8) Report quarterly to the Deputy Administrator regarding the progress being made within NASA to utilize incentive provisions.

In carrying out the functions specified in this paragraph (b), the Director of Procurement will utilize the assistance of the Headquarters Program Offices, the Office of the General Counsel, and the Audit Division.

(c) *Advance approval of incentives.* (1) The advance approval of the cognizant Headquarters program director will be obtained on the NASA prenegotiation position for procurement actions which exceed the monetary limitations in § 18-50.105(b)(4) and which contemplate the use of an incentive or award fee type of contract, prior to the discussion of incentive arrangements in negotiations, and in addition to any required approval of a procurement plan. The request for advance approval will be submitted immediately upon the establishment of a tentative NASA prenegotiation position, which may occur prior to the issuance of requests for proposals or which may result from the review and evaluation of offerors' responses to requests for proposals. The following information will be included in a prenegotiation memorandum to be submitted in support of each request for approval of a prenegotiation position:

(i) Brief description of the procurement action.

(ii) Proposed contractor(s).

(iii) Procurement objectives which will be aided by the planned incentives.

(iv) Type of contract contemplated and rationale supporting selection of the contract type;

(v) Parameters considered suitable for application of incentives (performance, schedule, cost, multiple or combinations of these). Discuss in detail the objectives of the proposed incentive arrangement, and the extent of any reliance on extra-contractual influences. Be specific, avoid vague generalization such as "improvement in performance, management, quality, delivery, at lowest possible cost" or "motivate the contractor to improve his quality, timeliness and cost consciousness."

(vi) Estimated target cost (minimum and maximum position). Discuss the extent and evaluation of any significant variance between the NASA estimated cost objective and the contractor's proposed estimated cost. Describe the audit and technical input utilized in development of the estimated cost. Discuss the range of confidence in the estimated target cost, i.e., the most pessimistic and the most optimistic estimates of cost expectancy, discuss in detail the bases for the establishment of the range of confidence in target cost and pricing techniques used to validate the cost estimates or range of incentive effectivesness.

(vii) Target, maximum, and minimum fee objective (if CPIF); target profit and ceiling price (if FPI); base and maximum fee (if CPAF). Discuss the bases for the establishment of fees or profit (target, maximum, minimum, base, and award fee as appropriate) using the factors contained in § 18-3.808.

(viii) Performance incentive: Goals, minimum acceptable performance; target performance; method of measure-

ment or test; furnish a value analysis of increments of increase or decrease in performance accomplishment, explain the base for establishment of goals and targets.

(ix) Schedule incentive: Discuss the planned delivery schedules or milestones in terms of the earliest desirable target and the latest acceptable dates; furnish a value analysis of increments of increase and decrease in the schedule accomplishment in relation to the cost incentive. Where milestones are used, give the reasons for their selection.

(x) Cost incentive: Sharing formula, fee swing (minimum and maximum position).

(xi) Award fee: Suggested criteria, rating, relative weighting evaluation award periods, method planned for fee payments and the designation of the Fee Determining Official.

(xii) Multiple incentives: Relative weighting; trade-offs; dependencies, i.e., the extent to which the incidence of the several individual incentives depends upon the attainment to some degree of other targets; overlap, i.e., arrangements by which the effect of one or more of the incentives may be extended beyond the effectiveness range implied by the relative weight assigned.

(xiii) If the action is a conversion, discuss the treatment of existing cost overrun or underrun and the effective point or date of conversion. Also, discuss the method used in determining the contractor fee earned, if any, as of conversion date in relation to the extent of performance completed under the prior phase. Discuss why a conversion is required and furnish a projection at completion of cost and fee if the present contractual arrangement is allowed to remain. Discuss the details of performance, cost, and schedule relationships as determined appropriate on a case-by-case basis describing the historical trends and rationale for projections of each factor.

(xiv) Graphic illustrations of incentive arrangement, including graphics of the total contract and details of cost, performance, schedule or award fee relationships.

(xv) If the action is an extension or renewal (e.g., by exercise of an option) of a contract which contains an incentive arrangement or if the contractor has previously performed under an incentive contract, furnish details of the results of previous operations under incentive. If the previous operations were under an award fee incentive arrangement, furnish a summary of the periodic evaluation comments of the installation's Incentive Review Board or comparable body.

(xvi) If the nature of the procurement indicates that significant "changes clause" activity may be anticipated, an explanation of the following is required: the special provisions that will be considered to provide a formulized adjustment for major changes that can be predicted; the efforts which have been made to construct the schedule and performance incentive features so that they will remain effective even with the changes or certain classes of changes, and the methods, procedures, and capabilities that will be used to make timely equitable adjustments in consonance with keeping the contractor motivated at least in accordance with the original incentive features.

Where the planned fee in the prenegotiation position exceeds the limitations set forth in § 18–3.450(f), justification for such fee will be set forth in separate correspondence for review and approval by the Director of Procurement. The advance approval of an incentive arrangement shall not be construed as requiring the preparation of an incentive contract, if in the course of negotiations the exercise of good business judgment requires a different contractual arrangement. However, the decision, that an incentive arrangement previously approved will not be used, will be coordinated with the approving authority prior to the commitment of NASA to a position in negotiations. If during the course of negotiations the contracting officer finds that the incentive plan as approved by the cognizant Headquarters program director cannot be negotiated or for other reasons requires changes, approval for such changes will be obtained prior to the commitment of NASA to a position in negotiations.

(2) Every procurement plan shall contain a discussion of the rationale for the proposed selection of the contract type. Approval of a procurement plan does not constitute approval of the prenegotiation position required by § 18–3.450(c)(1).

(3) The Director of Procurement will make available such assistance as may be necessary in support of field procurement office capability to draft, negotiate and administer the incentive provisions of new procurement actions or major amendments to existing incentive structures.

(4) 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, advanced Headquarters approval of the proposed incentive structure will be required in those cases where (i) the nature or scope of the effort 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, advanced Headquarters approval is not required.

(5) The prenegotiation memorandum will be retained as part of the official contract file. Also, significant work papers supporting the development of the pricing objective will be retained as part of the official contract file documentations.

(d) *Technical assistance.* The selection, drafting, negotiation, and administration of contract incentives require a team effort in which substantial technical assistance must be provided to procurement and legal personnel. The contracting officer shall obtain such assistance from technical personnel in his organization and shall be satisfied that the project director or comparable official is in agreement with the incentive approach being followed in any given case. Any differences of opinion shall be brought to the attention of the Director of Procurement.

(e) *Contract clauses.* (1) § 18–7.108 sets forth a standard incentive price revision clause for fixed-price incentive contracts with cost incentives.

(2) The following clause normally will be included in cost-type-incentive-fee contracts and will be preceded by the "Alterations in Contract" clause (§ 18–7.105–1). However, the clause may be modified by the contracting officer to meet the requirements of a particular procurement:

MEANING OF TERMS (DECEMBER 1964)

For the purpose of this cost-plus-incentive-fee contract, certain terms in this contract have the following meanings:

(a) "Estimated Cost" means "target cost" except in the following instances:

(1) Where the term first appears in the second sentence of the clause of this contract entitled "Changes."

(2) Wherever it appears in the clause of this contract entitled "Limitation of Cost."

(3) Wherever it appears in the clause of this contract entitled "Estimated Cost and Fixed-Fee."

(4) If this contract is incrementally funded, wherever the term appears in the clause "Limitation of Government's Obligation."

(5) If the "Government Property" clause is used, wherever the term appears.

(b) "Fixed-Fee" means "Fee."

(c) "Allowable Cost, Fixed-Fee, and Payment" means "Allowable Cost, Incentive-Fee, and Payment."

Where a contract which is not solely of the cost-plus-incentive-fee type (e.g., one which also provides for a fixed-fee), the first sentence of the clause shall be changed to read as follows:

For the purpose of the cost-plus-incentive-fee portions of this contract, certain terms in this contract have the following meanings:

(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 (1) 15% of the target cost in contracts for experimental, developmental, or research work, or (2) 10% 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 pre-negotiation 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.

Subpart 18-3.5—Solicitation of Proposals and Quotations

§ 18-3.500 Scope of subpart.

This subpart applies only to negotiated procurements in excess of $2,500 (see Subpart 18-3.6 for small purchases).

§ 18-3.501 Preparation of request for proposals or request for quotations.

(a) Forms used for requesting proposals or quotations on negotiated procurements shall be in accordance with Part 18-16 (see also § 18-1.309).

(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."

(6) Requirement for stipulation of a time within which the Government may accept the proposal;

(7) Number of pages and list of enclosures;

(8) Item description or statement of work;

(9) Type of contract contemplated (see § 18-3.803);

(10) Requirement for statement on contingent fees (see § 18-1.506(c));

(11) Statement on Buy American Act (§ 18-6.104-2) and requirement for Buy American Certificate (§ 18-6.104-3);

(12) Requirement that the offeror state whether he operates as an individual, partnership, or corporation (showing State where incorporated);

(13) Statement that the selected contractor will or will not require access to classified information (see NASA Management Instruction 1650.1, "Industrial Security Policies and Procedures");

(14) Time of delivery or performance requirements (see § 18-1.305);

(15) Requirement that the proposal or quotation state the intended place of performance, including the street address, and the names and addresses of owner and operator of producing facilities, if other than offeror, when it is reasonably expected that such facilities will be used in the performance of the contract;

(16) Place and method of delivery;

(17) Provisions to be made for reliability assurance (see § 18-1.5105);

(18) A description of the quality assurance system to be used (see § 18-1.5003);

(19) Place, method, and conditions of inspection, test, and acceptance (see § 18-14.101 et seq.);

(20) Identification of the special factors, such as Government cost or other expenditures, including reliability and maintainability requirements, which will be considered in evaluating the proposals, together with an indication of the relative importance to be given these factors, where applicable (see § 18-3.804-2);

(21) Method and format of price quotation desired (fixed-price or cost type, if known at the time), including a reference to the necessity for cost or price breakdown (see § 18-3.501(c)(2)(ix));

(22) Description of information required to support proposed prices; e.g., subcontract structure, purchasing system, royalty, and cost and price information (see Subparts 18-3.8, 18-3.9, 18-9.1, and Part 18-23);

(23) Information as to requirements for Certificate of Current Cost or Pricing Data (see § 18-3.807-3);

(24) Statement that special instructions for waived inventions will not be applied, or requirement for statement as to waived inventions (see §§ 18-9.101-3(a) or 18-9.101-3(e));

(25) Notice to offerors of the Government's desires as to the use of incentive considered applicable, objectives of the incentive performance goals, schedule milestones, critical delivery parameters, and similar information intended to elicit contractor response to the procurement objectives but without premature disclosures prejudicial to the Government's pre-negotiation position (see § 18-3.450);

(26) Notice to offerors of the possibility that award may be made without discussion of proposals (see § 18-3.102);

(27) The Certification of Independent Price Determination required by § 18-1.115;

(28) Contract clauses required by law or this chapter, copies of applicable standard or NASA forms which will form a part of the contract, and any report forms or handbooks required to be used or followed in complying with the terms of the contract;

(29) Directions for obtaining copies of any documents, such as plans, drawings, and specifications, which have been incorporated by reference (see § 18-1.1201);

(30) Instructions for disposition of drawings and specifications supplied with the request for proposals or request for quotations;

(31) Statement of information required to facilitate evaluation of technical and financial capabilities and a statement covering special technical capabilities which offerors must possess (see § 18-3.804);

(32) Instruction reflecting desirability of a separation between the contractor's "Business Management Quotation" and "Technical Quotation." For evaluation purposes separate quotations, where time permits, should be received; therefore, the format should be flexible enough to permit separate requirements (see § 18-3.802-4(a));

(33) List of any Government-furnished property (showing location and condition) including Government-owned tooling, which will be furnished for the performance of the contract, and any special provisions relating thereto;

(34) Requirement that information be furnished with respect to any Government-owned facilities, industrial equipment, or special tooling intended to be used in the performance of the contract, the value thereof, identification of the Government contract under which acquired, rental provisions, and other relevant information;

(35) Requirement that additional facilities to be provided by the Government be described and identified by category, such as "Land," "Buildings," "Machinery," "Equipment," etc., (see § 18-13.5105 for format);

(36) Requirement that additional special test equipment to be provided by the Government be described and its intended use, estimated cost, and proposed location be shown;

(37) Clear statement of option provisions (see Subpart 18-1.15 and § 18-12.1050);

(38) Requirement for the contractor to furnish data, when the requirement for data is known in advance of making the contract and delivery of data is definitely to be required in the performance of the contract (see Subpart 18-9.2

for detailed instructions and required clauses; see also § 18–3.852–3);

(39) Special provisions necessary for the particular procurement, relating to such matters as patents, data, copyrights (see Part 18–9); liquidated damages (see § 18–1.310); progress payments (see § 18–7.104–35);

(40) Requirement for information to be furnished on management engineering and consultant services specified in § 18–4.5205–2;

(41) When the NASA PERT System is to be applicable to the procurement (see § 18–7.204–55), inclusion of the following provision:

NASA PERT SYSTEM (APRIL 1962)

A proposed time schedule for performance of the work should be set out by phases or parts of the project, and show interrelationships among phases. This proposed schedule should be supported by an accompanying PERT network, prepared in general conformity with the instructions of the NASA PERT Handbook.

PROCUREMENT BY NEGOTIATION

Prospective contractors are advised that the successful contractor will be required to implement the NASA PERT System and report program progress biweekly.

(42) A statement as follows:

UNNECESSARILY ELABORATE CONTRACTOR'S PROPOSALS (NOVEMBER 1965)

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective proposal are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate art work, expensive paper, and bindings and expensive visual or other presentation aids are neither necessary nor desired.

The above statement shall be appropriately modified where included in a request for quotations;

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

(44) Requirement for submission of a proposed "Make or Buy" program (see Subpart 18–3.9);

(45) In accordance with the policy of § 18–1.304–2(d), the following statement and legend shall be included in all requests for proposals:

The proposal submitted in response to this request may contain technical data which the offeror, or his subcontractor offeror, does not want used or disclosed for any purpose other than evaluation of the proposal. The use and disclosure of any such technical data may be so restricted, *provided* the offeror marks the cover sheet of the proposal with the following legend, specifying the pages of the proposal which are to be restricted in accordance with the conditions of the legend:

Technical data contained in pages _____ of this proposal shall not be used or disclosed, except for evaluation purposes, provided that if a contract is awarded to this submitter as a result of or in connection with the submission of this proposal, the Government shall have the right to use or disclose this technical data to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose any technical data obtained from another source without restriction. The Government assumes no liability for disclosure or use of unmarked data and may use or disclose the data for any purpose. (October 1969)

(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.

(47) Requirement for furnishing the equal opportunity representation (see § 18–12.802–4);

(48) If leases are involved, the facilities nondiscrimination paragraph set forth in § 18–1.350–4;

(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.

(50) [Reserved]

(51) Statement as to requirement for jewel bearings (see § 18–1.315);

(52) Requirements set forth in § 18–1.351, if the procurement includes the furnishing of electro-sensitive initiating devices (squibs) or any other item or component designated in the procurement request as a potentially hazardous item;

(53) Requirement for representation as to small business and statement whether or not the offeror has previously been denied a Small Business Certificate (see § 18–1.903);

(54) Instructions that offeror promptly acknowledge receipt of the request for proposal or request for quotation and advise whether he intends to submit a proposal or offer;

(55) Statement that this request for proposal or request for quotation does not commit the Government to award a contract, the Government reserving the right to reject any or all proposals; or to negotiate separately with any source considered qualified; and that the contracting officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with the proposed procurement (see § 18–3.801);

(56) Statement that this request for proposal or request for quotation does not commit the Government to pay any costs incurred in the submission of the quotation or in making necessary studies or designs for the preparation thereof, nor to procure or contract for services or supplies. Further, no costs may be incurred in anticipation of a contract with the exception that any such costs incurred at the proposer's risk may later be charged to any resulting contract to the extent that they would have been allowable if incurred after the date of the contract and to the extent authorized by the contracting officer (see § 18–15.205–30);

(57) The following provision shall be included in all requests for proposals to be evaluated pursuant to NASA Source Evaluation Board procedures, when award of a cost-reimbursement type contract (with or without incentive arrangements) is contemplated:

Once the prospective contractor has been selected, the estimated costs submitted with its proposal shall not be subject to increase, except for changes in certified cost or pricing data submitted with the proposal, unless changes are made in the requirements of the request for proposals. Furthermore, increases shall be considered only in regard to those requirements that are actually affected by the changes (whether the changes result in an increase or decrease in the requirements and whether they are initiated by the Government or the offeror), and then only to the extent that such changes are specifically identified and justified. Negotiation of such increases will be conducted separately, and not as part of a combined overall negotiation of the estimated cost and fee of the proposed contract. (February 1967)

(58) A statement requesting prospective offerors to list the names and telephone numbers of persons authorized to conduct negotiations;

(59) Requirements for performance and payment bonds (see Subpart 18–10.1).

(60) Requests for proposals and requests for quotations for contracts in excess of $1 million, where the conduct of research, experimental, design, engineering, or developmental work is contemplated, and in such contracts of lesser dollar value if deemed appropriate by the contracting officer and the technology utilization officer of the installation concerned, shall contain the following requirement:

PLAN FOR NEW TECHNOLOGY REPORTING (JUNE 1966)

Each offeror shall submit with his proposal a plan which he proposes to use in carrying out the provisions of the "New Technology" clause of the contracts. The plan shall describe:

(a) The size and nature of the scientific and technological efforts in which inventions, discoveries, improvements and innovations may be expected. Include the scientific disciplines involved in these efforts, and summarize the technical problems to be solved which you feel are most likely to generate new technology.

(b) The emphasis given to new technology reporting by the top levels of management of the organization, and the specific means (e.g., company directives, newsletters, briefings) to be used to communicate such emphasis to the organization.

(c) The organizational placement and qualifications of (i) the individual(s) assigned as Company Technology Utilization/New Technology Representative(s), and their staffs, and of (ii) any others having substantial and specific responsibilities for new technology reporting. Describe all significant organizational relationships.

(d) Plans for both the initial and the continuing indoctrination of senior project personnel, supervision, and of other appropriate technical personnel in the benefits, responsibilities and details of new technology reporting.

(e) The plans for conducting the "frequent periodic reviews" required by the "New Technology" Clause. Include plans for supplementing existing Company invention reporting system(s) to insure reporting of that "new technology," which does not constitute invention (any new or improved products, devices, materials, processes, methods, scientific or technical computer programs, techniques, compositions, systems, machines, apparatuses, articles, fixtures, and tools, are reportable, whether or not they constitute invention).

(f) The details of actual documentation of reportable items, and the methods by which they will be reported. Include plans for (i) submission of sufficient detail to permit evaluation of the novelty and potential usefulness of the reportable items, (ii) avoiding unnecessary redocumentation by inclusion of existing documents or abstracts therefrom.

(g) Level of effort anticipated. (Quarterly/monthly rates and estimated disclosure output rates are desirable.)

(61) [Reserved]

(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) [Reserved]

(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.

(78) If it is expected that the procurement will result in a fixed-price contract not in excess of $100,000 for which cost or pricing data will not be obtained, the price representation set forth in § 18–3.604–3(d) except when adequate price competition as defined in §18–3.807–3(b)(1) is anticipated.

(c) In addition to the information specified in § 18–3.501(b), for contracts in excess of $1 million the request for proposal should contain requirements for the following information to be furnished by the offeror in his proposal, if applicable. This information may be required in the request for proposal for inclusion in contracts of lesser dollar value if deemed appropriate.

(1) *Technical proposal.* (i) Method by which offeror proposes to solve the technical problems of the project; descriptions, sketches, and plans of attack in sufficient detail to permit engineering evaluation of the proposal;

(ii) Specification of exceptions to proposed technical requirements;

(iii) Statement of background experience in fields relating to the procurement;

(iv) Names and résumés of experience of key technical personnel who will be employed on the project and extent to which each will participate in the performance of the project; an organization chart of the segment of offeror's organization which will be directly assigned to the project, listing names and job categories;

(v) Description and location of the company-owned research, test and production equipment and facilities which will be available for use on the project; separate list of any additional facilities or equipment required in the performance of the work; separate list of existing Government facilities available to the contractor and required for use on the project;

(vi) Hourly time estimates (without pricing information) by labor class for each phase or segment of the project; extent to which these estimates are based on the use of employees presently on the offeror's payrolls who will be available for the work as required; indication of number and types of personnel necessary to be hired and arrangements made to obtain them.

(2) *Business management proposal.* (i) Organization proposed for carrying out the project, including organization charts showing interrelationship of business management, technical management and subcontract management; indication of all levels of operation and management, from lower levels through intermediate management to top level management;

(ii) Résumé of experience of all key personnel who will conduct the managerial affairs of the project;

(iii) Contractual procedures proposed for the project to effect administrative and engineering changes, describing differences from existing procedures;

(iv) Extent to which offeror has invested corporate funds in research and development work in the project area or directly related areas and plans for future expenditures for such work; extent, if any, to which offeror is willing to participate in the cost of the project (see § 18–3.405–3);

(v) Statement as to capacity at which company-owned research, test, and production equipment and facilities required in the performance of the work are currently working; extent to which such facilities and equipment could handle the additional workload imposed by this

project; cost of any additional facilities or equipment required in the performance of the work with information as to whether such additional facilities or equipment will be contractor-furnished or Government-furnished; statement of value of existing Government facilities available to offeror and required for use on the project showing the Government agencies and facilities contracts involved;

(vi) Statement of past performance and experience including:

(*a*) List of Government contracts in excess of $1 million received in past 3 years or currently in negotiation involving mainly research and development work, showing each contract number, Government agency placing the contract, type of contract, and brief description of the work;

(*b*) For each cost-type contract, specify amounts of cost overruns or underruns, reasons therefor, and percentage of fixed fee;

(*c*) For each contract, give record of contract completion as against completion date anticipated at time of entering into contract, giving explanations for completion delays;

(*d*) Identify and explain any terminations for default or Government convenience;

(vii) Balance sheet for offeror's last fiscal year, accompanied by profit and loss statement;

(viii) Detailed cost or price proposal, furnished as a separate, detachable element of the business management proposal;

(ix) In soliciting proposals for support services requiring price quotations for a cost reimbursement type contract the request for proposals should set forth available data respecting the quantity and quality of supplies and services required. These data should be set forth in terms of man-hours of identifiable categories of labor, including experience and related qualifications, and in terms of quantities of supplies, all exclusive of costs. To be responsive, a proposer must submit a detailed cost or price proposal based on the effort described or estimated in the request for proposals. If the proposer feels that the work can be accomplished more efficiently with organizational plans, staffing, management, or equipment other than those indicated in the request for proposal, he may also submit an alternate proposal, supported by a detailed cost or price proposal;

(x) Statement as to the nature and effectiveness of the prospective contractor's cost reduction program (see § 18–3.102(b)(20)).

(d) Requests for proposals which are subject to the review and approval of a Source Evaluation Board should be developed in accordance with the above paragraphs and the requirements of paragraph 512 of the NASA Source Evaluation Board Manual (NPC 402).

(e) Request for proposals for procurements which are subject to title VI of the Civil Rights Act of 1964 (Public Law 88–352; 42 U.S.C. 2000d–1), shall include a requirement for obtaining an "Assurance of Compliance" (NASA Form 1206) in accordance with the provisions of § 18–1.355.

Subpart 18–3.6—Small Purchases

§ 18–3.600 Scope of subpart.

This subpart sets forth, simplified procedures for the procurement of (a) supplies and nonpersonal services the aggregate amount of which does not exceed $2,500 and (b) construction, the aggregate amount of which does not exceed $2,000, both of which are referred to in this subpart as "small purchases." It also applies to certain other supplies and services. Where the procurement is classified or requires specific contract provision relating to technical inspection or test, specification changes, Government-furnished property, insurance, patents, technical data, price adjustments, or the like, such procurements, even though they might otherwise be classified as small purchases on the basis of their dollar amounts, shall be effected by the use of a negotiated two-party formal contract. When the total cost of services to repair Government equipment does not exceed $2,500, such services may be obtained by purchase orders or other appropriate small purchase method, regardless of the value of the Government equipment being repaired (see § 18–3.608–2). Procurements of supplies and services or construction initially estimated to exceed $2,500 or $2,000, respectively, shall not be made by the small purchase method, even though resulting awards do not exceed such amounts.

§ 18–3.601 Purpose.

The objective of the simplified purchase methods prescribed herein is to reduce administrative costs.

§ 18–3.602 Definitions.

As used in this subpart the following terms have the meanings set forth below.

(a) Bulk funding concept means a system whereby a contracting officer receives authorization from a financial management or fiscal officer to obligate funds on purchase documents against a specified lump sum of funds reserved at the appropriation level for the purpose for a specified period of time rather than obtaining individual obligational authority on each purchase document. Bulk funding or other special procedures for commiting and obligating funds and approved resources authorizations may be established in accordance with Financial Management Manual 9030–5e and 9040–4b.

(b) Mail indicia means the official printed markings substituted for stamps, i.e., "Postage and Fees Paid" and NASA identification. This includes such markings on envelopes, cards, labels, wrappers, or tags.

(c) Local delivery means the movement of supplies or commodities wholly within a recognized metropolitan area in which both the point of pickup and the point of delivery are located.

§ 18–3.603 Policy.

(a) All purchases covered by this subpart shall be accomplished by negotiation and shall cite the appropriate subparagraph of 10 U.S.C. 2304(a) in accordance with Subpart 18–3.2. Such purchases shall be made only when requirements cannot be satisfied by procurement in accordance with Part 18–5. The contracting officer shall use the purchase method covered by this Subpart 18–3.6 which he determines to be most suitable to the immediate requirement and most efficient and economical. Simplified procedures may be used in procurements from Government established sources, if authorized by the basic contract or concurred in by the source. These procedures shall not be used for inserting paid advertisements in newspapers or magazines (see § 18–2.203–3(b)).

(b) Requirements aggregating more than $2,500 shall not be broken down into several purchases which are less than $2,500 merely for the purpose of permitting negotiation under the small purchase procedures authorized by this Subpart 18–3.6. Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation, and the award made on "all or none" basis. In such cases, suppliers shall be advised of this award procedure when quotations are requested.

(c) The "bulk funding" concept shall be used to the maximum extent practicable to reduce processing delays, double handling, and documentation. Bulk funding is particularly appropriate when numerous purchases using the same type of funds are to be made during a given period.

(d) Installation transportation facilities may be used for delivery from local suppliers to the installation only after consideration of the following methods:

(1) Supplier delivery;
(2) Common carrier;
(3) Parcel post; and
(4) Mail indicia.

(e) Inspection procedures for small purchases shall be in accordance with § 18–14.106.

(f) Data collected or compiled during the course of small purchase transactions are for administrative and guidance value in making the purchase and issuing the appropriate purchase document. The retention of such data in the purchase files for use in subsequent reference, or as administratively required for management review, should be limited in time and quantity to the minimum necessary for such use.

§ 18–3.604 Competition and price representation in small purchases.

§ 18–3.604–1 Competition in purchases not in excess of $250.

Small purchases not exceeding $250 may be accomplished without securing competitive quotations if the prices are considered to be reasonable. Such purchases shall be distributed equitably among qualified suppliers. When prac-

tical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order.

§ 18–3.604–2 Competition in purchases in excess of $250.

(a) The procedures in paragraphs (b), (c), and (d) of this section apply to purchases in excess of $250 made pursuant to this Subpart 18–3.6.

(b) Solicitation of quotations from a reasonable number of qualified sources of supply shall be made to assure that the procurement is to the advantage of the Government, price and other factors considered, including the administrative cost of the purchase. Generally, solicitation shall be made of at least three suppliers and, to the maximum extent possible, shall be restricted to the local trade area of either the purchasing or the receiving activity. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations. Quotations should generally be solicited orally. Written solicitation should be used when (1) the suppliers are located outside the local area, (2) special specifications are involved, (3) a large number of line items are included in a single proposed procurement, or (4) obtaining oral quotations is not considered economical or possible.

(c) In the absence of adequate price competition, reasonableness of a proposed price may be based on a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, or by other appropriate method. If this information is not available, reasonableness of price may be based on a comparison with similar items in a related industry or the contracting officer's personal knowledge of the item being procured. Written records of solicitation may be limited to notes or abstracts to show the vendor or vendors contacted, prices, delivery, and other informal historical data. However, if only one response is received, or the price variance between multiple responses reflects lack of true competition, an additional statement in writing shall be included in the contract file setting forth the basis of the determination of fair and reasonable price. In any case, the contracting officer should gain as much knowledge as practicable of the physical and material characteristics and intended use of the item to be purchased. When only one source is solicited, a justification, in the form prescribed by § 18–3.802–3(d)(1), must be made a part of the file to explain the absence of competition, except for procurement of utility services available only from one source or of educational services from nonprofit institutions. Notification to unsuccessful suppliers shall be given only if requested.

(d) Occasionally an item can be obtained only from a supplier who quotes a minimum order price or quantity, which either unreasonably exceeds stated quantity requirements, or results in an unreasonable price for the quantities required. If practicable before placing the order, the requiring activity should be informed in such cases of all facts regarding the quotation and requested to confirm or alter its requirement for the item or items under consideration. The file shall be documented to support the final action taken.

§ 18–3.604–3 Price representation.

(a) Except when adequate price competition as defined in § 18–3.807–1(b)(1) is anticipated, the policy and procedures in (b), (c), (d), and (e) of this section apply to small purchases other than those using imprest funds or Standard Form 44. The price representation in paragraph (d) of this section shall be set forth in the Schedule of blanket purchase agreements (§ 18–3.605) so as to become a part of their Terms and Conditions.

(b) Written solicitations for small purchases shall include the price representation in paragraph (d) of this section. The representation shall be inserted in a prominent place in the Schedule of the solicitation.

(c) When quotations for small purchases are solicited orally, the contracting officer shall obtain from the contractor the information included in the representation in paragraph (d) of this section and check the appropriate block of the representation and attach it to the purchase order.

(d) Representation form:

PRICE REPRESENTATION (FEBRUARY 1969)

The Contractor represents as part of his quotation that: (Check applicable box. If more than one box is applicable, identify line items to which each box applies.)

(1) ☐ The items set forth herein are catalog priced items and the prices quoted herein are not in excess of the catalog price reduced by any standard discount applicable to similar sales.

(2) ☐ The items set forth herein are not catalog priced items, but do have an established price in an open market having purchasers besides the Government; and the prices quoted herein are not in excess of this established market price.

(3) ☐ The items set forth herein are catalog priced items or have an established market price, but the prices quoted herein are in excess of such price because_____

_____

(4) ☐ Other price representation (if none of the above is applicable, indicate the basis for establishing the price and its relationship to prices charged other customers):

_____

_____

CAUTION: False statements may subject the contractor to penalties provided by statute and regulation.

(e) If the third or fourth block is checked or if a price representation cannot be obtained, the purchase file shall contain a brief notation supporting reasonableness of price, e.g., expedited delivery, special packaging, adequate price competition, price history, or prices of comparable items.

§ 18–3.605 Blanket purchase agreement (BPA).

§ 18–3.605–1 General.

A blanket purchase agreement is a simplified method of filling anticipated repetitive needs for small quantities of supplies or services by establishing "charge accounts" with qualified sources of supply. Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.

§ 18–3.605–2 Limitation on use.

Blanket purchase agreements may be used only within the following limitations:

(a) No single call issued against a blanket purchase agreement may exceed $2,500, and

(b) The maximum period of time covered by the agreement shall not exceed 1 year.

§ 18–3.605–3 Establishment of blanket purchase agreements.

(a) *Alternate sources.* To the extent practicable, blanket purchase agreements for items of the same type should be placed concurrently with more than one supplier. All competitive sources should be given an equal opportunity to furnish supplies or services under such agreements. However, if the total number of existing BPA's is large enough to preclude the economic solicitation of each potential source, at least three sources (§ 18–3.604–2) will be solicited on a controlled rotational plan.

(b) *Form.* Blanket purchase agreements shall be prepared and issued on Standard Form 147, or NASA Form 1379 (Order for Supplies or Services). The "Terms and Conditions of Purchase Order" shall be at least those on the reverse of the Standard Form 147. Other applicable provisions of the BPA will be set forth on Standard Form 36 or NASA Form 1379A (Continuation Sheet) or on a blank sheet of paper, including the following:

(1) The Contract Work Hours Standards Act—Overtime Compensation clause in § 18–12.303 shall be added unless it is reasonably anticipated that the aggregate of the total dollar amounts of orders to be placed thereunder will be $2,500 or less;

(2) Where the agreement is for the intended purchase of services covered by the Service Contract Act of 1965, the clause in § 18–12.1104–1 shall be made a part of the General Provisions and the procedures in § 18–12.1105–2 complied with, unless it is reasonably anticipated that the aggregate of the total dollar amounts of orders to be placed thereunder will be $2,500 or less in which event the clause in § 18–12.1104–2 shall be made a part of the General Provisions; and

(3) Where the agreement is for the intended purchase of supplies, the Walsh-Healey Public Contracts Act clause in § 18–12.604 shall be added, unless the agreement limits the aggregate

total of orders to be placed thereunder to $10,000.

(c) *Numbering.* Enter the procurement instrument identification number as prescribed in Subpart 18–50.3.

(d) *Accounting data.* Blanket purchase agreements need not cite any accounting data so that purchases utilizing different appropriation data may be made under the same agreement.

(e) *Negotiation authority.* The Schedule of each agreement shall be annotated as follows:

The issuance of individual requests against this blanket purchase agreement will be made under the authority of 10 U.S.C. 2304(a)(3).

This annotation shall not be duplicated on forms used to document individual calls, although the specific authority for the call may be cited therein.

(f) *Terms and conditions.* Blanket purchase agreements shall contain the following provisions:

(1) *Description of agreement.* A statement that the supplier shall furnish supplies or services, described therein in general terms, if and when requested by the contracting officer or his authorized representative during a specified period and within a stipulated aggregate amount, if any. Blanket purchase agreements may be limited to specific items or commodity groups or the scope of the agreement may encompass all items that the supplier is in a position to furnish.

(2) *Extent of obligation.* A statement that the Government is obligated only to the extent of authorized calls actually placed against the blanket purchase agreement.

(3) *Price representation.* The price representation format set forth in § 18–3.604–3(b) and a requirement that a completed price representation be submitted with each invoice relating to delivery against the call placed.

(4) *Call limitation.* A statement that no individual call under the agreement shall exceed $2,500.

(5) *Notice of individuals authorized to place calls and dollar limitations.* A provision that a list of names of individuals authorized to place calls under the agreement, identified by organizational component, and the dollar limitation per call for each individual shall be furnished the supplier by the contracting officer.

(6) *Delivery tickets.* A requirement that all shipments under the agreement shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information—

(i) Name of supplier;

(ii) Blanket purchase agreement number;

(iii) Date of call;

(iv) Call number;

(v) Itemized list of supplies or services furnished;

(vi) Quantity, unit price, and extension of each item less applicable discounts; and

(vii) Date of delivery or shipment.

(7) *Invoices.* One of the following statements:

(i) A summary invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipted copies of the delivery tickets; or

(ii) An itemized invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever first occurs, for all deliveries made during a billing period and for which payment has not been received. Such invoices need not be supported by copies of delivery tickets; or

(iii) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated: *Provided,* That:

(*a*) A consolidated payment will be made for each specified period, and

(*b*) The period of any discounts will commence on final date of billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

The provision in subdivision (iii) of this subparagraph should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method.

(8) The special data required by § 18–3.606–3(b) when it is desired to use the fast payment procedure.

(g) Blanket purchase agreements may be established with Federal Supply Schedule Contractors if not inconsistent or at variance with the terms of the applicable Federal Supply Schedule Contract.

§ 18–3.605–4 Competition under blanket purchase agreement.

Calls against blanket purchase agreements shall be placed only after compliance with § 18–3.604. When concurrent agreements for similar items are in effect, calls not in excess of $250 shall be equitably distributed. In those instances where there are an insufficient number of BPAs for any given class of supplies or services to assure adequate competition, the individual placing the order shall solicit quotations from other sources.

§ 18–3.605–5 Calls against blanket purchase agreements.

Calls against blanket purchase agreements generally will be made orally, except that informal correspondence may be used when ordering against agreements outside the local trade area. Written calls may be executed on Standard Form 147 or NASA Form 1379. Documentation of calls shall be limited to essential information. Forms may be developed for this purpose locally.

§ 18–3.605–6 Receipt of material.

Acceptance of supplies or services shall be indicated by signature and date on the sales slip or delivery ticket after quantities have been verified and any exceptions noted. For blanket purchase agreements incorporating the fast payment procedure, acceptance shall be predicated on the supplier's certification in accordance with specific instructions on this method to be made a part of the blanket purchase agreement. (See Fast Payment Clause, § 18–3.606–3(b)(4).)

§ 18–3.605–7 Review procedures.

The contracting officer or his designated representative shall review the blanket purchase agreement files at least semiannually to assure that authorized procedures are being followed.

§ 18–3.606 Fast payment procedure.

§ 18–3.606–1 General.

The fast payment procedure is designed to reduce lead time to consignees and to improve supplier relations by expediting payment for small purchases. The procedure provides for payment for supplies based on the contractor's submission of an invoice which constitutes a representation that the supplies have been delivered to a post office, common carrier or point of first receipt by the Government, and that the contractor agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase agreements.

§ 18–3.606–2 Conditions for use.

When the conditions set forth below are present, the fast payment procedure should be used to the maximum extent possible, provided such use is consistent with the other conditions of the procurement.

(a) Individual orders do not exceed $2,500.

(b) Title to the supplies will vest in the Government (1) upon delivery to a post office or common carrier for mailing or shipment to destination, or (2) upon receipt by the Government when the shipment is by means other than the post office or common carrier.

(c) Supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

(d) Supplier will execute a certificate of mailing or shipment, or a certificate of delivery to the point of first receipt by the Government.

§ 18–3.606–3 Preparation and Execution of Orders.

(a) Orders shall be issued on Order for Supplies or Services (Standard Form 147 or NASA Form 1379), except that calls against blanket purchase agreements shall be issued in accordance with § 18–3.605–5. Orders may be either priced or unpriced.

(b) Special data to be included on purchase orders or in blanket purchase agreements using fast payment procedures are:

(1) A requirement for the supplies to be shipped transportation or postage prepaid;

(2) A requirement that invoices be submitted direct to the paying or other office designated in the order, or in the case of unpriced purchased orders, to the contracting officer (see § 18–3.608–3(c));

(3) The following statement on consignee's copy: "Consignee's notification to procurement office of nonreceipt, damage, or nonconformance." The consignee shall notify the procurement office promptly after specified date of delivery in the purchase order, of supplies not received, damaged in transit, or not conforming to specifications of the purchase order. Under extenuating circumstances such notification should be made not later than 60 days after specified date of delivery.

(4) The following clause:

FAST PAYMENT PROCEDURE (AUGUST 1969)

(a) *General.* This is a fast payment order. Invoices will be paid on the basis of the Contractor's delivery to a post office, common carrier, or, in shipment by other means, to the point of first receipt by the Government.

(b) *Responsibility for Supplies.* Title to the supplies shall vest in the Government upon delivery to a post office or common carrier for shipment to the specific destination. If shipment is by means other than post office or common carrier, title to the supplies shall vest in the Government upon delivery to the point of first receipt by the Government. Notwithstanding any other provision of the purchase order, the Contractor shall assume all responsibility and risk of loss for supplies (i) not received at destination, (ii) damaged in transit, or (iii) not conforming to purchase requirements. The Contractor shall either replace, repair, or correct such supplies promptly at his expense, provided instructions to do so are furnished by the Contracting Officer within ninety (90) days from the date title to the supplies vests in the Government.

(c) *Preparation of Invoice.* (1) Upon delivery of supplies to a post office, common carrier, or in shipments by other means, the point of first receipt by the Government, the Contractor shall prepare an invoice in accordance with Clause 3 of the Terms and Conditions of Purchase Order, except that invoices under a blanket purchase agreement shall be prepared in accordance with the provisions of the agreement. In shipments by either post office or common carrier, the Contractor shall either (A) cite on his invoice the date of shipment, name and address of carrier, bill of lading number or other shipment document number, or (B) attach copies of such documents to his invoice as evidence of shipment. In addition the invoice shall be prominently marked "Fast Pay." In case of delivery by other than post office or common carrier, a receipted copy of the Contractor's delivery document shall be attached to the invoice as evidence of delivery.

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The cost of parcel post insurance will not be paid by the Government. If transportation charges are separately stated on the invoice, the Contractor agrees to retain related paid freight bills or other transportation billings, paid separately for a period of 3 years and to furnish such bills to the Government when requested for audit purposes.

(d) *Certification of Invoice.* The Contractor agrees that the submission of an invoice to the Government is a certification that the supplies for which the Government is being billed have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that such supplies are in the quantity and of the quality designated by the cited purchase order.

(5) A requirement that outer shipping containers shall be marked "Fast Pay."

§ 18–3.606–4 Responsibility for collection of debts.

The contracting officer shall be primarily responsible for collecting debts resulting from failures of contractors to properly replace, repair, or correct supplies lost, damaged, or not conforming to purchase requirements.

§ 18–3.607 Imprest fund method.

§ 18–3.607–1 General.

An imprest fund is a cash fund of a fixed amount established through an advance of funds, without appropriation charge, to an authorized imprest fund cashier to effect immediate cash payments of relatively small amounts for authorized purchases of supplies and nonpersonal services.

§ 18–3.607–2 Establishment of imprest funds.

(a) *Authority.* The Director of Financial Management, NASA Headquarters, may authorize, upon approval of the Chief, Disbursing Office of the Treasury Department, the establishment of imprest funds and any required subsequent increases thereto. The number of imprest funds at an installation are generally restricted to the minimum number necessary to assure efficiency in small purchase transactions. Financial Management Manual 9650–2 through 9650–15 should be used in conjunction with this Subpart.

(b) *Amount of imprest funds.* The amount of each fund shall be established on the basis of the estimated monthly payments therefrom, and the need for replenishment without undue administrative burden. A fund level review shall be made at least semiannually to insure that the level is not in excess of actual needs, and any necessary adjustments shall be made.

(c) *Imprest fund cashiers.* (1) Imprest fund cashiers are appointed in accordance with Financial Management Manual 9650–5 and are authorized to make cash payments for materials and nonpersonal services, maintain custody of funds, and file periodic vouchers to account for and replenish the imprest fund. Financial management or fiscal officers and others having access to accounting records or responsibility for originating, approving, processing, or receiving requirements are not eligible for appointment as imprest fund cashiers. In no event shall an imprest fund cashier have access to or control of more than one imprest fund. Imprest fund cashiers shall be covered by a position schedule bond of not less than the amount of the imprest fund.

(2) An alternate imprest fund cashier may be appointed where—(i) the volume of work requires an alternate to the principal cashier, or (ii) to provide service during the absence of the principal cashier. Appointment and surety bond requirements for principal cashiers shall apply to alternate cashiers. In planned short-term absences of the principal cashier, cash may be advanced by the principal to the alternate in an amount not to exceed the alternate's bond coverage or to the limit of the fund, whichever is less. Upon resumption of his duties, the cashier shall return the cash receipt to the alternate after obtaining paid receipts, subvouchers and residual cash. In the absence of the principal cashier for more than 15 working days or for a period of time which will require the submission of a reimbursable voucher before the return of the principal, the transfer of funds from the principal to the alternate cashier shall be accomplished as prescribed by Financial Management Manual 9650–10(c).

§ 18–3.607–3 Conditions for use.

(a) Imprest funds may be used in accomplishing small purchases when all of the following conditions are present:

(1) The transaction is not in excess of $100 ($250 under emergency conditions);

(2) The supplies or services are available for delivery within 30 days, whether at the supplier's place of business or at destination; and

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

(b) Imprest funds may also be used for payment of:

(1) Charges for local delivery and parcel post (including c.o.d. postal charges) for supplies ordered for payment from imprest funds, when the vendor is requested to arrange for delivery; and

(2) C.O.D. charges for supplies ordered for payment from imprest funds except as limited by paragraph (d)(2) of this section.

(c) The conditions for use specified in paragraphs (a) and (b) of this section do not preclude the use of imprest funds for other expenditures not related to small purchases (e.g., travel advances, travel expenses, and purchases of postage stamps and transportation tokens or passes), when such expenditures are authorized by other regulations governing the use of imprest funds.

(d) Imprest funds shall not be used for:

(1) Payments of salaries and wages;

(2) Payment of transportation charges (i.e., line-haul or intercity charges for transportation services paid directly to a common carrier providing such services, as distinguished from transportation charges included as an integral part of the vendors price);

(3) Advances, other than those authorized in § 18–3.607–4(d); or

(4) Cashing of checks or other negotiable instruments.

§ 18–3.607–4 Procedures.

(a) *Procurement.* Purchases from the imprest fund shall be based upon an authorized purchase request and shall be made only by the individuals authorized by the contracting officer. Orders may be placed orally without soliciting competition when prices are considered to

be reasonable, but shall be distributed equitably among qualified suppliers. Prompt payment discounts shall be solicited, and a sales document shall be obtained to support the cash payment. An authorized purchase order form endorsed "Payment to be made from Imprest Fund" may be used when required by supplier for granting Government discounts, or tax exemptions. (Since purchases through the use of imprest funds are of relatively small value, Government tax exemption certificates generally will not be required.) When the proposed purchase price will exceed any stated monetary restrictions on the purchase request, additional authorization shall be obtained prior to making the purchase. Copies of the purchase request document shall be marked to show:

(1) That an imprest fund purchase has been made;

(2) The unit prices and extensions;

(3) The supplier's name and address, and

(4) Anticipated date of delivery or pickup.

(b) *Sales document.* A sales document is a term applied to a supplier's invoice, sales ticket, packing slip, or any other sales instrument containing the following minimum information:

(1) Supplier's name and address;

(2) List of items;

(3) Quantity;

(4) Unit price and extension, and

(5) Cash discount, if any.

(c) *Receipt of material.* (1) All material purchased through the imprest fund shall be delivered to a designated receiving activity. The receiver shall examine the material to ascertain that the quantities and items described on the purchase request document and the supplier's sales document are present and in satisfactory condition. If the material is acceptable, the receiver shall stamp the supplier's sales document "Received and Accepted," date and sign the document, and pass it to the imprest fund cashier for payment. In the absence of a supplier's sales document, a receipted Standard Form 1165 (Receipt for Cash-Subvoucher) will be used to record the receipt of purchases made from the imprest fund and shall be processed in the same manner.

(2) When it is not practicable to obtain delivery of material at destination on a c.o.d. basis, advance arrangement may be made for the material to be picked up. The imprest fund cashier may then advance cash to an authorized individual to pick up and pay for the material. Necessary certifications of receipt and acceptance of material shall be obtained on one of the documents as indicated in paragraph (c)(1) above. Receipt for cash payment (see paragraph (e) of this section) shall be made on the same document, which will serve as the imprest fund receipt.

(3) When prior arrangements for pick up of material are not practicable, the imprest fund cashier may advance cash to an authorized individual to make a proposed purchase.

(d) *Advance of funds.* Individuals receiving a cash advance from the imprest fund cashier shall be required to sign the "Interim Receipt for Cash" portion of Standard Form 1165, or an equivalent receipt form. After the purchase has been made, the individual will return any unused cash to the imprest fund cashier with the necessary certifications of receipt, acceptance, and cash payment, at which time the imprest fund cashier shall "void" the interim receipt for cash. Cash so advanced should generally be accounted for daily, but cash may be advanced for a period not to exceed 5 consecutive work days. The requirement that the position of imprest fund cashier be covered under a position schedule bond does not extend to individuals to whom funds are advanced for making cash purchases.

(e) *Certification of cash payment.* The original receipt document for (or a copy tendered as the original) presented to the imprest fund cashier for payment shall be stamped with a certification containing the following information:

(1) Statement that cash payment was received in full;

(2) Amount paid;

(3) Date of payment, and

(4) Signature and title of supplier or his agent receiving the cash payment.

Alterations or corrections to documents tendered for payment shall be initialed by the person making the change. Changes in the amount paid shall be initialed by the individual receiving payment.

(f) *Responsibilities of imprest fund cashier.* (1) Pending receipt of material, the imprest fund cashier shall keep a file of purchase request documents covering imprest fund purchases. Prior to payment, or acceptance of the document tendered for settlement of an advance, the cashier shall verify the necessary certification of receipt and the supplier's billed price or the price paid. If the supplier's receipt for cash payment is not obtained for purchases of $15 or less, the person making the purchase will prepare a subvoucher showing the name of the vendor and the articles or services purchased.

(g) *Payments*—(1) *C.O.D.* Upon presentation of an authorized document with the necessary certification of receipt for supplies or services, the imprest fund cashier or other authorized individual shall pay the supplier or his agent and obtain the certification of cash payment as set forth in § 18–3.607–4(e).

(2) *Receipt from common carrier or post office.* When c.o.d. shipments are received or picked up from a common carrier or post office, the certification of cash payment may be accomplished on a list of the packages provided by the post office or common carrier. Such receipt will be supported by copies of the applicable sales document if available.

(3) *Periodic payments.* When a blanket purchase agreement is not suitable and it is administratively convenient and agreeable to the supplier, periodic payments from the imprest fund may be made for supplies delivered on a repetitive basis: *Provided,* That the accumulated amount of the deliveries for the specified period does not exceed the dollar limitation imposed on the imprest fund method by § 18–3.607–3.

(4) *Failure to ship C.O.D.* When material is ordered c.o.d. but is shipped by the supplier subject to payment by check, Standard Form 1034 (Public Voucher for Purchases and Services Other than Personal), may be used to make payment. Under these circumstances, the receiver shall prepare the necessary certification of receipt and forward the receipted document through the imprest fund cashier, for attachment of the supporting documents which authorized the shipment and submission to the disbursing officer for payment.

(h) *Reimbursement of imprest funds.* (1) The imprest fund shall be reimbursed in accordance with Financial Management Manual 9650–9.

(2) When a supplier refunds cash prior to the submission of Standard Form 1129 covering such payment, the imprest fund cashier shall accept the refund, return the money to the imprest fund, and enter the amount of the refund on the original of the supplier's receipt. When the refund is made subsequent to the submission of the applicable Standard Form 1129, the imprest fund cashier shall enter the amount of the refund on the retained copy of the reimbursement voucher, promptly submit the refund to the disbursing officer, or by otherwise depositing directly such funds on Standard Form 209, Certificate of Deposit.

(i) *Accounting.* Recordkeeping shall be based on simplified memorandum records to permit frequent reconciliation of funds; and should show (1) the amount of cash received, (2) the amount paid out, and (3) the balance on hand at the close of each day. It is permissible to group numerous small payments by numbering payment documents and affixing to them an adding machine tape showing the total applying to each grouping of payment documents.

(j) *Review.* The imprest fund cashier shall be required to account for the established fund at any time, by cash on hand, paid suppliers' receipts, unpaid reimbursement vouchers, and interim receipts for cash. Unannounced reviews, including cash counts are required to be made of each imprest fund at least quarterly by qualified individuals who are under the jurisdiction of the financial management or fiscal officer of the installation maintaining the imprest fund.

§ 18–3.608 Purchase orders.

§ 18–3.608–1 General.

(a) Negotiated purchases of material and nonpersonal services not in excess of $2,500 may be effected by using NASA Form 1379, Standard Form 147 (Order for Supplies or Services) and their ancillary forms, or Standard Form 44 (Purchase Order-Invoice-Voucher) (see § 18–3.608–9). The NASA Form 1379 and Standard Form 147 may also be used for construction not in excess of $2,000.

(b) The NASA Form 1379 provides for the arrangement of information in fixed locations. The uniform arrangement of data will facilitate manual and automated processing of contractual documents and interchange of information between procurement offices and contract administration activities.

§ 18-3.608-2 Order for supplies or services (NASA Form 1379 or Standard Form 147; Standard Form 36; NASA Form 1379B and Standard Form 30).

(a) *Forms.* The following forms may be used to issue purchase orders:

(1) NASA Form 1379 (Order for Supplies or Services) which when used with applicable ancillary forms, provides in one document—

(i) A purchase order, a blanket purchase agreement, a delivery order under a contract, or delivery order on Government agencies outside the Department of Defense (see Part 18-5);

(ii) A receiving and inspection report;

(iii) A property voucher, and

(iv) A document for acceptance by the supplier.

(2) Standard Form 36 or NASA Form 1379A (Continuation Sheet) provides additional space or a blank sheet of paper may be used;

(3) Standard Form 30 (Amendment of Solicitation/Modification of Contract) or NASA Form 1379B shall be used in all modifications (see § 18-3.608-4).

(b) *Conditions for use*—(1) *Use as a purchase order of not more than $2,500 in the United States, its Possessions, and Puerto Rico.* NASA Form 1379 is authorized for negotiated purchases of not more than $2,500 within the United States, its possessions, and Puerto Rico, Provided:

(i) The procurement is unclassified, except that NASA Form 1379 may be used for classified procurements if:

(a) The contracting officer retains responsibility for complete administration of the contract, including compliance with the requirements;

(b) The "Security Requirements" clause in § 18-7.104-12 is inserted in the Schedule;

(c) DD Form 254 (Security Requirements Check List) (see § 18-16.811) is incorporated in the purchase order; and

(d) The contractor's acceptance of the purchase order is obtained by use of NASA Form 1379B at the time of issuance of the order.

(ii) No clause covering the subject matter of any clause set forth in this Regulation, other than clauses set forth on NASA Form 1379, 1379B or Standard Form 147 and clauses referred to in subparagraphs (iii) through (x) below, in §§ 18-3.608-3, 18-3.608-4 and 18-14.104 (selection and use of appropriate standard inspection clauses) are to be used.

(iii) Where the contract specifies the delivery of data, one of the clauses set forth in §§ 18-9.203 through 18-9.206 shall be added as appropriate in accordance with the instructions contained in Subpart 18-9.2.

(iv) When required by Subpart 18-4, the clause set forth in § 18-6.403 shall be added.

(v) Where inspection and acceptance are at origin, where contract administration is performed at origin, where delivery at multiple destinations is required, or where otherwise appropriate the "Material Inspection and Receiving Report" clause may be required for use and inserted in the Schedule.

(vi) Where Government property having an acquisition cost in excess of $25,000 is to be furnished (for use in performance of contract or for repair), the "Government Property (Fixed-Price)" clause in § 18-13.702 shall be inserted in the Schedule. Where Government property having an acquisition cost not in excess of $25,000 is to be furnished for use in performance of the contract or for repair, the "Government-Furnished Property (Short Form)" clause in § 18-13.710 shall be inserted in the Schedule: *Provided*, That use of the clause shall be optional where the acquisition cost of property furnished for repair is not in excess of $2,500. Where a "Government Property" clause is inserted in the Schedule the contractor's signature shall be obtained on NASA Form 1379B.

(vii) The "Responsibility for Inspection" clause, set forth in § 18-7.103-5(e), shall be inserted in the Schedule.

(viii) The clauses set forth in § 18-1.1208 may be used in accordance with the provisions of that paragraph.

(ix) When required by Subpart 18-1.3, the clause set forth in § 18-1.327-2 shall be added.

(x) When required by Subpart 18-12.1, the clause set forth in § 18-12.1104-2 shall be added.

(c) *Solicitation and evaluation of quotations*—(1) *General.* In using the purchase order method, competition shall be solicited in accordance with § 18-3.604 and every effort shall be made to obtain prompt payment discounts. Written quotations may be solicited by Standard Form 18 (Request for Quotation).

(2) *Evaluation of quotations.* Quotations shall be evaluated inclusive of transportation charges from the shipping point of the supplier to the delivery destination. For orders exceeding $250, oral quotations shall be recorded directly on the purchase request, on an abstract sheet, or other appropriate work sheet. Except as provided under the unpriced purchase order method, quotations that are indefinite as to price or based on price escalation or redetermination shall not be considered for award by the purchase order method.

(d) *Preparation and issuance of priced purchase orders.* All applicable blocks and spaces shall be completed with the required data including the following policy guidance:

(1) Supplies to be purchased will be identified in accordance with Subpart 18-1.12.

(2) The quantity of supplies or services shall be specified. For bulk quantity items and those subject to shrinkage, evaporation, miscount, weight or footage variance, etc., a maximum allowable variation (normally not in excess of 10 percent) shall be specified in the order so that shipments in excess of the order quantity may be accepted if the reason for such excess comes within the Variation in Quantity clause of the order and the aggregate amount of the order does not exceed authorized limitations.

(3) Purchase orders shall be issued on a fixed-price basis, except as otherwise provided under § 18-3.608-3 and shall include any trade discounts and offered prompt payment discounts.

(4) Inspection of small purchase shall be in accordance with § 18-14.106. Orders generally will provide that inspection and acceptance will be at destination and source inspection should be specified only when required by § 18-14.105-2. When inspection and acceptance are to be performed at destination, advance copies of the purchase order shall be furnished to consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of material to assure expeditious payment of orders and to obtain prompt payment discounts, except where the fast payment procedure is authorized.

