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Part I

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Civil Aeronautics Board
Consumer and Marketing Service
Customs Bureau
Environmental Protection Administration
Federal Aviation Administration
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Maritime Commission
Federal Power Commission
Federal Railroad Administration
Federal Reserve System
Food and Drug Administration
General Services Administration
Geological Survey
Indian Affairs Bureau
Interim Compliance Panel (Coal Mine Health and Safety)
Internal Revenue Service
International Whaling Commission
Interstate Commerce Commission
Labor Department
National Aeronautics and Space Administration
National Highway Traffic Safety Administration
Securities and Exchange Commission
Tariff Commission
Urban Mass Transportation Administration

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LIST OF CFR SECTIONS AFFECTED

1949–1963

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Reference to this list will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

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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.

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Chapter III—Federal Deposit Insurance Corporation

SUBCHAPTER B—REGULATIONS AND STATEMENTS OF GENERAL POLICY

PART 335—SECURITIES OF INSURED STATE NONMEMBER BANKS

Certain Tender Offers and Acquisitions of Securities

Part 335 of Chapter III of Title 12 of the Code of Federal Regulations is amended as follows:

1. In § 335.4, paragraph (g)(2) is amended to read as follows:

§ 335.4 Registration statements and reports.

* * * * *

(g) * * *

(2)(i) Any person who, after acquiring, directly or indirectly, the beneficial ownership of any equity security of a bank, of a class which is registered pursuant to section 12 of the Act, is directly or indirectly the beneficial owner of more than 5 percent of such class shall, within 10 days after such acquisition, send to the bank at its principal executive office, by registered or certified mail, sent to each exchange where the security is traded, and file with the Corporation a statement containing the information required by Form F–11. Six copies of the statement shall be filed with the Corporation, one of which shall be manually signed.

(ii) Acquisitions of securities by a security holder who, prior to such acquisition, was the beneficial owner of more than 5 percent of the outstanding securities of the same class as those acquired shall be exempt from the reporting requirements of subdivision (i) of this subparagraph if the following conditions are met: (*a*) The acquisition is made pursuant to preemptive subscription rights in an offering made to all holders of securities of the class to which the preemptive subscription rights pertain; (*b*) the purchaser does not, through the exercise of such preemptive subscription rights, acquire more than his or its pro rata share of the securities offered; and (*c*) the acquisition is duly reported pursuant to section 16(a) of the Act and the provisions of § 335.6 promulgated thereunder.

* * * * *

2. In § 335.5, paragraph (l) is amended as follows:

§ 335.5 Proxy statements and other solicitations under section 14 of the Act.

* * * * *

(l) *Invitations for tenders.* (1) No person, directly or indirectly, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, shall make a tender offer for, or a request or invitation for tenders of, any class of any equity security, which is registered pursuant to section 12 of the Act, of a bank if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 percent of such class, unless, at the time copies of the offer or request or invitation are first published or sent or given to security holders, such person has filed with the Corporation a statement containing the information and exhibits required by Form F–11.

* * * * *

(5) If any securities to be offered in connection with the tender offer for, or request or invitation for tenders of, securities with respect to which a statement is required to be filed pursuant to subparagraph (1) of this paragraph, have been or are to be registered under the Securities Act of 1933, a copy of the prospectus containing the information required to be included therein under that Act shall be filed as an exhibit to such statement. Any information contained in the prospectus may be incorporated by reference in such statement.

(6) Six copies of the statement required by subparagraph (1) of this paragraph, every amendment to such statement, and all other material required by this section shall be filed with the Corporation. One copy of such statement or amendment shall be manually signed.

(15 U.S.C. 781. Interpret or apply 15 U.S.C. 781, 78m, 78n(a), 78n(c), 78n(d), and 78n(f))

These amendments shall become effective upon the date of publication in the FEDERAL REGISTER on March 3, 1971.

3a. The foregoing amendments implement the provisions of Public Law 91–567, which became effective December 22, 1970, as they apply to insured State nonmember banks.

b. The provisions of section 553 of title 5, United States Code, relating to notice, public participation, and deferred effective date were not followed in connection with these amendments because the Corporation finds it necessary in the public interest and for the protection of investors that regulations implementing Public Law 91–567 be adopted effective upon publication and that such procedures, with respect to these amendments, would serve no useful purpose inasmuch as the amendments primarily implement statutory provisions without significant exercise of administrative discretion or interpretation and are otherwise of a procedural nature.

Dated this 26th day of February 1971.

FEDERAL DEPOSIT INSURANCE CORPORATION,
[SEAL] E. F. DOWNEY,
Secretary.

[FR Doc.71-2914 Filed 3-2-71;8:51 am]

Title 7—AGRICULTURE

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

[Navel Orange Reg. 226, Amdt. 1]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907, 35 F.R. 16359), regulating the handling of Navel oranges grown in Arizona and designated part of California, 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 Navel Orange 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 Navel oranges, 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 amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Navel oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b)(1) (i) and (ii) of § 907.526 (Navel Orange Regulation 226, 36 F.R. 3111) are hereby amended to read as follows:

§ 907.526 Navel Orange Regulation 226.

* * * * *

(b) * * *

(1) * * *

(i) District 1: 900,000 cartons;

(ii) District 2: 300,000 cartons."

*

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

Dated: February 25, 1971.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71–2859 Filed 3–2–71;8:47 am]

[Lemon Reg. 468, Amdt. 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

(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 amendment 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 amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of lemons grown in California and Arizona.

(b) *Order, as amended.* The provisions in paragraph (b)(1) (i) and (ii) of § 910.768 (Lemon Regulation 468, 36 F.R. 3345) are hereby amended to read as follows:

§ 910.768 Lemon Regulation 468.

* * * * *

(b) * * *

(1) * * *

(i) District 1: 31,000 cartons.

(ii) District 2: 174,000 cartons.

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

Dated: February 26, 1971.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71–2858 Filed 3–2–71;8:47 am]

Title 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Power Commission

[Docket No. R–379; Order 420A]

PART 105—UNIFORM SYSTEM OF ACCOUNTS FOR CLASS D PUBLIC UTILITIES AND LICENSEES

PART 201—UNIFORM SYSTEM OF ACCOUNTS FOR NATURAL GAS COMPANIES

Accounting Treatment for Land Held for Future Utility Use and for Profits or Losses Realized Through Sales of Those Lands

FEBRUARY 23, 1971.

On January 22, 1970, the Commission issued Order No. 420 in this proceeding (36 F.R. 507, January 14, 1971). By that order the Commission amended certain accounts in its Uniform Systems of Accounts for Class A, B, C, and D Public Utilities and Licensees, and for Class A, B, C, and D Natural Gas Companies, together with certain schedules pertaining to the Annual Report Forms No. 1, No. 2, No. 1–F, and No. 2–A, prescribed respectively by §§ 141.1, 260.1, 141.2, and 260.2 of its regulations for public utilities, licensees and natural gas companies, effective for the reporting year 1971. Certain portions of that order involve inconsistent provisions that should be changed in respect to the amendments to the Commission's Uniform Systems of Accounts set forth therein.

The ordering paragraph C refers to Class D Public Utilities and Licensees prescribed by Part 205, Chapter I, Title 18 of the Code of Federal Regulations. "Part 205" is in error and should read "Part 105."

The ordering paragraph G2, fails to mention adding account 105.1, Production Properties Held for Future Use to the Chart of the Balance Sheet Accounts. Since this account is added to the text of the Balance Sheet Accounts it is logical to also add it to the Chart of Balance Sheet Accounts.

In the ordering paragraphs G4 and G5, the two new accounts added are referred to as "411.6, Gains from Sale of Utility Plant" and "411.7, Losses from Sale of Utility Plant" whereas they should have been referred to as "411.6, Gains from Disposition of Utility Plant" and "411.7, Losses from Disposition of Utility Plant."

The Commission finds:

(1) The revisions of the Commission's Uniform System of Accounts herein prescribed are necessary and appropriate for the administration of the Federal Power and Natural Gas Acts.

(2) Since the amendments to the Commission's Uniform System of Accounts prescribed by Order No. 420 issued January 7, 1971, are effective for the year commencing January 1, 1971, good cause exists for making these revisions to the Uniform System of Accounts, effective January 1, 1971.

(3) In view of the revisions herein, reflecting only minor adjustments to the Commission's Uniform System of Accounts as revised and amended by Order No. 420, further notice thereof is unnecessary.

The Commission, acting pursuant to the provisions of the Federal Power Act, as amended, particularly sections 301, 302, 303, 304, and 309 thereof (49 Stat. 854, 855, 858; 16 U.S.C. 825, 825a, 825b, 825c, 825h) and of the Natural Gas Act, as amended, particularly sections 8, 9, 10, and 16 thereof (52 Stat. 825, 826, 830; 15 U.S.C. 717g, 717h, 717i, 717o), orders:

A. The Commission's Uniform System of Accounts for Class D Public Utilities and Licensees prescribed by part 105, Chapter I, Title 18, of the Code of Federal Regulations is revised and amended as follows:

1. In the Electric Plant Instructions section amend the second sentence of instruction 6B. As so amended, Electric Plant Instruction 6B reads:

Electric Plant Instructions

* * * * *

6. *Electric Plant Retired.*

* * * * *

B. * * * If the land is sold, the difference between the book cost (less any accumulated provision for depreciation, or amortization therefor which has been authorized and provided) and the sale price of the land (less the commission and other expenses of making the sale) shall be included in account 411.6, Gains from Disposition of Utility Plant, or 411.7, Losses from Disposition of Utility Plant when such property has been recorded in account 394, Electric Plant Held for Future Use, otherwise to account 421.1, Gain on Disposition of Property or account 421.2, Loss on Disposition of Property, as appropriate. * * *

* * * * *

2. The chart of the Balance Sheet Accounts is amended by adding a new account title, "187, Deferred Losses from Disposition of Utility Plant" immediately following account title "183, Other Deferred Debits" and a new account title, "256, Deferred Gains from Disposition of Utility Plant" immediately following account title "255, Accumulated Deferred Investment Tax Credits," as follows:

Balance Sheet Accounts

(Chart of Accounts)

ASSETS AND OTHER DEBITS

* * * * *

4. DEFERRED DEBITS

* * * * *

187 Deferred losses from disposition of utility plant.

LIABILITIES AND OTHER CREDITS

* * * * *

8. DEFERRED CREDITS

* * * * *

256 Deferred gains from disposition of utility plant.

* * * * *

3. The text of the Balance Sheet Accounts is amended by adding two new accounts, "187, Deferred Losses From Disposition of Utility Plant" and "256, Deferred Gains From Disposition of Utility Plant," reading as follows:

Balance Sheet Accounts

ASSETS AND OTHER DEBITS

* * * * *

4. DEFERRED DEBITS

* * * * *

187 Deferred losses from disposition of utility plant.

This account shall include losses from the sale or other disposition of property previously recorded in account 394, Electric Plant Held for Future Use, under the provisions of paragraphs B, C, and D thereof, where such losses are significant and are to be amortized over a period of 5 years, unless otherwise authorized by the Commission. The amortization of the amounts in this account shall be made by debits to account 411.7, Losses From Disposition of Utility Plant. Amounts recorded in this account shall be net of related income taxes. (See account 394, Electric Plant Held for Future Use.)

LIABILITIES AND OTHER CREDITS

* * * * *

8. DEFERRED CREDITS

* * * * *

256 Deferred gains from disposition of utility plant.

This account shall include gains from the sale or other disposition of property previously recorded in account 394, Electric Plant Held for Future Use, under the provisions of paragraphs B, C, and D thereof, where such gains are significant and are to be amortized over a period of 5 years, unless otherwise authorized by the Commission. The amortization of the amounts in this account shall be made by credits to account 411.6, Gains from Disposition of Utility Plant. Amounts recorded in this account shall be net of related income taxes. (See account 394, Electric Plant Held for Future Use.)

* * * * *

4. The text of the Electric Plant Accounts is amended by revising account "394, Electric Plant Held for Future Use," as follows:

394 Electric plant held for future use.

A. This account shall include the original cost of electric plant (except land and land rights) owned and held for future use in electric service under a definite plan for such use, to include: (1) Property acquired (except land and land rights) but never used by the utility in electric service, but held for such service in the future under a definite plan, and (2) property (except land and land rights) previously used by the utility in service, but retired from such service and held pending its reuse in the future, under a definite plan, in electric service.

B. This account shall also include the original cost of land and land rights owned and held for future use in electric service under a plan for such use, to include land and land rights: (1) Acquired but never used by the utility in electric service, but held for such service in the future under a plan, and (2) previously held by the utility in service, but retired from such service and held pending its reuse in the future under a plan, in electric service.

C. In the event that property recorded in this account shall no longer be needed or appropriate for future utility operations, the company shall notify the Commission of such condition and request approval of journal entries to remove such property from this accounts.

D. Gains or losses from the sale of land and land rights or other disposition of such property previously recorded in this account and not placed in utility service shall be recorded directly in accounts 411.6 or 411.7 as appropriate, except when determined to be significant by the Commission. Upon such a determination, the amounts shall be transferred to account 256, Deferred Gains from Disposition of Utility Plant, or account 187, Deferred Losses from Disposition of Utility Plant, and amortized to accounts 411.6, Gains from Disposition of Utility Plant, or 411.7, Losses from Disposition of Utility Plant, as appropriate.

E. The property included in this account shall be classified according to the detailed accounts (301–390) prescribed for electric plant in service and the account shall be maintained in such detail as though the property were in service.

NOTE: Materials and supplies, meters and transformers held in reserve, and normal spare capacity of plant in service shall not be included in this account.

* * * * *

5. The Chart of the Income Accounts is amended by adding two new account titles "411.6, Gains from Disposition of Utility Plant" and "411.7, Losses from Disposition of Utility Plant," immediately following account title, "411.4, Investment Tax Credit Adjustments, Utility Operations," as follows:

Income Accounts

(Chart of Accounts)

1. UTILITY OPERATING INCOME

* * * * *

411.6 Gains from disposition of utility plant.

411.7 Losses from disposition of utility plant.

* * * * *

6. The texts of the Income Accounts is amended as follows:

(a) Two new accounts "411.6, Gains from Disposition of Utility Plant" and "411.7, Losses from Disposition of Utility Plant," are added immediately following account "411.5, Investment Tax Credit Adjustments, Non-utility Operations."

(b) Accounts "421.1, Gain on Disposition of Property" and "421.2, Loss on Disposition of Property," are revised.

These amended and revised portions of the Income Accounts read as follows:

Income Accounts

1. UTILITY OPERATING INCOME

* * * * *

411.6 Gains from disposition of utility plant.

This account shall include, as approved by the Commission, amounts relating to gains from the disposition of future use utility plant including amounts which were previously recorded in and transferred from account 394, Electric Plant Held for Future Use, under the provisions of paragraphs B, C, and D thereof.

411.7 Losses from disposition of utility plant.

This account shall include, as approved by the Commission, amounts relating to losses from the disposition of future use utility plant including amounts which were previously recorded in and transferred from account 394, Electric Plant Held for Future Use, under the provisions of paragraphs B, C, and D thereof.

* * * * *

2. OTHER INCOME AND DEDUCTIONS

* * * * *

421.1 Gain on disposition of property.

This account shall be credited with the gain on the sale, conveyance, exchange or transfer of utility or other property to another. Amounts relating to gains on land and land rights held for future use recorded in account 394, Electric Plant Held for Future Use will be accounted for as prescribed in paragraphs B, C, and D thereof. Income taxes on gains recorded in this accounts shall be recorded in account 409, Income Taxes.

421.2 Loss on disposition of property.

This account shall be charged with the loss on the sale, conveyance, exchange or transfer of utility or other property to another. Amounts relating to losses on land and land rights held for future use recorded in account 394, Electric Plant Held for Future Use will be accounted for as prescribed in paragraphs B, C, and D thereof. The reduction in income taxes attributable to losses recorded in this account shall be recorded in account 409, Income Taxes.

* * * * *

B. The Commission's Uniform System of Accounts for Natural Gas Companies (Class A and Class B) prescribed by Part 201, Chapter I, Title 18 of the Code

of Federal Regulations is revised and amended as follows:

1. The Gas Plant Instructions are revised as follows:

(a) In instruction 7, paragraph C and the first sentence of paragraph E are revised.

(b) In instruction 10, the second sentence of paragraph E is revised.

These revised portions of the Gas Plant Instructions read as follows:

Gas Plant Instructions

* * * * *

7. *Land and land rights.* * * *

C. The net profit from the sale of timber, cord wood, sand, gravel, other resources or other property acquired with the rights-of-way or other lands shall be credited to the appropriate plant account to which related. Where land is held for a considerable period of time and timber and other natural resources on the land at the time of purchase increases in value, the net profit (after giving effect to the cost of the natural resources) from the sales of timber or its products or other natural resources shall be credited to the appropriate utility operating income account when such land has been recorded in account 105, Gas Plant Held for Future Use, 105.1, Production Properties Held for Future Use, or classified as plant in service otherwise to account 421, Miscellaneous Nonoperating Income.

* * * * *

E. Any difference between the amount received from the sale of land or land rights, less agents' commissions and other costs incident to the sale, and the book cost of such land or rights shall be included in account 411.6, Gains from Disposition of Utility Plant or 411.7, Losses from Disposition of Utility Plant when such property has been recorded in account 105, Gas Plant Held for Future Use or 105.1, Production Properties Held for Future Use, otherwise to account 421.1, Gain on Disposition of Property or 421.2, Loss on Disposition of Property, as appropriate, unless a reserve therefor has been authorized and provided. * * *

* * * * *

10. *Additions and retirements of gas plant.*

* * * * *

E. * * * If the land is sold, the difference between the book cost (less any accumulated provision for depreciation, depletion or amortization therefor which has been authorized and provided) and the sale price of the land (less commissions and other expenses of making the sale) shall be recorded in account 411.6, Gains from Disposition of Utility Plant or 411.7, Losses from Disposition of Utility Plant when the property has been recorded in account 105, Gas Plant Held for Future Use or 105.1, Production Properties Held for Future Use, otherwise to accounts 421.1, Gain on Disposition of Property or 421.2, Loss on Disposition of Property, as appropriate. * * *

* * * * *

2. The Chart of the Balance Sheet Accounts is amended by adding three new accounts titled "105.1, Production Properties Held for Future Use" immediately following account "105, Gas Plant Held for Future Use," "187, Deferred Losses from Disposition of Utility Plant," immediately following account title "186, Miscellaneous Deferred Debits," and "256, Deferred Gains from Disposition of Utility Plant," immediately following account title "255, Accumulated Deferred Investment Tax Credits," as follows:

Balance Sheet Accounts

(Chart of Accounts)

ASSETS AND OTHER DEBITS

1. UTILITY PLANT

* * * * *

105.1 Production properties held for future use.

* * * * *

4. DEFERRED DEBITS

* * * * *

187 Deferred losses from disposition of utility plant.

LIABILITIES AND OTHER CREDITS

* * * * *

8. DEFERRED CREDITS

* * * * *

256 Deferred gains from disposition of utility plant.

* * * * *

3. The text of the Balance Sheet Accounts is amended as follows:

(a) Account "105, Gas Plant Held for Future Use" is revised.

(b) Account "110, Accumulated Provision for Depreciation of Gas Plant Held for Future Use," and account "113.2, Accumulated Provision for Amortization of Other Gas Plant Held for Future Use" are amended by revising the first sentence in paragraph "A" of each account and by adding a final sentence at the end of paragraph "B" of each account.

(c) Three new accounts are added, "105.1, Production Properties Held for Future Use," "187, Deferred Losses from Disposition of Utility Plant" and "256, Deferred Gains from Disposition of Utility Plant."

These revised and amended portions of the Balance Sheet Accounts read as follows:

Balance Sheet Accounts

ASSETS AND OTHER DEBITS

1. UTILITY PLANT

* * * * *

105 Gas plant held for future use.

A. This account shall include the original cost of gas plant (except land and land rights) owned and held for future use in gas service under a definite plan for such use, to include: (1) Property acquired (except land and land rights) but never used by the utility in gas service, but held for such service in the future under a definite plan, and (2) property (except land and land rights) previously used by the utility in gas service, but retired from such service and held pending its reuse in the future, under a definite plan, in gas service. This includes production properties relating to leases acquired on or before October 6, 1969.

B. This account shall also include the original cost of land and land rights owned and held for future use in gas service relating to leases acquired on or before October 6, 1969, under a plan for such use, to include land and land rights: (1) Acquired but never used by the utility in gas service, but held for such service in the future under a plan, and (2) previously held by the utility in gas service, but retired from such service and held pending its reuse in the future under a plan, in gas service. (See Gas Plant Instruction 7.)

C. In the event that property recorded in this account shall no longer be needed or appropriate for future utility operations, the company shall notify the Commission of such condition and request approval of journal entries to remove such property from this account.

D. Gains or losses from the sale of land and land rights or other disposition of such property previously recorded in this account and not placed in utility service shall be recorded directly in accounts 411.6 or 411.7, as appropriate, except when determined to be significant by the Commission. Upon such a determination, the amounts shall be transferred to account 256, Deferred Gains from Disposition of Utility Plant, or account 187, Deferred Losses from Disposition of Utility Plant, and amortized to accounts 411.6, Gains from Disposition of Utility Plant, or 411.7, Losses from Disposition of Utility Plant, as appropriate.

E. The property included in this account shall be classified according to the detail accounts (301 to 399) prescribed for gas plant in service and the account shall be maintained in such detail as though the property were in service.

NOTE A: Materials and supplies, meters and house regulators held in reserve, and normal spare capacity of plant in service shall not be included in this account.

NOTE B: Include in this account natural gas wells shut in after construction which have not been connected with the line; also, natural gas wells which have been connected with the line but which are shut in for any reason except seasonal excess capacity or governmental proration requirements or for repairs, provided that the related production leases were acquired on or before October 6, 1969.

105.1 Production properties held for future use.

A. This account shall include the cost of production properties (except land and land rights) relating to leases acquired on or after October 7, 1969, held under a definite plan for future use to insure a future supply of natural gas for use in pipeline operations, to include: (1) Production property (except land and land rights) acquired but never used by the utility in gas service, but held for such service in the future under a definite plan, and (2) production property (except land and land rights) previously used by the utility in gas service, but retired from such service and held pending its reuse in the future, under a definite plan, in gas service.

B. This account shall also include the original cost of land and land rights held under a plan for future use to insure a future supply of natural gas for use in pipeline operations, relating to leases acquired on or after October 7, 1969, to include land and land rights: (1) Acquired but never used by the utility in gas service, but held for service in the future under a plan, and (2) previously used by the utility in gas service, but retired from such service and held pending its reuse in the future under a plan, in gas service. (See Gas Plant Instruction 7.)

C. In the event that property recorded in this account shall no longer be needed or appropriate for future utility operations, the company shall notify the Commission of such condition and request approval of journal entries to remove such property from this account.

D. Gains or losses from the sale of land and land rights or other disposition of such property previously recorded in this account and not placed in utility service shall be recorded directly in accounts 411.6 or 411.7, as appropriate, except when determined to be significant by the Commission. Upon such determination, the amounts shall be transferred to account 256, Deferred Gains from Sale of Utility Plant, or account 187, Deferred Losses from Sale of Utility Plant, and amortized to accounts 411.6, Gains from Disposition of Utility Plant or 411.7, Losses from Disposition of Utility Plant, as appropriate.

E. The property included in this account shall be classified according to the detailed accounts prescribed for natural gas production and gathering plant in service and such classification shall be maintained in the same detail as though the property were in service.

* * * * *

110 Accumulated provision for depreciation of gas plant held for future use.

A. This account shall be credited with amounts charged to account 421, Miscellaneous Nonoperating Income, for depreciation expense on property included in accounts 105, Gas Plant Held for Future Use and 105.1, Production Properties Held for Future Use. * * *

B. * * * This account shall be subdivided so that amounts relating to account 105, Gas Plant Held for Future Use and 105.1, Production Properties Held for Future Use, can be readily identifiable.

* * * * *

113.2 Accumulated provision for amortization of other gas plant held for future use.

A. This account shall be credited with amounts charged to account 421, Miscellaneous Nonoperating Income, for amortization expense on property included in accounts 105, Gas Plant Held for Future Use, and 105.1, Production Properties Held for Future Use, not including, however, provisions for abandoned natural gas leases. * * *

B. * * * This account shall be subdivided so the amounts relating to accounts 105, Gas Plant Held for Future Use and 105.1, Production Properties Held for Future Use, can be readily identifiable.

* * * * *

4. Deferred Debits

* * * * *

187 Deferred losses from disposition of utility plant.

This account shall include losses from the sale or other disposition of property previously recorded in account 105, Gas Plant Held for Future Use and account 105.1, Production Properties Held for Future Use, under the provisions of paragraphs B, C, and D thereof, where such losses are significant and are to be amortized over a period of 5 years, unless otherwise authorized by the Commission. The amortization of the amounts in this account shall be made by debits to account 411.7, Losses from Disposition of Utility Plant. Subdivision of this account shall be maintained so that amounts relating to account 105, Gas Plant Held for Future Use and account 105.1, Production Properties Held for Future Use, can be readily identifiable. Amounts recorded in this account shall be net of related income taxes. (See accounts 105, Gas Plant Held for Future Use and 105.1, Production Properties Held for Future Use.)

* * * * *

LIABILITIES AND OTHER CREDITS

8. Deferred Credits

* * * * *

256 Deferred gains from disposition of utility plant.

This account shall include gains from the sale or other disposition of property previously recorded in account 105, Gas Plant Held for Future Use and account 105.1, Production Properties Held for Future Use, under the provisions of paragraphs B, C, and D thereof, where such gains are significant and are to be amortized over a period of 5 years, unless otherwise authorized by the Commission. The amortization of the amounts in this account shall be made by credits to account 411.6, Gains from Disposition of Utility Plant. Subdivision of this account shall be maintained so that amounts relating to account 105, Gas Plant Held for Future Use and account 105.1, Production Properties Held for Future Use, can be readily identifiable. Amounts recorded in this account shall be net of related income taxes. (See accounts 105, Gas Plant Held for Future Use and account 105.1, Production Properties Held for Future Use.)

* * * * *

4. The Chart of Income Accounts is amended by adding immediately following account title "411.4, Investment Tax Credit Adjustments, Utility Operations," two new account titles "411.6, Gains from Disposition of Utility Plant" and "411.7, Losses from Disposition of Utility Plant."

Income Accounts

(Chart of Accounts)

1. Utility Operating Income

* * * * *

411.6 Gains from disposition of utility plant.

411.7 Losses from disposition of utility plant.

* * * * *

5. The text of Income Accounts is amended as follows:

(a) Two new accounts "411.6, Gains from Disposition of Utility Plant" and "411.7, Losses from Disposition of Utility Plant," are added immediately following account "411.5, Investment tax credit adjustments, nonutility operations."

(b) Accounts "421.1, Gain on Disposition of Property" and "421.2, Loss on Disposition of Property," are revised.

These amended and revised portions of the Income Accounts read as follows:

Income Accounts

1. Utility Operating Income

* * * * *

411.6 Gains from disposition of utility plant.

This account shall include, as approved by the Commission, amounts relating to gains from the disposition of future use utility plant including amounts which were previously recorded in and transferred from account 105, Gas Plant Held for Future Use and account 105.1, Production Properties Held for Future Use, under the provisions of paragraphs B, C, and D thereof.

411.7 Losses from disposition of utility plant.

This account shall include, as approved by the Commission, amounts relating to losses from the disposition of future use utility plant including amounts which were previously recorded in and transferred from account 105, Gas Plant Held for Future Use and account 105.1, Production Properties Held for Future Use, under the provisions of paragraphs B, C, and D thereof.

* * * * *

2. Other Income and Deductions

* * * * *

421.1 Gain on disposition of property.

This account shall be credited with the gain on the sale, conveyance, exchange or transfer of utility or other property to another. Amounts relating to gains on land and land rights held for future use recorded in accounts 105, Gas Plant Held for Future Use and 105.1, Production Properties Held for Future Use, will be accounted for as prescribed in paragraphs B, C, and D thereof. (See gas plant instructions 5F, 7E, and 10E.) Income taxes on gains recorded in this account shall be recorded in account 409, Income Taxes.

421.2 Loss on disposition of property.

This account shall be charged with the loss on the sale, conveyance, exchange or transfer of utility or other property to another. Amounts relating to losses on

land and land rights held for future use recorded in accounts 105, Gas Plant Held for Future Use and 105.1, Production Properties Held for Future Use, will be accounted for as prescribed in paragraphs B, C, and D thereof. (See gas plant instructions 5F, 7E, and 10E.) The reduction in income taxes attributable to losses recorded in this account shall be recorded in account 409, Income Taxes.

* * * * *

C. The amendments and revisions adopted herein shall be effective January 1, 1971.

D. The Acting Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-2861 Filed 3-2-71;8:47 am]

[Docket No. R-392; Order No. 425]

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

Annual Report for Electric Utilities and Licensees

FEBRUARY 25, 1971.

On July 14, 1970, the Commission issued a notice of proposed rule making in this proceeding (35 F.R. 11701, July 22, 1970) proposing to revise schedule pages 429 and 430, Depreciation and Amortization of Electric Plant (Accounts 403, 404) of FPC Form No. 1, Annual Report for Electric Utilities, Licensees and Others (Class A and Class B), prescribed by § 141.1, Chapter I, Title 18 of the Code of Federal Regulations, to require the reporting of more detail regarding depreciation practices.

Comments were invited from interested parties to be submitted on or before August 28, 1970. Based on requests from respondents this date was extended to September 28, 1970 (35 F.R. 14002, Sept. 3, 1970). The Commission received comments from 23 respondents.[1]

The rulemaking as initially proposed would cause schedule pages 429 and 430, Depreciation and Amortization of Electric Plant to be expanded, in section A thereof, to include an additional plant function "Intangible Plant," so as to have this section more inclusive for depreciation and amortization expenses. In addition, section B of the schedule as proposed would relate to details of amortization only rather than both depreciation and amortization, as is presently the case. And finally, a new section C to the schedule was proposed to provide reporting of depreciation details in a more comprehensive fashion by including information on the methods used in arriving at depreciation charges.

Two respondents gave full support to the principles underlying the proposed rulemaking. Of these, one was in complete agreement with the rulemaking as proposed while the other suggested expansion of schedule section C to include both salvage and cost of removal rates and major revision of schedule page 408, Accumulated Provisions for Depreciation of Electric Plant of the FPC Form No. 1. The Commission does not presently need the additional information encompassed by these suggestions to carry out its regulatory responsibilities and therefore will not adopt them.

Ten respondents were noncommital in their reaction to the rulemaking but offered suggested changes of a minor and administrative nature. Most of the suggestions from these respondents have now been adopted and are included in the schedule. Four respondents questioned the need for reporting the information in section C of the schedule on an annual basis, in that the detailed information would be repetitious. With reference to the reporting of schedule section C data annually, the Commission believes these responses have merit and has modified the reporting requirements to require complete reporting of schedule section C information every 5 years, beginning with reporting year 1971 with only changes from the preceding complete report to be reported in the year the change occurs.

Eleven respondents were opposed to the rulemaking, of which six respondents were not opposed to changes in sections A and B of the schedule but were opposed only to the adoption of the schedule's section C. The primary thrust of the opposition was that respondents felt information could be made available to the Commission's staff during compliance audits or by periodic special studies and that there is created an implication by virtue of the mortality curve data requested that depreciation rates and service periods should be based solely on mortality studies. The Commission in considering the suggested alternative methods of obtaining data has found from experience that they are inadequate to support its requirements for continuous analysis of depreciation adequacy and practices and to provide current data needed to update its Form S-201, Electric Utility Depreciation Practices every 5 years. The statement that reporting of mortality curve data implies depreciation rates and service periods should be based solely on mortality studies is without merit since instructions to schedule section C require reporting on an "if available" basis. The Commission's established position is to consider plant mortality studies as only one element in depreciation analysis. It also recognizes the pitfalls of adopting depreciation rates based solely on mortality study results. However, considering that over one-half of the Class A and B electric utilities utilize mortality studies in varying degrees in the depreciation analysis process and have found them useful in arriving at depreciation accruals, it is considered appropriate and reasonable that this data be reported to the Commission.

Finally, four respondents requested that the schedule be eliminated from the requirement of CPA certification, since revisions would require in-depth depreciation studies by auditing firms. In this connection, the Commission has now modified the certification requirement to exclude data recorded in Columns (a) through (g) of schedule section C. Previous requirements remain applicable to schedule sections A and B and to information to be reported at the bottom of schedule section C. This is essentially the same as original certification requirements.

Certain other constructive suggestions received from respondents resulting from the proposed rulemaking have been included in the final revisions to the schedule and, although not substantive in nature, were of considerable value in the overall revision.

The Commission finds:

(1) The notice and opportunity to participate in this rulemaking proceeding with respect to the matters presently before this Commission through the submission, in writing, of data, views, comments, and suggestions in the manner described above, are consistent and in accordance with the procedural requirements prescribed by 5 U.S.C. 553.

(2) The amendments to Part 141, § 141.1, in Chapter I, Title 18 of the Code of Federal Regulations, herein prescribed, are necessary and appropriate for the administration of the Federal Power Act.

(3) Since the revisions prescribed herein, which were not included in the notice in this proceeding, are of a minor nature and consistent with the prime purpose of the proposed rulemaking, further compliance with the notice provision of 5 U.S.C. 553 is unnecessary.

(4) Since the revisions prescribed herein are for use in FPC Form No. 1 covering the calendar year beginning January 1, 1971 or for a year beginning or ending during the calendar year 1971, good cause exists for making these revisions to the form schedules Depreciation and Amortization of Electric Plant (Accounts 403, 404), effective upon issuance.

The Commission, acting pursuant to the provisions of the Federal Power Act, as amended, particularly sections 301, 304, and 309 thereof (49 Stat. 854, 855, 858; 16 U.S.C. 825, 825a, 825h), orders:

A. Effective for the reporting year 1971 and thereafter, General Instructions page ii and schedule pages 429 and 430, Depreciation and Amortization of Electric Plant (Accounts 403, 404), of FPC Form No. 1, Annual Report for Electric Utilities and Licensees, and Others (Class A and Class B) prescribed by § 141.1, Subchapter D, Chapter I,

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[1] Arthur Andersen & Co., Gilbert Associates, Inc., Martin Toscan Bennett Associates, Inc., Carolina Power and Light Co., The Cleveland Electric Illuminating Co., Columbus and Southern Ohio Electric Co., Commonwealth Edison Co., Consumers Power Co., Florida Power Corp., Iowa-Illinois Gas and Electric Co., Kansas City Power & Light Co., Montana-Dakota Utilities Co., Northeast Utilities, Northern States Power Co., Pacific Power & Light Co., Pennsylvania Power & Light Co., Public Service Electric and Gas Co., Public Service Co. of Indiana, Inc., Southern Services, Inc., Union Electric Co., Utah Power & Light Co., Virginia Electric and Power Co., and Wisconsin Electric Power Co.

Title 18 of the Code of Federal Regulations, are hereby amended as set forth in Attachment A hereto.[2]

B. The amendments herein adopted are effective upon issuance of this order.

C. The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-2862 Filed 3-2-71;8:47 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

[Docket No. FDC-76]

PART 46—NUT PRODUCTS

Peanut Butter; Definition and Standard of Identity; Effective Date

In the matter of establishing a definition and standard of identity for peanut butter (21 CFR 46.1):

An order promulgating a definition and standard of identity for peanut butter, to become effective 90 days after its date of publication in the FEDERAL REGISTER, was published July 24, 1968 (33 F.R. 10506). Two food manufacturers sought judicial review. Accordingly, an order staying the effective date of § 46.1, pending completion of judicial review, was published November 7, 1968 (33 F.R. 16333).

The U.S. Court of Appeals for the Third Circuit affirmed the order on May 14, 1970. Judicial review was concluded on December 14, 1970, when the U.S. Supreme Court denied the petition for a writ of certiorari filed by one of the manufacturers.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120): *It is ordered,* That § 46.1 *Peanut butters identity; label statement of optional ingredients* shall become effective 30 days from the date of publication hereof in the FEDERAL REGISTER.

Dated: February 24, 1971.

CHARLES C. EDWARDS,
Commissioner of Food and Drugs.

[FR Doc.71-2860 Filed 3-2-71;8:47 am]

[2] Attachment A filed as part of the original document.

Chapter III—Environmental Protection Agency

PART 420—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

O,O-Dimethyl 2,2,2-Trichloro-1-Hydroxyethyl Phosphonate

A petition (PP 0F0969) was filed with the Food and Drug Administration, DHEW, by Chemagro Corp., Post Office Box 4913, Kansas City, MO 64120, in accordance with the provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) proposing establishment of tolerances for residues of the insecticide *O,O*-dimethyl 2,2,2-trichloro-1-hydroxyethyl phosphonate in or on the raw agricultural commodities peanut vine hay at 12 parts per million, peanut vines and hulls at 3 parts per million, and peanuts at 0.1 part per million.