(5) F.o.b. destination shall be specified for supplies to be delivered within the United States, except Alaska and Hawaii, unless there are valid reasons to the contrary.

(6) The block "Deliver to F.O.B. Point On or Before" shall contain a definite calendar date by which delivery of supplies or performance of services is required.

(7) The contracting officer's signature on purchase orders shall be in accordance with the authority of Subpart 18-1.4. Facsimile signatures may be used in the production of purchase orders by automated methods.

(8) Distribution of copies of purchase orders and related forms shall be limited to those copies required for essential administration and transmission of contractual information.

(9) Purchase orders for subscriptions shall contain a statement substantially as follows to assure that subscriptions have become effective prior to payment of invoices:

> Contractor's Invoice must be submitted on or before _____ Contractor will be paid on the basis of his invoice which must state (1) the starting and ending dates of subscriptions, and (2) that subscriptions have been placed in effect for the addresses required.

§ 18-3.608-3 Unpriced purchase orders.

(a) An unpriced purchase order is an order for supplies or services the price of which is not established at the time of issuance of the order. Contracting officers shall assure that suppliers receiving unpriced purchase orders are carefully selected.

(b) An unpriced purchase order may be used only when all of the following conditions are present:

(1) The transaction will not exceed $2,500;

(2) It is impractical to obtain pricing in advance of issuance of the purchase order; and

(3) The procurement is for—

(i) Repairs to equipment requiring disassembly to determine the nature and extent of such repairs;

(ii) Sole source material for which cost cannot be readily established; or

(iii) Supplies or services where prices are known to be competitive but exact prices are not known.

(c) NASA Form 1379 or Standard Form 147 shall be used to issue unpriced purchase orders. A realistic monetary limitation shall be placed on the unpriced purchase order which shall be an obligation subject to adjustment when the firm price is established. Orders shall not contain an estimated target unit price. Each unpriced purchase order shall contain the following clause:

NOTICE TO SUPPLIER (AUGUST 1969)

This is a firm order if the total price is $_____ or less. Make delivery or perform in accordance with the delivery provisions of this order and submit invoice to the Contracting Officer of the procurement office named herein.

If total price of this order will exceed the above amount or if you cannot furnish material or services in exact accordance with the description and delivery schedules set forth herein, notify the undersigned Contracting Officer immediately, giving your quotation or proposed substitution or changes, and "Withhold Performance Pending Reply."

The contracting officer or his designated representative shall certify that the invoiced price is fair and reasonable and process the invoice for payment. Suitable local records and controls of outstanding unpriced purchase orders shall be maintained to assure regular follow-up with suppliers until the order is priced. These records should include any information available to support the fairness and reasonableness of the proposed monetary limitation.

§ 18–3.608–4 Obtaining contractor acceptance and modifying the purchase order.

(a) When it is desired to consummate a binding contract between the parties before the contractor undertakes performance, the contracting officer shall mark in the Acceptance Block on the NASA Form 1379B the box requiring acceptance by the contractor.

(b) Standard Form 30 or NASA Form 1379B shall be used to modify the purchase order for administrative or other changes.

(1) Modifications making administrative changes such as the correction of typographical errors, changes in paying office and changes in accounting and appropriation data do not require contractor acceptance.

(2) To otherwise modify the purchase order, and if not previously included in the purchase order, the Additional General Provisions (Clauses 13 through 15 of NASA Form 1379B) shall be incorporated by reference in the Standard Form 30, where used in lieu of NASA Form 1379B, and the contractor acceptance obtained by his signature on either the Standard Form 30 or NASA Form 1379B. Subsequent changes pursuant to the "Changes" clause shall not require contractor acceptance. However, other modifications outside the general scope of the purchase order, as amended, such as the addition of the "Government Property" clause, shall require contractor acceptance by signature on the Standard Form 30 or NASA Form 1379B.

(c) No additional clauses are authorized except as provided in § 18–3.608–2(b). A superseding NASA Form 1379 or Standard Form 147 shall not be used to issue a change to an outstanding purchase order.

§ 18–3.608–5 Termination of purchase order.

A purchase order which has not been accepted in writing by the contractor may be withdrawn or canceled by the contracting officer any time prior to the supplier's initiation of performance. Notice of withdrawal or cancellation should be in writing and should request the contractor's acknowledgment thereof. If the contractor has begun performance on such purchase order, however, or if the contractor has accepted the purchase order in writing other than by signature on the NASA Form 1379B or on a subsequently issued Standard Form 30, and it later becomes necessary to terminate the purchase order, the contractor should be asked to agree to cancellation of the order without cost or liability to either party. If he agrees, the cancellation shall be effected by use of NASA Form 1379B or Standard Form 30, incorporating the Additional General Provisions (NASA Form 1379B), signed by the contracting officer and the contractor. If the contractor does not agree to a no-cost settlement, the case will be referred to the legal office serving the installation and action will be withheld pending receipt of advice from that office. Termination of a purchase order which the contractor has accepted in writing by means of the Contractor Acceptance on NASA Form 1379B or a subsequently issued Standard Form 30 will be processed in accordance with the guidance set forth in Part 18–8 of this chapter.

§ 18–3.608–6 Use of Standard Form 147 or NASA Form 1379 as a delivery order.

(a) Except as to specialized procurements for which other instructions are given by this chapter (as for example, where utility purchases are procured under General Services Administration area contracts, as provided in Subpart 18–5.8) NASA Form 1379 or Standard Form 147 shall be used without monetary limitation as a delivery order for ordering supplies and services:

(1) Under indefinite delivery type contracts (see § 18–3.409) including such contracts made by Government agencies outside NASA; provided, (i) the order is issued in accordance with, and subject to the terms and conditions of such contract, and (ii) the order refers to the particular contract involved;

(2) From other Government agencies when the agency has made specific provision for NASA's authorized participation, and

(3) From designated Agencies for the Blind in accordance with Subpart 18–5.5.

(b) All delivery orders shall contain the typewritten name of the contracting officer or ordering officer and the original thereof shall be manually signed; when reproducible masters are used, only the masters need be manually signed; when interleaved carbon forms are used, manual signature on the original shall suffice. Facsimile signatures may be used in the production of delivery orders by automated methods.

§ 18–3.608–9 Order - invoice - voucher method.

(a) Standard Form 44 (Purchase Order-Invoice-Voucher) is designed primarily for over-the-counter purchases by authorized individuals while away from the procurement office or at isolated activities. It is a multipurpose form which can be used as a purchase order, receiving report, supplier's invoice and public voucher.

(b) Since there are no written terms and conditions included thereon, Standard Form 44 is authorized for use only when no other small purchase method is considered more suitable and all of the following conditions are satisfied:

(1) The transaction is not in excess of $2,500;

(2) Supplies or services are immediately available; and

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

(c) Instructions for completion of Standard Form 44 contained on the form may be supplemented in accordance with installation needs to satisfy internal procedural requirements. Negotiation authority need not be cited. In view of the negotiable character of the Standard Form 44, installations will maintain adequate safeguards to assure proper usage and availability of funds.

(d) NASA Form 1379 or Standard Form 147 may also be used for over-the-counter purchases as an order-invoice.

§ 18–3.650 Procurement request overlay method.

§ 18–3.650–1 General.

This method is an acceptable adjunct to other methods authorized in this subpart and may be used in placing oral orders when BPA's do not exist or, if existing, their use is considered too cumbersome in the instant circumstance. Each transaction is recorded on a small form which attaches to, becomes a part of, and overlays a portion of the procurement request. Suppliers' delivery tickets are used as additional supporting documentation. This method eliminates the administrative requirements for preparing and mailing individual purchase orders. This method may be used where suppliers are willing to accept oral orders and can be reasonably relied upon to fill such orders in accordance with the terms of the oral transaction.

§ 18–3.650–2 Limitations on use.

This method is not to be used where:

(a) The requirements of more than one procurement request are to be combined in a transaction;

(b) More than one delivery will be required (except that where the requirements of a single procurement request are to be equitably divided among several qualified suppliers, a single delivery per supplier shall be required);

(c) A written purchase order is required by the supplier;

(d) It is necessary or desirable to incorporate specifications or other terms and conditions in a written purchase order;

(e) GSA Federal Supply Schedules are to be used, or

(f) Where purchases are to be made from or through other Government agencies.

§ 18–3.650–3 Procedure.

(a) After competitive selection of the source (see § 18–3.604) the order may be placed by telephone. Particular care is to be taken to insure that the supplier agrees to accept the order without written confirmation and that the order number, item descriptions, quantities, prices, and other terms and conditions are clearly understood. If the amount of the purchase does not exceed $100 (or $250 under emergency conditions) the supplier should be encouraged to deliver c.o.d. (see § 18–3.607–3).

(b) The supplier will be given all pertinent and specific instructions at the time of placing the order, including the installation methods of handling charge purchases to be billed within a period of 1 month or less.

(c) Upon placing the order, the contracting officer will assure that a preprinted overlay form in affixed to the procurement request, and will, if necessary, after the overlay is filled in, adjust the estimated unit and total cost figures of the procurement request to reflect the actual purchase price. This will be done by lining through the original procurement request figures so that they remain legible. Any other changes in the original information of the procurement request to make it conform to the facts of the purchase will be made in like manner. The preprinted overlay form will contain at least the following information:

Order No. _____
Supplier _____
(Name)
_____
(City and State) (Zip Code)
Discount terms_____
Delivery date_____
Buyer _____
F.O.B. destination procurement placement Code _____
Action: Purchase request line items ( ) ( ) (etc.) complete*
Total procurement request action: partial,* complete*
Payment: cash,* charge*
_____
(Contracting Officer Signature)
Date signed_____
*Circle as appropriate.

(d) The contracting officer will sign and date the completed overlay form on the procurement request.

(e) The procurement request with overlay will be reproduced and distributed internally in accordance with the installation's local instructions to provide copies to the offices or activities which will be responsible for receiving and accepting the merchandise, for making cash payment, or processing charge purchases.

(f) In accordance with local instructions, copies of the supplier's delivery ticket received with the merchandise will be distributed to establish receipt and acceptance of merchandise and serve as a basis for cash payment of obligation of funds and subsequent payment of charge purchases.

Subpart 18–3.7—Negotiated Overhead Rates

§ 18–3.700 Scope of subpart.

This subpart prescribes policy and procedures with respect to the establishment and use of negotiated overhead rates in NASA cost-reimbursement type contracts and subcontracts.

§ 18–3.701 Definitions.

§ 18–3.701–1 Negotiated final overhead rate.

The term negotiated final overhead rate as used in this Part 18–3, means a percentage or dollar factor which expresses the ratio mutually agreed upon by NASA and the contractor, at the close of a regularly stated period (preferably the contractor's fiscal year), of allowable indirect expense incurred in the period to direct labor, manufacturing cost, cost of sales, or other appropriate base of this same period. Such rates are used as a means of determining the amount of reimbursement under a contract for the applicable indirect cost and are designated "postdetermined" overhead rates. In certain circumstances involving educational institutions, negotiated final overhead rates may be used as a means of determining the amount of reimbursement for the applicable indirect costs to be incurred during a future period of contract performance; in such cases, they are termed "predetermined" overhead rates (see § 18–3.704–2(b)).

§ 18–3.701–2 Provisional overhead rate.

The term provisional overhead rate as used in this Part 18–3, means a tentative overhead rate established for interim billing purposes pending negotiation of the final overhead rate. Provisional overhead rates are incorporated in the contract and require an amendment to change.

§ 18–3.701–3 Overhead (indirect costs).

The term overhead (indirect costs) as used in this Part 18–3, includes, but is not limited to, the general groups of indirect expenses such as those generated in manufacturing departments, engineering departments, tooling departments, general and administrative departments, and, if applicable, indirect costs accumulated by cost centers within these general groups. In the case of contractors using fund accounting systems (e.g., educational institutions), the term includes, but is not limited to, the general groups of expenses, such as general administration and general expense, maintenance and operation of physical plant, library expenses, and use charges for buildings and equipment.

§ 18–3.701–50 Negotiating authority.

The term negotiating authority as used in this Part 18–3, means the office designated by the Procurement Office, NASA Headquarters to conduct the negotiation of final overhead rates with a contractor.

§ 18–3.702 Purpose.

The major purposes of negotiated final overhead rates are: (a) To effect uniformity of approach in cases where more than one contract or one or more NASA installations and the Department of Defense are involved with the same contractor; (b) to effect economy in administrative effort; and (c) to promote timely settlement of reimbursement claims.

§ 18–3.703 Primary use.

Negotiated final overhead rates are authorized for use primarily in cost-reimbursement type contracts for research and development with commercial organizations and nonprofit or educational institutions. They may also be used in other cost-reimbursement type contracts after a determination is made by the Procurement Officer that their use is advantageous to the Government. Where it is not apparent that any one of the major purposes enumerated in § 18–3.702 above results, or will result, by the use of negotiated final overhead rates, indirect costs will be negotiated on the basis of an advisory audit report.

§ 18–3.704 Contract clauses.

§ 18–3.704–1 Contracts with concerns other than educational institutions.

When it has been determined that negotiated overhead rates are to be used pursuant to this Part 18–3, insert the following clause:

NEGOTIATED OVERHEAD RATES (NOVEMBER 1964)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost, Fixed Fee, and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties as specified below.

(b) The Contractor, as soon as possible but not later than ninety (90) days after the expiration of each period specified in the Schedule, shall submit to the Contracting Officer, with a copy to the cognizant audit activity and the Office of Procurement, NASA Headquarters, a proposed final overhead rate or rates for that period based on the contractor's actual cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the negotiating authority shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Part 15, Subpart 2, of the NASA Procurement Regulation as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in a modification to this contract which shall specify (i) the agreed final rates, (ii) the bases to which the rates apply, and (iii) the periods for which the rates apply.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in the Schedule or at billing rates acceptable to the Contracting Officer subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of negotiated provisional rates provided in the Schedule shall be set forth in an amendment to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

(g) Nothing in this clause shall preclude the Contracting Officer from negotiating final overhead rates for this contract for any period not exceeding six (6) months when necessary to close out this contract.

§ 18–3.704–2 Contracts with educational institutions.

(a) Insert the following clause in contracts with educational institutions where postdetermined overhead rates are to be used pursuant to this Part 18–3.

NEGOTIATED OVERHEAD RATES (POSTDETERMINED) (JANUARY 1964)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than six (6) months after the expiration of each period specified in the Schedule shall submit to the Contracting Officer, with a copy to the cognizant audit activity and the Office of Procurement, NASA Headquarters, a proposed final overhead rate or rates for that period based on the contractor's actual cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the negotiating authority shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Part 15, Subpart 3, of the NASA Procurement Regulation as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in a modification to this contract which shall specify (i) the agreed final rates, (ii) the bases to which the rates apply, and (iii) the periods for which the rates apply.

(e) Pending establishment of final overhead rates for any period, the contractor shall be reimbursed either at negotiated provisional rates as provided in the Schedule or at billing rates acceptable to the Contracting Officer subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over- or under-payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement either retroactively or prospectively. Any such revision of negotiated provisional rates provided in the Schedule shall be set forth in an amendment to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

(b) Provision may be made in cost reimbursement type research and development contracts with educational institutions for payment of reimbursable indirect costs on the basis of predetermined overhead rates, provided that this basis is used with respect to all contracts with an institution. Insert the following clause in contracts with educational institutions where such negotiated overhead rates are to be used pursuant to this Part 18–3.

NEGOTIATED OVERHEAD RATES (PREDETERMINED) (MAY 1964)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment," the allowable indirect costs under this contract shall be obtained by applying predetermined overhead rates to bases agreed upon by the parties as specified below.

(b) The contractor, as soon as possible but not later than three (3) months after the expiration of his fiscal year, shall submit to the Contracting Officer, with a copy to the cognizant audit activity and the Procurement Office, NASA Headquarters, a proposed predetermined overhead rate or rates based on the contractor's actual cost experience during that fiscal year, together with supporting cost data. Negotiation of predetermined overhead rates by the contractor and the negotiating authority shall be undertaken as promptly as practicable after receipt of the contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Part 15, Subpart 3, of the NASA Procurement Regulation as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (i) the agreed predetermined overhead rates, (ii) the bases to which the rates apply, (iii) the fiscal year unless the parties agree to a different period for which the rates apply, and (iv) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of predetermined overhead rates for any fiscal year or different period agreed to by the parties, the contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that fiscal year or other period are established.

(f) Any failure by the parties to agree on any predetermined overhead rate or rates under this clause shall not be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract. If for any fiscal year or other period specified in the Schedule of this contract the parties fail to agree to a predetermined overhead rate or rates, it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates in accordance with the terms of the "Negotiated Overhead Rates (Postdetermined)" clause set forth in 3.704–2 of the NASA Procurement Regulation as in effect on the date of this contract.

(g) Allowable indirect costs for the period until the end of the contractor's fiscal year during which performance begins shall be obtained by applying the predetermined overhead rate set forth in the Schedule to the bases set forth therein.

(c) When predetermined overhead rates are to be used and no such rate or rates have been established for the contractor's current fiscal year, the contracting officer shall obtain from the contractor during the contract negotiations a proposal for a predetermined overhead rate or rates to be applied until the end of such fiscal year. As far as practicable, such proposal should be based on the contractor's cost experience under similar contracts together with supporting cost data. The overhead rate or rates for such initial period shall be predetermined by negotiation and set forth in the contract schedule. The schedule shall also include the bases to which the rates apply and the period for which the rates apply. Pending establishment of predetermined overhead rates for the initial period, the contractor shall be reimbursed at billing rates acceptable to the contracting officer subject to appropriate adjustment when the final rates for that period are established.

§ 18–3.705 Policy.

Since many NASA contractors are under the negotiated overhead rate procedure with the Department of Defense, it is the policy of NASA to participate in joint negotiations with the Department of Defense. The NASA participant will be a representative of the Procurement Office, NASA Headquarters (Code KDP-2), or of a NASA Procurement Office designated by the Procurement Office, NASA Headquarters.

(a) NASA contractors not under the Department of Defense negotiated overhead rate procedure will be under NASA cognizance and the negotiations will be conducted by a representative of the Procurement Office, NASA Headquarters (Code KDP–2), or by the Procurement Office designated as the negotiating authority by the Procurement Office, NASA Headquarters, with selected field installations participating.

(b) A contractor currently under Department of Defense cognizance may eventually be transferred to NASA cognizance because of the shift in procurement predominance. Such transfer will be arranged by the Procurement Office, NASA Headquarters which designate the negotiating authority.

§ 18–3.706 Procedure.

When a contractor is under NASA cognizance, the procedure for the establishment and use of negotiated final overhead rates will generally consist of submission by the contractor of an overhead rate proposal, obtaining an advisory audit report from the cognizant auditor, holding a prenegotiation conference for review of the contractor's proposal and the advisory audit report, conduct of negotiation, preparation of a negotiation report or summary, and execution of contract amendments.

(a) The contractor shall submit a copy of his proposal to the contracting officers of each NASA installation with which he has contracts, with a copy to the cognizant audit activity and the Procurement Office, NASA Headquarters (Code KDP–2).

(b) The cognizant audit activity will review the contractor's overhead rate proposal using Part 18–15, of the NASA Procurement Regulation as a basis for determining allowable costs. An advisory audit report will be submitted to the Procurement Officer of each NASA installation having a contract with the contractor and a copy of the cognizant NASA Regional Audit Office and to the Procurement Office, NASA Headquarters (Code KDP–2). Such report shall set forth the findings of the audit activity including the results of discussion of such findings with the contractor.

(c) A prenegotiation conference will be held by the negotiating authority with attendance by the auditor, representatives of NASA installations, as designated by the Procurement Office, NASA Headquarters, and other Government procurement and audit activities interested in/or planning to attend the negotiations. This conference will relate to the areas of difference between the advisory audit report and the contractor's proposal, any other factors pertaining to the negotiations, decide upon the approach to the negotiations and establish a consolidated negotiation position. As a further aid to the negotiating authority, a representative of the audit activity and/or a representative of the NASA Audit Division will, upon request, attend the negotiation conference.

(d) The negotiation conference will be conducted by the negotiating authority designated by the Procurement Office, NASA Headquarters. The allowability of costs and methods of cost allocation will be governed by Part 18–15, of this chapter. An agreement will be negotiated on final overhead rates, the specific items treated as direct charges and the provisional overhead rates if such rates are to be specified in the contract.

(e) At the completion of the negotiation, the NASA negotiating authority will prepare a negotiation report listing the names, titles, and organizations of those in attendance, the rates negotiated, the reasons for variation from the audit report, if any, the period of rate applicability, the basis for the determination of such rates and, where applicable, the provisional rates agreed upon for application in the succeeding period. Such report shall become the basis for amending the affected contracts and shall become a part of the contract file. Sufficient copies of the report shall be forwarded by the negotiating authority to the Procurement Office, NASA Headquarters (Code KDP–2), for distribution to all interested activities.

(f) Contract amendments will incorporate the negotiated final overhead rates, the bases to which they apply, and the period of rate applicability.

§ 18–3.707 Coordination.

(a) Because of the preponderance of contractors now subject to the negotiated overhead rate procedure with the Department of Defense, arrangements have been made with the Department of Defense to advise the Procurement Office, NASA Headquarters (Code KDP–2) of a pending overhead rate negotiation. All NASA field installations and headquarters activities having an interest will be notified by the Procurement Office, NASA Headquarters (Code KDP–2) of the scheduled negotiation. The notification will designate the NASA participant in such negotiations. Should it be impossible for the designated participant to attend, the Procurement Office, NASA Headquarters (Code KDP–2) shall be notified and arrangements will be made to ensure that a NASA participant is in attendance.

(b) In cases where NASA becomes the sponsoring agency and has the responsibility for conducting the negotiation, a representative of the Procurement Office, NASA Headquarters (Code KDP–2), or or a designee of that office, will be responsible for notifying all interested NASA field installations, the Office of Naval Material, Navy Department; The Chief, Pricing and Financial Division, Air Force Systems Command, Department of the Air Force, and the Chief, Procurement Support Division, Army Materiel Command, Department of the Army, who will, in turn, notify the respective procurement activities within their agencies.

(c) Currently, the Department of Defense prepares and distributes a "Master List of Commercial Contractors, Nonprofit Institutions and Educational Organizations Operating Under Negotiated Overhead Rates for Cost Type Contracts" which indicates the Government agency sponsoring the negotiation. This list will be supplemented by the Procurement Office, NASA Headquarters (Code KDP–2) to include those contractors for which NASA becomes the sponsoring agency. As changes are made in the list, the field installations will be advised.

§ 18–3.708 Ceilings on indirect costs.

(a) Cost-sharing arrangements are occasionally made wherein cost participation by the contractor is evidenced by an agreement to accept overhead rates which are lower than the anticipated actual overhead rates. In such cases, a negotiated ceiling overhead rate may be used for application prospectively.

(b) In other cases, it may be desirable to provide for a ceiling on overhead rates beyond which the contractor will absorb the costs. For example: (1) The proposed contractor is a new company or has been recently reorganized and there may be no past record of indirect costs incurred, or (2) the proposed contractor may have a recent record of rapidly increasing overhead rates due, perhaps, to a declining volume of sales without a commensurate decline in indirect expense, or (3) the proposed contractor may be seeking to enhance its competitive position in a particular procurement by basing its proposal on overhead rates lower than those which reasonably may be expected to occur during contract performance and which would likely cause a cost overrun. When any of the foregoing circumstances are apparent with either a proposed prime or subcontractor, reasonable, realistic and equitable ceilings should be negotiated on overhead rates.

(c) In the cases cited in paragraphs (a) and (b) of this section, the Government will not be obligated to pay any additional amount on account of overhead above the negotiated ceiling rates. In the event overhead rates resulting from an audit of allowable costs are less than the negotiated ceiling rates, the ceiling rates will be reduced in conformity with the lower rates.

Subpart 18–3.8—Price Negotiation Policies and Techniques

§ 18–3.800 Scope of subpart.

This subpart sets forth the price negotiation policies and techniques applicable to negotiated prime contracts and those subcontracts which are subject to consent or review and policies and procedures applicable to the initiation of procurement requests and solicitation and evaluation of proposals. The principles in this subpart apply to negotiation of prices on all types of contracts and to revised prices as well as intitial prices.

§ 18–3.801 Basic policy.

§ 18–3.801–1 General.

It is the policy of NASA to procure supplies and services from responsible sources at fair and reasonable prices calculated to result in the lowest ultimate overall cost to the Government. Sound pricing depends primarily upon the exercise of sound judgment by all personnel concerned with the procurement.

§ 18–3.801–2 Responsibility of contracting officers.

(a) Contracting officers acting within the scope of their appointments (and in some cases acting through their authorized representatives) are the exclusive agents of NASA to enter into and administer contracts on behalf of the Government in accordance with NASA procurement instructions. Each contracting officer is responsible for performing or having performed all administrative actions necessary for effective contracting. The contracting officer shall exercise reasonable care, skill, and judgment and shall avail himself of all organizational tools (such as the advice of specialists in the fields of contracting, finance, law, contract audit, program management, system reliability, engineering, traffic management, and cost analysis) necessary to accomplish the purpose as, in his discretion, will best serve the interests of the Government.

(b) To the extent services of specialists are utilized in the negotiation of contracts, the contracting officer must coordinate a team of experts, requesting advice from them, evaluating their coun-

sel, and availing himself of their skills as much as possible. The contracting officer shall obtain simultaneous coordination of the specialist efforts to the greatest practical extent. He shall not, however, transfer his own responsibilities to them. Thus, the final negotiation of price, including price redetermination and evaluation of cost estimates, remains the responsibility of the contracting officer.

(c) When a contractor insists on a price or demands a profit or fee which the contracting officer considers unreasonable, the contracting officer shall, in coordination with the initiator of the purchase request, determine the feasibility of developing an alternate source of supply and take such action within his authority as may be appropriate in the circumstances. If, after exhausting the above course of action, a satisfactory solution has not been obtained, the contracting officer shall refer the prospective procurement to higher echelons of the procurement organization. Such referral shall include a complete statement of the attempt made to resolve the matter. With regard to a contractor's refusal to provide cost or pricing data, see § 18–3.807–6.

§ 18–3.801–3 Responsibilty of other personnel.

(a) *Requirements personnel.* Personnel, other than the contracting officer, who establish the requirements for the product or services to be procured, can influence the degree of competition obtainable as well as have a material effect upon prices. Failure to finalize requirements in sufficient time to allow:

(1) A reasonable period for preparation of requests for proposals;

(2) Preparation of quotations by offerors;

(3) Contract negotiation and preparation; and

(4) Adequate performance lead time,

causes delinquency in performance and uneconomical prices. Requirements issued on an urgent basis or with unrealistic performance schedules should be avoided since they generally increase price or restrict desired competition. Personnel determining requirements, specification, reliability, and quality assurance, adequacy of sources of supply, and like matters, have responsibility in such areas, equal to that of the contracting officer, for timely, sound, and economical procurement.

(b) *Pricing personnel.* (1) The contract pricing team available to support the contracting officer in the review and analysis of pricing proposals includes the price analyst, negotiator, buyer, project engineer, and other professional and technical specialists including cognizant contract administration and audit offices. Among the specialists available at the contract administration or audit offices are the contract auditor, price analyst, engineer, production, quality assurance, packaging, and transportation specialists. When the contracting officer requires a review and evaluation of the contractor's cost or pricing data (§ 18–3.807–2), he shall request such pricing support from the contract administration office, or from the contract auditor if only an audit report is desired (see § 18–3.809).

(2) The price analyst or negotiator supporting the contracting officer should be designated to develop a Government pricing objective prior to the negotiation. This includes the responsibility for determining the extent of advice required from other specialists, requesting, obtaining, and considering such advice, and for consolidating pricing data, including cost and price analyses, historical cost or pricing data, independent government cost estimates, economic analyses and the like. The advice and assistance of the price analyst/negotiator should always be obtained when complex pricing techniques are indicated, including the use of contract types involving the skillful balancing of price, cost and performance incentive arrangements. In many instances, he will be in the best position to conduct the price negotiation.

(3) When providing pricing support to the contracting officer, the contract administration office has primary responsibility for consolidating and evaluating the findings of the pricing team members at the contract administration and audit offices, and for the analysis of proposed prices in consideration of, but not limited to, such factors as the need for quantities and kinds of materials included in the proposal; the need for the number and kinds of man-hours; the need for special tooling and facilities; and the reasonableness of scrap and spoilage factors. These analyses by the contract administration office shall be based on its knowledge of production, quality assurance, engineering, and manufacturing practices and techniques, and information as to plant capacity, scheduling, engineering and production "know-how", Government property and make-or-buy considerations, particularly as these relate to the practices of the specific prospective contractor.

(4) The contract auditor is responsible for submission of information and advice, based on his analysis of the contractor's books, accounting records, and other related data, as to the acceptability of the contractor's incurred and estimated costs. The auditor shall report any denial by the contractor of access to records or cost or pricing data which the auditor considers essential to the preparation of a satisfactory report. If the auditor believes that the contractor's estimating methods or accounting system are inadequate to produce valid support for the proposal or to permit satisfactory administration of the type of contract contemplated, this shall be stated in the audit report and concurrently made known to the contractor so that he may have the opportunity of presenting his views to the contracting officer and contract administration office. Where the contracting officer determines that deficiencies in the contractor's accounting system or estimating methods are such that the proposed contract cannot be adequately priced or administered, he shall, with the advice of the contract auditor and the contract administration office, assure that necessary corrective action is initiated prior to the award of such contract. The auditor has responsibility for performing that part of reviews which requires access to the contractor's books and financial records supporting proposed cost or pricing data regardless of the dollar amount involved. The auditor shall have general access to the books and financial records for this purpose. The contracting officer, the contract administration office, or their technical representatives may request any data from, or review records of, the contractor (such as lists of labor operations, process sheets, etc.) necessary to the discharge of their responsibilities.

(5) In order to provide the contracting officer with maximum support, it is essential that there be close cooperation and communication between the contract auditors and the production and other technical specialists. Such coordination will be accomplished in a manner which will minimize duplication of analysis. (See § 18–3.809(b)(3).) The analyses by technical and audit personnel are of mutual interest, and information relating thereto shall be exchanged throughout the review process. It is recognized that the duties of auditors and those of other technical specialists in many cases require both to evaluate the same elements of estimated costs. While they shall review the data jointly or concurrently wherever possible, each shall render his services within his own area of responsibility. For example, on quantitative factors (such as labor hours), the auditor will frequently find it necessary to compare proposed hours with hours actually expended on the same or similar products in the past as reflected on the cost records of the contractor. From this information he can often project trend data. The technical specialist may also analyze the proposed hours on the basis of his knowledge of such things as shop practices, industrial engineering, time and motion factors, and the contractor's plant organization and capabilities. The interchange of this information will not only prevent duplication but will assure adequate and complementary analysis.

(6) Pricing based on cost analysis involves, among other things, an appraisal of estimates of costs expected to be incurred in the future. The accounting projection of trends based on cost or pricing data, together with any known changes therein, is only one method of conducting this appraisal, others[1] being:

(i) An engineering appraisal of the need for the estimated labor and mate-

[1](NOTE: The "Armed Services Procurement Regulation Manual for Contract Pricing", ASMP No. 1 may be used as a guide in the review, analysis and negotiation of contract prices. However, users are cautioned that parts of the manual contain special Department of Defense procurement techniques not adaptable or authorized for use by NASA, e.g., Weighted Guidelines and Contract Definition.)

rial costs and of tooling and facilities, and the reasonableness of scrap and spoilage factors, and

(ii) The preparation of independent estimates by competent technical personnel.

Occasionally, differences of opinion will exist not only on the reasonableness of cost projections but also on the accounting techniques on which they are based. In addition, it is normally not possible to negotiate a pricing result which is in strict accord with all of the opinions of all of the specialists, or even with the Government's pricing objective. Reasonable compromises are normally necessary and this fact must be understood by all members of the team. For all of these reasons, audit reports or pricing recommendations by others must be considered to be advisory only. The contracting officer is responsible for the exercise of the requisite judgments and is solely responsible for the final pricing decision. In those instances where the contracting officer does not adopt recommendations that have particular significance on the contract price, appropriate comments should be included in the record of the negotiation (§ 18–3.811).

(7) Whenever it becomes apparent to the contracting officer that the negotiations will require the resolution of complex problems which involve items significant in amount, he shall request attendance of appropriate representatives at the negotiation meeting.

(8) Formal written price analysis, technical analysis, audit report, and other information which may affect negotiations shall be furnished to the contracting officer prior to the negotiation of procurement actions expected to exceed $100,000. These reports will be retained as a part of the official contract file along with significant work papers supporting the development of the pricing objective.

§ 18–3.802 Preparation for negotiation.

§ 18–3.802–1 Product or service.

Knowledge of the product or service, and its use is essential to sound pricing. Before soliciting quotations, every contracting officer should develop, where feasible, an estimate of the proper price level or value of the product or service to be purchased. Such estimates may be based on a physical inspection of the product and review of such items as drawings, specifications, job process sheets, and prior procurement data. When necessary, requirements and technical specialists should be consulted. The primary responsibility for the adequacy of specifications and for the delivery requirements must necessarily rest with requirements and technical groups. However, the contracting officer should be aware of the effect which these factors may have on prices and competition and should, prior to award, inform requirements and technical groups of any unsatisfactory effect which their decisions have on prices or competition.

§ 18–3.802–2 Selection of sources.

(a) *Competition.* It is NASA policy that competition will be obtained whenever possible. Companies that have indicated their interest by filing Standard Form 129, "Bidder's Mailing List Application," and any other companies that are known to be competent in the field involved, should be considered for a pending procurement. No company shall be precluded from submitting a proposal merely because it was not initially furnished a request for proposals.

(b) *Locating prospective contractors.* There shall be a continuing effort by NASA procurement and technical personnel to search for and develop information on potential sources. The negotiator shall submit proposed procurements in excess of $2,500, which are to be awarded on a competitive basis, to the small business specialist for screening before requests for proposals are issued, in order that small business concerns may be given an equitable opportunity to compete for procurements for which they might qualify. However, see § 18–1.705–3. Prior to making a determination as to which firms will be solicited, the negotiator shall review the source list of companies which have filed Standard Form 129 and any other information, including brochures, surveys, discussions, or correspondence, indicating the companies' interest and ability in the field of procurement. The names of additional companies which are known to be interested and competent in the field shall be added.

(c) *Appraising prospective contractors.* When the preparation of proposals requires extensive work and expense to companies, especially in the case of research and development, the source list should be screened by technical personnel, the negotiator, and small business personnel, and requests for proposals sent only to those companies which not only are technically qualified but are known to have the experience, management capabilities, and facilities to perform the contract. In those circumstances where the number of eligible companies is excessively large, proposal requests need only be sent to a representative number of companies which will assure effective competition: *Provided, however,* That in subsequent procurements the list will be rotated to provide all qualified firms an equal opportunity to submit proposals.

§ 18–3.802–3 Noncompetitive procurement.

(a) While competition must be obtained whenever possible, there are circumstances where one institution or company has exclusive or predominate capability by reason of experience, specialized facilities, or technical competence to perform the work within the time required and at reasonable prices. In such a circumstance, the initiating technical office may recommend, for approval by the appropriate authority listed in paragraph (d) of this section, that only one institution or company is qualified to perform the work or services and that a proposal be solicited only from this source. This recommendation shall be in writing and will be contained in a separate document entitled "Justification for Noncompetitive Procurement" and shall set forth full and complete justification for the selection in accordance with paragraph (c) of this section, except as otherwise authorized by paragraph (d)(1) of this section. In those cases where the initiating technical office does not make such a recommendation, the recommendation may be made by the procurement office, if deemed appropriate. In such a case, the recommendation will be prepared for the signature of an appropriate individual, consistent with the approval requirements of paragraph (d) of this section, and shall have the concurrence of the cognizant technical office before submission to the approving authority specified in paragraph (d) of this section, except that such concurrence may be waived in the case of small purchases (see paragraph (d)(1) of this section).

(b) The provisions of this § 18–3.802–3 do not apply to: (1) procurements of $250 or less; (2) procurements from or through other Government agencies; (3) procurements of utility services where the services are available from only one source; (4) procurements of architect-engineer services; (5) procurements of industrial facilities required in support of related procurement contracts; (6) procurements of scientific experiments, based on unsolicited proposals, where selection is made pursuant to NASA Management Instruction 7100.1, "Conduct of Space Science Program—Selection and Support of Scientific Investigations and Investigators" (§ 18–4.403(d)); or (7) procurements based on unsolicited proposals where a "Justification for Acceptance of Unsolicited Proposal" is provided in accordance with Subpart 18–4.4.

(c) Justification for noncompetitive procurement. (1) The document entitled "Justification for Noncompetitive Procurement" shall:

(i) Fully express the circumstances which operate to make competitive negotiation impractical or not feasible;

(ii) Explain with particularity the exclusive or predominant capability the proposed contractor possess which meet the requirements of the procurement; and

(iii) Contain, in the first sentence of the document, an appropriate recommendation (e.g., "I recommend that we negotiate with the _____ (Name of company) only for the detailed documentation and fabrication of _____ (Item being procured)").

(2) Each "Justification" shall reflect the degree of consideration which has been given to other sources in the particular field and the reasons they lack the capability which the proposed contractor evidences. The following illustrations represent factors which should be considered, as appropriate, in preparing the "Justification":

(i) What capability does the proposed contractor have which is important to the specific effort and makes him clearly more desirable than another firm in the same general field?

(ii) What prior experience of a highly specialized nature does he possess which is vital to the proposed effort?

(iii) What facilities and test equipment does he have which are specialized and vital to the effort?

(iv) Does he have a substantial investment of some kind which would have to be duplicated at Government expense by another source entering the field?

(v) If schedules are involved, why are they critical and why can the proposed contractor best meet them?

(vi) If lack of drawings or specifications is a guiding factor, why is the proposed contractor best able to perform under these conditions? Why are drawings and specifications lacking? What is the leadtime required to get drawings and specifications suitable for competition?

(vii) Are Government-owned facilities involved?

(viii) Is the effort a continuation of previous effort performed by the proposed contractor?

(ix) Does the proposed contractor have personnel considered predominant experts in the particular field?

(x) Is competition precluded because of the existence of patent rights, copyrights or secret processes?

(xi) Are parts or components being procured as replacement parts in support of equipment specially designed by a manufacturer, where data available is not adequate to assure that the parts or components will perform the same function in the equipment as those parts or components being replaced?

(d) Review and approval: The "Justification" shall, as a minimum requirement, be reviewed and approved as follows:

(1) For small purchases in excess of $250, but not in excess of $2,500, the "Justification" may be in the form of a statement and shall be submitted for the approval of the contracting officer.

(2) For procurements in excess of $2,500, but not in excess of $100,000, the "Justification" shall be submitted for the approval of the Procurement Officer or his designees after prior review and written concurrence by the initiating technical individual's immediate superior. (For the purpose of this requirement, the term "or his designees" shall mean the individuals authorized by the Procurement Officer to sign the "Justification." Such authorization shall be in writing and shall not be delegated beyond the first level of supervision below the Procurement Officer.)

(3) For procurements in excess of $100,000, but less than the dollar amount set forth below for the installation concerned, the "Justification" shall be submitted for the approval of the Procurement Officer or his designee after prior review and written concurrence by the head of the cognizant technical division or laboratory, as applicable. (For the purpose of this requirement, the term "or his designee" shall mean the individual authorized by the Procurement Officer to sign the "Justification." Such authorization shall be in writing and shall not be delegated to more than one individual.)

(i) $250,000:

Flight Research Center.
Wallops Station.

(ii) $500,000:

Headquarters Contracts Division.
Kennedy Space Center.
NASA Pasadena Office.

(iii) $1 million:

Ames Research Center.
Goddard Space Flight Center.
Langley Research Center.
Lewis Research Center.
Manned Spacecraft Center.
Marshall Space Flight Center.
Space Nuclear Systems Office (Germantown).

(4) For procurements within the range of the dollar amounts set forth below for the installation concerned, the "Justification" shall be submitted for the approval of the Head of the Installation, his Deputy or Associate Director (the title "Associate Director" means a full Associate Director and not an Associate Director for _____) after prior review and written concurrences by the Director or Assistant Director of the cognizant technical directorate, cognizant Program Manager, or cognizant staff official, as applicable, who reports directly to the Head of the Installation, and by the Procurement Officer.

(i) $250,000 but less than $500,000:

Flight Research Center.
Wallops Station.

(ii) $500,000 but less than $1 million:

Headquarters Contracts Division.
Kennedy Space Center.
NASA Pasadena Office.

(iii) $1 million but less than $2,500,000:

Ames Research Center.
Goddard Space Flight Center.
Langley Research Center.
Lewis Research Center.
Manned Spacecraft Center.
Marshall Space Flight Center.
Space Nuclear Systems Office (Germantown).

(5) For procurements that equal or exceed the dollar amounts set forth below for the installation concerned, the "Justification" shall be submitted for the signature of the head of the Installation after prior review and written concurrences by the Director or Assistant Director of the cognizant technical directorate, cognizant Program Manager, or cognizant staff official, as applicable, who reports directly to the head of the Installation, and by the Procurement Officer. The "Justification" shall contain additional signature blocks for approval by the Administrator and for concurrences by the Director of Procurement, the cognizant Program Associate Administrator, the Assistant Administrator for Industry Affairs, the Assistant Administrator for Administration, the Associate Administrator for Organization and Management, and the Deputy Administrator.

(i) $500,000 and over:

Flight Research Center.
Wallops Station.

(ii) $1 million and over:

Headquarters Contracts Division.
Kennedy Space Center.
NASA Pasadena Office.

(iii) $2,500,000 and over:

Ames Research Center.
Goddard Space Flight Center.
Langley Research Center.
Lewis Research Center.
Manned Spacecraft Center.
Marshall Space Flight Center.
Space Nuclear Systems Office (Germantown).

The original and 20 copies of the "Justification" shall be submitted in the case of those procurements under the cognizance of the Office of Manned Space Flight. In all other instances the original and 10 copies shall be submitted. The position title will be shown for each individual signing the "Justification" as required by subparagraphs (1) through (5) of this paragraph.

(e) The "Justification for Noncompetitive Procurement" will be attached to the Procurement Plan in accordance with § 18–3.852–3 and will be made a part of the contract file. (See §§ 18–1.308 and 18–16.853.)

§ 18–3.802–4 Requests for proposals.

(a) *Preparation and submission.* Requests for proposals, including amendments thereto, shall be prepared by the procurement office, with assistance from technical or other offices as required and be issued by the contracting officer or his authorized representative. The request for proposals has a twofold purpose: (1) To convey to prospective contractors the information they need to prepare a proposal properly, and (2) to solicit the information that procurement and technical personnel need to appraise the proposals of prospective contractors. The request for proposals shall contain all the information necessary to enable a prospective offeror to prepare a proposal properly (see Subpart 18–3.5, which contains a list of items to be considered in preparing a request for proposals or a request for quotations). Requests for proposals, including requests for revised proposals, shall be in writing and shall specify a date for their submission. When advisable, particularly in the case of research and development, proposals shall be requested in two parts: (1) An unpriced technical proposal, and (2) a cost proposal cross-referenced to the technical proposal. Any extension of time granted to one prospective contractor shall be granted uniformly to all. Each request for proposals shall be issued to prospective contractors at the same time, and no contractor shall be given an advantage.

(b) *Advance information copies.* Two copies of each request for proposals and

changes to such request for proposals prepared pursuant to a procurement plan approved under § 18–3.852–2(a)(3) shall be forwarded to the Director of Procurement (Code KDR). These copies shall be forwarded at the earliest practicable date following completion of the final draft of the request for proposals. However, submission to the Director of Procurement shall in no event be later than the date the request for proposals is mailed to prospective proposers. The transmittal to the Director of Procurement shall identify the procurement plan to which the request for proposals applies. This requirement is in addition to the requirements of § 18–50.104.

(c) *Late proposals and late unsolicited revisions to proposals.* (1) Except with respect to procurements estimated not to exceed $2,500, written requests for proposals shall contain the following provision:

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The Government reserves the right to consider proposals or modifications thereof received after the date indicated for such purpose, but before award is made, should such action be in the interest of the Government.

(2) Proposals, or modifications thereof, received from qualified firms after the latest date specified for receipt may be considered if there is a probability of a significant reduction in cost to the Government, or technical improvements, as compared with proposals previously received. In such case, the negotiator shall investigate the circumstances surrounding the submission of the late proposal or modification and evaluate its content. He shall then submit his recommendations and findings to the contracting officer, in writing, as to whether, in his opinion:

(i) The company submitting the proposal has an excusable reason for late submission;

(ii) There is an advantage to the Government to consider the proposal;

(iii) All companies submitting proposals should be resolicited; and

(iv) Time of performance permits such resolicitation.

The contracting officer shall thereupon determine whether the proposal should be considered or rejected, or a resolicitation of proposals should be made.

(3) When the failure of a proposal to arrive on time is due solely to delay in the mails for which the offeror was not responsible or when only one proposal is received, the contracting officer may consider the proposal.

(4) Offerors submitting late proposals that will not be considered will be notified by the contracting officer that his proposal was received late and will not be considered.

(5) The provisions of subparagraphs (1) through (4) of this paragraph are also applicable to late quotations. In the case of a request for quotations, the provisions set forth in subparagraph (1) above will be appropriately modified.

§ 18–3.803 Type of contract.

(a) The selection of an appropriate type of contract and the negotiation of prices, or estimated costs and fee, are related and should be considered together. The objective is to negotiate a type of contract and a price that includes reasonable contractor risk and provides the contractor with the greatest incentive for efficient and economical performance. When negotiations indicate the need for using other than a firm fixed-priced contract, there should be compatibility between the type of contract selected and the contractor's accounting system. In view of the exploratory nature of research and development, and the uncertainties inherent in its successful accomplishment, cost-reimbursement type contracts normally will be utilized in accomplishing such procurements. Exception may be made when negotiating contracts of low monetary value where audit is impracticable or in contracts where the work to be performed can be described with a reasonable degree of definiteness and sufficient cost or pricing information is available to insure that the contract price will be fair and reasonable.

(b) In the course of a procurement program, a series of contracts, or a single contract running for a lengthy term, the circumstances which make for selection of a given type of contract at the outset will frequently change so as to make a different type more appropriate during later periods. In particular, the repetitive or unduly protracted use of a cost-plus-a-fixed-fee or time and materials contract is to be avoided where experience has provided a basis for firmer pricing which will promote more efficient performance and will place a more reasonable degree of risk on the contractor. Thus, in the case of a time and materials contract, continuing consideration should be given to converting to another type of contract as early in the performance period as practicable.

§ 18–3.804 Evaluation of proposals.

§ 18–3.804–1 General.

Evaluation of proposals by all personnel concerned with the procurement will be completed expeditiously. The evaluation of proposals received may be accomplished in a number of different ways. Evaluation of proposals for scientific experiments to be flown aboard NASA satellites will be accomplished in accordance with NASA Management Instruction 7100.1, "Conduct of Space Science Program—Selection and Support of Scientific Investigations and Investigators." Other methods of evaluation used by NASA, together with policies and procedures regarding their use, are set forth in §§ 18–3.804–2 and 18–3.804–3.

§ 18–3.804–2 Evaluation procedures not involving Source Evaluation Board.

The evaluation procedures set forth in paragraphs (a) through (d) shall be utilized except where the procedures set forth in § 18–3.804–3 apply.

(a) *Responsibility of contracting officer.* (See § 18–3.801–2.)

(b) *Technical evaluation.* Generally, procurement personnel are not qualified to evaluate proposals from a technical viewpoint and must rely on scientific and engineering personnel for this function. In research and development contracting, awards should usually be made to those companies that have the highest competence in the specific field of science or technology involved, although awards should not be made on the basis of research and development capabilities that exceed those needed for the successful performance of the work. It is imperative therefore that technical evaluations and recommendations be fully documented and reviewed by responsible personnel. Technical evaluation should include the following:

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

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

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

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

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

(6) The contractor's proposed method of achieving the reliability required.

In making this evaluation, technical personnel may be given access to portions of the business proposals upon request. After evaluation and preparation of written recommendations as to selection of source by the technical personnel, proposals shall be returned to the negotiator. The contracting officer is responsible for reviewing the justification in support of the recommendations of technical personnel to determine that the justification is adequate and that the documentation is complete.

(c) *Business evaluation*—(1) *Price and cost analysis.* Each proposal requires some form of price or cost analysis. The contracting officer must exercise judgment in determining the extent of analysis in each case. On high-dollar value procurements, particularly where effective competition has not been obtained, the analysis should be thorough, and the record carefully documented to disclose the extent to which the various elements of costs, fixed fee, or profit contained in the contractor's proposals were analyzed. The negotiation memorandum should also reflect the consideration given to the recommendations of the price analyst and the basis for nonacceptance or departure from the recommendations during the course of negotiations.

(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 recommenda-

tions 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, "Management Procedures for Automatic Data Processing Equipment") 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.

(3) *Other factors.* The contracting officer must appraise the management capability of the offeror to perform the required work in a timely manner. In making this appraisal, he must consider such factors as the company's management organization, past performance, reputation for reliability, availability of the required facilities, and cost controls, including the nature and effectiveness of its cost reduction program (see § 18–3.102(b)(20)).

§ 18–3.804–3 Evaluation procedures—use of Source Evaluation Board.

(a) Source Evaluation Board Procedures are appropriate for competitive negotiated procurements, except Architect-Engineer services and contracts for which the procedures have been specifically waived, then:

(1) The estimated cost of the contract will exceed $1 million;

(2) The estimated cost of the contract will not exceed $1 million, but it is likely that the source selected will receive other contracts for later phases of the same project which, cumulatively, would total more than $1 million. (Examples of this category include feasibility studies and project definition contracts under approved programs or programs for which approval will be requested.); or that

(3) A Source Selection Official determines that the use of the Source Evaluation Board procedures is desirable.

(b) The detailed procedures regarding the designation and operation of Source Evaluation Boards are set forth in NPC 402. (See NASA Management Instruction 1152.2, "Source Evaluation Board Manual".)

§ 18–3.804–4 Disclosure of information prior to selection of contractor.

During the course of evaluation proceedings, whether or not a Source Evaluation Board is utilized, NASA personnel participating in any way in evaluating proposals shall not reveal any information concerning the evaluation under way to anyone who is not also participating in the same evaluation proceedings, and then only to the extent that such information is required in connection with such proceedings. When other Government or Jet Propulsion Laboratory personnel participate in evaluation proceedings, they will be instructed to observe these restrictions. Information will be provided to unsuccessful offerors in accordance with § 18–3.106–3.

§ 18–3.805 Conduct of negotiations.

§ 18–3.805–1 General.

(a) After evaluation of proposals, written or oral discussions shall be conducted with all responsible offerors who submit proposals within a competitive range, price and other factors considered, in accordance with § 18–3.102(a), and due attention will be given to the factors cited in § 18–3.102(b).

(b) Procurement personnel, as well as other personnel concerned with the procurement, shall insure that contract negotiations are completed expeditiously. However, all details of the negotiation must be completed before the contract is actually placed. This includes, to the extent applicable:

(1) Arrangements regarding Government-furnished property;

(2) Determination that the prospective contractor is responsible, including completion of preaward surveys where required;

(3) Arrangements with other Government agencies for the use of facilities under their control;

(4) Where the contract will be administered by another Government agency, any necessary arrangements with the responsible activity of that agency;

(5) Where the contract will involve access to classified information, verification that required security clearance has been obtained.

(6) The requirement for the furnishing of data by the contractor in the performance of the contract, both for technical evaluation and for competitive reprocurement where follow-on procurement is probable, in those situations where the appropriate technical office has requested that the contracting officer obtain such data; and

(7) If the offeror's proposal contains technical data marked with a restrictive legend, whether the Government desires rights to use such data (§ 18–3.109, § 18–9.202–6).

(c) Whenever negotiations are conducted with more than one offeror, auction techniques are strictly prohibited. An example would be indicating to an offeror a price which must be met to obtain further consideration, or informing him that his price is not low in relation to that of another offeror. On the other hand, it is permissible to inform an offeror that his price is considered by the Government to be too high. After receipt of proposals, no information regarding the number or identity of the offerors participating in the negotiations shall be made available to the public or to any one whose official duties do not require such knowledge (see § 18–1.1050). Whenever negotiations are conducted with several offerors, while such negotiations may be conducted successively, all offerors selected to participate in such negotiations (see paragraph (a) of this section) shall be offered an equitable opportunity to submit such price, technical, or other revisions in their proposals as may result from the negotiations. All such offerors shall be informed of the specified date (and time if desired) of the closing of negotiations and that any revisions to their proposals must be submitted by that date. All such offerors shall be informed that any revision received after such date shall be treated as a late proposal in accordance with the "Late Proposals" provisions of the request for proposals. All such offerors shall also be informed that after the specified date for the closing of negotiation no information other than notice of unacceptability of proposal, if applicable (see § 18–3.106–3), will be furnished to any offeror until award has been made.

(d) Except where cost-reimbursement type contracts are to be used (see § 18–3.805–2), solicitations may provide for two-step negotiation. After receipt of initial unpriced technical proposals, such proposals will be evaluated to determine those which are acceptable to the Government or which, after discussion, can be made acceptable. After necessary discussions are completed, prices will thereafter be solicited for all acceptable proposals and no award may be made until such prices have been received. Solicitations may also include a notification of the possibility that award may be made upon submission of prices without further discussion of proposals received and therefore the best possible price should be submitted initially. Unless such notification is included in the solicitation, discussions shall be conducted as provided in paragraph (a) of this section.

(e) When, during negotiations, a substantial change occurs in the Government's requirements or a decision is reached to relax, increase or otherwise modify the scope of the work or statement of requirements, such change or modification shall be made in writing as an amendment to the request for proposal or request for quotations, and a copy shall be furnished to each prospective contractor. See § 18–3.802–4. Oral advice of change or modification may be given if (1) the changes involved are not complex in nature, (2) all prospective contractors are notified simultaneously (preferably by a meeting with the contracting officer), and (3) a record is made of the oral advice given. In such instances, however, the oral advice should be promptly followed by a written amendment verifying such oral advice previously given. The dissemination of oral advice of changes or modifications separately to each prospective offeror during individual negotiation sessions should be avoided unless preceded, accompanied, or immediately followed by a written amendment to the request for proposal or request for quotations embodying such changes or modifications. Each offeror whether notified orally or in writing shall be required to acknowledge receipt of the amendment and to state that he understands the time limit for submission of revised proposals (see § 18–3.501(b)(54)).

§ 18–3.805–2 Cost-reimbursement type contracts.

In selecting the contractor for a cost-reimbursement type contract, estimated costs of contract performance and proposed fees should not be considered as controlling, since in this type of contract advance estimates of cost may not provide valid indicators of final actual costs. There is no requirement that cost-reimbursement type contracts be awarded on the basis of either (a) the lowest proposed cost, (b) the lowest proposed fee, or (c) the lowest total estimated cost plus proposed fee. The award of cost-reimbursement type contracts primarily on the basis of estimated costs may encourage the submission of unrealistically low estimates and increase the likelihood of cost overruns. The cost estimate is important to determine the prospective contractor's understanding of the project and ability to organize and perform the contract. The agreed fee must be within the limits prescribed by law and appropriate to the work to be performed. Beyond this, however, the primary consideration in determining to whom the award shall be made is: Which contractor can perform the contract in a manner most advantageous to the Government.

§ 18–3.806 Cost, profit, and price relationships.

(a) Where products are sold in the open market, costs are not necessarily the controlling factor in establishing a particular seller's price. Similarly, where competition may be ineffective or lacking, estimated costs plus estimated profit are not the only pricing criteria. In some cases, the price appropriately may represent only a part of the seller's cost and include no estimate for profit or fee, as in research and development projects where the contractor is willing to share part of the costs. In other cases, price may be controlled by competition as set forth in § 18–3.805–1. The objective of the contracting officer shall be to negotiate fair and reasonable prices in which due weight is given to all relevant factors, including those in § 18–3.102.

(b) Profit or fee is only one element of price and represents a much smaller proportion of the total price than do such other estimated elements as labor and material. While the public interest requires that excessive profits be avoided, the contracting officer shculd not become so preoccupied with particular elements of a contractor's estimate of cost and profit that the most important consideration, the total price itself, is distorted or diminished in its significance. Government procurement is concerned primarily with the reasonableness of the price which the Government ultimately pays, and only secondarily with the eventual cost and profit to the contractor.

§ 18–3.807 Pricing techniques.

§ 18–3.807–1 General.

(a) *Policies.* Policies set forth in this Subpart 18–3.8 may be applied in a variety of ways in the evaluation of offerors' or contractors' proposals and in the negotiation of contract prices. The following paragraphs describe the principal price and cost evaluation techniques and the circumstances under which each may be used. They are equally applicable to initial and subsequent price negotiations.

(b) *Adequate price competition and catalog or market prices.* For the purpose of this § 18–3.807, the terms "adequate price competition" and "established catalog or market prices of commercial items sold in substantial quantities to the general public" shall be construed in accordance with the following general guidelines.

(1) *Adequate price competition.* (i) Price competition exists if offers are solicited and (*a*) at least two responsible offerors (*b*) who can satisfy the purchaser's (e.g., the Government's) requirements (*c*) independently contend for a contract to be awarded to the responsive and responsible offeror submitting the lowest evaluated price (*d*) by submitting priced offers responsive to the expressed requirements of the solicitation. Whether there is price competition for a given procurement is a matter of judgment to be based on evaluation of whether each of the foregoing conditions (*a*) through (*d*) of this subparagraph (1) (i) is satisfied. Generally, in making this judgment, the smaller the number of offerors, the greater the need for close evaluation.

(ii) If conditions (*a*) through (*d*) in subparagraph (1) (i) are met, price competition may be presumed to be "adequate" unless the purchaser (e.g., the contracting officer) finds that:

(*a*) The solicitation was made under conditions that unreasonably deny to one or more known and qualified offerors an opportunity to compete;

(*b*) The low competitor has such a determinative advantage over the other competitors that he is practically immune to the stimulus of competition in proposing a price (e.g., a determinative advantage because substantial costs, such as startup or other nonrecurring expenses, have already been absorbed in connection with previous sales, thus placing the competitor in a preferential position); or

(*c*) The lowest final price is not reasonable and supports such finding by an enumeration of the facts upon which it is based; provided, that such finding is approved by the Procurement Officer or his deputy.

(iii) A price is "based on" adequate price competition if it results directly from such competition or, if price analysis (not cost analysis) shows clearly that the price is reasonable in comparison with current or recent prices for the same or substantially the same items procured in comparable quantities under contracts awarded as a result of adequate price competition (e.g., (*a*) exercise of an option in a contract for which there was adequate price competition if the option price has been determined to be reasonable in accordance with § 18–1.1504(d) and the option price is not greater than the contract price; and (*b*) and item is normally procured competitively but in a particular situation only one offer is solicited or received, and the price clearly is reasonable in comparison with recent purchases of comparable quantities for which there was adequate price competition.)

(2) *Established catalog or market prices of commercial items sold in substantial quantities to the general public.* Application of this exception also requires judgment and analysis on a case-by-case basis. In making this judgment, the various elements of the term must be considered and a price must meet all these conditions in order to be considered for exception. In other words, the price must be, or be based on: (i) An established catalog or market price, (ii) of commercial items, (iii) sold in substantial quantities, (iv) to the general public. The following criteria should be applied in determining whether an item falls within the scope of this exception:

(*a*) An "established catalog price" is a price included in a catalog, price list, schedule, or other form that (*1*) is regularly maintained by the manufacturer or vendor, (2) is either published or otherwise available for inspection by customers, and (3) states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. An "established market price" is a current price, established in the usual and ordinary course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or vendor.

(*b*) A "commercial item" is an item, which term included both supplies and services, of a class or kind which (*1*) is regularly used for other than Government purposes, and (2) is sold or traded in the course of conducting normal business operations.

(*c*) Supplies are "sold in substantial quantities" when the facts or circumstances are sufficient to support a reasonable conclusion that the quantities regularly sold are sufficient to constitute a real commercial market for the item. Nominal quantities, such as models, specimens, samples, and prototype or experimental units, cannot be considered as meeting this requirement. Services are sold in substantial quantities if they are customarily provided by the contractor, with personnel regularly employed, and with equipment, if any is necessary, regularly maintained, solely or principally, for the purpose of providing such services.

(*d*) An item is sold "to the general public" if it is sold to other than affiliates of the seller for end use by other than the Government. Items sold to affiliates of the seller and sales for end use by the Government are not sales to the general public.

A price may be considered to be "based on" established catalog or market prices of commercial items sold in substantial quantities to the general public if the item being purchased is sufficiently similar to such a commercial item to permit the difference between the prices of the items to be identified and justified with-

out resort to cost analysis. The foregoing criteria require positive demonstration by convincing evidence to support the application of this exception. It is not enough that an item be listed in a catalog or price list, or be offered for sale to the general public, or be intended to become a commercial item, but tangible and substantial sales activity must be shown to result from such listing, offering, or intention. The listing of an item in the Federal Supply Schedules is an offer to furnish the item to Government agencies at stipulated price and delivery terms, and does not, of itself, meet the criteria for exception.

§ 18–3.807–2 Requirement for price or cost analysis.

(a) *General.* Some form of price or cost analysis is required in connection with every negotiated procurement action. The method and degree of analysis, however, is dependent on the facts surrounding the particular procurement and pricing situation. Cost analysis shall be performed in accordance with paragraph (c) of this section when cost or pricing data is required to be submitted under the conditions described in § 18–3.807–3; however, the extent of the cost analysis should be that necessary to assure reasonableness of the pricing result, taking into consideration the amount of the proposed contract and the cost and time needed to accumulate the necessary data for analysis. Price analysis shall be used in all other instances to determine the reasonableness of the proposed contract price. Price analysis may also be useful in corroborating the overall reasonableness of a proposed price where the determination of reasonableness was developed through cost analysis.

(b) *Price analysis.* (1) Price analysis is the process of examining and evaluating a prospective price without evaluation of the separate cost elements and proposed profit of the individual prospective supplier whose price is being evaluated. Price analysis may be accomplished in various ways including the following:

(i) The comparison of the price quotations submitted;

(ii) The comparison of prior quotations and contract prices with current quotations for the same or similar end items (to provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as specifications, quantities ordered, time for delivery, Government-furnished materials, and experienced trends of improvements in production efficiency; it must also be recognized that such comparison may not detect an unreasonable current quotation unless the reasonableness of the prior price was established and unless changes in the general level of business and prices have been considered);

(iii) The use of rough yardsticks (such as dollars per pound, per horsepower, or other units) to point up apparent gross inconsistencies which should be subjected to greater pricing inquiry;

(iv) The comparison of prices set forth in published price lists issued on a competitive basis, published market prices of commodities and similar indices, together with discount or rebate arrangements; and

(v) The comparison of proposed prices with estimates of cost independently developed by personnel within the procurement office.

(2) Price analysis techniques should be used to support or supplement cost analysis wherever appropriate.

(c) *Cost analysis.* (1) Cost analysis is the review and evaluation of a contractor's cost of pricing data (§ 18–3.807–3) and of the judgmental factors applied in projecting from the data to the estimated costs, in order to form an opinion on the degree to which the contractor's proposed costs represent what performance of the contract should cost, assuming reasonable economy and efficiency. It includes the appropriate verification of cost data, the avaluation of specific elements of costs (see § 18–16.202), and the projection of these data to determine the effect on prices of such factors as:

(i) The necessity for certain costs;

(ii) The reasonableness of amounts estimated for the necessary costs;

(iii) Allowances for contingencies;

(iv) The basis used for allocation of overhead costs; and

(v) The appropriateness of allocations of particular overhead costs to the proposed contract.

(2) Appropriate consideration should be given to Part 18–15, which contains general cost principles and procedures for the determination and allowance of costs in connection with the negotation of cost-reimbursement type contracts, as well as guidelines for use, where appropriate, in the evaluation of costs in connection with negotiated fixed-price type contracts.

(3) Among the evaluations that should be made where the necessary data are available, are comparisons of a contractor's or offeror's current estimated costs with:

(i) Actual costs previously incurred by the contractor or offeror;

(ii) His last prior cost estimate for the same or similar item or a series of prior estimates;

(iii) Current cost estimates from other possible source; and

(iv) Prior estimates or historical costs of other contractors manufacturing the same or similar items.

(4) Forecasting future trends in costs from historical cost experience is of primary importance. In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends. In cases involving production of recently developed, complex equipment, even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken, and in contracts extending over a period of several years, trend analysis should be made of overhead forecasts for the life of the contract.

§ 18–3.807–3 Cost or pricing data.

(a) The contracting officer shall require the contractor to submit, either actually or by specific identification in writing, cost or pricing data in accordance with § 18–16.202 and to certify, by use of the certificate in paragraph (b) of the clause set forth in § 18–3.807–4, that, to the best of his knowledge and belief, the cost or pricing data he submitted was accurate, complete, and current prior to:

(1) The award of any negotiated contract expected to exceed $100,000 in amount;

(2) The pricing of any contract modification expected to exceed $100,000 in amount to any formally advertised or negotiated contract whether or not cost or pricing data was required in connection with the initial pricing of the contract;

(3) The award of any negotiated contract not expected to exceed $100,000 in amount or any contract modification not expected to exceed $100,000 in amount to any formally advertised or negotiated contract whether or not cost or pricing data was required in connection with the initial pricing of the contract, provided the contracting officer considers that the circumstances warrant such action in accordance with paragraph (d) of this section;

unless the contracting officer determines, in writing, that the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The requirements under subparagraphs (1) and (2) of this paragraph may be waived in exceptional cases where the Associate Administrator for Organization and Management, or, in the case of a contract with a foreign government or agency thereof, the Assistant Administrator for Industry Affairs or the Director of Procurement authorizes such waiver and states in writing his reasons for such determination. The determination will set forth the procedures followed in attempting to obtain cost and pricing data, including any direct requests therefor, the contractor's reasons for refusing to submit cost or pricing data or reasons why data submitted by the contractor could not be used, and other efforts made by NASA to obtain confirmation of the accuracy of pricing from sources other than the contractor. Whenever the Contractor and Subcontractor Certified Cost or Pricing Data clause set forth in § 18–3.807–4 is to be included in the contract, it should also be included in the request for proposals, the invitation for bids, or the request for quotations.

(b) Any contractor who has been required to submit and certify cost or pricing data in accordance with paragraph (a) of this section shall also be required to obtain cost or pricing data from his subcontractors under the circumstances set forth in the clause in § 18–3.807–4.

(c) When there is adequate price competition, cost or pricing data shall not be

requested regardless of the dollar amount involved. As a general rule, cost or pricing data should not be requested when it has been determined that proposed prices are, or are based on, established catalog or market prices of commercial items sold in substantial quantities to the general public. Where, however, despite the willingness of a number of commercial purchasers to buy an item at such a catalog or market price, the purchaser (e.g., the contracting officer) finds that that price is not reasonable and supports such finding by an enumeration of the facts upon which it is based, cost or pricing data may be requested, if necessary, to establish a reasonable price; provided, that such finding is approved by the Procurement Officer. In addition, cost or pricing data may be requested, if necessary, where there is such a disparity between the quantity being procured and the quantity for which there is such a catalog or market price that pricing cannot reasonably be accomplished by comparing the two. Where an item is substantially similar to a commercial item for which there is an established catalog or market price at which substantial quantities are sold to the general public, but the offered price of the former is not considered to be "based on" the price of the latter in accordance with § 18-3.807-1(b)(2), any requirement for cost or pricing data should be limited to that pertaining to the differences between the items if this limitation is consistent with assuring reasonableness of pricing result.

(d) (1) Certified cost or pricing data shall not be requested prior to the award of any contract anticipated to be for $10,000 or less and generally should not be requested for modifications in those amounts. There should be relatively few instances where the requirement for certified cost or pricing data or use of the clause set forth in § 18-3.807-4 would be justified in awards between $10,000 and $100,000. In most such awards, the administrative costs will outweigh the benefits which might otherwise accrue from receipt of certified cost or pricing data; hence, all other means of determining reasonableness of price should be utilized. When less than complete cost analysis (e.g., analysis of only specific factors) will provide a reasonable pricing result (see § 18-3.807-2(a)) on awards under $100,000 without the submission of complete cost or pricing data, the contracting officer shall request, without certification, only that data which he considers adequate to support the limited extent of the cost analysis required.

(2) Although cost and pricing data was requested in the solicitation, a certification of cost and pricing data shall not be requested in connection with the award of any contract of any dollar value where the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantites to the general public, or prices set by law or regulation. (See § 18-3.604-3.)

(e) "Cost or pricing data" as used in this Subpart 18-3.8, consists of all facts existing up to the time of agreement on price which prudent buyers and sellers would reasonably expect to have a significant effect on the price negotiations. The definition of cost or pricing data embraces more than historical accounting data; it also includes, where applicable, such factors as vendor quotations, nonrecurring costs, changes in production methods and production or procurement volume, unit cost trends such as those associated with labor efficiency, and make-or-buy decisions or any other management decisions which could reasonably be expected to have a significant bearing on costs under the proposed contract. In short, cost or pricing data consists of all facts which can reasonably be expected to contribute to sound estimates of future costs as well as to the validity of costs already incurred. Cost or pricing data, being factual, is that type of information which can be verified. Because the contractor's certificate pertains to "cost or pricing data", it does not make representations as to the accuracy of the contractor's judgment on the estimated portion of future costs or projections. It does, however, apply to the data upon which the contractor's judgment is based. This distinction between fact and judgment should be clearly understood.

(f) The requirement for submission of costs or pricing data is met when all accurate cost or pricing data reasonably available (see §18-3.807-5(a)(1)) to the contractor at the time of agreement on price is submitted, either actually or by specific identification, in writing to the contracting officer or his representative. The distinction between the "submission" of cost or pricing data and the "making available" of records should be clearly understood. The mere availability of books, records and other documents for verification purposes does not constitute submission of cost or pricing data.

§ 18-3.807-4 Contractor and subcontractor certified cost or pricing data clause.

(a) The clause set forth below shall be inserted in all contracts over $100,000 and in all contract modifications over $100,000 even though the original amount of the contract is $100,000 or less. (NOTE: The clause thus included is by its terms made inoperative in certain contracts and subcontracts as provided by this clause.) In addition, the contracting officer shall include this clause, with appropriate reduction in the dollar amounts provided therein, in contracts not exceeding $100,000 for which he has obtained a Certificate of Current Cost or Pricing Data in accordance with §18-3.807-3(a)(3) in connection with the initial pricing of the contract.

CONTRACTOR AND SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (OCTOBER 1969)

(a) (1) The Contractor shall require, under the situations described in (2) below unless exempted under the exceptions set forth in (3) below, each subcontractor under this contract to submit cost or pricing data and to certify that, to the best of his knowledge and belief, such cost or pricing data are accurate, complete, and current.

(2) Except as provided in (3) below, certified cost or pricing data shall be submitted prior to (i) the award of each subcontract, the price of which is expected to exceed $100,000 and (ii) the negotiation of the price of each change or modification to a subcontract under this contract for which the price adjustment is expected to exceed $100,000.

(3) Certified cost or pricing data need not be furnished pursuant to this paragraph (a) where (i) the Contractor has not been required to furnish cost or pricing data; or (ii) the subcontract price or price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or the prices are set by law or regulation; and the Contractor states in writing the basis for applying this exception.

(4) In submitting the cost or pricing data, the subcontractor shall certify that the data are accurate, complete, and current, using the form of certificate set forth in paragraph (b) below. Such certificate and data (actual or identified, as provided in the certificate prescribed below) shall be submitted by the subcontractor to the next higher tier subcontractor, or the prime contractor, as applicable, for retention.

(b) The certificate required by this clause shall be in the form set forth below. When the certificate is to be submitted by a subcontractor, the words "Contracting Officer or his representative" shall be deleted and the name of the concern requiring the certificate shall be inserted.

CERTIFICATE OF CURRENT COST OR PRICING DATA (OCTOBER 1969)

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in NASA PR 3.807-3(e) submitted, either actually or by specific identification in writing (see NASA PR 3.807-3(f)), to the Contracting Officer or his representative in support of_____* are accurate, complete, and current as of _____**.

(Day Month Year)

Firm _____

Name _____

Title _____

_____***

(Date of Execution)

*Describe the proposal, quotation, request for price adjustment or other submission involved, giving appropriate identifying number (e.g., RFP No. _____).

**This date shall be the date when the price negotiations were concluded and the contract price was agreed to. The responsibility of the contractor is not limited by the personal knowledge of the contractor's negotiator if the contractor had information reasonably available (see 3.807-5(a)) at the time of agreement, showing that the negotiated price is not based on accurate, complete and current data.

***This date should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(c) For purposes of verifying that certified cost or pricing data submitted in conjunction with the negotiation of this contract or any contract change or other modification involving an amount in excess of $100,000 were accurate, complete, and current, the Contracting Officer, of the Government prime contract or his authorized representatives, shall—until the expiration of 3 years from the date of final payment under this contract or of the time periods specified in Appendix M of the NASA Procurement Regulation, whichever expires earlier—have the right to examine those

books, records, documents, papers and other supporting data which involve transactions related to this contract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein. The rights herein are in addition to those contained in any other clause of this contract dealing with records, audit and records, and examination of records.

(d) Whenever the price of any contract change or other modification to this contract is expected to exceed $100,000, the Contractor agrees to furnish the Contracting Officer certified cost or pricing data, using the certificate set forth in paragraph (b) above, unless the Contracting Officer determines that the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(e) The requirement for submission of certified cost or pricing data with respect to any contract change or other modification does not apply to any subcontract change or other modification, at any tier, where the Government prime contract is a firm fixed-price or fixed-price with escalation contract unless such change or other modification results from a contract change or other modification to the Government prime contract, nor does it apply to a subcontract change or other modification, at any tier, where the Government prime contract is not firm fixed-price or fixed-price with escalation, unless the price for such change or modification becomes reimbursable under the Government prime contract.

(f) The Contractor agrees to insert paragraph (c) without change and the substance of paragraphs (a), (b), (d), (e), and (f) of this clause in each subcontract hereunder in excess of $100,000, and in each subcontract of $100,000 or less at the time of making a change or other modification thereto in excess of $100,000.

(g) Whenever the Contractor was required to furnish a certificate of current cost or pricing data, either during negotiation of this contract or pursuant to the provisions of this clause, or whenever a subcontractor hereunder should have been required to furnish such a certificate pursuant to the provisions of this clause or of a clause in the subcontract, and the Contracting Officer determines that the price of this contract, including any profit or fee, or that any price adjustment negotiated for any change or other modification to this contract, has been increased by any significant sums because such cost or pricing data was inaccurate or incomplete or was not current as of the date set forth in the certificate applicable to such data, such price or price adjustment shall be reduced accordingly and the contract shall be modified in writing as may be necessary to reflect such reduction.

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

(NOTE: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the contractor and the subcontractor: *Provided*, That they are consistent with NASA PR 23.203 relating to Disputes provisions in subcontracts. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)

(b) Certificate of current cost or pricing data: When certification of cost or pricing data is required in accordance with § 18–3.807–3, a certificate in the form set forth in paragraph (b) of the above clause shall be included in the contract file along with the memorandum of the negotiation. Usually, the contractor shall be required to submit only one certificate which shall be submitted as soon as practicable after agreement is reached on the contract price.

§ 18–3.807–5 Defective cost or pricing data.

(a) Where any price to the Government must be negotiated largely on the basis of cost or pricing data submitted by the contractor, it is essential that the data be accurate, complete and current and in appropriate cases so certified by the contractor (see §§ 18–3.807–3 and 18–3.807–4). If such certified cost or pricing data is subsequently found to have been inaccurate, incomplete or noncurrent as of the effective date of the certificate, the Government is entitled to an adjustment of the negotiated price, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. Paragraph (g) of the Contractor and Subcontractor Certified Cost of Pricing Data clause set forth in § 18–3.807–4 gives the Government in such case an enforceable contract right to a price adjustment, that is, to a reduction in the price to what it would have been if the contractor had submitted accurate, complete and current data. In arriving at a price adjustment under this clause, the contracting officer should, after review of the record of the contract negotiation (see § 18–3.811), consider the following:

(1) The time when cost or pricing data was reasonably available to the contractor: Certain data such as overhead expenses and production records may not be reasonably available except on normal periodic closing dates. Also, the data on numerous minor material items each of which by itself would be insignificant may be reasonably available only as of a cutoff date prior to agreement on price because the volume of transactions would make the use of any later date impracticable. Furthermore, except where a single item is used in substantial quantity, the net effect of any changes to the prices of such minor items would likely be insignificant. Closing or cutoff dates should be included as a part of the data submitted with the contractor's proposal and should be updated by the contractor to the latest closing or cutoff dates, preceding agreement on price, for which such data is available. The contracting officer and contractor are encouraged to reach a prior understanding on criteria for establishing closing or cutoff dates, and to the extent possible the understanding should relate to an approved estimating system. Notwithstanding the foregoing, matters which are significant to contractor management and to Government and any related data, would be expected to be current on the date of agreement on price and therefore will be treated as reasonably available as of that date. Although changes in the labor base or in prices of major material items are generally significant matters, no hard and fast rule can be laid down since what is significant can depend upon such circumstances as the size and nature of the procurement.

(2) In establishing that the defective data caused an increase in the contract price, the contracting officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price. In the absence of evidence to the contrary, the natural and probable consequence of defective data is an increase in the contract price in the amount of the defect plus related burden and profit or fee; therefore, unless there is a clear indication that the defective data was not used, or was not relied upon, the contract price should be reduced in that amount.

(3) As a general rule, understated cost or pricing data shall not be "set off" against overstated cost or pricing data in arriving at a price adjustment. However, where there is a question as to the accuracy of a single item of data which is an average or composite rate, overstatements in making up the rate may be set off by understatements for the purpose of correcting the rate submitted by the contractor. In addition, as a further exception to the general rule against set off, overstated data (such as unit price) relating to a single item may be offset by understated data (such as quantity) relating to the same item. In any case, the contract price shall be adjusted only if the net adjustment is downward.

(b) If, at any time prior to agreement on price, the contracting officer learns through audit or otherwise that any cost or pricing data submitted is inaccurate, incomplete or noncurrent, he shall immediately call it to the attention of the contractor whether that defective data tends to increase or decrease the contract price. Thereafter, the contracting officer shall negotiate on the basis of any new data submitted, or on a basis which in his opinion makes satisfactory allowance for the incorrect data as he considers appropriate and shall reflect these facts in his record of negotiation.

(c) After award, if the contracting officer obtains information which leads him to believe that the data furnished may not have been accurate, complete or current, or if he considers that the data may not have been adequately verified as of the time of negotiation, he should request an audit to evaluate the accuracy, completeness and currency of such data. In the case of negotiated firm fixed-price contracts, postaward cost performance audit, pursuant to paragraph (c) of the clause set forth in § 18–3.807–4, shall be limited to the single purpose of determining whether or not defective cost or pricing data were submitted. Such audits

shall not be for the purpose of evaluating profit-cost relationships, nor shall any repricing of such contracts be made because the realized profit was greater than was forecast, or because some contingency cited by the contractor in his submission failed to materialize—unless the audit reveals that the cost or pricing data certified by the contractor were, in fact, defective.

(d) Under 10 U.S.C. 2306(f), as implemented by the Contractor and Subcontractor Certified Cost or Pricing Data clause set forth in § 18–3.807–4, the Government's right to reduce the prime contract price extends to cases where the prime contract price was increased by any significant sums because of subcontractor furnished defective cost or pricing data in connection with a subcontract where a certificate of cost or pricing data was or should have been furnished. In some cases, as where the defective nature of a subcontractor's data is only disclosed by Government audit, the information necessary to support a reduction in prime contract and subcontract prices may be available only from the Government. In effecting a prime contract price reduction, the contracting officer should make such necessary information available upon request, to the prime contractor or higher tier subcontractors; however, if the release of such information would compromise security or disclose trade secrets or other confidential business information, it shall be made available only under conditions that will fully protect it from improper disclosure, as may be prescribed or authorized by the Director of Procurement. Information made available pursuant to this paragraph (d) shall be limited to that used as the basis for the prime contract price reduction.

(e) Inasmuch as price reductions under the "Contractor and Subcontractor Certified Cost or Pricing Data" clause may involve first- and lower-tier subcontractors as well as the prime contractor, the contracting officer should give the prime contractor reasonable advance notice before making a determination to reduce the contract price under such clause, in order to afford the prime contractor an opportunity to take any action deemed advisable by him, particularly in connection with any subcontracts that may be involved.

§ 18–3.807–6 Refusal to provide cost or pricing data.

If cost or pricing data from the contractor is required to permit adequate analysis of the contractor's proposal in accordance with § 18–3.807–3 and the contractor has refused to provide such data, the contracting officer shall use those means available to him to attempt to secure such data. If the contractor persists in his refusal to provide necessary data, the contracting officer shall withhold making the award or price adjustment. In such event, he shall refer the procurement action to higher echelons of the procurement organization. Such referral shall include a complete statement of the attempts made to resolve the matter, including (a) steps taken to secure essential cost data, (b) efforts to secure the contractor's cooperation in the establishment of a satisfactory business relationship, (c) any assurances offered, such as agreements to adequately safeguard information furnished, and (d) a statement concerning the practicability of obtaining the supplies or services from another source of supply.

§ 18–3.807–7 Unacceptable substitutes for pricing negotiations.

A "Certificate of Current Cost or Pricing Data" shall not be considered a substitute for examination and analysis of the contractor's proposal. Contracting officers shall not rely on profit-limiting statutes as remedies for ineffective pricing.

§ 18–3.807–8 Evaluation and pricing of individual contracts.

Each contract shall be priced separately and independently, and no consideration shall be given to losses or profits realized or anticipated in the performance of other contracts. This prohibition neither prevents the negotiation of fixed overhead and other rates applicable to several contracts during annual or other specific periods nor prohibits forward pricing agreements applicable to several contracts. A proposed price reduction under another contract or other contracts shall not, however, be used as an evaluation factor.

§ 18–3.807–9 Specified contingencies.

When a contract is to include a provision for adjustment of price upon the happening of a specified contingency (e.g., escalation clauses, Government-furnished property clauses, tax clauses), the contract price should not include any amount on account of such contingency.

§ 18–3.807–10 Subcontracting considerations in cost analysis.

(a) The amount and quality of subcontracting may be a major factor influencing price. Since a large proportion of the procurement dollar is spent by prime contractors in subcontracting for work, raw materials, parts, and components, efficient purchasing practices by a contractor will contribute heavily toward efficient and economic production. While basic responsibility rests with the prime contractor for decisions to make or buy, for selection of subcontractors, and for subcontract prices and subcontract performance, the contracting officer must have adequate knowledge of these elements and their effect on prime contract prices. Therefore, contractors' "make-or-buy" programs and proposed subcontracts should be reviewed in accordance with Subpart 18–3.9 and Part 18–24. The information from such review should be used in negotiating prime contract prices. Even though not specifically required by Subpart 18–3.9, the contracting officer should, where appropriate, elicit from the offeror or contractor information concerning:

(1) The purchasing practices of the prime contractor;

(2) The principal subsystems or components to be subcontracted and the contemplated subcontractors, including (i) the degree of competition obtained, (ii) cost or price analyses or price comparisons accomplished, including accurate, complete, and current cost or pricing data, and (iii) the extent of subcontract supervision;

(3) The types of subcontracts; i.e., firm fixed-price or other; and

(4) The estimated total extent of subcontracting, including procurement of purchased parts and materials.

(b) In the review of subcontracting, there should be assurance that the contractors obtain competition, if available, from qualified sources in their award of subcontracts to the extent consistent with the procurement of the required services or supplies. Contractors shall be required to undertake appropriate price analysis (see § 18–3.807–2(b)) in all significant subcontract transactions, and to undertake cost analysis (see § 18–3.807–2(c)) if competition is not available or does not yield reasonable subcontract prices. Where the contracting officer's consent to subcontract is required, price or cost analysis shall be required as a condition to such consent.

(c) Where subcontracts are placed on a price redetermination or fixed-price incentive basis, it is particularly important in negotiating revisions of prime contract prices that there be substantial assurance that there was initial close pricing of subcontracts. Also, contracting officers should be alert to the risk of establishing firm redetermined price contract prices while a major subcontract is still subject to price redetermination and may eventually be redetermined at a price far lower than that ascribed to it in redetermining the prime contract price, with consequent profits to the contractor far in excess of those contemplated in the prime contract price negotiation. However, in some cases, it may be appropriate to negotiate firm contract prices even though the contractor has not yet established final subcontract prices, if the contracting officer can justify as reasonable the amount included for subcontracting, e.g., where fairly definite cost data on subcontract prices are available. In other cases, where certain subcontracts are subject to redetermination and available cost data on these subcontracts are highly indefinite but other circumstances require prompt negotiation of revised prime contract prices the contract modification which evidences the revised contract prices should provide for adjustment of the total amount paid or to be paid under the contract on account of subsequent redetermination of the specified subcontracts. This may be done by including in the contract modification a provision substantially as follows:

Promptly upon the establishment of firm prices for each of the subcontracts listed below, the Contractor shall submit, in such form and detail as the Contracting Officer may reasonably require, a statement of costs incurred in the performance of such subcontract and the firm price established therefor. Thereupon, notwithstanding any other pro-

visions of this contract as amended by this modification, the Contractor and the Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect such subcontract price revision. The equitable adjustment shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer.

(List subcontracts)
(October 1963)

(d) (1) In considering cost-plus-fixed-fee subcontracts, while negotiating prime contracts where cost analysis is performed, the contracting officer will make every effort to insure, but in consenting to cost-plus-fixed-fee subcontracts the contracting officer shall insure, that fees under such subcontracts, never exceed—

(i) Ten percent (10%) of the estimated cost, exclusive of fee, in the case of any subcontract for experimental, developmental, or research work; or

(ii) Seven percent (7%) of the estimated cost, exclusive of fee, in the case of any other subcontract; except that subcontracts for architectural or engineering services are subject to the statutory limitations set forth in § 18–4.204–1(b);

unless the payment of higher fees is approved by the Procurement Officer. However, such fixed-fees shall not exceed the statutory limitations set forth in 10 U.S.C. 2306(d).

(2) For cost-plus-incentive-fee subcontracts, incentive fee arrangements are subject to the provisions of § 18–3.450(f), except that in consenting to such subcontracts, maximum fees which exceed (i) 15 percent of the target cost in subcontracts for experimental, developmental, or research work, or (ii) 10 percent of the target cost in other contracts require the approval of the Procurement Officer.

§ 18–3.807–11 Overhead rate considerations.

(a) Indirect costs commonly known as overhead are defined and described in § 18–15.203. Criteria for treatment and application of indirect costs to contracts are also set forth in § 18–15.203.

(b) In order to assure a reasonable approximation and allocation of indirect costs on an equitable basis to individual contracts, negotiators shall utilize audited overhead data or negotiated overhead rates, where available, in connection with negotiation of contracts and shall not, unless authorized by the Procurement Officer, seek preferential overhead rates.

(c) If there is any question with respect to audited overhead data or negotiated overhead rates, or if such are not available, the negotiator should normally avail himself of the advisory services of the cognizant contract auditor in consonance with § 18–3.809.

§ 18–3.808 Profit or fee.

§ 18–3.808–1 General.

A fair and reasonable provision for profit or fee cannot be made by simply applying a certain predetermined percentage to the cost estimate or selling price of a product. Rather, the profit or fee should be first established as a dollar amount, after considering the factors set forth in this § 18–3.808. Therefore, where a fee is involved and it is necessary to determine the percentage relationship between the fee and the estimated cost of the contract in order to comply with administrative and statutory limitations on fees for cost-reimbursement type contracts, the percentage shall be determined only after the dollar amount of the fee has been established for negotiation purposes and the negotiation memorandum shall adequately reflect this process.

§ 18–3.808–2 Factors for determining fee or profit.

The factors set forth in paragraphs (a) through (i) of this section should be considered in determining profit or fee in all contracts, whether for supplies or services; for construction work; or for experimental, developmental, or research work; and whether of the fixed-price type or of the cost-reimbursement type unless otherwise specified in the particular factor. All of the following factors, as set forth in paragraphs (a) through (i) of this section, should be evaluated in the light of the basic policy set forth in § 18–3.801–1 which provides that supplies and services shall be procured from responsible sources of fair and reasonable prices calculated to result in the lowest overall cost to the Government.

(a) *Effect of competition.* When competition is effective and proposals are on a firm fixed-price basis, the contracting officer normally need not consider in detail the amount of estimated profit included in a price. When effective competition is lacking and in all cases where cost analysis is performed in accordance with § 18–3.807–2(c), the estimate for profit, target profit or fee, or the proposed fixed fee should be analyzed in the same manner as all other elements of price, evaluating the factors set forth in this § 18–3.808.

(b) *Degree of risk.* (1) The degree of risk assumed by the contractor should influence the amount of profit or fee a contractor is entitled to anticipate. For example, where a portion of the risk has been shifted to the Government through cost-reimbursement or price redetermination provisions, unusual contingency provisions, or other risk-reducing measures, the amount of profit or fee should be less than where the contractor assumes all risk.

(2) Some cost-plus-a-fixed-fee contracts and task orders for research and development call for the delivery of prototypes or other "hardware." Other such contracts or task orders require only that the contractor exert his "best efforts" to deliver the required end item. Frequently this is because the contractor is not willing to assume the additional burden of incurring substantial cost overruns without additional fee in order to complete performance. When the contract calls for delivery of developed models in accordance with well-defined performance or design characteristics or a predetermined delivery schedule, or both, in contrast to an obligation only to exert his "best efforts" to develop and deliver such models, payment of the fee should be conditioned on performance in accordance with the contractor's obligation to deliver, and in such cases the contractor may be entitled to a larger fee both because of the risk inherent in his commitment and because of the successful completion of the work.

(c) *Nature of work to be performed.* A major consideration in the determination of the amount of profit or fee, particularly in connection with experimental, developmental, or research work, is the difficulty or complexity of the work to be performed and any unusual demands of the contract, such as whether the project involves a new approach unrelated to existing equipment or only refinements on existing equipment, whether the caliber or class of engineer involved is that of an "idea-man," or whether the contractor is to be required by the contract to assign to the work unusually skilled talent.

(d) *Extent of Government assistance.* NASA encourages its contractors to perform their contracts with the minimum of financial, facilities, or other assistance from the Government. Where extraordinary financial, facilities, or other assistance must be furnished to a contractor by the Government, such extraordinary assistance should have an influence in determining what constitutes a fair and reasonable profit or fee.

(e) *Extent of the contractor's investment.* The extent of a contractor's total investment (i.e., both equity and borrowed capital) in the performance of the contract will be taken into consideration in determining the amount of the fee or profit.

(f) *Character of contractor's business.* Recognition must be given to the type of business normally carried on by the contractor, the complexity of manufacturing techniques, the rate of capital turnover, and the effect of each individual procurement upon such business. For example, where a contractor is engaged in an industry where the turnover of working capital is slow, generally the profit objective on individual contracts is higher than in those industries where the turnover is more rapid.

(g) *Contractor's performance.* In addition to the factors set forth in § 18–3.102, the contractor's past and present performance should be evaluated in such areas as quality of product, quality control, scrap and spoilage, efficiency in cost control (including need for and reasonableness of cost incurred), meeting performance schedules, timely compliance with contractual provisions, creative ability in product development (giving consideration to commercial potential of product), engineering (including inventive, design simplification, and development contributions), management of subcontract programs, management of Government property, and any unusual services furnished by the contractor. Where a contractor has consistently achieved excellent results in the foregoing areas in comparison with other

contractors in similar circumstances, such performance merits a proportionately greater opportunity for profit or fee. Conversely, a poor record in this regard should be reflected in determining what constitutes a fair and reasonable profit or fee.

(h) *Subcontracting.* (1) In negotiating the profit or fee, subcontracting as a factor shall be segregated for separate evaluation, particularly as it bears on the contractor's technical supervision and management responsibility, financial investment, and degree of risk, as outlined above. The degree and nature of subcontract programs vary on a broad spectrum. While it is not possible to define the exact profit or fee treatment to be accorded each situation, the general guidelines which follow shall be taken into consideration.

(2) The evaluation of a contractor's subcontracting program should not consist merely of applying arbitrary percentages of profit to subcontract prices in negotiating the prime contract price. A relatively large amount of subcontracting by itself need not result in negotiation of correspondingly lesser profit or fee since the character and circumstances of the subcontracting must be taken into account. Although purchased material and subcontracted work are usually properly included in the base upon which profit or fee is computed, instances may arise in which a significant portion or portions of a contract are subtracted in such a way that only a minimum amount of responsibility or risk remains with the prime contractor. In such case, in order to prevent unreasonable pyramiding of profit or fee, the amount of profit or fee attributable to the subcontracted work should be substantially less than where the contractor uses his own resources and retains substantial responsibility or risk. Of primary importance is the degree to which the subcontracting provides a better component or subsystem and lower costs, with timely performance (recognizing the distinction between the prime contractor who elects to buy rather than make in the interest of providing a better and less expensive component or subsystem than the prime contractor who buys because he has no in-house capability) and in which the contractor assumes heavy managerial and technical effort, responsibility, and risk. Particular attention should be given to the contractor's managerial and technical effort, responsibility and risk with respect to subcontracts under major systems contracts where a substantial portion of total contract cost is attributable to subcontracting of major components or subsystems. Consideration must be given to the relationship which the prime contractor's estimated profit or fee on subcontracted work bears to his cost of placing and managing such subcontracted work.

(3) In establishing a contractor's fee or profit, favorable consideration shall be given to:

(i) The company's policies and procedures which energetically support Government Small Business and Labor Surplus Area Programs;

(ii) Any unusual efforts which the contractor displays in subcontracting with small business and labor surplus area concerns, particularly for developmental type work likely to result in later production opportunities; and

(iii) Effectiveness of the company in subcontracting with and furnishing assistance to such concerns, as compared to other comparable contractors. In this connection, it is the responsibility of the contracting officer to examine the contractor's past and present effectiveness and plans for seeking out qualified small business and labor surplus area concerns, and to require the contractor during negotiations to document his past, present, and planned performance in these areas.

(i) *Unrealistic estimates.* If records reveal that a contractor's actual costs are consistently lower than his estimated costs (indicating a practice of excessive estimates), and if the contractor refuses to provide what seems to be a reasonable estimate of costs, a lower profit or fee should be considered.

(j) *Cost reduction program accomplishments.* Accomplishments of contractors who successfully reduce the cost of space research, development, and procurement under a cost reduction program should be taken into account in determining the amount of fee or profit.

§ 18–3.808–4 Minimal fees or cost sharing arrangements.

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

§ 18–3.808–5 Fee limitation for experimental, developmental, or research work.

In connection with the administrative and statutory limitations on fixed fees set forth in § 18–3.405–5(c)(2) the existence of the administrative limitation of 10 percent for research and development work should not prevent the negotiation of fixed fees up to the level of the statutory limitation of 15 percent in the appropriate circumstances. Such cases, however, shall be fully documented through factual support including specific details of prior experience with the contractor, the complexity of the work to be performed, and the details in connection with all of the above factors. Contractors proposing such fees should be required to support their proposals in a similar manner.

§ 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.

(c) *Additional functions of the contract auditor.* (1) Under cost-reimbursement type contracts, the cost-reimbursement portion of fixed-price contracts, letter contracts which provide for reimbursement of costs, time and material contracts, and labor-hour contracts:

(i) The contract auditor is the authorized representative of the contracting officer for the purpose of examining reimbursement vouchers received directly from contractors, transmitting those vouchers approved for provisional payment (see subparagraph (ii) of this paragraph (c)(1)) to the cognizant fiscal or financial management officer and issuing NASA Form 456, "Notice of Contract Costs Suspended and/or Disapproved," through the cognizant contracting officer to the contractor, with respect to costs claimed but not considered allowable. In the case of costs suspended, if the contractor disagrees with the suspension action, the contractor may appeal in writing through the auditor (who shall add appropriate comments) to the contracting officer, who will make his determination promptly in writing. If the contractor appeals in writing to the contracting officer from a disallowance action within the sixty-day period mentioned above, the contracting officer will make his determination in writing, as promptly as practicable, as a final decision of the contracting officer (see § 18–1.314 regarding decisions under the Disputes clause) and mail or otherwise furnish a copy to the contractor. Normally, the NASA Form 456, "Notice of Contract Costs Suspended and/or Disapproved," is issued by the auditor; however, the contracting officer also may issue or direct the issuance of NASA Form 456 with respect to any cost he has reason to believe should be suspended or disapproved. The contract auditor will examine and approve (except see subparagraph (ii) of this paragraph (c)(1)) separate fee vouchers and fee portions of vouchers for provisional payment in accordance with the contract schedule and any instructions received from the contracting officer. After examination by the auditor, completion vouchers shall be forwarded to the contracting officer for approval and transmittal to the cognizant fiscal or financial management officer.

(ii) When delegating audit functions (see Subpart 18–51.3), special instructions may be issued to the contract auditor:

(*a*) Requiring submission of separate vouchers for reimbursable costs and for payment of earned fee.

(*b*) Reserving to the contracting officer approval of separate fee vouchers and all vouchers submitted by contractors performing on a NASA installation.

(iii) Unless otherwise notified, the contractor shall submit public vouchers to the auditor in accordance with the following normal requirements:

1—Original SF 1034, SF 1035 or equivalent Contractor's attachment.

7—Copies SF 1034a, SF 1035a or equivalent Contractor's attachment.

The contractor shall mark on copies 1, 2, 3, 4, and such other copies as may be directed by the contracting officer, of the foregoing SF 1034a, by insertion in memorandum block, the name and address of the following parties to facilitate distribution of paid copies of vouchers by the fiscal or financial management office:

NASA Contracting Officer (Copy 1).
Defense Contract Audit Agency Auditor (Copy 2).
Contractor (Copy 3).
Contract Administration Office (Copy 4).
Project Management Office (Copy 5, when required by the NASA contracting officer).

The auditor will retain an unpaid copy of the voucher. When a voucher contains one or more individual direct freight charges of $100 or more, an additional copy of SF 1034a and SF 1035a shall be submitted and marked for return to the contractor after payment. This copy shall be transmitted quarterly by the contractor with the freight bills to the General Accounting Office. When a voucher is identified as the "Completion Voucher," an additional copy shall be submitted for transmittal to the NASA contracting officer.

(iv) Where the contracting officer is in agreement with the NASA Form 456 issued by the auditor, he shall assign a notice number and shall countersign the form. An original and 3 copies (which includes two acknowledgment copies, one each for return to the contracting officer and the auditor) of the form shall be sent to the contractor by certified mail, return receipt requested; one copy shall be attached to the SF 1034 and each copy of the SF 1034a (see subparagraph (iii) of this paragraph (c)(1)) on which the deduction is made, and one copy shall be sent to the auditor. The total amount suspended and/or disapproved as shown on the NASA Form 456 shall be inserted in the "differences" block of the public voucher, SF 1034 and SF 1034a, as follows:

NASA Form 456 No.---------- $------
Net amount approved---------- $------

When the contracting officer does not agree with a NASA Form 456 as issued by the auditor, he shall state his reasons for disagreement and shall furnish the auditor a copy of his statement, with an unsigned and unnumbered copy of the applicable NASA Form 456. Subsequent thereto, he should consult with the auditor and other Government personnel, as may be necessary, and the contractor, if appropriate, to dispose of any remaining items in question. If the amount of the deduction is more than the amount of the public voucher, the installment method of deduction shall be applied to this and subsequent public vouchers, until the amount is fully liquidated against the contractor's claim. The deductions on any voucher shall not exceed the amount thereof to avoid processing of a voucher in a credit amount. Public voucher(s) with zero amounts must be forwarded to the fiscal or financial management office for appropriate action. If deductions are in excess of contractor claims, recovery may be made through a direct refund from the contractor, in the form of a check payable to the Treasurer of the United States, or by a set-off deduction from the voucher(s) submitted by the contractor under any other contract, except where precluded by a "no set-off" provision. If a set-off is effected, the voucher(s) from which the deduction is made should be annotated to identify the contract and appropriation affected and the applicable NASA Form 456.

(v) When necessary, the contracting officer should consult with the auditor or the financial management officer (see FMM 9630) concerning preparation, examination and payment of vouchers. Functions to be performed by auditors and financial management and fiscal office personnel during the examination of vouchers is set forth in FMM 9630–20b(1).

(vi) The contract auditor shall be responsible for making appropriate recommendations to the contracting officer concerning the establishment of interim overhead billing rates, when such rates are provided for in the contract.

(2) Under cost-reimbursement type contracts with Canadian contractors:

(i) On contracts with the Canadian Commercial Corporation, audits are automatically arranged by the Department of Defence Production (Canada) (DDP) in accordance with agreement between the National Aeronautics and Space Administration and Department of Defence Production (Canada). Audit reports are furnished to the DDP. Upon advice from DDP, the Canadian Commercial Corporation (CCC) will certify the invoice and forward it with Standard Form 1034 (Public Voucher) to the contracting officer for further processing and transmittal to the fiscal or financial management officer.

(ii) On contracts placed directly with Canadian firms, audits are requested by the contracting officer from the Audit Services Branch, Comptroller of the Treasury, Department of Finance, Ottawa, Ontario, Canada. Invoices are approved by the auditor on a provisional basis pending completion of the contract and final audit. These invoices, accompanied by Standard Form 1034 (Public Voucher), are forwarded to the contracting officer for further processing and transmittal to the fiscal or financial management officer. Periodic advisory audit reports are furnished directly to the contracting officer. In the event that costs claimed are suspended or disapproved, the contracting officer shall issue the NASA Form 456, "Notice of Contract Costs Suspended and/or Disapproved" to the contractor. NASA Form 456 will be processed in the same manner as indicated in paragraph (c)(1)(i) of this section with regard to contractor appeals, and shall contain the statement prescribed therein with respect to costs disapproved.

(iii) Audits performed by the Audit Services Branch are normally conducted in accordance with Department of Defence Production regulations.

§ 18–3.810 Exchange of information.

In appropriate cases it is desirable to exchange and coordinate specialized information regarding a contractor between NASA procurement offices and between NASA and other Government agencies, since it will provide uniformity of treatment of major issues and it may aid in the resolution of particularly difficult or controversial issues.

§ 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 price negotiation, for inclusion in the contract file and for the use of reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of such 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 were submitted and a certificate of cost or pricing data was required (§ 18–3.807–4), the memorandum shall reflect the extent to which reliance was not placed upon the factual cost or pricing data submitted and the extent to which this data was not used by the contracting officer in determining his total price objective and in negotiating the final price. The memorandum shall also reflect the extent to which the contracting officer recognized in the negotiation that any cost or pricing data submitted by the contractor was inaccurate, incomplete, or noncurrent; the action taken by the contracting officer and the contractor as a result; and the effect, if any, of such defective data on the total price negotiated. 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, the contracting officer shall forward one copy of the memorandum to the cognizant auditor 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. In those cases where a copy is forwarded to the auditor, a copy will also be furnished to the cognizant contract administration office.

(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.

§ 18–3.812 Disposition of post award audits.

An auditor's advisory report or post award reviews of cost and pricing data may result either from a specific request of a contracting officer (see § 18–3.807–5 (c)) or from audit action initiated independent of a contracting officer's request. The contracting officer shall prepare a memorandum on each audit report indicating (a) whether defective data were submitted and relied upon and (b) the results of any contract action taken. A copy of the memorandum shall be forwarded to the auditor issuing the audit report and to the office administering the contract.

§ 18–3.813 Pre-contract planning and startup and other nonrecurring costs.

(a) Estimates of pre-contract, planning and startup costs include such costs as reproduction engineering, special tooling, special plant rearrangement, training programs, and such nonrecurring costs as initial rework, initial spoilage, and pilot runs.

(b) Since an offeror may propose a price which does not include all nonrecurring costs for the purpose of obtaining the initial contract and of gaining an advantage over competitors in negotiations for future procurements, it is important to know whether the offeror intends to absorb any portion of these costs or whether he plans to recover them in connection with subsequent pricing actions under the proposed or future contracts. This information is needed in evaluating competing proposals to determine which proposal is most likely to result in the lowest overall cost to the Government, particularly where the successful offeror is likely to become in effect, a sole source for follow-on procurements (including spare parts or other support items).

(c) When it is anticipated that such costs will be a significant factor in the evaluation of proposals for the procurement of an item, the request for proposals shall require the offeror to provide the following information:

(1) An estimate of the total of such costs;

(2) The extent to which these costs are included in the proposed price; and

(3) The intent to absorb, or plan for recovery of, any remaining costs. When entering into a contract with an offeror who has indicated that he intends to absorb any portion of these costs, the contract shall expressly provide that such portion will not be charged to the Government in any future noncompetitive procurement or other pricing action.

§ 18–3.850 Initiation of the procurement request.

A procurement request (NASA Form 404, or similar form) will be prepared and processed in accordance with the provisions of § 18–1.356.

§ 18–3.852 Procurement plans.

A procurement plan is a detailed outline of the method by which the contracting officer expects to accomplish the procurement task. The plan is an administrative tool designed to enable the contracting officer to plan effectively for the placement and accomplishment of assigned procurements by analyzing the requirement for, and determining the method to be used in, placing the procurement. It also furnishes justification for the contemplated method of procurement for use in connection with the review and approval of higher authority when applicable. Although adequate planning prior to procurement action is always a prerequisite, the preparation of a more formal procurement plan is required in certain cases. A description of what such a procurement plan should contain and the situation in which preparation and approval of such a plan are required are set forth in §§ 18–3.852–1 through 18–3.852–5.

§ 18–3.852–1 Requirement for preparation of procurement plans.

(a) Except as otherwise authorized by paragraph (b) of this section, contracting officer shall prepare a procurement plan, with the advice and assistance of the cognizant technical division, on each negotiated procurement which is estimated to exceed $100,000. Such plans shall be prepared prior to solicitation of proposals. Field installations may require the preparation of a procurement plan for negotiated procurements that are not anticiapted to exceed $100,000.

(b) Procurement plans are not required to be prepared for:

(1) Procurements of architect-engineer services;

(2) Procurements based on unsolicited proposals;

(3) Procurements contemplated with nonprofit institutions or organizations for basic research;

(4) Procurements of utility services where the services are available from only one source;

(5) Procurements made from or through other Government agencies; and

(6) Procurements of industrial facilities required in support of related procurement contracts.

§ 18–3.852–2 Approval of procurement plans.

(a) Procurement plans, whether for competitive or noncompetitive procurement action, shall, as a minimum requirement, be reviewed and approved in accordance with the procedures set forth below, whenever the estimated cost of the procurement, including the aggregate amount of follow-on contracts under the same program (see paragraph (b) of this section), is within the applicable dollar amounts set forth in (1), (2), or (3) below.

(1) For procurements in excess of $100,000, but less than the dollar amount set forth below for the installation concerned, the procurement plan shall be submitted for the approval of the Procurement Officer or his designee after prior review and written concurrence by the head of the cognizant technical division or laboratory, as applicable. (For the purpose of this requirement, the term "or his designee" shall mean the individual authorized by the Procurement Officer to sign the procurement plan. Such authorization shall be in writing and shall not be delegated to more than one individual.)

(i) $250,000:

Flight Research Center.
Wallops Station.

(ii) $500,000:

Headquarters Contracts Division.
Kennedy Space Center.
NASA Pasadena Office.

(iii) $1 million:

Ames Research Center.
Goddard Space Flight Center.
Langley Research Center.
Lewis Research Center.
Manned Spacecraft Center.
Marshall Space Flight Center.
Space Nuclear Systems Office (Germantown).

(2) For procurements within the range of the dollar amounts set forth below for the installation concerned, the procurement plan shall be submitted for the approval of the Head of the Installation, his Deputy or Associate Director (the title "Associate Director" means a full Associate Director and not an Associate Director for _____) after prior review and written concurrences by the Director or Assistant Director of the cognizant technical directorate, cognizant Program Manager, or cognizant staff official, as applicable, who reports directly to the Head of the Installation, and by the Procurement Officer.

(i) $250,000 but less than $500,000:

Flight Research Center.
Wallops Station.

(ii) $500,000 but less than $1 million:

Headquarters Contracts Division.
Kennedy Space Center.
NASA Pasadena Office.

(iii) $1 million but less than $2,500,000

Ames Research Center.
Goddard Space Flight Center.
Langley Research Center.
Lewis Research Center.
Manned Spacecraft Center.
Marshall Space Flight Center.
Space Nuclear Systems Office (Germantown).

(3) For procurements that equal or exceed the dollar amounts set forth below for the installation concerned, the procurement plan shall be submitted for the signature of the Head of the Installation after prior review and written concurrences by the Director or Assistant Director of the cognizant technical directorate, cognizant Program Manager, or cognizant staff official, as applicable, who reports directly to the Head of the Installation, and by the Procurement Officer. The procurement plan shall contain additional signature blocks for approval by the Associate Administrator for Organization and Management and

for concurrences by the Director of Procurement, the cognizant Program Associate Administrator, the Assistant Administrator for Industry Affairs, and the Assistant Administrator for Administration.

(i) $500,000 and over:

Flight Research Center.
Wallops Station.

(ii) $1 million and over:

Headquarters Contracts Division.
Kennedy Space Center.
NASA Pasadena Office.

(iii) $2,500,000 and over:

Ames Research Center.
Goddard Space Flight Center.
Langley Research Center.
Lewis Research Center.
Manned Spacecraft Center.
Marshall Space Flight Center.
Space Nuclear Systems Office (Germantown).

The original and 20 copies of the procurement plan shall be submitted in the case of those procurements under the cognizance of the Office of Manned Space Flight. In all other instances, the original and ten copies shall be submitted. The position title will be shown for each individual signing the procurement plan as required by subparagraphs (1) through (3) of this paragraph (a).

(b) Examples of what is meant by the phrase "including the aggregate amount of follow-on contracts under the same program" appearing in paragraph (a) of this section are: (1) options as defined in Subpart 18–1.15; (2) agreements-to-agree, wherein the parties agree to negotiate for the extension of the supplies or services being procured; and (3) later phases of the same project subject to the Phased Project Planning concept prescribed by NHB 7121.2.

§ 18–3.852–3 Contents of the procurement plan.

(a) *Procurement plans requiring approval by NASA Headquarters or the head of a field installation.* Each procurement plan prepared for approval by NASA Headquarters or the head of a field installation shall contain the information outlined below, developed in depth, using the same subject (or paragraph) headings and numbers as those indicated. Where a subject is not treated in the plan, the words "not applicable," or a suitable explanation, will follow the subject heading in the plan. Each heading or subheading may include as many paragraphs or further breakdowns as necessary for a particular plan. Centered at the top of the first page of the plan will be the words "Procurement Plan for" followed by sufficient wording to identify the procurement. The Procurement Plan Contents Checklist (NASA Form 1168) will accompany each procurement plan forwarded to an approving authority, with a copy of the original form attached to each copy of the plan. The form, listing the subject headings prescribed herein, will be placed at the beginning of the plan to serve as a table of contents. It should be filled in to indicate the number of the page on which each subject begins or to show the notation "N/A" for inapplicable. In developing the procurement plan, the format set forth below shall be followed:

PROCUREMENT PLAN FOR_____

1. Description of the Proposed Procurement.

a. Purpose and Description of Work, Supplies, or Services (including Quantities). In addition to a general description of the scope of the work, describe how it is intended to state the contractor's obligation—whether to comply with detailed specifications, meet performance requirements (with or without detailed specifications), perform a "mission," or furnish a level of effort, etc. Indicate whether the contract will contain any provision for further requirements such as options, provisioning of spare parts, installation services, etc., and briefly describe the substance of such provisions. In the case of nonpersonal services, demonstrate that the criteria of NPC 401 (NASA Policy & Procedures for Use of Contracts for Nonpersonal Services) have been met and reference the Justification for Contracting for Nonpersonal Services which will be attached to the plan.

b. Program and Project (including Identification of Project Approval Document). Identify the program and project, including project number. Also show the date of project approval and name and title of approving authority.

c. Responsible Technical Office. Identify the office that will be responsible for the technical monitoring of the contract.

d. Installation's Plan for Technical Monitoring.

e. Relation to Other Procurements—Past, Present, and Future. Briefly describe prior, present, and future phases of the project and any closely related procurements under the same or other projects. If more appropriate, include in paragraph a. above and reference it here.

f. Performance Milestones (if Known) and Delivery Schedule. Describe the schedule for performance or delivery under the contract and discuss critical, pacing items. Indicate the consideration given to the factors in 1.305—Time of Delivery or Performance.

g. Total Estimated Cost.

2. Funding.

a. Approved Project Funding by Fiscal Year.

b. Funding of Proposed Procurement by Fiscal Year. Identify as AO, R&D, or C of F; the dollar amounts in each; and the portion of work to which each relates.

c. Funding of Follow-on Procurements by Fiscal Year.

d. Contingencies or Reserves Required by Fiscal Year.

3. Sources.

a. Known Sources and Competitive Situation. Include a comprehensive list of known sources, prepared in accordance with § 18–3.802–2 and a discussion of the competitive situation believed to exist.

b. Sources to be Solicited and Reasons for Omission of Known Sources. Where all known sources are not to be solicited, give the basis for selection of firms to be solicited, unless paragraph (d) below applies.

c. Synopsizing or Explanation of Exception. State whether or not a synopsis will be prepared in accordance with the provisions of § 18–1.1003 and, if not, the reasons therefor.

d. Justification for Noncompetitive Procurement. If a single source is to be solicited, a Justification for Noncompetitive Procurement will be prepared in accordance with § 18–3.802–3 and attached to the procurement plan. It should be referenced in this paragraph.