Subsequently the firm amended its petition by changing the proposed tolerances to 4 parts per million for peanut vine and hulls and to 0.05 part per million for peanuts.

The Reorganization Plan No. 3 of 1970 published in the FEDERAL REGISTER of October 6, 1970 (35 F.R. 15623), transferred (effective December 2, 1970) to the Administrator of the Environmental Protection Agency the functions vested in the Secretary of Health, Education, and Welfare for establishing tolerances for pesticide chemicals under sections 406, 408, and 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346, 346a, and 348). The functions vested in the Secretary of Agriculture and the Department of Agriculture under section 408(1) of the Act were also transferred to the Administrator, Part 120, Chapter I, Title 21 was redesignated Part 420 and transferred to Chapter III (36 F.R. 424).

Prior to December 2, 1970, the Secretary of Agriculture certified that this pesticide chemical is useful for the purposes for which tolerances are being established and the Fish and Wildlife Service of the Department of Interior advised that it has no objection to these tolerances.

Based on consideration given data submitted in the petition and other relevant material, it is concluded that:

1. The proposed uses are not reasonably expected to result in residues in eggs, meat, milk, and poultry. The uses are in the category specified in § 420.6 (a)(3).

2. The tolerances established by this order will protect the public health.

Therefore, pursuant to the provisions of the Federal Food, Drug and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), the authority transferred to the Administrator (35 F.R. 15623), and the authority delegated by the Administrator to the Commissioner or Acting Commissioner of the Pesticides Office of the Environmental Protection Agency (36 F.R. 1228), § 420.198 is amended by inserting a new paragraph "4 parts per million * * *" after the paragraph "12 parts per million * * *" and by inserting a new paragraph "0.05 part per million * * *" after the paragraph "0.1 part per million * * *", as follows:

§ 420.198 *O,O*-dimethyl 2,2,2-trichloro-1-hydroxyethyl phosphonate; tolerances for residues.

* * * * *

Four parts per million in or on peanut vine hay and hulls.

* * * * *

0.05 part per million (negligible residue) in or on peanuts.

* * * * *

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Objections Clerk, Environmental Protection Agency, 1626 K Street NW., Washington, DC 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (3-3-71).

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

Dated: February 26, 1971.

R. E. JOHNSON,
Acting Commissioner,
Pesticides Office.

[FR Doc.71-2899 Filed 3-2-71;8:50 am]

PART 420—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

2-Chloro-1-(2,4,5-Trichlorophenyl) Vinyl Dimethyl Phosphate

A petition (PP 9F0805) was filed with the Food and Drug Administration, Department of Health, Education, and Welfare, by Shell Chemical Co., a division

of Shell Oil Co., 1700 K Street NW., Washington, DC 20006, proposing the establishment of tolerances for residues of the insecticide 2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate in meat, fat, and meat byproducts of cattle at 2 parts per million; and in milk fat at 0.75 part per million (reflecting negligible residues in whole milk). The petition was subsequently amended by withdrawing the request for a tolerance for residues in milk fat, and reducing the other requested tolerances to 1.5 parts per million in fat of meat and 0.5 part per million in meat and meat byproducts of cattle.

The Reorganization Plan No. 3 of 1970 published in the FEDERAL REGISTER of October 6, 1970 (35 F.R. 15623), transferred (effective December 2, 1970) to the Administrator of the Environmental Protection Agency the functions vested in the Secretary of Health, Education, and Welfare for establishing tolerances for pesticide chemicals under sections 406, 408, and 409 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 346, 346a, and 348). The functions vested in the Secretary of Agriculture and the Department of Agriculture under section 408(1) of that Act (21 U.S.C. 346a(1)) were also transferred to the Administrator of the Environmental Protection Agency. Part 120 of Chapter 1 of Title 21 was redesignated Part 420 and transferred to Chapter III (36 F.R. 424).

Prior to December 2, 1970, the Secretary of Agriculture certified that this pesticide chemical is useful for the purposes for which tolerances are being established and the Fish and Wildlife Service of the Department of Interior advised that it has no objection to these tolerances.

Based on consideration given data submitted in the petition and other relevant material, it is concluded that:

1. The revised usage is not reasonably expected to result in residues of the insecticide in milk. The uses are classified in the category specified in § 420.6(a)(3) for milk.

2. The tolerances established by this order are safe and will protect the public health.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), and under authority transferred to the Administrator (35 F.R. 15623) and the authority delegated by the Administrator to the Commissioner or Acting Commissioner of the Pesticides Office of the Environmental Protection Agency (35 F.R. 1228), § 420.252 is revised to read as follows to include the new tolerances mentioned above:

§ 420.252 2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate; tolerances for residues.

Tolerances are established for residues of the insecticide 2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate in or on raw agricultural commodities as follows:

110 parts per million in or on corn forage and fodder (including field corn, sweet corn, and popcorn).

10 parts per million in or on apples, sweet corn (kernels plus cob with husks removed), and corn grain (including field corn and popcorn).

1.5 parts per million in the fat of cattle.

0.75 part per million in the fat of poultry.

0.5 part per million in the meat and meat byproducts of cattle.

0.1 part per million in eggs, meat, and meat byproducts of poultry.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Objections Clerk, Environmental Protection Agency, 1626 K Street NW., Washington, DC 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (3-3-71).

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

Dated: February 26, 1971.

R. E. JOHNSON,
Acting Commissioner,
Pesticides Office.

[FR Doc.71-2898 Filed 3-2-71;8:50 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 18883; FCC 71-193]

PART 73—RADIO BROADCAST SERVICES

Table of Assignments of Certain FM Broadcast Stations; First Report and Order

1. The Commission here considers the notice of proposed rule making in Docket No. 18883, adopted June 17, 1970, to amend the FM Table of Assignments (§ 73.202(b) of the rules) in various respects (FCC 70-639; 35 F.R. 10320) with the exception of Whaleyville, Va., and Lowell, Ind. (RM-1481 and RM-1503). All proposed assignments within 250 miles of the United States-Canadian border have been approved by Canada under the terms of the Canadian-United States Agreement of 1947 and the Working Arrangement of 1963. Unless otherwise indicated, population figures are from the 1970 census. Except as noted herein, the proposals have not been opposed.

2. Americus, Ga. (RM-1484). We here consider the assignment of Channel 249A as a second FM assignment to Americus, Ga., population 16,091, the largest city and seat of Sumter County, population 26,931. Channel 232A is used by Station WDEC-FM; also providing service are limited time Station WDEC and daytime-only Station WISK, the latter licensed to the petitioner Sumter Broadcasting Co. The only party filing comments was Sumter Broadcasting, more or less reiterating the arguments advanced in the petition and summarized in the notice. Briefly, these are: Americus is a principal community of its county, a key governmental center, the home of two higher educational institutions, and otherwise of importance to the area's financial, industrial, and agricultural activities.

3. From the viewpoint of population, a community of the size of Americus is entitled to another FM channel. See the further notice of proposed rule making in Docket No. 14185, adopted July 25, 1962 (FCC 62-867), and incorporated by reference in paragraph 25 of the third report, memorandum opinion and order, adopted July 23, 1963, 23 R.R. 1859, 1871. There appears to be no technical obstacle to the allocation of Channel 249A. However, as pointed out in the notice, three communities of greater than 2,000 population would be precluded by assignment of this channel to Americus. They are: Ashburn, population 4,209; Montezuma, population 4,125; and Tifton, population 12,179. As the notice stated, each city has local radio stations; Ashburn and Montezuma each have daytime-only stations while Tifton has two full-time AM stations and an unused Class C FM assignment (Channel 262). If Channel 262 at Tifton were activated with modest height and power, Ashburn would be well within its service contour. Montezuma could receive service from both of Macon's Stations WMAZ-FM and WDEN-FM if they increased somewhat (to far from maximum) their power and height. In the circumstances, there is no serious preclusion. Accordingly, we find that the public interest, convenience, and necessity will be served by allocating Channel 249A to Americus, Ga.

4. Oakdale, Calif. (RM-1490). The proposals under consideration are the assignment of either Class B Channel 236 or 237A to Oakdale (population 6,522), the third largest city in Stanislaus County (population 191,679), which has no aural broadcast outlet of its own. Three Class B stations operate in the county, two at Modesto (population 60,348) located about 12 miles to the southwest, and one at Patterson, population 3,013, about 33 miles away.[1] The petitioner, Don Pedro Broadcasting Co., proposed Channel 236 at a site about 25 miles east of Oakdale in the foothill area of the Sierra Nevada Range, which

[1] The Patterson station occupies the channel assignment for Turlock (population 13,598), the second largest city in the county.

would allow the channel to meet all minimum mileage requirements, cover Oakdale with a principal-city signal (at maximum power from an assumed site 1,250 feet a.m.s.l.) and also serve the smaller places of Waterford, and La Grange.[2] Our notice suggested as an alternative the assignment of Channel 237A on the basis that Oakdale qualifies for a first FM channel but not a Class B, since an adequate showing had not been made to justify it.

5. The objections to a Class B allocation have been overcome by data and information filed by petitioner Don Pedro Broadcasting in response to the notice. While assignment of Channel 236 would preclude Channels 235, 236, 237A, and 238 from large areas, these generally are to the north and east of the assumed site in the sparsely populated higher elevations of the Sierra Nevada, where there is little likelihood of an FM station. Further, Don Pedro Broadcasting has demonstrated that there would be substantial areas within the 1 mv/m contour without any (9.1 percent) or only one (13.5 percent) 1 mv/m signals. Moreover, preclusion from either of the channels our Notice proposed is approximately the same. Because of other channel assignments, Channel 236 may be allocated in a corridor extending from the Pacific Ocean south of Monterey toward the northeast to the vicinity of Hawthorne, Nev., and beyond, but the suggested alternative allocation of Channel 237A would preclude allocation of Channel 236 in the center of the corridor and leaving areas near the Pacific Ocean and east of the Sierra Nevada Range where Channel 236 could be assigned but where potential needs for service are not as great as Oakdale's. Petitioner also urges the need for the wide-area coverage to provide programing for the substantial Spanish speaking population of the area, which Don Pedro Broadcasting Co. intends to cater to. However, the latter is an argument which is relevant to an application for a construction permit once a channel is assigned rather than allocation of a channel; there may be other applicants for the channel, if assigned, who would program differently.

6. On balance, it would appear that the public interest, convenience, and necessity would be served by allocating Channel 236 to Oakdale. We are persuaded by the fact that a Class B facility would provide service to substantial unserved and underserved areas including rough mountainous terrain which otherwise would be underserved. In making this assignment, it is to be understood that a successful applicant must be prepared to construct and operate a station at maximum power and antenna height or the equivalent considering terrain.[3]

[2] Waterford had a 1960 Census population of 1,780, but, as an unincorporated place, it is not yet listed in the 1970 Census. La Grange is unlisted in either Census; unofficial sources cited in footnote 5 of the notice (p. 4) showed its population as 80.

[3] Don Pedro proposes such a station which would include Merced (22,698), Turlock (13,859), and most of Modesto (60,348) within the 1 mv/m contour.

7. Goldsboro and Roanoke Rapids, N.C. (RM–1492). We here are concerned with returning Channel 272A as a second channel to the large center of Goldsboro (population 26,810), the county seat of Wayne County (population 85,408). Roanoke Rapids (population 13,508) is located in Halifax County (population 53,884). In 1967, Channel 273 was assigned to the smaller community and Channel 272A deleted from the larger because of the showing that substantial unserved (no service) and underserved (one other service) areas could be served by a Class C channel assignment at Roanoke Rapids. The assignment was made on condition that a station use 100-kw. power and 500 feet AAT antenna height or equivalent and further, as relevant here, that "[i]n the event the assignment is not applied for in a reasonable time, [Station] WFMC or any other interested party can file a petition to restore the previous assignments and consideration will be given to the situation at that time." 9 FCC 2d 672, 677 (1967)[4] Southern Radio and TV Corp., licensee of AM Station WFMC, Goldsboro, has petitioned for the exchange not only because Channel 273 has been fallow, but in fact the proposed change would eliminate preclusions for Channel 274 in Buckingham County, Va., and Channel 272A in a large area of eastern North Carolina. In all the circumstances, a lengthy discussion is not necessary. Suffice it to say that we deem it appropriate to delete Channel 273 from Roanoke Rapids, assign Channel 272A to both Goldsboro and Roanoke Rapids, and thus restore the FM Table of Assignment as it existed prior to the 1967 Third Report and Order in Docket No. 17095.

8. Albany, Ga. (RM–1500). Albany, Ga., population 68,181, is the central city of the Albany SMSA (Dougherty County, population 88,705). Lynne-Yvette Broadcasting Co., Inc., licensee of daytime-only AM Station WLYB at Albany, requested the assignment of Channel 269A as the third FM channel to that community. The other two channels (242 and 283) are in operation; they are licensed to two of the four AM licensees at Albany. The petitioner would have preferred a Class C channel but none is available without disrupting existing assignments. Channel 269A may be assigned without other changes, and no city with over 1,210 population and without an FM assignment would be precluded from an assignment.[5] The Albany SMSA population growth from 1960 to 1970 is 17.2 percent (20 percent for the city proper). In the circumstances, considering the criteria for the number of FM allocations by population (see paragraph 3 above) and the active interest for an additional FM channel, it appears that the public interest will be served by allocation of Channel 269A to Albany.

9. Hattiesburg, Miss. (RM–1519). We here consider the proposed allocation of Channel 269A as a third assignment to Hattiesburg, population 38,277, the seat of Forrest County (57,849). Petitioner Deep South Radio, Inc., is the licensee of Station WBKH (daytime-only) at that city. The petitioner showed that the channel could be assigned to Hattiesburg in accordance with minimum mileage separations, with preclusion to a relatively small area including Prentiss (1,789), Collins (1,934), and Petal (6,987). The first two are the seats of Jefferson Davis (12,936) and Covington (14,002) Counties, respectively, and Petal is in Forrest County.[6] Petitioner urged that its proposal would permit program diversification and competition. In this respect, there are presently seven aural outlets operating in Hattiesburg, two Class IV and three daytime-only AM stations, and two Class C FM stations. The two Class C FM stations are operated in conjunction with fulltime AM stations. It is claimed that Hattiesburg is experiencing growth in population, industry and governmental importance.[7]

10. In our notice, we stated that we are not persuaded that Hattiesburg does not already have its fair share of FM assignments,[8] and that the adoption of the proposal also would mean the mixture of Class A and C channels in the same community, a result we have attempted to avoid whenever possible. We also said that we are reluctant to adopt the third assignment for Hattiesburg, if it would result in precluding the last available assignment for Collins, since neither it nor its county has an FM outlet. In the latter respect, we directly solicited comments by advising the President, Board of Supervisors of Covington County and the Mayor of Collins, of the proposal and the preclusion at Collins. John K. Keyes, Esquire, attorney for the town of Collins, replied to the effect that Collins objected because of its own need for an FM station; reliance was placed on area growth, industrial expansion, and location in the heart of the State's farming, cattle raising, poultry producing, and timber production area. Deep South Radio filed an engineering study proposing to show that Channel 240A could be assigned to Collins, although the site would have to be limited to meet the minimum mileage separation under our rules. For the reasons set out in the next paragraph, we are unable to agree that Channel 240A may be assigned to Collins.

11. Our study shows that in order to meet separation requirements to Station WFXM, Jackson, Miss., Channel 238, and

[4] The criteria applied in that proceeding for determining unserved and underserved areas before allocating Class B or C channels to smaller communities have been consistently followed since then. See, e.g., Oakdale, California, paragraphs 4–6, above.

[5] As to possible preclusion at Sylvester (4,077) and Fitzgerald (7,558) in the event of a grant of Florida-Georgia Interstate's application for Channel 266 at Valdosta (BPH–6805) mentioned in the notice, the application was dismissed for failure to prosecute on Oct. 27, 1970 (Docket No. 18964).

[6] An applicant for Petal could apply for the channel if assigned to Hattiesburg, under the "10-mile rule" (§ 73.203(b)).

[7] The 1960–70 growth is 9.7 percent.

[8] See Docket No. 14185, referred to in paragraph 3, above, which set the limit of two FM channels for a city of less than 50,000 population.

to Station WLPR–FM, Mobile, Ala., Channel 241, the transmitter site for Channel 240A would have to be so far from Collins that it is extremely doubtful that a principal-city signal could be provided over Collins. In addition, to meet the spacing to Station WSLI, Channel 242, at Jackson, the transmitter would need to be south and southeast of Collins which again would make it short to Station WLPR–FM. In the circumstances, we must deny the proposed allocation of Channel 269A to Hattiesburg on the basis that there is no reason to deviate from our population criterion by assigning a third channel, especially when to do so would preclude an allocation to a significant area elsewhere and where there are already seven aural outlets.

12. Exeter, N.H. (RM–1529). We here consider the reallocation of Channel 296A from Portsmouth (population 25,717) to Exeter (population 8,892)—both in Rockingham County (138,951)—about 11 miles apart. Exeter is the county seat and its only aural service is daytime-only AM Station WKXR, licensed to the petitioner Coastal Broadcasting Co., Inc. Portsmouth has three aural services: two AM stations, one daytime-only and the other unlimited, and Station WPFM on FM Channel 262. Channel 296A has been fallow. Petitioner's contentions—which are outlined in the notice—briefly are as follows: Rockingham is the fastest growing county in the State (40.3 percent increase from 1960 to 1970) and the assignment would allow a first local full-time outlet in the area including Hampton Beach, a nearby resort area. It might be noted that Portsmouth's population has remained constant despite the area's growth (Exeter's increase was about 3,000, or over 50 percent). It appears that the public interest, convenience and necessity would be served by the reallocation from Portsmouth to Exeter.

13. South Lake Tahoe, Calif. (RM–1531). The proposal here is to assign Channel 261A to South Lake Tahoe, Calif. South Lake Tahoe, incorporated in 1965,[9] is located near the California-Nevada border about 40 miles south of Reno, Nev. Its population is 12,921. The area is primarily a recreational one. There are three aural broadcast stations; a Class IV AM, a daytime-only AM, and an FM on Channel 276A[10] (the latter two are licensed to Emerald Broadcasting Co., which filed comments). As our notice stated, the proposed assignment satisfies all technical requirements, and although there are large preclusion areas, this is regarded as insignificant because of general availability of other possible assignments in the areas affected. Because of the apparent rapid growth in the area (see next paragraph), we felt that the proposal warranted rule making.

14. Filing comments were KOWL, Inc. (licensee of Class IV Station KOWL), Emerald Broadcasting Co., and the petitioner Philip D. Doersam. KOWL took a pessimistic view as to the present and future of Lake Tahoe Basin. It was pointed out that the population figure relied on by petitioner (31,427) is the figure for Lake Tahoe Basin and not the city of South Lake Tahoe. KOWL also contended that because of changes in the city and county building ordinances, the uncertainty of the Tahoe Regional Planning Agency, the Lake Tahoe region is a depressed area. Emerald also contends that because petitioner and his wife doing business as Pendor Communications are new licensees of Station KBUB–FM, Reno, Nev., there would be a violation of the multiple ownership rule (§ 73.240). Petitioner, on the other hand, says that Station KBUB–FM with its antenna at Sparks, Nev., will not provide service to South Lake Tahoe because of intervening mountainous terrain.[11]

15. The "multiple ownership" question is one to be considered at the time of application rather than now, inasmuch as petitioner may not be the sole applicant. While we are not persuaded by petitioner's stress on intention to serve the entire Lake Tahoe area, it would appear that this is a growth area, as reflected by the 49.1 percent population increase (1960 to 1970) of El Dorado County, in which South Lake Tahoe is located. Under the extant population criteria (see paragraph 3, above), South Lake Tahoe may be entitled to a second FM channel. Accordingly, we hereby allocate Channel 261A to South Lake Tahoe and change the place of assignment of Channel 276A from "Tahoe Valley" to South Lake Tahoe to reflect the 1965 incorporation.

16. Fairmont, N.C. and Mullins, S.C. The notice in this proceeding also proposed changes in the allocations for these communities because of a rule (§ 73.207) adopted concerning IF "taboo" (for 53 or 54 channel) separations after the FM Table of Assignments had been adopted, and with which certain assignments in the Table are inconsistent. These are Channel 292A at Fairmont and Channel 239 at Lumberton, N.C. (occupied by Station WJSK). Since the Fairmont channel is unoccupied, the notice in this proceeding proposed a change to Channel 265A, which at the same time required that the unoccupied channel assignment at Mullins be changed from 265A to 296A. No one commented on these proposed changes. Since obviously in the public interest, these changes will be made.

17. Authority for the adoption of the amendments proposed herein is contained in sections 4(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended.

18. In accordance with the foregoing: *It is ordered*, That effective April 13, 1971, the FM Table of Assignments (§ 73.202(b) of the rules) is amended to read as follows for the cities listed below:

City	*Channel No.*
California:	
Oakdale	[1] 236
South Lake Tahoe	261A, 276A
Georgia:	
Albany	242, 269A, 283
Americus	232A, 249A
New Hampshire:	
Exeter	296A
Portsmouth	262
North Carolina:	
Fairmont	265A
Goldsboro	245, 272A
Roanoke Rapids	272A
South Carolina:	
Mullins	296A

[1] Any application must specify maximum power and antenna height, or the equivalent considering terrain.

19. *It is further ordered*, That the petition of Deep South Radio, Inc., RM–1519, is denied.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Adopted: February 24, 1971.

Released: February 26, 1971.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71–2905 Filed 3–2–71;8:50 am]

[9] It includes the communities formerly known as Bijou, Stateline, Al Tahoe, and Tahoe Valley.

[10] The FM Table of Assignments shows the place of assignment as Tahoe Valley, but this is being changed to South Lake Tahoe to reflect the incorporation (see footnote 9).

[11] Petitioner, in this respect, also points to the fact that Station KNEV (Channel 238) operating from a mountain peak north of Reno about 2,000 feet higher than KBUB–FM's installation does not serve the Lake Tahoe Basin area.

Title 49—TRANSPORTATION

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Corrected S. O. No. 1064]

PART 1033—CAR SERVICE

Distribution of Boxcars

At a session of the Interstate Commission, Railroad Service Board, held in Washington, D.C., on the 24th day of February 1971.

It appearing, that an acute shortage of plain boxcars with inside length of 40 feet or longer and less than 50 feet, equipped with side doors 9 feet or wider or of plain boxcars with inside length 50 feet or longer and less than 70 feet, regardless of door width, exists throughout the United States; that shippers are being deprived of such cars required for loading creating great economic loss and resulting in a severe emergency; that present rules, regulations, and practices with respect to the use, supply, control, movement, distribution, exchange, interchange, and return of such boxcars to the owning railroads are ineffective; and that orders issued by the Association of American Railroads to promote more equitable distribution have proved ineffective. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and

the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than 30 days' notice.

It is ordered, That:

§ 1033.1064 Distribution of boxcars.

(a) Each common carrier by railroad subject to the Interstate Commerce Act shall observe, enforce, and obey the following rules, regulations, and practices with respect to its car service:

(1) Return to owners empty, except as otherwise authorized in paragraphs (3) and (5) of this section, all plain boxcars which are listed in the registration of the specific railroads named herein in the Official Railway Equipment Register, ICC R.E.R. 378, issued by E. J. McFarland, or successive issues thereof as having mechanical designation XM, with inside length of 40 feet or longer and less than 50 feet and equipped with side doors 9 feet or wider, or with inside length 50 feet or longer and less than 70 feet regardless of door width, which bear the identification marks shown:

Burlington Northern Inc.: Identification marks—BN, CBQ, GN, NP, SPS.
Chicago, Milwaukee, St. Paul and Pacific Railroad Co.: Identification marks—Milw.
Missouri-Kansas-Texas Railroad Co.: Identification marks—BKTY, MKT.
Southern Pacific Transportation Co.: Identification marks—SP.
Union Pacific Railroad Co.: Identification marks—UP.

(2) Plain boxcars described in subparagraph (1) of this paragraph include both plain boxcars in general service and plain boxcars assigned to the exclusive use of a specified shipper.

(3) Except as otherwise provided in subparagraph (5) of this paragraph, boxcars described in paragraph (1) of this paragraph may be loaded to stations on the lines of the owning railroad, or to any other station which is closer to the owner than the station at which loaded. After unloading at a junction with the carowner, such cars shall be delivered to the carowner at that junction, either loaded or empty.

(4) Boxcars described in subparagraph (1) of this paragraph shall not be back-hauled empty from a junction with the carowner.

(5) Boxcars described in subparagraph (1) of this paragraph located at a point other than a junction with the carowner shall not be back-hauled empty, except for the purpose of loading to a junction with the carowner or to a station on the lines of the carowner.

(6) The return to the owner of a boxcar described in paragraph (1) herein shall be accomplished when it is delivered to the carowner, either empty, or loaded as authorized by subparagraphs (3) or (5) of this paragraph.

(7) Junction points with the carowner shall be those listed by the carowner in its specific registration in the Official Railway Equipment Register, ICC R.E.R. No. 378, issued by E. J. McFarland, or successive issues thereof, under the heading "Freight Connections and Junction Points."

(8) In using plain boxcars owned by railroads not listed in paragraph (1) of this section, the railroads named therein will restrict the use of such cars to traffic destined to a station closer to the carowner than the station at which the car was last loaded.

(9) In determining distances to the carowner from points of loading or unloading, tariff distances applicable via the lines of the carriers obligated under Car Service Rules 1 and 2 to move the car shall be used.

(10) No common carrier by railroad subject to the Interstate Commerce Act shall accept from shipper any loaded boxcar for movements contrary to the provisions of subparagraphs (3) or (5) of this paragraph.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(c) *Effective date.* This order shall become effective at 12:01 a.m., March 1, 1971.

(d) *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.

(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 a copy of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order 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.71-2884 Filed 3-2-71;8:48 am]

[Corrected S.O. No. 1065]

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 24th day of February 1971.

It appearing, that an acute shortage of certain plain boxcars exists on the railroads named in paragraph (a) subparagraph (1) herein; that shippers located on the lines of these carriers are being deprived of such cars required for loading, resulting in a severe emergency and causing grain elevators to be unable to accept grain from farmers, thus creating economic loss; that present rules, regulations, and practices with respect to the use, supply, control, movement, distribution, exchange, interchange, and return of boxcars owned by these railroads are ineffective; and that orders issued by the Association of American Railroads to promote more equitable distribution have proved ineffective. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than 30 days' notice.

It is ordered, That:

§ 1033.1065 Distribution of boxcars.

(a) Each common carrier by railroad subject to the Interstate Commerce Act shall observe, enforce, and obey the following rules, regulations, and practices with respect to its car service:

(1) Return to owner empty, except as otherwise authorized in subparagraphs (5) and (7) of this paragraph, all plain boxcars which are listed in the registration of the specific railroads named herein in the Official Railway Equipment Register, ICC R.E.R. 378, issued by E. J. McFarland, or successive issues thereof, as having mechanical designation XM, with inside length 44 feet 6 inches or less and equipped with doors less than 9 feet wide and bearing the identification marks shown:

The Atchison, Topeka and Santa Fe Railway Co.: Identification marks—ATSF.
Burlington Northern Inc.: Identification marks—BN, CBQ, GN, NP, SPS.
Chicago & Eastern Illinois Railroad Co.: Identification marks—CEI.
Chicago and North Western Railway Co.: Identification marks—CGW, CMO, CNW, MSTL.
Chicago, Milwaukee, St. Paul and Pacific Railroad Co.: Identification marks—MILW.
Chicago, Rock Island and Pacific Railroad Co.: Identification marks—RI.
The Colorado and Southern Railway Co.: Identification marks—C&S.
Fort Worth and Denver Railway Co.: Identification marks—FW&D.
Missouri-Illinois Railroad Co.: Identification marks—M–I.
Missouri-Kansas-Texas Railroad Co.: Identification marks—MKT.
Missouri Pacific Railroad Co.: Identification marks—MP.
Soo Line Railroad Co.: Identification marks—DSA, SOO.
The Texas and Pacific Railway Co.: Identification marks—T&P, TP.

(2) The following companies will be considered as one railroad in the application of subparagraphs (1), (5), (6), (7), (8), (9), and (10) of this paragraph.

Burlington Northern Inc.
The Colorado and Southern Railway Co.
Fort Worth and Denver Railway Co.

(3) The following companies will be considered as one railroad in the application of subparagraphs (1), (5), (6), (7), (8), (9), and (10) of this paragraph.

Chicago & Eastern Illinois Railroad Co.
Missouri-Illinois Railroad Co.
Missouri Pacific Railroad Co.
The Texas and Pacific Railway Co.

(4) Plain boxcars described in subparagraph (1) of this paragraph include both plain boxcars in general service and

plain boxcars assigned to the exclusive use of a specified shipper.

(5) Except as otherwise provided in subparagraph (7) herein, boxcars described in subparagraph (1) of this paragraph may be loaded to stations on the lines of the owning railroad, or to any other station which is closer to the owner than the station at which loaded. After unloading at a junction with the car owner, such cars shall be delivered to the car owner at that junction, either loaded or empty.

(6) Boxcars described in subparagraph (1) of this paragraph shall not be back-hauled empty from a junction with the car owner.

(7) Boxcars described in subparagraph (1) of this paragraph located at a point other than a junction with the car owner shall not be back-hauled empty, except for the purpose of loading to a junction with the car owner or to a station on the lines of the car owner.

(8) The return to the owner of a boxcar described in subparagraph (1) of this paragraph shall be accomplished when it is delivered to the car owner, either empty, or loaded as authorized by subparagraphs (5) or (7) of this paragraph.

(9) Junction points with the car owner shall be those listed by the car owner in its specific registration in the Official Railway Equipment Register, ICC R.E.R. No. 378, issued by E. J. McFarland, or successive issues thereof, under the heading "Freight Connections and Junction Points."

(10) In using plain boxcars owned by railroads not listed in subparagraph (1) of this paragraph, the railroads named therein will restrict the use of such cars to traffic destined to a station closer to the carowner than the station at which the car was last loaded.

(11) In determining distances to the carowner from the points of loading or unloading, tariff distances applicable via the lines of the carriers obligated under Car Service Rules 1 and 2 to move the car shall be used.

(12) No common carrier by railroad subject to the Interstate Commerce Act shall accept from shipper any loaded boxcar for movements contrary to the provisions of subparagraphs (5) or (7) of this paragraph.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(c) *Effective date.* This order shall become effective at 12:01 a.m., March 1, 1971.

(d) *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.

(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 a copy of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order 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.71-2885 Filed 3-2-71;8:48 am]

Title 50—WILDLIFE AND FISHERIES

Chapter III—International Regulatory Agencies (Fishing and Whaling)

SUBCHAPTER B—INTERNATIONAL WHALING COMMISSION

PART 351—WHALING

Miscellaneous Amendments

The Whaling Convention Act of 1949 (64 Stat. 421–425; 16 U.S.C. 916 et seq.), implements the International Convention for the Regulation of Whaling signed at Washington, D.C., December 2, 1946, by the United States of America and certain other governments; section 13 of the Act (64 Stat. 425; 16 U.S.C. 916D), provides that regulations of the International Whaling Commission shall be submitted for publication in the FEDERAL REGISTER. Regulations of the Commission are defined to mean the whaling regulations in the schedule annexed to and constituting a part of the convention in their original form or as modified, revised, or amended by the Commission. The provisions of the whaling regulations, as originally embodied in the schedule annexed to the convention, have been amended several times by the International Whaling Commission, the last amendment having been brought into effect on October 7, 1970. The provisions of these regulations are applicable to persons and vessels under the jurisdiction of the United States.

Amendments to the whaling regulations adopted by the International Whaling Commission pursuant to article V of the Convention are not subject to the notice and public procedure requirements of the Administrative Procedure Act (5 U.S.C. 553). Accordingly, in fulfillment of section 13 of the Whaling Convention Act of 1949, the Whaling Regulations published as Part 351, Title 50, Code of Federal Regulations, as the same appeared in 33 F.R. 2777 are amended as follows:

These amended regulations shall become effective on the date of publication.

Issued at Washington, D.C., pursuant to authority delegated to me under the Reorganization Plan No. 4, effective October 3, 1970 (35 F.R. 15627).

HARVEY M. HUTCHING,
Acting Director,
National Marine Fisheries Service.

1. Section 351.4(a)(2) is amended by changing the number "1966" to "1971."

2. Section 351.4(b) is amended to read "It is forbidden to use a factory ship or whale catcher attached thereto for the purpose of taking or treating baleen whales except minke whales in any of the following areas:"

3. Section 351.5 is amended to read "It is forbidden to use a factory ship or whale catcher attached thereto for the purpose of taking or treating baleen whales in the waters south of 40° south latitude * * *"

4. Section 351.6(d) is amended by changing the number "1968" to "1971."

5. Section 351.6(e) is amended to read "It is forbidden to use a factory ship or whale catcher attached thereto for the purpose of taking or treating sperm whales in the waters between 40° south latitude and 40° north latitude."

6. Section 351.7(a) is amended to read "It is forbidden to use a factory ship or whale catcher attached thereto for the purpose of taking or treating baleen whales (excluding minke whales) in * * *"

7. Section 351.7(b) is amended to read "It is forbidden to use a factory ship or whale catcher attached thereto for the purpose of taking or treating * * *"

8. Section 351.8(a) is amended by deleting the words "whale catchers attached to factory ships" in line 4 and inserting "factory ships or whale catchers attached thereto."

9. Section 351.8(b)(3) is amended by inserting after "sei" the words "or Bryde's."

10. Section 351.8(c) is amended to delete the word "factoryship" in the 6th line and add after the word "any" "waters south of 40° south latitude by all factory ships or whale catchers attached thereto * * *"

11. Section 351.8(d) is amended by deleting the last sentence and substituting "The taking or attempting to take baleen whales by factory ships or whale catchers attached thereto shall be illegal in any waters south of 40° south latitude after midnight of the date so determined."

12. Amend § 351.8 by adding paragraphs (f), (g), and (h) to read as follows:

(f) The number of fin whales taken in the North Pacific Ocean and dependent waters excluding the catch in the East China Sea shall not exceed 1,308 whales, plus or minus 10 percent (10%) in 1971.

(g) The number of sei and Bryde's whales combined taken in the North Pacific Ocean and dependent waters shall not exceed 4,710 whales plus or minus 10 percent (10%) in 1971. The numbers taken in the succeeding few years shall be further adjusted on the basis of the latest scientific assessment, so that within a few years the catch shall be less than the estimate of the sustainable yield.

(h) The provisions regarding a 10 percent (10%) allowance for fin and sei (including Bryde's) whales in the North Pacific Ocean and dependent waters shall be applied in such a way that if the catch of one species exceeds the number given in subparagraph (f) or (g), the catch of the other species shall be less

than the appropriate number by an equivalent amount.

13. Section 351.9(a) is amended by adding the word "Bryde's" after the word "sei" in the second line, and "and Bryde's" after "sei" in the fifth and eighth lines, and by changing the date "1968" to "1971" in said paragraph.

14. Section 351.9(b) is amended by deleting "for delivery to factory ships on land stations" in the third, fourth, sixth and seventh lines and by changing the date "1968" to "1971."

15. Section 351.11 is amended by adding "apart from minke whales" after the words "baleen whales," by adding "except the North Pacific Ocean and its dependent waters north of the Equator" after the word "area" in the fifth line, and by adding "provided that catch limits in the North Pacific Ocean and dependent waters are established as provided in § 351.8 paragraphs (f), (g), and (h)" after the word "season" in the ninth line.

16. Section 351.13(a) is amended by deleting the words "delivery to" in the first line and substituting the words "treatment by."

17. Section 351.13(d) is amended by deleting the words in the first three lines up to and including "immediately" and substitute the words "The information specified in paragraph (c) of this section shall be entered immediately by a factory ship * * *."

18. Section 351.18(a) is amended by inserting the following definition after the definition for the Blue whale "Bryde's whale" (Balaenoptera edeni or brydei) means any whale known by the name of "Bryde's whale," and under the definition of "Sei whale," delete the last portion of the sentence beginning with "and shall be taken to include Bryde's whale (B. brydei)."

[FR Doc.71-2870 Filed 3-2-71;8:45 am]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter I—Federal Procurement Regulations

PART 1-5—SPECIAL AND DIRECTED SOURCES OF SUPPLY

Subpart 1-5.10—Use of Excess Aluminum

ELIMINATION OF REPORTING REQUIREMENTS

This amendment revises procedures for implementing the Government Use program for excess aluminum in the National Stockpile. Specifically, the amendment eliminates the reporting requirements which have been imposed upon executive agencies and Government contractors under the excess aluminum use program. It also revises the references to rated orders which have been redesignated by the Department of Commerce.