4. Justification and Authorization for Negotiation.

a. Determination and Findings. A copy of the applicable Determination and Findings under 10 U.S.C. 2304(a) (or a proposed Determination and Findings prepared for the signature of the Deputy Administrator, when appropriate) should be added to the plan and referenced here.

b. Justifications Relating to Class D&F's. In case a Class Determination and Findings is used, include a statement setting forth the facts and circumstances that clearly and convincingly establish that formal advertising is not feasible and practicable for the particular procurement; also include a complete statement of facts and circumstances which establish the applicability of the Class D&F.

5. Type of Contract.

a. Recommended Type. State the type of contract recommended and why.

b. D&F for Method of Contracting. When applicable, attach a copy of the Determination and Findings under 10 U.S.C. 2306(c), prepared in accordance with § 18–3.305–5.

c. Special Requirements. If the type of contract proposed requires any special approvals or determinations, attach a copy or include a request for NASA Headquarters appoval, as appropriate, and reference it here.

d. Incentive Consideration. Discuss the feasibility of applying incentive provisions and describe any incentive provisions proposed. Discuss the types of incentives (cost, performance, schedule) considered most suitable for the accomplishment of the procurement objectives and, in general terms, their relative weights. If the procurement plan contemplates using a cost-plus-fixed-fee type of contract, discuss any provision for conversion to an incentive type, including approximate time of conversion and the basis for determining the time.

e. Letter Contract and Complete Justification. If a letter contract is contemplated, so state and explain the special circumstances which are believed to justify its use. The policy of NASA is not to issue letter contracts. Exceptions to this policy require the advance approval of the Administrator or Deputy Administrator and will be permitted only after agreement has been reached with the contractor on all matters of a substantive nature. Approval of a procurement plan which contemplates the use of a letter contract will not be construed as authorization to issue a letter contract.

6. Oral Briefing of Prospective Contractors. Include a recommendation, with a supporting explanation, as to whether an oral briefing of prospective contractors should be held and, if so, whether this briefing should take place before or after the issuance of requests for proposals.

7. Method of Evaluating Proposals.

a. Recommended Method. Recommend which method set forth in § 18–3.804 should be utilized and the reasons.

b. Special Problems. A description of any special problems relating to the evaluation.

c. Source Evaluation Board Appointment Letter. The letter which establishes the composition of the Source Evaluation Board and appoints the members will be prepared for signature and forwarded as an attachment to the procurement plan. It will be referenced in this paragraph of the plan.

8. Government Property — Description, Monetary Evaluation, and Basis for Requirement.

a. Facilities. Indicate the magnitude and describe existing facilities which will be Government-furnished and/or any new facilities which may be constructed or otherwise acquired on behalf of the Government for contractor performance and the proposed location thereof. State whether any difficulty

is anticipated in identifying specific items to be listed in the contract schedule. If a separate facilities contract will be awarded or amended, so indicate and state the projected schedule for action. Include the estimated cost of new facilities or modifications to existing facilities and the estimated date of readiness for use. If nonseverable facilities are involved, include plan for complying with requirements of § 18–13.307.

b. Other Property Government-furnished. Describe any other significant items such as propellants and pressurants, materials, communication services, etc., which may be furnished by the Government in performance of the work.

9. Reliability and Quality Assurance.

a. Reliability Assurance. Include a summary of the reliability assurance requirements (see Subpart 18–1.51 of this chapter). The latter should include the following information: (i) Major areas of reliability program emphasis (or deemphasis) commensurate with the nature and status of the project; (ii) provision for responsibility for reliability program implementation; and (iii) planned funding (best estimates by fiscal year).

b. Quality Assurance. Include a summary of the general quality assurance requirements (see Subpart 18–1.50 of this chapter).

10. Management Information Systems. State what management information systems are to be required, such as financial management, PERT, Line of Balance, manpower reporting, etc.; and explain any unusual or unique factors.

11. Precontract Costs. State whether any work has been done by the proposed contractor, or is contemplated prior to the date the contract becomes binding, and, if so, the estimated cost of such work and the means proposed for making it compensable under the contract.

12. Technical Data for Reprocurement. State whether follow-on procurement will be likely, and if so, the kinds and amounts of technical data which will be required to be furnished by the contractor in order to reprocure from sources other than the firm performing the contract, or include a statement, prepared by the appropriate technical office, setting forth the reasons why data for such purposes will not be required. (See Subpart 18–9.2)

13. Other Pertinent Data. Include here any other pertinent data that would be helpful to the approving authority in appraising the plan for carrying out the procurement. Examples are: (i) Background information not otherwise covered; (ii) basis for urgency, with related detail; (iii) special provisions contemplated; (iv) estimated cost of each major segment of the procurement; (v) anticipated labor problems where the nature of the work and local conditions might precipitate jurisdictional strikes; (vi) a recommendation as to what labor provisions, if any, should be included in a contract where the work relates both to supplies subject to the Walsh Healey Act and to construction subject to the Davis-Bacon and other acts (state estimated proportion of each type of work); and (vii) information relating to the special requirements of a particular Program Office, such as the Apollo Configuration Management System, Logistics Support Plan, Documentation Management Provisions, Program Definition Phase procedures, and Work Structure Breakdown (identification of the relationship of the work to the program as a whole and to the portions of the program with which it directly interfaces).

14. Procurement Action Schedule. Establish a realistic time schedule for completing the major phases of procurement action, stated in terms of the length of time allotted to each phase. However, in the event that work must be commenced by a certain date, include also the date by which each phase must be completed in order to avoid use of a letter contract (except as provided for in the plan) or a contractor's incurrence of precontract costs. The schedule should cover the entire time from receipt of purchase request (or whatever initiated procurement action) to execution of contract or, when required, Headquarters approval of contract.

15. Legal Review of Procurement Plan. Include a statement to the effect that the procurement plan has been reviewed by Counsel for the procurement office (or will be reviewed prior to forwarding to the approving authority) and make reference to Counsel's comments attached.

Particular attention should be given to each plan prepared to insure, not only that its technical and business aspects are sound, but that each of the above subjects included in the plan is fully presented and explained, so as to be understandable to personnel outside the preparing installation.

(b) *Procurement plans requiring approval by the procurement officer.* Procurement plans prepared for the approval of the Procurement Officer in accordance with § 18–3.852–2(a)(1) are not subject to the requirement set forth in paragraph (a) of this section. Such plans may be prepared in accordance with the procedures prescribed by each installation, provided, that each plan shall contain, as a minimum, the following information:

(1) Purpose and description of the proposed procurement;

(2) Program and project titles;

(3) Responsible technical office;

(4) Delivery schedule or period of performance;

(5) Estimated dollar amount of the procurement and funding data;

(6) Sources to be solicited and reasons for omission of other known sources, if any;

(7) Synopsizing or explanation of exception;

(8) Justification for noncompetitive procurement (may be referenced in and attached to the Plan);

(9) Determination and findings for negotiation authority (referenced in and attached to the Plan);

(10) Type of contract contemplated and rationale, if not firm fixed price;

(11) Determination and findings for method of contracting (referenced in and attached to the Plan);

(12) Incentive consideration (unless firm fixed-price contract is contemplated);

(13) Considerations as to Small Business participation;

(14) Government Property — description, monetary evaluation, and basis for requirement;

(15) Precontract costs (if any);

(16) Management information systems (if appropriate);

(17) Reliability and quality assurance (if appropriate);

(18) Technical data for reprocurement; and

(19) Procurement action schedule.

§ 18–3.852–5 Assistance in providing for reliability assurance in procurement plans.

When system hardware costing over $1 million is involved, as defined in Subpart 18–1.51, reliability personnel at the field installation involved shall assist in the preparation of the procurement plan with respect to arrangements to be made for reliability monitoring. In the absence of such reliability personnel, the field installation shall seek the advice and assistance of the Director, Reliability and Quality Assurance, NASA Headquarters, or his designee, in the preparation of procurement plans.

§ 18–3.852–6 Requests for proposals.

For requests for proposals prepared pursuant to a procurement plan approved under § 18–3.852–2(a)(3), see § 18–3.802–4(b).

§ 18–3.853 Award and preparation of the contract.

(a) In determining to whom the contract shall be awarded, the contracting officer shall consider not only technical competence, but all other pertinent factors including management capabilities, cost controls and accomplishments of contractors who successfully reduce the cost of space research, development, and procurement (see § 18–3.102(b)(20)), and past performance in adhering to contract requirements, weighing each factor in accordance with the requirements of the particular procurement (see § 18–1.903).

(b) Except as authorized in § 18–16.102–3(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.

§ 18–3.854 Release of contract award information.

§ 18–3.854–1 General.

Because of public and congressional interest in NASA contracts, a particular effort must be made to furnish information to the public and Congress concerning firms which receive contract awards.

§ 18–3.854–2 Letter contracts.

(a) The procedures for issuing and approving letter contracts are contained in §§ 18–3.408 and 18–50.105(c). Prior to transmittal of a letter contract to a contractor for signature, the Procurement Officer will furnish to the installation Public Information Office the following information:

(1) Whether the letter contract initiates a new contract or additional work or services under an existing contract;

(2) Dollar amount authorized for letter contract and estimated total cost of the contract or supplemental agreement;

(3) Name and address of the contractor;

(4) Location where the work is to be performed;

(5) Brief description of the work, including identification of the program and project; and

(6) For the purpose only of responding to queries, a list of the unsuccessful offerors and addresses.

(b) Public information office. Upon receipt of the information described in paragraph (a) above, the installation Public Information Office will transmit the information immediately, in the form of a news release, by priority TWX or more expeditious means (if appropriate), to the Assistant Administrator for Public Affairs and the Assistant Administrator for Legislative Affairs, NASA Headquarters. The information will not be otherwise released by the installation Public Information Office, nor will the letter contract be released before 2:30 p.m. Washington, D.C., time of the next working day, unless clearance has been received earlier from the office of the Assistant Administrator for Public Affairs. If individual circumstances clearly indicate a need for earlier action, exception must be obtained from the Director of Procurement.

§ 18-3.854-3 Definitive contracts and supplemental agreements.

(a) This section pertains to contracts and supplemental agreements which do not require the approval of the Director of Procurement pursuant to § 18-50.105 and are in an amount of $1 million or over, exclusive of supplemental agreements covering overruns or incremental funding actions. Such contracts and supplemental agreements will not be distributed, or information given to any source outside NASA that the contractual instrument has been signed by both parties, until the procedures described in subparagraphs (1) and (2) of this paragraph are carried out:

(1) The Procurement Officer will furnish to the installation Public Information Office the following information:

(i) Whether the contract initiates a new contract or additional work or services under an existing contract;

(ii) Type of contract (FP, CPFF, CPIF etc.)

(iii) Dollar amount authorized for the instant action and estimated total cost of the contract if this is different;

(iv) Name and address of the contractor;

(v) Location where the work is to be performed;

(vi) Brief description of the work, including identification of the program and project; and

(vii) For the purpose only of responding to queries, a list of the unsuccessful offerors and addresses.

(2) Upon receipt of the above information, the installation Public Information Office will immediately prepare a news release in the form of a priority TWX which will contain as a minimum the information set forth in subparagraph (1) of this paragraph, and transmit it to the Assistant Administrator for Public Affairs and the Assistant Administrator for Legislative Affairs, NASA Headquarters. The information will not be otherwise released by the installation Public Information Office, nor will the contract instrument be released before 2:30 p.m. Washington, D.C., time of the next working day, unless clearance has been received earlier from the office of the Assistant Administrator for Public Affairs. If individual circumstances clearly indicate a need for earlier action, exception must be obtained from the Director of Procurement.

(b) Contracts and supplemental agreements which require the approval of the Director of Procurement pursuant to § 18-50.105 will be accompanied, when forwarded for such approval, by a draft news release prepared by the installation Public Information Office and furnished to the procurement office for inclusion in the submission file. The news release will contain as a minimum the information required by paragraph (a)(1) of this section. At the time the contract or supplemental agreement is approved by the Director of Procurement, the news release, together with a notice as to whether the contract or supplemental agreement is subject to conditional approval, will be forwarded immediately to the Assistant Administrator for Public Affairs and the Assistant Administrator for Legislative Affairs, preceded by telephonic notice to both offices.

§ 18-3.854-4 Unsuccessful offerors.

For releasing information to unsuccessful offerors, see § 18-3.106-3.

Subpart 18-3.9—Make-or-Buy Programs Policies and Procedures

§ 18-3.900 Scope of subpart.

(a) This subpart sets forth policies and procedures for obtaining, evaluating, and agreeing to contractors' proposed "make-or-buy" programs. These techniques are required only where the work is complex, the dollar value is substantial, and there is not adequate price competition. The evaluation of and agreement upon a contractor's proposed make-or-buy program shall be accomplished during negotiations to the extent practicable.

(b) Although there is a relationship among the evaluation and agreement upon a contractor's make-or-buy program, the review and approval of procurement systems and consent to subcontracts (see Part 18-23), each is a separate and distinct action and the factors to be considered in each vary.

(c) In order to form a basis for contract negotiations, the make-or-buy program submitted with the contractor's proposal should (1) sufficiently identify the important segments of the total effort, and (2) establish the framework for determining the contractor's in-house effort, the subcontract effort, and the plant workload with attendant overhead costs.

§ 18-3.901 Make-or-buy programs.

§ 18-3.901-1 General.

The Government buys management from the prime contractor along with goods and services, and places responsibility on him to manage programs to the best of his ability, including placing and administering subcontracts as necessary to assure performance at the lowest overall cost to the Government. Although the Government does not expect to participate in every management decision, it may reserve the right to review the contractor's management efforts, including the proposed make-or-buy program. In reviewing the content of the proposed make-or-buy program effort should be made to have the prime contractor establish any new facility in or near sections of concentrated unemployment or underemployment and in areas of persistent or substantial labor surplus.

§ 18-3.901-2 Definition and criteria.

(a) A make-or-buy program is that part of a contractor's written plan which identifies the major subsystems, assemblies, subassemblies, and components to be manufactured, developed, or assembled in his own facilities, and those which will be obtained elsewhere by subcontract. A "make" item is any item produced, or work performed, by the contractor or his affiliates, subsidiaries, or divisions.

(b) Regardless of the type of contract contemplated, information with respect to prospective contractors' make-or-buy programs shall be required in all negotiated procurements except:

(1) When a proposed contract has a total estimated value of less than $1 million, unless the contracting officer specifically determines that such information is appropriate;

(2) In research and development contracts, unless the contract is for prototypes or hardware and it can reasonably be anticipated that significant follow-on quantities of the product will be procured;

(3) When the contracting officer determines that the price is based on adequate price competition, or established catalog or market prices of commercial items sold in substantial quantities to the general public, or on prices set by law or regulation; or

(4) When the contracting officer determines that the work is not complex.

(c) Information with respect to make-or-buy programs and the program required to be included in any contract (see § 18-3.901-4) shall be confined to items which, because of their complexity, quantity, or cost or because their production requires additional facilities, normally would require company management review of the make-or-buy decision. As a general guideline, the make-or-buy program should not include items or work efforts costing less than 1 percent of the total estimated contract price or $500,000, whichever is less. Raw materials and off-the-shelf items shall not be included.

§ 18-3.901-3 Procedure.

(a) When submission of information with respect to a prospective contractor's proposed make-or-buy program is required, the solicitation shall so state and shall clearly set forth any special factors to be used in evaluating the program. After considering such factors as capability, capacity, availability of small business and labor surplus area concerns as subcontract sources, the establishment of new facilities at or near sections of

concentrated unemployment or underemployment, contract schedules, integration control, proprietary processes, and technical superiority or exclusiveness, the prospective contractor shall identify in his proposed make-or-buy program that work which he considers he or his affiliates, subsidiaries, or divisions must perform as "must make," must subcontract as "must buy," and can either perform or acquire by subcontract as "can make or buy." The prospective contractor shall state the reasons for his recommendations of "must make" or "must buy" in sufficient detail for the contracting officer to determine that sound business and technical judgment has been applied to each major element of the program. When the make-or-buy program is to be incorporated into the contract and the design status of the article being procured does not permit accurate precontract identification of major items that should be included in the make-or-buy program, the prospective contractor shall be notified that such items must be added to the program, when identifiable, under the "Changes to Make-or-Buy Program" clause (§ 18–3.901–4(b)). The prospective contractor shall be required to include in the information furnished with respect to his proposed make-or-buy program:

(1) A description by which each major item can be identified;

(2) A recommendation to make or to buy each such item or defer the decision;

(3) A recommendation as to make-or-buy for any "can make or buy" item;

(4) The proposed subcontractors, if known, including location and size classification;

(5) Designation of the plants or divisions in which the contractor proposes to make the item; and

(6) Sufficient information to permit the contracting officer to evaluate the proposed program in accordance with paragraph (b) of this section.

Proposed make-or-buy programs shall be evaluated and negotiated as soon as practical after receipt of the contractors' proposals and in any event prior to award.

(b) In reviewing and evaluating a proposed make-or-buy program, the contracting officer shall assure that all appropriate items are included and shall delete items which should not be included. In conducting his review, the contracting officer shall obtain the advice of appropriate personnel including technical, small business and labor surplus area specialists, whose knowledge would contribute to the adequacy of the review. During such review primary consideration shall be given to the effect of the contractor's proposed make-or-buy program on price, quality, delivery, and performance. The contractor has the basic responsibility for make-or-buy decisions. The contractor's recommendations shall therefore be accepted unless they adversely affect the Government's interest or are inconsistent with Government policy. The evaluation of "must make" and "must buy" items should normally be confined to that necessary to assure that the items are properly categorized. The effect of the following factors on the interests of the Government shall also be considered:

(1) Whether the contractor has justified the performance of work in plant which differs significantly from his operations;

(2) The consequence of the contractor's projected plant work loading with respect to overhead costs;

(3) The contractor's consideration of the competence, ability, experience, and capacity available in other firms, especially small business and labor surplus area concerns (this is particularly significant if the contractor proposes to request additional Government facilities in order to perform in-plant work);

(4) The contractor's make-or-buy history as to the type of item concerned;

(5) Whether small business and labor surplus area concerns will be able to compete for subcontracts; and

(6) Other elements, such as the nature of the items, experience with similar items, future requirements, engineering, tooling, starting load costs, market conditions, and the availability of personnel and materials.

(c) Proposed "make" items normally shall not be agreed to when the products or services under consideration:

(1) Are not regularly manufactured or provided by the contractor, and are available—quality, quantity, delivery, and other essential factors considered—from any other firm at prices no higher than if the contractor should make or provide the products or services; or

(2) Are regularly manufactured or provided by the contractor, but are available—quality, quantity, delivery, and other essential factors considered—from any other firm at lower prices.

Such items may be agreed to, however, if the contracting officer determines that the overall cost of the contract or of the program to the Government would be increased if the item were bought.

(d) Before agreeing to a "make-or-buy" program to be incorporated into the contract (or, when the program is included in a contract, consenting to any change therein which, in his opinion, would reduce the anticipated participation of small business and labor surplus area concerns), the contracting officer shall invite the advice and counsel of the activity's small business and labor surplus area specialist, if any, by permitting him to review all pertinent facts and make recommendations thereon. Such review by the small business specialist should be concurrent with the review by the contracting officer. When urgent circumstances do not permit such a concurrent review, or where the small business specialist fails to respond on a timely basis, the contracting officer shall include an explanatory statement in the contract file and shall transmit a copy to the small business specialist.

§ 18–3.901–4 Incorporation of the make-or-buy program in contracts.

(a) Where information with respect to a make-or-buy program has been required to be submitted in accordance with the foregoing, the make-or-buy program, as approved by the contracting officer, shall be included only in cost-reimbursement contracts except:

(1) Cost-sharing contracts where the contractor's share is 25 percent or more;

(2) Cost-plus-incentive-fee contracts having a cost incentive which provides for a swing from target fee of at least ±3 percent and a contractor's overall share of cost of at least 10 percent (authority may be requested (see § 18–1.109) to exclude the make-or-buy program from other cost-plus-incentive-fee contracts having different incentive and cost-sharing patterns, whenever the contracting officer finds that such other contracts provide sufficient incentive for control of costs); and

(3) Cost-plus-incentive-fee contracts to which § 18–3.901–5 is applicable.

(b) The following clause shall be incorporated in all contracts in which a make-or-buy program has been included.

CHANGES TO MAKE-OR-BUY PROGRAM (AUGUST 1969)

The Contractor shall perform this contract in accordance with the "make-or-buy" program incorporated in this contract except as hereinafter provided. If the Contractor proposes to change the "make-or-buy" program, he shall notify the Contracting Officer thereof in writing at a time reasonably in advance of the proposed change and shall therewith submit justification in sufficient detail to permit evaluation of the proposed change. Changes in the place of performance of work on any "make" items in the "make-or-buy" program are subject to this requirement. With respect to items deferred at the time of negotiation of this contract for later addition to the "make-or-buy" program, the Contractor shall notify the Contracting Officer of each proposed addition at the earliest possible time, together with justification in sufficient detail to permit evaluation. This contract shall be deemed modified in accordance with such proposed change or addition upon receipt by the Contractor of the Contracting Officer's written approval thereof.

§ 18–3.901–5 Price adjustments.

(a) The following subparagraphs apply only to fixed-price incentive and cost-plus-incentive-fee contracts.

(b) There may be cases where it is proper to agree that an item of significant value will be "bought" even though it would usually be more economical to have it "made", or vice versa. For instance, the contractor may have a unique capability for low-cost manufacture of a substantial component but his capacity may be full during the period necessary for contract performance, so the component must be subcontracted. In such cases it will be necessary that the "make-or-buy" program as approved by the contracting officer specifically call for what would usually be the more costly treatment of the item. In that event the consequent higher costs may be explicitly recognized in establishing the best obtainable contract or target price. Unforeseen changes in the circumstances may arise during the contract performance, however, which induce the contractor to propose changing the item from "buy"

to "make" (or vice versa). If such a change is made, the element of the contract price which was intended to compensate the contractor for the higher costs flowing from the initial make-or-buy decision would instead constitute windfall profits to the contractor and unwarranted costs to the Government.

(c) When, during the review of the prospective contractor's "make-or-buy" program (see § 18-3.901-3), a situation of the kind described in paragraph (b) of this section is found to exist, the clause set forth below shall be included in the contract, and any "make-or-buy" items of the kind described in paragraph (b) of this section shall be specifically designated in the Schedule (or elsewhere in the contract) as being either a "make" item or a "buy" item, and as being subject to this clause. The make-or-buy program itself and the clause in § 18-3.901-4(b) shall not be included in the contract.

PRICE ADJUSTMENT FOR MAKE-OR-BUY CHANGES (AUGUST 1969)

This clause applies only to items that are designated elsewhere in this contract as being "make" items or "buy" items subject to this clause. If the Contractor desires to "make" any designated "buy" item or to "buy" any designated "make" item, he shall give written notice to the Contracting Officer reasonably in advance of the proposed change and shall include significant and reasonably available cost and pricing data in sufficient detail to permit evaluation of the proposed change Promptly thereafter, if the Contractor proceeds with the change, the Contractor and the Contracting Officer shall negotiate an equitable reduction in the contract price* to reflect any decrease in costs which should reasonably result from the change, and the contract shall be modified in writing accordingly. Failure to agree on an equitable reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

Subpart 18-3.11—Acquisition of Automatic Data Processing Equipment

§ 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 head of the installation concerned in accordance with the procedures of NHB 2410.1, "Management Procedures for Automatic Data Processing Equipment."

(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 § 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 determiantion 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 noncurrence and of consequent cost disallowance contemplated under § 18-15.205-48.

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

*Substitute "target cost and target fee" for "contract price" in cost-plus-incentive-fee contracts.

PART 18-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart 18-4.1—[Reserved]

Subpart 18-4.2—Architect-Engineer Services

Subpart 18-4.3—[Reserved]

Subpart 18-4.4—Unsolicited Proposals

Subpart 18-4.50—Utility Services

Subpart 18-4.51—[Reserved]

Subpart 18-4.52—Management Consultant or Advisory Services

AUTHORITY: The provisions of this Part 18-4 issued under 42 U.S.C. 2473(b)(1).

Subpart 18–4.1—[Reserved]

Subpart 18–4.2—Architect-Engineer Services

§ 18–4.200 Scope of subpart.

This subpart prescribes procedures for the procurement by contract of professional services of architects and engineers (referred to hereafter as architect-engineer services). Procedures for procuring architect-engineer services through the construction organization of the Corps of Engineers, Department of the Army, are set forth in NASA Management Instruction 1052.86, "NASA-Corps of Engineers Agreement for Performance of Construction Services."

§ 18–4.201 Definitions.

As used in this Subpart 18–4.2, the following terms shall apply:

(a) "Architect-engineer services" consist of services required in connection with:

(1) Preparation of designs, plans, drawings, and specifications for a proposed construction project (referred to as Title I Services); and

(2) Supervision and inspection of the construction work (referred to as Title II Services).

(b) Title I Services include:

(1) Preparation of necessary topographical and other field surveys, test borings, and other subsurface investigations;

(2) Preparation of preliminary studies, sketches, layout plans, and reports, including estimates of cost of the proposed project and of all structures, utilities, and appurtenances thereto;

(3) Adaptation of Government designs, drawings, specifications, and standards for buildings and other structures as necessary;

(4) Preparation of final designs, working drawings, specifications, and cost estimates of the proposed project;

(5) Assistance to the contracting officer in preparing invitations for bids or requests for proposals for the required construction work and in evaluating bids or proposals received;

(6) Review and approval of all shop and working drawings submitted by the construction contractor; and

(7) Advice during the construction period relative to interpreting the plans and specifications in the event inspection of the construction is performed by the Government.

(c) Title II Services include complete supervision and inspection of the construction work and preparation of record drawings to show the construction as actually accomplished.

§ 18–4.202 Policy.

The selection of architects-engineers for professional services shall be based on the professional qualifications necessary for satisfactory performance of the required services and not on the basis of the evaluation of competitive bids or proposals.

§ 18–4.203 Architect-engineer selection board.

§ 18–4.203–1 Establishment.

The head of each installation shall establish an architect-engineer selection board to be composed of not less than three members who, collectively, have experience in engineering, construction, and procurement matters. Members shall be appointed from employees from within the installation, one of whom shall be designated as chairman.

§ 18–4.203–2 Functions.

(a) Except as otherwise provided in § 18–4.203–4, the architect-engineer selection board shall perform the following functions:

(1) Collect and maintain data on architect-engineer firms, including information on the qualifications of their members and key employees, past experience on various types of construction projects, and standing in the profession. (U.S. Government Architect-Engineer Questionnaire—Standard Form 251—will be used for this purpose.)

(2) When procurement by contract of architect-engineer services for a particular project is contemplated, review the qualifications of an adequate number of architect-engineer firms and evaluate the architect-engineer firms in accordance with paragraph (b) of this section. (In making this review and technical evaluation, correspondence and conferences with architect-engineer firms under consideration shall be conducted to the extent deemed necessary.)

(3) Prepare a report for submission to the head of the field installation, recommending, in the order of preference, a minimum of three firms which, after careful evaluation, are considered the best qualified to perform the required services. (This report shall include sufficient details as to the extent of the evaluation and review made and the considerations upon which the recommendations were based.)

(b) In evaluating architect-engineer firms, the architect-engineer selection board shall consider the following factors:

(1) Specialized experience of the firm in the field or fields required;

(2) Capacity of the firm to perform the work within the required time;

(3) Past record of performance on contracts with NASA, other Government agencies, and private industry, including such factors as control of costs, quality of work, and ability to meet schedules; and

(4) Geographic location of the firm and its familiarity with the area in which the project is located.

Since it is NASA policy to encourage additional firms to participate in the performance of architect-engineer services for NASA, the architect-engineer selection board shall, to the fullest extent practicable, give favorable consideration to qualified firms not having prior performance experience with NASA.

§ 18–4.203–3 Action by head of installations.

Except as otherwise provided in § 18–4.203–4, the head of the installation shall review the recommendations of the architect-engineer selection board and shall:

(a) Approve the recommended list of qualified architect-engineer firms as submitted;

(b) Rearrange the order of preference; or

(c) Return the recommendations to the board for such action as he may consider necessary.

The head of the installation shall advise the board of the final action and shall furnish the contracting officer with a copy of the report and final action thereon which will serve as authorization to commence negotiation. The list of qualified firms in order of preference is for internal use of NASA, and such information shall not be made known to the firms under consideration.

§ 18–4.203–4 Simplified procedures for procurement estimated to cost $10,000 or less.

When authorized by the head of the installation, one of the simplified procedures set forth in this section may be used in selecting architect-engineer firms to perform services that are estimated to cost $10,000 or less, in lieu of the architect-engineer selection board performing the functions prescribed by § 18–4.203–2(a) (2) and (3), and actions prescribed by § 18–4.203–3.

(a) *Selection by the Board.* After reviewing and evaluating architect-engineer firms in accordance with §§ 18–4.203–2(a)(2) and 18–4.203–2(b), the board will prepare a report for submission to the contracting officer listing, in the order of preference, a minimum of three firms which, after careful evaluation, are considered the best qualified to perform the required services. (This report will include sufficient details as to the extent of the evaluation and review made and the considerations upon which the selections were based.) This report will be forwarded to the contracting officer and will serve as authorization to commence negotiation.

(b) *Selection by the Chairman of the Board.* When, in the judgment of the chairman of the board, it is considered that board action is not required in connection with a particular selection of architect-engineer firms, the following procedures will be followed:

(1) The chairman of the board will perform the functions required by § 18–4.203–2(a)(2).

(2) The chairman of the board will prepare a report in the same manner as that prescribed by § 18–4.203–2(a)(3), except that the report will be submitted to the head of the field installation or his designee for concurrence.

(3) The head of the installation or his designee will review the report from the chairman of the board, and concur with the selection made by the chairman, or return the report to the chairman for

such action as may be considered necessary.

(4) Upon receipt of a concurred report, the chairman of the board will furnish the contracting officer with a copy of the report. Such report will serve as authorization to commence negotiation.

§ 18–4.203–5 Selection of architect-engineers for master planning.

(a) *Definition of master plan.* A master plan is an integrated series of documents which present in graphic, narrative, and tabular form the present composition of the installation and the plan for its orderly and comprehensive development to perform its various missions in the most efficient and economical manner.

(b) *Selection.* Where it is proposed to select an architect-engineer to develop a master plan in connection with the establishment of a new NASA activity or installation, the report prepared by the architect-engineer selection board, in accordance with § 18–4.203–2(a)(3) will be forwarded by the head of the installation, with his concurrence in the selection, to the cognizant Institutional Director, NASA Headquarters, for the approval of the Administrator and the concurrences of the Deputy Administrator and the Associate Administrator. The cognizant Institutional Director will refer the report for review to the Procurement Office (Code: KD), the Office of Facilities (Code: BX), and to other offices as appropriate under the circumstances. After receipt of comments and recommendations from the reviewing offices, the cognizant Institutional Director will revise, modify, or concur in the report, as appropriate, and forward it to the Administrator, via the Associate Administrator.

§ 18–4.204 Negotiation procedures.

§ 18–4.204–1 General.

(a) The contracting officer is responsible for conducting the negotations and for the results thereof. In discharging his responsibilities, the contracting officer shall use the services of technical, legal, financial, pricing, and other specialists in NASA, as required. Negotiations shall be directed toward:

(1) Making certain that the proposed contractor has a clear understanding of the essential details of the required work;

(2) Determining that the proposed contractor will make available the necessary personnel and organization to accomplish the work within the required time; and

(3) Effecting mutual agreement on the provisions of the contract and on a fair and reasonable fee (contract price) for the required work.

(b) *Limitation on fee.* Pursuant to 10 U.S.C. 2306(d), the amount of the fee that may be paid to an architect-engineer under a cost-plus-a-fixed-fee contract for the production and delivery of the designs, plans, drawings, and specifications required for the accomplishment of any public works or utilities project may not exceed 6 percent of the estimated cost of such project, exclusive of the amount of such fee. In addition, it is NASA policy to apply this statutory limitation to the fee paid to an architect-engineer for the performance of such services under a fixed-price contract. The architect-engineer services subject to this limitation are those described in § 18–4.201(b)(2), (3), and (4). This limitation shall be applied on an individual contract basis.

§ 18–4.204–2 Conduct.

Negotiations shall be conducted initially with the architect-engineer firm given first preference under the procedures set forth in § 18–4.203. If a mutually satistfactory contract cannot be negotiated with such firm, the negotiations shall be terminated and the firm notified. Negotiations then shall be initiated with the firm given second preference and this procedure shall be continued until a mutually satisfactory contract has been negotiated.

§ 18–4.204–3 Independent government estimate.

Prior to the initiation of negotiations, the contracting officer shall develop an independent Government estimate of the cost of the required architect-engineer services, based on a detailed analysis of the costs expected to be generated by the work. Information, such as hourly pay rates and overhead and general and administrative expense loading factors, may be requested from the architect-engineer firm under consideration to the extent required in preparing the Government estimate. The independent Government estimate shall be revised as required during negotiations to reflect changes in, or clarification of, the scope of the work to be performed by the architect-engineer. A cost estimate, based on the application of percentage factors to cost estimates of the various segments of the construction project, may be developed for comparison purposes, but such a cost estimate shall not be used as a substitute for the independent Government estimate.

§ 18–4.204–4 Architect-engineer's estimate.

The contracting officer shall request the architect-engineer firm to submit its proposed fee and supporting detailed cost breakdown. Such request shall be made prior to the initiation of negotiations, where practicable, or promptly after agreement on the scope of the work to be performed has been reached during negotiations. Revisions of the proposed fee and supporting detailed cost breakdown shall be requested as required during negotiations to reflect changes in, or clarification of, the scope of the work to be performed by the architect-engineer.

§ 18–4.204–5 Fair and reasonable fee.

The contracting officer shall negotiate a fee considered fair and reasonable based on a comparative study of the independent Government estimate and the architect-engineer's estimate. Significant differences between elements of the two estimates and between the overall estimates shall be investigated, and the contracting officer shall satisfy himself as to the reasons therefor.

§ 18–4.204–6 Procurements requiring Headquarters approval.

Contracts for architect-engineer services that require the prior approval of the Director of Procurement are specified in § 18–50.105(b)(2). The request for approval shall include all information required to be developed by this § 18–4.204, and in particular, shall set forth the detailed cost breakdown on which the determination was based that the proposed fee is fair, reasonable and consistent with the provisions of § 18–4.204–1(b).

§ 18–4.204–7 Record of negotiation.

Promptly at the conclusion of each negotiation, the contracting officer shall prepare a memorandum, setting forth the principal elements of the contract negotiations, for use of reviewing authorities and for inclusion in the contract file. The memorandum shall contain sufficient detail to reflect the significant considerations controlling the establishment of the fee and other terms of the contract. § 18–50.106 of this chapter prescribes the type of information to be included.

§ 18–4.205 Contracting with architect-engineer firms for construction work.

§ 18–4.205–1 Policy.

Except as provided in § 18–4.205–3, the award of a contract for architect-engineer services for a particular facility and the award of a contract for the related construction work to the same firm, its subsidiaries, or affiliates is prohibited. This policy prevents the development of situations where architect-engineer firms might be discouraged from furnishing their best professional services and from rendering unbiased decisions during the design and construction periods. Accordingly, bids or proposals for the construction of a facility shall not be solicited from the firm furnishing architect-engineer services for that facility, its subsidiaries, or affiliates; and unsolicited bids or proposals from that firm, its subsidiaries, or affiliates shall not be considered.

§ 18–4.205–2 Procedure.

An architect-engineer firm, selected for negotiation of an architect-engineer services contract under the procedures set forth in § 18–4.203, shall be advised of the policy set forth in § 18–4.205–1 prior to the initiation of negotiations, if that firm possesses construction capabilities either within its own organization or through subsidiaries or affiliates. The firm shall have the option of either:

(a) Declining to enter into contract negotiations in order to be eligible to compete for the related construction contract; or

(b) Entering into contract negotiations with the clear understanding that, if such negotiations are successful, the firm, its subsidiaries, or affiliates will be ineligible to compete for the related construction contract.

§ 18–4.205–3 Exceptions.

The policy set forth in § 18–4.205–1 is not applicable to:

(a) Those cases where the Director of Procurement specifically authorizes, prior to the initation of negotiations, the use of a cost-plus-a-fixed-fee contract for both the design and construction of a specialized facility; or

(b) Those cases in which a contract is awarded on the basis of performance specifications for the construction of a facility, and the contract requires the contractor to furnish construction drawings, specifications, or site adaptation drawings of the facility.

Requests for authorization, pursuant to paragraph (a) of this section, shall be in sufficient detail to establish the need for procuring both design and construction under one contract. In neither of the excepted cases in paragraphs (a) and (b) of this section shall the firm that prepared the drawings and specifications be engaged to supervise and inspect, on behalf of the Government, the construction of the facility involved.

Subpart 18–4.4—Unsolicited Proposals

§ 18–4.401 General.

(a) It is NASA's policy to inform organizations and individuals of scientific and technological areas encompassed by NASA's mission, and to encourage the submission of unsolicited proposals containing relevant new ideas. An unsolicited proposal is a written offer to perform work which does not result for a formal written request for proposals issued by NASA. However, inquiries regarding NASA interest in supporting research and development in a particular technical area shall not be construed as proposals. Unsolicited proposals are offered in the hope that NASA will support the proposer in research or development activities, or the testing of new products. Many of the proposals eventually become a part of a NASA program; others may have little or no value.

(b) Proposals for flight experiments to be carried on earth satellites or spacecraft present special problems of coordination, evaluation and selection. NASA Handbook, "Opportunities for Participation in Space Flight Investigations," (NHB 8030.1) provides detailed instructions for the preparation and submission of flight experiment proposals. Prospective submitters should be furnished a copy of this Handbook upon request.

(c) All proposals should be specific and, as a minimum, include the information set forth in subparagraphs (1) through (18) of this paragraph. Although it is desired that unsolicited proposals be prepared in conformance with the standards set forth below, NASA may accept unsolicited proposals for evaluation purposes which do not conform thereto:

(1) Name and address of the organization submitting the proposal;

(2) Date of preparation or submission;

(3) Type of organization (profit, nonprofit, educational, other);

(4) Concise title and abstract of the proposed effort or activity for which support is being sought;

(5) An outline and discussion of the purpose of the proposed effort or activity, the method of attack upon the problem, and the nature and extent of the anticipated results;

(6) Names of the key personnel to be involved (name of principal investigator, if applicable), brief biographical information, including principal publications and relevant experience;

(7) Proposed starting and completion dates;

(8) Equipment, facility and personnel requirements;

(9) Proposed budget, including separate cost estimates for salaries and wages, equipment, expendable supplies, services, travel, subcontracts, other direct costs, and overhead;

(10) Names of any other Federal agencies receiving the proposal and/or funding the proposed effort or activity;

(11) Brief description of the proposer's facilities, particularly those which would be used in the proposed effort or activity;

(12) Brief outline of the proposer's previous work and experience in the field;

(13) If available, a descriptive brochure and a current financial statement;

(14) If proposed effort or activity requires or may generate classified security information, the security status of the organization and the major investigators, and identification of the cognizant security office;

(15) Period for which proposal is valid;

(16) Names and telephone numbers of proposer's primary business and technical personnel whom NASA may contact during evaluation and/or negotiation;

(17) Each proposal containing technical data, which the submitter intends to be used by NASA for evaluation purposes only, may be marked on the cover sheet with the legend prescribed in § 18–1.304–2(c)(1); and

(18) Signature of a responsible official of the proposing organization or a person authorized to contractually obligate such organization.

(d) Proposals should be submitted well in advance of the desired beginning of support, and in ample copies to allow simultaneous study by all reviewers.

(e) All unsolicited proposals from educational and non-profit scientific institutions, proposals to NASA Headquarters from other sources, and requests for additional information regarding the preparation of unsolicited proposals should be submitted to:

National Aeronautics and Space Administration, Office of University Affairs (Code: Y), Washington, D.C. 20546.

When unsolicited proposals are received initially by NASA field installations, copies of such proposals will be furnished to the Office of University Affairs in accordance with instructions issued by that office.

§ 18–4.402 Policy.

§ 18–4.402–1 General.

All unsolicited proposals shall be processed in an expeditious manner. Proposals shall be acknowledged as soon after receipt as possible. Submitters shall be notified as to the ultimate disposition of their proposals.

§ 18–4.402–2 Preliminary review.

Prior to making a comprehensive evaluation of a document apparently submitted as an unsolicited proposal, the initial receiving office shall determine that the document:

(a) Contains sufficient technical and cost information to enable meaningful evaluation;

(b) Has been approved by a responsible official of the proposing organization or a person authorized to contractually obligate such organization; and

(c) Does not merely offer to perform standard services or to provide "off-the-shelf" articles.

If the document does not meet these requirements, a comprehensive evaluation need not be made, and the document may be considered and handled as correspondence or advertising. In such cases a prompt reply shall be sent to the submitter, indicating how the document is being interpreted and the reason(s) for not considering it a proposal.

§ 18–4.402–3 Comprehensive evaluation.

Every unsolicited proposal that is circulated for comprehensive evaluation shall have attached or imprinted a legend identifying it as an unsolicited proposal, and stating that it may be used only for purposes of evaluation (§ 18–1.304–2(c)). In evaluating a proposal, the evaluating office(s) shall consider, in addition to any other criteria, the following factors:

(a) The overall scientific, technical merit of the proposed effort;

(b) The potential contribution which the proposed effort is expected to make to NASA's specific program objective(s), if supported at this time;

(c) The unique capabilities, related experience, facilities, instrumentation, or techniques which the proposer possesses and offers, and which are considered to be integral factors for achieving the scientific, technical, or technological objective(s) of the proposal;

(d) The unique qualifications, capabilities and experience of the proposed principal investigator and/or key personnel.

Comprehensive evaluations shall be coordinated according to procedures to be established by the Office of University Affairs. If a proposal is not to be accepted, the submitter shall be informed by a suitable letter. A copy of such letter and associated proposal shall be retained in the files of the Office of University Affairs.

§ 18–4.402–4 Method of procurement.

(a) *Competitive procurement.* It is NASA's policy to obtain competition whenever possible (§ 18–3.802–2). However, data and other information submitted with an unsolicited proposal shall be treated in accordance with the policy set forth in § 18–1.304. Therefore, when a received document qualifies as an unsolicited proposal, but its substance is available to NASA without restriction from another source, or its substance closely resembles that of a pending competitive solicitation or otherwise is not sufficiently unique to justify acceptance, NASA's policy of obtaining competition applies. When procurement is intended and competition is feasible, the proposal shall be rejected, as in § 18–4.402–3, and all readily available copies (excluding the Office of University Affairs official proposal file copy) shall be returned to the submitter.

(b) *Noncompetitive procurement.* (1) A favorable technical evaluation of an unsolicited proposal is not, in itself, sufficient justification for negotiating on a noncompetitive basis with the submitter. When an unsolicited proposal has received a favorable technical evaluation and it is determined that the substance thereof is not available to NASA without restriction from another source, or competition is otherwise precluded, the subject matter of such proposal may be procured from the proposer on a noncompetitive basis. The technical office sponsoring the procurement shall support its recommendation with a "Justification for Acceptance of Unsolicited Proposal." The "Justification" shall include the findings set forth in subparagraphs (i), (ii), or (iii) below:

(i) The procurement is to provide support to an educational institution for the development or improvement of that institution's capability to contribute to the national aeronautical and space program; and the proposal was selected on the basis of its overall merit, cost and potential contribution to NASA program objectives, after a thorough evaluation and comparison with other proposals for similar support;

(ii) The procurement is for basic scientific or engineering research; and the proposal was selected on the basis of its overall merit, cost and contribution to NASA program objectives, after a thorough evaluation and comparison with other proposals in the same or related fields; or

(iii) The procurement is for services other than basic research (e.g. development, feasibility studies, etc.); the proposal contains technical data or offers unique capabilities that are not available from another source; and it is not feasible or practical to define the Government's requirement in such a way as to avoid the necessity of using the technical data contained in the proposal.

(2) In addition, the "Justification" shall include the facts and circumstances that support the recommended action. The following illustrations represent factors which should be considered, as appropriate, in preparing the "Justification":

(i) The scientific/technical merits of the unsolicited proposal and its potential contribution to NASA's program objectives;

(ii) The qualifications, capabilities, and related experience of the submitter, principal investigator and/or key personnel;

(iii) Unique facilities, instrumentation, or techniques; and

(iv) Circumstances that operate to preclude competitive negotiation.

§ 18–4.403 Procedure.

(a) The Office of University Affairs will develop guidelines for, and participate in, the receipt, proper handling and disposition of unsolicited proposals from all non-NASA sources.

(b) If a Program Office or a field installation determines that (1) an unsolicited proposal, or a revised version thereof, is technically and programmatically acceptable; (2) funds are available; and (3) project approval, as may be required, has been obtained, a procurement request (NASA Form 404, or similar form) may be initiated. The procurement request shall be prepared and processed in accordance with the applicable provisions of § 18–1.356 and NASA Management Issuance 5101.12, "Policy and Procedures Concerning Procurement Requests."

(c) When it has been determined under the provisions of § 18–4.402–4(b) that it is necessary to negotiate exclusively with the submitter, the initiating technical office shall submit with the procurement request its recommendation for single source procurement for approval by the appropriate authority. This recommendation shall be in writing and will be contained in a separate document entitled "Justification for Acceptance of Unsolicited Proposal" (§ 18–4.402–4(b)). The Justification shall be subject to the same approval requirements as set forth in § 18–3.802–3(c) for "Justifications for Noncompetitive Procurements."

(d) A "Justification for Acceptance of Unsolicited Proposal" is not required for (1) procurements of $250 or less, or (2) procurements of scientific experiments selected pursuant to NASA Management Instruction 7100.1, "Conduct of Space Science Program—Selection and Support of Scientific Investigations and Investigators."

(e) Formal RFP's or RFQ's shall not be issued to obtain additional information required for the negotiation of contracts based on unsolicited proposals accepted pursuant to NMI 7100.1. The proposal itself constitutes the basis for negotiations and any further technical or budgetary information requested or received shall be considered to supplement, amend, or revise the original accepted proposal.

Subpart 18–4.50—Utility Services

§ 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 below:

(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, cable, terminal and switching facilities) used for such modes of transmission as telephone, telegraph, teletypewriter, data, facsimile, radio, 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 Heaquarters, 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 areawide utility contracts (see Subpart 18–5.8).

(2) Department of Defense areawide 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 when it is determined to be in the best interest of the Government. The following criteria must be met prior to requesting the extension of FTS service to a NASA contractor:

(i) The total amount of the contract will be in excess of $5 million;

(ii) The contract will be long term; 2 or more years (including options);

(iii) The contract must be of a type that permits the contracting officer to adjust its terms and charges to allow for the fact that the Government is providing this service at no cost; and

(iv) FTS is required and will be used in direct support of the contract and is not to be used for non-NASA business. The contractor shall submit a letter certification to this effect to the contracting officer.

If it is determined that all four criteria are met, the request should be referred to the Office of Tracking and Data Acquisition, NASA Headquarters (Code TN). The Office of Tracking and Data Acquisition will make the necessary implementation 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, "Communications System Management Responsibilities."

(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, NASA Headquarters (Code BZ). Crypto equipment will be obtained from and through the NASA Crypto Custodian (Code DHA). Reference manual NPC 106 (classified), "Manual for Safeguarding of Cryptomaterial" and NASA Management Instructions 1136.10, "Administrative Services Division" and 1136.4, "Security Division."

§ 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) areawide communication contracts along with a request for a waiver of the requirement to use either the GSA or DOD areawide communications contract. In determining whether a GSA or DOD areawide communications contract is adequate to meet the requirements of the using installation, consideration should be given to (i) the areawide 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 areawide 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 areawide contract is not available;

(2) An areawide 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 filed and approved 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 areawide contract is not available;

(2) An areawide contract exists but requirements are for nonstandard 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 filing and approval 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 Procurement Office, NASA Headquarters (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 Procurement Office, NASA Headquarters (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 Procurement Office, NASA Headquarters (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 areawide public utility contracts.

Policies and procedures governing the procurement of utility services by use of General Services Administration areawide public utility contracts are set forth in Subpart 18–5.8.

§ 18–4.5005–4 DOD areawide communications contracts.

Policies and procedures governing the procurement of communications services by use of the DOD areawide 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 Procurement Office, NASA Headquarters (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 Procurement Office, NASA Headquarters (Code KDR) and to the Office of Facilities, NASA Headquarters (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 Procurement Office, NASA Headquarters (Code KDR) and the Office of Facilities, NASA Headquarters (Code BX). If the rate change affects communications services, he will notify the Office of Tracking and Data Acquisition, NASA Headquarters (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 subparagraph (1) or (2) of this paragraph, 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 Procurement Office, NASA Headquarters, with the technical assistance of the Office of Facilities, NASA Headquarters 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, NASA Headquarters will furnish the necessary guidance to the contracting officer. Prior to recommending any action concerning the proposed rate changes, the Procurement Office, NASA Headquarters will, as necessary, coordinate with other staff offices or divisions, or other Government agencies. The contracting officer shall await the recommendations of the Procurement Office, NASA Headquarters or the Office of Tracking and Data Acquisition, NASA Headquarters 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 Procurement Office, NASA Headquarters (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 Procurement Office, NASA Headquarters (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 Procurement Office, NASA Headquarters (Code KDR) whenever it is desired to sell utility services.

(b) The Procurement Office, NASA Headquarters (Code KDR) will provide the necessary guidance to consummate the sale.

(c) Each proposed agreement shall be submitted to the Procurement Office, NASA Headquarters (Code KDR) for approval.

Subpart 18–4.52—Management Engineering or Consultant Services

§ 18–4.5200 Scope of subpart.

This subpart sets forth the policy and procedures for negotiating contracts with firms and organizations for management engineering or consultant services. The policies and procedures for obtaining the services of individual experts and consultants are set forth in NASA Management Instruction 1052.87, "NASA–CSC Agreement—Experts and Consultants" and NASA Federal Personnel Manual (FPM), Supp. 32.

§ 18–4.5201 Applicability.

The provisions of this subpart are applicable to NASA Headquarters offices and field installations. In addition, the office charged with administration of the NASA contract for the operation of the Jet Propulsion Laboratory shall ensure that proposed JPL subcontracts for management engineering or consultant services are processed in accordance with the procedures set forth herein.

§ 18–4.5202 Definitions.

The following definitions apply to this subpart.

(a) The term "firms and organizations" includes:

(1) Any business enterprise, association, foundation, or educational institution; and

(2) Any unit of government outside the Federal Government of the United States.

(b) The term "negotiating contracts for management engineering or consulting services" includes the negotiation of contract modifications or amendments directed in full or in part toward the procurement of management engineering or consulting services.

(c) The term "management engineering or consultant services" includes:

(1) Any examination, survey, study, review, analysis, assistance, consultation, or advice having as its purpose improvement in the effectiveness, efficiency, and economy of NASA management operations; and

(2) Any effort to improve the NASA organizational structure, business systems, industrial processes, performance standards, methods, procedures, plant or office layout, managerial skills, or general administration, as well as analysis leading directly to any of these services.

The term "management engineering or consultant services" does not include services for research and development; nor does it include reliability studies, plant operation and maintenance services, architect-engineering services, stenographic services, or services of consulting physicians.

§ 18–4.5203 Policy.

It is NASA policy to utilize firms and organizations outside the Government for management engineering or consultant services to improve NASA management only when such services are necessary and:

(a) Comparable services are not obtainable within NASA or from other Government organizations; and such services are not readily available through Civil Service; or

(b) An assessment of NASA management practices by firms or organizations outside the Government organizational structure demonstrably would prove more beneficial than an intragovernmental study.

§ 18–4.5204 Scope.

The functions for which management consulting firms and other organizations may be of assistance to NASA include, but are not limited to, the following:

(a) Conducting training programs to increase the competence and effectiveness of NASA employees;

(b) Reviewing NASA support and operating programs (for example, procurement and supply) to increase the responsiveness of such programs to NASA needs;

(c) Modernizing NASA systems and procedures;

(d) Strengthening NASA organization and management structure, planning, and controls; and

(e) Organizing new programs or services.

§ 18–4.5205 Procedure.

§ 18–4.5205–1 Request for approval.

(a) When a NASA field installation considers that management engineering or consultant services are necessary and desirable, in accordance with the policy stated in § 18–4.5203, the installation shall, prior to solicitation, secure the approval of the Institutional Director. Requirements originating within NASA Headquarters may be approved by that senior official of the originating element who reports directly to General Management. Requests for approval to procure such services will be prepared in quintuplicate in the format set forth in § 18–4.5206. Prior to approval, the Institutional Director, or other Headquarters official as designated above, will forward two copies of the request to the Office of Management Development, NASA Headquarters (Code L) for concurrence. The approval cycle in Headquarters normally will require less than 2 calendar weeks.

(b) The Office of Management Development, NASA Headquarters (Code L) will analyze and evaluate the request as to:

(1) The necessity for the task (taking into account, for example, whether the task is required to be initiated immediately or should be deferred; and whether the problem involved is likely to be affected by other current NASA plans);

(2) The proposed method of accomplishment as compared to alternative feasible methods (whether, for example, instead of contracting for management consultant or advisory services, it would be more expeditious and less costly for NASA to hire experts temporarily on a per diem basis);

(3) The significance of the problem and the extent to which it relates to NASA functions generally and to different NASA organizational elements; and

(4) Other pertinent considerations.

§ 18–4.5205–2 Negotiation of contracts.

(a) Unless noncompetitive negotiation is authorized (see § 18–3.802–3), negotiation of contracts shall be conducted with a sufficient number of firms or organizations to permit NASA to evaluate, prior to making award, the comparative merits of qualified sources and of different approaches to the task.

(b) Contracting officers shall include in the request for proposals a requirement that each offeror furnish the following information with his price quotation, notwithstanding the type of contract anticipated:

(1) The name(s) and qualifications of principal members of the contractor organization who will be responsible for the project;

(2) The title of each official and the number of employees who will participate;

(3) The estimated number of manhours that each official and employee will contribute to the proposed project; and

(4) The standard billing rate per hour for each official and employee.

The contract shall establish requirements to insure that the proposal of the successful offeror will be adhered to (as negotiated and agreed to) in each of the above respects.

(c) In addition, the request for proposals and the resulting contract shall contain the following provisions:

(1) That the contractor warrants the rates quoted are not in excess of those charged nongovernmental clients for the same services performed by the same individuals;

(2) That the Government has the right to the working papers used by the participating officials and employees of the firm or organization in connection with the project;

(3) That publication or distribution of the study, data, or other related material is prohibited, except to the extent authorized by the contracting officer; and

(4) That the contractor agrees that any reports regarding organizational matters (as required by the contract) shall include, when feasible, in addition to the recommendations, alternative methods to be considered and the pros and cons of each alternative.

§ 18–4.5205–3 Contract award and approval.

Unless otherwise required by Subpart 18–50.1, of this chapter or by direction of the Institutional Director, awards may be made without further reference to Headquarters after the approval required by § 18–4.5205–1 has been obtained.

§ 18–4.5205–4 Copies of reports and recommendations.

Upon completion of the services required, the initiating office shall forward one copy of all reports or recommendations made by the consulting firm or organization to the Office of Management Development, NASA Headquarters (Code L), and four copies to the Institution Director or other Headquarters official approving the request as set forth in § 18–4.5205–1.

§ 18–4.5206 Format for requesting approval for use of management engineering or consultant services.

REQUEST FOR APPROVAL TO PROCURE MANAGEMENT ENGINEERING OR CONSULTANT SERVICES

Date:_____

1. It is requested that approval be granted to solicit proposals and contract for: (Give detailed description of statement of work to be performed.)

2. The desired goals or results of this work are:

3. It is believed that this work will be beneficial to NASA and the Government for the following reasons (list reasons in concise language):

4. Statement of those organizational groups within NASA or other Government agencies known to have any degree of capability in the field this work encompasses.

5. Give reasons or opinions why this work could not or should not be conducted by NASA or other Government personnel.

6. State type and extent of agency participation necessary; that is, if agency personnel will be required to work with those providing service; describe how many, types, tasks, etc. Also give description of type of support required, if any, such as office or other space, supplies, materials, etc.

7. Describe any travel anticipated or required in connection with the service.

8. Give estimate of time and number of personnel (all types) and any additional items or facilities required to produce desired results.

9. Give estimated costs and source of funds.

10. If the request is for one designated firm or organization to undertake the work, identify the firm or organization in detail, give special qualifications, and reasons justifying the selection.

11. If the request is not limited to one firm or organization, list the sources proposed for solicitation.

12. Give an opinion as to the effect on NASA if the request is not approved.

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

[FR Doc.71–682 Filed 1–15–71;8:52 am]

Title 49—TRANSPORTATION

Chapter II—Federal Railroad Administration, Department of Transportation

PART 250—GUARANTEE OF CERTIFICATES OF TRUSTEES OF RAILROADS IN REORGANIZATION

The purpose of this amendment is to establish a new Part 250 setting forth the procedures and requirements of the Federal Railroad Administration, in filing applications with the Administrator for guarantees by the Secretary of Transportation of Trustee Certificates pursuant to Emergency Rail Services Act of 1970 (Public Law 91–663).

Since this new Part 250 establishes agency procedures, and in view of the emergency nature of the underlying statute authorizing guarantees, notice and public procedure thereon are impracticable and the procedures can be made effective immediately.

In consideration of the foregoing, effective January 13, 1971, Chapter II of Subtitle B of Title 49, Code of Federal Regulations, is amended by adding a new Part 250, as set forth below.

Issued in Washington, D.C. on January 13, 1971.

CARL V. LYON,
Acting Administrator,
Federal Railroad Administration.

Sec.
250.1 Form and content of application.
250.2 Required exhibits.
250.3 Fees.
250.4 Execution and filing of application.
250.5 General instructions.

AUTHORITY: The provisions of this Part 250 issued under sec. 3(f) of the Emergency Rail Services Act of 1970, Public Law 91-663; § 1.49(m), regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(m).

§ 250.1 Form and content of application.

The application shall include, in the order indicated and by section numbers and letters corresponding to those used in this part, the following:

(a) As to the Trustee and the transaction:

(1) Full and correct name and principal business address.

(2) The name and address of the reorganization court under the direction of which the Trustee is acting, and the nature of the proceeding, if any, in which Trustee was appointed.

(3) Name, title, and address of the person to whom correspondence regarding the application should be addressed.

(4) Brief description of the loan and its purpose or purposes, including statements of (i) the total amount of the loan, (ii) the purpose or purposes for which the loan proceeds will be used, (iii) the maturity date or dates, (iv) description of the security, if any, for the loan, including applicants' opinion of the value of any collateral and the basis for such opinion, (v) the date or dates on which Trustee desires the funds to be made available, (vi) the rate of interest, (vii) estimated total expenses in connection with the loan, including detail as to expenses estimated for legal and accounting services, printing and engraving, trustees' fees, State and Federal taxes, and commissions and discounts, and (viii) the portion of the loan concerning which guarantee by the Secretary is sought, description of the security for the certificates and the guarantee, together with an opinion of the value of such collateral and the basis for such opinion.

(5) Concerning the necessity for the guarantee sought:

(i) Statement on behalf of the Trustee that it has endeavored to obtain a loan or loans for the purpose or purposes proposed without a guarantee by the Secretary in connection therewith, but has not been able to obtain a loan therefor upon reasonable terms, or if only upon terms considered unreasonable, a statement setting forth such terms and describing any facts relevant thereto.

(ii) Information as to the Trustee's efforts to obtain the needed financing without a guarantee thereof by the Secretary, and as to the results of such efforts. (See § 250.2(b)(3) as to exhibits on this subject.)

(6) Statement, in summary form, showing the carrier's financial obligations to, or claims against, the United States, if any, as of date of application, or latest available date, listed as to (i) balance on any direct loans, (ii) balance on any loans under which the United States is guarantor, (iii) status of any claims under litigation, and (iv) any other debits or credits existing between the carrier applicant and the United States, showing the department or agency involved in such loans, claims and other debts.

(7) Full and complete statement, together with independent supporting evidence, where feasible, concerning the effect that cessation of essential transportation services of carrier would have on the public welfare.

(8) Full and complete statement, together with supporting evidence, where possible, demonstrating that cessation of essential transportation services by carrier applicant is imminent.

(9) Full and complete statement, together with supporting evidence, if possible, that there is no other practicable means of obtaining funds to meet payroll and other expenses necessary to provide essential transportation services other than the issuance of trustee certificates. Such statement shall include in detail a complete listing of all nontransportation assets of the carrier and corporate affiliates, or subsidiaries having a fair market value of not less than $50,000, together with the amount of encumbrances thereon, if any, and a statement or plan for the disposition or sale of such assets as a means of obtaining funds necessary for essential transportation services.

(10) Full and complete statement, together with supporting evidence, if possible, demonstrating, with particularity, that the carrier can reasonably be expected to become self sustaining within a reasonable period of time.

(11) Full and complete statement, together with supporting evidence, that the probable value of the assets of the carrier in the event of liquidation provides reasonable protection to the United States.

(b) As to the lender or lenders:

(1) Full and correct name and principal business address.

(2) Names and addresses of principal executive officers and directors, or partners.

(3) Reference to applicable provisions of law and the charter or other governing instruments conferring authority to the lender to make the loan and to accept the mortgage or other obligation evidencing the loan.

(4) Brief statement of the circumstances and negotiations leading to the agreement by the lender to make the proposed loan, including the name and address of any person or persons, other than directors, officers, partners, or employees of the carrier, representing or purporting to represent the Trustee in connection with such negotiations.

(5) Brief statement of the nature and extent of any affiliation or business relationship between the lender and any of its directors, partners, or principal executive officers, on the one hand, and, on the other, the carrier and any of its directors, partners, or principal executive officers, or any person or persons whose name is required to be furnished under subparagraph (4) of this paragraph.

(6) Full and complete statement of all sums paid or to be paid and of any other consideration given or to be given by lender in connection with the proposed loan, including with respect thereto: (i) name and address of each person to whom the payment is made or to be made, (ii) the amount of the cash payment, or the nature and value of other consideration, (iii) the exact nature of the services rendered or to be rendered, (iv) any condition upon the obligation of the lender to make such payment, and (v) the nature of any affiliation, association, or prior business relationship between any person named in answer to subdivision (i) of this subparagraph and the lender or any of its directors, partners, or officers.

§ 250.2 Required exhibits.

There shall be filed with and made a part of each application, and with each copy thereof, the exhibits required in this section.

(a) The following exhibits are required concerning the Trustee and the carrier:

(1) As Exhibit 1, with the original application but not with copies thereof, copy of duly certified order of the court, or instrument of appointment, appointing trustees of the carrier.

(2) As Exhibit 2, a certified copy of the order(s) of the reorganization court having jurisdiction of applicant authorizing (i) the filing of the application with the Administrator for a guarantee of the Trustee's certificate; (ii) filing of the application with the Interstate Commerce Commission, under section 20a of the Interstate Commerce Act, for authority to issue trustee's certificates; (iii) the pledge of security for the loan and the guarantee in the manner contemplated by section 3(c) of the Emergency Rail Services Act of 1970; and (iv) compliance by the Trustees with conditions to the guarantee imposed by law and the Administrator.

(3) As Exhibit 3, preliminary opinion of counsel for the Trustee that he is familiar with the corporate or other organizational powers of the carrier, including the orders of the reorganization court, that the Trustees of the carrier are authorized to make the application, and that when proper orders of the reorganization court have been issued and the obligations executed, and security delivered as contemplated by the application, such obligations will constitute the valid and subsisting obligations of the Trustee's of the carrier and will be treated as an expense of administration and receive the highest lien on the railroad's property and priority in payment under the Bankruptcy Act. Such opinion should also cover the option to be granted to the Administrator to procure by purchase or lease trackage rights over the line of carrier applicant, and such equipment as may be necessary to provide such services by the Administrator (or his assignee) in the event of actual or threatened cessation of essential transportation services by the carrier.

(4) As Exhibit 4, a map of the carrier's existing railroad.

(5) As Exhibit 5, statement showing miles of line owned; miles operated; number of units of locomotives, freight cars, and passenger cars owned and leased; principal commodities carried; and identification of the ten most important industries served.

(6) As Exhibit 6, statement as to whether any railroad affiliated with the carrier has applied for or received a loan guarantee under title V of the Interstate Commerce Act, or under the Emergency Rail Services Act of 1970. If such an affiliate has applied for or received such a guarantee, full particulars shall be given.

(7) As Exhibit 7, statement showing total dividends, if any, declared and total dividends paid for each of the last 5 calendar years and for each month of the current year to latest available date.

(8) As Exhibit 8, a copy of general balance sheet as of latest available date, but as of a date not earlier than the end of the third month preceding date of filing of the application, in form and detail as required in schedules 200A and 200L of the Interstate Commerce Commission's annual report Form A, together with the following supporting schedules:

(i) Particulars of loans and notes receivable in form and detail as required in Schedule 201 of annual report Form A for the Class I railroads.

(ii) Particulars of investments in other companies in form and detail similar to that required in schedules 205 and 206 of annual report Form A.

(iii) Particulars of balance in accounts 741 and 743, Other Assets and Deferred Charges, respectively, in form and detail as required in annual report Form A, schedule 216.

(iv) Particulars of loans and notes payable in form and detail required in schedule 223 of annual report Form A, as well as information as to bank loans, including the name of the bank, date and amount of the original loan, current balance, maturities, rate of interest, and security if any, therefor.

(v) Particulars of long-term debt in form and detail similar to that required in schedules 218 and 219 of annual report Form A, including a brief statement concerning each mortgage, and indicating the property or securities encumbered.

(vi) Particulars of balance in account 784, Other Deferred Credits, in form and detail as required in schedule 225 of annual report Form A.

(vii) Particulars as to contingent assets and liabilities in form and detail as required in schedule 233 of annual report Form A for the Class I railroads.

(viii) Particulars as to guarantees and suretyships in form and detail as required in schedule 110 of annual report Form A for the Class I railroads.

(ix) Particulars as to capital stock in form and detail as required in schedules 228, 229, and 230 of annual report Form A.

NOTE: The information required as Exhibit 8 shall give effect to any modification of the Commission's Uniform System of Accounts for Railroad Companies in effect on the date of filing the loan application.

(9) As Exhibit 9, statement showing comparative balance sheets as of December 31, for each of the last 2 years preceding the year in which the application is filed in form and detail as required in annual report Form A, schedules 200A and 200L, and if carrier or Trustee's reports to its stockholders include a consolidated balance sheet for two or more railroads which differs from the returns in the balance sheet schedules of its annual reports to the Commission, reference should be made here to the sections of the stockholders' reports which include said consolidated balance sheets.

(10) As Exhibit 10, to be filed only with the original copy of the application, a copy of carrier applicant's report to its stockholders or report of the trustee for each of the 3 years preceding the year in which the application is filed.

(11) As Exhibit 11, comparative income statement for last full quarter of the year preceding the month of the year in which the loan application is filed, including cumulative data to latest month shown, which shall not be earlier than the third month preceding date of filing the application, compared with the same quarter of each of the 2 preceding years, in account form similar to that required in column (a) of schedule 300 of annual report Form A, and modified to include any revision of the Commission's Uniform System of Accounts for Railroad Companies in effect on the date of filing the loan application.

(12) As Exhibit 12, comparative income statement showing data for each of the last 2 years in account form and detail similar to that required in the preceding paragraph.

(13) As Exhibit 13, pro forma income statement showing estimated income account for each of the remaining months in the current year and for each month of the year subsequent thereto, in account form and detail similar to that required in the preceding two paragraphs, together with a statement setting forth the basis for such estimates.

(14) As Exhibit 14, comparative statement of total expenditures for maintenance of (i) way and structures and (ii) equipment for each of the past 2 years and for each month of the current year, together with estimated expenditures for the remaining months of the current year and the year subsequent thereto, and including a statement showing the basis for such estimates.

(15) As Exhibit 15, a statement showing for the current calendar year and each year for 5 years thereafter estimated total operating revenues, total operating expenses, operating ratio, income available for fixed charges, and net income after fixed charges and contingent interest.

(16) As Exhibit 16, a statement showing actual cash balance at the beginning of each month and the actual cash receipts and disbursements during each month of the current year to the date of the latest balance sheet furnished as Exhibit 8, together with a monthly forecast (both before and after giving effect to use of proceeds from the proposed loan) for the balance of the current year and the year subsequent thereto.

(17) As Exhibit 17, a statement showing for each month to latest available month of the current year, compared with the same month of each of the 2 preceding years (i) number of tons of revenue freight carried, (ii) number of revenue ton-miles, (iii) freight revenue (account 101), (iv) number of passengers carried, (v) number of passenger miles, and (vi) passenger revenue (account 102), as well as similar information, on an estimated basis, for each of the remaining months in the current year and the year subsequent thereto.

(18) As Exhibit 18, statement showing comparatively for each year in the 2-year period preceding the year in which the application is filed, and on an estimated basis for the current and succeeding 4 years, the following: (i) Total charges to operating expenses for depreciation of way and structures, and equipment, (ii) deductions for accelerated tax amortization under section 168 of the Internal Revenue Code in excess of such depreciation charged to operating expenses, (iii) net income reported in annual reports to the Commission, and (iv) pro forma net income which would have resulted without the benefit of such deductions for accelerated tax amortization.

(19) As Exhibit 19, a general statement setting forth the facts as to estimated prospective earnings and other funds upon which applicant relies to repay the loan.

(b) The following exhibits are required as to the transaction.

(1) As Exhibit 20, specimens, or forms where specimens are not available, of all securities to be pledged or otherwise issued in connection with the proposed loan; and in case of mortgage, a copy of the mortgage or indenture.

(2) As Exhibit 21, copies of the loan agreement entered into, or to be entered into, between the Trustee and lender, and of any agreements or instruments executed or to be executed in connection with the proposed loan.

(3) As Exhibit 22, copies of correspondence from all, and not less than three, lending institutions or security underwriters to which application for the financing has been made, evidencing that they have declined the financing unless guaranteed by the Secretary or specifying the terms upon which they will undertake the financing without such guarantee.

(c) The following exhibits are required as to the lender:

(1) As Exhibit 23, to be filed only with the original copy of the application, copies of the charter or other organizational papers and of bylaws or other governing instruments, including all amendments.

(2) As Exhibit 24, balance sheet statement as of the latest available date, but within 3 months of the date of filing the application.

(3) As Exhibit 25, income statement for the 3 calendar or fiscal years immediately preceding the year in which the application is filed and similar statement for the latest available period in the current year but within 3 months of the date of filing the application.

(4) If the transaction involves a fiscal agent or trustee acting on behalf of lenders, or an underwriter, Exhibits 23 through 25 shall only be required of such fiscal agent or underwriter.

§ 250.3 Fees.

On date of final payment of the loan guaranteed by the Secretary pursuant to application filed under this part, the applicant carrier or the trustee, if still in existence, shall pay, or cause to be paid, to the Administrator as a guarantee fee such amount as the Administrator hereafter may determine and prescribe as necessary to cover the administrative costs of carrying out the provisions of the Emergency Rail Services Act of 1970.

§ 250.4 Execution and filing of application.

The following procedure shall govern the execution and filing of the application:

(a) The original application shall bear the date of execution and be signed with ink by or on behalf of the trustee and the lender. Execution on behalf of the trustee shall be by the trustee or trustees having knowledge of the matters therein set forth. Persons signing the application on behalf of the trustee and lender, respectively, shall also sign a certificate in form as follows:

---------- certifies that he
(Name of official)
is the ---------- of
(Title of official)
the ----------; that he is
(Name of carrier or lender)
authorized on the part of said applicant to sign and file with the Administrator this application and exhibits attached thereto; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof relating to the aforesaid ----------; that he has
(Name of carrier or lender)
knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

(Date)

(b) There shall be made a part of the original application the following certificate by the Chief Accounting Officer of the carrier:

---------- certifies that he is----------
(Name of officer) (Title of officer)
of ----------; that
(Name of carrier applicant)
he has supervision over the books of account and other financial records of the carrier and has control over the manner in which they are kept; that such accounts are maintained in good faith in accordance with the effective accounting and other orders of the Interstate Commerce Commission; that he has examined the financial statements and supporting schedules included in this application and to the best of his knowledge and belief said statements accurately reflect the accounts as stated in the books of account; and that, other than the matters set forth in the exceptions attached to such statements, said financial statements and supporting schedules represent a true and complete statement of the financial position of the carrier applicant and that there are no undisclosed assets, liabilities, commitments to purchase property or securities, other commitments, litigation in the courts, contingent rental agreements, or other contingent transactions which might materially affect the financial position of the carrier applicant.

(Date)

(c) The original application and supporting papers, and six copies thereof for the use of the Administrator shall be filed with the Administrator, Federal Railroad Administration, Department of Transportation, Washington, D.C. Simultaneously, one copy of the application and supporting papers shall be filed with the Secretary of the Interstate Commerce Commission, Washington, D.C. Each copy shall bear the dates and signatures that appear in the original and shall be complete in itself, but the signatures in the copies may be stamped or typed. If unusual difficulties arise in the furnishing of any of the exhibits required in § 250.2, the carrier applicant or the lender, upon appropriate showing and with the consent of the Administrator, may file a lesser number.

(d) In the event the furnishing of exhibits in the detail required by § 250.2 is shown by the applicant or applicants to be unduly burdensome in relation to the nature and amount of the loan, the Administrator may modify the requirements of said section. In addition, the Administrator may waive or modify any requirement of this part upon good cause shown, or make any additional requirements he deems necessary.

§ 250.5 General instructions.

(a) If the application is approved by the Administrator and the Secretary of Transportation and the latter agrees to make the guarantee, the following documents will be required for deposit with the Administrator before the transaction is closed:

(1) Final opinion by counsel for the Trustee to the effect that he is familiar with the corporate powers of the carrier applicant and the orders of the reorganization court; that the Trustees of the carrier applicant are authorized to execute and deliver the certificate or other obligations evidencing the same, and to pledge and hypothecate any securities pledged as collateral; that the certificate or other obligations so executed and so delivered constitute the valid and binding obligations of the Trustees of the carrier that the certificate or other obligations of the Trustee will be treated as an expense of administration and receive the highest lien on the railroads property and priority in payment under the Bankruptcy Act, and that the lender and the Secretary will obtain a lien on any security involved of the rank and priority represented by the Trustee. Such opinion shall also cover the priority and lien of each item of the collateral offered.

(2) Certified copies of the reorganization court orders and decrees authorizing the Trustee to execute and deliver the certificates or other obligations and to give the security under and according to the terms of the loan and guarantee as prescribed by the Administrator. Such order or orders of the reorganization court shall specify that trustee certificates, guaranteed by the Secretary as to payment of principal and interest, shall be treated as an expense of administration and receive the highest lien on the railroad's property and priority in payment under the Bankruptcy Act.

(3) Unexecuted copies of the foregoing documents will be delivered to the Administrator 3 business days prior to closing.

(b) The guarantee by the Secretary of a loan pursuant to an application filed as provided in this part should not be construed as relieving a carrier from complying with applicable provisions of section 20a of the Interstate Commerce Act (49 U.S.C. 20a) in relation to the issuance of Trustee certificates.

[FR Doc.71-622 Filed 1-15-71;8:47 am]

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Rev. S.O. 1043, Amdt. 2]

PART 1033—CAR SERVICE

Return of Hopper Cars

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 11th day of December 1970.

Upon further consideration of Revised Service Order No. 1043 (35 F.R. 11402, 15295) and good cause appearing therefor:

It is ordered, That § 1033.1043 *Service Order No. 1043* (Regulations for return of hopper cars) be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1971, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., December 31, 1970.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17(2))

It is further ordered, That copies of this amendment shall be served upon the Association of American Railroads, Car Service Division, and upon the American

Short Line Railroad Association, as agents of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order shall 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.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-656 Filed 1-15-71;8:50 am]

[S.O. 1046, Amdt. 1]

PART 1033—CAR SERVICE

Burlington Northern, Inc., and Certain Other Railroads Authorized To Operate Over Tracks of Peoria and Pekin Union Railway Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 11th day of December 1970.

Upon further consideration of Revised Service Order No. 1046 (35 F.R. 11301) and good cause appearing therefor:

It is ordered, That § 1033.1046 *Service Order No. 1046* (Burlington Northern, Inc., Chicago, Rock Island and Pacific Railroad Co., and Toledo, Peoria & Western Railroad Co. authorized to operate over tracks of the Peoria and Pekin Union Railway Co.) be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1971, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., December 31, 1970.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That copies of this amendment shall be served upon the Association of American Railroads, Car Service Division, and upon the American Short Line Railroad Association, as agents of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order shall 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.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-657 Filed 1-15-71;8:50 am]

[S.O. 1056-A]

PART 1033—CAR SERVICE

Distribution of Boxcars

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 17th day of December 1970.

Upon further consideration of Service Order No. 1056 (35 F.R. 18468) and good cause appearing therefor:

It is ordered, That § 1033.1056 *Service Order No. 1056* (Distribution of boxcars) be, and it is hereby, vacated and set aside.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That this order shall become effective at 12:01 a.m., December 17, 1970; that copies of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of the order shall 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.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-655 Filed 1-15-71;8:50 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airworthiness Docket No. 70-WE-23-AD; Amdt. 39-1144]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing Model 747 Series Airplanes

Amendment 39-1024 (35 F.R. 11176), AD 70-14-3, as amended by Amendment 39-1093 (35 F.R. 16468) and further amended by Amendment 39-1123 (35 F.R. 18734) requires inspection of all flap tracks and repair as necessary and provides for the replacement of the existing flap tracks with redesigned flap tracks on the Boeing Model 747-100 Series airplanes.

The Boeing Co. has advised the agency that 200 Series airplanes, now in production or for which an airworthiness certificate has been previously issued, incorporate the same flap track design. The redesigned flap tracks referenced in paragraph (2)(f) of AD 70-14-3, as amended, and in Boeing Service Bulletin 57-2011, Revision 4, dated November 25, 1970, are being installed on the fleet as available and in accordance with operator's scheduling. Until the modification is accomplished as a terminating action, the inspections and placard installation required by the AD permit continued operation of the 100 Series airplanes with the required degree of safety. The operation of the 200 Series airplanes is, by virtue of this amendment, conditioned upon performance of the identical actions described in AD 70-14-3 for 100 Series airplanes, by expanding the applicability statement. The requirements of the AD are not altered in any manner as to the 100 Series airplanes, or to any future Series of 747 aircraft. As herein amended, the AD will apply to Model 747 airplanes certificated in all categories.

As the identical situation exists as to the 200 Series airplanes which required immediate adoption of the AD as Amendment 39-1024, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by further amending Amendment 39-1024 (35 F.R. 11176), AD 70-14-3 as follows:

Delete from the applicability statement the limitation "-100 Series," so as to make said statement read, in pertinent part, as follows: "* * * all Model 747 airplanes * * *"

This amendment becomes effective January 19, 1971.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Los Angeles, Calif., on January 7, 1971.

JAMES V. NIELSON, *Acting Director, FAA Western Region.*

[FR Doc.71-629 Filed 1-15-71;8:48 am]

[Airspace Docket No. 70-WE-83]

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

Designation of Transition Area; Correction

On December 18, 1970, F.R. Doc. 70-17029 (35 F.R. 19171) was published in the FEDERAL REGISTER which adopted an amendment to Part 71 of the Federal Aviation Regulations designating a new transition area at Tracy, Calif. It has been noted than an error was made in the geographical coordinates of the airport. Action is taken herein to correct the discrepancy.

Since this action is minor in nature and imposes no additional burden on any

person, notice and public procedure hereon is unnecessary.

In consideration of the foregoing, F.R. Doc. 70-17029 (35 F.R. 19171) is amended by deleting "* * * (latitude 37°51'15" N., * * *" and substituting "* * * (latitude 37°41'15" N., * * *" therefor.

Effective date. The effective date as originally established may be retained.

(Sec. 307(a), Federal Aviation Act of 1958, as amended, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Los Angeles, Calif., on January 6, 1971.

ARVIN O. BASNIGHT,
Director, Western Region.

[FR Doc.71-630 Filed 1-15-71;8:48 am]

[Airspace Docket No. 70-EA-74]

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

Designation of Control Zone

On page 16179 of the FEDERAL REGISTER for October 15, 1970, the Federal Aviation Administration published proposed regulations which would designate a control zone for Lost Nation Airport, Willoughby, Ohio.

Interested parties were given 30 days after publication in which to submit written data or views. A Mr. Luhta, representing Concord Airpark, requested a decrease in the extension so as to eliminate the Airpark from the extension and in any event the extension would interfere with instrument approaches to Concord. It is not feasible, however, to reduce the extension as this would lessen the required protection needed for aircraft using the procedures for Lost Nation Airport. Further, since Cleveland tower controls approaches to both airports, no interference will evolve from the institution of the control zone.

In view of the foregoing, the proposed regulations are hereby adopted effective 0901 G.m.t., March 4, 1971.

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749; 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y., on December 24, 1970.

LOUIS J. CARDINALI,
Acting Director, Eastern Region.

Amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to designate a Willoughby, Ohio control zone described as follows:

WILLOUGHBY, OHIO

Within a 5-mile radius of the center 41°41'00" N., 81°23'20" W., of Lost Nation Airport, Willoughby, Ohio; within 4 miles each side of the 088° bearing from the Lost Nation RBN, 41°40'58" N., 81°22'53" W., extending from the 5-mile-radius zone to 12 miles east of the RBN; within 3 miles each side of the 268° bearing from the Lost Nation RBN, extending from the 5-mile-radius zone to 8.5 miles west of the RBN; excluding the portion within the Cleveland, Ohio (Cuyahoga County Airport), control zone. This control zone shall be effective from 0800 to 2130 hours, local time, daily.

[FR Doc.71-631 Filed 1-15-71;8:48 am]

[Airspace Docket No. 70-WA-10]

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

Designation of Terminal Control Area at Washington, D.C.

On October 1, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 15303) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate a revised Washington, D.C., terminal control area (TCA).

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. Most of the comments received in response to this proposal were favorable.

Two commentators, while generally agreeing with the proposal, suggested changes in the proposed ceiling. One commentator recommended changing the ceiling from 6,500 feet MSL to 6,250 feet MSL. The rationale here was that such a change would effectively reserve the 6,000-foot MSL level to TCA use, free a second westerly VFR level at 6,500 feet MSL, and preserve the customary 500 feet separation. This commentator stated that it seemed a waste of airspace to tie up the 6,500-foot MSL VFR level when vertically contiguous level IFR traffic is restricted beyond the proposed 15 nautical miles to 6,000 and 7,000 feet MSL. The other commentator stated the belief that the FAA had ample justification for establishing an 8,000-foot MSL ceiling at the time of the proposal, and recommended that the ceiling be set at 10,000 feet MSL to encompass the increasing number of arriving and departing turbojet aircraft operating at or above this altitude and transitioning within TCA airspace.

It must pointed out that the ceiling 6,500 feet MSL in the proposal was established after consultations with and recommendation of concerned airspace users. However, in light of the above comments and after further study, the FAA has determined that the ceiling should be set at 7,000 feet MSL. This ceiling will provide an additional portion of airspace to accommodate aircraft operating to, from, or through the TCA, provide an additional IFR altitude and have little if any effect upon VFR traffic from that envisaged in the proposal.

One commentator requested that any change in airspace configuration for Washington National Airport include an assessment of the environmental factors involved in such change. The commentator cited the National Environmental Policy Act of 1969 (42 U.S.C. 4321 (Supp. IV 1965-69)). The comment reflected thorough and scholarly research concerning a variety of recognized problems in the operation of Washington National Airport and suggested that the TCA rule include an environmental statement to include inter alia, considerations concerning the existence of the airport and alternatives, noise, air pollution, access, alternative uses for the airport site. The commentator recognized that these and other environmental considerations would require studies and actions beyond the scope of this rule making action. The FAA was urged to take the airspace configuration action in the form of "temporary rule-making" and commit itself to publish an Advance Notice of Proposed Rule Making on the issues raised by the commentator within 45 days.

Air safety has been and continues to be the prime consideration in the establishment of terminal control areas. The terminal control area at Washington is necessary for operational safety at the two primary airports within the terminal control area. The FAA is aware of and is concerned about the other issues raised by the commentator. Some rule making has already been done in the environmental area, other rule making is in progress as are the type of studies suggested by the commentator. Further appropriate rule making will be undertaken when adequate information indicating such action is available. In view of this the FAA does not feel that an environmental statement is a prerequisite to the issuance of this rule, nor can it at this time commit itself to a specific timetable for rule making in the other areas suggested by the commentator. It is important, however, to state that the Washington TCA rule may have the effect of reducing noise to a level less than that which presently exists.

One commentator stated that insufficient airspace is provided for traffic pattern operation at Hyde Field Airport when three or more aircraft are in the traffic pattern. The distance from Hyde Field to the TCA boundary east of the airport is 1.2 miles and the distance to the TCA boundary north of Hyde Field is slightly less than 1 mile. The FAA understands the commentator's concern and is studying this situation with a view toward alleviating the problem.

In addition to raising the TCA ceiling to 7,000 feet MSL, two other minor airspace adjustments are appropriate at this time. The Washington-Virginia Airport closed after the NPRM was published; therefore, the Area "A" exclusion which provided access to this airport is eliminated in this amendment. The second problem involves the western most part of Area "C" which is under the air traffic control jurisdiction of Dulles Airport. The elimination of this small area from the TCA will not adversely affect the TCA traffic and will eliminate a serious coordination problem between the Air Traffic Control facilities at Washington National and Dulles International Airports.

Two commentators suggested that the TCA call-up points be additionally identified as radial/DME points from the Washington VOR. This will be included in the next issue of the Washington terminal area chart.

Several commentators who basically approved of the proposed airspace configuration suggested that implementation be delayed until the new configuration could be depicted on sectional charts. Recent incidents and accidents in congested metropolitan airspace, in particular the recent mid-air collision in New Jersey, have highlighted the urgency of establishing the Washington, D.C., TCA as early as possible. Graphic depictions of the new configuration will be available and given the widest dissemination by the time the rule is implemented.

All comments received on the proposal have been given due consideration. In the interest of providing immediately increased air safety in a vital metropolitan complex, and since establishment of the Washington, D.C., TCA has been long publicized and pilots have been operating aircraft within the terminal control area configuration on a voluntary basis since October 1, 1970, good cause exists to make the rule effective in less than 30 days.

In consideration of the foregoing, § 71.401(a) of the Federal Aviation Regulations is amended, effective 0900 G.m.t., February 4, 1971, by changing the Washington, D.C., terminal control area to read as follows:

WASHINGTON, D.C., TERMINAL CONTROL AREA

PRIMARY AIRPORTS

1. Washington National Airport (lat. 38°51'05" N., long. 77°02'20" W.).
2. Andrews AFB (lat. 38°48'40" N., long. 76°52'05" W.).

BOUNDARIES

AREA A

That airspace extending upward from the surface to and including 7,000 feet MSL within a 7-mile radius of the Washington, D.C., VOR and within a 7-mile radius of the Andrews, Md., VORTAC excluding the airspace bounded on the north by lat. 38°45'50" N., on the east by long. 76°54'25" W., on the south by a 7-mile radius circle of the Andrews VORTAC, and on the west by long. 76°59'30" W.; and excluding Prohibited Area P-56.

AREA B

That airspace extending upward from 1,500 feet MSL to and including 7,000 feet MSL within a 10-mile radius of the Washington VOR and a 10-mile radius of the Andrews VORTAC, excluding Area A.

AREA C

That airspace extending upward from 2,500 feet MSL to and including 7,000 feet MSL between the 10-mile and 15-mile radius circles of the Washington VOR and the Andrews VORTAC, excluding that airspace west of a line from a point on the Nottingham 308° T radial 31.75 nautical miles northwest of the VORTAC to a point on the Nottingham 268° T radial 25.25 nautical miles west of the VORTAC.

(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 January 14, 1971.

LOUIS H. MCCAUGHEY,
Acting Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc.71-711 Filed 1-15-71;8:52 am]

[Docket No. 10751; Amdt. 736]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

Correction

In F.R. Doc. 71-6 appearing at page 147 in the issue for Wednesday, January 6, 1971, the effective date in paragraph number 3 on page 148, now reading "January 23, 1971", should read "January 28, 1971".

Title 32A—NATIONAL DEFENSE, APPENDIX

Chapter X—Oil Import Administration, Department of the Interior

[Rev. 5, Amdt. 28]

OI REG. 1—OIL IMPORT REGULATION

Canadian Imports, Districts I–IV; Partial Allocations

Regulations providing for allocations of Canadian imports into Districts I–IV for the allocation period January 1, 1971, through December 31, 1971, will be issued after the proposal published in the FEDERAL REGISTER for November 28, 1970 (35 F.R. 18208) has been considered in the light of comments received during the thirty (30) day period ending December 28, 1970. Under the final regulations, persons who continue to meet the requirements for eligibility stated in paragraph (c) of section 29 of Oil Import Regulation 1 (Revision 5) (35 F.R. 10296) and who imported Canadian overland imports under allocations made pursuant to paragraph (d) of section 29 will be eligible for allocations of Canadian imports for the period January 1, 1971, through December 31, 1971. Pending the issuance of the final regulations, a new section 29A is added to Oil Import Regulation 1 (Revision 5) providing for partial allocations to such persons in order to avoid disruptions of their operations. Because such action must be taken promptly if such disruptions are to be avoided, it would not serve the public interest either to give notice of proposed rule making on, or to delay the effective date of, this amendment. Accordingly, this Amendment 28 shall become effective immediately.

A new section 29A, reading as follows, is added to Oil Import Regulation 1 (Revision 5):

Sec. 29A Canadian imports—partial allocations.

(a) As used in this section the term "Canadian imports" means imports from Canada of crude oil which has been produced in Canada and unfinished oils which have been derived from crude oil or natural gas produced in Canada and which have been transported into the United States by overland means or over waterways other than ocean waterways.

(b) For the allocation period January 1, 1971, through December 31, 1971, the Administrator shall make a partial allocation of Canadian imports into Districts I–IV to each person who has in Districts I–IV a facility or facilities for processing Canadian imports or pipeline facilities using crude oil as fuel and who received an allocation of Canadian overland imports under paragraph (d) of section 29 of this regulation and who imported under such allocation. The partial allocation shall not exceed the amount of the allocation received by that person under paragraph (d) of section 29 reduced by the amount of any licenses issued to that person under an interim allocation for the allocation period January 1, 1971, through December 31, 1971. Partial allocations made pursuant to this paragraph (b) will be superseded by regular allocations which will be made later. Licenses issued under a partial allocation will be charged against the superseding regular allocation.

(c) The Administrator shall issue a license under a partial allocation only upon request and only in an amount sufficient to cover the importation specified in the request.

(d) A person who imports Canadian imports under a partial allocation must run the oil in his own facility.

(e) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

(f) If a person holds a partial allocation of Canadian imports under this section and if he also holds an allocation of imports under section 10 for the period January 1, 1971, through December 31, 1971, he may obtain from the Administrator a license which will permit him to import Canadian imports in a quantity not exceeding two-thirds of the amount of the allocation made under section 10. Such licenses shall be charged against the allocation made under section 10.

Dated: January 13, 1971.

FRED J. RUSSELL,
Under Secretary of the Interior.

I concur:

G. A. LINCOLN,
Director, Office of Emergency Preparedness.

[FR Doc.71-713 Filed 1-14-71;3:16 pm]

[Rev. 5, Amdt. 27]

OI REG. 1—OIL IMPORT REGULATION

Asphalt Import Program, 1971

In the FEDERAL REGISTER of November 18, 1970 (35 F.R. 17225), notice was given by the Oil Import Administration of a proposal to permit increased imports of asphalt in 1971: Comments were received, were reviewed, and are part of the public record.

The Director of the Office of Emergency Preparedness has found, with the advice of the Oil Policy Committee, that the adoption for 1 year of a program which will permit increased importation of asphalt into Districts I–IV during the calendar year 1971 will not impair the national security and will help to avoid a possible shortage of asphalt during the year.

Accordingly, a new section 31 is added to Oil Import Regulation 1 (Revision 5), as amended, to provide for allocations of imports of asphalt during the calendar year 1971 to persons who certify a need for such imports in order to meet contractual obligations or manufacturing requirements. In order that the advantages offered by the amendment will be promptly available, this Amendment 27 shall become effective immediately.

No imports of asphalt pursuant to this section shall be construed as establishing a basis for future import allocations under any program that may be hereafter instituted for the control of asphalt imports.

A new section 31, reading as follows, is added to Oil Import Regulation 1 (Revision 5).

Sec. 31 Asphalt.

(a) As used in this section, the term "asphalt" means (1) if asphalt cement, a solid or semi-solid cementitious material which is refined from crude oil and in which the predominant constituents are bitumens, and (2) if liquid asphalt, a product (i) the principal constituent of which is a cementitious material that, when refined from crude oil, was a solid or semisolid consisting predominantly of bitumens, (ii) the kinematic viscosity of which is not less than 250 centistokes at 140° F., and (iii) in which hydrocarbon solvents do not exceed 40 percent of the product by volume.

(b) For the allocation period January 1, 1971 through December 31, 1971, the Administrator shall make an allocation of imports of asphalt into Districts I–IV to any person who certifies that such imports are required to meet obligations under contracts with, or purchase orders from, customers in Districts I–IV or to meet his own construction or manufacturing requirements. The allocation shall be in the quantity which such person certifies in writing is required to meet such obligations or requirements.

(c) Asphalt imports under an allocation made pursuant to paragraph (b) shall not be further processed except by blending by mechanical means or by air blowing and shall not be burned for lighting or for the generation of heat or power.

(d) Applications for allocations under this section may be filed with the Administrator at any time during the period. An application must be filed in such form as the Administrator may prescribe. All licenses issued under allocations made pursuant to this section shall be valid only during the period January 1, 1971 through December 31, 1971.

(e) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

Dated: January 13, 1971.

FRED J. RUSSELL,
Under Secretary of the Interior.

I concur:

G. A. LINCOLN,
Director, Office of Emergency Preparedness.

[FR Doc.71–712 Filed 1–14–71;3:16 pm]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

[Docket No. 71–504]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Areas Quarantined

Pursuant to provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 34b, 134f), Part 76, Title 9, Code of Federal Regulations, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases, is hereby amended in the following respects:

In § 76.2, paragraph (e)(7) relating to the State of North Carolina is amended to read:

(7) *North Carolina.* That portion of Gates, Chowan, and Perquimans Counties bounded by a line beginning at the junction of State Highways 37 and 32; thence, following State Highways 37, 32, in a southeasterly direction to Secondary Road 1303; thence, following Secondary Road 1303 in a generally southerly direction to Secondary Road 1305; thence, following Secondary Road 1305 in a southeasterly direction to Secondary Road 1200; thence, following Secondary Road 1200 in a northerly direction to Secondary Road 1213; thence, following Secondary Road 1213 in an easterly direction to Secondary Road 1214; thence, following Secondary Road 1214 in a southeasterly direction to Secondary Road 1001; thence, following Secondary Road 1001 in a northerly direction to Secondary Road 1204; thence, following Secondary Road 1204 in a northwesterly direction to Secondary Road 1413; thence, following Secondary Road 1413 in a northerly and then southwesterly direction to State Highway 32; thence, following State Highway 32 in a southwesterly direction to its junction with State Highway 37 in Gates County.

(Secs. 4–7, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791–792, as amended, secs. 1–4, 33 Stat. 1264, 1265, as amended, sec. 1, 75 Stat. 481, secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111, 112, 113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 29 F.R. 16210, as amended)

Effective date. The foregoing amendments shall become effective upon issuance.

The amendments quarantine portions of Gates, Chowan, and Perquimans Counties in North Carolina because of the existence of hog cholera. This action is deemed necessary to prevent further spread of the disease. The restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will apply to the quarantined portions of such Counties.

The amendments also exclude a portion of Pitt County, N.C., from the areas quarantined because of hog cholera. Therefore, the restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will not apply to the excluded area, but will continue to apply to the quarantined areas described in § 76.2(e). Further, the restrictions pertaining to the interstate movement of swine and swine products from nonquarantined areas contained in said Part 76 will apply to the area excluded from quarantine.

Insofar as the amendments impose certain further restrictions necessary to prevent the interstate spread of hog cholera, they must be made effective immediately to accomplish their purpose in the public interest. Insofar as they relieve restrictions, they should be made effective promptly in order to be of maximum benefit to affected persons.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 12th day of January 1971.

F. J. MULHERN,
Acting Administrator, Agricultural Research Service.

[FR Doc.71–623 Filed 1–15–71;8:47 am]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release No. 33-5117]

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

Optional Form for Registration of Additional Issues of Securities Registered on National Securities Exchanges, or for Offerings to Holders of Certain Classes of Convertible Securities, or to Holders of Certain Types of Warrants

I. *Adoption of Form S-16 (17 CFR 239.27).* The Securities and Exchange Commission has adopted Form S-16, a short form for registration statements under the Securities Act of 1933, for use in connection with certain types of offerings specified in the instructions to the form. Notice of the proposed adoption of the form was published October 7, 1969, in Securities Act Release 5011 (34 F.R. 17033).

The use of proposed Form S-16 as published for comment would have been limited to securities of issuers qualified under proposed Rule 163 (17 CFR 230.163) of the "160 series." Since that rule has not been adopted it has been necessary to adopt some other standard for the use of the form. Accordingly, the form as adopted provides that it may be used by any company which would be entitled to use Form S-7 (17 CFR 239.26) for registration of securities.

The form is an optional form which may be used to register securities of issuers which at the time of filing the registration statement would be entitled to use Form S-7 for the registration of securities under the Act. The form may be used for registering securities to be sold in the following types of offerings:

1. Securities which are to be offered by persons other than the registrant in the regular way on a national securities exchange if securities of the same class are registered on the same or another such exchange.

2. Securities to be offered by an issuer to holders of convertible securities of an affiliate of the issuer which are convertible into securities of the issuer, where no commission or other remuneration is paid or payable by anyone for soliciting such conversion.

3. Securities to be issued upon the exercise of outstanding publicly held warrants where no commission or other remuneration is paid for soliciting the exercise of the warrants.

The prospectus must identify the issuer and the securities to be registered and state the amount to be registered. If the offering is to be made on behalf of a selling security holder, the name of the security holder and information concerning his ownership of the securities to be registered and his relationship to the issuer must be disclosed. If the offering involves convertible securities of an affiliate, certain information with respect to such securities must be disclosed and if the offering involves the exercise of warrants certain information with respect to the warrants must be given.

The statements and reports filed by the registrant under the Securities Exchange Act, specified in Item 6 of the form, must be incorporated by reference and a statement made that similar material subsequently filed is also deemed to be incorporated by reference. The material so incorporated includes the registrant's latest annual report, proxy, or information statement and reports on Forms 8-K (17 CFR 249.308) and 10-Q (17 CFR 249.308a) or 7-Q (17 CFR 249.307a), as the case may be.

In addition, any material adverse changes in the registrant's affairs subsequent to the date of the latest certified financial statements must be disclosed in the prospectus. The prospectus must also disclose where the documents incorporated by reference in the registration statement may be inspected or copies thereof obtained.

In addition to the prospectus, the registration statement must contain the required exhibits and signatures and an undertaking by the registrant to file section 10(a)(3) prospectuses as post-effective amendments to the registration statement and to notify the Commission when the offering is completed or terminated.

Like Forms S-7 (17 CFR 239.26), S-8 (17 CFR 239.16b) and S-9 (17 CFR 239.22), which take into consideration information otherwise filed with the Commission and available to the public, Form S-16 is in the nature of an experiment. The Commission intends to observe its operation in conjunction with the recently revised registration and reporting requirements under the Securities Exchange Act of 1934 to determine whether the omission of information from the prospectus is consistent with the objectives of the Securities Act of 1933. The form will be amended or rescinded if experience with its use indicates that such action is necessary or desirable in the public interest or for the protection of investors.

Commission action. The Commission hereby amends Part 239 of Chapter II of Title 17 of the Code of Federal Regulations by adding thereunder a new § 239.27 which reads as follows:

§ 239.27 Form S-16, optional form for registration of additional issues of securities of same class as those registered on a national securities exchange, or for offerings to holders of certain convertible securities, or for offerings to holders of certain types of outstanding warrants.

This form may be used for registration under the Securities Act of 1933 of the following securities of any issuer which at the time of filing the registration statement meets the requirements for the use of Form S-7 (§ 239.26):

(a) Securities to be offered on behalf of a person or persons, other than the registrant, in the regular way on a national securities exchange if securities of the same class are listed and registered on the same or another such exchange at the time of filing the registration statement on this form.

(b) Securities to be offered to the holders of convertible securities of an affiliate of the registrant and the registered securities are the securities such holders are entitled to receive upon conversion, provided no commission or other remuneration is paid or payable for solicitation of the conversion of such securities; or

(c) Securities of an issuer to be offered to the holders of outstanding warrants upon the exercise thereof provided no commission or other remuneration is paid or payable for soliciting the exercise of such warrants.

Incorporation by reference approved by the Director of the Office of the Federal Register on January 15, 1971.

The text of Form S-16 is set forth in Release 33-5117, dated December 23, 1971, copies of which have been filed with the Office of the Federal Register; additional copies of the Release and Form S-16 are available on request from the Securities and Exchange Commission, Washington, D.C. 20549.

II. *Amendment of Rule 427 (17 CFR 230.427).* Rule 427 permits the omission from any prospectus used more than 9 months after the effective date of the registration statement of any information previously required to be contained in the prospectus insofar as later information covering the same subjects, as of a date not more than 16 months prior to the use of the prospectus, is contained therein. Paragraph (b) of the rule has been amended to provide that where securities have been registered on any form, but at the time of filing a prospectus as a part of a post-effective amendment the registrant would be entitled to register the securities on another form, such as Form S-8 or S-9, the prospectus may be prepared in accordance with the requirements of such other form. Prior to the amendment this procedure could be followed only where the initial registration statement was filed on Form S-1.

Commission action. Paragraph (b) of § 230.427 of Chapter II of Title 17 of the Code of Federal Regulations is amended to read as follows:

§ 230.427 Contents of prospectus used after 9 months.

* * * * *

(b) Notwithstanding the foregoing, a prospectus filed as a part of an amendment to an effective registration statement on any form may be prepared in accordance with the requirement of any other form which would then be appropriate for the registration of the securities to which the prospectus relates, provided all of the requirements of such other form (including the filing of any required undertakings) are met. The amendment shall be deemed to relate to the proper form if the Commission declares it effective.

III. *Amendment of Rule 429 (17 CFR 230.429).* Rule 429 provides that where two or more registration statements have

been filed by the same issuer, a prospectus which meets the requirements for use in connection with the securities covered by the latest statement may be used in connection with the securities covered by the earlier statements if it contains all of the information which would be required in a prospectus relating to the securities covered by the earlier statements. However, such a combined prospectus may not be used if the latest registration statement was filed on Form S–14 (17 CFR 239.23), since a prospectus for securities registered on that form is not deemed suitable for securities registered on other forms. For similar reasons, paragraph (a) of Rule 429 has been amended to provide that a combined prospectus may not be used if the latest registration statement is filed on Form S–16.

Commission action. Paragraph (a) of § 230.429 of Chapter II of Title 17 of the Code of Federal Regulations is hereby amended to read as follows:

§ 230.429 Prospectus relating to several registration statements.

(a) Where two or more registration statements have been filed by the same registrant, a prospectus which meets the requirements of the Act and the rules and regulations thereunder for use in connection with the securities covered by the latest registration statement shall be deemed to meet such requirements for use in connection with the securities covered by the earlier registration statements if such prospectus includes all of the information which would currently be required in a prospectus relating to the securities covered by the earlier statements: *Provided,* That this rule shall not apply if the latest registration statement was filed on Form S–14 (§ 239.23 of this chapter) or Form S–16 (§ 239.27 of this chapter).

* * * * *

The Commission finds that the adoption of Form S–16 provides a new optional form for issuers which would be entitled to use existing Form S–7, that the amendment of Rule 427 enlarges a previously existing privilege, and the amendment of Rule 429 merely makes it clear that new Form S–16 would be excluded from its permissive provisions; and that, therefore, notice and procedures under 5 U.S.C. 552 are unnecessary. Accordingly, the foregoing action, which was taken pursuant to the Securities Act of 1933, particularly sections 6, 7, 10, and 19(a) thereof, shall become effective on January 29, 1971.

(Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85, secs. 205, 209, 48 Stat. 906, 908, sec. 8, 68 Stat. 685, sec. 1, 79 Stat. 1051, 15 U.S.C. 77f, 77g, 77j, 77s(a))

By the Commission, December 23, 1970.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[FR Doc.71–612 Filed 1–15–71;8:46 am]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 71–15]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

PART 174—PROTESTS

Administrative Review

On August 22, 1970, there were published in the FEDERAL REGISTER (35 F.R. 13428), regulations implementing the Customs Administrative Act of 1970, and conforming amendments to Chapter I of Title 19, Code of Federal Regulations. In order to conform the procedure set forth in § 10.21 of the Customs regulations for passengers dissatisfied with the assessment of duty on their baggage, clarify the place for filing a protest set forth in § 174.12, and clarify in § 174.28 the manner of submission of additional arguments while a protest is under review, the following amendments to Chapter I, Title 19 of the Code of Federal Regulations are hereby adopted:

In § 10.21 paragraph (h) is amended to read:

§ 10.21 Examination procedure; collection of duties and taxes.

* * * * *

(h) If the passenger remains dissatisfied with the assessment of duty after reexamination, he shall pay the duty assessed and may protest the decision of the district director in accordance with Part 174 of this chapter.

* * * * *

(R.S. 251, as amended, secs. 514, 624, 46 Stat. 734, as amended, 759; 19 U.S.C. 66, 1514, 1624)

In § 174.12 paragraph (d) is amended to read:

§ 174.12 Filing of protests.

* * * * *

(d) *Place of filing.* Protests shall be filed with the district director whose decision is protested except that, when the entry underlying the decision protested is filed at a port other than the district headquarters, the protest may be filed with the port director or at that port.

* * * * *

Section 174.28 is amended by adding a sentence at the end thereof so that the section reads:

§ 174.28 Consideration of additional arguments.

In determining whether to allow or deny a protest filed within the time allowed, a reviewing officer may consider alternative claims and additional grounds or arguments submitted in writing by the protesting party with respect to any decision which is the subject of a valid protest at any time prior to disposition of the protest. In any case in which alternative claims or additional grounds or arguments are submitted orally, they shall be considered in the allowance or denial of the protest only if submitted in writing in conjunction with, or no later than 60 days after, such oral submission.

(R.S. 251, as amended, secs. 514, 624, 46 Stat. 734, as amended, 759; 19 U.S.C. 66, 1514, 1624)

Since the amendment to § 10.21 conforms the procedure to be followed with those required by the Customs Administrative Act of 1970, and the amendments to §§ 174.12 and 174.28 clarify the statement of an existing rule, notice and public proceeding thereon is found unnecessary, and the amendments shall be effective upon publication in the FEDERAL REGISTER (1–16–71).

[SEAL] MYLES J. AMBROSE,
Commissioner of Customs.

Approved: January 5, 1971.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.71–680 Filed 1–15–71;8:51 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER C—DRUGS

PART 138—DRUGS; OFFICIAL NAMES

New Names

In the FEDERAL REGISTER of February 13, 1970 (35 F.R. 2995), a notice was published proposing that § 138.2 be amended by adding certain items to the list therein as official names for drugs.

Having considered the comments received in response to the proposal, and other relevant information, the Commissioner of Food and Drugs concludes that the proposal, except for the proposed names "brinase" and "salcolex", should be adopted with minor technical or editorial changes.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 508, 76 Stat. 789; 21 U.S.C. 358) and the administrative procedure provisions of 5 U.S.C. 552 (80 Stat. 383, as amended 81 Stat. 54) and under authority delegated to the Commissioner (21 CFR 2.120), § 138.2 is amended by alphabetically inserting in the table the following new items as official names for drugs:

§ 138.2 Drugs; official names.

* * * * *

Official name	Chemical name or description	Molecular formula
* * *	* * *	* * *
Aklomide	2-Chloro-4-nitrobenzamide	$C_7H_5ClN_2O_3$
* * *	* * *	* * *
Arginine	*L*(+)-Arginine	$C_6H_{14}N_4O_2$
* * *	* * *	* * *
Bamethan	α-[(Butylamino)methyl]-*p*-hydroxybenzyl alcohol	$C_{12}H_{19}NO_2$
* * *	* * *	* * *
Bucrylate	Isobutyl 2-cyanoacrylate	$C_8H_{11}NO_2$
Bunolol	(±)-5-[3-(*tert*-Butylamino)-2-hydroxypropoxy]-3,4-dihydro-1(2*H*)-naphthalenone.	$C_{17}H_{23}NO_3$
* * *	* * *	* * *
Cellaburate	Cellulose acetate butyrate	
* * *	* * *	* * *
Cinoxate	2-Ethoxyethyl *p*-methoxycinnamate	$C_{14}H_{18}O_4$
* * *	* * *	* * *
Clonazepam	5-(*o*-Chlorophenyl)-1,3-dihydro-7-nitro-2*H*-1,4-benzodiazepin-2-one	$C_{15}H_{10}ClN_3O_3$
* * *	* * *	* * *
Clonixeril	2,3-Dihydroxypropyl 2-(3-chloro-*o*-toluidino)nicotinate	$C_{19}H_{17}ClN_2O_4$
Clonixin	2-(3-Chloro-*o*-toluidino)nicotinic acid	$C_{13}H_{11}ClN_2O_2$
* * *	* * *	* * *
Closiramine	8-Chloro-11-[2-(dimethylamino)ethyl]-6,11-dihydro-5*H*-benzo[5,6]-cyclohepta[1,2-*b*]pyridine.	$C_{18}H_{21}ClN_2$
* * *	* * *	* * *
Cyclacillin	6-(1-Aminocyclohexanecarboxamido)-3,3-dimethyl-7-oxo-4-thia-1-azabicyclo[3.2.0]heptane-2-carboxylic acid.	$C_{15}H_{23}N_3O_4S$
* * *	* * *	* * *
Diamocaine	1-(2-Anilinoethyl)-4-[2-(diethylamino)ethoxy]-4-phenylpiperidine	$C_{31}H_{37}N_3O$
* * *	* * *	* * *
Dopamine	4-(2-Aminoethyl)pyrocatechol	$C_8H_{11}NO_2$
* * *	* * *	* * *
Etidronic Acid	(1-Hydroxyethylidene)diphosphonic acid	$C_2H_8O_7P_2$
Etoxadrol	(+)-2-(2-Ethyl-2-phenyl-1,3-dioxolan-4-yl)piperidine	$C_{15}H_{21}NO_2$
Euprocin	*O*-6′-Isopentylhydrocupreine	$C_{24}H_{34}N_2O_2$
Famotine	1-[(*p*-Chlorophenoxy)methyl]-3,4-dihydroisoquinoline	$C_{16}H_{14}ClNO$
* * *	* * *	* * *
Fenticlor	2, 2′-Thiobis[4-chlorophenol]	$C_{12}H_8Cl_2O_2S$
* * *	* * *	* * *
Flucrylate	2,2,2-Trifluoro-1-methylethyl 2-cyanoacrylate	$C_7H_6F_3NO_2$
* * *	* * *	* * *
Flufenisal	4′-Fluoro-4-hydroxy-3-biphenylcarboxylic acid acetate	$C_{15}H_{11}FO_4$
* * *	* * *	* * *
Iomethin I 125	4-[[3-(Dimethylamino)propyl]amino]-7-iodo-^{125}I-quinoline	$C_{14}H_{18}IN_3$ (in which the iodine atom is ^{125}I).
Iomethin I 131	4-[[3-(Dimethylamino)propyl]amino]-7-iodo-^{131}I-quinoline	$C_{14}H_{18}IN_3$ (in which the iodine atom is ^{131}I).
* * *	* * *	* * *
Isomylamine	2-(Diethylamino)ethyl 1-isopentylcyclohexanecarboxylate	$C_{18}H_{35}NO_2$
* * *	* * *	* * *
Lorazepam	7-Chloro-5-(*o*-chlorophenyl)-1, 3-dihydro-3-hydroxy-2*H*-1, 4-benzodiazepin-2-one.	$C_{15}H_{10}Cl_2N_2O_2$
* * *	* * *	* * *
Mecrylate	Methyl 2-cyanoacrylate	$C_5H_5NO_2$
* * *	* * *	* * *
Nafronyl	2-(Diethylamino)ethyl tetrahydro-α-(1-naphthylmethyl)-2-furanpropionate.	$C_{24}H_{33}NO_3$
* * *	* * *	* * *
Octylate	Octyl 2-cyanoacrylate	$C_{12}H_{19}NO_2$
Octicizer	2-Ethylhexyl diphenyl phosphate	$C_{20}H_{27}O_4P$
* * *	* * *	* * *
Oxisuran	(Methylsulfinyl)methyl 2-pyridyl ketone	$C_8H_9NO_2S$
* * *	* * *	* * *
Oxypertine	5, 6-Dimethoxy-2-methyl-3-[2-(4-phenyl-1-piperazinyl)ethyl]-indole.	$C_{23}H_{29}N_3O_2$
* * *	* * *	* * *
Perlapine	6-(4-Methyl-1-piperazinyl)morphanthridine	$C_{19}H_{21}N_3$
* * *	* * *	* * *
Polytef	Poly(tetrafluoroethylene)	$(C_2F_4)_n$
* * *	* * *	* * *
Procarbazine	*N*-Isopropyl-α-(2-methylhydrazine)-*p*-toluamide	$C_{12}H_{19}N_3O$
* * *	* * *	* * *
Roxarsone	4-Hydroxy-3-nitrobenzenearsonic acid	$C_6H_6AsNO_6$
* * *	* * *	* * *
Sulfanitran	4′[(*p*-Nitrophenyl)sulfamoyl]acetanilide	$C_{14}H_{13}N_3O_5S$
* * *	* * *	* * *
Temazepam	7-Chloro-1,3-dihydro-3-hydroxy-1-methyl-5-phenyl-2*H*-1, 4-benzodiazepin-2-one.	$C_{16}H_{13}ClN_2O_2$
* * *	* * *	* * *
Tibolone	17-Hydroxy-7α-methyl-19-nor-17α-pregn-5(10)-en-20-yn-3-one	$C_{21}H_{28}O_2$
* * *	* * *	* * *
Tiletamine	2-(Ethylamino)-2-(2-thienyl)cyclohexanone	$C_{12}H_{17}NOS$
* * *	* * *	* * *
Triclofos	2,2,2-Trichloroethyl dihydrogen phosphate	$C_2H_4Cl_3O_4P$
Triflocin	4-(α,α,α-Trifluoro-*m*-toluidino)nicotinic acid	$C_{13}H_9F_3N_2O_2$
* * *	* * *	* * *
Trimipramine	5-[3-(Dimethylamino)-2-methylpropyl]-10,11-dihydro-5*H*-dibenz-[*b*, *f*]azepine.	$C_{20}H_{26}N_2$
* * *	* * *	* * *

Effective date. This order shall become effective 30 days after its publication in the FEDERAL REGISTER.