1. Section 1-5.1001-1(b) is revised as follows:

§ 1-5.1001-1 Government Use Program.

* * * * *

(b) These provisions do not apply to procurements of supplies or construction effected by procuring activities located outside, for use outside, the United States, its possessions, and Puerto Rico. These provisions are applicable to new procurements that are effected by amendments to an existing contract. In such cases, only the new procurement portion of the total contract is considered in determining whether the clause is required and, if required, the extent of its applicability.

2. Section 1-5.1001-2 is amended as follows:

§ 1-5.1001-2 Contract clause.

REQUIRED SOURCE FOR ALUMINUM INGOT

* * * * *

(c) To the extent the Contractor (or subcontractor or supplier, where applicable) places subcontracts or purchase orders for aluminum products or for items other than aluminum products and containing aluminum in any form, he is not required with respect to such subcontracts or purchase orders to purchase aluminum from GSA. However, he agrees to incorporate this clause:

(i) In any such subcontract or purchase order for aluminum products in the total amount of $500 or more; or

(ii) In any such subcontract or purchase order in the total amount of $25,000 or more for any items containing aluminum in any form where the quantity of aluminum products used in the production of such items is estimated to be 10,000 pounds or more.

(d) The requirements of this clause are not intended to preclude basic agreements or other arrangements between the parties to any contracts (subcontracts or purchase orders) subject to this clause that will permit reference in such contracts to the applicability of the requirements of this clause, without the need for physically incorporating this clause in its entirety in each affected subcontract or purchase order.

(e) In placing subcontracts and purchase orders subject to the clause, the Contractor and all subcontractors and suppliers are authorized and encouraged to consolidate aluminum product purchases hereunder with other defense rated order purchases (ACM, DO, or DX) and other identifiable Government orders so as to apply the requirements of this clause to the total purchase. Otherwise, it is required either that aluminum product purchases subject to this clause be separately made, or, if consolidated with other aluminum product purchases, that the quantities (by weights) of aluminum products subject to this clause be separately set forth in the purchase document and identified as subject to this clause.

(f) Required purchases of aluminum from GSA by Contractors, subcontractors, or suppliers shall be made within 90 days from the date (i) of final delivery pursuant to a contract, subcontract, or purchase order containing the requirements of this clause, or (ii) when the Contractor, subcontractor, or supplier has completed deliveries of aluminum products aggregating 100,000 pounds, whichever is earlier: *Provided, however,* That any Contractor, subcontractor, or supplier, may defer required purchases of aluminum for the purpose of consolidating purchases to meet the requirement of two or more contracts, subcontracts, or purchase orders containing this clause until 90 days after the aggregate purchase requirements of such contracts, subcontracts, or purchase orders equal the minimum order quantities established by GSA (approximately 10,000 pounds or more). Successive consolidated purchases thereafter may be made at any time within 90-day intervals. The 90-day limitations may be extended upon approval in writing by GSA.

(g) Certain producers of aluminum have entered into contracts with GSA effective as of November 1, 1965, under which they have made long term commitments to purchase certain minimum and maximum quantities of aluminum from that Agency. The obligations of such producers under this clause shall be governed by the provisions of those contracts to the extent of any inconsistency.

(h) All purchases made pursuant to this clause, other than from GSA, which are rated (ACM, DO, or DX) in accordance with DMS Regulation 1, DMS Order 3, and DPS Regulation 1, are subject to the provisions of those regulations concerning the maintenance of records, rights of inspection and audit, and the penalty provisions contained therein for willful noncompliance.

3. Section 1-5.1001-3 is amended by revising the contract provision set forth in the section as follows:

§ 1-5.1001-3 Contract clause for construction contracts.

* * * * *

(c) To the extent the Contractor or subcontractor or supplier, where applicable, places subcontracts or purchase orders for aluminum products, or for items other than aluminum products and containing aluminum in any form, or for construction where the subcontractor is to furnish materials containing aluminum in any form, he is not required with respect to such subcontracts or purchase orders to purchase aluminum from GSA. However, he agrees to incorporate this clause:

(i) In any such subcontract or purchase order for aluminum products in the total amount of $500 or more; or

(ii) In any such subcontract or purchase order in the total amount of $25,000 or more for any items containing aluminum in any form where the quantity of aluminum products used in the production of such items is estimated to be 10,000 pounds or more; or

(iii) Construction, where the materials are to be supplied by the subcontractor and the total value of such materials containing aluminum (in any form) is estimated to be $25,000 or more, and where the quantity of aluminum products used in the production of such items is estimated to be 10,000 pounds or more.

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

Modification of existing contracts. Executive agencies should modify existing contracts entered into prior to the effective date of this amendment which contain the contract clause prescribed in § 1-5.1001-2 by deleting paragraph (d) of such clause. Consideration for the deletion of paragraph (d) is the savings to the Government resulting from the elimination of (a) reimbursable costs associated with the requirement of the paragraph and/or (b) expenses involved in administering the reports which are no longer needed.

Effective date. These regulations are effective upon publication in the FEDERAL REGISTER (3-3-71).

Dated: February 23, 1971.

ROBERT L. KUNZIG,
Administrator of General Services.

[FR Doc.71-2838 Filed 3-2-71;8:45 am]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 18—National Aeronautics and Space Administration

REVISION OF REGULATIONS

Parts 18–5, 18–6, and 18–7 of Chapter 18, Title 41 Code of Federal Regulations are revised as set forth below. These revisions to Chapter 18 covering changes made by the Basic 1970 Edition and Revision 1 of the NASA Procurement Regulation were effective July 27, 1970, except for interim changes made by Procurement Regulation Directives.

PART 18–5—INTERDEPARTMENTAL PROCUREMENT

Subpart 18–5.1—Procurement Under Federal Supply Schedule Contracts

Sec.
18–5.100 Scope of subpart.
18–5.101 General.
18–5.101–1 Federal Suply Schedule contracts.
18–5.101–2 Procurement offices.
18–5.101–3 Labor surplus area and small business considerations.
18–5.102 Mandatory Federal Supply Schedules.
18–5.103 Federal Supply Schedules not mandatory.
18–5.104 Order for Supplies or services.
18–5.105 Federal Supply Schedules with multiple source provisions.
18–5.105–1 Description.
18–5.105–2 General.
18–5.105–3 Justifications.
18–5.105–4 Responsibility of procurement office.
18–5.106 Use of Federal Supply Schedules for automatic data processing Equipment (ADPE) and related software, and maintenance services.

Subpart 18–5.4—Procurement of Prison-Made Supplies

18–5.400 Applicability.
18–5.401 General.
18–5.402 Preference as between prison-made and blind-made supplies.
18–5.403 Schedule of supplies which are prison-made.
18–5.404 Mandatory procurement of prison-made supplies.
18–5.404–1 Mandatory procurement from Federal Prison Industries, Inc.
18–5.404–2 Mandatory procurement of prison-made supplies from General Services Administration Stores Depots.
18–5.405 Nonmandatory procurement of prison-made supplies.
18–5.406 Procurement procedure.
18–5.406–1 Procurement from Federal Prison Industries, Inc.
18–5.406–2 Procurement from General Services Administration Stores Depots.
18–5.407 Exceptions.
18–5.408 Clearances.

Subpart 18–5.5—Procurement of Blind-Made Supplies

18–5.500 Applicability.
18–5.501 General.
18–5.502 Schedule of supplies which are blind-made.
18–5.503 Mandatory procurement of blind-made supplies.
18–5.504 Procurement procedure.
Sec.
18–5.504–1 Through National Industries for the Blind.
18–5.504–2 From General Services Administration Stores Depots.
18–5.505 Clearances.
18–5.506 Optional procurement of blind-made supplies.
18–5.550 Procurement of services from agencies for the blind.

Subpart 18–5.6—Procurement of Printing and Related Supplies

18–5.601 Printing and related supplies.
18–5.602 Contract clause.

Subpart 18–5.7—Procurement From or Through Another Federal Agency

18–5.700 Scope of subpart.
18–5.701 Procuring materials from the Department of the Air Force missile procurement fund.
18–5.701–1 Requests for procurement.
18–5.701–2 Delivery requests.
18–5.701–3 Receiving procedures.
18–5.701–4 Billing.
18–5.702 Procurement of jewel bearings.
18–5.703 Procurement of helium.
18–5.704 Acquisition of mercury.

Subpart 18–5.8—Procurement of Certain Utility Services by Use of General Services Administration Areawide Public Utility Contracts and Department of Defense Areawide Communications Contracts

18–5.800 Scope of subpart.
18–5.801 General.
18–5.802 Distribution of GSA areawide public utility contracts and related publications.
18–5.803 Use of GSA areawide public utility contracts.
18–5.804 Ordering under GSA areawide public utility contracts.
18–5.850 Use of DOD areawide communications.

Subpart 18–5.9—Use of General Services Administration Supply Sources by Prime Contractors in Performing Cost-Reimbursement-Type Contracts

18–5.900 Scope and applicability of subpart.
18–5.901 Policy.
18–5.902 Limitation.
18–5.903 Authorization.
18–5.903–1 Basic authority.
18–5.903–2 Format and contents of authorizations.
18–5.903–3 Distribution.
18–5.904 Procedure.
18–5.904–1 Purchase orders under Federal Supply Schedule Contracts.
18–5.904–2 Purchase orders for General Services Administration Stores Stock.
18–5 904–3 Acquisition of filing cabinets by contractors.
18–5.905 Furnishing information to contractors.
18–5.906 Format for authorization for contractors to use GSA supply sources.
18–5.907 Contract Clause.

Subpart 18–5.10—Procurement From or Through the Military Departments

18–5.1000 Scope of subpart.
18–5.1001 Authorization and policy.
18–5.1002 NASA-Defense purchase request and acceptance.
18–5.1002–1 Preparation and use of form.
18–5.1002–2 Retention of property.
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18–5.1003 Changes in estimated total prices.
18–5.1004 Inquiries.
18–5.1005 Payments.

Subpart 18–5.51—Procurement of Items Designated as Potentially Hazardous

18–5.5100 Scope.
18–5.5101 Policy.

Subpart 18–5.1—Procurement Under Federal Supply Schedule Contracts

§ 18–5.100 Scope of subpart.

This subpart sets forth the policy and procedure relating to procurement from Federal Supply Schedules.

§ 18–5.101 General.

§ 18–5.101–1 Federal Supply Schedule contracts.

The Federal Supply Service, General Services Administration, establishes Federal Supply Schedule contracts for common use classes of supplies and services available directly from contractors at stated prices for a given period of time subject to stated minimum and maximum order limitations. The Index of National and Regional Federal Supply Schedules (referred to herein as "the Index"), contains a listing of current Schedules and information pertinent thereto. Copies of the Index and Schedules are available to procurement offices from the General Services Administration regional offices upon request. Requests should be submitted on GSA Form 457. In certain cases, individual Federal Supply Schedules will contain further qualifications to the coverage set forth in the Index. In the event of any conflict between the provisions of the index and those of any schedule those of the Schedule shall govern.

§ 18–5.101–2 Procurement offices.

Prior to initiating procurements from commercial sources, NASA procurement offices shall determine whether or not the required supplies or services are available from a Federal Supply Schedule. This information may be readily determined from the Index or the applicable Federal Supply Schedule.

§ 18–5.101–3 Labor surplus area and small business considerations.

In furtherance of NASA's policy of fostering labor surplus area and small business opportunities to the maximum extent possible; where two or more items at the same delivered price will meet the requiring activity's needs equally well, selection should be made when ordering against Federal Supply Schedule contracts, on the basis of preference for the item(s) of a labor surplus area concern or a small business concern. In making the selection on this basis, the order of priority shall be as follows:

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

(b) Other certified-eligible concerns;

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

(d) Other persistent labor surplus area concerns;

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

(f) Other substantial labor surplus area concerns; and

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

§ 18–5.102 Mandatory Federal Supply Schedules.

Supplies or services listed in a Federal Supply Schedule shall be obtained under the contracts summarized therein if the Schedule provides that such contracts are for mandatory use as primary sources of supply by executive agencies generally and NASA has not been listed therein as exempt, subject to the following exceptions:

(a) *Delivery requirements.* (1) When the delivery period offered in the Federal Supply Schedule does not meet the delivery requirements of the procurement office, procurement need not be made from the Federal Supply Schedules. However, delivery dates shown in Federal Supply Schedules are based upon the average capability of the contractor and are usually conservative. Contractors, in most instances, are able to make delivery within a shorter period of time than the maximum provided in the Schedule. Therefore, when the delivery requirements of the procurement office are less than the maximum shown in the Schedule, the contractor should be queried as to whether the delivery requirements can be met. This procedure shall be followed except in those cases where transportation time from the contractor's shipping point, or time required for inquiry and reply, make conformance impracticable. Where a multiple award Schedule item is involved, purchase must be made under the Schedule unless it is established, in accordance with the Schedule provisions, that one of the Schedule contractors whose products are acceptable can meet the delivery time requirement.

(2) Most Federal Supply Schedule contracts executed after July 1962 include a provision requiring contractors to reply to Government requests for earlier delivery within 3 working days. Such replies are to be made by the same method of communication as that used by the procurement office for its request. This contract provision also provides that earlier deliveries offered by contractors and accepted by the procurement offices will be binding on the contractors. Failure to meet maximum Federal Supply Schedule delivery dates (or delivery dates that are less than the maximum as agreed to by contractors under contracts containing the above-mentioned provision) constitutes a breach of contract and the order may be terminated for default in whole or in part by the procurement office. Where the contract does not include the aforementioned provision (generally contracts entered into prior to July 1962), if the contractor has affirmed his inability to provide earlier delivery or has failed to respond to the query within 3 days, procurement may be made from other sources for delivery earlier than the maximum specified in the Schedule. In such cases, an appropriate record justifying the action should be placed in the contract file.

(b) *Similar items.* When specific supplies or services having the same general characteristics and intended use as those listed in a Federal Supply Schedule are needed for a special requirement, the following procedures shall apply.

(1) *Nonemergency requirements.* When supplies or services are to be procured from other sources to satisfy a nonurgent requirement, the head of the office initiating the purchase request or his designated representative shall furnish the procurement office a signed statement identifying the supplies or services to be purchased. The statement shall include an explanation of why similar items listed in the applicable Federal Supply Schedule will not meet the specific requirement. The procurement office prior to initiating purchase action shall furnish such statement to the Commissioner, Federal Supply Service, General Services Administration, with a request that the requirement for using the Federal Supply Schedule item be waived. If such waiver is not granted, the case will be referred to the Director of Procurement for a final decision as to whether the nonschedule item will be purchased. The Director of Procurement shall promptly notify the Commissioner, Federal Supply Services, and the procurement office of the decision reached.

(2) *Emergency requirements.* When supplies or services are to be procured from other sources and the situation will not permit the delay incident to following the normal channels of obtaining a waiver from the General Services Administration prior to purchase, such waiver shall not be requested. In emergency situations, the head of the office initiating the purchase request, or his designated representative, shall furnish to the procurement office a signed statement identifying the supplies or services to be purchased, and explaining why similar items listed in the applicable Federal Supply Schedule will not meet the specific requirements. The procurement office shall within 15 days of the date of purchase, furnish such statement to the Commissioner, Federal Supply Service, General Services Administration.

(c) *Maximum dollar limitations.* Federal Supply Schedules stipulate maximum dollar limitations above which agencies may not submit orders and contractors may not accept orders. The maximum limitation varies between Schedules. The value of a single order or a series of orders placed within a short time, may not exceed this limitation.

(d) *Minimum requirements.* Federal Supply Schedules stipulate dollar amounts or quantitative values below which agencies need not submit orders and contractors are not obligated to accept orders. In determining such dollar amounts or quantitative values, all requirements which would normally be included in a single order to a contractor shall be considered.

(e) *Geographic location.* Federal Supply Schedules delineate geographic applicability on a national, zone, regional, or other area basis. The location of the activity to which delivery of the articles will be made or the location at which service will be performed shall govern, and not the location of the office which places the order with the contractor.

(f) *Public exigency.* Federal Supply Schedule contracts permit purchase elsewhere, where necessary, in cases of public exigency. However, ordering personnel should be alerted to situations where proximity of the contractor's production and distribution facilities to the point of use result in the contractor's facility being an immediate source of supply to meet the exigency.

(g) *Opportunity to buy supplies and services for less than listed prices from Federal Supply Schedule contractors.* Except when procuring automatic data processing equipment, related software and maintenance services, procurement offices shall not solicit bids, proposals, quotations, or otherwise test the market for comparison with the schedule prices (see § 18–5.106). However, if an opportunity arises for NASA to purchase listed supplies and services from a Federal Supply Schedule contractor at a price substantially more favorable to the Government than the price listed, the procurement will be accomplished at the more favorable price. Immediately subsequent thereto, a copy of the contract shall be furnishd to the office which issued the applicable Federal Supply Schedule. This office is identified on the cover of the Schedule.

(h) *Price exceeds $100,000.* The General Services Administration (GSA) has made the cost and pricing data requirements of 10 U.S.C. 2306(f) applicable to negotiated procurements of the GSA by the inclusion of such cost and pricing data requirements in Subpart 1–3.8 of the Federal Procurement Regulations (FPR). NASA is advised that these regulations are applied to Federal Supply Schedule contracts. Accordingly, when NASA purchases from Federal Supply Schedules, NASA will assume that Federal Supply Schedule contractors have furnished GSA with acceptable cost or pricing data and certification, or the Federal Supply Schedule contractor has qualified under the statutory exceptions. Specific variation generally will not be required from GSA to evidence compliance with the statute. Requests for evidence of compliance will not be made of GSA without the Procurement Officer's prior submission of such request, together with written justification therefor, to the Director of Procurement (Code KDP–2) for approval.

§ 18–5.103 Federal Supply Schedules not mandatory.

Supplies or services available from a Federal Supply Schedule which is optional for use by executive agencies generally (or in which NASA is listed as exempt) shall be ordered therefrom if:

(a) The Schedule or the contractor's price list identifies the item by Federal stock number;

(b) Delivery requirements can be met (see § 18–5.102(a));

(c) The order is within the maximum and minimum limitations of the Schedule; and

(d) The price is determined to be fair and reasonable.

Exception from the foregoing is permitted only where the contracting office has actual knowledge that the purchase can be made more advantageously to the Government from a source other than the Supply Schedule, after allowing for the burdens and cost of a new procurement under applicable prescribed procedures. Except when procuring automatic data processing equipment, related software and maintenance services, the procurement office shall not solicit bids, proposals, quotations, or otherwise test the market for comparison with the schedule price see § 18–5.106). Where a procurement from a source of supply other than the nonmandatory Schedule indicates that such source might be more advantageous to the Government as a general source, the name and address of the supplier together with other details of the procurement action shall be forwarded to the General Services Administration through the Regional Office of the GSA region in which the procuring activity is located. The provisions of § 18–5.102(a) are applicable when determining whether a contractor can meet delivery requirements.

§ 18–5.104 Order for supplies or services.

NASA Form 1379 or Standard Form 147 should be used as a delivery order in purchasing supplies or services from Federal Supply Schedule contractors.

§ 18–5.105 Federal Supply Schedules with multiple source provisions.

§ 18–5.105–1 Description.

(a) Multiple-award Federal Supply Schedules cover contracts made with more than one supplier for comparable items at either the same or different prices for delivery to the same geographical area. These schedules are identified by the inclusion, in the Special Provisions, of a paragraph entitled "Multiple Awards."

(b) Federal Supply Schedule contracts are made on a multiple award basis when one or both of the following circumstances apply:

(1) The most effective utilization of industry production and distribution facilities in meeting the needs of the Government can be accomplished through making multiple awards and such awards are otherwise advantageous to the Government. (Considerations in determining that multiple awards should be made include price, quality, facility of delivery, availability of production and distribution facilities, technical advice or service in connection with products involved, and other pertinent factors.)

(2) In the absence of prescribed standards or specifications, selectivity, with respect to the choice of one item from a group of comparable items, is to the advantage of the Government in terms of suitability to accomplish or produce required end results.

§ 18–5.105–2 General.

The provisions of § 18–5.103 shall be applied in determining whether an order should be placed under a multiple-award schedule. Each purchase made from a multiple-award schedule must be made at the lowest delivered price available under that schedule, unless the procurement office fully justifies the purchase of a higher priced item.

§ 18–5.105–3 Justifications.

(a) Justifications of purchases made at prices other than the lowest delivered price available should be based on specific or definitive needs which are clearly associated with the achievement of program objectives. Mere personal preference cannot be regarded as an appropriate basis for a justification. Justifications should be clear and fully expressed. Recital of, or reference to one of the factors set forth in paragraph (b) of this section is not sufficient.

(b) The following examples illustrate factors that may be used in support of justifications, when used with assertions that are fully set forth and documented.

(1) Special features of one item, not provided by comparable items, are required in effective program performance.

(2) An actual need exists for special characteristics to accomplish identified tasks.

(3) It is essential that the item selected be compatible with items or systems already existing within using offices.

(4) Trade-in considerations favor a higher priced item and produce the lowest net cost.

(5) Time of delivery in terms of actual need cannot be met by a lower priced contractor.

(6) Justifications which incorporate features of the following examples must be based on objective factors which adequately establish the advantages inherent in purchase of the higher priced item when:

(i) Probable life of the item selected, as compared to that of a comparable item at a lower cost, is sufficiently greater so that the additional purchase price is economically warranted;

(ii) Warranty conditions of a higher priced item are sufficiently advantageous to justify the added cost; and

(iii) Greater maintenance availability, lower overall maintenance costs, or the elimination of problems anticipated with respect to machines or systems, especially at isolated use points, will produce long-run savings greater than the difference in purchase prices.

§ 18–5.105–4 Responsibility of procurement office.

The possibilities of selectivity among items listed in multpile-award Federal Supply Schedules do not relieve the procurement office of its responsibility to place its orders at the lowest delivered prices available (after application of Buy American differentials, when appropriate, as set forth in the Federal Supply Schedule under the paragraph "Foreign Origin") unless there are factors for consideration which definitely justify the purchase at other than the lowest price. This responsibility exists whether or not the value of an order is more or less than the applicable open market limitation. When orders are placed with Schedule contractors at other than the lowest schedule price available for the type of services or supplies required, the procurement office shall include in the contract file a memorandum for record setting forth the facts and conclusions justifying the order.

§ 18–5.106 Use of Federal Supply Schedules for automatic data processing equipment (ADPE) and related software and maintenance services.

(a) Nothing in this Subpart 18–1 is intended to preclude or otherwise detract from the procurement of ADPE from a number of different sources, if such action will be in the best interests of the Government. The existence of a Federal Supply Schedule contract does not preclude or waive the requirement for full and complete competition in obtaining ADPE, software, or maintenance services. Suitable ADPE not on a Federal Supply Schedule contract, as well as that which is on such a contract must be considered. Bids or proposals should be solicited from all qualified sources, including those on Federal Supply Schedules, if such action will be in the best interest of the Government.

(1) Purchase orders issued against Federal Supply Schedule contracts should delineate specifically both the hardware and/or the software being procured. Care should be taken to ensure that specific requirements and commitments are included in the purchase orders.

(2) In any case where ADPE, software, or maintenance services are procured under a Federal Supply Schedule contract at other than the lowest available delivered price, justification for the action shall be documented in the contract file in accordance with the provisions of § 18–5.105–4.

(3) Except in those instances where a determination as to lowest overall cost can be reached and documented without further solicitation or negotiation, proposals or bids should be solicited to determine the ADPE, software, or maintenance services which would satisfy requirements at the lowest overall cost to the Government, price and other factors considered.

(b) In accordance with the authority of 40 U.S.C. 486(c) the General Services Administration (GSA) has authorized agencies to procure ADPE, software and maintenance items from Federal Supply Schedule contracts without prior review and approval of GSA.

(1) In these instances, two copies of the solicitation document and any subsequent amendments thereto, shall be forwarded to the Director, ADP Procurement Division, Office of Automated Data Management Services—FTP, Federal

Supply Service, General Services Administration, Washington, D.C. 20405, as soon as available, but in no event later than the date issued to industry. In addition, one copy of the resulting purchase order, delivery order or contract shall be forwarded upon issuance.

(2) If, as a result of such solicitation, all or any part of the general purpose commercially available, mass produced ADPE, related software or maintenance service items selected are not available from a FSS contract, a request for procurement authority shall be forwarded to the Commissioner, Federal Supply Service, General Services Administration, Washington, D.C. 20405 through the Director of Procurement (Code KDP–1). This request shall consist of two copies of the solicitation document together with such other clarifying or explanatory information as may be available. No award shall be made until the required procurement authority has been granted.

Subpart 18–5.4—Procurement of Prison-Made Supplies

§ 18–5.400 Applicability.

This subpart is applicable to supplies procured within the United States.

§ 18–5.401 General.

Supplies of the classes listed in the "Schedule of Products Made in Federal Penal and Correctional Institutions" shall be purchased in accordance with the policies and procedures set forth in this subpart.

§ 18–5.402 Preference as between prison-made and blind-made supplies.

In any case where similar supplies are manufactured or offered for sale both by Federal penal and correctional institutions and by agencies for the blind, the supplies must be purchased from Federal Prison Industries, Inc., to the extent available.

§18–5.403 Schedule of supplies which are prison-made.

Supplies which are manufactured by Federal penal and correctional institutions are in strict conformity with Federal Specifications. These supplies are listed in the "Schedule of Products Made in Federal Penal and Correctional Institutions" (referred to in this Subpart 18–5.4 as the "Schedule"). Copies of the Schedule are available from Federal Prison Industries, Inc., c/o Department of Justice, Washington, D.C. 10537.

§ 18–5.404 Mandatory procurement of prison-made supplies.

§ 18–5.404–1 Mandatory procurement from Federal Prison Industries, Inc.

Supplies listed in the Schedule shall be procured directly from Federal Prison Industries, Inc., when—

(a) Supplies require overseas packaging or packing;

(b) Supplies are required in carload lots, as described in the Consolidated Freight Classification for the commodity concerned; or

(c) Supplies are required in less than carload lots, but are not stocked by General Services Administration Stores Depots.

§ 18–5.404–2 Mandatory procurement of prison-made supplies from General Services Administration Stores Depots.

Supplies listed in the Schedule which are required in less than carload lots and which are stocked by General Services Administration Stores Depots shall be procured from such depots, except that procurement shall be made directly from Federal Prison Industries, Inc., when (a) the procurement office is so located that it is more practical and economical to procure directly from Federal Prison Industries, Inc., rather than from or through the General Services Administration, or (b) the General Services Administration Stores Depot is temporarily unable to furnish the required supplies, in which instance the depot will so advise the procurement office so that the procurement may be made directly from Federal Prison Industries, Inc.

§ 18–5.405 Nonmandatory procurement of prison-made supplies.

Contracting officers are encouraged to utilize the facilities of Federal Prison Industries, Inc., to the maximum extent practicable in the procurement of supplies which are not listed in the Schedule, but which are nevertheless of a type manufactured in Federal penal and correctional institutions.

§ 18–5.406 Procurement Procedure.

§ 18–5.406–1 Procurement from Federal Prison Industries, Inc.

Procurement directly from Federal Prison Industries, Inc., will be made by placing a purchase order with the Federal Prison Industries, Inc., % Department of Justice, Washington, D.C. 20537.

§18–5.406–2 Procurement from General Services Administration Stores Depots.

The Federal Standard Requisitioning and Issue Procedure (Federal Property Management Regulation, Subpart 101–26.2) shall be used to obtain prison-made supplies from General Services Administration Stores Depots.

§ 18–5.407 Exceptions.

Supplies listed in the Schedule may be procured through National Industries for the Blind or from commercial sources under any of the following conditions:

(a) Immediate delivery or performance is required by public exigency;

(b) Suitable used supplies can be obtained; or

(c) The total cost of the order is $25 or less.

§ 18–5.408 Clearances.

In addition to the exceptions provided in § 18–5.407, supplies of the types listed in the Schedule may be purchased through National Industries for the Blind or from commercial sources if such procurement is specifically authorized in clearances issued by Federal Prison Industries, Inc., as set forth in paragraphs (a) and (b) below.

(a) General clearances are issued by Federal Prison Industries, Inc., when classes of supplies are not avialable from Federal penal and correctional institutions, or when it is otherwise in the best interest of the Government to allow procurement of those classes of supplies from agencies for the blind or from commercial sources. Purchase orders or contracts written pursuant to a general clearance need not be supported by a copy of the clearance, but the clearance number must be cited on the purchase order or contract as well as on the initial voucher.

(b) Formal clearances are issued in response to requests initiated by purchasing offices desiring to procure from agencies for the blind or from commercial sources supplies of the type listed in the Schedule when such supplies are not covered by a general clearance. Requests for formal clearances shall be addressed to Federal Prison Industries, Inc., % Department of Justice, Washington, D.C. 20537. Actual purchase of the required supplies shall not be consummated prior to the issuance of the formal clearance. A copy of the clearance certificate must be attached to the initial voucher.

Subpart 18–5.5—Procurement of Blind-Made Supplies

§ 18–5.500 Applicability.

This subpart is applicable to supplies procured within the United States.

§ 18–5.501 General.

Supplies listed in the Schedule of Blind-Made Products shall be procured in accordance with the policies and procedures set forth in this subpart.

§ 18–5.502 Schedule of supplies which are blind-made.

Supplies manufactured by agencies for the blind are listed in the Schedule of Blind-Made Products, hereinafter referred to as the Schedule, copies of which may be obtained from the General Services Administration Regional Offices or Depots Items available from stocks at General Services Administration stores depots are so identified in the Schedule. Requests for copies of the Schedule will be submitted on GSA Form 457, will specify the exact organizational mailing address, and will request placement on the mailing lists for revisions.

§ 18–5.503 Mandatory procurement of blind-made supplies.

Except as provided in § 18–5.402 supplies listed in the Schedule shall be procured as follows:

(a) Orders for centrally managed supplies shall be placed through the National Industries for the Blind (NIB) in accordance with § 18–5.504–1.

(b) Orders for supplies which have been decentralized for local purchase shall be submitted to the General Services Administration Stores Depot which can best serve the Procurement Office, except that when one of the conditions

set forth below is present, procurement shall be through the NIB:

(1) Supplies require overseas packaging or packing;

(2) Supplies are required in carload lots, as described in the Consolidated Freight Classification for the Commodity concerned;

(3) Supplies are stocked by General Services Administration Stores Depots, but the procurement office is so located that it is more practical and economical to purchase directly from the agency for the blind which manufactures the supplies, rather than from the stores depot;

(4) The Schedule indicates that the supplies are not stocked by General Services Administration Stores Depots; or

(5) Delivery requirements cannot be met.

(c) Supplies listed in the Schedule may be procured from commercial sources under any of the conditions set forth below:

(1) Necessity requires delivery within two weeks and the NIB cannot give assurance of positive availability; or

(2) The procurement is for $25 or less.

§ 18–5.504 Procurement procedure.

§ 18–5.504–1 Through National Industries for the Blind.

When procurement of blind-made supplies is to be effected through the NIB, such procurement shall be made submitting directly to the National Industries for the Blind, 15 West 16th Street, New York, NY 10011, a request, in letter form, for an allocation. Upon receipt of the request, requirements will be allocated by NIB, and the procurement office will be notified of the name and location of the agency designated to manufacture the requirements. Upon receipt of such notification, a purchase order shall be issued to the designated agency for the blind and a copy thereof will be forwarded to the NIB. Such orders may be issued without limitation as to dollar amount. A certification of fund availability must be obtained before an order may be issued.

§ 18–5.504–2 From General Services Administration Stores Depots.

The Federal Standard Requisitioning and Issue Procedure (Federal Property Management Regulation, Subpart 101–26.2) shall be used in obtaining blind-made supplies from General Services Administration Stores Depots.

§ 18–5.505 Clearances.

Except as provided in § 18–5.503(a) procurement offices may procure supplies of the types listed in the Schedule from commercial sources if (1) such procurement is specifically authorized in clearances issued by NIB, and (2) if purchase action is initiated within 30 days from the date of the authorization of such additional period as may be authorized by the NIB.

§ 18–5.506 Optional procurement of blind-made supplies.

Supplies of any type or classification may be procured from agencies for the blind in any quantity, including less than carload lots, when such agency is the low bidder or offeror in response to an invitation for bids or request for proposals.

§ 18–5.550 Procurement of services from agencies for the blind.

Services, as distinguished from supplies, will not be procured pursuant to the procedure set forth above. The provisions of this subpart do not apply to labor or services or anything other than tangible articles produced by the blind.

Subpart 18–5.6—Procurement of Printing and Related Supplies

§ 18–5.601 Printing and related supplies.

Printing, duplicating, binding, and related supplies, including the printing, duplicating and other reproduction of documentation (e.g., reports, statistical data, etc.) required by NASA contracts shall be procured in accordance with (a) the Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States, and (b) NMI 1490.2 "Responsibilities, Procedures, and Standards for NASA Printing, Duplicating, and Binding." The standards set forth in Attachment B to NMI 1490.2 shall be made a part of the contract schedule when any of the above items are required as a part of the contract.

§ 18–5.602 Contract clause.

The clause set forth below shall be inserted in all contracts which have requirements for printing, duplicating, or other reproduction of documentation.

LIMITATION ON PRINTING, DUPLICATING AND OTHER REPRODUCTION (JULY 1970)

Printing, duplicating, binding, and related supplies, including the printing, duplicating and other reproduction of documentation (e.g., reports, statistical data, etc.) required under this contract are subject to the provisions of the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States and shall comply with the standards set forth in the Schedule.

Subpart 18–5.7—Procurement From or Through Another Federal Agency

§ 18–5.700 Scope of subpart.

This subpart established policies and procedures for the procurement of special items of supplies from other Federal agencies.

§ 18–5.701 Procuring materials from the Department of the Air Force missile procurement fund.

The Department of the Air Force has assigned the operational authority and responsibility for the procurement and distribution of missile propellants and related items to the San Antonio Air Materiel Area (SAAMA), Kelly Air Force Base, Tex. Propellants, oxidizers, fuels, pressurants, and related materials are financed under a single Air Force appropriation designated the "Missile Procurement Fund" (MPF). Supplies are obtained by SAAMA from Government-owned contractor-operated plants and by consolidated procurements from industry. NASA, other Government agencies, and contractors (where materials are Government-furnished) may acquire from SAAMA the items listed in § 18–52.508 of this chapter on a reimbursable basis. The Air Force MPF shall be utilized as a supply source for propellants whenever there are economic or other advantages to the Government. Field installations and offices obtaining supplies from the Missile Procurement Fund shall comply with the reporting requirements of § 18–52.500.

§ 18–5.701–1 Requests for procurement.

To obtain the materials listed in § 18–52.508 from the Air Force MPF, NASA procurement offices will execute a NASA-Defense Purchase Request (NASA Form 523) in accordance with § 18–5.1002 and forward it to Headquarters, San Antonio Air Materiel Area, Kelly Air Force Base, Tex., Attention: SAOS. The following additional information should also be provided on the form:

(a) Contract number (when material is required for use by a NASA contractor);

(b) Delivery address; and

(c) Mode of transportation (rail, trailer, barge, etc.).

When the purchase requests covers requirements for materials which have not been previously forecast, as provided by Subpart 18–52.5 of this chapter, or covers significant changes to previously reported requirements, the SAAMA should be notified immediately of such requirements.

§ 18–5.701–2 Delivery requests.

(a) A delivery request is a call on the Air Force, made against a purchase request (NASA Form 523), which specifies the time and place of delivery. On the basis of the estimated requirements (See Subpart 18–52.5), the Air Force will notify NASA field installations and contractors of the name and address of the Air Force office or producing contractor's plant to which requests for delivery of materials shall be made. Delivery requests may be placed by any means of communication that time justifies; however, all verbal requests for delivery must be confirmed by a written request within 24 hours. The delivery request, both oral and written, must cite the NASA-Defense Purchase Request number under which the material is being ordered and contain the following information:

(1) Nomenclature and Federal Stock Number;

(2) Quantity;

(3) Program, project, and task;

(4) Contract number (when the material is required for use by a NASA contractor);

(5) Delivery address;

(6) Dates of delivery;

(7) Mode of transportation; and

(8) Location of weighing stations and scales (if weighing of the products prior to delivery is required).

(b) Each delivery request shall be numbered in the following manner to simplify identification and control. The

number shall consist of the last two digits of the calendar year (i.e. 70) followed by a dash (—) and a numerical designator of the month submitted (i.e. 8 for August) and a dash (—) and a consecutive running system beginning with 1. For example, a request number would appear as follows: 70–8–1. The next request would be written 70–8–2, etc. Changes to a request would be identified by adding an alphabetical designator beginning with A to the number. For example, the first change to request number 70–8–2 would be written 70–8–2A, etc. The above numbering system is not intended to replace or to interfere with existing NASA purchase order numbering or internal budget or accounting numbering procedures.