(Sec. 508, 76 Stat. 789; U.S.C. 358)

Dated: January 4, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-476 Filed 1-15-71;8:45 am]

Title 30—MINERAL RESOURCES

Chapter I—Bureau of Mines, Department of the Interior

SUBCHAPTER O—COAL MINE HEALTH AND SAFETY

PART 100—CIVIL PENALTIES FOR VIOLATIONS OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

In accordance with the provisions of section 109 of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173), and pursuant to the authority vested in the Secretary of the Interior under section 508 of the Act, Subchapter O of Chapter I, Title 30, Code of Federal Regulations, is amended by adding a new Part 100, as set forth below, which provides procedures to be followed by the Bureau of Mines in assessing civil penalties for violations of the mandatory health and safety standards and other provisions of the Federal Coal Mine Health and Safety Act of 1969.

Section 109 of the Act will be enforced, until further notice, in accordance with the procedures set forth in Part 100 which shall be reviewed from time to time in the light of enforcement experience gained under the Act.

Since these regulations are procedural in nature and are promulgated to obtain an immediate maximum enforcement effort by the Bureau of Mines under the Coal Mine Health and Safety Act of 1969, and are intended to insure a maximum compliance effort under the Act on the part of the coal mining industry, Part 100 shall become effective on the date of its publication in the FEDERAL REGISTER (1-16-71).

FRED J. RUSSELL,
Under Secretary of the Interior.

JANUARY 14, 1971.

Sec.

AUTHORITY: The provisions of this Part 100 issued under secs. 109 and 508, Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742; Public Law 91-173).

§ 100.1 Purpose.

The assessment of civil penalties under section 109 of the Federal Coal Mine Health and Safety Act of 1969 shall be made for the purpose of maintaining the health and safety of the miner and of insuring the maximum compliance effort on the part of the coal mining industry.

§ 100.2 Assessment of civil penalties; general.

(a) Each proposed assessment shall be made after taking into consideration (1) the operator's history of previous violations, (2) the appropriateness of the penalty to the size of the operator's business, (3) whether the operator was negligent, (4) the effort on the operator's ability to continue in business, (5) the gravity of the violation, and (6) the demonstrated good faith of the operator in attempting to achieve rapid compliance after notification of violation.

(b) The amount of the civil penalty proposed shall be within guidelines established by the Secretary (see Appendix A to this part) and revised periodically in the light of experience gained under the Act, except that a particular violation may warrant proposing a civil penalty in an amount more than or less than the range set forth in the guidelines.

§ 100.3 Liability for civil penalties; policy.

(a) *Withdrawal orders.* A civil penalty will be proposed in accordance with the procedures established herein for each violation that leads to the issuance of an Order of Withdrawal, for example:

(1) A violation that creates an imminent danger;

(2) A repeated unwarrantable failure violation; and,

(3) A violation that is not abated in the reasonable time specified by the Bureau of Mines for total abatement.

The amount of the penalty for each such violation will not be more than $10,000.

(b) *Other violations*—(1) *Serious violations.* (i) A civil penalty will be proposed in accordance with the procedures established herein for each serious violation. The amount of the penalty for each such violation will not be more than $10,000.

(ii) For these purposes, a "serious violation" will be deemed to exist if there is a substantial probability that death or serious physical harm to the miners could result from a condition which exists, or from one or more practices which have been adopted or are in use.

(2) *Nonserious violations.* A civil penalty will be proposed in accordance with the procedures established herein for each violation that is specifically determined not to be of a serious nature. The amount of the penalty, if any, for each such violation, will not be more than $10,000.

(3) *Absence of fault.* No civil penalty will be proposed for either a serious or nonserious violation if it is determined that the operator (i) did not, and could not with the exercise of reasonable diligence know of the presence of the violation, or (ii) did not and could not have available to him at the time of the inspection the equipment, material, personnel or technology required to avoid the violation. Each such determination will be documented in writing and will set forth the specific conditions and reasons that justify such a determination.

§ 100.4 Procedures for assessment of civil penalties; protest procedures.

(a) Each Notice of Violation and Order of Withdrawal issued on or after March 30, 1970, will be reviewed by an Assessment Officer who is appointed by and responsible to the Director, Bureau of Mines, to determine the liability of the operator or miner for a civil penalty and the amount of penalty to be proposed.

(b) (1) Before any administrative proceeding to impose a civil penalty under section 109 of the Act is instituted, the Assessment Officer shall serve, by certified mail, a Proposed Order of Assessment upon the operator or miner charged.

(2) The Proposed Order of Assessment shall specify the Notice of Violation or Order of Withdrawal for which the liability of the operator or miner for a penalty has been determined and shall state the amount of the proposed civil penalty.

(c) In determining the amount of the proposed penalty, the Assessment Officer will consider all relevant circumstances, including the operator's history of previous violations, the appropriateness of such penalty to the size of the operator's business, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation and the demonstrated good faith of the operator in attempting to achieve rapid compliance after notification of violation.

(d) The Proposed Order of Assessment shall also advise the operator or miner charged that he has 15 working days from the date of receipt of the Proposed Order of Assessments to protest the proposed assessment, either partly or in its entirety.

(e) Where an operator or miner fails to timely protest a proposed assessment, he shall be deemed to have waived his right of protest including his right of formal adjudication and opportunity for hearing, and the Proposed Assessment Order shall become the final assessment order of the Secretary of the Interior.

(f) The protest to the Proposed Order of Assessment shall be in writing and shall state any facts, explanations, and arguments denying the charges of violation, or demonstrating any extenuating circumstances, error in the Proposed Order of Assessment or other reason why the penalty should not be imposed and may request the revision or modification of the proposed penalty. The operator or miner charged may request a hearing in accordance with section 109 of the Act. If a hearing is requested, the protest must so state.

(g) (1) The Assessment Officer may extend in writing the time within which the operator or miner has to protest the Proposed Order Assessment.

(2) Upon receipt of a protest, the Assessment Officer may reconsider the proposed assessment and may redetermine any proposed civil penalty.

(3) The Assessment Officer, upon reconsideration, may amend or reissue the Proposed Order of Assessment.

(h) The operator or miner charged shall have 15 working days from date of receipt of such amended or reissued order to accept the amended or reissued order, whereupon it shall become the final assessment order of the Secretary, or to request formal adjudication with opportunity for hearing.

(i) (1) Where the operator or miner requests formal adjudication of the assessment penalty under section 109 of the Act, the Assessment Officer shall forward the matter to the Associate Solicitor for Mine Health and Safety who shall file a petition to assess penalty with the Office of Hearings and Appeals of the Department of the Interior.

(2) The petition shall be served on the operator or miner who shall then answer the petition and be afforded an opportunity for a public hearing.

(3) The Office of Hearings and Appeals shall thereafter issue an order, based on Findings of Fact and Conclusions of Law.

(4) In assessing a penalty, the Office of Hearings and Appeals may redetermine the amount of the civil penalty for each violation in any amount not to exceed $10,000.

APPENDIX A

GUIDELINES FOR ASSESSMENT OF PENALTIES

Type of violations	*Penalty Range*
1. Mine Operators:	
A. Imminent Danger Withdrawal Orders	$5,000–$10,000
B. Other Withdrawal Orders	$1,000– $5,000
C. Serious Violations	$100– $1,000
D. Nonserious Violations	$25– $500
2. Miners:	
Smoking or the carrying of smoking materials, matches, or lighters	$25– $250

NOTE: Consideration of all relevant circumstances in the case of a particular violation may warrant the Assessment Officer's proposing a civil penalty in an amount more than or less than the range set forth above.

[FR Doc.71-748 Filed 1-15-71;9:47 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Part 8]

ENTRY OF IMPORTED MERCHANDISE

Evidence of Right To Make Entry Where Merchandise is Released From Customs Custody to the Carrier

Notice is hereby given that pursuant to the authority contained in sections 448, 484, 624, 46 Stat. 714, 722, as amended, 759 (19 U.S.C. 1448, 1484, 1624) it is proposed to amend § 8.6, Customs regulations, by making optional the production of documentary evidence of the right to make entry by the consignee in those cases where Customs releases merchandise to the carrier, not to the order of the carrier.

The present procedure requires that the person making entry either produce a bill of lading or a certificate executed by the carrier certifying that the person named therein is the owner or consignee. In cases where merchandise is released to the carrier the person making entry then goes back to the carrier to obtain possession of the goods.

The proposed amendment would consider the carrier's act of delivering the goods to the person making entry as the certification that such person is the owner or consignee. This procedure will benefit the carrier and the importer, the former by eliminating a need for furnishing unnecessary documentation and the latter by eliminating one visit to the carrier to secure evidence of right to make entry. Customs will also benefit by reducing its workload through a reduction in paperwork.

Therefore, it is proposed to amend the Customs regulations as tentatively set forth below:

Addition of § 8.6(n) to read:

§ 8.6 Evidence of right to make entry; legal representative of consignee; nonresident consignee; foreign corporation; underwriters and salvors.

* * * * *

(n) Where, in accordance with subsection (j) of section 484, Tariff Act of 1930, merchandise is released from Customs custody (either under immediate delivery procedures in accordance with the provisions of § 8.59, or after an entry has been made and estimated duties deposited, where appropriate) to the carrier by whom the merchandise was brought to the port, the delivery of the merchandise by the carrier to the person making entry and depositing the estimated duties shall be deemed to be the certification required by subsection (h), section 484, Tariff Act of 1930. Customs responsibility under this optional entry procedure is limited to the collection of duties, and constitutes no representation whatsoever regarding the right of any person to otbain possession of the merchandise from the carrier. Consequently, no Customs official shall be liable to any person in respect to the delivery of merchandise released from Customs custody in accordance with the provisions of this paragraph.

Before action is taken on the proposed amendment consideration will be given to all relevant data, views, or arguments which are submitted in writing to the Commissioner of Customs, Bureau of Customs, Washington, D.C. 20226, not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER. No hearing will be held.

[SEAL] MYLES J. AMBROSE,
Commissioner of Customs.

Approved: January 7, 1971.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.71-679 Filed 1-15-71;8:51 am]

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Revision of Rates; Correction

Revision of rates pursuant to the Revenue Act of 1964 and the Tax Reform Act of 1969.

On January 5, 1971, notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 70). The section number 1.1-3 appearing in paragraph 4 should have been section number 1.1-4. Accordingly, replace the number 1.1-3 with the number 1.1-4. Also, insert in § 1.3-1(c)(5) the words "or the regulations thereunder" after the words "section 3".

JAMES F. ORING,
Director, Legislation and Regulations Division.

[FR Doc.71-647 Filed 1-15-71;8:49 am]

[26 CFR Part 1]

INCOME TAX

Revision of Rates

Correction

In F.R. Doc. 71-5 appearing at page 70 in the issue of Tuesday, January 5, 1971, the following changes should be made in the tables under § 1.3:

1. In Table I—Returns Claiming 1 Exemption, the rates for incomes of "at least $8,100 but less than 8,150" should appear only once.

2. In Table II—Returns Claiming 2 Exemptions:

a. In the rates for incomes of "at least $4,250 but less than 4,300", the entry in the third column now reading "425" should read "424".

b. In the rates for incomes of "at least $6,100 but less than 6,150", the entry in the last column should read "773".

3. In Table III—Returns Claiming 3 Exemptions:

a. In the rates for incomes of "at least $2,350 but less than 2,375", the entry in the last column should read "35".

b. The second set of entries for incomes of "at least $2,950" should be deleted.

c. In the rates for incomes of "at least $7,400 but less than 7,450", the entry in the last column now reading "821" should read "921".

4. In Table IV—Returns Claiming 4 Exemptions:

a. In the rates for incomes of "at least $5,400", the entry in the second column now reading "4,450" should read "5,450".

b. In the rates for incomes of "at least $6,100", the entry in the second column now reading "5,150" should read "6,150".

c. In the rates for incomes of "at least $6,750 but less than 6,800", the entry in the sixth column now reading "547" should read "647".

5. In Table V—Returns Claiming 5 Exemptions, in the rates for incomes of "at least $9,350 but less than 9,400", the entry in the last column should read "1,075".

6. In Table VI—Returns Claiming 6 Exemptions, in the rates for incomes of "at least $7,050 but less than 7,100", the entry in the last column now reading "567" should read "467".

7. In Table VIII—Returns Claiming 8 Exemptions, in the rates for incomes of "at least $9,200 but less than 9,250", the entry in the fifth column now reading "588" should read "488".

8. In Table XI—Returns Claiming 11 Exemptions, in the rates for incomes of "at least $9,800 but less than 9,850", the entry in the last column now reading "296" should read "396".

9. In Table XVIII—Returns Claiming 3 Exemptions, in the rates for incomes of "at least $6,800 but less than 6,850", the entry in the sixth column now reading "759" should read "795".

10. In Table XXIII—Returns Claiming 8 Exemptions, following the set of entries for incomes of "at least $8,400 but less than 8,450", the next set of entries should be designated "at least $8,450 but less than 8,500".

11. In Table XXVIII—Returns Claiming 13 Exemptions:

a. In the rates for incomes of "at least $9,350 but less than 9,400", the entry

in the last column now reading "22" should read "25".

b. In the rates for incomes of "at least $9,400 but less than 9,450", the entry in the last column now reading "35" should read "32".

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 2850]

POWER TRANSMISSION LINES

Description of Environmental Impact; Extension of Time

On page 18399 of the FEDERAL REGISTER of December 3, 1970, there was a notice and text of a proposed amendment to Part 2850 of Title 43 of the Code of Federal Regulations. The proposed amendment requires that a detailed description of the environmental impact of a project be filed with an application for a power transmission line right-of-way across public lands. The amendment also requires that approval of an application for such a right-of-way be withheld if the beneficial purposes and effects of the project will be outweighed by an adverse environmental impact.

Interested persons were given 30 days from the date of publication in the FEDERAL REGISTER to submit written comments, suggestions, or objections respecting the amendment to the Bureau of Land Management (210), Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

The period for submitting written comments, suggestions or objections is hereby extended for 30 days from the date of publication of this notice in the FEDERAL REGISTER.

HARRISON LOESCH,
Assistant Secretary of the Interior.

JANUARY 11, 1971.

[FR Doc.71-610 Filed 1-15-71;8:46 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 70-SO-107]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Lancaster, S.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 Federal Aviation Administration, Southern Region, Air Traffic Division, 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, Airspace and Procedures 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 Federal Aviation Administration, Southern Region, Room 724, 3400 Whipple Street, East Point, GA.

The Lancaster transition area would be designated as:

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Lancaster Airport (lat. 34°43'22" N., long. 80°51'18" W.).

The proposed designation is required to provide controlled airspace protection for IFR operations at Lancaster Airport. A prescribed instrument approach procedure to this airport, utilizing the Fort Mill, S.C., VORTAC, is proposed in conjunction with the designation of this transition area.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on January 5, 1971.

JAMES G. ROGERS,
Director, Southern Region.

[FR Doc.71-632 Filed 1-15-71;8:48 am]

[14 CFR Part 71]

[Airspace Docket No. 70-SO-110]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Marianna, Fla., transition area.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Area Manager, Miami Area Office, Air Traffic Branch, Post Office Box 2014, AMF Branch, Miami, FL 33159. 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 light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 724, 3400 Whipple Street, East Point, GA.

The Marianna transition area described in § 71.181 (35 F.R. 2134) would be redesignated as:

That airspace extending upward from 700 feet above the surface within an 8.5-mile-radius of Marianna Municipal Airport (lat. 30°50'08" N., long. 85°11'02" W.); within 3 miles each side of Marianna VOR 127° radial, extending from the 8.5-mile-radius area to 8.5 miles southeast of the VOR.

The application of Terminal Instrument Procedures (TERPs) and current airspace criteria to Marianna terminal requires the following actions:

1. Increase the basic radius circle from 8 to 8.5 miles.

2. Increase the extension predicated on Marianna VOR 127° radial 2 miles in width and 0.5 mile in length.

The proposed alteration is required to provide controlled airspace protection for IFR operations at Marianna.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on January 6, 1971.

GORDON A. WILLIAMS, Jr.,
Acting Director, Southern Region.

[FR Doc.71-633 Filed 1-15-71;8:48 am]

[14 CFR Part 71]

[Airspace Docket No. 70-WE-97]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amendments to Part 71 of the Federal Aviation Regulations that would alter the descriptions of the Cortez, Colo., control zone and transition area.

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Airspace and Program Standards Branch, Federal Aviation Administration, 5651 West Manchester Avenue, Post Office Box 92007, Worldway Postal Center, Los Angeles, CA 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. No public hearing is contemplated at this

time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposals contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 5651 West Manchester Avenue, Los Angeles, CA 90045.

The instrument approach, departure and holding airspace requirements for Cortez-Montezuma County Airport have been reviewed in accordance with the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). As a result of the review it is necessary to alter the descriptions of the Cortez, Colo., control zone and transition area.

The additional control zone will provide controlled airspace protection for aircraft executing arrival and departure procedures below 1,000 feet above the surface. The 700-foot portion of the transition area provides controlled airspace protection for approach and departure procedures between 1,000 feet and 1,500 feet above the surface; the 1,200-foot portion for aircraft executing the holding procedure at or above 1,500 feet above the surface.

In consideration of the foregoing, the FAA proposes the following airspace actions.

In § 71.171 (35 F.R. 2054) the description of the Cortez, Colo. control zone is amended to read as follows:

CORTEZ, COLO.

Within a 5-mile radius of Cortez-Montezuma County Airport, Cortez, Colo. (latitude 37°18'15" N., longitude 108°37'35" W.) and within 3 miles each side of the Cortez VOR 210° and 004° radials, extending from the 5-mile-radius zone to 8 miles north of the VOR. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

In § 71.181 (35 F.R. 2134) the description of the Cortez, Colo., transition area is amended to read as follows:

CORTEZ, COLO.

That airspace extending upwards from 700 feet above the surface within a 7-mile radius of Cortez-Montezuma County Airport, Cortez, Colo. (latitude 37°18'15" N., longitude 108°37'35" W.), within 3.5 miles each side of the Cortez VOR 184° and 004° radials extending from the 7-mile-radius area to 11.5 miles north of the VOR; that airspace extending upward from 1,200 feet above the surface within 6 miles east and 9.5 miles west of the Cortez VOR 184° and 004° radials, extending from 8 miles south to 19 miles north of the VOR, and within 5 miles northeast of and parallel to the Dove Creek VORTAC 129° radial, extending from the VORTAC to 21 miles southeast of the VORTAC.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Los Angeles, Calif., on January 6, 1971.

ARVIN O. BASNIGHT,
Director, Western Region.

[FR Doc.71-634 Filed 1-15-71;8:48 am]

[14 CFR Part 71]

[Airspace Docket No. 70-WE-53]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amendments to Part 71 of the Federal Aviation Regulations that would alter the descriptions of the Durango, Colo., control zone and transition area.

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Airspace and Program Standards Branch, Federal Aviation Administration, 5651 West Manchester Avenue, Post Office Box 92007, Worldway Postal Center, Los Angeles, CA 90009. All communications received within 30 days after publication of the notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 5651 West Manchester Avenue, Los Angeles, CA 90045.

The instrument procedures for Durango-La Plata Airport, Durango, Colo., have been reviewed in accordance with the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). As a result of the review, it has been determined that descriptions of the control zone and transition area must be amended to provide sufficient controlled airspace for aircraft executing prescribed instrument procedures.

In consideration of the foregoing, the FAA proposes the following airspace action.

In § 71.171 (35 F.R. 2054) the description of the Durango, Colo. control zone is amended to read as follows:

DURANGO, COLO.

Within a 5-mile radius of La Plata Field (latitude 37°09'12" N., longitude 107°45'04" W.) and within 3 miles each side of the Durango VOR 224° radial, extending from the 5-mile-radius zone to 8 miles southwest of the VOR. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

In § 71.181 (35 F.R. 2134) the description of the Durango, Colo. transition area is amended to read as follows:

DURANGO, COLO.

That airspace extending upwards from 700 feet above the surface within a 7-mile radius of the La Plata Airport (latitude 37°09'12" N., longitude 107°45'04" W.), and within 3.5 miles each side of the Durango VOR 224° radial, extending from the 7-mile-radius area to 11.5 miles southwest of the VOR; that airspace extending upward from 1,200 feet above the surface within 9.5 miles southeast and 6 miles northwest of the Durango VOR 224° and 044° radials, extending from 8 miles northeast to 25 miles southwest of the VOR.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Los Angeles, Calif., on January 6, 1971.

ARVIN O. BASNIGHT,
Director, Western Region.

[FR Doc.71-635 Filed 1-15-71;8:48 am]

[14 CFR Part 71]

[Airspace Docket No. 70-SO-109]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Apalachicola, Fla., transition area.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Area Manager, Miami Area Office, Air Traffic Branch, Post Office Box 2014, AMF Branch, Miami, FL 33159. 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 Federal Aviation Administration, Southern Region, Room 724, 3400 Whipple Street, East Point, GA.

The Apalachicola transition area described in § 71.181 (35 F.R. 2134) would be redesignated as:

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Apalachicola Municipal Airport (lat. 29°43'45" N., long. 85°01'45" W.); within 3 miles each side of the 012°, 049°, and 322° bearings from Apalachicola RBN, extending from the 6.5-mile-radius area to 8.5 miles north, northeast, and northwest of the RBN.

The application of Terminal Instrument Procedures (TERPs) and current airspace criteria to Apalachicola terminal requires the following actions:

1. Increase the basic radius circle from 6 to 6.5 miles.

2. Increase the extensions predicated on the 012°, 049°, and 322° bearings from Apalachicola RBN 2 miles in width and 0.5 mile in length.

The proposed alteration is required to provide controlled airspace protection for IFR operations at Apalachicola.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on January 5, 1971.

JAMES G. ROGERS,
Director, Southern Region.

[FR Doc.71-636 Filed 1-15-71;8:48 am]

FEDERAL TRADE COMMISSION

[16 CFR Part 428]

ADVERTISING OF CIGARETTES

Notice of Suspension of Trade Regulation Proceeding

The Federal Trade Commission has suspended indefinitely the Trade Regulation Rule proceeding with regard to disclosure of tar and nicotine content in cigarette advertising.

Public notice of this Trade Regulation Rule proceeding and a statement of the proposed Rule in full were published in the FEDERAL REGISTER on August 8, 1970, at page 12671. Notice of postponement of the public hearing relating to the proposed Trade Regulation Rule was published in the FEDERAL REGISTER on October 7, 1970, at page 15765.

The Commission has retained the unconditional right to reschedule the Trade Regulation Rule proceeding and to take any other action relating to this subject at any time it deems such action to be necessary or desirable in the public interest.

Notice of any further proceedings with regard to the proposed Trade Regulation Rule will be published in the FEDERAL REGISTER at least fifteen (15) days in advance of any such further proceedings.

Issued: January 13, 1971.

By direction of the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[FR Doc.71-684 Filed 1-15-71;8:52 am]

Notices

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Treasury Dept. Order 218]

LAW ENFORCEMENT PERSONNEL

Delegation of Authority To Protect Government Employees, Property, Operations and Functions

1. As an Officer of the United States and as Secretary of the Treasury, and pursuant to the authority vested in me as such by the Constitution and laws of the United States and subject to the conditions specified in paragraph 2 of this order, I hereby authorize and direct law enforcement personnel of the Treasury Department to assist in protecting officers and employees of the United States, its property, its operations and its functions wheresoever located, from unauthorized and willful interference, injury, harm, damage, carrying away, or destruction without regard to whether such officers and employees, property, operations or functions are those of, or are under the jurisdiction or within the possession or control of, the Department of the Treasury.

2. Assistance shall be rendered under the authority contained in this order only when the following conditions are met:

a. There exists an emergency in which (i) officers or employees, property, operations or functions of the United States are threatened, and (ii) adequate protection cannot be provided by duly authorized local, State, or Federal law enforcement officers; and

b. There is a proper request for such assistance which includes a statement from the requesting official that offices, employees, property, operations or functions of the United States are threatened and that adequate protection cannot be provided by duly authorized local, State or Federal law enforcement officers, or, in the judgment of the senior law enforcement official of the assisting Treasury agency present, the situation can be considered an emergency and the circumstances require that such assistance, to be effective, be rendered without awaiting such request.

Dated: April 2, 1970.

[SEAL] DAVID M. KENNEDY,
Secretary of the Treasury.

[FR Doc.71-678 Filed 1-15-71;8:51 am]

POST OFFICE DEPARTMENT

BOARD OF GOVERNORS OF U.S. POSTAL SERVICE

Resolutions

The Board of Governors of the U.S. Postal Service have adopted the following resolutions:

[Resolution No. 71-5]

EFFECTIVE DATE OF STATUTES; ADOPTION OF BYLAWS

Resolved: Pursuant to section 15(a) of the Postal Reorganization Act (Public Law 91-375), the Board of Governors establishes effective dates of certain provisions of that Act as follows:

Provisions of Postal Reorganization Act	*Effective dates*
The following provisions contained in section 2:	Date of publication of this resolution in FEDERAL REGISTER.
39 U.S.C. section 207	Do.
39 U.S.C. section 402	

Pursuant to section 401(2) of title 39, United States Code, as contained in section 2 of the Postal Reorganization Act (Public Law 91-375), the Board of Governors adopts the bylaws which are attached hereto (39 CFR, Chapter I, Subchapter A) and incorporated herein by reference.

The Secretary of the Board of Governors is directed to file the seal, prescribed by § 2.2 of the bylaws, in the Office of the Secretary of State. The Secretary of the Board of Governors is further directed to arrange for the publication of this resolution and the bylaws in the FEDERAL REGISTER.

The bylaws are effective on the date of their adoption except that §§ 2.2 and 3.9 shall become effective on the date of the publication of this resolution and the bylaws in the FEDERAL REGISTER (1-16-71).

The foregoing resolution was adopted by the Board of Governors on January 13, 1971.

[Resolution No. 71-7]

PROVISION RELATING TO ASSISTANT POSTMASTERS GENERAL, GENERAL COUNSEL, JUDICIAL OFFICER; EFFECTIVE DATE

Resolved: Pursuant to section 15(a) of the Postal Reorganization Act (Public Law 91-375), the Board of Governors establishes January 20, 1971, as the effective date of section 204 of title 39, United States Code, as contained in section 2 of the Act.

Pursuant to section 204 of title 39, United States Code, as contained in section 2 of the Postal Reorganization Act (Public Law 91-375), the Board of Governors determines that there shall be seven Assistant Postmasters General within the Postal Service. This determination shall become effective on January 20, 1971.

The Secretary of the Board of Governors is directed to arrange for the publication of this resolution in the FEDERAL REGISTER.

The foregoing resolution was adopted by the Board of Governors on January 13, 1971.

[Resolution No. 71-8]

EMPLOYMENT POLICY PROVISION (CLASSIFYING AND FIXING THE COMPENSATION AND BENEFITS OF POSTAL PERSONNEL); EFFECTIVE DATE

Resolved: Pursuant to section 15(a) of the Postal Reorganization Act (Public Law 91-375), the Board of Governors establishes January 20, 1971, as the effective date of section 1003 of title 39, United States Code, as contained in section 2 of the Act.

The Secretary of the Board of Governors is directed to arrange for the publication of this resolution in the FEDERAL REGISTER.

The foregoing resolution was adopted by the Board of Governors on January 13, 1971.

[Resolution No. 71-9]

COMMENCEMENT OF OPERATIONS OF U.S. POSTAL SERVICE; EFFECTIVE DATE

Resolved: Pursuant to section 15(a) of the Postal Reorganization Act (Public Law 91-375), the Board of Governors establishes July 1, 1971, as the date upon which the Postal Service shall commence operations. All provisions of the Act not made effective on an earlier date shall become effective upon the commencement of operations.

The Secretary of the Board of Governors is directed to arrange for the publication of this resolution in the FEDERAL REGISTER.

The foregoing resolution was adopted by the Board of Governors on January 13, 1971.

[Resolution No. 71-10]

POSTAL RATEMAKING PROVISIONS; EFFECTIVE DATES

Resolved: Pursuant to section 15(a) of the Postal Reorganization Act (Public Law 91-375), the Board of Governors establishes effective dates of certain provisions of that Act as follows:

The following provisions contained in section 2:

Provisions of Postal Reorganization Act	*Effective dates*
39 U.S.C. section 101	Jan. 20, 1971.
39 U.S.C. section 403	Do.
39 U.S.C. section 404(2)	Do.
So much of 39 U.S.C. section 410(b)(1) as pertains to section 552 of title 5, U.S.C. (public information); 410(c)(4).	
39 U.S.C. section 2004	Do.
39 U.S.C. section 2401(b) and (c)	Do.
39 U.S.C. sections 3621 through 3641, inclusive, and sections 3681 through 3685, inclusive.	Do.

The Secretary of the Board of Governors is directed to arrange for the publication of this resolution in the FEDERAL REGISTER.

The foregoing resolution was adopted by the Board of Governors on January 13, 1971.

(39 U.S.C. secs. 202, 203, 204, 205(c), 207, 401(2), 402, as enacted by Public Law 91-375 and sec. 15(a) of Public Law 91-375)

DAVID A. NELSON,
General Counsel, Post Office Department, Secretary to Board of Governors, U.S. Postal Service.

[FR Doc.71-695 Filed 1-15-71;8:52 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Utah 11741]

UTAH

Notice of Proposed Classification of Public Lands for Disposal by Exchange

JANUARY 8, 1971.

Pursuant to section 7 of the Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C. 315f) and to the regulations in 43 CFR 2400.0–3, it is proposed to classify the lands described below for disposal through exchange, under section 8 of the Act of June 28, 1934, as amended (48 Stat. 1272; 43 U.S.C. 315g; 43 CFR Part 2200), for lands within the Salt Lake District.

This proposal has been discussed with the District Advisory Board, local government officials and other interested parties. Information from discussions and other sources indicate that these lands meet the criterion of 43 CFR 2430.4(d), which authorized classification of lands "for exchange under appropriate authority where they are found to be chiefly valuable for public purposes because they have special values, arising from the interest of exchange proponents, for exchange for other lands which are needed for the support of a Federal program."

Publication of this notice will segregate the lands from all appropriation, including location under the mining laws, except applications for exchange. Publication will not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral and vegetative resources, other than under the mining laws.

No application for an exchange will be accepted until it has first been determined that it is in the public interest of the United States to acquire the proposed offered lands and that the value of the offered lands equals or exceeds that of the selected lands.

All applications for exchange must be accompanied by a statement from the Bureau of Land Management, Salt Lake District Manager, that the proposal is feasible, in accordance with 43 CFR 2201.2.

Information concerning these lands is available at the Salt Lake District Office, 1750 South Redwood Road, Salt Lake City, UT 84104.

For a period of 60 days from the date of publication of this notice in the FEDERAL REGISTER, interested parties may submit comments, suggestions, or objections to the District Manager of the Salt Lake District, Bureau of Land Management, 1750 South Redwood Road, Room 214, Salt Lake City, UT 84104; or the State Director, Bureau of Land Management, Post Office Box 11505, Salt Lake City, UT 84111.

The lands affected by this proposal are located in Tooele County, Utah, and are described as follows:

SALT LAKE MERIDIAN

T. 5 S., R. 8 W.,
Sec. 34, NE¼NE¼, SW¼, SW¼SE¼;
Sec. 35, N½.
T. 6 S., R. 7 W.,
Sec. 6, lots 5, 6, 7, SE¼NW¼, E½SW¼;
Sec. 7, lots 1, 2, 3, E½W½, E½;
Sec. 18, E½, E½W½;
Sec. 19, lots 3, 4, NE¼, E½NW¼, NW¼SE¼, E½SW¼;
Sec. 20, NW¼NW¼;
Sec. 30, lots 1, 2.
T. 6 S., R. 8 W.,
Sec. 3, all;
Sec. 10, N½NE¼, W½;
Sec. 11, NW¼, N½SW¼, SE¼SW¼;
Sec. 12, N½, N½S½, S½SW¼;
Sec. 13, all;
Sec. 14, E½E½;
Sec. 15, N½NW¼;
Sec. 22, W½NE¼, W½, SE¼;
Sec. 24, SW¼NE¼, NW¼, N½SW¼, SE¼;
Sec. 25, NE¼, S½NW¼, SW¼, W½SE¼, NE¼SE¼;
Sec. 27, all;
Sec. 34, NE¼, E½NW¼, NW¼NW¼.

The above described area contains 7,644.31 acres.

R. D. NIELSON,
State Director.

[FR Doc.71-651 Filed 1-15-71;8:49 am]

National Park Service

GLEN CANYON NATIONAL RECREATION AREA, ARIZ.

Notice of Intention To Issue Concession Permit

Pursuant to the provisions of section 5, of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20) public notice is hereby given that 30 days after the date of publication of this notice, the Department of the Interior, through the Superintendent, Glen Canyon National Recreation Area, proposes to issue a concession permit to D. C. Christensen authorizing him to provide concession facilities and services for the public at Glen Canyon National Recreation Area for a period of 1 year from January 1, 1971 through December 31, 1971.

The foregoing concessioner has performed his obligations under a prior permit to the satisfaction of the National Park Service and, therefore, pursuant to the Act cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit. However, under the Act cited above, the National Park Service is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted within 30 days after the publication date of this notice.

Interested parties should contact the Superintendent, Glen Canyon National Recreation Area, Post Office Box 1507, Page, AZ 86040, for information as to the requirements of the proposed permit.

C. E. JOHNSON,
Superintendent, Glen Canyon National Recreation Area.

[FR Doc.71-611 Filed 1-15-71;8:46 am]

Office of the Secretary

ELMER S. HALL

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of December 15, 1970.

Dated: December 15, 1970.

E. S. HALL.

[FR Doc.71-652 Filed 1-15-71;8:49 am]

HUGH C. VAN HORN

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of December 23, 1970.

Dated: December 21, 1970.

HUGH C. VAN HORN.

[FR Doc.71-653 Filed 1-15-71;8:49 am]

PROPOSED TRANS-ALASKA PIPELINE

Notice of Public Hearing; Correction

On January 15, 1971, there appeared in the FEDERAL REGISTER (36 F.R. 622) a notice of public hearings on the environmental impact of granting a right-of-way for a crude oil pipeline across Federal lands in Alaska. The designated place for the public hearing to be held in Washington, D.C., on February 16 and 17, 1971, will not be available for use. The Washington hearing will therefore be held:

Tuesday and Wednesday, February 16 and 17, 1971, in the Auditorium of the Civil Service Commission, 1900 E Street NW., Washington, DC

Hearings will commence at 8:30 a.m.

RICHARD R. HITE,
Deputy Assistant Secretary for Administration.

JANUARY 15, 1971.

[FR Doc.71-757 Filed 1-15-71;11:14 am]

DEPARTMENT OF COMMERCE

Bureau of Domestic Commerce

CORNELL UNIVERSITY

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 as amended (34 F.R. 15787 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. 71–00001–63–46500. Applicant: Cornell University, Department of Vegetable Crops, Plant Science Building, Ithaca, NY 14850. Article: Ultramicrotome, Model LKB 8800. Manufacturer: LKB Produkter A.B., Sweden.

Intended use of article: The article will be used to prepare ultrathin sections of interspecific hybrid (*L. esculentum x L. peruvanium*) tomato embryos. This hybrid exhibits a high degree of incompatibility, a scientific phenomena of great interest and significance in both the animal and plant kingdom. Through electron microscopy, fine structure of embryo development and the sequence of F_1 hybrid organelle development and degeneration will be studied.

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, is being manufactured in the United States.

Reasons: Examination of the applicant's thin sections under the electron microscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness, etc.), the properties of the embedding media and the geometry of the block. In connection with a prior case (Docket No. 69–00665–33–46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such (other) factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70–00077–33–46500) relating to the duty-free entry of an identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness, etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult." The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm./sec.). The most closely comparable domestic instrument is the Model MT–2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT–2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm./sec.

We are advised by HEW in its memorandum of November 6, 1970, that cutting speeds in excess of 4 mm./sec. are pertinent to the successful production of ultrathin sections, which are highly uniform in thickness, of the soft tissues in soft embeddings encountered in the applicant's high resolution electron microscopy studies of organelle development in the tomato embryo. HEW cites as a precedent its prior recommendation relating to Docket No. 70–00519–33–46500 which conforms in many particulars to the captioned application. We, therefore, find that the Model MT–2B ultramicrotome is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

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 is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71–593 Filed 1–15–71;8:45 am]

DEPARTMENT OF AGRICULTURE ET AL.

Notice of Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Scientific Instrument Evaluation Division, Bureau of Domestic Commerce, Washington, D.C. 20230, within 20 calendar days after date on which this notice of application is published in the FEDERAL REGISTER.

Amended regulations issued under cited Act, as published in the October 14, 1969, issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 71–00306–33–46070. Applicant: U.S. Department of Agriculture National Animal Disease Laboratory, Post Office Box 70, Ames, IA 50010. Article: Scanning electron microscope, Model Mark IIA. Manufacturer: Cambridge Instrument Co., Ltd., United Kingdom. Intended use of article: The article will be used in a research program in animal disease to characterize animal tissues and microbial agents. The tissues and agents will be varied as to physical qualities and physiognomy. Inculded are such diverse specimens as bone; blood cells; a variety of bacterial agents; fungal thalli and spores; certain algae and higher plant materials; and complexes of particulate antigens and antibodies. Application received by Commissioner of Customs: December 14, 1970.

Docket No. 71–00307–33–46500. Applicant: Stanford University, Purchasing Department, 820 Quarry Road, Palo Alto, CA 94304. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter A.B., Sweden. Intended use of article: The article will be used in a study of the substructure and function of cell types, including lymphocytes, histiocytes, eosinophils, and Reed-Sternberg cells in lesions of Hodgkin's disease. The primary objective of the research is to improve methods for the diagnosis of Hodgkin's disease. Application received by Commissioner of Customs: December 14, 1970.

Docket No. 71–00309–33–46500. Applicant: University of Illinois, Purchasing Division, 223 Administration Building, Urbana, IL 61801. Article: Ultramicrotome, Model OmU2. Manufacturer: C. Reichert Optische Werke A.G., Austria. Intended use of article: The article will be used for research involving cholinergic oxidative and dehydrogenase enzyme systems at ultrastructural levels. The investigation will localize intracellularly acetylcholinesterase (AchE) choline acetylase, microsomal oxidase, and lactate dehydrogenases (LDH) in differentiated neural tissue of selected teleost, mammals and insects. Application received by Commissioner of Customs: December 14, 1970.

Docket No. 71–00310–33–46040. Applicant: Columbia University, 630 West 168th Street, New York, NY 10032. Article: Electron microscope, Model EM 300. Manufacturer: Philips Electronics NVD, The Netherlands. Intended use of article: The article will be used in the Orthopaedic Research Laboratories for studies of the fine structure of bone, cartilage, other connective tissue cells and mineralizing collagen. Osteogenesis and collagen synthesis in fracture repair will be investigated. The main research program concerns the effects of bioelectric phenomena on the functions of connective tissue cells. Application received by Commissioner of Customs: December 15, 1970.

Docket No. 71-00311-33-46500. Applicant: Southern Illinois University, Laboratory of Molecular Virology, Carbondale, IL 62901. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter A.B., Sweden. Intended use of article: The article will be used to study biological materials, primarily virus-host-cell systems. The properties of the materials to be investigated are those which lend themselves to an understanding of the structural bases for the controlled transcription of the DNA molecule in poxviruses, which involves the arrangement of information along DNA molecules, the continuity of the polynucleotide strands and location and structure of the replicating point. Application received by Commissioner of Customs: December 15, 1970.

Docket No. 71-00312-33-46040. Applicant: Red Acre Farm, Inc., Red Acre Road, Stow, MA 01775. Article: Electron microscope, Model EM 9S-2. Manufacturer: Carl Zeiss, Inc., West Germany. Intended use of article: The article will be used for an investigation of pathological changes produced by deficiency of certain vitamins; an inquiry into the cause of heart failure that has been observed in rats of a certain strain produced in the applicant's laboratory; and for a project relating to the problem of human peptic ulcer disease. Application received by Commissioner of Customs: December 16, 1970.

Docket No. 71-00314-33-46040. Applicant: The Pennsylvania State University, College of Medicine, Department of Microbiology, 500 University Drive, Hershey, PA 17033. Article: Electron microscope, Model HU-12. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article will be used for research, teaching and training purposes. The development of viruses within cells will be monitored as an integral part of a cancer research program. A graduate course, "Electron Microscopic Techniques", will teach the basic techniques in specimen preparation for the ultrastructural approach to research. Application received by Commissioner of Customs: December 17, 1970.

Docket No. 71-00313-16-61800. Applicant: Museum of Arts and Sciences, 137 North Halifax Avenue, Daytona Beach, FL 32018. Article: Planetarium, Model Venus. Manufacturer: Goto Optical Co., Japan. Intended use of article: The article will be used for precision sky and apparent sky motion simulation for educational and public programs, including astronomy and navigation instruction. Application received by Commissioner of Customs: December 17, 1970.

Docket No. 71-00316-65-07700. Applicant: Georgia Institute of Technology, 225 North Avenue NW., Atlanta, GA 30332. Article: Oscilloscope camera and accessories. Manufacturer: Steinheil Optronic, West Germany. Intended use of article: The article will be used to produce high quality film records of the images displayed on the screen of a scanning electron microscope. The samples used range from composites to biological materials. The School of Ceramic Engineering will use the camera in connection with graduate teaching and research. Application received by Commissioner of Customs: December 21, 1970.

Docket No. 71-00317-33-46040. Applicant: Wm. H. Singer Memorial Research Institute of the Allegheny General Hospital, 320 East North Avenue, Pittsburgh, PA 15212. Article: Two electron microscopes, Model EM 300 and accessories. Manufacturer: Philips Electronics NVD, The Netherlands. Intended use of article: The article will be used for a study of the ultrastructure of several oncogenic simian adenoviruses with respect to the mechanism by which these viruses produce cancer in host animals; and for an investigation of the fine structure of simian viruses and Herpes virus with particular reference to the processes of multiplication and replication in tissue culture cell lines. Application received by Commissioner of Customs: December 21, 1970.

Docket No. 71-00318-15-14000. Applicant: Wheaton College, Norton, MA 02766. Article: Abbe comparator Model B. Manufacturer: Carl Zeiss Jena, East Germany. Intended use of article: The article will be used to study stellar phenomena such as molecular and elemental compositions of evolved stars; and radial velocities of evolved stars which may be members of clusters and binary systems. Application received by Commissioner of Customs: December 22, 1970.

Docket No. 71-00319-33-46040. Applicant: University of North Carolina, School of Medicine, Department of Pathology, Chapel Hill, NC 27514. Article: Electron microscope, Model JEM 100B. Manufacturer: Japan Electron Optics Lab., Co., Ltd., Japan. Intended use of article: The article will be used for ultrastructural studies of biological materials related to a research program concerning the "Subcellular or Ultastructural Pathology of Heavy Metals." Detailed changes in organelles (subcellular structures) in cells of animal organs as affected by ingestion of heavy metals is being studied in order to understand the manner in which metal contaminants in our environment affect the metabolism of cells and human health. Application received by Commissioner of Customs: December 22, 1970.

Docket No. 71-00320-33-46040. Applicant: The Ohio State University Department of Microbial and Cell Biology, 190 North Oval Drive, Columbus, OH 43210. Article: Electron microscope, Model EM 300. Manufacturer: Philips Electronic NVD, The Netherlands. Intended use of article: The article will be used to study the ultrastructural relationships of micro-organisms and the microenvironment. Research concerns the effects of certain chlorinated hydrocarbon pesticides on biochemically active cell fractions and on virus ultrastructure; and an investigation of the characteristics and distribution of colloidal microparticulates in Lake Erie. Application received by Commissioner of Customs: December 22, 1970.

Docket No. 71-00321-01-77030. Applicant: Reed College, 3203 Southeast Woodstock Boulevard, Portland, OR 97202. Article: NMR spectrometer, Model R-20B. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article will be used for educational and research purposes. Laboratory instruction in nuclear magnetic resonance techniques will be taught. Senior students will use the article for their thesis research concerning a study of certain fluorine derivatives and for an investigation of the fluoride complexes of divalent transition metal ions. Application received by Commissioner of Customs: December 22, 1970.

Docket No. 71-00322-33-46500. Applicant: Polytechnic Institute of Brooklyn, 333 Jay Street, Brooklyn, NY 11201. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter A.B., Sweden. Intended use of article: The article will be used to study the effect of certain chemicals such as thallium sulfate, thallium radioactive, potassium sulfate, etc., upon chicken and rat embryos in the production of hadacidin birth defects. The changes in development of bones, connective tissue and malformation caused by these chemicals are being investigated. Application received by Commissioner of Customs: December 23, 1970.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-606 Filed 1-15-71;8:46 am]

HERBERT H. LEHMAN COLLEGE

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 as amended (34 F.R. 15787 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. 71-00085-63-46500. Applicant: Herbert H. Lehman College, Bedford Park Boulevard West, Bronx, NY 10468. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter A.B., Sweden.

Intended use of article: The article will be used to produce ultrathin sections for electron microscopic examination. The primary use will be for studying the blue-green algae. One of the projects concerns the three dimensional reconstruction of certain inclusions. Research is also being conducted on studies of polyphosphate bodies in blue-green algae.

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, is being manufactured in the United States.

Reasons: Examination of the applicant's thin sections under the electron miscroscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness etc.), the properties of the embedding media and the geometry of the block. In connection with a prior case (Docket No. 69-00665-33-46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such (other) factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70-00077-33-46500) relating to the duty-free entry of an identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult." The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm./sec.). The most closely comparable domestic instrument is the Model MT-2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm./sec.

We are advised by HEW in its memorandum of December 10, 1970, that cutting speeds in excess of 4 mm./sec. are pertinent to the ultrathin sectioning of the blue-green algae with nonhomogenous mechanical properties in the applicant's study of polyhedral body membranes and polyphosphide bodies. HEW cites as a precedent its prior recommendation relating to Docket No. 71-00001-33-46500 which conforms in many particulars to the captioned application. We, therefore, find that the Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

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 is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-594 Filed 1-15-71;8:45 am]

MICHIGAN STATE UNIVERSITY

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 as amended (34 F.R. 15787 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. 71-00003-33-46500. Applicant: Michigan State University, Department of Anatomy, Gultner Hall, Room 274, East Lansing, MI 48823. Article: Ultramicrotome, Model LKB 4800A. Manufacturer: LKB Produkter A.B., Sweden.

Intended use of article: The article will be used to produce thin sections of nerve and muscle tissue for study with the electron microscope. Research projects concern the reactions of the central nervous system to tumor homograft implantation and the accurate identification of the cells participating in the rejection reaction utilizing radioautographic techniques; and growth and atrophy studies of muscle tissue, in which the increase or decrease in the total number of myofibrils and/or changes in fibrillar/interfibrillar dimensions need to be ascertained.

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, is being manufactured in the United States.

Reasons: Examination of the applicant's thin sections under the electron microscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness, etc.), the properties of the embedding media and the geometry of the block. In connection with a prior case (Docket No. 69-00665-33-46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such (other) factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70-00077-33-46500) relating to the duty-free entry of an identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness, etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult." The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm./sec.). The most closely comparable domestic instrument is the Model MT-2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm./sec.

We are advised by HEW in its memorandum of November 6, 1970, that cutting speeds in excess of 4 mm./sec. are pertinent to the applicant's research studies involving the sectioning of nerve and muscle of various degrees of tissue softness, soft embedding materials and the need for smooth uniform ultrathin sections for localization of DNA-precursors. We, therefore, find that the Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

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 is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-595 Filed 1-15-71;8:45 am]

NEW YORK UNIVERSITY

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 as amended (34 F.R. 15787 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. 71-00093-33-46500. Applicant: New York University Medical Center, 550 First Avenue, New York, NY 10016. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter A.B., Sweden.

Intended use of article: The article will be used for research concerning the secretory dynamics of exocrine glands; the morphology of penicillin allergy reactions; and for cytodifferentiation of steriod secreting cells.

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, is being manufactured in the United States.

Reasons: Examination of the applicant's thin sections under the electron microscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness etc.), the properties of the embedding media and the geometry of the block. In connection with a prior case (Docket No. 69-00665-33-46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such (other) factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70-00077-33-46500) relating to the duty-free entry of an identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness, etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult." The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm./sec.). The most closely comparable domestic instrument is the Model MT-2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm./sec.

We are advised by HEW in its memorandum of December 10, 1970, that cutting speeds in excess of 4 mm./sec. are pertinent to the applicant's research studies involving serial sectioning for electron microscopy of rodent submandibular gland, steroid secreting cells and other soft tissue. HEW cites as a precedent its prior recommendation relating to Docket No. 71-00001-33-46500 which conforms in many particulars to the captioned application. We, therefore, find that the Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

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 is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-596 Filed 1-15-71;8:45 am]

PUERTO RICO NUCLEAR CENTER

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 as amended (34 F.R. 15787 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. 71-00004-33-46500. Applicant: Puerto Rico Nuclear Center, Bio-Medical Building, Caparra Heights Station, San Juan, PR 00935. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter A.B., Sweden.

Intended use of article: The article will be used for research projects concerning sectional study of radiation damage to the membranes of the central nervous system and cells; ultramicrotome study of the penetration of cells by trypanosoma cruzi; a study of the effect of radiation on the latency of coxsackie virus in wild rats; and a study of solid state phenomenon in crystals.

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, is being manufactured in the United States.

Reasons: Examination of the applicant's thin sections under the electron microscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness etc.), the properties of the embedding media and the geometry of the block. In connection with a prior case Docket No. 69-00665-33-46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such (other) factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70-00077-33-46500) relating to the duty-free entry of an identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult." The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm./sec.). The most closely comparable domestic instrument is the Model MT-2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm./sec.

We are advised by HEW in its memorandum of November 6, 1970, that cutting speeds in excess of 4 mm./sec. are pertinent to the sucessful sectioning of tissues having the range of consistencies of the various cells and tissues encountered in the applicant's research studies involving radiation damage to cell membranes, the penetration of cells and the fine structure of virus. HEW cites as a precedent is prior recommendation relating to Docket No. 70-00203-33-46500 which conforms in many particulars to the captioned application. We, therefore, find that the Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

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 is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-597 Filed 1-15-71;8:45 am]

SOUTHERN ILLINOIS UNIVERSITY

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 as amended (34 F.R. 15787 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. 71-00046-33-46500. Applicant: Southern Illinois University, School of Dental Medicine, Edwardsville, IL 62025. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter A.B., Sweden.

Intended use of article: The article will be used for studies of soft tissues (examples: lymph nodes, salivary gland, mucosa) and dental hard tissues (examples: dentin, enamel, bone). Research in the areas of both soft tissues and dental hard tissues will deal with healthy, normal and diseased conditions, for investigation of the structural geometric orientation and organization.

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, is being manufactured in the United States.

Reasons: Examination of the applicant's thin sections under the electron microscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness, etc.), the properties of the embedding media and the geometry of the block. In connection with a prior case (Docket No. 69-00665-33-46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such (other) factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70-00077-33-46500) relating to the duty-free entry of an identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness, etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult." The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm./sec.). The most closely comparable domestic instrument is the Model MT-2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm./sec.

We are advised by HEW in its memorandum of November 25, 1970, that cutting speeds in excess of 4 mm./sec. are pertinent to the applicant's research studies involving the production of useful sections from such soft tissues as lymph node, salivary gland, and mucosa embedded in vestopel or methacrylate. We, therefore find that the Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

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 is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-598 Filed 1-15-71;8:45 am]

TEMPLE UNIVERSITY

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 as amended (34 F.R. 15787 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. 71-00059-33-46500. Applicant: Temple University Medical School, 3400 North Broad Street, Philadelphia, PA 19140. Article: Ultramicrotome, Model "OmU2". Manufacturer: C. Reichert Optische Werke A.G., Austria.

Intended use of article: The article will be used to produce ultrathin sections for electron microscopic examination. The primary tissue involved will be the cells of the human malignant melanoma examined directly and at various intervals after tissue culture. Extremely thin sections are required in order to study the melanosome, a cytogenetic structural marker of benign and malignant melanocytes.

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, is being manufactured in the United States.

Reasons: Examination of the applicant's thin sections under the electron microscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness, etc.), the properties of the embedding media and the geometry of the block. In connection with a prior case (Docket No. 69-00665-33-46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such (other) factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70-00077-33-46500) relating to the duty-free entry of an identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness, etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult." The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm./sec.). The most closely comparable domestic instrument is the Model MT-2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm./sec.

We are advised by HEW in its memorandum of November 25, 1970, that cutting speeds in excess of 4 mm./sec. are pertinent to the production of ultrathin sections for three dimensional reconstruction of the melanosome and its filaments in the applicant's study of melanogenesis of tissue culture cells during their life cycle. We, therefore, find that the Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

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 is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-599 Filed 1-15-71;8:45 am]

TEMPLE UNIVERSITY

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 as amended (34 F.R. 15787 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. 71-00051-33-46500. Applicant: Temple University School of Medicine, 3400 North Broad Street, Philadelphia, PA 19140. Article: Ultramicrotome, Model LKB 8800. Manufacturer: LKB Produkter A.B., Sweden. Intended use of article: The article will be used to produce ultrathin sections for electron microscopic examination. The primary tissue involved will be the cells of human malignant melanoma examined directly and at various intervals after tissue culture. Extremely thin sections are required in order to study the melanosome, a cytogenetic structural marker of benign and malignant melanocytes.

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, is being manufactured in the United States.

Reasons: Examination of the applicant's thin sections under the electron microscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness, etc.), the properties of the embedding media and the geometry of the block. In connection with a prior case (Docket No. 69-00665-33-46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting, (among such (other) factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70-00077-33-46500) relating to the duty-free entry of an identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness, etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult." The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm./sec.). The most closely comparable domestic instrument is the Model MT-2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm./sec.

We are advised by HEW in its memorandum of November 25, 1970, that cutting speeds in excess of 4 mm./sec. are pertinent to the ultrathin sectioning of the softer materials encountered in the applicant's study of the melanosome which involves tissue culture cells of human malignant melanoma. We, therefore, find that the Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

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 is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-600 Filed 1-15-71;8:45 am]

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 as amended (34 F.R. 15787 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. 71-00080-33-46500. Applicant: University of California, San Diego, Post Office Box 109, La Jolla, CA 92037. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter A.B., Sweden.

Intended use of article: The article will be used for research concerning the relationship of connective tissue stroma cells to human cancer cells in tumor biopsies and the formation and localization of virus particles in cultures of human tissue plants. The relationship of the stroma cells and of the extracellular collagen to cancer cells as well as the formation of the collagen will be studied.

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, is being manufactured in the United States.

Reasons: Examination of the applicant's thin sections under the electron microscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness etc.), the properties of the embedding media and the geometry of the block. In connection with a prior case (Docket No. 69-00665-33-46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such (other) factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70-00077-33-46500) relating to the duty-free entry of an identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult." The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm./sec.). The most closely comparable domestic instrument is the Model MT-2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm./sec.

We are advised by HEW in its memorandum of November 25, 1970, that cutting speeds in excess of 4 mm./sec. are pertinent to the sectioning of the variety of tissues encountered in the applicant's research studies involving the relationship of stroma cells and of extracellular collagen to cancer cells and the formation of collagen and the relation of viruses to membranes and chromosome fibers. We, therefore, find that the Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

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 is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-601 Filed 1-15-71;8:45 am]

UNIVERSITY OF ILLINOIS

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 as amended (34 F.R. 15787 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. 71-00043-33-46500. Applicant: University of Illinois at Chicago Circle, Department of Biological Sciences, Box 4348, Chicago, IL 60680. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter A.B., Sweden.

Intended use of article: The article will be used to section ovary endocrine glands, fat body and ovarian duct system of *Drosophila melanogaster*, and *Drosophila persimilis;* ovary and endocrine tissue of *ephestia kühnellia;* and mitospores, meiospores, sporangia and mycelia of the aquatic phycomycete, *Allomyces arbuscula*. These biological materials are to be investigated for cytological studies of growth, development and mutant gene activity.

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, is being manufactured in the United States.

Reasons: Examination of the applicant's thin sections under the electron microscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness etc.), the properties of the embedding media and the geometry of the block. In connection with a prior case (Docket No. 69-00665-33-46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting, (among such (other) factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70-00077-33-46500) relating to the duty-free entry of an identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult." The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm./sec.). The most closely comparable domestic instrument is the Model MT-2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm./sec.

We are advised by HEW in its memorandum of November 25, 1970, that cutting speeds in excess of 4 mm./sec. are pertinent to the applicant's ultrastructural study of insect tissues including soft endocrine glands, fat body, ovary, etc. We, therefore, find that the Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

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 is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-603 Filed 1-15-71;8:46 am]

UNIVERSITY OF KENTUCKY

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 as amended (34 F.R. 15787 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. 71-00033-33-46500. Applicant: University of Kentucky, Medical Center, Department of Anatomy, Lexington, KY 40506. Article: Ultramicrotome, Model LKB 4800A. Manufacturer: LKB Produkter A.B., Sweden.

Intended use of article: The article will be used to study the process of keratinization at various stages. During the early developmental stages, keratin material is soft and at the late stages of development this material is extremely hard. Keratinizing feather germs will be cultured for various lengths of time. The "normal" or "base line" morphology of this organ grown in culture will be determined at the ultrastructural level.

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, is being manufactured in the United States.

Reasons: Examination of the applicant's thin sections under the electron microscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness, etc.), the properties of the embedding media and the geometry of the block. In connection with a prior case (Docket No. 69-00665-33-46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such (other) factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70-00077-33-46500) relating to the duty-free entry of an identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness, etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult." The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm./sec.). The most closely comparable domestic instrument is the Model MT-2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm./sec.

We are advised by HEW in its memorandum of November 20, 1970, that cutting speeds in excess of 4 mm./sec. are pertinent to the applicant's research studies involving the sectioning of the sites of keratin precursor and early stages of keratin development in soft tissue material for electron microscopy. HEW cites as a precedent its prior recommendaton relating to Docket No. 70-00519-33-46500 which conforms in many particulars to the captioned application. We, therefore, find that the Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

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 is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-602 Filed 1-15-71;8:45 am]

UNIVERSITY OF NOTRE DAME DU LAC

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 as amended (34 F.R. 15787 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. 71-00017-33-46500. Applicant: The University of Notre Dame du Lac, Biology Department, College of Science, Notre Dame, IN 46556. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter A.B., Sweden.

Intended use of article: The article will be used to cut sections of developing crustacean, hymenopteran and human tumor tissues which vary widely in density. Since the research involves reconstruction of the three-dimensional

morphology of submicroscopic structures, it must be possible to easily obtain ribbons of serial ultrathin sections of equal thickness. Also, the ultramicrotome will be used in courses in Developmental Cytology, Analysis of Ultrastructure and Biological Electron Microscopy.

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, is being manufactured in the United States.

Reasons: Examination of the applicant's thin sections under the electron microscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness etc.), the properties of the embedding media, and the geometry of the block. In connection with a prior case (Docket No. 69–00665–33–46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such (other) factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70–00077–33–46500) relating to the duty-free entry of and identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult." The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm./sec.). The most closely comparable domestic instrument is the Model MT–2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT–2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm./sec.

We are advised by HEW in its memorandum of November 13, 1970, that cutting speeds in excess of 4 mm./sec. are pertinent to successfully obtaining long series of ultrathin sections of uniform thickness of the variety of materials, particularly the softer materials, involved in the applicant's research studies.

We therefore find that the Model MT–2B ultramicrotome is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

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 is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71–604 Filed 1–15–71;8:46 am]

UNIVERSITY OF OREGON

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 as amended (34 F.R. 15787 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. 71–00005–33–46500. Applicant: University of Oregon, Biology Department, Eugene, OR 97403. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter A.B., Sweden.

Intended use of article: The liquid endosperm of the African Blood Lilly, *Haemanthus katherinae* Baker, and primary spermatocytes of *Drosophila melanogaster*, the fruit fly, will be the primary tissues for which the article will be used in the investigation of the chromosome movements and spindle fine structure of cell division.

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, is being manufactured in the United States.

Reasons: Examination of the applicant's thin sections under the electron microscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness etc.), the properties of the embedding media and the geometry of the block. In connection with a prior case (Docket No. 69–00665–33–46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such (other) factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70–00077–33–46500) relating to the duty-free entry of an identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult." The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm./sec.). The most closely comparable domestic instrument is the Model MT–2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT–2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm./sec.

We are advised by HEW in its memorandum of November 6, 1970, that cutting speeds in excess of 4 mm./sec. are pertinent to the applicant's research studies involving chromosome movement and spindle fine structure in cell division, particularly in the studies involving softer specimens and the embedding materials used for embedding on a coverslip.

We, therefore, find that the Model MT–2B ultramicrotome is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

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 is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71–605 Filed 1–15–71;8:46 am]

WILLIAM BEAUMONT HOSPITAL

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 as amended (34 F.R. 15787 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. 71–00045–33–46500. Applicant: William Beaumont Hospital, 3601 West 13 Mile Road, Royal Oak, MI 48072. Article: Ultramicrotome Model LKB 8800A. Manufacturer: LKB Produkter A.B., Sweden.

Intended use of article: The article will be used for ultrathin sectioning of several types of tissues in health and disease, and in normalcy and under experimental conditions. The ultrastructure of developing and transplanted thyroid tumors will be examined in an effort to relate the physiologic and biochemical

changes to the structure of the cell organelles. The structure of isolated kidney tubules from drug-treated and untreated animals will be compared in order to gain some information on the metabolism and physiological and pharmacological properties of certain drugs.

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, is being manufactured in the United States.

Reasons: Examination of the applicant's thin sections under the electron microscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness etc.), the properties of the embedding media and the geometry of the block. In connection with a prior case (Docket No. 69-00665-33-46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such (other) factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70-00077-33-46500) relating to the duty-free entry of an identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult." The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm./sec.). The most closely comparable domestic instrument is the Model MT-2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm./sec.

We are advised by HEW in its memorandum of November 25, 1970, that cutting speeds in excess of 4 mm./sec. are pertinent to the applicant's study of carcinogenesis of the thyroid gland that involves sectioning of tumors and certain fatty tissues. We, therefore find that the Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

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 is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-607 Filed 1-15-71;8:46 am]

YALE UNIVERSITY

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 as amended (34 F.R. 15787 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. 71-00002-91-46500. Applicant: Yale University, Department of Biology, New Haven, CT 06520. Article: Ultramicrotome, Model OmU2. Manufacturer: C. Reichert Optische Werke A.G., Austria.

Intended use of article: The article will be used in a study of the structure of the submicroscopic channels (plasmodesmata) which interconnect adjacent plant cells in a tissue. It purpose is to cut ultrathin sections of tissue containing plasmodesmata which will then be viewed in the electron microscope.

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, is being manufactured in the United States.

Reasons: Examination of the applicant's thin sections under the electron microscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness, etc.), the properties of the embedding media and the geometry of the block. In connection with a prior case (Docket No. 69-00665-33-46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such (other) factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70-00077-33-46500) relating to the duty-free entry of an identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult." The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm./sec.). The most closely comparable domestic instrument is the Model MT-2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm./sec.

We are advised by HEW in its memorandum of November 6, 1970, that cutting speeds in excess of 4 mm./sec. are pertinent to the applicant's study of plasmodesmata by electron microscopy and autoradiography which will require serial sections of uniform thickness, i.e., free of chatter marks and other defects. HEW cites as a precedent its prior recommendations relating to Dockets Nos. 70-00680-33-46500 and 70-00729-33-46500 which conform in many particulars to the captioned application. We, therefore, find that the Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

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 is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[FR Doc.71-608 Filed 1-15-71;8:46 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ACTING ASSISTANT REGIONAL ADMINISTRATOR FOR EQUAL OPPORTUNITY, REGION IX (SAN FRANCISCO)

Designation

The officials named below in Region IX (San Francisco) are hereby designated to serve as Acting Assistant Regional Administrator for Equal Opportunity, Region IX (San Francisco), during the absence of the Assistant Regional Administrator for Equal Opportunity, with all the powers, functions, and duties redelegated or assigned to the Assistant Regional Administrator for Equal Opportunity: *Provided*, That no official is authorized to serve as Acting Assistant Regional Administrator for Equal Opportunity unless the other officials whose names precede his in this designation are unable to act by reason of absence:

1. Andrew Corcoran.
2. Robert Jeffrey, Sr.
3. Curtis G. Oler.

(Delegation and redelegation of authority to take final action with respect to certain positions and employees effective as of May 4, 1969)

Effective date: September 21, 1970.

ANDREW J. BELL III,
Acting Regional Administrator, Region IX (San Francisco).

[FR Doc.71-675 Filed 1-15-71;8:51 am]

ACTING ASSISTANT REGIONAL ADMINISTRATOR FOR MODEL CITIES, REGION IX (SAN FRANCISCO)

Designation

The officials named below in Region IX (San Francisco) are hereby designated to serve as Acting Assistant Regional Administrator for Model Cities, Region IX (San Francisco), during the absence of the Assistant Regional Administrator for Model Cities, with all the powers, functions and duties redelegated or assigned to the Assistant Regional Administrator for Model Cities: *Provided*, That no official is authorized to serve as Acting Assistant Regional Administrator for Model Cities unless the other official whose name precedes his in this designation is unable to act by reason of absence:

1. Tad T. Masaoka.
2. Earl G. Singer.

This designation supersedes the designation effective June 29, 1969 (34 F.R. 15818, Oct. 14, 1969).

(Delegation and redelegation of authority to take final action with respect to certain positions and employees effective as of May 4, 1969)

Effective date: September 21, 1970.

ANDREW J. BELL III,
Acting Regional Administrator, Region IX.

[FR Doc.71-672 Filed 1-15-71;8:51 am]

ACTING ASSISTANT REGIONAL ADMINISTRATOR FOR RENEWAL ASSISTANCE, REGION IX (SAN FRANCISCO)

Designation

The officials named below in the Renewal Assistance Office, Region IX (San Francisco), are hereby designated to serve as Acting Assistant Regional Administrator for Renewal Assistance, Region IX (San Francisco), during the absence of the Assistant Regional Administrator for Renewal Assistance, with all the powers, functions, and duties redelegated or assigned to the Assistant Regional Administrator for Renewal Assistance: *Provided*, That no official is authorized to serve as Acting Assistant Regional Administrator for Renewal Assistance unless the other official whose name precedes his in this designation is unable to act by reason of absence:

1. Raymond J. Crisp.
2. William S. Kennedy.

This designation supersedes and cancels the designation published at 34 F.R. 17923 on November 5, 1969, effective as of September 21, 1969.

(Delegation and redelegation of authority to take final action with respect to certain positions and employees effective as of May 4, 1969)

Effective date: September 21, 1970.

ROBERT H. BAIDA,
Regional Administrator, Region IX (San Francisco).

[FR Doc.71-673 Filed 1-15-71;8:51 am]

ACTING REGIONAL COUNSEL, REGION IX (SAN FRANCISCO)

Designation

The officials named below in Region IX (San Francisco) are hereby designated to serve as Acting Regional Counsel, Region IX (San Francisco), during the absence of the Regional Counsel, with all the powers, functions, and duties redelegated or assigned to the Regional Counsel: *Provided*, That no official is authorized to serve as Acting Regional Counsel unless all other officials whose names precede his in this designation are unable to act by reason of absence:

1. Alfred J. DeMartini, Jr.
2. Maurice D. Laymon.
3. Paul A. DeMare.

This designation supersedes the designation effective January 1, 1969 (34 F.R. 6708-6709, Apr. 19, 1969).

(Delegation and redelegation of authority to take final action with respect to certain positions and employees effective as of May 4, 1969)

Effective date: September 21, 1970.

ANDREW J. BELL III,
Acting Regional Administrator, Region IX (San Francisco).

[FR Doc.71-674 Filed 1-15-71;8:51 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGFR 71-7]

BUSH RIVER, MD.

Notice of Public Hearing Concerning Operation of Penn Central Railroad Bridge

Notice is hereby given that a public hearing will be held to determine the need for changes in the special operation regulations for this bridge. The hearing will be held by the Commander, Fifth Coast Guard District at the VFW Hall, Route 40, Aberdeen, MD, and will start at 7 p.m. on February 18, 1971.

The purpose of the hearing is to consider a request from the Legal Liaison Officer, Bush River Yacht Club to revoke or revise the special operation regulations presently in force. These regulations are as follows:

§117.245 *Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of drawtenders is not required.* * * *

(f) * * *

(3) Bush River, Md.; The Pennsylvania Railroad Co. bridge at Bush River. From June 1 to September 30, inclusive, the draw will be required to be opened not more than two times each day on Saturdays and Sundays only between 10 a.m. and 5 p.m., on receipt of at least 24 hours' advance notice from the duly authorized representative of the Bush River Boat Club. At all other times the draw need not be opened for the passage of vessels. The notice posted in accordance with paragraph (d) of this section shall state exactly how the representative of the Bush River Boat Club may be reached.

* * * * *

All interested persons may present data, views, and comments orally, or in writing at the public hearing concerning these proposals. The hearing will be an informal one conducted by a representative of the Commandant. Additional procedures for conduct of the hearing will be announced at the hearing. A transcript of the hearing will be made and anyone may buy a copy of the transcript from the reporting service.

Interested persons who are unable to attend this hearing may also participate in this consideration by submitting written data, views, arguments, or comments as they may desire on or before March 5, 1971. All submissions should be made in writing to the Commander, Fifth Coast Guard District, 610 Federal Building, Portsmouth, VA 23705. It is requested that each submission state the subject to which it is directed, the reason for any recommendations and the name, address, and firm or organization if any, of the person making the submission. Each communication received within the time specified will be fully considered and evaluated before final action is taken on the proposal in this document. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Fifth Coast Guard District.

After the time set for the submission of comments by the interested parties the Commander, Fifth Coast Guard District will forward the record, including all written submissions and his recommendations with respect to the proposals and the submissions, to the Chief, Office of Operations, U.S. Coast Guard, Washington, D.C. The Chief, Office of Operations will thereafter make a final determination with respect to these proposals.

Authority for this section is set forth in section 5, 28 Stat. 362, as amended (33 U.S.C. 499); section 6(g)(2) of the Department of Transportation Act, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5) (35 F.R. 4959) and 33 CFR 1.05-1(c)(4) (35 F.R. 15922).

Dated: January 13, 1971.

D. H. LUZIUS,
Captain, U.S. Coast Guard, Acting Chief, Office of Operations.

[FR Doc.71-676 Filed 1-15-71;8:51 am]

Hazardous Materials Regulations Board

SPECIAL PERMITS ISSUED

JANUARY 12, 1971.

Pursuant to Docket No. HM–1, Rule-making Procedures of the Hazardous Materials Regulations Board, issued May 22, 1968 (33 F.R. 8277), 49 CFR Part 170, following is a list of new DOT Special Permits upon which Board action was completed during December 1970:

Special permit No.	Issued to—Subject	Mode or modes of transportation
6234	Shippers registered with this Board for shipments of an oxidizing material (calcium hypochlorite compounds with at least 45% by weight calcium hypochlorite dihydrate) in 49 CFR 173.217 packages.	Rail, Highway.
6303	Shippers registered with this Board for shipments of compressed gases in DOT-3AA cylinders quenched by a medium other than oil.	Water, Rail, Highway, Cargo-only aircraft.
6305	Shippers registered with this Board for shipments of detonating fuzes, class C explosives in DOT–23F fiberboard boxes.	Rail, Highway.
6357	Shippers registered with this Board for shipments of fissile radioactive materials n.o.s. in "birdcage" package conforming generally to DOT specification 6M.	Highway, Water, Rail, Cargo-only aircraft.
6363	Sundstrand Corp. to ship mixture of monomethylhydrazine and anhydrous hydrazine in non-DOT specification stainless steel pressure vessel.	Rail, Highway, Cargo-only aircraft.
6364	Shippers registered with this Board for shipments of fissile radioactive materials, n.o.s. in package identified as General Electric Model No. RR–1.	Highway.
6366	Carolina Welding Supplies, Inc. to ship certain compressed gases in DOT-3A, 3AA cylinders having a 10-year hydrostatic retest period.	Rail, Highway.
6367	Thompson Bros. Supplies, Inc. to ship certain compressed gases in DOT-3A, 3AA cylinders having a 10-year hydrostatic retest period.	Rail, Highway.
6368	Shippers registered with this Board to ship waste dichlorobectene mixture in DOT-105A300W tank cars.	Rail.
6369	Shippers registered with this Board for shipments of aniline oil in DOT-112A400W tank cars, and proposed DOT-114A400W tank cars.	Rail.
6371	Shippers registered with this Board for shipments of fissile and large quantities of radioactive materials, n.o.s. in UKAEA Model 1076/1266 package.	Highway, Cargo-only aircraft.
6373	Valley Welders Supply Co., Inc. to ship certain compressed gases in DOT-3A, 3AA cylinders having a 10-year hydrostatic retest period.	Rail, Highway.
6374	Westinghouse Electric Corp. to ship fissile and normal form radioactive materials in proposed DOT–20WC–5 package.	Highway.
6375	Shippers registered with this Board for shipments of fissile and large quantities of radioactive materials, n.o.s. in Whitehead and Kales Cask Model No. PB–1.	Highway.
6380	Greene & Kellogg, Inc., to ship certain compressed gases in DOT-3A, 3AA cylinders having a 10-year hydrostatic retest period.	Rail, Highway.
6382	Celanese Chemical Co. to transport ethylene oxide by tank motor vehicle upon emergency transfer from tank car.	Highway.
6383	FMC Corp. to ship chlorine in two tank cars having tanks overdue for retest.....	Rail.
6391	Hummel Chemical Co., Inc. to ship titanium metal powder in 15B wooden box/37C metal drum composite package.	Highway.

C. B. SMITH,
Acting Chairman.

[FR Doc.71–556 Filed 1–15–71;8:45 am]

Office of the Secretary

PENN CENTRAL TRANSPORTATION CO.

Waiver of Notice Requirements

By application dated January 7, 1971, filed pursuant to section 3(a) of the Emergency Rail Services Act of 1970 (Public Law 91–663), the trustees of Penn Central Transportation Co. seek the guarantee by the Secretary of Transportation of the payment of principal and interest on trustee certificates proposed to be sold.

Section 3(a) of the Act authorizes the Secretary to make such guarantees, after consultation with the Interstate Commerce Commission, and upon making in writing certain required findings. The Act further requires the Secretary to publish notice of his intention to make the required findings in the FEDERAL REGISTER not less than 15 days prior to making his findings. However, it also permits the Secretary to waive those notice requirements upon good cause shown and upon a finding that extraordinary circumstances warrant waiver of the notice requirements.

The Penn Central Transportation Co. needs a minimum daily cash balance to assure continued operation of its facilities. Without this minimum balance it is impossible for the railroad to assure sufficient funds to meet current cash demands. These demands may fluctuate as much as $10 to $15 million per day. As of January 1, 1971, Penn Central's cash balance was $18.7 million. As of January 9, 1971, this balance had dropped to $15.7 million. By January 31, there will be an estimated cash deficit of at least $5.3 million.

It is clear that Penn Central's cash position is exceptionally precarious. At any time a severe cash drain on a single day could create a cash deficit before January 31 which could result in a cessation of services. The winter season with its dangers of heavy snows and freezing conditions results in increased operating expenses and enhances this possibility of a complete draining of the railroad's cash.

The sale of trustee certificates necessary to generate the cash required to sustain the company beyond January 31, 1971, has been approved by the Interstate Commerce Commission. The sale must also be approved by an order of the reorganization court. I am advised that such an order will not be made in the absence of a declaration of my intention to guarantee the certificates being approved for issuance. I am also advised that the sale of such certificates to the underwriters cannot be consummated until 10 days following the date of the court order. Therefore, a delay of 15 days to permit publication of notice of my intention to make the findings necessary to a guarantee would delay the sale of certificates well beyond January 31, the date by which the Company estimates a cash deficit of $5.3 million.

Accordingly, I find that extraordinary circumstances warrant waiving the requirement of 15 days' notice of my intention to make the findings required by section 3(a) of the Emergency Rail Services Act of 1970, and I do hereby waive such notice.

Issued in Washington, D.C., on January 13, 1971.

JOHN A. VOLPE,
Secretary of Transportation.

[FR Doc.71–701 Filed 1–15–71;8:52 am]

PENN CENTRAL TRANSPORTATION CO.

Findings Regarding Application of Trustees for Guarantee of Trustee Certificates

By application dated January 7, 1971, filed pursuant to section 3(a) of the Emergency Rail Services Act of 1970 (Public Law 91–663) the trustees of Penn Central Transportation Co. seek the guarantee by the Secretary of Transportation of the payment of principal and interest on trustee certificates proposed to be sold.

Section 3(a) of the Act authorizes the Secretary to make such guarantees, after consultation with the Interstate Commerce Commission, and upon making in writing certain required findings. The Act further requires the Secretary to publish notice of his intention to make such required findings in the FEDERAL REGISTER not less than 15 days prior to making such findings. However, it also permits the Secretary to waive such notice requirements upon good cause shown and upon a finding that extraordinary circumstances warrant waiver of such notice requirements. I have, on this date, waived the notice requirement.

FINDINGS REQUIRED BY SECTION 3(a)

I hereby find, for the reasons stated in the discussion which follows, that:

(1) Cessation of essential transportation services by the railroad would endanger the public welfare;

(2) Cessation of such services is imminent;

(3) There is no other practicable means of obtaining funds to meet payroll and other expenses necessary to provide such services than the issuance of such certificates;

(4) Such certificates cannot be sold without a guarantee;

(5) The railroad can reasonably be expected to become self-sustaining; and

(6) The probable value of the assets of the railroad in the event of liquidation provides reasonable protection to the United States.

DISCUSSION

As to finding number 1:

Penn Central is the Nation's largest transportation company with some 20,000 miles of line covering the northeastern region of the United States. This region is coterminous with the eastern rail district. Within the latter boundaries are such metropolitan areas as St. Louis, Chicago, Cincinnati, Cleveland, Buffalo, Pittsburgh, Boston, New York, Philadelphia, and Washington, D.C. The industries, farms, and mines within this district account for 50 percent of the Nation's gross national product and the availability of transportation capacity is essential to continued production. Penn Central provides one-third of the total transportation services for this region.

Penn Central is not only the predominant carrier in the eastern district, it is also a key link in the Nation's rail transportation system. It interchanges with 144 other rail carriers at 1,088 interchange points. Therefore, any disruption of Penn Central's service will distort connecting rail service and disrupt essential transportation services far beyond the geographic area immediately served by the railroad.

The Penn Central's role in the national economy is further evidenced by its traffic. In addition to transporting large volumes of finished products, in 1969 the Penn Central transported 25 percent of the Nation's steel, 17 percent of its coal, and 21 percent of its iron ore. The eastern district is particularly dependent on the Penn Central for the transportation of coal to power plants. (See page 3 of Senate Report 91–1510 of Dec. 19, 1970, accompanying the Emergency Rail Services Act of 1970.)

The Penn Central is also the Nation's largest rail passenger carrier. Substantial commuter services are provided by the railroad in such cities as New York, Philadelphia, and Boston. Cessation of operations would increase significantly the transportation problems of these cities.

For these reasons, I find that Penn Central provides services that are essential transportation services within the meaning of the Emergency Rail Services Act of 1970, and that cessation of such services would endanger the public welfare.

As to finding number 2:

The Penn Central Transportation Co. needs a minimum daily cash balance to assure continued operation of its facilities. Without this minimum balance it is impossible for the railroad to assure sufficient funds to meet current cash demands. These demands may fluctuate as much as $10 to $15 million per day. As of January 1, 1971, Penn Central's cash balance was $18.7 million. As of January 9, 1971, this balance had dropped to $15.7 million. By January 31, there will be an estimated cash deficit of at least $5.3 million.

It is clear that Penn Central's cash position is exceptionally precarious. At any time a severe cash drain on a single day could create a cash deficit before January 31 which could result in a cessation of services. The winter season with its dangers of heavy snows and freezing conditions results in increased operating expenses and enhances this possibility of a complete draining of the railroad's cash.

In addition, even if the railroad's cash position were to enable it to survive its current precarious position over the next few weeks, the sizeable cost of making payment of back wages required pursuant to Public Law 91–541 would place the railroad in such a deficit position that services could not be continued.

As to finding number 3:

The most practicable sources of funds other than credit include disposition of assets, increased revenues from better services, and reduction of costs. None of these sources provides immediate cash resources to Penn Central at this time.

Disposition of assets includes such items as salvage from the abandonment of excess rail capacity and the sale of nontransportation properties. Abandonment is subject to the abandonment provisions of section 1(18) of the Interstate Commerce Act (49 U.S.C. 1(18)). Potential funds from this source would neither be adequate nor timely to meet Penn Central's immediate needs.

Disposition of nontransportation assets requires an orderly, well structured plan to prevent undue loss of values during liquidation. No long term plan has been developed. It should be noted that as a condition of this guarantee the trustees will have to agree to submit such a plan within 30 days.

Increased revenues from better service cannot be achieved immediately. The cash balances enumerated under the discussion of finding number 2 demonstrate that sufficient funds are not now being generated by the railroad. The fact that the long term prospects may be otherwise is of no immediate benefit.

Reduced costs require a long term program dependent on improved operating efficiencies and reduction in excess capital plant. Increased operating efficiencies require cash which is not available.

As to finding number 4:

The trustees have explored the financing of trustee certificates with the following sources: commercial banks, insurance companies, pension funds, investment bankers, suppliers, railroads, and shippers. Their efforts have been without success. Exhibit 22 of the application contains copies of replies by various firms and institutions to such inquiries. Some of the firms and institutions contacted were—

Morgan Stanley and Co., New York.
The First Boston Corp., New York.
Salomon Brothers, New York.
The Equitable Life Assurance Society, New York.
New York State Teachers Retirement System, Albany, N.Y.
Union Pacific Railroad.
First National City Bank, New York.
Santa Fe Railroad.
Pullman, Inc.
Bethlehem Steel Corp.

The Federal Reserve Bank of New York has confirmed the nonavailability of financing without a guarantee in a memorandum of January 8, 1971. The Under Secretary of the Treasury for Monetary Affairs has corroborated this view in a letter to me of January 11, 1971.

As to finding number 5:

The Penn Central is in great difficulty at this time. It is contemplated that the railroad will continue to have losses in net income for the next 3 to 4 years and that it will suffer continued cash attrition for at least another 2 years. However, at the same time there are real prospects for improving this situation. Under the new and vigorous management of the trustees and their appointees, improvements in operations and overall management techniques are being instituted to turn the railroad around.

We must now look to the future and the steps that may be taken under present management to improve the entire organization. During the latter part of 1970 a reduction of 5,500 employees was effected. A continuing evaluation is underway with the view of further reductions in force contemplated in 1971. Actions have been taken to consolidate duplicate facilities, plans have been developed to apply for abandonment of some 3,800 miles of deficit producing branch lines, upgrading of equipment is in process to the extent permitted by the present severe cash problem, and better cash utilization is being stressed and is a distinct possibility.

Projections of rail freight traffic in 1980 have been made by the Department of Transportation. These indicate that rail freight traffic will grow at the rate of 2.8 percent annually between 1970 and 1980. This percentage growth is based on our best estimate of current 1970 traffic and the BLS estimate of 1980 GNP which gives a long term 4.3 percent annual growth trend (based on 1965). The growth in tonnage will be slightly less.

The Penn Central presently accounts for about 11 percent of national freight ton miles. Well over two-thirds of its traffic originates from or terminates on another line. While the growth rate of the eastern region lags slightly behind the Nation in terms of population and employment, the Penn Central may be expected to attain a growth approaching the 2.8 percent figure.

Aside from the expected growth in freight traffic and steps being taken by present management, the following additional steps, generally involving present or likely future actions of Federal and State agencies, will have a positive impact on improving the Penn Central's ability to become self-sustaining. First, with the assistance of a substantial grant from the Urban Mass Transit Administration, the States of New York and Connecticut are putting the finishing touches

on a program involving the Penn Central's commuter service on the lines of the New Haven Railroad. Under an agreement signed last October, the State of New York will purchase a portion of the Penn Central's lines in New York State for 6.9 million dollars, while the State of Connecticut will lease portions of the Penn Central's commuter lines for 60 years at a payment of $815,000 annually. The two States have also paid Penn Central approximately 4.0 million dollars for 97 passenger cars. The commuter service in question will be operated by the Penn Central for the account of the two States for a management fee of $100,000 annually. The effect of the assumption of these operations by the two States will relieve the Penn Central of an annual cash drain of between $6 and $8 million a year. In addition to this bistate effort, the State of New York will, on or about April 1 of this year, take over the Penn Central's commuter services operating over the Hudson and Harlem divisions of the former New York Central wholly within New York State.

Second, a number of recent actions by the ICC involving such matters as changing the basis of per diem rental on rail freight cars, changes in the apportionment of divisions on joint rates between northern and southern railroad and final approval of the pending 15 percent increase in railroad freight rates could serve to increase substantially the Penn Central's annual revenues.

Third, the Penn Central is making a very vigorous effort to liquidate investments in unneeded nonrailroad facilities which will, over a period of years, generate a certain amount of additional cash for the railroads.

Fourth, the recently enacted Railroad Passenger Service Corporation Act will, over several years, remove a cash drain of approximately 40 million dollars annually from the Penn Central Railroad.

All of these steps are either in process of implementation or will be implemented in the near future. While difficult problems face the trustees in implementing drastic management and operational changes to realize savings and/or increased profits on a short-term basis, present management must be given an opportunity to implement their programs. Achieving an improvement of some 10 to 15 percent in increased revenues and cost reductions will go a long way toward meeting the needs of Penn Central and will be a springboard toward achieving the long-term objectives needed to put the railroad on a self-sustaining basis.

As to finding number 6:

The Penn Central's balance sheet as of October 31, 1970, lists total assets of $4,664,819,602. Under the provisions of section 3(c) of the Act, the trustee certificates, as approved by the court, are to be treated as an expense of administration and receive the highest lien on the railroad's property and priority in payment under the Bankruptcy Act. The agreements entered into with the trustees in connection with a guarantee will provide sufficient opportunity for close and continuing review to assure the preservation of assets sufficient to protect the Government's interest.

Issued in Washington, D.C., on January 13, 1971.

JOHN A. VOLPE,
Secretary of Transportation.

[FR Doc.71-702 Filed 1-15-71;8:52 am]

CIVIL AERONAUTICS BOARD

[Docket No. 22851]

AEROVIAS NACIONALES DE COLOMBIA, S.A. (AVIANCA)

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on January 26, 1971, at 10 a.m., e.s.t., in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before the undersigned examiner.

Dated at Washington, D.C., January 13, 1971.

[SEAL] WILLIAM H. DAPPER,
Hearing Examiner.

[FR Doc.71-662 Filed 1-15-71;8:50 am]

[Docket No. 22900; Order 71-1-51]

BUFFALO AERONAUTICAL CORP.

Order To Show Cause Regarding Establishment of Service Mail Rate

Issued under delegated authority, January 11, 1971.

The Postmaster General filed a notice of intent December 17, 1970, pursuant to 14 CFR Part 298, petitioning the Board to establish for Buffalo Aeronautical Corp. (Buffalo), an air taxi operator, a final service mail rate of 61.47 cents per great circle aircraft mile for the transportation of mail by aircraft between Rochester and Albany, N.Y., based on five round trips per week.

In support of his petition, the Postmaster General states that this route was previously served by Cutlass Aviation, Inc. (Cutlass), and later by Manchester Aviation Co., Inc. (Manchester); that because of circumstances beyond the control of the parties involved, the service on this route will no longer be available by either Cutlass or Manchester; and that Buffalo has agreed to the foregoing rate based on five round trips per week using Beechcraft 18 aircraft.

It is in the public interest to fix, determine, and establish the fair and reasonable rate of compensation to be paid by the Postmaster General for the proposed transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the aforesaid points. Upon consideration of the notice of intent and other matters officially noticed, it is proposed to issue an order[1] to include the following findings and conclusions:

The fair and reasonable final service mail rate to be paid to Buffalo Aeronautical Corp., in its entirety by the Postmaster General pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 61.47 cents per great circle aircraft mile between Rochester and Albany, N.Y., based on five round trips per week.

Accordingly, pursuant to the Federal Aviation Act of 1958 and particularly sections 204(a) and 406 thereof, and the Board's regulations 14 CFR Part 302, 14 CFR Part 298 and the authority duly delegated by the Board in its organization regulations 14 CFR 385.16(f):

It is ordered, That:

1. Buffalo Aeronautical Corp., the Postmaster General, Allegheny Airlines, Inc., American Airlines, Inc., Eastern Air Lines, Inc., Mohawk Airlines, Inc., Northeast Airlines, Inc., United Air Lines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rate for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, as the fair and reasonable rate of compensation to be paid to Buffalo Aeronautical Corp.;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, as specified below; and

3. This order shall be served upon Buffalo Aeronautical Corp., the Postmaster General, Allegheny Airlines, Inc., American Airlines, Inc., Eastern Air Lines, Inc., Mohawk Airlines, Inc., Northeast Airlines, Inc., and United Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

1. Further procedures related to the attached order shall be in accordance with 14 CFR Part 302, and notice of any objection to the rate or to the other findings and conclusions proposed therein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

2. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed therein and fix and determine the final rate specified therein;

3. If answer is filed presenting issues for hearing, the issues involved in determining

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[1] As this Order to Show Cause is not a final action, it is not regarded as subject to the review provisions of 14 CFR Part 385. These provisions will apply to final action taken by the staff under authority delegated in § 385.16(g).

the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307).

[FR Doc.71-666 Filed 1-15-71;8:50 am]

[Docket No. 22628; Order 71-1-54]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Passenger Matters

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 12th day of January 1971.

An agreement has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, among air carriers, foreign air carriers, and other carriers, embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). The agreement, which was adopted for early effectiveness at the Honolulu Worldwide Passenger Fare Conference held September–October 1970, has been assigned the above-designated CAB Agreement number.

The more substantive elements of the agreement, insofar as it applies in air transportation, provide for adjustments in certain normal and promotional fares scheduled to become effective January 1, 1971, within the Western Hemisphere.

Normal first-class and economy fares applicable between the United States and Panama/Colombia would generally be increased. These increases would range between 2 and 16 percent, or between $6 and $68 for round-trip first-class fares, and round-trip economy fares would be increased from $2 to $36, or by 0.5 to 9 percent. First-class and economy excursion fares between the United States and Colombia/Panama/Venezuela would also be increased, generally by $10 round trip in the case of economy-class services.

Minimum-stay requirements for the use of excursion fares would be amended for January 1, 1971, effectiveness so as to have the effect of establishing a new 10-day requirement for southbound travel from New York/Miami to Barranquilla/Medellin and from New York to Bogota/Panama City; increasing from 10 to 14 days the minimum-stay requirement on excursion fare travel between Los Angeles/Miami/New York/San Francisco/Washington, D.C. and Buenos Aires/Santiago; reducing from 10 to 7 days the requirements for northbound travel from Guayaquil/Quito to Miami; and eliminating the present 10-day minimum-stay period for travel from Bogota to Miami.

A new resolution, to be effective January 1, 1971, through March 31, 1972, would govern group inclusive tour (GIT) fares for travel from the United States to points in Colombia and incorporates fares and provisions related to their use which were previously approved by the Board under a current resolution.[1] However, fares would be established for additional markets, and these would provide reductions of about 40 percent from normal round-trip economy-class fares. An existing resolution providing for GIT fares from the United States to Venezuela would be amended by the inclusion of additional fares for travel by groups of 50 or more, and these would provide discounts from applicable round-trip economy fares up to approximately 50 percent.

Other elements of the agreement for expedited effectiveness include amended resolutions governing the sale of air transportation/inclusive tours under installment plans in the currencies of certain South American countries and provisions for the construction of through economy-class fares by carriers using, on certain United States domestic sectors, BAC–111 aircraft having a minimum of 69 seats (the 34-inch seat pitch configuration of which has nine rows of five-abreast seating and six rows of four-abreast), as well as the use of all types of equipment on Hawaiian domestic services.

In support of the agreement, Pan American World Airways, Inc. (Pan American), and Braniff Airways, Inc. (Braniff) indicate that the changes contemplated in the limited number of markets involved will not seriously disrupt travel plans, particularly in light of a minimal number of advance bookings. Pan American adverts to its Latin American operating loss of more than $36 million (before interest expense) for the year ended September 30, 1970, and estimates that the proposed fare changes will provide a 4.3-percent increase in revenues for the markets involved.[2] Braniff estimates that the net revenue increase will not exceed 5 percent in the areas involved.

By Order 70–12–62, dated December 11, 1970, the Board established a procedural date of December 24 for the receipt of comments from interested persons and parties with respect to the subject fare changes. No comments have been received.

We will approve the agreement in light of the depressed earnings situation of the carriers which indicates on its face that there is a need for additional revenues. The proposed normal fares on a per mile basis are comparable to those in effect in other areas and are not unreasonable, while the excursion fare increases flow from the normal fare increases and tend to maintain, in the case of economy excursion service, the same relationships to normal fares as presently exist. The alteration of the minimum-stay requirements does not appear to be unreasonable and the availability of new GIT fares, on the same basis as now applies, to additional U.S. cities should help stimulate air travel from those cities to Colombia and Venezuela. While we are herein approving the agreement, we believe it should be implemented on statutory notice. The traveling public and travel agents need a reasonable period of time to accommodate themselves to the fare changes. The 30-day statutory notice requirement, among other things, is intended to provide such a period. Accordingly, we are approving the agreement effective this date, provided that tariffs implementing the changes shall not be filed on less than 30 days' statutory notice.

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, makes the following findings:

1. The Board does not find the following resolutions, incorporated in the agreement indicated, to be adverse to the public interest or in violation of the Act:

CAB agreement 22050	IATA No.	Title	Application
R-2	001L	Inclusion of Thisted in Attachments	2; 1/2; 2/3; 1/2/3.
R-3	001y	TC1 Special Effectiveness Resolutions (NEW)	1.
R-4	001yy	TC1 Escape Resolution	1.
R-14	003	Standard Rescission Resolution	1/2 (N. Atl.).
R-5	014a	Expedited Construction Rule for Passenger Fares (Amending)	1; 3/1; 1/2 (N. Atl.) 1/2/3 (N. Atl.).
R-6	051	TC1 First Class Fares (Amending)	1.
R-7	061	TC1 Economy Class Fares (Amending)	1.
R-8	070	TC1 Excursion Fares (Amending)	1.
R-9	084j	TC1 14 Day Group Inclusive Tour Fares—Venezuela (Amending.).	1.
R-11	281	Sale of Air Transportation/Inclusive Tours Under Instalment Plans in Currencies of South American Countries Marked with an Asterisk in Resolution 021b—Except Argentina, Brazil, Chile, Paraguay, Peru, and Uruguay (Revalidating and Amending).	1.
R-12	281e	Sale of Air Transportation/Inclusive Tours Under Instalment Plans in Local Currency in Peru (Revalidating and Amending.).	1.

2. The Board does not find that the following resolution, incorporated in the agreement indicated, is adverse to the public interest or in violation of the Act: *Provided*, That approval shall be subject to the conditions hereinafter stated:

CAB agreement 22050	IATA No.	Title	Application
R-10	084m	TC1 Group Inclusive Tour Fares USA—Colombia (NEW)	1

[1] IATA Resolution 084i, approved by Orders 70–4–73, dated Apr. 15, 1970, and 70–4–142, dated Apr. 28, 1970.

[2] PAA estimates that at the experienced traffic levels for the year ended September 1970, their additional revenues would have been $765,000.

Provided that:

(a) The provision which at departure would permit a lesser number of passengers than that prescribed by the resolution to travel shall not be limited to situations caused by circumstances beyond the control of the passengers dropping out of the group and the balance of the group may travel at no added costs.

(b) In the event a passenger discontinues his journey en route for any reason, the amount of the fare paid may be applied as a credit toward the purchase of transportation at the applicable fare calculated from the original point of origin.

(c) Full refund shall be made in the event of death or illness of the passenger or of a member of the passenger's immediate family prior to travel.

(d) The amount of the forfeiture to be imposed in the event of cancellation by the group or member of the group at departure time for any reason shall not exceed 25 percent of the fare paid and after departure the forfeiture shall not exceed 25 percent of the excess of the price of the group-fare ticket over the cost of normal-fare transportation from point of origin to point of cancellation.

3. The Board does not find the following resolution, incorporated in the agreement indicated, and which is not directly applicable in air transportation, to be adverse to the public interest or in violation of the Act:

CAB agreement 22050	IATA No.	Title	Application
R-1	001i	Closing and Opening of Ndola Airport (NEW)	2

Accordingly, it is ordered, That:

1. Those portions of Agreement CAB 22050 set forth in finding paragraphs 1 and 3 above be and hereby are approved;

2. That portion of Agreement CAB 22050 set forth in finding paragraph 2 be and hereby is approved, subject to the conditions stated therein; and

3. Insofar as air transportation as defined by the Act is concerned, tariff filings shall not be made to implement the agreement prior to this date, and such tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing.

Any air carrier party to the agreement, or any interested person, may, within 15 days from the date of service of this order, submit statements in writing containing reasons deemed appropriate, together with supporting data, in support of or in opposition to the Board's action herein. An original and 19 copies of the statements should be filed with the Board's Docket Section. The Board may, upon consideration of any such statements filed, modify or rescind its action herein by subsequent order.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-667 Filed 1-15-71;8:50 am]

[Docket No. 22508]

MAINLAND-PONCE SERVICE INVESTIGATION

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on February 8, 1971, at 10 a.m., e.s.t., in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner Hyman Goldberg.

Requests for information and evidence, statements of proposed issues, and proposed procedural dates shall be filed with the Examiner, Bureau Counsel, and the parties named in Orders 70-8-102 and 70-12-49, on or before February 1, 1971. Petitions for leave to intervene shall be filed on or before the same date.

Dated at Washington, D.C., January 13, 1971.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[FR Doc.71-663 Filed 1-15-71;8:50 am]

[Dockets Nos. 21866, 22784; Order 71-1-62]

OZARK AIR LINES, INC.

Order of Investigation and Suspension Regarding Fare Increases in Short-Haul Markets

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 13th day of January 1971.

By tariff revisions[1] marked to become effective January 14, 1971, Ozark Air Lines, Inc. (Ozark), proposes to increase its regular and discount fares in 36 Chicago markets under 500 miles.[2]

In support of its proposal, Ozark asserts that because of its deteriorating financial condition it is in particular need of increased revenues at this time. The carrier asserts that the Chicago markets in which it is seeking a fare increase have higher cost levels and are not typical of the industry or Ozark's system as a whole. Ozark believes its proposal is consistent with the Board's findings in Orders 70-11-134 and 70-11-136 in which the Board indicated approval of fare increases in specific markets having cost and other characteristics similar to those for which it is seeking increases here.

No complaints have been filed.

Ozark's instant proposal to increase certain regular fares comes within the scope of the Domestic Passenger-Fare Investigation now actively in process and the lawfulness of these fares will be determined in that proceeding. It is anticipated that a decision on the fare level and directly related issues will be reached by about April 1, 1971. The issue now before us is whether to permit to become effective or suspend these proposed fares pending a final determination of their lawfulness in that investigation.

Ozark's fare filings involves only 36 markets out of its entire system and purports to be justified on facts and circumstances peculiar to operations at and between these particular points. As such, this filing does not involve an evaluation of basic costs of service, including load factors, now underway in the passenger-fare investigation to the same degree as its earlier tariff proposal to increase all fares which were suspended pending investigation.[3]

We believe that the information furnished by Ozark, as well as other information available to the Board, adequately establishes that Chicago experiences congestion of a magnitude which results in costs atypical of those prevailing in the air transport system in general and Ozark's system in particular. Ozark has shown that its Chicago terminal costs are substantially higher than it experiences elsewhere on its system, and its scheduled block times on flights over Chicago segments are one-quarter to one-third longer than over segments of comparable distance not involving Chicago. Accordingly, with the exceptions noted below, we will permit the proposed increases in the Chicago markets.

There are some instances where Ozark, in constructing its fares, employed rounding techniques inconsistent with previous Board orders. Consequently, we will suspend those fares which are enumerated in Appendix A.[4]

Upon consideration of all relevant matters, the Board finds that the proposed military fare increases, which are herein suspended, may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful and should be investigated.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof.

It is ordered, That:

1. An investigation is instituted to determine whether the YM class fares and provisions described in Appendix A hereto, and rules, regulations, or prac-

[1] Revisions to Airline Tariff Publishers, Inc., Agent, Tariff CAB No. 136.

[2] Present coach fares in markets of 200 miles or less would be increased, in most cases, by approximately $2, and in markets between 201 and 500 miles by approximately $3.

[3] Order 70-12-45.

[4] Appendix A filed as part of the original document.

tices affecting such fares and provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful fares and provisions, and rules, regulations, and practices affecting such fares and provisions;

2. Pending hearing and decision by the Board, the fares and provisions described in Appendix A [4] hereto are suspended and their use deferred to and including April 13, 1971, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The investigation of the military fares ordered herein is hereby consolidated into Docket 22784; and

4. A copy of this order will be filed with the aforesaid tariff and served upon Ozark Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[5]

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-668 Filed 1-15-71;8:51 am]

[Docket No. 20051; Order 71-1-55]

PAN AMERICAN WORLD AIRWAYS, INC.

Order Authorizing Discussions and Approving Agreements

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 12th day of January 1971.

By letter dated November 24, 1970, Pan American World Airways, Inc. (Pan American), requests authority from the Board to engage in joint discussions with other United States and foreign airlines using the International Arrivals Building (IAB) at John F. Kennedy Airport. The purpose of such discussion is to resolve the problem posed by a letter of November 4, 1970, of the Port of New York Authority (PNYA) which was sent to all airlines using IAB requesting that the airlines arrange to limit their passenger arrivals beginning June 15, 1971, in order to alleviate critical passenger congestion in the Custom facilities at IAB.[1]

PNYA's letter expresses a very serious concern for the extreme passenger congestion situation at IAB beginning in the summer of 1971. The letter states that PNYA has completed an analysis and review of this past summer's experience, has made a comparison with its experience of the preceding 1969 summer, and has arrived at projections for the summer of 1971. The letter further states in effect that, based upon its study of the problem and, knowing no way whereby the capacity of Kennedy Airport for the summer of 1971 can be increased to accommodate the anticipated passengers arriving in peak hours who require Federal inspection clearances, PNYA arrived at its decision to request the airlines concerned to plan passenger arrivals. PNYA indicates its awareness that planning passenger arrival times at IAB to given maximums will not guarantee the elimination of intolerable congestion, since delays and other variances in actual flight arrivals vis-a-vis scheduled flight arrival will occur. However, PNYA believes that planning arrivals so that they do not exceed the maximum requested will substantially lessen the probability of unacceptable congestion at IAB. PNYA states that, while it has under review measures to be taken in the event peak passenger arrivals at IAB in the summer of 1971 congest the IAB to an unacceptable level, at this time the only measure it knows of is to hold arriving passengers on aircraft until the facility can accept them. PNYA believes it is urgent that the airlines seek and gain approval from the Board to discuss and arrange their passenger arrivals at IAB. In addition, PNYA notes the existence of an Airline Scheduling Committee which was formed with Board approval to allocate hourly slots among the airlines serving Kennedy Airport and other airports subject to the Federal Aviation Administration's High Density Traffic Airports regulation,[2] and suggests that the airlines concerned may wish to use the Airline Scheduling Committee as a vehicle to arrange their passenger arrivals at the IAB.

The Bureau of Customs of the Department of the Treasury (Customs) has indicated its complete agreement with the recommendations of PNYA to achieve the elimination of excessive peak arrival periods.[3] Customs notes its responsibility for carrying out the President's priority programs of suppressing the flow of narcotics and dangerous drugs coming into the United States, and attributes the major drawback to passenger facilitation at IAB to the continuation of airline scheduling patterns which concentrate the bulk of arriving passengers within certain peak hours. Customs advises that it plans to install several additional inspection belts in each wing of the IAB and provide sufficient manpower to staff the additional belts during the peak summer hours. Based upon the advice of the Director of Customs at Kennedy Airport, Customs indicates that it can effectively handle the 2,500 passengers per hour limitation requested by PNYA for IAB.

Upon consideration of the matter, we have decided to grant Pan American's request for multicarrier discussions, subject to the restrictions set forth below. The congestion caused by large numbers of simultaneously arriving passengers at IAB presents extraordinary circumstances which warrant the affected carrier's collective consideration. Accordingly, we find that the public interest in reducing the IAB congestion problem warrants a grant of approval for discussions and joint arrangements among affected airlines. However, we also find that the public interest requires the imposition of the restrictions hereinafter stated.

To begin with, the area of concern presently before the Board involves international arrivals of passengers at IAB, rather than, as in previous cases, the number of movements of total aircraft at various high density airports. For this reason, the parties eligible to enter into discussions and joint arrangements for the adjustment of international passenger arrivals at IAB will be limited to those United States and foreign air carriers that transport international passengers for arrival in the United States at IAB and are subject to clearance by U.S. inspection agencies, and the discussions will be limited to the facilities congestion problem at IAB. On the other hand, the discussions need not be limited to the movement of aircraft arriving at IAB, but may extend to consideration of such factors, for example, as types and characteristics of aircraft carrying international passengers to IAB, load factors on IAB destined aircraft, the number of passengers actually being transported, time of arrivals, the facilitation of inspection clearances, and proposed remedies for or accommodation to the facilities congestion problem.

Also, PNYA has suggested that the Airline Scheduling Committee, presently established and in operation under prior Board authority to discuss scheduling adjustment at high density airports, may, upon the airlines' election, serve as a vehicle to arrange passenger arrivals at the IAB. While the New York Scheduling Committee does function in the area of transportation operations at John F. Kennedy International Airport, its discussions also include LaGuardia Airport and, when made subject to the regulations of the Federal Aviation Administration and Board approval, Newark Airport.[4] Thus, the number of carriers represented on this Committee may be greater than those directly concerned with the facilities congestion problem at the IAB. However, the established framework of the existing Scheduling Committees may be useful for the instant

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[5] Concurring and dissenting statements of Vice Chairman Gilliland and Member Minetti filed as part of the original document.

[1] Specifically, PNYA requested all airlines whose arriving passengers pass through IAB to plan their respective passenger arrivals so that, beginning June 15, 1971, there will be a maximum of (1) 2,500 passengers arriving at the IAB during any hour; (2) 1,250 passengers arriving at each of the two wings of the IAB during any 60-minute period; (3) 750 passengers arriving at each of the two wings of the IAB in any 30-minute period; and (4) 500 passengers arriving at each of the two wings of the IAB in any 15-minute period.

[2] The New York Scheduling Committee was established to discuss airline scheduling adjustments in the New York area which includes JFK Airport, as well as LaGuardia and Newark Airports, and Board approval of its activities has been extended through Oct. 24, 1971. See Order 70-11-112, Nov. 23, 1970.

[3] Letter of Nov. 30, 1970, from the Acting Commissioner, Bureau of Customs, to Mr. S. G. Tipton, President, Air Transport Association.

[4] Order 70-11-112, Nov. 23, 1970.

discussions. We shall not bar the use of the current Scheduling Committee framework, subject to our earlier discussed condition pertaining to the parties who may participate in such discussions.

The procedures to be followed in conducting the discussions will be left to the discretion of the parties involved. However, we will require that adequate notice of any meeting be given and that a Board observer be permitted to attend each meeting as well as any representatives designated by PNYA, Bureau of Customs and other interested Federal departments and inspection agencies. In addition, we will require the carriers to file within 5 days of each meeting a full and complete report of each IAB carrier meeting summarizing the intercarrier discussions and detailing the arrangements made in and resulting from those discussions. Since the Board is granting prior approval to the holding of the IAB carriers' discussions and arrangements,[5] these reports will enable the Board to determine whether any subsequent Board action is necessary. Further, our approval shall extend to October 24, 1971, the present expiration date of the New York Scheduling Committee.

Our approval of the carriers' discussions and arrangements also extends to resultant agreements among the discussants for the adjustment of schedules operated to IAB, to further the PNYA and Customs' needs. Such prior approval is being granted out of recognition of the need for expedition relating to the discussions and plans for the 1971 peak season. The reporting conditions and our retention of jurisdiction will provide us with the means of taking any further action on such agreements as may be in the public interest.

Accordingly, it is ordered, That:

1. Pan American World Airways, Inc., is hereby authorized to hold discussions and enter into joint arrangements with other United States and foreign air carriers providing foreign air transportation to New York City at IAB, John F. Kennedy Airport, to alleviate the facility congestion for international passenger arrivals at such terminal, subject to the following conditions:

(a) The purpose of the discussions shall be to facilitate the voluntary adjustments in international passenger arrivals so that the total of such arrivals will not exceed limitations of 2500 passengers per hour and, to the extent feasible, such further limitations as herein requested by Port of New York Authority and supported by the Bureau of Customs of the Department of the Treasury;

(b) Discussions and arrangements shall be limited to the matters affecting international passenger arrival facilities congestion problems only at IAB, John F. Kennedy Airport in New York City;

(c) The authorization also constitutes approval pursuant to section 412 of the Federal Aviation Act of any agreement for the adjustment of schedules which may be made among the discussants stemming solely from activities in conformity with this order;

(d) Eligibility to participate in the activities authorized herein shall extend to all certificated air carriers and foreign air carriers authorized to provide scheduled services at John F. Kennedy Airport, New York City, all supplemental air carriers, and all foreign air carriers holding permits authorizing charter foreign air transportation as defined in § 214.2 (a) of the Board's economic regulations: *Provided,* That service by such carriers at the John F. Kennedy Airport is in fact provided at the International Arrivals Building and is there subject to Customs' clearance;

(e) A notice of any meeting called pursuant to this order shall be filed with the Board in this docket and mailed to all carriers referred to in subparagraph (d), supra, and agencies and authorities referred to in paragraph 4, infra, at least 7 calendar days prior to such meeting; a report (or complete and accurate minutes) of all discussions, and details of all arrangements entered into, will be made, and copies thereof shall be served on each of the above persons upon whom a meeting notice must be mailed within 14 days after the conclusion of each meeting, and two copies thereof shall be filed with the Board within 5 working days after the conclusion of each meeting or at the same time that copies are served upon the carriers, whichever is earlier;

(f) Representatives of the Board and all interested Federal departments and agencies, of all carriers described in subparagraph (d), above, and of the Port of New York Authority shall be permitted to attend the meetings;

(g) The discussants shall not discuss schedules in particular city pairs or submit information concerning their proposed services or schedules in such a fashion as to indicate the city pairs involved;

(h) The authorizations and approvals herein shall not be construed as authorizing discussions of rates, fares, charges, or inflight and other services in connection with air transportation; and

(i) There shall be filed with the Board, by whatever body the discussants form or utilize for their activities, a report, in triplicate, containing the information submitted to it by the carriers in advance of a meeting of that body showing the respective carriers' proposed schedules. Such report shall be filed with the Board at the same time that it is transmitted to the carriers;

2. The authorization granted herein shall expire on October 24, 1971, and this order may be earlier revoked or amended at any time at the discretion of the Board;

3. The Board reserves the right to disapprove or modify any arrangements resulting from the discussions herein authorized; and

4. A copy of this order shall be served upon all U.S. certificated air carriers and all foreign air carriers holding permits from the Board which provide foreign air service to IAB, John F. Kennedy Airport; the Departments of the Treasury, Transportation, and Justice; the Federal Aviation Administration; and the Port of New York Authority.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-669 Filed 1-15-71;8:51 am]

[5] As in the case of our approval of the Scheduling Committee Agreements, our approval will preclude discussions or arrangements regarding schedules in particular city pairs and the submission of information concerning proposed service or schedules in a fashion which will indicate the city pairs involved. See Order 68-12-11, Dec. 3, 1968.

[Dockets Nos. 22392, 22393; Order 71-1-56]

PIEDMONT AVIATION, INC.

Order Denying Temporary Suspension and Setting Application for Hearing

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 12th day of January 1971.

Application of Piedmont Aviation, Inc., for amendment of its certificate of public convenience and necessity for Route 87.

Application of Piedmont Aviation, Inc., for authority to suspend service temporarily at Blacksburg-Radford-Pulaski, Va.