§ 18–5.701–3 Receiving procedures.

(a) *Receiving documents.* Receipt of materials will be evidenced by the signature of an individual authorized by NASA to receive materials from the Air Force on:

(1) USAF Propellant Sale/Return Slip (AF Form 857)—when materials are received directly from the Air Force inventory.

(2) Materiel Inspection and Receiving Report (DD Form 250)—when materials are received directly from a commercial producer's plant; or

(3) Other receiving forms—when materials are received from or through other Government agencies.

Every effort should be made to ensure that the NASA-Defense Purchase Request number is recorded on the receiving document prior to signing.

(b) *Weighing facilities.* Local weighing facilities (NASA-owned, contractor-owned, commercial or State operated) may be used to determine quantities of product received. If a discrepancy exists between the quantities shown on receiving documents and the quantities actually received:

(1) A certified weighing ticket evidencing actual weight at destination will be obtained; and

(2) A copy of the receiving document (AF Sale/Return Slip or DD Form 250) and the original weighing ticket will be forwarded to Headquarters, San Antonio Air Materiel Area, Kelly Air Base, Tex., Attention: SACAOM, identifying the discrepancy.

(c) *Distribution of receipts.* Copies of all receiving documents except the USAF Propellant Sale/Return Slip (Form 857) shall be transmitted to the Headquarters, San Antonio Air Materiel Area, Kelly Air Force Base, Tex., Attention: SACAOM. Receiving documents may be accumulated and submitted on the 10th, 20th, and last day of each month.

§ 18–5.701–4 Billing.

The costs for materials obtained through the Air Force Missile Procurement Fund are reimbursable. After delivery, a Standard Form 1080 (Voucher for Transfers Between Appropriations and/or Funds (Disbursement)), supported by documentary evidence of delivery, will be submitted by Headquarters, CAAMA to the NASA installation designated in the NASA–Defense Purchase Request (NASA Form 523).

§ 18–5.702 Procurement of jewel bearings.

See § 18–1.315.

§ 18–5.703 Procurement of helium.

(a) NASA is required under the provisions of Public Law 86–777 (50 U.S.C. 167a et seq.) to obtain its major requirements for helium from the Secretary of Interior.

(b) Each procurement office shall attempt to obtain its requirements for helium (gaseous or liquid) from the Secretary of the Interior (Bureau of Mines) prior to placing contracts with a private contractor for supply of helium.

(c) Questions regarding the application of this policy should be directed to the Procurement Office, NASA Headquarters (Code KDP–3).

§ 18–5.704 Acquisition of mercury.

(a) NASA is prohibited from purchasing mercury in quantities of 76 pounds or more from commercial sources without prior clearance from the General Services Administration.

(b) Mercury, minimum 99.9 percent pure (not triple distilled), in 76-pound flasks, is available for transfer from General Services Administration stocks at fair market value.

(1) Requests for mercury by NASA installations for their use or for use by their cost-reimbursement type contractors shall be made to the Project Manager, Mineral and Ores, Propetry Management and Disposal Services, General Services Administration, Washington, D.C. 20405. The project manager will furnish the current fair market value to NASA. The unit of issue is a 76-pound flask.

(2) Requests for clearance to purchase quantities of 76 pounds or more from sources other than the General Services Administration shall be submitted to the office referred to in paragraph (b)(1) of this section and must be accompanied by a statement of reasons that make the available excess mercury unsuitable for use by the requesting field installation.

Subpart 18–5.8—Procurement of Certain Utility Services by Use of General Services Administration Areawide Public Utility Contracts and Department of Defense Areawide Communications Contracts

§ 18–5.800 Scope of subpart.

This subpart prescribes policy and procedures for the procurement of certain utility services by use of General Services Administration (GSA) areawide public utility contracts and Department of Defense (DOD) areawide communications contracts.

§ 18–5.801 General.

(a) The General Services Administration enters into indefinite delivery type areawide contracts with various utility companies for the furnishing of electric, natural and manufactured gas distributed by pipes, steam sewage, water, telephone, and teletypewriter services to all, or substantially all, Government agencies located within specified areas. GSA areawide public utility contracts provide that the contractor will, upon receipt of an order in the form prescribed by the contracts, furnish without further negotiation as to rates and charges, the services involved in accordance with such of his established and filed rate schedules as are applicable to the service.

(b) The Department of Defense enters into indefinite delivery type areawide contracts with various communication companies for the furnishing of communications to all, or substantially all, Department of Defense installations. DOD areawide communications contracts provide that the contractor will upon receipt of an order in the form prescribed by the contract, furnish, without further negotiations as to rates and charges, the service involved in accordance with such of his established and filed rate schedules as are applicable to the service.

§ 18–5.802 Distribution of GSA areawide public utility contracts and related publications.

A list of the utility services obtainable under GSA areawide public utility contracts, including the area served and the name of the contractor involved, is contained in GSA Circular No. 61, Revised. GSA also has available copies of the areawide public utility contracts which include the required order form. Copies of GSA Circular No. 61 and GSA areawide public utility contracts may be obtained, upon request, from General Services Administration, Transportation and Communication Service, Public Utilities Division, Washington, D.C. 20405.

§ 18–5.803 Use of GSA areawide public utility contracts.

(a) Where GSA areawide public utility contracts are adequate to meet the requirements of NASA installations for utility services, such services will be procured thereunder. In determining whether a GSA areawide public utility contract is adequate to meet the requirements of the using installation, consideration should be given to (1) the areawide contract rates viewed in light of the magnitude of the service required, (2) any unusual characteristics of the service required, (3) any special equipment or facility requirements, (4) any special technical contract provisions required, and (5) any other special circumstances.

(b) Where an installation considers that a DOD areawide communications contract is more advantageous to the Government than the GSA areawide public utility contract, a request for a waiver of the requirement to use the GSA areawide public utility contract will be submitted to the Office of Tracking and Data Acquisition (Code TN). The request will explain why the use of the DOD areawide contract is considered to be more advantageous to the Government than the GSA areawide contract.

(c) Where an installation considers that a separately negotiated contract is

more advantageous to the Government than the GSA areawide public utility contract, for a utility service other than communications, a request will be submitted to the Procurement Office, NASA Headquarters (Code KDR), for a waiver of the requirement to use the GSA areawide public utility contract. The request shall explain why the separately negotiated contract is considered to be more advantageous to the Government than the areawide contract.

(d) Where an installation considers that a separately negotiated contract for communications services is more advantageous to the Government than the GSA areawide public utility contract or the DOD areawide communications contract, a request for a waiver of the requirement to use the GSA contract or the DOD contract (in that order) will be submitted to the Office of Tracking and Data Acquisition (Code TN). The request shall explain why the separately negotiated contract is considered to be more advantageous to the Government than either the GSA or DOD areawide contracts.

§ 18–5.804 Ordering under GSA areawide public utility contracts.

When utility services are procured under GSA areawide public utility contracts, the method of ordering prescribed in the appropriate GSA areawide contract will be used. The form prescribed for ordering may be modified to satisfy fiscal and administrative requirements of NASA, and to contain such additional contract provisions as may be contemplated or permitted by the GSA areawide contract, except that it shall not be modified for use as a public voucher in lieu of Standard Form 1034.

§ 18–5.850 Use of DOD areawide communications.

When the decision is made to procure communications services under DOD areawide contracts in accordance with § 18–5.803(b), the method of ordering prescribed in the appropriate DOD areawide contract will be used. The form may be modified to satisfy fiscal and administrative requirements of NASA, and to contain such additional contract provisions as may be contemplated or permitted by the DOD areawide contract, except that it shall not be modified for use as a public voucher in lieu of Standard Form 1034.

Subpart 18–5.9—Use of General Services Administration Supply Sources by Prime Contractors in Performing Cost-Reimbursement Type Contracts

§ 18–5.900 Scope and applicability of subpart.

(a) This subpart prescribes policies and procedures for the guidance of contracting officers in authorizing the use of General Services Administration supply sources (Federal Supply Schedule contracts and General Services Administration stores stock) by prime contractors in performing cost-reimbursement type contracts.

(b) This subpart applies only to the procurement of supplies to be delivered in the United States, its possessions, or Puerto Rico.

§ 18–5.901 Policy.

In appropriate cases, the contracting officer should authorize contractors to utilize General Services Administration supply sources in performing cost-reimbursement type contracts. Before issuing such an authorization, the contracting officer shall determine that it is in the best interest of the Government, considering price, delivery, contract administration, and any other significant factors, including recommendations of the contractor.

§ 18–5.902 Limitation.

Contractors shall not be authorized to utilize General Services Administration supply sources (a) in connection with the performance of fixed-price type contracts, even though such contracts provide for price adjustment, escalation, redetermination, or cost-reduction incentive; or (b) for the leasing of equipment to be utilized in the performance of cost-reimbursement type contracts, other than automatic data processing equipment for use only in performance of cost-reimbursement contracts where the entire rental cost will be charged to those contracts. Contractors operating under the above types of contracts may, however, if they so desire, utilize GSA supply source listings for price information purposes. Such listings (GSA catalogs and copies of GSA Federal Supply Contracts) as may be readily available in procurement offices will be made available for review by contractors for this purpose.

§ 18–5.903 Authorization.

§ 18–5.903–1 Basic authority.

Contractors shall be authorized to utilize General Services Administration supply sources only (a) where title to property ordered under Federal Supply Schedule contracts will pass to and vest in the Gevernment directly from the Federal Supply Schedule contractor (rather than through the prime contractor), (b) where the contractor will lease automatic data processing equipment under a Federal Supply Schedule contract for use only in performance of cost-reimbursement contracts, and the entire rental cost will be charged to those contracts, or (c) where title to Government-owned property ordered from General Services Administration stores stock will remain in the Government.

§ 18–5.903–2 Format and contents of authorizations.

Authorizations shall be in writing and shall cite the contract number, specify any applicable limitations on the authority, such as the period of eligibility, and contain any other pertinent information, including requirements relative to ordering, receiving, inspection, and payment. The written authorization shall be in substantially the same format as that set forth in § 18–5.906.

§ 18–5.903–3 Distribution.

Copies of each authorization shall be forwarded by the contracting officer to the General Services Administration, Federal Supply Service, Office of Supply Management, General Services Building, Washington, DC 20405 and to the General Services Administration regional office serving the geographical area in which the facilities of the authorized prime contractor are located.

§ 18–5.904 Procedure.

§ 18–5.904–1 Purchase orders under Federal Supply Schedule contracts.

Orders by contractors under Federal Supply Schedule contracts shall be placed in accordance with the provisions of the applicable Federal Supply Schedule and the authorization. Such orders shall be accompanied by a copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule contractor) and shall contain the statement set forth in paragraph 2.a. of the format for authorization set forth in § 18–5.906.

§ 18–5.904–2 Purchase orders for General Services Administration Stores Stock.

Orders by contractors for General Services Administration stores stock shall be placed in accordance with the authorization. Such orders shall contain the statement set forth in paragraph 2.b. of the format for authorization set forth in § 18–5.906.

§ 18–5.904–3 Acquisition of filing cabinets by contractors.

(a) The moratorium declared by the President, in his letter of January 9, 1965, on acquisition by Government Agencies of filing cabinets covers requirements provided directly to NASA contractors (through GSA Federal Supply Service) where title to such equipment vests in the Government.

(b) Prior to ordering additional filing cabinets, NASA contractors are required to take the following prerequisite actions:

(1) Transfer inactive records to contractor storage areas;

(2) Dispose of unnecessary records in accordance with their corporate procedures;

(3) Use less expensive shelf filing methods;

(4) Take other actions which will reduce needs for filing cabinets; and

(5) Furnish statement to cognizant contracting officer that the above prerequisite actions have been taken and that sufficient additional filing capacity has not been produced.

(c) The contractor will then submit his request to the NASA contracting officer who, after conferring with the Records Management Officer, Supply Officer, and Project Officer, will certify on all letter requests that the prerequisite actions have been taken by the contractor and that such actions have not produced the required filing cabinets. Such certification will be forwarded with a letter request to the appropriate GSA Regional Administrator.

(d) If the need for the filing cabinets is approved by GSA, excess items of the type requested will be furnished, if available, through appropriate property accountability channels.

(e) Approved requests which cannot be filled from excess will be returned to the originating contractor with GSA Form 2084, Clearance to Acquire Correspondence Filing Cabinets, reflecting an FC (file cabinet) clearance number authorizing submission of a requisition to the GSA regional office. When mailed, the requisition will have the clearance number noted, and include a copy of the clearance document.

§ 18–5.905 Furnishing information to contractors.

Contracting officers shall assist contractors in obtaining pertinent Federal Supply Schedules, the General Services Administration Stores Stock Catalog and appropriate supplements thereto, and other relevant information.

§ 18–5.906 Format for authorization for contractors to use GSA supply sources.

Subject: Authorization to Lease, Rent or Purchase from General Services Administration Supply Sources.

(*Contractor's name*)

(*Address*)

1. You are hereby authorized to act for the Government in the following matters:

a. The purchasing of property for acquisition under Contract No. ------ which is available for purchase by Government agencies either directly from the General Services Administration Stores Depots or under Federal Supply Schedules, subject to the limitations set forth herein.

b. The leasing or rental of equipment for use on Contract No. ------ which is available for lease or rental by Government agencies under Federal Supply Schedules, subject to the limitations set forth herein.

c. The issuance of tax exemption certificates in lieu of the payment of State or other taxes for which the Government is not liable on property purchased under this authorization.

2. a. *Purchase orders under Federal Supply Schedule Contracts.* Orders shall be placed in accordance with the terms and conditions of the attached Federal Supply Schedule and this authorization. A copy of this authorization shall be attached to the order (unless a copy was previously furnished to the Federal Supply Schedule contractor) and shall contain the following statement:

This order is placed on behalf of the National Aeronautics and Space Administration, in furtherance of U.S. Government Contract No. (Insert contract number), pursuant to written authorization dated ---------- [ ].[1]

Title to property purchased hereunder shall vest in the U.S. Government. In the event of any inconsistency between the terms and conditions of this order and those of the Federal Supply Schedule contract, the latter will govern.

b. *Orders for items in the General Services Administration Stores Stock Catalog.* Orders shall be placed in accordance with the attached General Services Administration Stores Stock Catalog and this authorization. Include the address to which billings are to be sent. Bills are not issued by General Services Administration until after shipment has been made, and should therefore be paid promptly. Necessary adjustments, if any, will be made by General Services Administration subsequent to payment. All orders shall contain the following statement:

This order is placed on behalf of the National Aeronautics and Space Administration, in furtherance of U.S. Government Contract No. (Insert contract number), pursuant to written authorization dated ---------- [ ].[1]

Title to property delivered hereunder shall remain in the U.S. Government.

3. (Other provisions.)

4. This authority hereby granted is not transferable or assignable.

(*Contracting Officer*)

§ 18–5.907 Contract clause.

Insert the following clause in all cost-reimbursement type contracts under which the contractor may acquire supplies for the account of the Government. The last sentence of the clause shall be deleted in the case of facilities contracts.

GENERAL SERVICES ADMINISTRATION SUPPLY SOURCES (OCTOBER 1967)

The Contracting Officer may issue the Contractor an authorization to utilize General Services Administration supply sources for property to be used in the performance of this contract. Title to all property acquired under such an authorization shall be in the Government. All property acquired under such an authorization shall be subject to the provisions of the clause of this contract entitled "Government Property", except paragraphs (a) and (b) thereof.

Subpart 18–5.10—Procurement From or Through the Military Departments

§ 18–5.1000 Scope of subpart.

This subpart sets forth policies and procedures, developed jointly by the National Aeronautics and Space Administration and the Department of Defense, with reference to procurement of supplies or services by NASA from or through the Military Departments.

§ 18–5.1001 Authorization and policy.

(a) NASA is authorized by the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.) to use the procurement services, personnel, equipment, and facilities of the Military Departments with their consent, with or without reimbursement, and on a similar basis to cooperate with the Military Departments in the use of procurement services, equipment, and facilities.

(b) The Military Departments have agreed to cooperate fully with NASA in making their procurement services, equipment, personnel, and facilities available on the basis of mutual agreement.

(c) The Military Departments have agreed not to claim reimbursement for administrative costs incident to procurements for NASA, except as may be otherwise agreed prior to the time the services are performed.

(d) When procuring supplies or services for NASA or performing field service functions in support of NASA contracts, the Military Department concerned has agreed to use its own methods, except when otherwise required by the terms of the agreement involved.

(e) The Military Departments normally will use their own funds when procuring supplies or services for NASA, or performing services, and will not cite NASA funds on any Defense obligation or payment document.

§ 18–5.1002 NASA-defense purchase request and acceptance.

§ 18–5.1002–1 Preparation and use of form.

(a) The NASA-Defense Purchase Request (NASA Form 523) shall be used by NASA procurement offices for requesting procurement of supplies or services from all activities of the Military Departments. Individual NASA-Defense Purchase Requests shall be prepared in accordance with the instructions on the reverse of NASA Form 523 and shall be numbered in accordance with § 18–50.303. The form shall not be used for requesting:

(1) Block transfers of excess property between NASA and the Military Departments;

(2) Performance by the Military Departments of field service functions related to NASA contracts; or

(3) Items which the Military Departments normally purchase and stock for military use or in-house services, except when a DOD activity is willing to accept the form for these purposes. Supplies and services of this nature may be requisitioned using appropriate DOD forms when they are provided by and are acceptable to or preferred by the Military Department supplying activity or as otherwise mutually agreed upon by the parties.

(b) To obtain materials from the Air Force Missile Procurement Fund the procedures of § 18–5.701–1 will be followed.

(c) *Instructions for completing NASA Form 523.* The NASA-Defense Purchase Request is to be used by NASA to request the procurement of supplies or services by any activity of the Department of Defense. These instructions pertain to preparation and use of the form by NASA activities.

(1) *Block 5.* The original and 5 copies of the purchase request, each complete with all attachments, shall be forwarded to the DOD activity shown in this block.

(2) *Block 7b.* Describe the required services or supplies accurately and in sufficient detail to enable the purchasing activity to understand the requirement. When applicable, the particular NASA program and/or project to which the request or amendment pertains shall be indicated. Attachments may be used as required. For items of hardware stocked by the DOD, the item identification of the Army, Navy, or Air Force and the Federal stock number shall be entered if known. When applicable, give the specification number, manufacturer's part number, and other descriptive data, such as the desired grade, style, type, color, size, rating, etc.

(3) *Block 8.* Attachments should be prepared in sufficient quantity so that

[1] Insert "a copy of which is attached," or "a copy of which you have on file," or other suitable language, as appropriate.

each copy of a request is complete with a copy of every attachment listed therein.

(i) Shipping instructions: When names and addresses of consignees of all supplies to be delivered are not contained herein, or otherwise furnished, request for the issuance of shipping instructions shall be made to the appropriate NASA originating office not less than 30 days prior to date on which any of the articles is to be ready for shipment. Three copies of shipping documents shall be forwarded to the NASA originating office and each consignee.

(ii) Disposition of property: Include instructions for the disposition of any nonexpendable or other residual property purchased with NASA funds.

(iii) Priority rating: Include applicable priority rating and claimant program identification (example: Priority Rating DO–A2). In procurement for DX programs, identification shall also include the unclassified program name.

(4) *Block 10.* If this request or any part of the supplies or services covered by this request is subject to section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457), a copy of the New Technology or Property Rights in Inventions clause together with appropriate instructions for the inclusion of the clause in contracts shall be furnished the purchasing activity in accordance with § 18–9.101–9.

(5) *Block 12.* Cite appropriation symbol, cost coding, or any other accounting data to be included in the ensuing documentation.

(6) *Security classification.* If the purchase request or any part thereof is classified, DD Form 254, "Security Requirements Check List," or other written notice of security requirements shall be prepared.

(7) *Changes.* All changes that affect the contents of the purchase request must be processed as a purchase request amendment. This includes such changes as a decrease in quantity, increase or decrease in funds, change in the specifications or in the part, stock or drawing numbers, etc. Such changes may be made initially by expeditious means such as telegraph or telephone communication, but each change shall be confirmed by a purchase request amendment. The original and five copies of purchase request amendments shall be forwarded to the DOD recipient of the original purchase request. In preparing an amendment, Blocks 1 through 6 must always be completed. Only those remaining blocks of the form that are applicable to the change or revision of the data in the purchase request or prior amendments thereto need be filled in. The unused blocks, however, should have "N/C" inserted to reflect no change.

§ 18–5.1002–2 Retention of property.

In preparing a NASA-Defense Purchase Request, consideration shall be given to NASA's subsequent need for any nonexpendable equipment items acquired by the Military Departments which are reimbursed from NASA funds. When it it determined that retention of such equipment would be to NASA's advantage, the following clause shall be incorporated in the purchase request:

Title to all nonexpendable equipment having a unit cost in excess of $100 acquired in connection with this purchase request and for which reimbursement is made from NASA funds shall remain in NASA. All such items shall be identified and marked as NASA property. Records shall be maintained to the extent that periodic inventory reports can be submitted to NASA upon request. Listings of all excess, residual, and termination inventories shall be submitted to the NASA originating office for disposition instructions. (May 1961)

§ 18–5.1002–3 Acceptance by military department.

(a) Except as provided in paragraph (c) of this section within 30 days after receipt of a NASA-Defense Purchase Request, the Military Department concerned will forward to the initiator of the request an Acceptance of MIPR form, DD Form 448–2, in quadruplicate. Each DD Acceptance Form will show the action being taken or to be taken to fill the requirement and the name and complete address of the Department of Defense procurement activity for future direct contact by the initiator.

(b) To the extent feasible, all documents including acceptances, contracts, correspondence, shipping documents, work or project orders, and Standard Form 1080 (Voucher for Transfer between Appropriations and/or Funds) billings will reference the NASA-Defense Purchase Request number and the item number when appropriate.

(c) Acceptance by the Military Department is not required for NASA-Defense Purchase Requests covering deliveries of common-use standard stock items which the supplying department has on hand or on order for prompt delivery at published prices.

§ 18–5.1003 Changes in estimated total prices.

When a Military Department determines that the estimated total price (Block 9, NASA Form 523) of the items to be procured for NASA is not sufficient to cover the required reimbursement, or is in excess of the amount required, a request for an amendment will be forwarded to the NASA originating office. The request will indicate a specific dollar amount, rather than a percentage, and will include justification for any upward adjustment requested. Upon approval of the request, an amendment to the NASA-Defense Purchase Request shall be forwarded by the NASA procurement office concerned to the DOD procuring activity.

§ 18–5.1004 Inquiries.

Inquiries and correspondence shall be directed to the DOD procuring activity referenced on the DD Form 448–2.

§ 18–5.1005 Payments.

Except when agreements provide that reimbursement is not required, payments to the Military Departments for supplies and services furnished to or procured for NASA shall be effected on the basis of Standard Form 1080 billings submitted to the NASA office designated in Block 11 of the NASA-Defense Purchase Request. Billings shall be supported in the same manner as billings between Military Departments.

Subpart 18–5.51—Procurement of Items Designated as Potentially Hazardous

§ 18–5.5100 Scope.

This subpart provides policies and procedures for the procurement of items designated as potentially hazardous from or through other Government agencies.

§ 18–5.5101 Policy.

(a) If the order or request or other appropriate document communicating NASA's requirements involves the procurement of items designated as potentially hazardous, copies of required provisions and clauses (see §§ 18–1.351 and 18–9.204–52), together with instructions for their inclusion in IFB's, RFP's and contracts, shall be furnished to the Government agency.

(b) If the order or request or other appropriate document communicating NASA's requirements involves the delivery of items designated as potentially hazardous to the Government or to a Government contractor or subcontractor, the Government agency receiving the request shall be requested to furnish the data required by §§ 18–1.351 and 18–9.204–52.

PART 18–6—FOREIGN PURCHASES

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Subpart 18-6.1—Buy American Act—Supply and Service Contracts

§ 18-6.100 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10 a-d) and the policies set forth in Executive Order 10582, dated December 17, 1954, with respect to supply and service contracts.

§ 18-6.101 Definitions.

As used in this subpart, the following terms have the meanings set forth below.

(a) "End products" means articles, materials, and supplies which are to be acquired for public use. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts.

(b) "Components" means those articles, materials, and supplies which are directly incorporated in end products.

(c) "United States" means the States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, the Virgin Islands, Guam, and any areas subject to the complete sovereignty of the United States.

(d) "Domestic source end product" means an unmanufactured end product which has been mined or produced in the United States, or an end product manufactured in the United States if the cost of its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind:

(1) Determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or

(2) As to which the Administrator has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(e) "Canadian end product" means an unmanufactured end product, mined or produced in Canada, or an end product manufactured in Canada if the cost of its components which are mined, produced, or manufactured in Canada or the United States exceeds 50 percent of the cost of all its components.

(f) "Foreign end product" means an end product other than a domestic source end product.

(g) "Domestic bid" means a bid or offered price for a domestic source end product, including transportation to destination.

(h) "Foreign bid" means a bid or offered price for a foreign end product, including transportation to destination, and duty (whether or not a duty-free entry certificate may be issued).

§ 18-6.102 Statutory requirements.

Except as provided in § 18-6.103, the Buy American Act requires that in the procurement of supplies and services only domestic source end products shall be acquired for public use. In determining whether an end product is a domestic source end product, only the end product and its components shall be considered.

§ 18-6.103 Exceptions.

§ 18-6.103-1 Use outside the United States.

The restrictions of the Buy American Act do not apply to articles, materials, or supplies for use outside the United States.

§ 18-6.103-2 Nonavailability in the United States.

(a) The Buy American Act does not apply to articles, materials, or supplies of a class or kind which the Government has determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Such classes or kinds of articles, materials, or supplies are included in the list set forth in § 18-6.105.

(b) Contracting officers are authorized to make additional determinations of nonavailability both prior to entering into contracts and in the course of contract administration: *Provided, however,* That in the latter case the Government receives adequate consideration. A copy of each determination of nonavailability will be included in the contract file.

(c) The following is the format for nonavailability determinations made by contracting officers:

DETERMINATION OF NONAVAILABILITY

Pursuant to the authority contained in section 2, title III, of the Act of March 3, 1933 (popularly called the Buy American Act (41 U.S.C. 10 a-d)), and authority delegated to me by § 18-6.103-2(b), I hereby find:

a. (Insert a description of the item or items to be procured, including unit, quantity, and estimated cost inclusive of duty and transportation costs to destination.)

b. (Enter the name and address of proposed contractor or supplier, and country of origin of the item or items.)

c. (Include a brief statement of the necessity for the procurement.)

d. (Include a statement of facts establishing the nonavailability of a similar item or items of domestic origin. If there is no known domestic item or items which can be used as a reasonable substitute, a statement to this effect will be made.)

Based upon these findings, it is determined that the above described item(s) is (are) not mined, produced, or manufactured, or the articles, materials, or supplies from which it (they) is (are) manufactured, are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

Accordingly, the requirement of the Buy American Act that procurement be made from domestic sources and that it be of domestic origin is not applicable to this procurement, since said procurement is within the nonavailability exception stated in the Buy American Act. Authority is granted to procure the above-described item(s) of foreign origin (country of origin) at an estimated total cost of $_____, including duty and transportation costs to destination.

---------- ----------
(Date) (Contracting Officer)

§ 18-6.103-3 Unreasonable costs or inconsistency with the public interest.

When it is determined by the Administrator that the cost of a domestic source end product would be unreasonable or that its acquisition would be inconsistent with the public interest, the restrictions of the Buy American Act do not apply.

§ 18-6.103-4 Scrap.

Scrap generated in, collected in, and prepared for processing in the United States shall be considered as of domestic origin.

§ 18-6.103-5 Canadian supplies.

(a) The Administrator, by NASA Management Instruction 5106.2, "Determination Under the Buy American Act—Canadian Supplies", has determined that it would be inconsistent with the public interest to apply the restrictions of the

Buy American Act to the acquisition of certain supplies mined, produced, or manufactured in Canada. Accordingly, contracting officers shall:

(1) Evaluate all bids and proposals offering Canadian end products on a parity with bids and proposals offering domestic source end products, except that applicable duty (whether or not a duty-free entry certificate may be issued) shall be included in evaluating such bids and proposals offering Canadian end products; and

(2) Treat all components mined, produced, or manufactured in Canada as though they were mined, produced, or manufactured in the United States, except that, in evaluating bids and proposals containing such components, applicable duty (whether or not a duty-free entry certificate may be issued) shall be included.

(b) The procedures set forth in paragraph (a) above do not apply to or affect (1) items listed in § 18–6.105 or (2) items determined to be nonavailable in accordance with the procedures set forth in § 18–6.103–2.

§ 18–6.104 Procedures.

§ 18–6.104–1 Applicability.

The procedures in this § 18–6.104 apply to all contracts involving the procurement of supplies, except contracts exclusively for articles, materials, or supplies for use outside the United States. For Canadian supplies, see § 18–6.103–5(a).

§ 18–6.104–2 Solicitation of bids and proposals.

Invitations for bids and requests for proposals shall state that specific information as to articles, materials, and supplies excepted from the Buy American Act (see § 18–6.105) is available to prospective contractors upon request.

§ 18–6.104–3 Certificate.

Invitations for bids and requests for proposals shall require that each bid or proposal include a certificate substantially as follows:

BUY AMERICAN CERTIFICATE (JANUARY 1964)

The bidder or offeror hereby certifies that each end product, except the end products excluded below, is a domestic source end product (as defined in the contract clause entitled Buy American Act); and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

Excluded items: _____

§ 18–6.104–4 Evaluation of bids and proposals.

(a) The Administrator, by NASA Management Instruction 5106.1, "Determinations Under the Buy American Act—End Products and Construction Materials," has determined that where the procedures outlined in paragraphs (b), (c), and (d), of this section, result in the acquisition of foreign end products, the acquisition of domestic source end products would be (1) unreasonable in cost or (2) inconsistent with the public interest (see § 18–6.103–3). These procedures do not apply to the evaluation of bids and proposals offering Canadian end products; such bids and proposals shall be evaluated as provided in § 18–6.103–5(a)(1).

(b) Except as provided in § 18–6.103–5(a)(1), bids and proposals shall be evaluated so as to give preference to domestic bids. Award shall be made to the low acceptable bidder, after applying the procedures set forth in paragraph (c) of this section except for bids or proposals requiring decision of the Administrator, in accordance with paragraph (d) of this section. When more than one line item is offered in response to an invitation for bids or request for proposals, the appropriate percentage factor set forth in paragraph (c) of this section shall be applied, for evaluation purposes, on an item-by-item basis, except that such percentage factor may be applied to any group of items when the invitation for bids or request for proposals specifically provides that award may be made on a particular group of items.

(c) For purposes of evaluating bids and proposals, a factor of 6 percent of the amount of each foreign bid or proposal (which does not offer Canadian end products) shall be added to such bid or proposal. If, after applying such 6 percent factor, the low acceptable domestic bid or proposal is the low bid or proposal, award shall be made to the low domestic bidder or offeror. If, after applying such 6 percent factor, the low acceptable foreign bid or proposal is the low bid or proposal, award shall be made to such low foreign bidder or offeror, except that:

(1) When the firm submitting the low acceptable domestic bid or proposal is a small business or labor surplus area concern, or both, and its bid or proposal exceeds $100,000, the proposed award shall be submitted through the Procurement Office, NASA Headquarters (Code KDP–1) to the Administrator for decision; or

(2) When the firm submitting the low acceptable domestic bid or proposal is a small business or labor surplus area concern, or both, and its bid or proposal is $100,000 or less, a factor of 12 percent (in lieu of the 6 percent factor) of the amount of the low foreign bid or proposal shall be added to such low foreign bid or proposal, and award made to the low bidder or offeror: *Provided, however,* That when small purchase procedures (see Subpart 18–3.6, of this Chapter) are used, the 6 percent factor shall apply.

(d) The proposed award shall be submitted to the Administrator for decision if:

(1) Required by paragraph (c)(1) of this section;

(2) Rejection of an acceptable low foreign bid or proposal is considered necessary to protect essential national security interests, such as maintenance of a mobilization base; or

(3) Rejection of any bid or proposal is considered necessary for other reasons of the national interest.

(e) The following are examples of evaluation of bids and proposals in accordance with the provisions of paragraphs (b) and (c) of this section:

Example 1. Price differential of 6 percent or less between low foreign (non-Canadian) and low domestic bid or proposal:

	Low domestic bid	Low foreign bid
Cost to destination	$20,000	$19,000
Import duty		600
Total	2,000	19,600
6 percent differential		1,176
Total	20,000	20,776

The low domestic bid is not unreasonable; award would be made to the low domestic bidder (see paragraph (c) of this section).

Example 2. Price differential in excess of 6 percent between low foreign (non-Canadian) and low domestic bid or proposal, and small business and/or labor surplus area concerns are not involved.

	Low domestic bid	Low foreign bid
Cost to destination	$20,000	$17,000
Import duty		500
Total	20,000	17,500
6 percent differential		1,050
Total	20,000	18,550

The low domestic bid is unreasonable; award would be made to the low foreign bidder (see paragraph (c) of this section).

Example 3. Low domestic bidder or offeror is a small business and/or labor surplus area concern; the low domestic bid or proposal exceeds the low foreign (non-Canadian) bid or proposal by more than 6 percent, and small purchase procedures are not involved.

	Low foreign bids (include transportation to destination and duty)		Low domestic bids (include transportation to destination)			
Item	A Company	B Company	C Company	D Company	E Company	Difference (percent)
1	$20,000		$24,000			20
2	40,000		46,000			15
3		$20,000		$22,200	$22,600	11
4	20,000					13
5		30,000		32,700		9
6	20,000		22,000			10
7	10,000		10,700			7
8	5,000				6,500	30
			102,700			

A. In the case of Items 1, 2, 6, and 7 in the example, proposed awards would be submitted to the Director of Procurement for decision by the Administrator since (1) the low acceptable domestic bid exceeds the low acceptable foreign bid plus 6 percent on an item-by-item basis, (2) the low domestic bidder is a small business or labor surplus area concern, and (3) its bid exceeds $100,000 (see paragraph (c)(1) of this section).

B. In the case of Items 3 and 5 in the example, award would be made to the low domestic bidder, since (1) the differential is less than 12 percent on an item-by-item basis, (2) the low domestic bidder is a small business or labor surplus area concern, and (3) its bid is less than $100,000 (see paragraph (c)(2) of this section).

C. In the case of Items 4 and 8 in the example, award would be made to the low foreign bidder, since (1) the differential exceeds 12 percent on an item-by-item basis, (2) the low domestic bidder is a small business or labor surplus area concern and (3) its bid is less than $100,000 (see paragraph (c)(2) of this section).

§ 18–6.104–5 Contract clause.

In accordance with the requirements of this Subpart 18–6.1, insert the clause set forth below.

BUY AMERICAN ACT (SEPTEMBER 1961)

(a) In acquiring end products, the Buy American Act (41 U.S.C. 10 a–d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "components" means those articles, materials, and supplies which are directly incorporated in the end products;

(ii) "End products" means those articles, materials, and supplies which are to be acquired under this contract for public use; and

(iii) A "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States or Canada exceeds 50 percent of the cost of all its components. For the purposes of this (a)(iii)(B), components of foreign origin of the same type or kind as the products referred to in (b) (ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) Which are for use outside the United States;

(ii) Which the Government determines are not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) As to which the Administrator determines the domestic preference to be inconsistent with the public interest; or

(iv) As to which the Administrator determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated Dec. 17, 1954.)

§ 18–6.105 List of excepted articles, materials, and supplies.

The articles, materials, and supplies listed below may be acquired for public use without regard to country of origin, except as provided in Subpart 18–6.4. The Administrator, by NASA Management Instruction 5106.1, "Determinations Under the Buy American Act—End Products and Construction Materials," has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act to petroleum included in the list below. The remaining articles, materials, and supplies in the list below are included on the basis of nonavailability (see § 18–6.103–2(a)).

Acetylene, black.
Antimony, as metal or oxide.
Asbestos, amosite.
Bismuth.
Books, trade, text, technical or scientific; newspapers; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.
Cadmium, ores and flue dust.
Calcium cyanamide.
Chalk, English.
Chrome ore or chromite.
Cobalt, in cathodes, rondelles, or other primary forms.
Cork, wood or bark and waste.
Diamonds, industrial.
Graphite, natural, crystalline, crucible grade.
Jute and jute burlaps.
Lac.
Logs, veneer, and lumber from Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.
Mica.
Nickel, primary, in ingots, pigs, shot, cathodes, or similar forms; nickel oxide and nickel salts.
Petroleum, crude oil; petroleum, finished products; and petroleum unfinished oils.
Platinum and platinum group metals refined, as sponge, powder, ingots, or cast bars.
Quartz crystals.
Rubber, crude and latex.
Shellac.
Tin, in bars, blocks, and pigs.
Wax, carnauba.