Piedmont Aviation, Inc. (Piedmont) has filed an application [1] to amend its certificate of public convenience and necessity for Route 87 by deleting Blacksburg-Radford-Pulaski, Va. (hereinafter New River Valley). Piedmont also filed an application [2] requesting authority to suspend service temporarily at New River Valley until the Board acts upon its application in Docket 22392.

In support of its application in Docket 22393, Piedmont alleges, inter alia, that in spite of normal promotional efforts and upgrading of flight equipment, New River Valley has not generated sufficient passenger traffic to warrant the continuation of air service; [3] that continuation of service at New River Valley would generate a subsidy requirement of approximately $83,544, or $13.12 per passenger; that nearby Roanoke now diverts much of the relatively small traffic potential of New River Valley due to superior service there and a newly completed four-lane divided highway which makes facilities more readily available to potential New River Valley passengers; and that even were it economically feasible to operate jet aircraft at New River Valley, Piedmont could not do so because the runway cannot accommodate Boeing 737 aircraft.

[1] Docket 22392.
[2] Docket 22393.
[3] Piedmont alleges that it enplanes only 1.8 passengers per departure at New River Valley in 1969.

Answers in opposition were filed by several parties.[4] Included among them was the New River Valley Airport Commission[5] representing several civic parties, alleging, inter alia, that Piedmont has not fully exploited the area's passenger and cargo potential because of poor scheduling and customer service and unnecessary referral of persons to service at Roanoke, and that continued air service will be essential if the area is to continue growing as it has in the past 10 years.

Upon consideration of the pleadings and all the relevant facts, we have decided to deny Piedmont's request for a temporary suspension of service, and to set for hearing Piedmont's application to delete Blacksburg-Radford-Pulaski from its certificate.

We believe that under all the circumstances it would be appropriate to consider, in a full evidentiary hearing, the conflicting assertions referred to above regarding Piedmont's low traffic generation. We also note that there will be no replacement service at New River Valley should Piedmont's application be granted, and the Blacksburg area will be without air service for the first time since 1962.

Accordingly, it is ordered, That:

1. The application of Piedmont Aviation, Inc., in Docket 22393, be and it hereby is denied;

2. The application of Piedmont Aviation, Inc., in Docket 22392, be and it hereby is set for hearing at a time and place to be hereafter designated; and

3. This order shall be served on the parties served with the foregoing applications and on Piedmont Aviation, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-670 Filed 1-15-71;8:51 am]

[Docket No. 22374]

PIEDMONT AVIATION, INC.

Notice of Prehearing Conference Regarding Deletion of Elizabeth City, N.C.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on February 5, 1971, at 10 a.m., e.s.t., in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner William H. Dapper.

Requests for information and evidence, statements of proposed issues, and proposed procedural dates shall be submitted to the Examiner, Bureau Counsel, the carrier and the city on or before January 29, 1971.

Dated at Washington, D.C., January 13, 1971.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[FR Doc.71-664 Filed 1-15-71;8:50 am]

[Docket No. 22301]

PIEDMONT AVIATION, INC.

Notice of Prehearing Conference Regarding Deletion of Southern Pines/Pinehurst/Aberdeen, N.C.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on February 4, 1971, at 10 a.m., e.s.t., in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner William H. Dapper.

Requests for information and evidence, statements of proposed issues, and proposed procedural dates should be submitted to the Examiner, Bureau Counsel, the carrier, and the city points on or before January 28, 1971.

Dated at Washington, D.C., January 13, 1971.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[FR Doc.71-665 Filed 1-15-71;8:50 am]

[Docket No. 23001; Order 71-1-53]

TRANS WORLD AIRLINES, INC.

Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 12th day of January 1971.

By tariffs variously bearing posting and issue dates of November 30 and December 11, and marked to become effective January 14, 1971, Trans World Airlines, Inc. (TWA), proposes to establish multicontainer rates in the westbound direction only from New York, Newark, Boston, and Philadelphia to Los Angeles and San Francisco.

The proposal provides a minimum charge per container, for nine or more Type A containers, and a rate per hundredweight for weight in excess of 5,000 pounds in such container. In addition, shipments of nine or more Type A containers may be accompanied by additional traffic, at comparable rates, in LD-3 and LD-7 containers.

The proposed minimum charges result in reductions ranging from 9 to 14 percent for a 3,200-pound container load (equal to the minimum weight of the present Type A single container rates), and from 35 to 39 percent for a 5,000-pound container. The proposed multicontainer excess-weight rates represent further reductions from the present single-container excess rates of from 13 to 18 percent.[1]

Complaints requesting investigation and suspension have been filed by American Airlines, Inc. (American), and The Flying Tiger Line Inc. (Flying Tiger). The complaints assert, inter alia, that the proposed rates and charges are not cost-justified and that the particular rate levels are below the level of five or more Type A multicontainer rates now under suspension by the Board, supra, and would be uneconomic as a basic rate for the carriage of general commodities in prime markets in the predominant westbound direction. In addition, the complainants allege the proposal is discriminatory against the single container shipper and that these reduced multicontainer rates are not the answer to the competitive problem presented by the cargo charters.

In support of its proposal[2] and in answer to the complaints, TWA states that (1) the proposed rates are intended to meet the diversionary competition of certain regularized charter operations; (2) the minimum shipment size is sufficiently above that of existing traffic to protect present revenues from dilution; (3) proposed rates provide sufficient revenue to cover all out-of-pocket costs and provide a contribution to overhead; and (4) the nature of the filing will lead to consistent daily utilization of the capacity required to move such multicontainer shipments.

Upon consideration of the complaints and other relevant matters, the Board finds that the proposal may be unjust, unreasonable, unjustly discriminatory, unduly preferential, or unduly prejudicial, or otherwise unlawful, and should be suspended pending investigation.

The proposed rates, effecting reductions up to 39 percent, would be substantially below the multicontainer rates suspended by the Board on November 27, 1970, in Order 70-11-137. While conceding that the rates will not cover fully allocated costs, TWA contends that the rates will provide revenue sufficient to cover all incremental costs and provide a contribution to overhead of $1,064 per flight. As the complaints point out, there

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[4] They include the Division of Aeronautics of the State Corporation Commission of Virginia; the board of supervisors of Giles County; the New River Valley Planning District Commission; the town counsel of Pulaski; the New River Valley Industrial Commission; the Pulaski County board of supervisors; the counsel of the town of Dublin; the counsel of the city of Radford; and the counsel of the town of Pearisburg.

[5] The Commission also included in its answer a request that the Board make Allegheny Airlines, Inc., and Southern Airways, Inc., parties to the case. However, these carriers have filed no motions for intervention in this proceeding, and the Commission has made no showing that Allegheny or Southern could serve New River Valley on an economic basis. In these circumstances, the Board has decided to deny the request that Allegheny and Southern be made parties.

[1] The proposed rates also range from 6 to 9 percent below the five-or-more Type A multicontainer rates suspended by the Board by Order 70-11-137 dated Nov. 27, 1970.

[2] The Board's economic regulations provide that there shall be submitted with tariff filings an explanation of the new or changed matter, the reasons for the filing, including if applicable the basis of rate making employed, as well as the economic data or information on which the carrier intends the Board rely (14 CFR 221.165). TWA's initial justification did not accompany the tariff filing transmittal as required by the regulations, and in fact was submitted one week after the tariff filing. A subsequent communication to supplement the original justification was submitted, dated Dec. 18, 1970, but was not directed to the Civil Aeronautics Board Tariffs Section as contemplated by the regulations (14 CFR 221.162). While the Board is considering the instant filings on the merits, carriers are advised that failure to comply with the foregoing regulations may result in rejection of the tariff filing.

is no requirement in the tariff that all nine containers will necessarily move on the same aircraft, or even be tendered at the same time, and there is therefore no sound basis to assume that the particular aircraft transporting this traffic will operate at the high load factor assumed.

There is no basis to assume that the proposed rates will generate traffic which is not now moving by air and the lower rates may significantly dilute the revenues from the carriers' prime westbound service. There are undoubtedly economies in handling containerized traffic, and the existing rate structure should and does provide an incentive for unitization and density. However, the proposed rates appear to be out of proportion to the savings potential.

We do not discount the contention that charter operations may be competitive with scheduled service.[2] We do not believe, however, that the answer to this competitive problem lies in the establishment of rates which appear to be uneconomic for scheduled freight services and which would not be profitable in the long run.

The Board has previously suspended a proposal to extend multicontainer rates to additional markets (Order 70-7-1), and has suspended a proposal to extend the life of the then existing multicontainer rates (Order 70-11-137) upon grounds of discrimination where no adequate cost justification was provided to support the lower unit rates for shipments of multicontainers. TWA has not purported to show lower unit costs in handling multicontainers compared with single containers. The proposed discounts widen the spread between single-container and multicontainer shipments and thereby aggravate the discrimination.[4]

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 1002 thereof:

It is ordered, That:

1. An investigation is instituted to determine whether the rates and charges described in Appendix A hereto,[5] and rules, regulations, or practices affecting such rates and charges, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful rates and charges, and rules, regulations, and practices affecting such rates and charges;

2. Pending hearing and decision by the Board, the rates and charges described in Appendix A hereto[5] are suspended and their use deferred to and including April 13, 1971, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The proceeding herein is assigned for hearing before an examiner of the Board, at a time and place hereafter to be designated;

4. The complaints of American Airlines, Inc. in Docket 22909, and The Flying Tiger Line Inc., in Docket 22922, are dismissed, except to the extent granted herein; and

5. Copies of this order shall be filed with the tariffs and served upon American Airlines, Inc., The Flying Tiger Line Inc., and Trans World Airlines, Inc., which are hereby made parties to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-671 Filed 1-15-71;8:51 am]

[2] The complainants recognize the competitive problem of charter operations, however, they urge that the instant proposal is not the solution to the problem. Rather, American and Flying Tiger urge that the Board take action in Docket 22057, wherein scheduled carriers have requested that the Board disapprove charter agreements between Airlift and Shulman as well as the Shulman/WTC joint loading agreement.

[4] In addition, there is an inversion in the rates which would warrant suspension of the proposal. Specifically, the minimum charges per container produce a lower rate per 100 pounds than the rate per 100 pounds which would apply to excess weight, as shown by the following example:

		From New York to Los Angeles		
Container type	Minimum charge	Minimum weight	Average rate per cwt	Rate per cwt for excess weight in excess of minimum weight
A	$640	5,000	$12.80	$14
LD-3	215	1,667	12.89	14
LD-7	490	3,750	13.07	14

[5] Appendix A filed as part of the original document.

FEDERAL HOME LOAN BANK BOARD

[H.C. No. 83]

H. F. AHMANSON & CO. AND AHMANCO, INC.

Notice of Receipt of Application for Approval of Acquisition of Control of Mountain View Savings and Loan Association

JANUARY 13, 1971.

Notice is hereby given that the Federal Savings and Loan Insurance Corporation has received an application from the H. F. Ahmanson & Co., Los Angeles, Calif., a unitary savings and loan holding company which is controlled by Ahmanco, Inc., Los Angeles, Calif., for approval of acquisition of control of the Mountain View Savings and Loan Association, Mountain View, Calif., an insured institution, under the provisions of section 408(e) of the National Housing Act, as amended (12 U.S.C. 1730a (e)), and § 584.4 of the regulations for Savings and Loan Holding Companies, said acquisition to be effected by the merger of Mountain View Savings and Loan Association into Home Savings and Loan Association, an insured subsidiary of H. F. Ahmanson & Co., by means of an exchange of shares of Mountain View for cash and shares in H. F. Ahmanson & Co. Comments on the proposed acquisition should be submitted to the Director, Office of Examinations and Supervision, Federal Home Loan Bank Board, Washington, D.C. 20552, within 30 days of the date this notice appears in the FEDERAL REGISTER.

[SEAL] JACK CARTER,
Secretary,
Federal Home Loan Bank Board.

[FR Doc.71-609 Filed 1-15-71;8:46 am]

FEDERAL POWER COMMISSION

[Docket No. CP71-173]

CITIES SERVICE GAS CO.

Notice of Application

JANUARY 12, 1971.

Take notice that on January 4, 1971, Cities Service Gas Co. (applicant), Post Office Box 25128, Oklahoma City, OK 73125, filed in Docket No. CP71-173 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, installation, and operation of certain transmission and compressor facilities, as hereinafter described, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, applicant proposes to install and operate one 2,000-horsepower unit at its existing North Ulysses Compressor Station in Kearny County, Kans., 3,500-horsepower at its existing United Compressor Station in Grant County, Kans., and one 2,000-horsepower compressor unit at its existing Straight Compressor Station in Texas County, Okla. Applicant also proposes to construct and operate approximately 16.4 miles of 26-inch pipeline and related appurtenant facilities paralleling and looping its existing 26-inch Blackwell-Grabham pipeline in Chautauqua and Montgomery Counties, Kans., and approximately 5 miles of 12-inch pipeline and related appurtenant facilities paralleling and looping its existing 8-inch Fort Scott pipeline in Allen County, Kans.

Applicant states that the proposed facilities are necessary to insure applicant's ability to continue to meet its customers' demands for natural gas under peak day conditions, and will create needed reserve capacity.

Applicant states that the total estimated cost of the proposed facilities is $4,300,000, which will be paid from treasury cash.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 2, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and

procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[FR Doc.71-616 Filed 1-15-71;8:47 am]

[Docket No. CP71-171]

EASTERN SHORE NATURAL GAS CO.

Notice of Application

JANUARY 11, 1971.

Take notice that on December 29, 1970, Eastern Shore Natural Gas Co. (applicant), 114 East Main Street, Salisbury, MD 21801, filed in Docket No. CP71-171 an application pursuant to section 7(c) of the Natural Gas Act for authority to transport and sell 140 Mcf of LGA-1 gas service (liquefied natural gas) to certain of its resale customers, as hereinafter described, all as more fully set forth in this application which is on file with the Commission and open to public inspection.

Specifically, applicant requests authority to furnish storage service in accordance with the following schedule:

Customer	Daily demand	Capacity volume
Cambridge Gas Co.	15	315
Chesapeake Utilities Corp., Citizens Gas Division	40	765
Dover Gas Light Division	75	1,470
Sussex Gas Division	10	220
Total	140	2,770

Applicant states that its service proposal is dependent upon the currently pending application in Docket No. CP71-162, filed by its supplier, Transcontinental Gas Pipe Line Corp., wherein the latter pipeline seeks authority to sell 140 Mcf per day of liquefied natural gas service to Eastern Shore. Applicant further states that its service will provide substantial economic and operational benefits to the several distribution companies to which service is now proposed.

Applicant states that the proposed service can be made effective without the construction of any new transmission facilities and will not require any new delivery points to the proposed customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 2, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[FR Doc.71-640 Filed 1-15-71;8:48 am]

[Docket No. CS71-169, etc.]

FRANCIS OIL & GAS, INC., ET AL.

Notice of Applications for "Small Producer" Certificates [1]

JANUARY 12, 1971.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce from areas for which just and reasonable rates have been established, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 5, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

Docket No.	Date filed	Name of applicant
CS71-169	12-18-70	Francis Oil & Gas, Inc. (Operator), et al., 4120 East 51st St., Tulsa, OK 74135.
CS71-170	12-18-70	P. C. Frazee, 301 North Main, Syracuse, KS 67878.
CS71-171	12-21-70	A. R. Dillard (Operator) et al., 1600 10th St., Wichita Falls, TX 76301.
CS71-172	12-21-70	John A. Hairford, Post Office Box 594, Hooker, OK 73945.
CS71-173	12-21-70	Westmore Drilling Co., Inc. (Operator), et al., Post Office Box 206, Chapin Bldg., Medicine Lodge, KS 67104.
CS71-174	12-22-70	R. J. Patrick, Post Office Box 1273, Liberal, KS 67901.
CS71-175	12-28-70	Rudman Resources, Inc., 1730 Mercantile Dallas Bldg., Dallas, TX 75201.
CS71-176	12-28-70	Williams Properties, Inc., 1730 Mercantile Dallas Bldg., Dallas, TX 75201.
CS71-177	12-28-70	Donald W. Jackson, 1411 North Carlton, Liberal, KS 67901.
CS71-178	12-30-70	Graham-Michaelis Drilling Co. and Sierra Petroleum Co., Inc., 302 G-M Bldg., 211 North Broadway, Wichita, KS 67202.
CS71-179	12-18-70	Herman Geo. Kaiser (Operator) et al., 4120 East 51st St., Tulsa, OK 74135.

[FR Doc.71-639 Filed 1-15-71;8:48 am]

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket No. CP71-174]

LONE STAR GAS CO.

Notice of Application

JANUARY 11, 1971.

Take notice that on January 4, 1971, Lone Star Gas Co. (applicant), 301 South Harwood Street, Dallas, TX 75201, filed in Docket No. CP71-174 a budget-type application pursuant to section 7(c) of the Natural Gas Act as implemented by § 157.7(c) of the Commission's regulations for a certificate of public convenience and necessity authorizing the construction, during the calendar year 1971, and operation of gas sales or transportation facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct facilities for sales of natural gas to industrial customers located outside the franchise area of local distributors and miscellaneous rearrangements including changes in existing field operations or relocation of existing facilities. Applicant states that the maximum delivery to any one customer will not exceed 100,000 Mcf annually, and that none of the gas will be used for boiler fuel purposes.

Applicant states that the requested budget-type certificate authorization will avoid the preparation and processing of individual application for each minor installation or rearrangement, procedures which are expensive and time consuming to applicant and to the Commission.

Applicant states that the total estimated cost of the proposed facilities will not exceed $200,000, with no single project to exceed $25,000. The entire cost of the proposed facilities will be financed from cash on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 2, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[FR Doc.71-641 Filed 1-15-71;8:48 am]

[Docket No. CP71-169]

MID LOUISIANA GAS CO.

Notice of Application

JANUARY 12, 1971.

Take notice that on December 28, 1970, Mid Louisiana Gas Co. (applicant), Post Office Box 1707, Shreveport, LA 71102, filed in Docket No. CP71-169 an application pursuant to section 7(c) of the Natural Gas Act seeking authorization for: (i) The development and operation of an underground reservoir for the storage of natural gas, to be designated the Hester Storage Field; (ii) the construction and operation of certain facilities to deliver gas to and from the storage field; and (iii) the sale of changed volumes of natural gas to various existing resale customers of applicant, as hereinafter described, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states it proposes to acquire rights and interests and to install facilities, including a small compressor station of 2,200-horsepower, to develop and operate the Discorbis D-2 Sand, Hester Field in St. James Parish, LA, as an underground reservoir for the storage of natural gas, and that it proposes to install and operate facilities, including approximately 8.8 miles of pipeline, required to deliver gas to and from the field. Applicant also states that, in order to meet the urgent needs of its resale customers, it has agreed to certain increases in maximum daily delivery obligations and, in order that gas may be available for injection into storage, applicant's general service resale customers have agreed to certain lesser maximum daily delivery obligations during the period April through October of each year.

Applicant states that Transcontinental Gas Pipe Line Corp. (Transco) has agreed to transport gas for Applicant and deliver it at a point in St. James Parish for receipt and injection into storage by Applicant, and that both Transco and United Gas Pipe Line Co. (United) have agreed to receive gas withdrawn by Applicant from storage and to deliver equivalent quantities to Applicant at delivery points in East Feliciana and East Baton Rouge Parishes, La.

The application further states that during the winter season (November through March) gas will be withdrawn from storage at initial rates of up to 60,000 Mcf per day and that during the first 3 years of operation, between 2,000,000 and 3,000,000 Mcf will be withdrawn from storage each heating season. The total estimated cost of constructing and developing the Hester Storage Field, including initial cushion gas and installation of pipeline and measuring facilities by applicant to Transco and United out of the field, is $5,570,600, approximately 25 percent of which will be provided through internally generated funds and the balance of which will be provided by borrowings arranged by Applicant's parent company, Houston Natural Gas Corp.

Mid Louisiana states that the sales requirements of its system consist largely of deliveries to local distribution systems for resale for domestic commercial heating purposes, and that the extreme fluctuations in these sales caused by changes in temperature make the use of underground storage of unique value in meeting these requirements.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 2, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[FR Doc.71-617 Filed 1-15-71;8:47 am]

[Project 1473]

MONTANA POWER CO.

Notice of Application for Amendment of License for Constructed Project

JANUARY 12, 1971.

Public notice is hereby given that application for amendment of license has been filed under the Federal Power Act (16 U.S.C. 791a–825r) by The Montana Power Co. (correspondence to: George W. O'Connor, President, The Montana Power Co., General Offices, Electric Building, Butte, MT 59701) for its constructed Georgetown Lake Project No. 1473, located on Flint Creek in Deer Lodge and Granite Counties, Mont., and affecting lands of the United States.

Licensee seeks amendment of license Article 20 to incorporate a more flexible rate of return limitation on project net investment upon which surplus earnings of the project would be based and amortization reserves established and maintained pursuant to section 10(d) of the Federal Power Act. Licensee seeks to have the rate of return related to the company's weighted average annual embedded long-term debt cost rate times one and one-half, or 6 percent, whichever is greater. This provision would be substituted for the straight 6-percent rate of return provision presently specified by Article 20.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 9, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[FR Doc. 71–618 Filed 1–15–71;8:47 am]

[Project 1869]

MONTANA POWER CO.

Notice of Application for Amendment of License for Constructed Project

JANUARY 12, 1971.

Public notice is hereby given that application for amendment of license has been filed under the Federal Power Act (16 U.S.C. 791a–825r) by The Montana Power Co. (correspondence to: George W. O'Connor, President, The Montana Power Co., General Offices, Electric Building, Butte, MT 59701) for its constructed Thompson Falls Project No. 1869, located at Thompson Falls on Clark Fork River, in Sanders County, Mont., and affecting lands of the United States.

The application seeks amendment of license Article 22 to incorporate a more flexible rate of return limitation on project net investment upon which surplus earnings of the project would be based and amortization reserves would be established and maintained pursuant to section 10(d) of the Federal Power Act. Licensee seeks to have the rate of return related to the Company's weighted average annual embedded long-term debt cost rate times 1½, or 6 percent, whichever is greater. This provision would be substituted for the straight 6-percent rate of return provision presently specified by license Article 22.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 10, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[FR Doc.71–642 Filed 1–15–71;8:48 am]

[Project 2188]

MONTANA POWER CO.

Notice of Application for Amendment of License for Constructed Project

JANUARY 12, 1971.

Public notice is hereby given that application for amendment of license has been filed under the Federal Power Act (16 U.S.C. 791a–825r) by The Montana Power Co. (correspondence to: George W. O'Connor, President, The Montana Power Co., General Offices, Electric Building, Butte, MT 59701) for its constructed Missouri-Madison Project No. 2188, located on the Missouri and Madison Rivers in the vicinity of Great Falls in Cascade County; in the vicinity of Helena in Lewis and Clark County; in the vicinity of Boseman in Gallitin County; and in the vicinity of Virginia City in Madison County—all within the State of Montana, and affecting lands of the United States.

Licensee seeks amendment of license Article 24 to incorporate a more flexible rate of return limitation on project net investment upon which surplus earnings of the project would be based and amortization reserves established and maintained pursuant to section 10(d) of the Federal Power Act. Licensee seeks to have the rate of return related to the company's weighted average annual embedded long-term debt cost rate times 1½, or 6 percent, whichever is greater. This provision would be substituted for the straight 6 percent rate of return provision presently specified by Article 24.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 10, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[FR Doc.71–643 Filed 1–15–71;8:48 am]

[Docket No. CP71–170]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Notice of Application

JANUARY 11, 1971.

Take notice that on December 29, 1970, Natural Gas Pipeline Company of America (applicant), 122 South Michigan Avenue, Chicago, IL 60603, filed in Docket No. CP71–170 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a sales measuring facility and the transportation of natural gas in interstate commerce by which applicant has been making interruptible direct industrial sales to General Finance Inc., in Cloud County, Kans., as hereinafter described, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application states that the facilities proposed to be abandoned, costing $17,326.76, were installed to enable applicant to deliver and sell gas to General Finance Inc. Applicant has been informed by General Finance Inc., that it has contracted for a firm supply of gas with Kansas Power and Light Co., and has requested termination of its contract with applicant upon the initiation of service by Kansas Power and Light Co.

Applicant proposes to remove such of the facilities to be abandoned as can be reclaimed and salvaged.

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 2, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18

CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[FR Doc.71-644 Filed 1-15-71;8:49 am]

[Docket No. CP71-175]

SOUTHERN NATURAL GAS CO.

Notice of Application

JANUARY 12, 1971.

Take notice that on January 4, 1970, Southern Natural Gas Co. (applicant), Post Office Box 2563, Birmingham, AL 35202, filed in Docket No. CP71-175, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 8.115 miles of 18-inch loop pipeline extending from M.P. 13.608 (Bay Huertes Gate) to M.P. 21.723 (Lake Washington) on applicant's West Delta Block 30 supply line, in Plaquemines Parish, La., as hereinafter described, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application states that the proposed loop, which will connect at Lake Washington with applicant's 20-inch Lake Washington supply line, will provide applicant with additional pipeline capacity to move gas from applicant's West Delta Block 105-133 supply line and West Delta Block 30 supply line to applicant's Lake Washington supply line. Such additional capacity is stated to be necessary to allow applicant to transport additional volumes of gas that are presently available from West Delta supply sources but which, because of the limited capacity of the presently existing Bay Huertes-Lake Washington pipeline, cannot be transported. In addition, the application states that the installation of the proposed loop line will provide applicant with pipeline capacity which will permit the attachment of additional reserves in the West Delta area.

The estimated cost of constructing applicant's proposed facilities is $1,500,910, which cost will be financed from cash on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 2, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[FR Doc.71-645 Filed 1-15-71;8:49 am]

FEDERAL RESERVE SYSTEM

MARINE CORP.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by The Marine Corp., which is a bank holding company located in Milwaukee, Wis., for prior approval by the Board of Governors of the acquisition by applicant of 90 percent or more of the voting shares of Farmers State Bank, Beaver Dam, Wis.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Chicago.

By order of the Board of Governors, January 11, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-624 Filed 1-15-71;8:47 am]

FEDERAL TRADE COMMISSION

REPORT OF "TAR" AND NICOTINE CONTENT OF SMOKE OF CERTAIN VARIETIES OF CIGARETTES

The Federal Trade Commission's laboratory has determined the "tar" (dry particulate matter) and total alkaloid (reported as nicotine) content of 120 varieties of cigarettes. The laboratory utilized the Cambridge filter method specified in the FEDERAL REGISTER notice of November 4, 1966 (31 F.R. 14278), as described in an article entitled "Determination of Particulate Matter and Alkaloids (as Nicotine) in Cigarette Smoke," by C. L. Ogg, Journal of the Association of Official Agricultural Chemists, Vol. 47, No. 2, 1964, with the following modifications set forth in the FEDERAL REGISTER notice of August 1, 1967 (32 F.R. 11178):

1. Smoke cigarettes to a 23 mm. butt length, or to the length of the filter and overwrap plus 3 mm. if in excess of 23 mm.,

2. Base results on a test of 100 cigarettes per brand, or type,

3. Cigarettes to be tested will be selected on a random basis, as opposed to "weight selection",

4. Determine particulate matter on a "dry" basis employing the gas chromatography method published by C. H. Sloan and B. J. Sublett in Tobacco Science 9, page 70, 1965, as modified by F. J. Schultz' and A. W. Spears' report published in Tobacco Vol. 162, No. 24, page 32, dated June 17, 1966, to determine the moisture content,

5. Determine and report the "tar" content after subtracting moisture and alkaloids (as nicotine) from particulate matter.

Concerning the 120 varieties tested, 29 were capable of being smoked to 23 mm. or to an average range of between 23 and 24 mm. The butt lengths of the other 91 varieties tested ranged from 23 mm. to an average of between 37.2 and 40.3 mm. The butt lengths of 40 of the 120 varieties tested exceeded 30 mm.

The samples used were obtained by attempting to purchase two packages of each variety of cigarettes during May of 1970 and June of 1970 in each of 50 geographic locations throughout the country. All varieties of cigarettes were not available in each of the 50 geographic locations and in these instances, one or more additional packages of cigarettes were purchased in those geographic locations where the respective varieties were available. The samples utilized in the tests were representative of the 120 varieties of cigarettes as available throughout the country at the time of purchase. Testing was completed on October 21, 1970.

The varieties tested are listed in alphabetical order. "Tar" figures have been rounded off to whole numbers and nicotine figures to tenths of milligrams.

"TAR" AND NICOTINE OF ONE-HUNDRED TWENTY (120) VARIETIES OF DOMESTIC CIGARETTES

Brand	Type	"Tar" [1]	Nicotine [2]
Alpine	King size, filter, menthol.	19	1.2
Belair	do	16	1.2
Do	100 mm., filter, menthol.	18	1.3
Benson & Hedges	Regular size, filter (hard pack).	19	1.4
Do	King size, filter (hard pack).	20	1.4
Do	100 mm., filter	20	1.4
Do	100 mm., filter, menthol.	21	1.4
Bull Durham	King size, filter	28	1.8
Camel	Regular size, non-filter.	24	1.5
Do	King size, filter	20	1.3
Carlton [3]	Regular size, filter	2	0.2
Do	King size, filter	4	0.3
Century	100 mm., filter	21	1.3
Chesterfield	Regular size, non-filter.	24	1.4
Do	King size, nonfilter	28	1.7
Do	King size, filter	20	1.4
Do	King size, filter, menthol.	18	1.1
Do	101 mm., filter	21	1.4
Domino	King size, filter	22	1.1
Do	King size, nonfilter	25	1.2
Do	King size, filter, menthol.	17	0.9
Doral	King size, filter	14	0.9
Do	King size, filter, menthol.	13	1.0
Duke of Durham	King size, filter	10	0.3
DuMaurier	King size, filter (hard pack).	18	1.3
Edgeworth Export.	do	18	1.2
Do	100 mm., filter	20	1.4
English Ovals	Regular size, non-filter (hard pack).	24	1.8
Do	King size, nonfilter (hard pack).	29	2.2
Fatima	King size, nonfilter	31	1.8
Frappe	King size, filter, menthol.	9	0.3
Galaxy	King size, filter	20	1.4
Gauloises Caporal.	Regular size, non-filter.	20	0.9
Gauloises Disque Bleu.	Regular size, filter	17	0.9
Half & Half	King size, filter	23	1.6
Herbert Tareyton.	King size, nonfilter	28	1.7
Home Run	Regular size, non-filter.	18	1.3
Kent	Regular size, filter	9	0.5
Do	King size, filter (hard pack).	16	1.0
Do	King size, filter	16	1.0
Do	100 mm., filter	19	1.2
King Sano	King size, filter, menthol.	6	0.2
Do	King size, filter	6	0.2
Kool	Regular size, non-filter, menthol.	21	1.3
Do	King size, filter, menthol.	18	1.4
Do	100 mm., filter, menthol.	19	1.3
L & M	Regular size, filter	17	0.9
Do	King size, filter (hard pack).	18	1.0
Do	King size, filter	18	1.1
Do	100 mm., filter	19	1.2
Do	100 mm., filter, menthol.	19	1.2
Lark	King size, filter	17	1.1
Do	100 mm., filter	18	1.1
Life	King size, filter	11	0.7
Lucky Strike	Regular size, non-filter.	27	1.6
Lucky Filters	King size, filter	20	1.5
Do	100 mm., filter	20	1.4
Mapleton	Regular size, non-filter.	25	1.0
Do	King size, filter	22	1.0
Marlboro	King size, filter (hard pack).	19	1.2
Do	King size, filter	20	1.3
Do	King size, filter, menthol.	19	1.3
Do	100 mm., filter	22	1.5
Do	100 mm., filter (hard pack).	21	1.4
Marvels	Regular size, nonfilter	17	0.6
Do	Regular size, filter	3	0.1
Do	King size, nonfilter	23	0.8
Do	King size, filter	5	0.2
Do	King size, filter, menthol.	4	0.2
Montclair	do	13	0.9
Multifilter	King size, filter (plastic box).	15	1.0
Do	King size, filter, menthol (plastic box).	12	0.9
Newport	King size, filter, menthol (hard pack).	19	1.1
Do	King size, filter, menthol.	19	1.1
Do	100 mm., filter, menthol.	21	1.3
Oasis	King size, filter, menthol.	18	1.0
Old Gold Straights.	Regular size, nonfilter	22	1.3
Do	King size, nonfilter	27	1.6
Old Gold Filters	King size, filter	19	1.2
Do	100 mm., filter	24	1.5
Pall Mall	King size, nonfilter	28	1.7
Do	95 mm., filter (hard pack).	19	1.3
Do	95 mm., filter, menthol (hard pack).	17	1.2
Do	100 mm., filter	20	1.4
Do	100 mm., filter, menthol.	18	1.3
Parliament	King size, filter (hard pack).	16	1.0
Do	King size, filter	16	1.0
Do	100 mm., filter	19	1.3
Peter Stuyvesant	King size, filter	24	1.5
Do	100 mm., filter	22	1.5
Philip Morris	Regular size, non-filter.	23	1.5
Philip Morris Commander.	King size, nonfilter	29	1.8
Picayune	Regular size, non-filter.	19	1.4
Piedmont	do	24	1.4
Players	Regular size, non-filter (hard pack).	30	2.0
Raleigh	King size, nonfilter	24	1.5
Do	King size, filter	17	1.2
Do	100 mm., filter	18	1.2
Salem	King size, filter, menthol.	19	1.3
Do	100 mm., filter, menthol.	21	1.5
Sano	Regular size, non-filter.	15	0.5
Silva Thins	100 mm., filter	16	1.0
Do	100 mm., filter, menthol.	16	1.0
Spring	do	21	1.3
Stratford	King size, nonfilter	22	0.8
Tareyton	King size, filter	17	1.1
Do	100 mm., filter	18	1.2
Tempo	King size, filter	12	0.9
True	do	12	0.7
Do	King size, filter, menthol.	13	0.7
Viceroy	King size, filter	17	1.2
Do	100 mm., filter	19	1.4
Virginia Slims	do	18	1.2
Do	100 mm., filter, menthol.	18	1.2
Vogue (black)	King size, filter (hard pack).	25	0.9
Vogue (colors)	do	17	0.6
Winston	do	20	1.3
Do	King size, filter	20	1.3
Do	100 mm., filter	20	1.4
Do	100 mm., filter, menthol.	22	1.5

See footnotes at end of document.

[1] Total particulate matter (dry)—milligrams total particulate matter less nicotine and water.
[2] Milligrams total alkaloids reported as nicotine.
[3] Limited availability based on reduced sampling from Washington, D.C. only.

Issued: January 13, 1971.

By direction of the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[FR Doc.71-683 Filed 1-15-71;8:52 am]

SECURITIES AND EXCHANGE COMMISSION

[70-4965]

INDIANA & MICHIGAN ELECTRIC CO.

Notice of Proposed Issue and Sale of First Mortgage Bonds and Preferred Stock at Competitive Bidding

JANUARY 11, 1971.

Notice is hereby given that Indiana & Michigan Electric Co. (I&M), 2101 Spy Run Avenue, Fort Wayne, IN 46801, an electric utility subsidiary company of American Electric Power Co., Inc., a registered holding company, has filed an application and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

I&M proposes to issue and sell, pursuant to the competitive bidding requirements of Rule 50 under the Act, $30 million aggregate principal amount of its first mortgage bonds in a new series maturing in not less than three and not more than 30 years. The maturity of the

bonds will be determined not less than 72 hours prior to the bidding date. The interest rate on the bonds (which shall be a multiple of one-eighth of 1 percent) and the price to be paid to I&M (which shall not be less than 99 percent nor more than 102¾ percent of the principal amount thereof) will be determined by the competitive bidding. The bonds will be issued under the mortgage and deed of trust dated as of June 1, 1939, between I&M and Irving Trust Co. and E. J. McCabe, as trustees, as heretofore supplemented and amended and as to be further supplemented and amended by a supplemental indenture to be dated as of the first day of the month in which the bonds are to be issued, and which includes a prohibition until February 1, 1976, against refunding the issue with the proceeds of funds borrowed at a lower annual cost of money.

I&M also proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, 300,000 shares of its authorized but unissued cumulative preferred stock, par value $100 per share. The dividend rate (which shall be a multiple of $0.04) and the price (exclusive of accrued dividends) to be paid to I&M (which shall be not less than $100 nor more than $102.75 per share), will be determined by the competitive bidding. The terms of the preferred stock will include a prohibition until February 1, 1976, against refunding the stock, directly or indirectly, with the proceeds of funds derived from the issuance of debt securities at a lower effective interest cost or from the issuance of other stock, which ranks prior to or on a parity with the preferred stock as to dividends or assets, at a lower effective dividend cost.

I&M will apply the proceeds from the sale of the bonds and preferred stock towards the payment, at maturity, of its commercial paper, which is estimated to be outstanding in an amount not exceeding $54,340,000 at the time of issuance of the bonds and preferred stock, for working capital and reimbursement for money already expended.

The application states that the issue and sale of the bonds and preferred stock are subject to authorization by the Public Service Commission of Indiana, the State commission of the State in which I&M is organized and doing business, and by the Michigan Public Service Commission, the State commission of the State in which I&M is qualified to and is also doing business. It is further stated that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction. The fees and expenses to be incurred by I&M in connection with the proposed issue and sale of the bonds and preferred stock will be supplied by amendment.

Notice is further given that any interested person may, not later than January 28, 1971, 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 (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended or as it may be further amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[FR Doc.71-614 Filed 1-15-71;8:46 am]

[70-4964]

JERSEY CENTRAL POWER & LIGHT CO.

Notice of Proposed Issue and Sale of Bonds at Competitive Bidding

JANUARY 11, 1971.

Notice is hereby given that Jersey Central Power & Light Co. (Jersey Central), Madison Avenue at Punch Bowl Road, Morristown, NJ 07960, an electric utility subsidiary company of General Public Utilities Corp., a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

Jersey Central proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, $35 million principal amount of first mortgage bonds due February 1, 2001. The interest rate (which will be a multiple of one-eighth of 1 percent) and the price (which will be not less than 100 percent nor more than 102.75 percent of the principal amount thereof plus accrued interest from February 1, 1971, to the date of delivery) will be determined by the competitive bidding. The bonds will be issued under and secured by an Indenture, dated as of March 1, 1946, of Jersey Central to First National City Bank, successor trustee, as heretofore supplemented and amended and as to be further supplemented and amended by a 19th supplemental indenture to be dated as of February 1, 1971, and which includes, subject to certain exceptions, a prohibition until February 1, 1976, against refunding the issue with proceeds of funds borrowed at a lower interest cost.

The proceeds from the sale of the bonds will be used to pay, in full, Jersey Central's short-term bank notes outstanding at the date of sale of the bonds. Such notes amounted to $19,600,000 at October 31, 1970, and are expected to aggregate approximately $26 million at the date of sale of the bonds. The proceeds from the sale of such notes have been or will be used directly or indirectly for construction purposes. The balance of the proceeds will be used to partially finance Jersey Central's 1971 construction program which is estimated at $160,800,000. The proceeds from any premium resulting from the sale of the bonds will be used to finance the business of Jersey Central, including the payment of expenses of its financing program.

It is stated that the fees and expenses to be paid by Jersey Central in connection with the issue and sale of the bonds are estimated at $90,000 including counsel fees of $28,000 and accountants' fees of $4,400 and that the fees and expenses of counsel for the underwriters, to be paid by the successful bidders, will be supplied by amendment.

It is further stated that the Board of Public Utility Commissioners of New Jersey has jurisdiction over the proposed issue and sale of bonds by Jersey Central and that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than February 9, 1971, 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 (airmail 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, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[FR Doc.71-613 Filed 1-15-71;8:46 am]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area 796]

MISSISSIPPI

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of December 1970, because of the effects of certain disasters, damage resulted to residences and business property located in the town of Ecru, Miss.

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the area affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such area constitutes a catastrophe within the purview of the Small Business Act, as amended.

Now, therefore, as Acting Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property, situated in the aforesaid town, suffered damage or destruction resulting from a fire which occurred on December 8, 1970.

OFFICE

Small Business Administration District Office, 245 East Capitol Street, Jackson, MS 39205.

2. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to July 31, 1971.

Dated: January 8, 1971.

EINAR JOHNSON, *Acting Administrator.*

[FR Doc. 71-626 Filed 1-15-71; 8:47 am]

[Delegation of Authority No. 30-C (Region X), Amdt. 4]

REGIONAL DIVISION CHIEFS ET AL., REGION X

Delegation of Authority

Pursuant to the authority delegated to the regional director by Delegation of Authority No. 30-C (35 F.R. 2840), as amended (35 F.R. 15033 and 35 F.R. 17156), Delegation of Authority No. 30-C (Region X) (35 F.R. 4574), as amended (35 F.R. 13809, 35 F.R. 18766, and 35 F.R. 19725), is hereby further amended by revising Item I.A.2.b, Item I.B.1, Item II.A.2.b, Item III.A.2.b, and Item IV.A.2.b, to read as follows:

I. *Regional Division Chiefs, Regional Counsel, and Staffs—A. Chief and Assistant Chief, Financing Division.* * * *

2. * * *

b. To approve displaced business loans and coal mine health and safety loans up to $350,000 (SBA share) and to decline them in any amount.

* * * * *

B. *Supervisory Loan Officers (Financing Division).* 1. To approve or decline business, disaster, displaced business, and coal mine health and safety loans not exceeding $50,000 (SBA share) and economic opportunity loans not exceeding $25,000 (SBA share).

* * * * *

II. *District Directors—A. Financing Program.* * * *

2. * * *

b. To approve or decline displaced business loans and coal mine health and safety loans up to $350,000 (SBA share).

* * * * *

III. *District Division Chiefs, District Counsel, and Staffs—A. Chief, Financing Division.* * * *

2. * * *

b. To approve or decline displaced business loans and coal mine health and safety loans up to $350,000 (SBA share).

* * * * *

IV. *Branch Manager and Staff—Fairbanks, Alaska—A. Branch Manager.* * * *

2. * * *

b. To approve or decline displaced business loans and coal mine health and safety loans up to $350,000 (SBA share).

* * * * *

Effective date: December 16, 1970.

FORBES M. BRUCE, *Regional Director, Region X.*

[FR Doc.71-625 Filed 1-15-71;8:47 am]

DEPARTMENT OF LABOR

Office of the Secretary

CARESSA, INC.

Notice of Investigation Regarding Certification of Eligibility of Workers To Apply for Adjustment Assistance

The Department of Labor has received a Tariff Commission report containing an affirmative finding under section 301(c)(2) of the Trade Expansion Act of 1962 with respect to its investigation of a petition for determination of eligibility to apply for adjustment assistance filed on behalf of workers of Caressa, Inc., located in Miami, Fla. (No. TEA-W-32). In view of the report and the responsibilities delegated to the Secretary of Labor under section 8 of Executive Order 11075 (28 F.R. 473), the Director, Office of Foreign Economic Policy, Bureau of International Labor Affairs, has instituted an investigation, as provided in 29 CFR 90.5 and this notice. The investigation relates to the determination of whether any of the group of workers covered by the Tariff Commission report should be certified as eligible to apply for adjustment assistance, provided for under title III, chapter 3, of the Trade Expansion Act of 1962, including the determinations of related subsidiary subjects and matters, such as the date unemployment or underemployment began or threatened to begin and subdivision of the firm involved to be specified in any certification to be made, as more specifically provided in Subpart B of 29 CFR Part 90.

Interested persons should submit written data, views, or arguments relating to the subjects of investigation to the Director, Office of Foreign Economic Policy, U.S. Department of Labor, Washington, D.C., on or before January 19, 1971.

Signed at Washington, D.C., this 11th day of January 1971.

EDGAR I. EATON, *Director, Office of Foreign Economic Policy.*

[FR Doc.71-681 Filed 1-15-71;8:52 am]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

JANUARY 13, 1971.

Protests to the granting of an application must be prepared in accordance with § 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42107—*Phosphate rock to Horn, Mo.* Filed by O. W. South, Jr., agent (No. A6217), for interested rail carriers. Rates on phosphate rock, crude (other than ground phosphate rock), in carloads, as described in the application, from Bartow, Fla., and points grouped therewith, to Horn, Mo.

Grounds for relief—Rail-barge-truck competition.

Tariff—Supplement 129 to Southern Freight Association, agent, tariff ICC S-658.

FSA No. 42108—*Iron and steel articles to points in West Virginia.* Filed by Traffic Executive Association-Eastern Railroads, agent (E.R. No. 2992), for interested rail carriers. Rates on iron and steel articles, in carloads, as described in the application, from points in official (including Illinois) territory, to specified points in West Virginia.

Grounds for relief—Market competition.

Tariffs—Supplements 70 and 94 to Traffic Executive Association-Eastern Railroads, agent, tariffs ICC C–677 and C–631, respectively.

FSA No. 42110—*Chlorine from Brunswick, Ga.* Filed by O. W. South, Jr., agent (No. A6216), for and on behalf of Southern Railway Co. Rates on chlorine, in tank carloads, as described in the application, from Brunswick, Ga., to Canton, N.C.

Grounds for relief—Market competition.

Tariff—Supplement 15 to Southern Freight Association, agent, tariff ICC S–938.

FSA No. 42111—*Rates from and to points in South Dakota.* Filed by Chicago and North Western Railway Co. (No. 103), for interested rail carriers. Rates on property moving on class and commodity rates, between points in South Dakota, on the one hand, and points in the United States and Canada, on the other.

Grounds for relief—Abandonment of track.

AGGREGATE-OF-INTERMEDIATES

FSA No. 42106—*Vegetables, melons, and related articles from points in southwestern territory.* Filed by Southwestern Freight Bureau, agent (No. B–208), for interested rail carriers. Rates on vegetables, fresh or green, melons, etc., in carloads, as described in the application, from points in southwestern territory, to points in central-eastern territory.

Grounds for relief—Maintenance of depressed rates without use of such rates as factors in constructing combination rates.

Tariff—Supplement 113 to Southwestern Freight Bureau, agent, tariff ICC 4785.

FSA No. 42109—*Iron and steel articles to points in West Virginia.* Filed by Traffic Executive Association—Eastern Railroads, agent (E.R. No. 2993), for interested rail carriers. Rates on iron and steel articles, in carloads, as described in the application, from points in official (including Illinois) territory, to specified points in West Virginia.

Grounds for relief—Maintenance of depressed rates established to meet market competition without use of such rates as factors in constructing combination rates.

Tariffs—Supplements 70 and 94 to Traffic Executive Association—Eastern Railroads, agent, tariffs ICC C–677 and C–631, respectively.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71–660 Filed 1–15–71;8:50 am]

[Notice 228]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 12, 1971.

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 1131), 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 protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The 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 field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 111231 (Sub-No. 170 TA), filed January 7, 1971. Applicant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, AR 72764. Applicant's representative: James B. Blair, 111 Holcomb Street, Springdale, AR 72764. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel*, from Carlinville, Ill., to points in Texas, Oklahoma, Missouri, and Arkansas, for 180 days. Supporting shipper: Central Illinois Steel Co., Post Office Box 68, Carlinville, IL. Send protests to: District Supervisor William W. Land, Jr., 2519 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

No. MC 110098 (Sub-No. 110 TA), filed January 7, 1971. Applicant: ZERO REFRIGERATED LINES, Post Office Box 20380, 1400 Ackerman Road, San Antonio, TX 78220. Applicant's representative: T. W. Cothren, Post Office Box 20380, San Antonio, TX 78220. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts and articles distributed by meat packinghouses* as described in sections A and C of appendix I to the *Report in Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles, and hides), from the plantsite and/or cold storage facilities of Missouri Beef Packers, Inc., at or near Plainview, Tex., to all points in Colorado, Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, and Wisconsin, for 180 days. Supporting shipper: Norman L. Cummins, Director of Physical Distribution, Missouri Beef Packers, Inc., 630 Amarillo Building, Amarillo, Tex. 97101. Send protests to: Richard H. Dawkins, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 301 Broadway, Room 206, San Antonio, TX 78205.

No. MC 114091 (Sub-No. 84 TA), filed January 7, 1971. Applicant: HUFF TRANSPORT CO., INC., Mail: Post Office Box 13116, 40213, Office: 2114 South 41st Street, Louisville, KY 40211. Applicant's representative: Clarence L. Huff (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizer*, from plantsite of Kentucky Asphalt Terminal Co. near Louisville, Jefferson County, Ky., to points in Indiana, Ohio, Illinois, and Kentucky, for 180 days. Supporting shipper: F. Neal Edman, Assistant Traffic Manager, Motor Transportation, W. R. Grace & Co., 100 North Main Street, Memphis, TN 38101. Send protests to: Mr. Wayne L. Merilatt, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 426 Post Office Building, Louisville, KY 40202.

No. MC 115162 (Sub-No. 213 TA), filed January 7, 1971. Applicant: POOLE TRUCK LINE, INC., Post Office Drawer 500, Evergreen, AL 36401. Applicant's representative: Robert E. Tate (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Scrap batteries*, from Frankfort, Ind., to Troy, Ala., for 180 days. Supporting shipper: Sanders Lead Co., Inc., Troy, AL 36081. Send protests to: Clifford W. White, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 814, 2121 Building, Birmingham, AL 35203.

No. MC 116544 (Sub-No. 121 TA), filed January 6, 1971. Applicant: WILSON BROTHERS TRUCK LINE, INC., Post Office Box 636, 700 East Fairview Avenue, Carthage, MO 64836. Applicant's representative: Robert Wilson (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of appendix 1 to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, and hides), from Plainview, Tex., to points in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Kentucky, and Wisconsin, for 180 days. Supporting shipper: Missouri Beef Packers, Inc., 630 Amarillo Building, Amarillo, TX 79101. Send protests to: John V. Barry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 1100 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 124078 (Sub-No. 467 TA), filed January 6, 1971. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Applicant's representative: James R. Ziperski (same address as above). Authority sought to operate as a *common carrier*, by motor

vehicle, over irregular routes, transporting: *Plastic pellets,* from Atlanta, Ga., to Decatur, Tenn., for 180 days. Supporting shipper: Amoco Chemicals Corp., 130 East Randolph Drive, Chicago, IL 60601 (L. G. Kuntz, Transportation Manager). Send protests to: District Supervisor Lyle D. Helfer, Bureau of Operations, Interstate Commerce Commission, 135 West Wells Street, Room 807, Milwaukee, WI 53203.

No. MC 133965 (Sub-No. 1 TA), filed January 7, 1971. Applicant: CALZONA TRANSPORTATION, INC., Post Office Box 6558, Phoenix, AZ 85005. Applicant's representative: William J. Lippman, Suite 820, Federal Bar Building West, 1819 H Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Refined cottonseed oil,* in bulk, in tank vehicles, from Fullerton, Calif., to Gallup, N. Mex., for 180 days. Supporting shipper: S & S Food Products, Inc., Division of Moore's Sea Food Products, Inc., Box 639, Gallup, NM 87301. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, 3427 Federal Building, Phoenix, AZ 85025.

No. MC 135153 (Sub-No. 1 TA), filed January 7, 1971. Applicant: GREAT OVERLAND, INC., Post Office Box 1417, Dodge City, KS 67801. 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 defined by the Commission (except those commodities in bulk and hides), from Dodge City, Kans., to points in New York, for 150 days. Supporting shipper: Hyplains Dressed Beef, Inc., Box 539, Dodge City, KS 67801. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 501 Petroleum Building, Wichita, KS 67202.

No. MC 135180 (Sub-No. 1 TA), filed January 5, 1971. Applicant: CHARLES DEAN FORRET, doing business as FORRET TRUCKING, 1800 East 18th Street, Des Moines, IA 50316. Applicant's representative: Kenneth F. Dudley, Post Office Box 279, Ottumwa, IA 52501. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses,* as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (restricted against the transportation of commodities in bulk, in tank vehicles, and hides), under a continuing contract with Needham Packing Co., Inc.; (1) from the plant and warehouse facilities of Needham Packing Co., Inc., located at West Fargo, N. Dak.; Fargo, N. Dak.; Sioux City, Iowa; and Omaha, Nebr.; to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia; and (2) from the plant and warehouse facilities of Needham Packing Co., Inc., located at Sioux City, Iowa, and Omaha, Nebr., to Chicago, Ill., and points in Illinois and Indiana in the Chicago commercial zone as defined by the Commission, for 180 days. Supporting shipper: Needham Packing Co., Inc., Sioux City, IA 51101. Send protests to: Ellis L. Annett, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, IA 50309.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-658 Filed 1-15-71;8:50 am]

[Notice 634]

MOTOR CARRIER TRANSFER PROCEEDINGS

JANUARY 13, 1971.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), 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-72504. By order of January 8, 1971, the Motor Carrier Board approved the transfer to Vincent Ganduglia Trucking, a corporation, Fresno, Calif., of a portion of certificate No. MC-117642 and the entire certificate No. MC-117642 (Sub-No. 5) issued to F. P. Nielson & Sons Trucking, a corporation, Salt Lake City, Utah, authorizing the transportation of: Chemical fertilizers, from specified points in California to designated points in Arizona. William H. Kessler, 638 Divisadero Street, Fresno, CA 93721, attorney for applicants.

No. MC-FC-72556. By order of January 8, 1971, the Motor Carrier Board approved the transfer to Ace Transfer & Storage Co., a corporation, 711 West California, Oklahoma City, OK 73102, of certificate No. MC-128463 (Sub-No. 1) issued to Lester H. Blair and Elizabeth B. Blair, a partnership, doing business as Ace Transfer & Storage, 711 West California, Oklahoma City, OK, authorizing the transportation of: Used household goods, subject to certain restrictions, between specified counties in Oklahoma.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-659 Filed 1-15-71;8:50 am]

[No. 35342]

NEBRASKA INTRASTATE FREIGHT RATES AND CHARGES, 1970

At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D.C., on the 4th day of January 1971.

By joint petition filed November 2, 1970, Burlington Northern Inc., Chicago and North Western Railway Co., Union Pacific Railroad Co., and Missouri Pacific Railroad Co., all of the carriers by rail and operating within the State of Nebraska, aver that the Nebraska State Railway Commission has refused to permit increases in intrastate rates and charges on sugar, beet or cane, and sugar beets, moving within that State corresponding to increases maintained by the carriers on like commodities moving in interstate commerce as authorized by this Commission in Ex Parte No. 262, Increased Freight Rates, 1969, 337 I.C.C. 436;

It appearing, that petitioners allege that the failure of the Nebraska State Railway Commission to permit comparable increases in rates and charges on intrastate traffic of sugar, beet or cane, and sugar beets, within the State of Nebraska as authorized on line interstate traffic by this Commission in Ex Parte No. 262, supra, causes and results in the petitioners being required to maintain rates and charges on said intrastate traffic which are unjustly discriminatory against and an undue burden upon interstate commerce; thus, petitioners request an investigation, under section 13 of the Interstate Commerce Act, of the said intrastate freight rates and charges and an order removing the alleged unlawfulness;

And it further appearing, that there have been brought in issue by the said petition matters sufficient to require an investigation of the intrastate freight rates and charges on sugar, beet or cane, and sugar beets made or imposed by the State of Nebraska;

Wherefore, and good cause appearing: *It is ordered,* That the petition be, and it is hereby, granted, and that an investigation be, and it is hereby, instituted under section 13 of the Interstate Commerce Act to determine whether the said rates and charges of carriers by railroad, or any of them, operating in the State of Nebraska for the intrastate transportation of sugar, beet or cane, and sugar beets made or imposed by authority of the State of Nebraska cause or will cause, by reason of the failure of such rates and charges to include increases corresponding to those permitted by this Commission for interstate transportation in Ex Parte No. 262, Increased Freight Rates, 1970, supra, any undue or unreasonable advantage, preference, or prejudice, as between persons or locations in intrastate commerce, on the one hand, and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against, or undue burden on, interstate or foreign commerce; and to determine what rates and charges, if any, or what maximum, or minimum, or maximum and minimum

rates and charges shall be prescribed to remove the unlawful advantage, preference, discrimination, or undue burden, if any, that may be found to exist.

It is further ordered, That all persons who wish actively to participate in this proceeding and to file and to receive copies of pleadings shall make known that fact by notifying the Status Branch of the Office of Proceedings of the Commission, in writing, on or before February 3, 1971. Although individual participation is not precluded, to conserve time and to avoid unnecessary expense, persons having common interests should endeavor to consolidate their presentations to the greatest extent possible. The Commission desires participation only of those who intend to take an active part in the proceeding.

It is further ordered, That as soon as practicable after the date for indicating desire to participate in the proceeding has passed, the Commission will serve a list of the names and addresses of all persons upon whom service of all pleadings must be made.

It is further ordered, That a copy of this order be served upon each of the said petitioners; and that the State of Nebraska be notified of the proceeding by sending copies of this order and of said petition by certified mail to the Governor of Nebraska, Lincoln, Nebr., and to the Nebraska State Railway Commission at Lincoln; and that further notice of this proceeding be given to the public by depositing a copy of this order in the office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register, Washington, D.C., for publication in the FEDERAL REGISTER.

And it is further ordered, That this proceeding be assigned for hearing as may hereafter be designated.

By the Commission, Division 2.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-661 Filed 1-15-71;8:50 am]

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