Subpart 18–6.2—Buy American Act—Construction Contracts

§ 18–6.200 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10 a–d) and the policies set forth in Executive Order 10582, dated December 17, 1954, with respect to construction contracts.

§ 18–6.201 Definitions.

As used in this subpart, the following terms have the meanings set forth below.

§ 18–6.201–1 Construction.

"Construction" means construction, alteration, or repair of any public building or public work in the United States.

§ 18–6.201–2 Construction materials.

"Construction materials" means articles, materials, and supplies which are brought to the construction site for incorporation in the building or work.

§ 18–6.201–3 Components.

"Components" means those articles, materials, and supplies which are directly incorporated in construction materials.

§ 18–6.201–4 United States.

"United States" means the States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, the Virgin Islands, Guam, and any areas subject to the complete sovereignty of the United States.

§ 18–6.201–5 Domestic construction material.

"Domestic construction material" means an unmanufactured construction material which has been mined or produced in the United States, or a manufactured construction material which has been manufactured in the United States if the cost of its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the construction material in which it is incorporated is manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

§ 18–6.201–6 Nondomestic construction material.

"Nondomestic construction material" means a construction material other than a domestic construction material.

§ 18–6.202 Statutory requirements.

Except as provided in § 18–6.203, the Buy American Act requires that in the performance of contracts for construction, only domestic construction materials shall be used. In determining whether construction material is domestic construction material, only the construction material and its components shall be considered.

§ 18–6.203 Exceptions.

§ 18–6.203–1 Nonavailability in the United States.

(a) The Buy American Act does not apply to articles, materials, or supplies of a class or kind which the Government has determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality (see § 18–6.206).

(b) The authority to make additional determinations of nonavailability, is described in § 18–6.103–2(b).

(c) The format for nonavailability determinations is set forth in § 18–6.103–2(c).

§ 18–6.203–2 Unreasonable costs or impracticability.

The restrictions of the Buy American Act do not apply when it is determined by the Administrator that the use of a particular domestic construction material would (a) unreasonably increase the cost, or (b) be impracticable (see § 18–6.204–3).

§ 18–6.204 Procedures.

§ 18–6.204–1 Applicability.

The procedures in this § 18–6.204 apply to all contracts for construction in the

United States, except contracts executed on Standard Form 19.

§ 18–6.204–2 Solicitation of bids and proposals.

Invitations for bids and requests for proposals for construction shall include the following provision:

INFORMATION REGARDING BUY AMERICAN ACT (JANUARY 1964)

(a) The Buy American Act (41 U.S.C. 10 a–d) generally requires that only domestic construction materials be used in the performance of this contract. This requirement does not apply to construction materials or their components as set forth below:

(Insert list here including the items set forth in § 18–6.206)

(b) (1) Furthermore, bids or proposals offering the use of additional nondomestic construction materials may be acceptable for award if the Government determines that the use of comparable domestic construction materials is impracticable or would unreasonably increase the cost or that domestic construction materials (in sufficient and reasonably available commercial quantities and of a satisfactory quality) are unavailable. Reliable evidence shall be furnished justifying such use of additional nondomestic construction materials.

(2) Where it is alleged that the use of domestic construction materials would unreasonably increase the cost:

(i) Data shall be included, based on a reasonable canvass of suppliers, demonstrating that the cost of each such domestic construction material would exceed by more than 6 percent the cost of the comparable nondomestic construction material. (All costs of delivery to the construction site shall be included, as well as any applicable duty.)

(ii) For evaluation purposes, 6 percent of the cost of all additional nondomestic construction materials which qualify under (i) above will be added to the bid or proposal.

(3) When offering additional nondomestic construction materials, bids or proposals may also offer, at stated prices, any available comparable domestic construction materials, so as to avoid the possibility that failure of a nondomestic construction material to be acceptable under (1) above will cause rejection of the entire bid.

§ 18–6.204–3 Evaluation of bids and proposals.

(a) *Determination.* The Administrator, by NASA Management Instruction 5106.1, "Determinations Under the Buy American Act—End Products and Construction Material," has determined that where the procedures set forth in (b) below result in the use of nondomestic construction materials, the use of domestic construction materials would unreasonably increase the cost (see § 18–6.203–2).

(b) *Unreasonable cost.* If a bid or proposal is submitted in accordance with paragraph (b) of the provision set forth in § 18–6.204–2, and if such bid or proposal would be the low acceptable bid or proposal but for the Buy American Act, award shall be made on such bid or proposal if all the following conditions are satisfied:

(1) The bid or proposal specifically designates the nondomestic construction materials (not listed as exceptions in the invitation for bids or request for proposals) proposed for use;

(2) As to each such nondomestic construction material, accompanying data show that the cost of any available acceptable domestic construction material, delivered at the construction site, would exceed by more that 6 percent the cost of the designated nondomestic construction material delivered at the construction site (including any applicable duty);

(3) As to each such nondomestic construction material, the contracting officer is satisfied that the showing required by subparagraph (2) of this paragraph is correct as of the date of the opening of bids or proposals; and

(4) The bid or proposal is low after adding, for evaluation purposes, to such bid or proposal, 6 percent of the cost of all nondomestic construction materials (delivered at the construction site and including any applicable duty) which are offered in such bid or proposal and which qualify under subparagraphs (1) through (3) of this paragraph.

(c) *Impracticability.* If a bid or proposal is submitted in accordance with (b) of the provisions set forth in § 18–6.204–2, and if such bid or proposal would be the low acceptable bid or proposal but for the Buy American Act, the proposed award shall be submitted together with all pertinent information and full justification for such action to the Director of Procurement for decision by the Administrator, if the following conditions exist:

(1) The bid or proposal specifically designates the nondomestic construction materials (not listed as exceptions in the invitation for bids or request for proposals) proposed for use; and

(2) As to each such nondomestic construction material, accompanying data show that it would be impracticable to use domestic construction materials.

(d) If a contract is to be awarded under paragraph (b) or (c) of this section, the contracting officer shall place in the contract file (1) a copy of the data and justification in the case of an exception under paragraph (b) of this section, or (2) a copy of the Administrator's finding of impracticability in the case of an exception under paragraph (c) of this section, and copies thereof shall be available for public inspection.

§ 18–6.204–4 Small business.

Nothing in § 18–6.204–3 shall affect the authority or responsibility of the NASA to place a fair proportion of its total contracts with small business concerns.

§ 18–6.205 Penalty for violation.

If the Administrator finds that in the performance of a construction contract there has been a failure to comply with the clause in the contract entitled "Buy American Act," he shall make public his findings, including therein the name of the contractor obligated under the contract, and no other contract for construction in the United States or elsewhere shall be awarded to such contractor, or to subcontractors, materialmen, or suppliers with whom such contractor is associated or affiliated within a period of 3 years after such finding is made public.

§ 18–6.206 List of excepted articles, materials, and supplies.

The articles, materials, and supplies listed below may be used in construction without regard to country of origin, except as provided in Subpart 18–6.4 of this chapter, on the basis of the nonavailability provision of the Buy American Act. (See § 18–6.203–1.)

Antimony, as metal or oxide.
Asbestos, amosite.
Bismuth.
Cadmium, ores and flue dust.
Chalk, English.
Chrome ore or chromite.
Cobalt, in cathodes, rondelles, or other primary forms.
Cork, wood or bark and waste.
Damar gum.
Graphite, natural, crystalline, crucible grade.
Jute and jute burlap.
Kaurigum.
Lac.
Logs, veneer, and lumber from Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.
Mica.
Nickel, primary, in ingots, pigs, shot, cathodes, or similar forms; nickel oxide and nickel salts.
Rubber, crude and latex.
Shellac.
Tin, in bars, blocks, and pigs.

§ 18–6.207 Contract clauses.

(a) The clause set forth below shall be included in all contracts for construction, and any articles, materials, and supplies which have been the subject of additional determinations pursuant to § 18–6.203–1 shall be listed thereunder.

NONDOMESTIC CONSTRUCTION MATERIALS (SEPTEMBER 1962)

The requirements of the clause of this contract entitled "Buy American Act" do not apply to construction materials or their components as set forth below:

(Insert list here including the items set forth in § 18–6.206)

(b) If a contract is to be awarded under §18–6.204–3 (b) or (c) and the use of designated nondomestic construction materials is to be permitted, the designated nondomestic construction materials shall be listed under the clause required by paragraph (a) of this section.

(c) The clause set forth below shall be inserted in all contracts for construction except those executed on Standard Form 19 and NASA Form 1379.

BUY AMERICAN (SEPTEMBER 1962)

(a) *Agreement.* In accordance with the Buy American Act (41 U.S.C. 10 a–d) and Executive Order 10582, December 17, 1954 (3 CFR Supp.), the Contractor agrees that only domestic construction material will be used (by the Contractor, subcontractors, materialmen, and suppliers) in the performance of this contract, except for nondomestic material listed in the contract.

(b) *Domestic construction material.* "Construction material" means any article, material, or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a "domestic construction material" if it has been mined or produced in the United States. A manufactured construction material is "domestic construction material" if it has

been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. "Component" means any article, material, or supply directly incorporated in a construction material.

(c) *Domestic component.* A component shall be considered to have been "mined, produced or manufactured in the United States" (regardless of its sources in fact) if the article, material, or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Subpart 18–6.4—Purchases From Soviet-Controlled Areas

§ 18–6.401 Restrictions.

§ 18–6.401–1 General policy.

Generally, supplies originating from sources within Soviet-controlled areas shall not be acquired for public use, notwithstanding the provisions of Subparts 18–6.1 and 18–6.2, and NASA contractors and subcontractors shall not acquire for use in the performance of any NASA contract or subcontract thereunder any supplies or services originating from Soviet-controlled areas.

§ 18–6.401–2 Soviet-controlled areas.

For the purpose of this subpart, Soviet-controlled areas are the folowing:

Albania.
Bulgaria.
China, excluding Taiwan (Formosa), but including Manchuria, Inner Mongolia, the provinces of Tsinghai and Sikang, Sinkiang, Tibet, the former Kwantung Leased Territory, the present Port Arthur Naval Base Area, and Liaoning Province.
Communist-controlled area of Viet Nam and Communist-controlled area of Laos.
Cuba.
Czechoslovakia.
East Germany (Soviet Zone of Germany and the Soviet Sector of Berlin).
Estonia.
Hungary.
Latvia.
Lithuania.
North Korea.
Outer Mongolia.
Poland and Danzig.
Rumania.
Union of Soviet Socialist Republics.

§ 18–6.401–3 Certain supplies of foreign origin.

The following supplies, if of foreign origin and however processed, shall be presumed to have originated from Soviet-controlled (Chinese) sources and shall not be acquired for public use unless (a) such supplies have been lawfully imported into the United States, its possessions, or Puerto Rico, or (b) the supplies are acquired directly from the countries indicated:

Bamboo, split	None.
Braids, straw	Italy, Japan.
Bristles, hog, including such bristles in knots or other processed condition.	None.
Brushes, paint (including parts thereof) containing hog bristles, if any such bristle is more than 1½ inches in total length or more than 1¼ inches out of the ferrule.	Do.
Eggs, poultry:	
Whole in the shell, other than chicken	Do.
Whole, dried	Do.
Albumen, dried	Do.
Yolks, dried	Do.
Floor coverings, grass and straw, including sea-grass mats and squares.	Japan.
Fur skins:	
Goat and kid	Argentina, Ethiopia (including Eritrea), Iran, Iraq.
Kolinsky	Republic of Korea.
Weasel	Canada.
Garments, Chinese type	None.
Jade, stones, cut but not set and suitable for use in jewelry.	Do.
Menthol, natural and synthetic (other than racemic)	Brazil.
Silk, piece goods, tussah and muga	None.
Silk, tussah and muga	Do.
Tea, Chinese type	Formosa.
Tung oil	Argentina, Brazil, Paraguay.
Walnuts	France, Iran, Italy, Turkey.

§ 18–6.401–4 Certain supplies from Hong Kong, Macao, and Soviet-controlled areas.

The following supplies, however processed, which are or were located in or transported from or through Hong Kong, Macao, or any Soviet-controlled area (see § 18–6.401–2), shall be presumed to have originated from Soviet-controlled (Chinese) sources, and shall not be acquired for public use unless such supplies have been lawfully imported into the United States, its possession, or Puerto Rico:

Agar-agar.
Bamboo:
  Bags, baskets, and other manufactures, excluding furniture.
  Poles and sticks.
Brocades and brocade articles.
Camphor, natural and synthetic.
Camphor oil, natural and synthetic.
Carpets.
Castor oil.
Chinaware, other than Dresden ware and Meissen ware.
Citronella oil.
Cotton manufactures.
Cotton waste.
Earthenware.
Edible marine products.
Embroideries and embroidered articles.
Feather manufactures.
Glass, sheet (window).
Graphite.
Hair nets, regardless of the material from which made.
Handkerchiefs.
Hardware manufactures, including furniture other than bentwood furniture.
Hats, paper.
Honey.
Ivory manufactures.
Lace and lace articles.
Linen manufacturers, excluding wearing apparel other than wearing apparel made in whole or in part of brocade, embroidery, or lace.
Ores and metals:
  Antimony.
  Bismuth.
  Quicksilver.
  Molybdenum.
  Tin.
  Tungsten.
Peanuts and peanut products.
Poultry, including pigeons, frozen or otherwise prepared or preserved.
Ramie.
Rugs.
Sea-grass and straw manufactures, excluding floor covering.
Sesame, oil and seed.
Shoes, leather-soled with no-leather upper, except ladies' high-heel shoes.
Silk:
  Raw and manufactures other than Western style suits and Indian saris.
  Waste.
Skins, deer and goat.
Stones, semiprecious, and manufacture thereof, including jewelry.
Tapestries, including needlework tapestries.
Tapioca, including tapioca flour.

§ 18–6.401–5 Supplies from North Korea or China.

All supplies, however processed, which are or were located in or transported from or through North Korea or China (as described in § 18–6.401–2) shall be presumed to have originated from Soviet-controlled (Chinese) sources, and shall not be acquired for public use unless such supplies have been lawfully imported into the United States, its possessions, or Puerto Rico.

§ 18–6.402 Exceptions.

(a) Exceptions from the general policy will be made only in accordance with paragraphs (b) and (c) of this section. Moreover, such exceptions shall be made only in cases of emergency, or where supplies are not available from any other source and a substitute supply is not acceptable, or in other unusual situations.

(b) Supplies other than those whose procurement is prohibited by §§ 18–6.401–3, 18–6.401–4, and 18–6.401–5, originating from sources within Soviet-controlled areas (see § 18–6.401–2), may be procured only when:

(1) The purchase is for $2,500 or less and the contracting officer determines there is a need for an exception in accordance with the procedures set forth in paragraph (d) (1) (i) or (2) (i) of this section; or

(2) The purchase is for more than $2,500 and an exception is approved by the Administrator in accordance with the procedures set forth in paragraph (d) (1) (ii) or (2) (ii) of this section.

(c) Supplies whose procurement is prohibited by §§ 18–6.401–3, 18–6.401–4, and 18–6.401–5 may be acquired if the acquisition is approved by an authorized Treasury Department representative. Where a request for such approval has been denied by a Treasury Department representative, an appeal may be made by the Administrator to the Secretary of the Treasury when unusual circumstances appear to warrant a departure from the general policy. Such appeals, with all pertinent information shall be submitted through the Procurement Office, NASA Headquarters (Code KDP–1).

(d) *Procedures.* (1) When it is proposed to procure supplies originating from sources within Soviet-controlled areas for public use within the United States (as defined in § 18–6.101(c)), or when a constuction contractor proposes to use such supplies in the performance of a contract for construction within the United States (as defined in § 18–6.201–1), the following procedurse should be followed:

(i) If the proposed procurement of such supplies does not exceed $2,500, the contracting officer shall make a determination of nonavailability, as authorized in § 18–6.103–2 or § 18–6.203–1. This determination shall include, in addition to the findings outlined in the determination format set forth in § 18–6.103–2 (c), a finding to the effect that there is no known item or items from sources within non-Soviet-controlled areas which can be used as a reasonable substitute. Such determination shall be made a part of the contract file.

(ii) If the proposed procurement of such supplies exceeds $2,500, the contracting officer shall prepare a determination of nonavailability for signature by the Administrator. The format of the determination set forth in § 18–6.103–2 (c) shall be used and such determination shall include, as an additional finding, a statement to the effect that there is no known item or items from sources within non-Soviet-controlled areas which can be used as a reasonable substitute. Such determination shall be forwarded, in triplicate, to the Office of Procurement.

(2) When it is proposed to procure supplies originating from sources within Soviet-controlled areas for public use elsewhere than within the United States (as defined in § 18–6.101(c)), or when a construction contractor proposes to use such supplies in the performance of a contract for construction elsewhere than within the United States, the following procedures shall be followed:

(i) If the proposed procurement of such supplies does not exceed $2,500, the contracting officer shall make a written finding setting forth the unusual situation, such as an emergency or the nonavailability of acceptable substitute supplies of domestic or non-Soviet-controlled area origin, which justifies the procurement of supplies originating in a Soviet-controlled area. Such finding shall be made a part of the contract file.

(ii) If the proposed procurement of such supplies exceeds $2,500, the contracting officer shall make a written finding, as described in paragraph (d) (2) (i) of this section. Such finding shall be forwarded, in triplicate, to the Procurement Office, NASA Headquarters for approval by the Administrator of the exception authorizing the proposed procurement.

§ 18–6.403 Contract clause.

(a) Except as provided in paragraph (b) of this section, in contracts for supplies, services, or construction, where acceptance is to take place outside the United States, its possessions, or Puerto Rico, the Soviet-controlled area listed in § 18–6.401–2 shall be set forth in the contract schedule and the following clause shall be included in the contract:

SOVIET-CONTROLLED AREAS (SEPTEMBER 1962)

(a) The Contractor shall not acquire for use in the performance of this contract any supplies or services originating from sources within Soviet-controlled areas, as listed in the Schedule of this contract, or transported from or through Hong Kong or Macao, without the written approval of the Contracting Officer.

(b) The Contractor agrees to insert the provisions of this clause, including this subparagraph (b) and the Soviet-controlled areas listed in the Schedule, in all subcontracts hereunder.

(b) The requirements of paragraph (a) of this section do not apply to purchase orders for small purchases (see Subpart 18–3.6, of this chapter) when there is other reasonable assurance of compliance with the policy set forth in this subpart.

Subpart 18–6.6—Duty and Customs

§ 18–6.601 Duties and customs on foreign purchases.

Ordinarily, duty must be paid in connection with the importation of supplies purchased by NASA outside the United States as provided in the tariff schedules set forth in 19 U.S.C. 1202 (Public Law 87–456, title III, section 303(c), approved May 24, 1962; 76 Stat. 78). However, many items are listed in the schedules as being duty-free. Schedule 8 of § 1202 is specifically directed to items which may be imported duty-free under conditions set forth in connection with the various items listed therein. Particular attention is invited to the following authorized exemptions:

(a) Item 832 of Part 3 of Schedule 8 provides that "emergency war materials purchased abroad" may be imported duty-free upon certification by the Military Departments to the Commissioner of Customs. Accordingly, when a Military Department makes a purchase on behalf of NASA, or when NASA is making a purchase for a Military Department, the above duty-free exemption authority shall be used to the maximum extent practicable. The policies and procedures for effecting duty-free entry of such materials are set forth in ASPR, section VI, part 6;

(b) Item 864.30 of Part 5, Schedule 8 provides for the duty-free exemption of "articles intended solely for testing, experimental or review purposes including plans, specifications, drawings, photographs, and similar articles for use in connection with experimental study" subject to the limitations set forth in headnote 1, under Item 862.20 of Part 5, Schedule 8; and

(c) Certain supplies (not including equipment) for vessels or aircraft operated by the United States are exempt from duty under 19 U.S.C. 1309.

Subpart 18–6.7—Foreign Contract Procurement

§ 18–6.700 Scope of subpart.

This subpart prescribes policy and procedures relating to the negotiation of foreign contracts.

§ 18–6.701 Definition of foreign contract procurement.

The term "foreign contract procurement" as used in this subpart means the procurement of negotiation of supplies or services, including construction work and contracts for research and development, where the work is to be performed outside the United States, its possessions, and Puerto Rico, by a foreign government or instrumentality thereof, or a foreign private contractor. The term does not include the following:

(a) Negotiation of government-to-government agreements;

(b) Negotiation of contracts with domestic concerns which involves work to be performed outside the United States, its possessions, and the Commonwealth of Puerto Rico;

(c) Contracts with the Canadian Commercial Corporation; or

(d) Procurement of books and periodicals from foreign sources of supply.

§ 18–6.702 Policy.

Foreign contract procurement is a specialized area which often requires involved negotiation with instrumentalities of foreign governments. Some of the requirements for contract clauses imposed by U.S. laws conflict with statutory prohibitions imposed by foreign countries. The resolution of these issues generally involves close coordination between the Office of International Programs and the Office of General Counsel, NASA Headquarters, and the Department of State. Accordingly, it is the policy of NASA that the responsibility for foreign contract procurement be centralized at NASA Headquarters.

§ 18–6.703 Assignment of responsibility for contract negotiation.

The Headquarters Contracts Division (Code: DHC), in conjunction with the Offices of International Affairs and General Counsel, is responsible for negotiating and executing contracts with foreign governments and private foreign organizations. This assignment of responsibility is specifically limited to foreign

contract procurement, as defined in § 18–6.701.

§ 18–6.704 Procedure.

A Headquarters or field installation technical office requiring a foreign procurement to be made will submit a properly approved Purchase Request (NASA Form 404, or similar form), through channels, to the Headquarters Contracts Division, NASA Headquarters (Code: DHC), for procurement action. In accordance with § 18–7.000, contract forms and clauses to be used in foreign contract procurement will be as prescribed on a case-by-case basis by the Director of Procurement.

§ 18–6.705 Assignment of contract administration.

(a) *General.* Assignment of contract administration responbility will be made by agreement between the initiating office and the Headquarters Contracts Division. Since principal responsibility for the monitoring of contractor progress and performance generally rests with a field installation, the Headquarters Contracts Division normally will designate the procurement officer of the cognizant field installation as his authorized representative for purposes of contract administration.

(b) *Contracts performed in Canada.* (1) When, in accordance with the provisions of Subpart 18–51.3, contract administration and related support service functions of the Defense Contract Administration Services are desired on a contract to be performed in Canada (whether placed with Canadian Commercial Corporation or direct with a Canadian firm), a letter of delegation shall be issued to:

Defense Contract Administration Services Office, Ottawa, 123 Slater Street, MacDonald Building, Ottawa 4, ON, Canada.

(2) In order that DCASO, Ottawa may utilize the capabilities of the Canadian Government agencies in the performance of contract administration services functions, each letter of delegation shall provide that the DCASO, Ottawa is delegated authority to act as the contracting officer's representative with power of further delegation for the performance of the requested services.

(3) A copy of each letter of delegation issued to the DCASO, Ottawa shall be furnished:

NASA/DCASR Representative, Defense Contract Administration Services Region, Detroit, 1580 East Grand Boulevard, Detroit, MI 48211.

§ 18–6.706 Contacts with foreign nationals.

(a) Proposals by NASA staff members which involve program or contract possibilities with foreign nationals shall be coordinated with the Office of International Affairs, NASA Headquarters, before any contacts are made with foreign nationals.

(b) Informal discussions between NASA staff members and foreign nationals could give rise to expectations concerning program or contract possibilities which are not supported by program requirements. Such situations must be avoided to preclude possible embarrassment to the United States, as well as to NASA.

(c) Requests or offers by foreign nationals to NASA staff members on programs or contract matters shall be reported promptly o the Office of International Affairs. (See NASA Policy Directive 1362.1, "Initiation and Development of International Participation and Cooperation in Aeronautical and Space Programs.")

Subpart 18–6.8—Balance of Payments Program—Offshore Procurement

§ 18–6.801 Use of excess foreign currencies.

It is the policy of NASA to utilize all possible actions to minimize payments and maximize receipts entering into the balance of payments. In carrying out this policy, procurement offices should, to the maximum extent practicable, ensure that contracts and other obligations incurred in excess and near-excess currency countries are made payable in foreign currencies rather than in U.S. dollars. The expenditures, in these countries, of foreign currencies rather than U.S. dollars provides a saving in the budget and improves the balance of payments situation.

§ 18–6.801–1 Obligations incurred in excess and near-excess currency countries.

NASA procurement offices should establish procedures to ensure that contracts and other obligations incurred in excess and near-excess currency countries are made payable in foreign currencies rather than in U.S. dollars, notwithstanding the appropriation or fund that will be used for payment. This should include contracts with American contractors, to the extent that the contractor may be expected to require such currencies for necessary expenses in the country involved.

§ 18–6.801–2 Designation and announcement of excess currency countries.

Excess and near-excess currency countries are designated by the Treasury Department. The list of countries which the Treasury Department has determined are excess or near-excess to the needs of the United States are announced in Bureau of the Budget Bulletins. The current Bulletin is included as an attachment to NASA Management Instruction 9393.2, "Use of Excess and Near-Excess Foreign Currencies."

Subpart 18–6.10—Exemption of Certain Contracts With Foreign Contractors From the Requirement for an Examination of Records Clause

§ 18–6.1000 Scope of subpart.

This subpart sets forth policies and procedures for exempting the requirement for the "Examination of Records" clause in contracts with foreign contractors and foreign subcontractors.

§ 18–6.1001 Statutory requirements.

(a) In accordance with 10 U.S.C. 2313(c), the "Examination of Records" clause may be excluded from negotiated contracts and subcontracts with foreign contractors and foreign subcontractors where:

(1) The Administrator determines, with the concurrence of the Comptroller General or his designee, that inclusion of the clause would not be in the public interest; or

(2) Where—

(i) The contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination, and

(ii) The Administrator determines, after taking into account the price and availability of the property or services from U.S. sources, that the public interest would be best served by exclusion of the clause.

(b) A determination of the Administrator under paragraph (a)(2) of this section does not require the concurrence of the Comptroller General or his designee. However, where a determination of the Administrator under paragraph (a)(2) is the basis for exclusion of the "Examination of Records" clause, the statute requires that a written report be furnished to the Congress. This report, which shall explain the reasons for the determination, shall be prepared in triplicate, signed by the head of the installation concerned, and forwarded to the Director of Procurement (Code KDP–2 for processing to the Administrator.)

§ 18–6.1002 Policy.

The "Examination of Records" clause shall be included wherever possible. Exclusion of the clause should be allowed only after the contracting officer has made all reasonable efforts to include the clause and has considered such factors as alternate sources of supply, additional cost, and time of delivery. "Foreign Contractor" for purposes of this subpart is defined as "one that is organized or existing under laws of a country other than the United States, it territories, or possessions."

§ 18–6.1003 Requests for determinations and findings.

Request for determinations and findings for exclusion ordinarily will be initiated by the contracting officer. The request shall consist of a letter submitted through normal procurement channels, addressed to the Administrator setting forth all the facts necessary to arrive at an appropriate determination and findings.

§ 18–6.1004 Determination and findings.

The determination and findings made by the Administrator to authorize exclusion of the "Examination of Records"

clause from a contract with a foreign contractor or foreign subcontractor under 10 U.S.C. 2313(c) shall:

(1) Identify the contract and its purpose, and state, that it is a contract or subcontract with a foreign contractor or foreign subcontractor, or that the contractor or subcontractor is a foreign government or agency thereof;

(2) Describe the efforts that have been made to include the clause in the contract or subcontract;

(3) State the reasons for the contractor's or subcontractor's refusal to include the clause;

(4) Describe the price and availability of the property or services from United States and other sources; and

(5) Determine that it is in the public interest to exclude the clause pursuant to the provisions of 10 U.S.C. 2313(c).

PART 18–7—CONTRACT CLAUSES

Sec.

18–7.000 Scope of part.

Subpart 18–7.1—Clauses for Fixed-Price Supply Contracts

18–7.100 Scope of subpart.
18–7.102 Applicability.
18–7.103 Required clauses.
18–7.103–1 Definitions.
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18–7.103–7 Payments.
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18–7.103–11 Default.
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18–7.103–16 Contract Work Hours Standards Act—overtime compensation.
18–7.103–17 Walsh-Healey Public Contracts Act.
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18–7.103–21 Termination for convenience of the Government.
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18–7.104–21 Limitation on withholding of payments.
18–7.104–22 Small business subcontracting program.
18–7.104–23 Subcontracts.
18–7.104–24 Government property.
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18–7.104–38 Labor surplus area subcontracting program.
18–7.104–40 Competition in subcontracting.
18–7.104–41 Contractor and subcontractor certified cost or pricing data.
18–7.104–42 Audit and records.
18–7.104–50 Data requirements.
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18–7.104–57 Liability for Government property furnished for repair or other services.
18–7.104–58 Safety and health.
18–7.104–59 Nonuse of foreign-flag vessels engaged in Cuban and North Vietnam trade.
18–7.104–60 Report on NASA subcontracts.
18–7.104–61 Rights in data for potentially hazardous items.
18–7.104–62 Potentially hazardous items.
18–7.104–63 Disclosure of unsolicited proposals outside Government.
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18–7.105–8 Stop work orders.
18–7.106 Price escalation clauses (established prices).
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18–7.106–2 Escalation clause for nonstandard steel items.
18–7.106–3 Escalation clause for standard supplies.
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18–7.107 Price escalation clause (labor and material).
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18–7.109–2 Prospective periodic price redetermination at stated intervals.
18–7.109–4 Retroactive price redetermination after completion.

Subpart 18–7.2—Clauses for Cost-Reimbursement Type Supply Contracts

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18–7.203–2 Changes.
18–7.203–3 Limitation of cost.
18–7.203–4 Allowable cost, fixed fee, and payment.
18–7.203–5 Inspection of supplies and correction of defects.
18–7.203–6 Assignment of claims.
18–7.203–7 Examination of records.
18–7.203–8 Subcontracts.
18–7.203–9 Utilization of small business concerns.
18–7.203–10 Termination.
18–7.203–11 Excusable delays.
18–7.203–12 Disputes.
18–7.203–13 Renegotiation.
18–7.203–15 Convict labor.
18–7.203–16 Contract Work Hours Standards Act—overtime compensation.
18–7.203–17 Walsh-Healey Public Contracts Act.
18–7.203–18 Equal opportunity.
18–7.203–19 Officials not to benefit.
18–7.203–20 Covenant against contingent fees.
18–7.203–21 Government property.
18–7.203–22 Insurance—liability to third persons.
18–7.203–23 Authorization and consent.
18–7.203–24 Notice and assistance regarding patent and copyright infringement.
18–7.203–26 Utilization of concerns in labor surplus areas.
18–7.203–27 Payment for overtime premiums.
18–7.203–28 Competition in subcontracting.
18–7.203–29 Audit and records.
18–7.203–50 Payment of royalties.
18–7.203–51 Estimated cost and fixed fee.
18–7.203–52 Payment of fixed fee.
18–7.203–53 Interest.
18–7.204 Clauses required to be used when applicable.
18–7.204–1 Clauses for contracts involving construction work.
18–7.204–2 Soviet-controlled areas.
18–7.204–3 Buy American Act.
18–7.204–4 Notice to the Government of labor disputes.
18–7.204–6 Filing of patent applications.
18–7.204–7 New technology.
18–7.204–9 Rights in data.
18–7.204–12 Security requirements.
18–7.204–15 Priorities, allocations, and allotments.
18–7.204–16 Negotiated overhead rates.
18–7.204–18 Limitation on wtihholding of payments.
18–7.204–19 Small business subcontracting program.
18–7.204–20 Changes to make-or-buy program.
18–7.204–21 Flight risks.
18–7.204–26 Preference for U.S.-Flag vessels.
18–7.204–28 General Services Administration supply sources.
18–7.204–29 Labor surplus area subcontracting program.
18–7.204–30 Contractor and subcontractor certified cost or pricing data.
18–7.204–31 Scientific and technical information service.
18–7.204–50 Data requirements.
18–7.204–51 Approval of contract.
18–7.204–53 Limitation of Government's obligation.
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18–7.204–56 NASA financial management reporting.
18–7.204–58 Safety and health.
18–7.204–59 Nonuse of foreign-flag vessels engaged in Cuban or North Vietnam trade.
18–7.204–60 Report on NASA subcontracts.
18–7.204–61 Rights in data for potentially hazardous items.
18–7.204–62 Potentially hazardous items.
18–7.204–63 Disclosure of unsolicited proposals outside Government.
18–7.204–64 Financial reporting of Government-owned space hardware.
18–7.205 Additional clauses.
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18–7.205–50 Notice of delay.
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18–7.205–53 Contractor's independent research program.
18–7.205–54 Reports of work.

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18–7.302 Required clauses.
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18-7.302-3 Standards of work.
18-7.302-4 Inspection.
18-7.302-5 Assignment of claims.
18-7.302-6 Examination of records.
18-7.302-7 Federal, State, and local taxes.
18-7.302-8 Utilization of small business concerns.
18-7.302-9 Default.
18-7.302-10 Termination for the convenience of the Government.
18-7.302-11 Disputes.
18-7.302-12 Renegotiation.
18-7.302-13 Buy American Act.
18-7.302-14 Convict labor.
18-7.302-15 Walsh-Healey Public Contracts Act.
18-7.302-16 Contract Work Hours Standards Act—overtime compensation.
18-7.302-17 Equal opportunity.
18-7.302-18 Officials not to benefit.
18-7.302-19 Covenant against contingent fees.
18-7.302-21 Authorization and consent.
18-7.302-22 Notice and assistance regarding patent and copyright infringement.
18-7.302-23 New technology or property rights in inventions.
18-7.302-24 Rights in data.
18-7.302-25 Security requirements.
18-7.302-26 Utilization of concerns in labor surplus areas.
18-7.302-53 Interest.
18-7.302-54 Reports of work.
18-7.302-55 Scientific and technical information service.
18-7.303 Clauses required to be used when applicable.
18-7.303-1 Clauses for contracts involving construction work.
18-7.303-2 Filing of patent applications.
18-7.303-6 Priorities, allocations, and allotments.
18-7.303-7 Government property.
18-7.303-8 Soviet-controlled areas.
18-7.303-9 Notice to the Government of labor disputes.
18-7.303-10 Limitation on withholding of payments.
18-7.303-11 Small business subcontracting program.
18-7.303-12 Subcontracts.
18-7.303-17 Ground and flight risk.
18-7.303-23 Progress payments.
18-7.303-25 Labor surplus area subcontracting program.
18-7.303-27 Competition in subcontracting.
18-7.303-28 Contractor and subcontractor certified cost or pricing data.
18-7.303-29 Audit and records.
18-7.303-50 Data requirements.
18-7.303-51 Approval of contract.
18-7.303-52 Preference for U.S.-flag vessels.
18-7.303-55 NASA PERT system.
18-7.303-56 NASA financial management reporting.
18-7.303-57 Key Personnel and facilities.
18-7.303-58 Safety and health.
18-7.303-59 Nonuse of foreign-flag vessels engaged in Cuban or North Vietnam trade.
18-7.303-60 Report on NASA subcontracts.
18-7.303-61 Rights in data for potentially hazardous items.
18-7.303-62 Potentially hazardous items.
18-7.303-63 Disclosure of unsolicited proposals outside Government.
18-7.304 Additional clauses.
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18-7.304-4 Bill of materials.
18-7.304-5 Stop work orders.
18-7.304-8 Warranty.
18-7.304-50 Notice of delay.
18-7.304-59 Price escalation.
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18-7.304-61 Special tooling.
18-7.350 Short form clauses for fixed-price research contracts with nonprofit institutions
18-7.350-1 Definitions.
18-7.350-2 Payment.
18-7.350-3 Technical reports and data.
18-7.350-4 Government-furnished property.
18-7.350-5 Release of information.
18-7.350-6 Security.
18-7.350-7 Property rights in inventions.
18-7.350-8 Disputes.
18-7.350-9 Termination at the option of the Government.
18-7.350-10 Authorization and consent.
18-7.350-11 Notice and assistance regarding patent and copyright infringement.
18-7.350-12 Buy American Act.
18-7.350-13 Examination of records.
18-7.350-14 Equal opportunity.
18-7.350-15 Covenant against contingent fees.
18-7.350-16 Officials not to benefit.
18-7.350-17 Convict labor.
18-7.350-18 Audit and records.
18-7.350-19 Additional clauses.

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18-7.400 Scope of subpart.
18-7.401 Applicability.
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18-7.402-2 Limitation of cost.
18-7.402-3 Allowable cost, fixed fee, and payment.
18-7.402-4 Standards of work.
18-7.402-5 Inspection and correction of defects.
18-7.402-6 Assignment of claims.
18-7.402-7 Examination of records.
18-7.402-8 Subcontracts.
18-7.402-9 Utilization of small business concerns.
18-7.402-10 Termination.
18-7.402-11 Disputes.
18-7.402-12 Renegotiation.
18-7.402-13 Buy American Act.
18-7.402-14 Convict labor.
18-7.402-15 Walsh-Healey Public Contracts Act.
18-7.402-16 Contract Work Hours Standards Act—overtime compensation.
18-7.402-17 Equal opportunity.
18-7.402-18 Officials not to benefit.
18-7.402-19 Covenant against contingent fees.
18-7.402-20 Authorization and consent.
18-7.402-21 Notice and assistance regarding patent and copyright infringement.
18-7.402-22 New technology.
18-7.402-23 Rights in data.
18-7.402-24 Security requirements.
18-7.402-25 Government property.
18-7.402-26 Insurance—liability to third persons.
18-7.402-27 Utilization of concerns in labor surplus areas.
18-7.402-28 Payment for overtime premiums.
18-7.402-29 Competition in subcontracting.
18-7.402-30 Audit and records.
18-7.402-50 Payment of royalties.
18-7.402-51 Estimated cost and fixed fee.
18-7.402-52 Payment of fixed fee.
18-7.402-53 Interest.
18-7.402-54 Reports of work.
18-7.402-55 Scientific and technical information service.
18-7.403 Clauses required to be used when applicable.
18-7.403-1 Clauses for contracts involving construction work.
18-7.403-2 Filing of patent applications.
18-7.403-5 Excusable delays.
18-7.403-7 Priorities, allocations, and allotments.
18-7.403-8 Soviet-controlled areas.
18-7.403-9 Negotiated overhead rates.
18-7.403-10 Notice to the Government of labor disputes.
18-7.403-11 Contractor and subcontractor certified cost or pricing data.
18-7.403-12 Limitation on withholding of payments.
18-7.403-13 Small buisness subcontracting program.
18-7.403-14 Changes to make-or-buy program.
18-7.403-16 Flight risks.
18-7.403-23 General Services Administration supply sources.
18-7.403-24 Labor surplus area subcontracting program.
18-7.403-50 Data requirements.
18-7.403-51 Approval of contract.
18-7.403-52 Preference for U.S.-Flag vessels.
18-7.403-53 Limitation of Government's obligation.
18-7.403-55 NASA PERT system.
18-7.403-56 NASA financial management reporting.
18-7.403-57 Key personnel and facilities.
18-7.403-58 Safety and health.
18-7.403-59 Nonuse of foreign-flag vessels engaged in Cuban or North Vietnam trade.
18-7.403-60 Report on NASA subcontracts.
18-7.403-61 Rights in data for potentially hazardous items.
18-7.403-62 Potentially hazardous items.
18-7.403-63 Disclosure of unsolicited proposals outside Government.
17-7.403-64 Financial reporting of Government-owned space hardware.
18-7.404 Additional clauses.
18-7.404-1 Changes.
18-7.404-2 Alterations in contract.
18-7.404-4 Bills of materials.
18-7.404-5 Stop work orders.
18-7.404-50 Notice of delay.
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18-7.404-53 Contractor's independent research program.
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18-7.450 Clauses for cost-reimbursement research and development contracts with nonprofit institutions (including educational institutions).
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18-7.451 Required clauses.
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18-7.451-5 Inspection.
18-7.451-6 Assignment of claims.
18-7.451-7 Examination of records.
18-7.451-8 Subcontracts.
18-7.451-9 Utilization of small business concerns.
18-7.451-10 Termination for the convenience of the Government.
18-7.451-11 Disputes.
18-7.451-12 Renegotiation.
18-7.451-13 Buy American Act.
18-7.451-14 Convict labor.
18-7.451-15 Walsh-Healey Public Contracts Act.
18-7.451-16 Contract Work Hours Standards Act—overtime compensation.
18-7.451-17 Equal opportunity.
18-7.451-18 Officials not to benefit.

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18-7.451-19 Covenant against contingent fees.
18-7.451-20 Authorization and consent.
18-7.451-21 Notice and assistance regarding patent and copyright infringement.
18-7.451-22 New technology or property rights in inventions.
18-7.451-23 Rights in data.
18-7.451-24 Security requirements.
18-7.451-25 Government property.
18-7.451-26 Insurance—liability to third persons.
18-7.451-27 Utilization of concerns in labor surplus areas.
18-7.451-28 Payment for overtime premiums.
18-7.451-29 Competition in subcontracting.
18-7.451-30 Audit and records.
18-7.451-50 Payment of royalties.
18-7.451-51 Estimated cost.
18-7.451-54 Reports of work.
18-7.451-55 Scientific and technical information service.
18-7.452 Clauses required to be used when applicable.
18-7.452-1 Clauses for contracts involving construction work.
18-7.452-2 Filing of patent applications.
18-7.452-7 Priorities, allocations, and allotments.
18-7.452-8 Soviet-controlled areas.
18-7.452-9 Negotiated overhead rates.
18-7.452-10 Notice to the Government of labor disputes.
18-7.452-11 Contractor and subcontractor certified cost or pricing data.
18-7.452-12 Limitation on withholding of payment.
18-7.452-13 Small business subcontracting program.
18-7.452-14 Changes to make-or-buy program.
18-7.452-23 General Services Administration supply sources.
18-7.452-24 Labor surplus area subcontracting program.
18-7.452-50 Data requirements.
18-7.452-51 Approval of contract.
18-7.452-52 Preference for U.S. flag vessels.
18-7.452-53 Limitation of Government's obligation.
18-7.452-55 NASA PERT system.
18-7.452-56 NASA financial management reporting.
18-7.452-57 Key personnel and facilities.
18-7.452-58 Safety and health.
18-7.452-59 Nonuse of foreign-flag vessels engaged in Cuban or North Vietnam trade.
18-7.452-60 Report on NASA subcontracts.
18-7.452-61 Rights in data for potentially hazardous items.
18-7.452-62 Potentially hazardous items.
18-7.452-63 Disclosure of unsolicited proposals outside Government.
18-7.452-64 Financial reporting of Government-owned space hardware.
18-7.453 Additional clauses.
18-7.453-1 Changes.
18-7.453-2 Alterations in contract.
18-7.453-4 Bill of materials.
18-7.453-50 Notice of delay.
18-7.453-52 Date of incurrence of costs.
18-7.453-53 Contractor's independent research program.
18-7.453-57 Federal, State, and local taxes.
18-7.453-58 Excusable delays.
18-7.460 Short form clauses for cost-reimbursement type research contracts with nonprofit institutions (including educational institutions.
18-7.460-1 Definitions.
18-7.460-2 Limitation of cost.
18-7.460-3 Government property.
18-7.460-5 Insurance—liability to third persons.
18-7.460-6 Records.
18-7.460-7 Release of information.
18-7.460-8 Property rights in inventions.
18-7.460-9 Data and inspection.
18-7.460-10 Authorization and consent.
18-7.460-11 Notice and assistance regarding patent and copyright infringement.
18-7.460-12 Security.
18-7.460-13 Disputes.
18-7.460-14 Termination.
18-7.460-15 Buy American Act.
18-7.460-16 Equal opportunity.
18-7.460-17 Covenant against contingent fees.
18-7.460-18 Officials not to benefit.
18-7.460-19 Convict labor.
18-7.460-20 Allowable cost and payment.
18-7.460-21 Audit and records.
18-7.461 Additional clauses.

Subpart 18-7.5—Clauses for Personal Services Contracts

Cross reference.

Subpart 18-7.6 [Reserved]

Subpart 18-7.7—Clauses for Facilities Contracts

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18-7.702-2 Facilities to be provided.
18-7.702-3 Late delivery, diversion, and substitution.
18-7.702-4 Changes.
18-7.702-5 Representations and warranties.
18-7.702-6 Inspection.
18-7.702-7 Excusable delays.
18-7.702-8 Location of the facilities.
18-7.702-9 Government bills of lading.
18-7.702-10 Allowable cost and payment.
18-7.702-11 Limitation of cost.
18-7.702-12 Use and charges.
18-7.702-13 Examination of records.
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18-7.702-15 Title.
18-7.702-16 Access.
18-7.702-17 Property control.
18-7.702-18 Liability for the facilities.
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18-7.702-20 Indemnification of the Government.
18-7.702-21 Stop work orders.
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18-7.702-23 Notice of use of the facilities.
18-7.702-24 Termination of the use of the facilities.
18-7.702-25 Period of this contract.
18-7.702-26 Disposition of the facilities.
18-7.702-27 Failure to perform.
18-7.702-28 Disputes.
18-7.702-29 Security requirements.
18-7.702-30 Authorization and consent.
18-7.702-31 Notice and assistance regarding patent and copyright infringement.
18-7.702-33 Subcontracts.
18-7.702-34 Utilization of small business concerns.
18-7.702-35 Utilization of concerns in labor surplus areas.
18-7.702-36 Buy American Act.
18-7.702-37 Assignment of claims.
18-7.702-38 Renegotiation.
18-7.702-39 Officials not to benefit.
18-7.702-41 Covenant against contingent fees.
18-7.702-42 Payment for overtime premiums.
18-7.702-43 Convict labor.
18-7.702-44 Equal opportunity.
18-7.702-45 Walsh-Healey Public Contracts Act.
18-7.702-46 Contract Work Hours Standards Act—overtime compensation.
18-7.702-47 Contractor and subcontractor certified cost or pricing data.
18-7.702-48 Audit and records.
18-7.702-50 Competition in subcontracting.
18-7.702-51 Interest.
18-7.702-52 Notice to the Government of labor disputes.
18-7.702-53 General Services Administration supply sources.
18-7.702-54 Limitation on withholding of payments.
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18-7.702-56 Property listings.
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18-7.703-5 Representations and warranties.
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18-7.703-7 Excusable delays.
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18-7.703-10 Limitation of cost.
18-7.703-11 Examination of records.
18-7.703-12 Title.
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18-7.703-14 Liability for the facilities.
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18-7.703-16 Indemnification of the Government.
18-7.703-17 Stop work orders.
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18-7.703-19 Failure to perform.
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18-7.703-21 Security requirements.
18-7.703-22 Authorization and consent.
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18-7.703-25 Subcontracts.
18-7.703-26 Utilization of small business concerns.
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18-7.703-28 Buy American Act.
18-7.703-29 Assignment of claims.
18-7.703-30 Renegotiation.
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18-7.703-34 Payment for overtime premiums.
18-7.703-35 Convict labor.
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18-7.703-37 Walsh-Healy Public Controls Act.
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18-7.703-39 Supersedure.
18-7.703-40 Contractor and subcontractor certified cost or pricing data.
18-7.703-41 Audit and record.
18-7.703-43 Competition in subcontracting.
18-7.703-44 Interest.
18-7.703-45 Notice to the Government of labor disputes.
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18-7.703-47 Limitation on withholding of payments.
18-7.703-48 Payment of royalties.
18-7.703-49 Small business subcontracting program.
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18-7.704 Required clauses for facilities use contract.
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18-7.704-7 Maintenance.
18-7.704-8 Inspection.
18-7.704-9 Title.
18-7.704-10 Access.
18-7.704-11 Property control.
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18-7.704-13 Government bills of lading.
18-7.704-14 Liability for the facilities.
18-7.704-15 Indemnification of the Government.
18-7.704-16 Notice of use of the facilities.
18-7.704-17 Termination of the use of the facilities.
18-7.704-18 Period of this contract.
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18-7.704-28 Convict labor.
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18-7.704-30 Contract Work Hours Standards Act—overtime compensation.
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18-7.704-36 Interest.
18-7.704-37 Property listings.
18-7.705 Clauses required to be used when applicable.
18-7.705-1 Rights in data.
18-7.705-2 Filing of patent applications.
18-7.705-3 Priorities, allocations, and allotments.
18-7.705-4 Transfer of title to the facilities.
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18-7.705-6 Buy American Act—construction contracts.
18-7.705-7 Improvements to buildings or land owned by the Government.
18-7.705-8 New technology.
18-7.705-9 Required source for jewel bearings.
18-7.705-10 Changes to make-or-buy program.
18-7.705-11 Contractor and subcontractor certified cost or pricing data.
18-7.705-12 Negotiated overhead rates.
18-7.705-13 Rights in data for potentially hazardous items.
18-7.705-14 Potentially hazardous items.
18-7.705-15 Safety and health.

Subpart 18-7.8 [Reserved]

Subpart 18-7.9—Clauses for Time and Material and Labor Hour Contracts

18-7.900 Scope of subpart.
18-7.901 Required clauses.
18-7.901-1 Definitions.
18-7.901-2 Changes.
18-7.901-3 Excusable delays.
18-7.901-4 Termination.
18-7.901-5 Government property.
18-7.901-6 Payments.
18-7.905-7 Assignment of claims.
18-7.901-8 Disputes.
18-7.901-9 Convict labor.
18-7.901-10 Subcontracts.
18-7.901-11 Contract Work Hours Standards Act—overtime compensation.
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AUTHORITY: The provisions of this Part 18-7 issued under 42 U.S.C. 2473(b)(1)

§ 18-7.000 Scope of part.

This part sets forth uniform clauses to be used in contracts for property and services entered into by NASA, except in contracts to be performed outside the United States, its possessions, and Puerto Rico (hereafter referred to as foreign contracts). The clauses to be used in foreign contracts shall be as prescribed on a case-by-case basis in accordance with the provisions of Subpart 18-6.7.

Subpart 18-7.1—Clauses for Fixed-Price Supply Contracts

§ 18-7.100 Scope of subpart.

This subpart sets forth uniform clauses for use in fixed-price supply contracts as defined in § 18-7.102.

§ 18-7.102 Applicability.

As used throughout this subpart, the term "fixed-price supply contract" means any contract entered into either by formal advertising or by negotiation, inclusing letter contracts (except notices of award, contracts placed under Small Purchases Procedures, and amendments or supplemental agreements which do not effect new procurement), at a fixed price (with or without provision for price redetermination, escalation, or other form of price revision), and for supplies other than construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property; experimental, developmental, or research work, or facilities to be provided by the Government under a facilities contract as defined in § 18-13.101-8.

§ 18-7.103 Required clauses.

The following clauses shall be inserted in all fixed-price supply contracts.

§ 18-7.103-1 Definitions.

DEFINITIONS (SEPTEMBER 1962)

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Administrator" means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Administrator.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a

Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

(d) The term "NASA" means the National Aeronautics and Space Administration.

Additional definitions may be included, provided they are not inconsistent with the foregoing clause or the provisions of this chapter.

§ 18–7.103–2 Changes.

CHANGES (SEPTEMBER 1962)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entiled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

In the foregoing clause the period of "30 days" within which any claim for adjustment must be asserted may be varied not to exceed "60 days."

§ 18–7.103–3 Extras.

EXTRAS (SEPTEMBER 1962)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

§ 18–7.103–4 Variation in quantity.

VARIATION IN QUANTITY (SEPTEMBER 1962)

No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

§ 18–7.103–5 Inspection.

INSPECTION (SEPTEMBER 1962)

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.

(b) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, the Government shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Contracting Officer, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, the Government either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby, or (ii) may terminate this contract for default as provided in the clause of this contract entitled "Default." Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Contracting Officer may require the delivery of such supplies at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inpection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If Government inspection or test is made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of the Government except as otherwise provided in this contract: *Provided,* That in case of rejection the Government shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when supplies are not ready at the time such inspection and test is requested by the Contractor or when reinspection or retests is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

§ 18–7.103–6 Responsibility for supplies.

RESPONSIBILITY FOR SUPPLIES (SEPTEMBER 1962)

Except as otherwise provided in this contract, (i) the Contractor shall be responsible for the supplies covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection; (ii) after delivery to the Government at the designated point and prior to acceptance by the Government or rejection and giving notice thereof by the Government, the Government shall be responsible for the loss or destruction of or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of the Government acting within the scope of their employment; and (iii) the Contractor shall bear all risks as to rejected supplies after notice of rejection, except that the Government shall be responsible for the loss, or destruction of, or damage to the supplies only if such loss, destruction, or damage results from the gross negligence of officers, agents, or employees of the Government acting within the scope of their employment.

§ 18–7.103–7 Payments.

Insert the following clause except that in letter contracts insert clause 4 of NASA Form 551–3 set forth in § 18–16.859–4(d).

PAYMENTS (SEPTEMBER 1962)

The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either $1,000 or 50 percent of the total amount of this contract.

In contracts for the furnishing of transportation and accessorial services, the words "properly certified" shall be substituted for the word "proper" above.

§ 18–7.103–8 Assignment of claims.

ASSIGNMENT OF CLAIMS (SEPTEMBER 1962)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating $1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this

contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency, or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

In negotiated procurement, where a contract is indebted to the Government as a result of dealings with NASA or other Government agencies, the last sentence before the sentence in parentheses of paragraph (a) of the "Assignment of Claims" clause, which is commonly referred to as the "no-set-off" provision, shall be omitted if such action is requested by other Government agencies or if it otherwise appears to be appropriate to protect the interests of the Government. In any event, the "no-set-off" provision shall be omitted from contracts for transportation services provided by common carriers who are subject to the Interstate Commerce Act, as amended, or the Civil Aeronautics Act of 1938. The assignee is required by the Assignment of Claims Act, as amended, to "File written notice of the assignment together with a true copy of the instrument of assignment with (a) the contracting officer or the head of his department or agency; (b) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and (c) the disbursing officer, if any, designated in such contract to make payment."

When Standard Form 32 is used, the form need not be changed to delete the parenthetical sentence at the end of paragraph (a) of the clause.

§ 18–7.103–9 Additional bond security.

ADDITIONAL BOND SECURITY (SEPTEMBER 1962)

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

§ 18–7.103–10 Federal, State, and local taxes.

Insert the appropriate clause set forth in § 18–11.401–1 or § 18–11.401–2.

§ 18–7.103–11 Default.

In accordance with the requirements of § 18–8.707, insert the clause set forth therein.

§ 18–7.103–12 Disputes.

DISPUTES (SEPTEMBER 1962)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Administrator. The decision of the Administrator or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the decision of the Contracting Officer.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: *Provided*, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

§ 18–7.103–13 Renegotiation.

RENEGOTIATION (SEPTEMBER 1962)

(a) To the extent required by law, this contract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.), as amended, and to any subsequent act of Congress providing for the renegotiation of contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing, this contract shall be deemed to contain all the provisions required by Section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts, as that term is defined in Section 103g of the Renegotiation Act of 1951, as amended.

§ 18–7.103–16 Contract Work Hours Standards Act—overtime compensation.

Insert the clause set forth in § 18–12.303–1. Note the prefatory language required by § 18–12.303–2 for use in contracts with a State or political subdivision thereof.

§ 18–7.103–17 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18–12.605.

§ 18–7.103–18 Equal opportunity.

Insert one or the other of the following clauses, as required by and in accordance with the instructions in § 18–12.802: (a) the "Equal Opportunity" clause set forth in § 18–12.802–1, or (b) the "Equal Opportunity in Federally Assisted Construction Contracts" clause set forth in § 18–12.802–2.

§ 18–7.103–19 Officials not to benefit.

OFFICIALS NOT TO BENEFIT (SEPTEMBER 1962)

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

§ 18–7.103–20 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.103–21 Termination for convenience of the Government.

Insert the appropriate clause set forth in § 18–8.701.

§ 18–7.103–22 Authorization and consent.

Insert the clause set forth in § 18–9.103(a).

§ 18–7.103–23 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.103–53 Interest.

INTEREST (JANUARY 1963)

Notwithstanding any other provision of this contract, unless paid within 30 days all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code) shall bear interest at the rate of 6 percent per annum from the date due until paid. Amounts shall be due upon the earliest one of (i) the date fixed pursuant to this contract, (ii) the date of the first demand for payment, (iii) the date of a supplemental agreement fixing the amount, or (iv) if this contract provides for revision of prices, the date of written notice to the contractor stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by contract supplement.

§ 18–7.104 Clauses required to be used when applicable.

§ 18–7.104–1 Clauses for contracts involving construction work.

(a) In accordance with the requirements of Subpart 18–12.4, insert in fixed-price supply contracts which involve construction work the clauses listed below, which are set forth in § 18–12.403–1:

Davis-Bacon Act.
Contract Work Hours Standards Act—Overtime Compensation.
Apprentices.
Payrolls and Payroll Records.
Compliance With Copeland Regulations.
Withholding of Funds.
Subcontracts.
Contract Termination—Debarment.

(b) In accordance with the requirements of § 18–6.207, insert in all contracts for construction, except those executed on Standard Form 19 and NASA Form 1379, the clause entitled "Buy American," as set forth in § 18–6.207(c).

§ 18–7.104–2 Soviet-controlled areas.

In accordance with the requirements of § 18–6.403, insert the clause set forth therein and include in the Schedule of

the contract the list of Soviet-controlled areas set forth in § 18–6.401–2.

§ 18–7.104–3 Buy American Act.

In accordance with the requirements of Subpart 18–6.1, insert the clause set forth in § 18–6.104–5.

§ 18–7.104–4 Notice to the Government of labor disputes.

Wherever work is to be performed and a work stoppage would result in delay in an urgent NASA program, insert the following clause:

NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (SEPTEMBER 1962)

(a) Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the prime contractor, as the case may be, of all relevant information with respect to such dispute.

§ 18–7.104–5 Patent indemnity.

Under the circumstances specified in § 18–9.104, the clause set forth therein may be included in the contract.

§ 18–7.104–6 Filing of patent applications.

In accordance with the requirements of § 18–9.107, insert the clause set forth therein.

§ 18–7.104–7 New technology.

In accordance wih the requirements of § 18–9.101–2, insert the clause set forth in § 18–9.101–4.

§ 18–7.104–9 Rights in data.

In accordance with the requirements of § 18–9.203, insert the clause in § 18–9.203–1, as amended by § 18–9.203–2 and, if applicable, by § 18–9.203–3.

§ 18–7.104–10 Ground and flight risk.

In all negotiated fixed-price type contracts for the production, modification, maintenance, or overhaul of aircraft, insert the clause set forth in § 18–10.404.

§ 18–7.104–12 Security requirements.

Insert the following clause in all contracts which are classified "Confidential" or higher and in other contracts which may require access to classified information or material:

SECURITY REQUIREMENTS (SEPTEMBER 1962)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential" or higher.

(b) NASA shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Checklist (DD Form 254), or other written notification.

(c) The Contractor agrees to execute, if he has not already done so, a Security Agreement (DD Form 441) with the Government, represented by the Military Department assigned security cognizance over the Contractor's facility. To the extent the Government has indicated, as of the date of this contract, or thereafter indicates a security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within his own organization in accordance with the requirements of:

(i) The Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for Safeguarding Classified Information in effect on the date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) Any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department assigned security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility, and representatives of NASA, shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through these representatives, determine that the Contractor is not complying with the security requirements of this contract, the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

(e) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause, and the security costs under this contract are thereby increased or decreased, the contract price shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any such equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause of this contract.

(f) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (f) but excluding the last sentence of paragraph (e) of this clause.

(g) The Contractor also agrees that he shall determine that any subcontractor proposed by him for the furnishing of supplies and services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information.

§ 18–7.104–14 Utilization of small business concerns.

In accordance with the instructions in § 18–1.707–3(a), insert the clause contained therein.

§ 18–7.104–15 Examination of records.

Insert the following clause in all negotiated fixed-price supply contracts in excess of $2,500.

EXAMINATION OF RECORDS (OCTOBER 1969)

(a) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three (3) years after final payment under this contract or of the time periods specified in Appendix M of the NASA Procurement Regulation, whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(b) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract or of the time periods specified in Appendix M of the NASA Procurement Regulation, whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding $2,500 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

§ 18–7.104–17 Convict labor.

In accordance with the requirements in Subpart 18–12.2, insert the clause set forth in § 18–12.203.

§ 18–7.104–18 Priorities, allocations, and allotments.

In accordance with the requirements of §18–1.307–2, insert the clause set forth therein.

§ 18–7.104–20 Utilization of concerns in labor surplus areas.

In accordance with the requirements of §18–1.805–3(a), insert the clause set forth therein.

§ 18–7.104–21 Limitation on withholding of payments.

(a) Except as provided in paragraph (b) of this section, insert the following clause in contracts which include more than one clause or Schedule provision authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed:

LIMITATION ON WITHHOLDING OF PAYMENTS (SEPTEMBER 1962)

If more than one clause or Schedule provision of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or Schedule provision at that time: *Provided*, That this limitation shall not apply to—

(i) Withholdings pursuant to any clause relating to wages or hours of employees;

(ii) Withholdings not specifically provided for by this contract; and

(iii) The recovery of overpayments.

(b) The clause set forth in parargaph (a) of this section is not required in letter contracts or where:

(1) The contracting officer determines that the withholding limitation in the said clause is incompatible with the

purpose of the particular withholding provisions involved; or

(2) All of the contract clauses or Schedule provisions (in excess of one) which provide for the withholding of payments either (i) are exempt from the limitations in the clause set forth in paragraph (a) of this section under the proviso thereof, or (ii) provide that their withholding provisions do not require any additional withholdings where the amounts required to be withheld under them are being withheld under other provisions of the contract.

If it is determined that the withholding limitation in the clause set forth in paragraph (a) of this section is incompatible with the purpose of particular withholding provisions, the said clause may be omitted or modified to make it inapplicable to such withholding provisions.

§ 18–7.104–22 Small business subcontracting program.

In accordance with the requirements of § 18–1.707, insert the clause set forth in § 18–1.707–3(b).

§ 18–7.104–23 Subcontracts.

In accordance with the requirements of § 18–23.201–1, insert an appropriate Subcontracts clause.

§ 18–7.104–24 Government property.

In accordance with the requirements of § 18–13.702, insert the appropriate clause set forth therein.

§ 18–7.104–25 Special tooling.

In accordance with the requirements of § 18–13.704, insert the clause therein.

§ 18–7.104–35 Progress payments.

The policies and procedures set forth in paragraph 504 of Appendix E of ASPR, concerning the use of progress payments in formally advertised procurements, shall be followed by procurement offices. The provisions to be included in the invitation for bids and the "Progress Payments" clauses authorized for use pursuant to paragraph 504 are authorized for use in accordance with the instructions contained therein, except that the short form "Progress Payments" clauses set forth in paragraphs (a) and (b) of this section may be used in lieu of the ASPR clauses whenever it is estimated that the procurement will be less than $100,000.

(a) *Progress payments labor and material clause (short form).*

PROGRESS PAYMENTS (SHORT FORM CLAUSE BASED ON BOTH DIRECT LABOR AND MATERIAL COSTS OR WHEN LIMITED TO EITHER LABOR OR MATERIAL) (SEPTEMBER 1962)

Upon request of the Contractor, progress payments shall be made to the Contractor from time to time as work progresses, in amounts approved by the Contracting Officer, upon the following terms and conditions:

(a) *Computation of Amounts.*

(1) Unless a smaller amount is requested, each progress payment shall be 85 percent of the Contractor's cumulative costs of direct labor performed and material acquired [strike out inapplicable language if limited to a single direct cost] for performance of this contract; less the sum of previous progress payments. In no event, however, may the amount of unliquidated progress payments exceed _____ percent of the total contract price of items and services not yet delivered, invoiced to and accepted by the Government; also, the aggregate amount of progress payments made may not exceed _____ percent of the total contract price. [These percentages shall be the same as in (b) below.]

(2) Contractor's costs above mentioned must be reasonable, allocable to this contract, and consistent with generally accepted accounting principles.

(b) *Recovery of Program Payments.* Except as otherwise provided in this contract, payment by the Government for materials delivered, invoiced to, and accepted by the Government shall be reduced by _____ percent and the amount of the reduction applied against progress payments previously made until such time as the total of all progress payments has been liquidated. [The percentage to be inserted here and in (a)(1) above should be calculated as those in the following example: If the base for progress payments is 85 percent of the cost of direct labor and material and if estimated costs of direct labor and material are 70 percent of total estimated costs, liquidation would be at a rate not less than 59.5 percent (85×70) of the contract price or delivered items.]

(c) *Reduction or Suspension.* The Government reserves the right to withhold or reduce progress payments and to increase the liquidation rate if in the opinion of the Contracting Officer the Contractor is in such unsatisfactory financial condition or has so failed to make progress as to endanger contract performance and recoupment of progress payments.

(d) *Title to Material and Work.* When any progress payment is made under this contract, title to material acquired and work performed under this contract shall vest in the Government, and title to all like property thereafter acquired or produced by the Contractor and properly chargeable to this contract under generally accepted accounting practices shall vest in the Government. The Contractor shall repay to the Government an amount equal to that portion of the unliquidated progress payments allocable to material lost, stolen, destroyed, or damaged. Upon completion of performance of all obligations of the Contractor under this contract, title to all property not delivered to and accepted by the Government under this contract and to which title had vested in the Government under this contract shall vest in the Contractor.

(e) *Records and Reports.* The Contractor shall maintain reasonable controls for proper administration of this clause and shall furnish such statements and information as may reasonably be requested by the Contracting Officer. The Government shall be afforded reasonable opportunity to examine the Contractor's books, records, and accounts.

(f) *Default.* If this contract is terminated for default, the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments, less any amounts payable to the Contractor in accordance with the Default clause.

(g) *Reservation of Rights.* The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(b) *Progress payments total costs clause (short form).*

PROGRESS PAYMENTS (SHORT FORM "TOTAL COSTS" CLAUSE) (SEPTEMBER 1962)

Upon request of the Contractor, progress payments shall be made to the Contractor form time to time as work progresses, in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of Amounts.*

(1) Unless a smaller amount is requested, each progress payment shall be 70 percent of the Contractor's cumulative total costs under this contract, less the sum of any previous progress payments. In no event, however, may the aggregate amount of progress payments made exceed 70 percent of the total contract price.

(2) The Contractor's costs must be reasonable, allocable to this contract, consistent with sound and generally accepted accounting principles, and may include depreciation or amortization allowance. Such costs shall exclude amounts for materials to which the Contractor has not acquired title.

(3) At no time shall unliquidated progress payments exceed 70 percent of the total contract price of the items and services not yet delivered and invoiced to and accepted by the Government.

(b) *Recovery of Progress Payments.* Except as otherwise provided in this contract, payments by the Government for materials delivered, invoiced, and accepted shall be reduced by 70 percent of the contract price of such items and the amount of the reduction applied against progress payments previously made until such time as the total of all progress payments has been recovered.

(c) *Reduction or Suspension.* The Government reserves the right to withhold or reduce progress payments and to increase the liquidation rate if in the opinion of the Contracting Officer the Contractor is in such unsatisfactory financial condition or has so failed to make progress as to endanger contract performance and recoupment of progress payments.

(d) *Title to Material and Work.* When any progress payment is made under this contract, title to material acquired and work performed under this contract shall vest in the Government, and title to all like property thereafter acquired or produced by the Contractor and properly chargeable to this contract under generally accepted accounting principles shall vest in the Government. The Contractor shall repay to the Government an amount equal to that portion of the unliquidated progress payments allocable to material lost, stolen, destroyed, or damaged. Upon completion of performance of all obligations of the Contractor under this contract, title to all property and work not delivered to and accepted by the Government under this contract and to which title had vested in the Government under this contract shall vest in the Contractor.

(e) *Records and Reports.* The Contractor shall maintain reasonable controls for proper administration of this clause and shall furnish such statements and information as may reasonably be requested by the Contracting Officer. The Government shall be afforded reasonable opportunity to examine the Contractor's books, records, and accounts.

(f) *Default.* If this contract is terminated for default, the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments, less any amounts payable to the Contractor in accordance with the default clause.

(g) *Reservation of Rights.* The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

§ 18–7.104–36 Preference for U.S.-flag vessels.

Under the circumstances stated in Subpart 18–1.14, insert the clause set forth in § 18–1.1402–3 in the contract.

§ 18–7.104–38 Labor surplus area subcontracting program.

In accordance with the requirement of § 18–1.805–3(b), insert the clause set forth therein.

§ 18–7.104–40 Competition in subcontracting.

Insert the following clause in all negotiated contracts over $10,000, except in firm fixed-price contracts where award is on the basis of effective price competition, or where prices are established by law or regulation.

COMPETITION IN SUBCONTRACTING (SEPTEMBER 1962)

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

§ 18–7.104–41 Contractor and subcontractor certified cost or pricing data.

In accordance with the requirements of § 18–3.807–3, insert the clause set forth in § 18–3.807–4.

§ 18–7.104–42 Audit and records.

(a) Insert the following clause in any negotiated contract which is not firm fixed-price or fixed-price with escalation.

AUDIT AND RECORDS (OCTOBER 1969)

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

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

(c) The Contractor shall preserve and make available his records (i) until the expiration of three years from the date of final payment under this contract or for the time periods specified in Appendix M of the NASA Procurement Regulations, whichever expires earlier, and (ii) for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (A) or (B) below.

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement or for the time periods specified in Appendix M of the NASA Procurement Regulation, whichever expires earlier.

(B) Records which relate to (i) appeals under the "Disputes" clause of this contract or (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) costs and expenses of this contract as to which exception has been taken by the Contracting Officer or his duly authorized representative, shall be retained until such appeals, litigation, claims, or exceptions have been disposed of.

(d) The Contractor shall insert this clause, including the whole of this paragraph (d), in each subcontract hereunder that is not firm fixed-price or fixed-price with escalation. When so inserted, changes shall be made to designate the higher-tier subcontractor at the level involved in place of the Contractor; to add "of the Government prime contract" after "Contracting Officer"; and to substitute "the Government prime contract" in place of "this contract" in (B) of paragraph (c) above.

(b) In cost-reimbursement type contracts that have separate periods of performance and that are to include, in the "Examination of Records" clause prescribed by § 18–7.203–7, the alternate paragraph (a)(4) which is set forth in § 18–7.203–7(b), the clause set forth in paragraph (a) of this section shall be modified by adding the following to paragraph (c) thereof:

Notwithstanding the foregoing, the Contractor's obligation to preserve and make available his records shall not extend beyond the period of his like obligation under the "Examination of Records" clause of this contract. (March 1970.)

§ 18–7.104–50 Data requirements.

In accordance with the requirements of § 18–9.202, insert the clause set forth in § 18–9.202–1(e).

§ 18–7.104–51 Approval of contract.

Insert the clause set forth below in the contract when approval thereof by the Director of Procurement is required.

APPROVAL OF CONTRACT (JULY 1968)

This contract (modification) shall be subject to the written approval of the Director of Procurement, NASA Headquarters, or his duly authorized representative, and shall not be binding until so approved.

§ 18–7.104–56 Order of precedence.

The following clause, which may be modified to change the order or to add to delete items to meet the needs of a particular procurement, shall be included in all contracts which are not preceded by a written solicitation (see §§ 18–2.201(a)(22) and 18–3.501(b)(62):

ORDER OF PRECEDENCE (NOVEMBER 1965)

In the event of an inconsistency in this contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) the Schedule; (b) General Provisions; (c) the other provisions of the contract whether incorporated by reference or otherwise; and (d) the Specifications.

§ 18–7.104–57 Liability for Government property furnished for repair or other services.

In accordance with the requirements of § 13.702(c), insert the clause set forth therein.

§ 18–7.104–58 Safety and health.

In accordance with the requirements of Subpart 18–1.52, insert the clause set forth in § 18–1.5204.

§ 18–7.104–59 Nonuse of foreign-flag vessels engaged in Cuban or North Vietnam trade.

In accordance with the requirements of § 18–1410, insert the clause set forth therein.

§ 18–7.104–60 Report on NASA Subcontracts.

In accordance with the requirements of § 18–16.902, insert the clause set forth therein.

§ 18–7.104–61 Rights in data for potentially hazardous items.

In accordance with the requirements of § 18–9.204–52, insert the clause set forth in § 18–9.204–52(c).

§ 18–7.104–62 Potentially hazardous items.

In accordance with the requirements of § 18–1.351, insert the clause set forth therein.

§ 18–7.104–63 Disclosure of proposals outside Government.

In accordance with the requirements of § 18–1.304–2(f), insert the clause set forth therein.

§ 18–7.105 Additional clauses.

The following clauses shall be inserted in fixed-price supply contracts if it is desired to cover the subject matter thereof.

§ 18–7.105–1 Alterations in contract.

Alterations in contract provisions may be made only in accordance with the provisions of § 18–1.109. When alterations are necessary, they shall be set forth either in the Schedule or on an Attachment Sheet, preceded by the following clause:

ALTERATIONS IN CONTRACT (SEPTEMBER 1962)

The following alterations have been made in the provisions of this contract.

§ 18–7.105–5 Liquidated damages.

When a liquidated damages provision is to be included in the contract, the clause set forth below shall be inserted as paragraph (f) of the "Default" clause (see § 18–8.707) and the present paragraphs (f) and (g) of that clause redesignated as (g) and (h). In addition, an appropriate implementing provision setting forth the amount of liquidated damages shall be included in the Schedule.

(f)(i) In the event the Government exercises its right of termination as provided in paragraph (a) above, the Contractor shall be liable to the Government for excess costs as provided in paragraph (b) above and, in addition, for liquidated damages, in the amount set forth elsewhere in this contract, as fixed, agreed, and liquidated damages for each calendar day of delay, until such time as the Government may reasonaly obtain delivery or performance of similar supplies or services.

(ii) If the contract is not so terminated, notwithstanding delay as provided in paragraph (a) above, the Contractor shall continue performance and be liable to the Government for such liquidated damages for each calendar day of delay until the supplies are delivered or services performed.

(iii) The Contractor shall not be liable for liquidated damages for delays due to causes which would relieve him from liability for excess costs as provided in paragraph (c) of this clause. (September 1962)

§ 18–7.105–6 Bill of materials.

A bill of materials consists of a report by a supplier which specifies the quantities of various materials required to produce a designated quantity of supplies of a particular kind. A bill of materials, with respect to all or part of the supplies to be furnished pursuant to a contract, will be required only if the contracting

officer determines that such bill is necessary to develop materials or components requirements for production and maintenance programs, or for other specified purposes. In such event, the contract shall specify, with respect to such bill, the following:

(a) The supplies or parts thereof to be covered by the bill of materials;

(b) The type of bill or bills (detailed, modified, expanded summary, or abbreviated summary) to be furnished, with applicable instructions;

(c) The compensation to be paid the contractor for furnishing such bill and any revisions thereto, or a statement that the price of the item to which the bill relates includes compensation for the furnishing of such bill;

(d) The number and kind of copies of such bill to be furnished; and

(e) Delivery dates.

In such event, the contract shall also include the following clause:

BILL OF MATERIALS (SEPTEMBER 1962)

(a) With respect to the supplies to be delivered pursuant to the contract, for which a Bill of Materias is required, the Contractor shall furnish a Bill of Materials in the required number of copies on Department of Defense Forms 346 and 347, if applicable, or authorized reproductions thereof, in accordance with the instructions specified in the Schedule.

(b) The contractor shall furnish to the Government, at such intervals as designated in the Schedule, revised pages of the Bill of Materials incorporating the effect of any changes, pursuant to the clause hereof entitle "Changes," in the quantity of any material or part, or any other information contained in the Bill of Materials, or a statement that no revision is necessary. A final revision, or statement that no revision is necessary, shall be furnished upon completion of performance of the contract.

(c) The Bill of Materials and all revisions or statements subsequent thereto shall be subject to inspection and acceptance by the Government.

Where a bill of materials is procured by contract separate from the supplies to which such bill of materials relates, such contract shall include such of the terms mentioned above as may be appropriate and shall specify that the bill of materials shall be furnished on DD Forms 346 and 347, if applicable, or authorized reproductions thereof. The contractor shall not be required to obtain data for the bill of materials in greater detail from a subcontractor than he is to furnish under the terms of the above clause.

§ 18–7.105–7 Supply warranty.

In accordance with § 18–1.324, an appropriate supply warranty clause may be inserted.

§ 18–7.105–8 Stop work orders.

(a) *Use of clause.* The clause set forth in paragraph (c) of this section is authorized for use in any negotiated fixed-price type contract under which work stoppage may be required for reasons such as advancements in state of the art, performance or engineering breakthroughs, or realignment of programs. This clause is not authorized for use in research contracts with educational or other nonprofit institutions.

(b) *Use of orders.* (1) Inasmuch as stop work orders may result in increased costs to the Government by reason of standby costs, such orders will be issued only with prior approval of the procurement officer. Generally, use of a stop work order will be limited to those situations where it is advisable to suspend work pending a decision by the Government and a supplemental agreement providing for such suspension is not feasible. Although a stop work order may be used pending a decision to terminate for convenience, it will not be used pending a decision to terminate for default, nor will it be used in lieu of the issuance of a termination notice after a decision to terminate has been made.

(2) Stop work orders should include (i) a clear description of the work to be suspended; (ii) instructions as to the issuance of further orders by the contractor for material or services; (iii) guidance as to action to be taken on subcontracts; and (iv) other suggestions to the contractor for minimizing costs. Promptly after issuance, stop work orders should be disscussed with the contractor and should be modified, if necessary, in the light of such discussions.

(3) As soon as feasible after a stop order is issued, (i) the contract will be terminated; or (ii) the stop work order will either be canceled or—if necessary and if the contractor agrees—be extended beyond the period specified in the order. In any event, this must be done before the specified stop work period expires. When an extension of the stop work order is necessary, it shall be evidenced by a supplemental agreement. Any cancellation of a stop work order shall be subject to the same approvals as were required for the issuance of the order.

(c) *Clause.*

STOP WORK ORDER (JULY 1970)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of ninety (90) [1] days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90)[1] days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

(i) cancel the stop work order, or

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

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

(i) the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract, and

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

(c) If a stop work order is not canceled and the work covered by such order is terminated for the convenience of the Government, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

[1] This clause may provide for less than 90 days.

§ 18–7.106 Price escalation clauses (established prices).

This § 18–7.106 sets forth uniform clauses for use when it is desired to provide for price escalation in the event of changes in the contractor's established prices. Each clause is preceded by a statement of the conditions under which it may be used.

§ 18–7.106–1 Escalation clause for basic steel, aluminum, brass, bronze, or copper mill products.

The following price escalation clause is authorized for use in advertised or negotiated fixed-price supply contracts for basic steel, aluminum, brass, bronze, or copper mill products, such as sheets, plates, and bars, when an established price exists for the particular supply being procured. The percentage figure to be used in paragraph (d) (3) of the clause shall not exceed 10 percent.

PRICE ESCALATION (SEPTEMBER 1962)

(a) The Contractor warrants that the unit prices stated herein, excluding any part of the prices which reflects requirements for preservation, packaging and packing, beyond standard commercial practice, are not in excess of the Contractor's applicable established prices in effect on the date set for opening of bids (or the contract date, if this is a negotiated contract rather than one entered into by means of formal advertising) for like quantities of the supplies covered by this contract.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any established price, and each applicable unit price shall be decreased by the amount of the decrease in the applicable established price. Any such decrease in a unit price shall apply to those supplies delivered on and after the effective date of each applicable decrease in the Contractor's established price, and this contract shall be amended accordingly. The Contractor shall certify on each invoice submitted under the contract that each unit price stated therein reflects all decreases, if any, which the Contractor had made in the established price applicable thereto, since the date set for opening of bids (or the contract date, if this is a negotiated contract rather than one entered into by formal advertising), or shall certify on the final invoice that all such decreases have been applied to supplies delivered on and after the effective date of each such decrease in the Contractor's established prices.

(c) The Contractor may from time to time after the date of this contract and during the performance hereof, by written notice to the Contracting Officer, request an upward adjustment in any of the contract unit prices to be effective as of a date to be specified

by the Contractor. Such request shall be acted upon in accordance with the following provisions of this clause.

(d) An upward adjustment in a contract unit price may be made under this clause only in accordance with the following conditions.

(1) Such an upward adjustment shall be made only if the Contractor's applicable established price has increased subsequent to the date set for opening of bids (or the contract date, if this is a negotiated contract rather than one entered into by means of formal advertising).

(2) No unit price shall be increased by an amount greater than the amount of the increase in the Contractor's applicable established price.

(3) The aggregate of the increases in any unit price made under this clause shall not exceed _____ percent of the original applicable contract unit price.

(4) No adjusted unit price shall be effective earlier than the effective date of the increase in the applicable established price, but if the Contractor's request for adjustment is received by the Contracting Officer more than ten (10) days after the effective date of the increase in the Contractor's applicable rate, no adjusted unit price shall be effective earlier than the date of receipt by the Contracting Officer of such request.

(5) No upward adjustment in unit prices hereunder shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the related increase in the applicable established price, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(e) In the event the requested upward adjustment in any contract unit price is acceptable to the Contracting Officer, he shall so notify the Contractor, and the contract shall be amended accordingly. In the event the requested upward adjustment is not acceptable to the Contracting Officer, or if the Contracting Officer does not reach an agreement with the Contractor with respect to a price increase, the Contracting Officer may, within 30 days after receipt of the Contractor's request, cancel without liability to either party the Contractor's right to proceed with performance of that portion of the contract which is undelivered at the time of such cancellation, except that the Contractor may make delivery of all or any of the supplies which a duly authorized officer of the company shall certify were completed or in the process of manufacture at the time of receipt of notice of such cancellation. In such event the Government shall pay for all supplies so delivered at the applicable unit price contained in the Contractor's request, and the contract shall be amended accordingly: *Provided*, That such certification is made within 10 days after receipt of notice of such cancellation: *And provided further*, That such requested increase satisfies all of the conditions and does not exceed the limitations of paragraph (d). In the event this contract is for standard steel supplies, they shall be deemed to be in the process of manufacture when the steel therefor is in any state of processing after the beginning of the furnace melt.

(f) During the period after the Contractor has requested an upward adjustment, and prior to an agreement between the parties with respect to the request, or cancellation of the contract pursuant to paragraph (e), the Contractor shall continue deliveries according to the terms of the contract. The Contractor shall be paid for such deliveries at the applicable increased unit prices as requested: *Provided*, That such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d): *And provided further*, That if the parties agree on an increase less than that requested, payments previously made at the requested amount shall be adjusted accordingly. If the Contracting Officer neither reaches an agreement with the Contractor on the requested adjustment, nor cancels the contract, the Contractor shall continue deliveries according to the terms of the contract, and the Contractor shall be paid therefor at the applicable increased unit prices as requested: *Provided*, That such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d).

§ 18–7.106–2 Escalation clause for nonstandard steel items.

The following price escalation clause is authorized for use in advertised or in negotiated fixed-price supply contracts when:

(a) The contractor is a steel producer and actually manufactures the standard steel mill item referred to in paragraph (d) of the clause; and

(b) The items being procured are nonstandard steel items made wholly or in major part of standard steel mill items.

When this clause is included in invitations for bids, Note (8) is inapplicable and shall be omitted. Invitations for bids or requests for proposals shall instruct bidders or offerors, as appropriate, to complete all blanks in accordance with the applicable notes.

PRICE ESCALATION (SEPTEMBER 1962)

(a) The Contractor represents that the unit prices set forth in this contract do not include any contingency allowance to cover the possibility of increased costs of performance resulting from increases in either (i) the Contractor's rates of pay for labor employed by it, or (ii) the prices which the Contractor charges his manufacturing shops for the steel required in the performance of this contract.

(b) Each contract unit price shall be subject to revision, pursuant to the provisions of this clause, to reflect changes in the cost of labor and steel. For the purpose of any such price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified in paragraph (d) below shall be _____ percent, and the proportion of the contract unit price attributable to the cost of steel shall be _____ percent. [See Note (1).]

(c) For the purposes of this paragraph, the term "labor index" shall mean the average straight time hourly earnings of the Contractor's employees in the _____ shop of the Contractor's plant [see Note (2)] for any particular month. The word "month" as used herein means "calendar month"; *Provided, however*, That if the Contractor's accounting period does not coincide with the calendar month, then such accounting period shall be used throughout the clause in lieu of "month." Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the particular shop identified above for any given month by the total number of straight time hours worked by such employees in that month. Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the "base labor index," which shall be the average of the labor indices for the three months consisting of the month of _____, 19__, [see Note (3)] the month immediately preceding, and the month immediately following, and to the "current labor index," which shall be the average of the labor indices for the month in which delivery of supplies is required to be made in accordance with the terms of the contract and the month preceding.

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the "base steel index," which shall be the Contractor's established or published price to the public [see Note (8)] including all applicable extras of $_____ per _____ [see Note (4)] for _____ [see Note (5)] on _____, 19__ [see Note (6)] and the "current steel index," which shall be the Contractor's established or published price to the public [see Note (8)] of said item including all applicable extras in effect _____ days [see Note (7)] prior to the first day of the month in which delivery of supplies is required to be made in accordance with the terms of the contract.

(e) Each contract unit price shall be revised for each month in which, by the terms of this contract, delivery of supplies is required to be made, and such revised contract unit price shall apply to the deliveries of those quantities of supplies required to be made in that month regardless of when actual delivery be made of said quantities of supplies. Each revised contract unit price for any month shall be computed by adding together the following three amounts: (i) the amount (representing the adjusted cost of labor) obtained by multiplying _____ percent of the contract unit price by a fraction, the numerator of which shall be the current labor index and the denominator of which shall be the base labor index; (ii) the amount (representing the adjusted cost of steel) obtained by multiplying _____ percent of the contract unit price by a fraction, the numerator of which shall be the current steel index and the denominator of which shall be the base steel index; and (iii) the amount equal to _____ percent of the original contract unit price (representing that portion of such unit price which relates neither to the cost of labor nor to the cost of steel and which is therefore not subject to revision) [see Note (1)]: *Provided, however*, That any revised contract unit price made pursuant to the provisions of this clause shall in no event exceed 110 percent of the original contract unit price. All computations shall be made to the nearest one-hundredth of 1 cent.

(f) Pending revisions of the contract unit prices, if any, to be made pursuant to this clause, the Contractor shall be paid the contract unit prices for deliveries made. Within thirty (30) days after the final delivery of supplies, or within such further period of time as may be authorized by the Contracting Officer, the Contractor shall furnish a statement setting forth and certifying the correctness of (i) the average straight time hourly earnings of the Contractor's employees in the shop of the Contractor identified in paragraph (c) above which earnings are relevant to the computations of the "base labor index" and the "current labor index," and (ii) the Contractor's established or published prices to the public [see Note (8)] including all applicable extras, for like quantities of the item identified in paragraph (d) above, which prices are relevant to the computation of the "base steel index" and the "current steel index." Upon request of the Contracting Officer or his duly authorized representative, the Contractor shall make available his records used in the computation of the labor indices. After the receipt of such certificate by the

Contracting Officer, the revised contract unit prices shall be computed in accordance with the provisions of this clause, and this contract shall be amended accordingly.

(g) In the event of any total or partial termination of any item of this contract for the convenience of the Government, the month in which notice of such termination is received by the Contractor, if prior to the month in which delivery is required by this contract, shall be considered the month in which delivery of such terminated or partially terminated item is required for the purpose of determining the current labor and materials indices under paragraphs (c) and (d) hereof: *Provided, however,* That as to the quantity of such item which is not terminated for convenience, the month in which delivery is required by this contract shall continue to apply for determining said indices. In the case of termination of any item for default on the part of the Contractor, any price revision shall be limited to the quantity of each item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of notice of termination for default.

(h) As used in this clause the phrase "the month in which delivery of supplies is required to be made in accordance with the terms of this contract" shall mean any month in which under the terms of this contract a specific quantity of units of the supplies called for by this contract is required to be delivered: *Provided, however,* That in case the failure of the Contractor to make delivery of such quantity shall have arisen out of causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," the quantity not delivered shall be required to be delivered as promptly as possible after the cessation of the cause of such failure, and the delivery schedule set forth in this contract shall be amended accordingly.

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

NOTES

(1) Bidder insert the same percentage figures for the corresponding blanks in paragraphs (b) and in (e) (i) and (ii). In paragraph (e) (iii), bidder insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.

(2) Bidder identify the shop and plant in which the standard steel mill item identified in paragraph (d) will be finally fabricated or processed into the contract item.

(3) Bidder insert the month of bid opening, or the month in which the Contractor submitted his proposal if this is a negotiated contract.

(4) Bidder insert the unit price and unit of measure of the standard steel mill item used by the Contractor in the manufacture of the contract item.

(5) Bidder identify the standard steel mill item used by the Contractor in the manufacture of the contract item.

(6) Bidder insert the date set for bid opening, or the date of the Contractor's quotation if this is a negotiated contract.

(7) Bidder insert the number of days which represents the Contractor's best estimate of the period of time required for processing the standard steel mill item in the shop identified in paragraph (c).

(8) In negotiated procurements of nonstandard steel items, when there is no established or published price to the public, or when it is not desirable to use such price this paragraph may refer to another appropriate price basis, such as an established interplant price.

§ 18–7.106–3 Escalation clause for standard supplies.

The following price escalation clause is authorized for use in negotiated fixed-price supply contracts for standard supplies for which established prices exist. The clause may be used only when the total contract price is over $5,000 and delivery is not to be completed within 6 months after the contract date. The percentage figure to be used in paragraph (d)(3) of the clause shall not exceed 10 percent. If any standard trade discounts offered by the contractor against his list or catalog price are taken into account in negotiating the contract unit price, the contracting officer's file should contain a statement setting forth the list or catalog price and the discounts. The discounts referred to do not include prompt payment or cash discounts.

PRICE ESCALATION (SEPTEMBER 1962)

(a) The Contractor warrants that the unit prices stated herein, excluding any part of the prices which reflects requirements for preservation, packaging, and packing beyond standard commercial practice, are not in excess of the Contractor's applicable established prices in effect on the contract date for like quantities of the supplies covered by this contract. The term "established price" as used in this clause is the net price after applying any applicable standard trade discounts offered by the Contractor from his list or catalog price.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each applicable contract unit price shall be decreased by the same percentage that the applicable established price is decreased. Any such decrease in a unit price shall apply to those supplies delivered on and after the effective date of each applicable decrease in the Contractor's established price, and this contract shall be amended accordingly. The Contractor shall certify on each invoice submitted under the contract that each unit price stated therein reflects all decreases, if any, which the Contractor had made in the established price applicable thereto, since the contract date; or shall certify on the final invoice that all such decreases have been applied to supplies delivered on and after the effective date of each such decrease in the Contractor's established prices.

(c) The Contractor may from time to time after the date of this contract and during the performance hereof, by written notice to the Contracting Officer, request an upward adjustment in any of the contract unit prices to be effective as of a date to be specified by the Contractor. Such request shall be acted upon in accordance with the following provisions of this clause.

(d) An upward adjustment in a contract unit price may be made under this clause only in accordance with the following conditions:

(1) Such an upward adjustment shall be made only if the Contractor's applicable established price has increased subsequent to the contract date.

(2) No unit price shall be increased by a percentage greater than the percentage increase in the Contractor's applicable established price.

(3) The aggregate of the increases in any unit price made under this clause shall not exceed _____ percent of the original applicable contract unit price.

(4) No adjusted unit price shall be effective earlier than the effective date of the increase in the applicable established price, or the date of receipt by the Contracting Officer of the Contractor's request for adjustment, whichever is the later.

(5) No upward adjustment in unit prices hereunder shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the related increase in the applicable established price, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(e) In the event the requested upward adjustment in any contract unit price is acceptable to the Contracting Officer, he shall so notify the Contractor, and the contract shall be amended accordingly. In the event the requested upward adjustment is not acceptable to the Contracting Officer, or if the Contracting Officer does not reach an agreement with the Contractor with respect to a price increase, the Contracting Officer may, within 30 days after receipt of the Contractor's request, cancel without liability to either party the Contractor's right to proceed with performance of that portion of the contract which is undelivered at the time of such cancellation.

(f) During the period after the Contractor has requested an upward adjustment, and prior to an agreement between the parties with respect to the request, or cancellation of the contract pursuant to paragraph (e), the Contractor shall continue deliveries according to the terms of the contract. The Contractor shall be paid for such deliveries at the applicable increased unit prices as requested: *Provided,* That such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d): *And provided further,* That if the parties agree on an increase less than that requested, payments previously made at the requested amount shall be adjusted accordingly. If the Contracting Officer neither reaches an agreement with the Contractor on the requested adjustment, nor cancels the contract, the Contractor shall continue deliveries according to the terms of the contract, and the Contractor shall be paid therefor at the applicable increased unit prices as requested: *Provided,* That such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d).

§ 18–7.106–4 Escalation clause for semistandard supplies.

The following price escalation clause is authorized for use in negotiated fixed-price supply contracts for semistandard supplies, the prices of which can be reasonably related to the prices of nearly equivalent standard supplies for which established prices exist. The clause may be used only when the total contract price is over $5,000 and delivery is not to be completed within six months after the contract date. A clear understanding should be set forth in writing prior to making the contract as to the identity of the standard supply items which are applicable. The percentage figure to be used in paragraph (d)(3) of the clause shall not exceed 10 percent. If any standard trade discounts offered by the contractor against his list or catalog price are taken into account in negotiating the contract unit price, the contracting officer's file should contain a statement setting forth the list or catalog price and the discounts. The discounts referred to do not include prompt payment or cash discounts. When the supplies being purchased are standard supplies in all

respects except for preservation, packaging, and packing requirements, the following clause should not be used; in such cases the escalation clause for standard supplies in § 18–7.106–3 is the appropriate clause.

PRICE ESCALATION (SEPTEMBER 1962)

(a) The Contractor warrants that the supplies covered by this contract are supplies which the Contractor customarily offers for sale commercially except for modifications in accordance with the specifications of this contract, and that as of the contract date any differences between the unit prices stated herein and the Contractor's established prices for like quantities of the supplies which are the nearest commercial equivalents of the supplies covered by this contract (herein referred to as "the established prices") are due to compliance with such specifications, and to compliance with any requirements which this contract may contain for preservation, packaging, and packing beyond standard commercial practice. The term "established price" as used in this clause is the net price after applying any applicable standard trade discounts offered by the Contractor from his list or catalog price.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each applicable contract unit price shall be decreased by the same percentage that the applicable established price is decreased. Any such decrease in a unit price shall apply to those supplies delivered on and after the effective date of each applicable decrease in the Contractor's established price, and this contract shall be amended accordingly. The Contractor shall certify on each invoice submitted under the contract that each unit price stated therein reflects all decreases, if any, which the Contractor had made in the established price applicable thereto, since the contract date, or shall certify on the final invoice that all such decreases have been applied to supplies delivered on and after the effective date of each such decrease in the Contractor's established prices.

(c) The Contractor may from time to time after the date of this contract and during the performance hereof, by written notice to the Contracting Officer, request an upward adjustment in any of the contract unit prices to be effective as of a date to be specified by the Contractor. Such request shall be acted upon in accordance with the following provisions of this clause.

(d) An upward adjustment in a contract unit price may be made under this clause only in accordance with the following conditions:

(1) Such an upward adjustment shall be made only if the Contractor's applicable established price has increased subsequent to the contract date.

(2) No unit price shall be increased by a percentage greater than the percentage increase in the Contractor's applicable established price.

(3) The aggregate of the increases in any unit price made under this clause shall not exceed _____ percent of the original applicable contract unit price.

(4) No adjusted unit price shall be effective earlier than the effective date of the increase in the applicable established price, or the date of receipt by the Contracting Officer of the Contractor's request for adjustment, whichever is the later.

(5) No upward adjustment in unit prices hereunder shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the related increase in the applicable established price, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(e) In the event the requested upward adjustment in any contract unit price is acceptable to the Contracting Officer, he shall so notify the Contractor, and the contract shall be amended accordingly. In the event the requested upward adjustment is not acceptable to the Contracting Officer, or if the Contracting Officer does not reach an agreement with the Contractor with respect to a price increase, the Contracting Officer may, pursuant to the clause of the contract entitled "Termination for Convenience of the Government," terminate the Contractor's right to proceed with performance of that portion of the contract which is undelivered at the time of such termination.

(f) During the period after the Contractor has requested an upward adjustment, and prior to an agreement between the parties with respect to the request, or termination of the contract pursuant to paragraph (e), the Contractor shall continue deliveries according to the terms of the contract. The Contractor shall be paid for such deliveries at the applicable increased unit prices as requested: *Provided*, That such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d): *And provided further*, That if the parties agree on an increase less than that requested, payments previously made at the requested amount shall be adjusted accordingly. If the Contracting Officer neither reaches an agreement with the Contractor on the requested adjustment, nor terminates the contract, the Contractor shall continue deliveries according to the terms of the contract, and the Contractor shall be paid therefor at the applicable increased unit prices as requested: *Provided*, That such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d).

§ 18–7.107 Price escalation clause (labor and material).

(a) The following price escalation clause is authorized for use in negotiated fixed-price supply contracts where (1) the price exceeds $50,000, (2) the period of performance exceeds 6 months, (3) there is no major element of design engineering or developmental work involved in producing the items being procured, and (4) one or more identifiable labor or material cost factors are subject to change.

(b) The Schedule shall describe in detail the types of labor and materials subject to escalation, the labor rates (including fringe benefits, if any), and unit prices of materials, which may be increased or decreased, and the quantities of labor and specified materials allocable to each unit of supplies to be delivered under the contract. The following sample format illustrates a type of schedule description that may be used:

The following types of labor and material are subject to price escalation pursuant to clause — of this contract.

CONTRACT ITEM NO. 1

Types of labor and materials	Rates of pay and material prices	Quantities and direct costs per unit of procurement
Drill press operator	$3.00/hour—no fringe benefits included.	20 minutes—$1.00.
Welder	$2.75/hour. 0.05/hour—vacation pay. 0.20/hour—pension plan.	
	$3.00	10 minutes—$0.50.
Copper sheet	$0.40 pound	2 pounds—$0.80.
Purchased parts:		
(1) ABC tube X5721.	$1.00 each	3 each—$3.00.
(2) XYZ part No. 9348.	$0.50 each	10 each—$5.00.

The percentage figure to be used in paragraph (d)(vi) of the clause will not exceed 10 percent.

(c) In negotiating adjustments under the clause, the contracting officer will consider work in process and materials on hand at the time of changes in labor rates or materials prices since these elements may have a significant impact on equitable price adjustments.

PRICE ESCALATION (SEPTEMBER 1962)

(a) The Contractor warrants that the prices set forth in this contract do not include any allowance for any contingency to cover increased costs of performance resulting from increases in (i) the Contractor's rates of pay for labor or (ii) the unit prices for materials, set forth in the Schedule.

(b) If at any time during the performance of this contract there is an increase or decrease in the rates of pay for labor or unit prices for materials set forth in the Schedule, the Contractor shall notify the Contracting Officer thereof within 60 days of such increase or decrease or within such further period as may be approved in writing by the Contracting Officer, but in any event not later than final payment under the contract. Such notice shall include the Contractor's proposal for an equitable adjustment in the contract unit prices to be negotiated in accordance with paragraph (c) below and shall be accompanied by data, in such form as the Contracting Officer may require, explaining (i) the causes, (ii) the effective date, and (iii) the amount, both of the increase or decrease and of the Contractor's proposal for an equitable adjustment.

(c) Promptly upon receipt of any notice and data described in (b) above, the Contractor and the Contracting Officer shall negotiate an equitable adjustment, and the effective date thereof, in the contract unit prices to reflect any change in the cost of performance of this contract due to the increase or decrease in rates of pay for labor or unit prices for materials set forth in the Schedule: *Provided, however*, That such negotiations may be postponed by the Contracting Officer until an accumulation of such increases and decreases results in an adjustment allowable under (d)(v). The equitable adjustment, and the effective date thereof, shall be set forth in an amendment or supplemental agreement to this contract. Such amendment or supplemental agreement shall also revise the rates of pay for labor or unit prices for materials set forth in the Schedule to reflect the increase or decrease therein. Failure of the parties to agree to an adjustment under this clause

shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." Pending agreement on, or determination of, any such adjustment and its effective date, the Contractor shall continue performance.

(d) Not withstanding any other provision of this clause, any price adjustment under this clause shall be subject to the following limitations:

(i) There shall be no adjustment for supplies whose production cost is not affected by a change in the rates of pay for labor or unit prices for materials set forth in the Schedule;

(ii) There shall be no adjustment other than for increases or decreases in the rates of pay for labor or unit prices for materials set forth in the Schedule;

(iii) There shall be no adjustment for any increase or decrease in the quantities of labor or materials set forth in the Schedule for each item to be delivered hereunder;

(iv) No upward adjustment shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the adjustment, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule;

(v) Except as provided in (e) below, there shall be no adjustment for any change in rates of pay for labor or unit prices for materials which would not result in a net change of at least three percent of the then current total contract price; and

(vi) There shall be no adjustment upward which would cause any adjusted contract unit price to exceed _____ percent of the corresponding original contract unit price.

(e) If, after delivery of the last unit called for by this contract, either party requests negotiation pursuant to (c) above, the limitations of (d) (v) shall not apply.

(f) The final invoice submitted under this contract shall include a certification that the Contractor has not experienced a decrease in rates of pay for labor or unit prices for materials set forth in the Schedule or that he has given notice of all such decreases in compliance with (b) above.

(g) The Contracting Officer may examine the contractor's books, records, and other supporting data relevant to the costs of labor and materials during all reasonable times until three years after final payment under this contract.

§ 18–7.108 Incentive price revision clause.

When, in accordance with the provisions of Subpart 18–3.4, of this chapter, the fixed-price incentive contract described in § 18–3.404–4(a)(2) is to be used, the following clause shall be made a part of the contract. As to each item which is to be subject to incentive price revision, the contract schedule shall set forth the target cost, target profit, and target price. Paragraph (d)(2) of the following clause may be modified to provide, within the price ceiling, for a ceiling, a floor, or both on the final profit.

INCENTIVE PRICE REVISION (SEPTEMBER 1962)

(a) *Definitions.* As used in this clause, the following terms shall have the meanings set forth below:

(i) The term "target price" means the unit price of any supplies or services under this contract, which is subject to adjustment in accordance with this clause, and is composed of "target cost" and "target profit."

(ii) The term "target cost" means that part of the target price which, at the time of its negotiation, was agreed to as the estimate of the unit cost of the supplies or services being procured.

(iii) The term "target profit" means that part of the target price which, at the time of its negotiation, was agreed to as the unit profit for furnishing the supplies or services at a cost equal to the target cost.

(iv) The term "total target price" means the sum of the target prices.

(v) The term "total target cost" means the sum of the target costs.

(vi) The term "total target profit" means the sum of the target profits.

(vii) The term "total adjusted cost" means the final negotiated cost of all supplies or services which are subject to price revision under this clause.

(viii) The term "total adjusted price" means the final contract price, as computed in accordance with this clause, for all supplies or services which are subject to price revision under this clause.

(b) *General.* The supplies or services identified in the Schedule as Items _____ are subject to price revision in accordance with the provisions of this clause: *Provided,* That in no event shall the total adjusted price of such items exceed _____ percent (_____ %) of the total target cost. Any supplies or services which are to be ordered separately under, or otherwise added to, this contract, and which are to be subject to price revision in accordance with the provisions of this clause, shall be identified as such in a modification to this contract.

(c) *Submission of Data.* Within _____ (_____) days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services called for by those items listed in paragraph (b) above, the Contractor shall submit, in such form as the Contracting Officer may require, (i) a detailed statement of all costs incurred up to the end of that month in performing all work under such items, and (ii) an estimate of costs of such further performance, if any, as may be necessary to complete performance of all work with respect to such items.

(d) *Price Revision.* Upon submission of the data required by paragraph (c) above, the Contractor and the Contracting Officer shall promptly establish the total adjusted price in accordance with the following:

(1) On the basis of the information required by paragraph (c) above, together with any other pertinent information, there shall be established by negotiation the total adjusted cost reasonably incurred or to be incurred for and properly allocable to the supplies delivered (or services performed) and accepted by the Government, which are subject to price revision under this clause.

(2) The total adjusted price shall be established by adding to the total adjusted cost an allowance for profit determined as follows:

When the total adjusted cost is—	*The allowance for profit is—*
Equal to the total target cost.	Total target profit.
Greater than the total target cost.	Total target profit less _____ percent (_____ %) of the amount by which the total adjusted cost exceeds the total target cost.
Less than the total target cost.	Total target profit plus _____ percent (_____ %) of the amount by which the total adjusted cost is less than the total target cost.

(e) *Records.* (1) The Contractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. The Contractor shall segregate the costs of any supplies or services for which the price is fixed and not subject to revision under this clause. Each subcontract placed by the Contractor hereunder on other than a firm fixed-price basis in connection with the furnishing of the supplies or services identified in paragraph (b) above as being subject to price revision (i) shall provide that the subcontractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of such subcontract, and (ii) shall require each such subcontractor to insert the entire substance of this subparagraph, including this (ii), in all his subcontracts which are on other than a firm fixed-price basis.

(2) The Government may at all reasonable times make such examination or audit as the Contracting Officer may require of the Contractor's books, records, documents, and other evidence, pertinent to the performance of this contract.

(f) *Certification.* An authorized responsible official of the Contractor shall certify on each statement of costs submitted to the Contracting Officer pursuant to (c) above that the incurred costs are based upon records of the Contractor, that such records reflect generally accepted accounting principles and practices normally followed by the Contractor, that such costs are correct to the best of his knowledge and belief, and that the accompanying estimate of cost to complete is considered reasonable.

(g) *Subcontracts.* (1) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis; and the Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which is on a cost-plus-a-fee basis and which would involve a total price in excess of $10,000, including the fee. The Contracting Officer may, in his discretion, ratify in writing any such cost-plus-a-fee subcontract and such action shall constitute the consent of the Contracting Officer as required by this subparagraph (1).

(2) Each subcontract placed by the Contractor hereunder (i) shall provide that the Government may at all reasonable times make such examination or audit as the Contracting Officer may require of the subcontractor's books, records, documents, and other evidence, pertinent to the performance of the subcontract, and (ii) shall require each such subcontractor whose subcontract is on other than a firm fixed-priced basis to insert the entire substance of this subparagraph, including this (ii), in all his subcontracts. The term "subcontract," as used in this subparagraph (2) only, excludes firm fixed-price subcontracts not in excess of $2,500 and subcontracts for utility services at rates established for uniform application to the general public.

(h) *Contract Modifications.* The total adjusted price, as determined in accordance with paragraph (d) above, shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer and shall apply to supplies delivered and to services performed under this contract.

(i) *Adjustment of Payments.* Pending execution of the contract modification referred to in paragraph (h) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the

target prices set forth in this contract: *Provided*, That if at any time it appears that the then current billing prices do not provide for payments consistent with the provisions of subparagraph (j)(3) below, the parties may agree to revise billing prices, which shall be reflected in a modification to this contract. Billing prices are for the sole purpose of providing for interim payments and shall not affect the determination of the total adjusted price under paragraph (d) above. After execution of the contract modification referred to in paragraph (h) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total adjusted price and any additional payments, refunds, or credits resulting therefrom shall be promptly made.

(j) *Limitation on Payments.* (1) This paragraph (j) shall not apply after final price revision to the full extent permitted by this contract.

(2) Within forty-five (45) days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contracting Officer a cumulative statement setting forth:

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) That portion of the total target profit which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established, increased or decreased in accordance with the incentive profit formula set forth in (d)(2) above when the amount of costs stated under (ii) above differs from the aggregate target costs of such supplies or services; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2)(iv) above exceeds the sum of (2)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any tax credits under section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (4) modified as outlined in (i) above.

(k) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon the total adjusted price within 60 days after the date on which the data required by (c) above are to be submitted, or within such further time as may be specified by the Contracting Officer, such failure to agree shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder.

(l) *Termination.* If this contract is terminated prior to establishment of the total adjusted price, prices of supplies or services subject to price revision under this clause shall be established pursuant to this clause for (i) completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

In the event the contract calls for spare parts or other supplies or services, which are to be ordered under a provisioning document or Government option, and the prices of such supplies or services are to be made subject to incentive price revision in accordance with the above clause, the following provision (m) shall be included in such clause:

(m) *Spare Parts.* Spare parts, other supplies, or services, which are to be furnished under this contract, pursuant to a provisioning document or Government option, shall be subject to price revision in accordance with the provisions of this clause, and any prices established for such spare parts, other supplies, or services, pursuant to such provisioning document or Government option, shall be deemed to be target prices. Target cost and profit covering such spare parts, other supplies, or services may be established either separately, in the aggregate, or in any combination thereof, as the parties may agree.

§ 18–7.109 Price redetermination clauses.

§ 18–7.109–1 General.

When it is determined, in accordance with §18–3.403, to use a fixed-price contract providing for redetermination of price, the applicable clause of those set forth below shall be used.

§ 18–7.109–2 Prospective periodic price redetermination at stated intervals.

(a) *Description, applicability, and limitations.* See § 18–3.404–5.

(b) *Clause.*

PRICE REDETERMINATION (TYPE A)
(NOVEMBER 1965)

(a) *General.* The unit prices and the total price set forth in this contract shall be periodically redetermined in accordance with the provisions of this clause.[1] The prices for supplies delivered and services performed prior to the first effective date of price redetermination shall remain fixed.

(b) *Price Redetermination Periods.* For the purpose of price redetermination the performance of this contract is divided into successive periods. The first period shall extend from the date of this contract to ——————,[2] and the second and each succeeding period shall extend for ——— (———) months from the end of the last preceding period, except that the final period may be varied by agreement of the parties. The first day of the second and each succeeding period shall be the effective date of price redetermination for the period.

(c) *Price Redetermination.* Not more than ———[3] days nor less than ———[3] days before the end of each redetermination period, except the last, and as otherwise provided in (iii) below, the Contractor shall submit:

(i) Proposed prices for supplies which may be delivered or services which may be performed in the next succeeding period under this contract, together with—

(A) An estimate and breakdown of the costs of such supplies or services on DD Form 784 or in any other form on which the parties may agree;

(B) Sufficient data to support the accuracy and reliability of such estimate; and

(C) An explanation of the differences between such estimate and the original (or last preceding) estimate for the same supplies or services;

(ii) A statement of all costs incurred in the performance of this contract through the end of the ———[4] month prior to the date of the submission of proposed prices, on DD Form 784 or in any other form on which the parties may agree, together with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

(iii) Supplemental statements of costs incurred subsequent to the date set forth in (ii) above for—

(A) Supplies delivered and services performed; and

(b) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

as and to the extent that such information becomes available prior to the conclusion of negotiations on redetermined prices; and

(iv) Any other relevant data which may reasonably be required by the Contracting Officer.

Upon receipt of the data required by this subparagraph (c), the Contractor and the Contracting Officer shall promptly negotiate to redetermine fair and reasonable contract prices for supplies which may be delivered and services which may be performed in the period following the effective date of price redetermination. Where the Contractor fails to submit the data as required above within

[1] Where a ceiling is applicable, the following proviso shall be added: "*Provided*, That in no event shall the total amount paid under this contract exceed ——— dollars ($———)". Alternatively, the contract may provide ceiling amounts for each or any of the price redeterminations under the contract.

[2] This point may be expressed in terms of units delivered, or as a calendar date, but in either case the period shall generally end on the last day of a month.

[3] Insert in the blanks numbers of days so that the Contractor's submission will be late enough to reflect recent cost experience (having in mind the contractor's accounting system), but early enough to permit review, audit if necessary, and negotiation prior to the start of prospective period.

[4] Insert the word "first," except the word "second" may be inserted if necessary to achieve compatibility with the contractor's accounting system.

the time specified, payments under this contract may be suspended by the Contracting Officer until the data are furnished.

(d) *Subcontracts.* No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis; and the Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which is on a cost-plus-a-fee basis and which would involve an estimated amount in excess of $10,000, including the fee. The Contracting Officer may, in his discretion, ratify in writing any such cost-plus-a-fee subcontract and such action shall constitute the consent of the Contracting Officer as required by this paragraph (d).

(e) *Contract Modifications.* Each negotiated redetermination of prices shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, setting forth the redetermined prices for supplies delivered and services performed hereunder during the applicable price redetermination period.

(f) *Adjustment of Payments.* Pending execution of the contract modification referred to in paragraph (e) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the prices set forth in this contract: *Provided,* That, if at any time it appears that the then current billing prices do not provide for payments consistent with the provisions of subparagraph (g) (3) below, the parties may agree to greater or lesser billing prices, which shall be reflected in an amendment or supplemental agreement to this contract. Billing prices are for the sole purpose of providing for interim payments and shall not affect the redetermination of prices under this clause. After execution of the contract modification referred to in paragraph (e) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed prices, and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(g) *Limitation on Payments.* (1) This paragraph (g) shall apply only during a period for which firm prices have not been established.

(2) Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contracting Officer a statement cumulative from the inception of the contract, setting forth:

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) That portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g), Limitation on Payments), which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments); *Provided,* That such statement need not be submitted for any quarter for which either no costs are to be reported under (ii) above or revised billing prices have been established in accordance with paragraph (g) above and do not exceed the existing contract price, the Contractor's price-redetermination offer, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2) (iv) above exceeds the sum of (2) (i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified as outlined in (i) above.

(h) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices for any price redetermination period within sixty (60)[4] days after the date on which the data required by (c) above is to be filed, or within such further time as may be agreed upon by the parties, the failure to agree upon redetermined prices shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder. For the purpose of (e), (f), and (g) above, and pending final settlement of the disagreement on appeal, or by failure to appeal, or by agreement, such a decision shall be treated as an executed contract modification. Pending such final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as hereinbefore provided.

(i) *Termination.* If this contract is terminated, prices shall continue to be established pursuant to this clause (i) for completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, for supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

§ 18–7.109–4 Retroactive price redetermination after completion.

(a) *Description, Applicability, and Limitations.* See § 18–3.404–7.

(b) *Clause.*

PRICE REDETERMINATION (TYPE E) (NOVEMBER 1965)

(a) *General.* The unit prices and the total price set forth in this contract shall be redetermined in accordance with the provisions of this clause: *Provided,* That in no event shall the total amount paid under this contract exceed _____ dollars ($ _____).

(b) *Price Redetermination.* Within _____ (_____) days after delivery of all supplies to be delivered and completion of all services to be performed under this contract, the Contractor shall submit (i) proposed prices, (ii) a statement of all costs incurred in the performance of this contract, on DD Form 784 or any other form on which the parties may agree, and (iii) any other relevant data which may reasonably be required by the Contracting Officer. Upon receipt of the required data, the Contractor and the Contracting Officer shall promptly negotiate to redetermine fair and reasonable contract prices for supplies delivered and services performed by the Contractor under this contract. Where the Contractor fails to submit the required data within the time specified, payment of all invoices may be suspended by the Contracting Officer until the data are furnished.

(c) *Subcontracts.* No subcontract under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis; and the Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which is on a cost-plus-a-fee basis and which would involve an estimated amount in excess of $10,000 including the fee. The Contracting Officer may, in his discretion, ratify in writing any such cost-plus-a-fee subcontract and such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(d) *Contract Modification.* The negotiated redetermination of price shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, setting forth the redetermined prices which shall apply to supplies delivered and to services performed by the Contractor hereunder.

(e) *Adjustment of Payments.* Pending execution of the contract modification referred to in paragraph (d) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the prices set forth in this contract: *Provided,* That, if at any time it appears that the then current billing prices do not provide for payments consistent with the provisions of subparagraph (f) (3) below, the parties may agree to greater or lesser billing prices, which shall be reflected in an amendment or supplemental agreement to this contract. Billing prices are for the sole purpose of providing for interim payments and shall not affect the redetermination of prices under this clause. After execution of the contract modification referred to in paragraph (d) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed prices, and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(f) *Limitation on Payments.* (1) This paragraph (f) shall apply until final price redetermination to the full extent permitted by this contract.

(2) Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contracting Officer a statement cumulative from the inception of the contract, setting forth:

[4] This period may be varied by the parties at the time of negotiating the contract.

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) That portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (f), Limitation on Payments), which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(3) Notwithstanding any provision of this contract authorizing greater payments if on any quarterly statement the amount of (2)(iv) above exceeds the sum of (2) (i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any applicable tax credits under section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified as outlined in (i) above.

(g) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices within sixty (60) [1] days after the date on which the data required by (b) above is to be filed, or within such further time as may be agreed upon by the parties, the failure to agree upon redetermined prices shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder. For the purpose of paragraphs (d), (e), and (f) above, and pending final settlement of the disagreement on appeal, or by failure to appeal, or by agreement, such a decision shall be treated as an executed contract modification.

(h) *Termination.* If this contract is terminated prior to price redetermination, prices shall be established pursuant to this clause for completed supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

[1] This period may be varied by the parties at the time of negotiating the contract.

Subpart 18–7.2—Clauses for Cost-Reimbursement Type Supply Contracts

§ 18–7.200 Scope of subpart.

This subpart sets forth uniform contract clauses for use in cost-reimbursement type supply contracts as defined in § 18–7.202.

§ 18–7.202 Applicability.

As used throughout this subpart, the term "cost-reimbursement type supply contract" means any contract, including letter contracts (except notices of award, contracts placed under Small Purchases Procedures, and amendments or supplemental agreements which do not effect new procurement), entered into on a cost or cost-plus-fixed-fee basis (see § 18–3.400) for supplies other than (a) the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property; (b) experimental, developmental, or research work; or (c) facilities to be provided by the Government under a facilities contract as defined in § 18–13.101–8.

§ 18–7.203 Required clauses.

The following clauses shall be inserted in all cost-reimbursement type supply contracts.

§ 18–7.203–1 Definitions.

Insert the clause set forth in § 18–7.103–1. Additional definitions may be included, provided they are not inconsistent with such clause or the provisions of this chapter.

§ 18–7.203–2 Changes.

CHANGES (SEPTEMBER 1962)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; (iii) place of delivery; and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made (i) in the estimated cost or delivery schedule, or both, (ii) in the amount of any fixed fee to be paid to the Contractor, and (iii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

In the foregoing clause, the period of "sixty (60) days" within which any claim for adjustment must be asserted may be reduced to a period of not less than "thirty (30) days."

§ 18–7.203–3 Limitation of cost.

Insert the following clause, except that in letter contracts insert clause 3 of NASA Form 551–3 set forth in § 18–16.859–4(d).

LIMITATION OF COST (MARCH 1969)

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

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

§ 18–7.203–4 Allowable cost, fixed-fee and payment.

(a) *Allowable cost, fixed-fee, and payment.* Insert the following clause in all cost-reimbursement type contracts, except as provided in paragraph (b) of this section. Additional instructions for use of the clause are set forth in paragraph (c) of this section.

ALLOWABLE COST, FIXED FEE AND PAYMENT (JULY 1970)

(a) For the performance of this contract, the Government shall pay to the Contractor:

(i) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with—

(A) Part 15, Subpart 2 of the NASA Procurement Regulation as in effect on the date of this contract; and

(B) The terms of this contract; and

(ii) Such fixed fee, if any, as may be provided for in the Schedule.

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

(c) Promptly after receipt of each invoice or voucher the Government shall, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer. Payment of the fixed fee, if any, shall be made to the Contractor as specified in the Schedule: *Provided, however,* That after payment of eighty-five percent (85%) of the fixed fee set forth in Schedule, the Contracting Officer may withhold further payment of fee until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed fifteen percent (15%) of the total fixed fee or one hundred thousand dollars ($100,000), whichever is less.

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

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including without limitation, the provisions relating to patents and the provisions of (f) below), the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fixed fee, which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

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

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

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

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

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

(C) Claims for reimbursement of costs, including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

(D) When there is included in this contract a clause entitled "Data Requirements," claims pursuant to such clause when a written request by the Contracting Officer to furnish data is made within the 1-year period after final payment.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

In paragraph (f)(ii)(B) the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor: *Provided,* That a corresponding increase is made in the period for retention of records required in paragraph (a)(4) of the Examination of Records clause set forth in § 18–7.203–7.

(b) *Allowable cost, incentive fee, and payment.* When the contract provides for incentives which may result in the revision of the fee, the clause set forth below will be used, except in cost-plus-award-fee type contracts. Additional instructions for use of the clause are set forth in paragraph (c) of this section.

ALLOWABLE COST, INCENTIVE FEE, AND PAYMENT (JULY 1970)

(a)(1) For the performance of this contract, the Government shall pay to the Contractor—

(i) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with—

(A) Part 15, Subpart 2 of the NASA Procurement Regulation as in effect on the date of this contract; and

(B) the terms of this contract; and

(ii) A fee determined as provided in the Schedule to this contract.

(2) The target cost and target fee of this contract are set forth in the Schedule and shall be subject to adjustment in accordance with (h) and (i) below. As used throughout this contract the term—

(i) "Target cost" means the estimated cost of this contract initially negotiated, adjusted in accordance with (h) below; and

(ii) "Target fee" means the fee which was initially negotiated on the assumption that this contract would be performed and delivered as stipulated in the Schedule, for a cost equal to the estimated cost of this contract initially negotiated, adjusted in accordance with (h) below.

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

(c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer. Payment of fee shall be made to the Contractor as specified in the Schedule; provided, however, that whenever in the opinion of the Contracting Officer, the Contractor's performance or cost then incurred indicates that target fee will not be achieved, payment of fee will be based on such lesser fee, not lower than the minimum fee, as the Contracting Officer may determine to be appropriate. After payment of eighty-five percent (85%) of the applicable fee, the Contracting Officer may withhold further payment of fee until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed fifteen percent (15%) of the total applicable fee or one hundred thousand dollars ($100,000) whichever is less. When the Contracting Officer has ordered that fee payments be reduced in accordance with the foregoing, he may increase the basis for payment to an amount not to exceed the target fee upon an affirmative showing by the Contractor that such action is justified and equitable.

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

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (f) below), the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fee which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contrator promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable

expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver—

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

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

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

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

(C) Claims for reimbursement of costs, including reasonable expenses incidental, thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

(D) When there is included in this contract a clause entitled "Data Requirements," claims pursuant to such clause when a written request by the Contracting Officer to furnish data is made within the one-year period following final payment.

Except as provided in (j) below, payments under the assignment and claims excepted from the release shall be subject to adjustment by reason of the adjustment of fee in accordance with (i) below.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

(h) When the work under this contract (including any supplies or services which are ordered separately under, or otherwise added to, this contract) is increased or decreased by contract modification or when any equitable adjustment in the target cost is authorized under any other clause of this contract, equitable adjustments in the target cost, target fee, minimum fee, maximum fee, or any or all of them, as appropriate, shall be set forth in an amendment or supplemental agreement to this contract.

(i) The fee payable hereunder shall be the target fee adjusted in accordance with the Schedule.

(j) For the purpose of the adjustment of the fee in accordance with (i) above, the term "total allowable cost" shall not include allowable costs arising out of:

(i) Any of the causes specifically enumerated inthe clause hereof entitled "Excusable Delays" to the extent they are without the fault or negligence of the Contractors or any subcontractor; or

(ii) The taking effect, after the negotiation of the target cost of this contract, of a statute, court decision, written ruling or regulation which results in the Contractor's being required to pay or bear the burden of any tax or duty, or increase in the rate thereof.

(c) *Additional instructions.* (1) Whenever, pursuant to paragraph (c) of the clauses set forth in paragraphs (a) and (b) of this section, vouchers or invoices which are submitted for approval include amounts for progress payments made to fixed-price type subcontractors, the payment to the prime contractor may included the full amount of the progress payment made to the subcontractor.

(2) In paragraph (f)(ii)(B) of the clauses set forth in paragraphs (a) and (b) of this section, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (a)(4) of the clause set forth in § 18–7.203–7.

(3) The detailed arrangements for increase or decrease of target fee (or adjustment of base fee in award fee contracts) shall be set forth in the contract Schedule.

(4) Paragraph (c) of the clause set forth in paragraph (b) of this section, states that payment of fee shall be made to the contractor as specified in the Schedule. Generally, the Schedule should provide that payment of fee will be based on target fee.

(5) In the case of cost-sharing contracts and cost-reimbursement type contracts without fee, use the clause set forth in paragraph (a) of this section modified as follows:

(i) Change the title of the clause to read "Allowable Cost and Payment."

(ii) Insert the following sentence in lieu of the second sentence of paragraph (c) of the clause,

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

If the contract does not provide for cost-sharing, delete the parenthetical reference to the Government's share from the above sentence.

(iii) Delete the words "and any part of the fixed fee" from paragraph (e); and

(iv) In contracts which provide for cost-sharing, delete paragraph (a)(ii).

(6) In the case of cost-plus-award-fee contracts, use the clause set forth in paragraph (a) of this section, modified as follows:

(i) Substitute the words "base fee and award fee" for "fixed-fee" wherever they appear except in (a)(ii); and

(ii) Change (a)(ii) to read as follows:

"such base fee, if any, and such additional fee as may be awarded, as provided for in the Schedule."

(7) In the case of combined cost-plus-incentive-fee/cost-plus-fixed-fee contracts use the clause set forth in paragraph (b) of this section, modified as follows:

(i) In paragraph (c) delete "not lower than the minimum fee" and substitute therefore "not lower than the sum of the fixed-fee and minimum fee";

(ii) In paragraph (c) delete "not to exceed the target fee" and substitute therefor "not to exceed the sum of the fixed-fee and target fee"; and

(iii) In paragraph (h), delete "When the work under this contract" and substitute "When work subject to the incentive-fee portion of this contract".

(8) The contracting officer shall determine to his satisfaction that the estimated cost of the contract initially negotiated does not include amounts for the contingencies identified in paragraph (j) of the clause set forth in paragraph (b) of this section.

§ 18–7.203–5 Inspection of supplies and correction of defects.

INSPECTION OF SUPPLIES AND CORRECTION OF DEFECTS (SEPTEMBER 1962)

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies, fabricating methods, and special tooling hereunder. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, acceptance of any supplies or lots of supplies shall be made as promptly as practicable after delivery thereof and shall be deemed to have been made no later than sixty (60) days after the date of such delivery, if acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the Schedule) after acceptance of the supplies or lots of supplies last delivered in accordance with the requirements of this contract, the Government may require the Contractor to remedy by correction or replacement as directed by the Contracting Officer, any supplies or lots of supplies which at the time of delivery thereof are defective in material or workmanship or otherwise not in conformity with the requirements of this contract. Except as otherwise provided in paragraph (c) hereof, the cost of any such replacement or corerction shall be included in Allowable Cost determined as provided in the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment," but no additional fee shall be payable with respect thereto. Such supplies or lots of supplies shall not be tendered thereafter for acceptance unless the former requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to replace or correct such supplies or lots of supplies, the Government (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under this contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (ii) in the case of supplies not delivered, may require the delivery of such supplies, and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (iii) may terminate this contract for default as provided in the clause of this contract entitled "Termination." Failure to agree to the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) Notwithstanding the provisions of paragraph (b) hereof, the Government may at any time require the correction or replacement by the Contractor, without cost to the Government, of supplies or lots of supplies which are defective n material or workmanship, or otherwise not in conformity with the requirements of this contract, if such defects or failures are due to fraud, lack of good faith, or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (iii) a separate and complete major industrial operation in connection with the performance of this contract. The Government may at any time also require correction or replacement by the Contractor, without cost to the Government, of any such defective supplies or lots of supplies if the defects or failures are caused by one or more individual employees selected or retained by the Contractor after any such supervisory personnel has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

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

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

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace supplies or lots of supplies which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the clause of this contract entitled "Government Property."

§ 18–7.203–6 Assignment of claims.

In accordance with the requirements of § 18–7.103–8, insert the clause set forth therein.

§ 18–7.203–7 Examination of records.

(a) Except as provided in (b) of this section, insert the following clause.

EXAMINATION OF RECORDS (OCTOBER 1969)

(a) (1) The Contractor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of this contract (hereinafter collectively called the "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract.

(2) The Contractor agrees to make available at the office of the Contractor at all reasonable times during the period set forth in subparagraph (4) below any books, documents, papers, or records of the Contractor, that directly pertain to, and involve transactions relating to this contract or subcontracts hereunder for inspection, audit or reproduction by any authorized representative of the Comptroller General.

(3) In the event the Comptroller General or any of his duly authorized representatives determines that his audit of the amounts reimbursed under this contract as transportation charges will be made at a place other than the office of the Contractor, the Contractor agrees to deliver, with the reimbursement voucher covering such charges or as may be otherwise specified within two years after reimbursement of charges covered by any such voucher, to such representative as may be designated for that purpose through the Contracting Officer, such documentary evidence in support of transportation costs as may be required by the comptroller General or any of his duly authorized representatives.

(4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall preserve and make available his records (i) until expiration of three years after final payment under this contract or of the time periods specified in Appendix M of the NASA Procurement Regulation, whichever expires earlier; and (ii) for such longer period, if any, as is required by applicable statute, by any other clause of this contract, or by (A) or (B) below.

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available until expiration of 3 years from the date of any resulting final settlement or of the time periods specified in Appendix M of the NASA Procurement Regulation, whichever expires earlier.

(B) Records which relate to (i) appeals under the "Disputes" clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) cost and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of.

(5) Except for documentary evidence delivered pursuant to subparagraph (3) above, and the records described in subparagraph (4) (B) above, the Contractor may in fulfillment of his obligation to retain his records as required by this clause substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of 2 years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Contracting Officer with the concurrence of the Comptroller General or his duly authorized representative.

(6) The provisions of this paragraph (a), including this subparagraph (6), shall be applicable to and included in each subcontract hereunder which is on a cost, cost-plus-a-fixed-fee, time-and-material, or labor-hour basis.

(b) The Contractor further agrees to include in each of his subcontracts hereunder, other than those set forth in subparagraph (a) (6) above, a provision to the effect that the subcontractor agrees that the Comptroller General or any of his duly authorized representatives, shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods specified in Appendix M of the NASA Procurement Regulation, whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of such subcontractor that directly pertain to, and involve transactions relating to the subcontract. The term "subcontract," as used in this paragraph (b) only, excludes (i) purchase orders not exceeding $2,500 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(b) In the case of contracts which establish separate periods of performance, the following alternate paragraph (a) (4) may be substituted for the corresponding paragraph of the clause prescribed by (a) of this section.

(4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall preserve and make available his records (i) until expiration of 3 years from the date of payment of the voucher or invoice submitted by the Contractor after the completion of the work performed during any separate period of performance established by this contract or by any amendment or supplemental agreement, without regard to former or subsequent periods of performance, or for the time periods specified in Appendix M of the NASA Procurement Regulation, whichever expires earlier, and (ii) for such longer period, if any, as is required by applicable statute, by any other clause of this contract, or by (A) or (B) below.

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available until expiration of 3 years from the date of any resulting final settlement or for the time periods specified in Appendix M of the NASA Procurement Regulation, whichever expires earlier.

(B) Records which relate to (i) appeals under the "Disputes" clause of this contract, (ii) litigation of the settlement of claims

arising out of the performance of this contract, or (iii) cost and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of. (October 1969)

In the case of such contracts which do not contain the foregoing alternate paragraph (a)(4), that paragraph may be inserted by amendment, or in the alternative, the retention of records may be administered in accordance with the procedures set forth in the foregoing alternate paragraph (a)(4).

§ 18–7.203–8 Subcontracts.

(a) In accordance with the requirements in § 18–23.201–2, and subject to the instructions in (b) below, insert the following clause.

SUBCONTRACTS (AUGUST 1969)

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is cost-reimbursement type, time and materials or labor-hour, or (ii) is fixed-price type and exceeds in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment having a value in excess of $1,000 or of any items of industrial facilities.

(b) In the case of a proposed subcontract which (i) is cost-reimbursement type, time and materials, or labor-hour, and would involve an estimated amount in excess of $10,000, including any fee, or (ii) is proposed to exceed $100,000, or (iii) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate are expected to exceed $100,000; the advance notification required by (a) above shall include:

(1) A description of the supplies or services to be called for by the subcontract;

(2) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(3) The proposed subcontract price, together with the Contractor's cost or price analysis thereof;

(4) The subcontractor's current, complete, and accurate cost of pricing data and Certificate of Current Cost or Pricing Data, when such data and certificate are required, by other provisions of this contract, to be obtained from the subcontractor; and

(5) Identification of the type of subcontract to be used.

(c) The Contractor shall obtain the written consent of the Contracting Officer prior to placing any subcontract for which advance notification is required under (a) above. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(f) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be enitled to reimbursement from the Government.

(g) Notwithstanding (c) above, the Contractor may enter into subcontracts within (i) and (ii) of (a) above without the consent of the Contracting Officer if the Contracting Officer has approved in writing the Contractor's procurement system and the subcontract is within the scope of the approval

(h) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of the "Limitation on Payments" paragraph set forth in the appropriate clause prescribed by paragraph 7.108 of the NASA Procurement Regulation, including subparagraph (d) thereof, modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit the portion of subparagraph (3) thereof relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of the "Limitation on Payments" provision, including subparagraph (4) thereof, modified as outlined in (i) of this paragraph.

(i) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments on the fixed-price subcontracts of those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in paragraphs 503 and 514 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

(b) In contracts of the types listed in § 18–23.201–2(b), insert the following paragraph (g) in lieu of paragraph (g) of the clause set forth in paragraph (a) of this section:

(g) Notwithstanding (c) above, the Contractor may enter into subcontracts without the prior written consent of the Contracting Officer if the Contracting Officer has, in writing, approved the Contractor's procurement system and the subcontract is within the scope of such approval. (August 1969)

§ 18–7.203–9 Utilization of small business concerns.

In accordance with the requirements set forth in § 18–1.707–3(a), insert the clause contained therein.

§ 18–7.203–10 Termination.

Insert the clause set forth in § 18–8.702.

§ 18–7.203–11 Excusable delays.

Insert the clause set forth in § 18–8.708.

§ 18–7.203–12 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.203–13 Renegotiation.

Insert the clause set forth in § 18–7.103–13.

§ 18–7.203–15 Convict labor.

In accordance with the requirements of Subpart 18–12.2, insert the clause set forth in §18–12.203.

§ 18–7.203–16 Contract Work Hours Standards Act—overtime compensation.

Insert the clause set forth in § 18–12.303–1. Note the introductory language required by § 18–12.303–2 for use in contracts with a State or political subdivision thereof.

§ 18–7.203–17 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18–12.605.

§ 18–7.203–18 Equal opportunity.

Insert one or the other of the following clauses, as required by and in accordance with the instructions in § 18–12.802: (a) The Equal Opportunity clause set forth in § 18–12.802–1, or (b) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18–12.802–2.

§ 18–7.203–19 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.203–20 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.203–21 Government property.

Insert the clause set forth in § 18–13.703.

§ 18–7.203–22 Insurance—liability to third persons.

INSURANCE—LIABILITY TO THIRD PERSONS (SEPTEMBER 1962)

(a) The Contractor shall procure and thereafter maintain workmen's compensation, employer's liability, comprehensive general liability (bodily injury) and comprehensive automobile liability (bodily injury and property damage) insurance, with respect to performance under this contract, and such other insurance as the Contracting Officer may from time to time require with respect to performance under this contract: *Provided*, That the Contractor may with the approval of the Contracting Officer maintain a self-insurance program: *And provided further*, That with respect to workmen's compensation the Contractor is qualified pursuant to statutory authority. All insurance required pursuant to the provisions of this paragraph shall be in such form, in such amounts, and for such periods of time as the Contracting Officer may from time to time require or approve, and with insurers approved by the Contracting Officer.

(b) The Contractor agrees, to the extent and in the manner required by the Contracting Officer, to submit for the approval of the Contracting Officer any other insurance maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement hereunder.

(c) The Contractor shall be reimbursed: (i) For the portion allocable to this contract of the reasonable cost of insurance as required or approved pursuant to the provisions of this clause, and (ii) for liabilities to third persons for loss of or damage to property (other than property (A) owned, occupied, or used by the Contractor or rented to the Contractor, or (B) in the care, custody, or control of the Contractor), or for death or bodily injury, not compensated by insurance or otherwise, arising out of the performance of this contract, whether or not caused by the negligence of the Contractor, his agents, servants, or employees; provided, such liabilities are represented by final judgments or by settlements approved in writing by the Government, and expenses incidental to such liabilities, except liabilities (I) for which the Contractor is otherwise responsible under the express terms of the clause or clauses, if any, specified in the Schedule, or (II) with respect to which the Contractor has failed to insure as required or maintain insurance as approved by the Contracting Officer, or (III) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (1) all or substantially all of the Contractor's business, or (2) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (3) a separate and complete major industrial operation in connection with the performance of this contract. The foregoing shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required to be submitted for approval or required to be procured and maintained pursuant to the provisions of this clause; provided, such cost would constitute allowable cost under the clause of this contract entitled "Allowable Cost, Fixed-Fee, and Payment."

(d) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract, and the risk of which is then uninsured or in which the amount claimed exceeds the amount of coverage. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. If the amount of the liability claimed exceeds the amount of coverage, the Contractor shall authorize representatives of the Government to collaborate with counsel for the insurance carrier, if any, in settling or defending such claim. If the liability is not insured or covered by bond, the Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith: *Provided, however,* That the Contractor may, at his own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

§ 18–7.203–23 Authorization and consent.

Insert the clause set forth in § 18–9.103(a).

§ 18–7.203–24 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.203–26 Utilization of concerns in labor surplus areas.

In accordance with the requirements of § 18–1.805–3(a), insert the clause set forth therein.

§ 18–7.203–27 Payment for overtime premiums.

In accordance with the requirements of § 18–12.102, insert the clause set forth in § 18–12.102–6.

§ 18–7.203–28 Competition in subcontracting.

Insert the clause set forth in § 18–7.104–40.

§ 18–7.203–29 Audit and records.

Insert the clause set forth in § 18–7.104–42.

§ 18–7.203–50 Payment of royalties.

Insert the clause set forth in § 18–9.108–1, except that in contracts with members of the Manufacturers Aircraft Association the clause set forth in § 18–9.108–2 may be substituted therefor.

§ 18–7.203–51 Estimated cost and fixed fee.

Normally, the clause set forth below will be used as the Schedule provision covering the estimated cost and fixed fee. However, the clause may be modified at the discretion of the contracting officer.

ESTIMATED COST AND FIXED FEE (SEPTEMBER 1962)

The estimated cost of this contract is ----------exclusive of the fixed fee of -------. The total of estimated cost and fixed fee is-------.

§ 18–7.203–52 Payment of fixed fee.

Normally, the clause set forth below will be used as the Schedule provision covering the payment of fixed fees. However, at the discretion of the contracting officer, the clause may be modified.

PAYMENT OF FIXED FEE (SEPTEMBER 1962)

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

§ 18–7.203–53 Interest.

Insert the clause set forth in § 18–7.103–53.

§ 18–7.204 Clauses required to be used when applicable.

§ 18–7.204–1 Clauses for contracts involving construction work.

(a) In accordance with the requirements of Subpart 18–12.4, insert in cost-reimbursement type supply contracts which involve construction work the clauses listed below which are set forth in § 18–12.403–1:

Davis-Bacon Act.
Contract Work Hours Standards Act—Overtime Compensation.
Apprentices.
Payrolls and Payroll Records.
Compliance With Copeland Regulations.
Withholding of Funds.
Subcontracts.
Contract Termination—Debarment.

(b) In accordance with the requirements of § 18–6.207, insert in all contracts for construction, except those executed on Standard Form 19 and NASA Form 1379, the clause entitled "Buy American" set forth in § 18–6.207(c).

§ 18–7.204–2 Soviet-controlled areas.

In acordance with the requirements of § 18–6.403, insert the clause set forth therein and include in the Schedule of the contract the list of Soviet-controlled areas set forth in § 18–6.401–2.

§ 18–7.204–3 Buy American Act.

In accordance with the requirements of Subpart 18–6.1, insert the clause set forth in § 18–6.104–5.

§ 18–7.204–4 Notice to the Government of labor disputes.

In accordance with the requirements of § 18–7.104–4, insert the clause set forth therein.

§ 18–7.204–6 Filing of patent applications.

In accordance with the requirements of § 18–9.107, insert the clause set forth therein.

§ 18–7.204–7 New technology.

In accordance with the requirements of § 18–9.101–2, insert the clause set forth in § 18–9.101–4.

§ 18–7.204–9 Rights in data.

In accordance with the requirements of § 18–9.203, insert the clause in § 18–9.203–1, as amended by § 18–9.203–2 and, if applicable, by § 18–9.203–3.

§ 18–7.204–12 Security requirements.

Insert the following clause in all contracts which are classified "Confidential" or higher and in other contracts which may require access to classified information or material:

SECURITY REQUIREMENTS (SEPTEMBER 1962)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential" or higher.

(b) The NASA shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Check List (DD Form 254), or other written notification.

(c) The Contractor agrees to execute, if he has not already done so, a Security Agreement (DD Form 441) with the Government, represented by the Military Department assigned security cognizance over the Contractor's facility. To the extent the Government has indicated as of the date of this contract, or thereafter indicates, a security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within its own organization in accordance with the requirements of:

(i) the Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for Safeguarding Classified Information in effect on the date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department having security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility, and representatives of NASA, shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through these representatives, determine that the Contractor is not complying with the security requirements of this contract, the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

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

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

(g) The Contractor also agrees that he shall determine that any subcontractor proposed by him for the furnishing of supplies and services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information.

§ 18–7.204–15 Priorities, allocations, and allotments.

In accordance with the requirements of § 18–1.307–2, insert the clause set forth therein.

§ 18–7.204–16 Negotiated overhead rates.

Where negotiated overhead rates are to be used pursuant to Subpart 18–3.7, the appropriate clause set forth in § 18–3.704 shall be included in the contract.

§ 18–7.204–18 Limitation on withholding of payments.

In accordance with the requirements in § 18–7.104–21, insert the clause set forth therein.

§ 18–7.204–19 Small business subcontracting program.

In accordance with the requirements of § 18–1.707, insert the clause set forth in § 18–1.707–3(b).

§ 18–7.204–20 Changes to make-or-buy program.

In accordance with the requirements of § 18–3.901, insert the clause set forth therein.

§ 18–7.204–21 Flight risks.

In contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor by the Government, insert the clause set forth in § 18–10.504.

§ 18–7.204–26 Preference for U.S.-flag vessels.

In accordance with the requirements of Subpart 18–1.14, insert the clause set forth in § 18–1.1402–3.

§ 18–7.204–28 General Services Administration supply sources.

The clause set forth in § 18–5.907 shall be included in contracts in accordance with the instructions set forth therein.

§ 18–7.204–29 Labor surplus area subcontracting program.

In accordance with the requirements of § 18–1.805–3(b), insert the clause set forth therein.

§ 18–7.204–30 Contract and subcontractor certified cost or pricing data.

In accordance with the requirements of § 18–3.807–3, insert the clause set forth in § 18–3.807–4.

§ 18–7.204–31 Scientific and technical information service.

Insert in all cost-reimbursement type supply contracts where research and development work is involved the clause set forth in § 18–7.302–55.

§ 18–7.204–50 Data requirements.

In accordance with the requirements of § 18–9.202, insert the clause set forth in § 18–9.202–1(e).

§ 18–7.204–51 Approval of contract.

Insert the clause set forth in § 18–7.104–51 when approval of the contract by the Director of Procurement is required.

§ 18–7.204–53 Limitation of Government's obligation.

The clause set forth below is authorized for use under the following conditions:

(a) The total value of the contract is $1,000,000 or more;

(b) The period of performance under the contract is in excess of 12 months; and

(c) Funds are not available to fully fund the total contract value at the time of entering into the contract.

Authority to use the clause shall not be construed as an approval to incrementally fund the contract.

LIMITATION OF GOVERNMENT'S OBLIGATION (SEPTEMBER 1962)

(a) It is estimated that the total cost to the Government, inclusive of any fixed fee, for the performance of this contract will not exceed the estimated cost and fixed fee set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. The fixed fee for complete performance of this contract is specified in the Schedule.

(b) The sum presently available for payment and allotted to this contract, the items covered thereby, and the period of performance which it is estimated the allotted amount will cover, are specified in the Schedule. It is anticipated that from time to time additional funds will be allotted to this contract up to the full estimated cost, including any fixed fee. When additional funds are allotted from time to time for continued performance of the work, the parties shall agree as to the applicable estimated period of contract performance which shall be covered by such funds and the contract Schedule amended accordingly. The Contractor agrees to perform or have performed work on this contract up to the point at which in the event of termination of this contract for the convenience of the Government pursuant to the clause of this contract entitled "Termination," the total amount paid and payable by the Government pursuant to any settlement including cost and fixed fee under paragraph (e) of such clause would, in the exercise of reasonable judgment by the Contractor, approximate the total amount at the time allotted to this contract. The Contractor shall not be obligated to continue performance of the work beyond such point.

(c) The Government shall not be obligated to reimburse the Contractor for costs incurred (including amounts payable in respect to subcontracts and termination settlement costs) and to pay any fixed fee to which the Contractor may be entitled in excess of the total amount from time to time allotted to this contract. However, when and to the extent that the total amount allotted to this contract has been increased, any costs incurred by the Contractor and any fixed fee to which the Contractor may be entitled, prior to the increase and in excess of the amount previously allotted, shall be allowable to the same extent as if such costs had been incurred and fee earned after such increase in amount allotted.

(d) In the event funds allotted are considered by the Contractor to be inadequate to cover the work to be performed for the period set forth in the Schedule, the Contractor shall notify the Contracting Officer in writing when within the next thirty (30) days the work will reach a point at which, in the event of termination of this contract for the convenience of the Government pursuant to the clause of this contract entitled "Termination," the total amount paid and payable by the Government pursuant to a settlement including cost and fixed fee under paragraph (e) of such clause will approximate eighty-five percent (85%) of the total amount then allotted to the contract. The notice shall state the estimated date when such point will be reached and the estimated amount of

additional funds required to continue performance for the period set forth in the Schedule. The Contractor shall, thirty (30) days prior to the end of the period specified in the Schedule, advise the Contracting Officer in writing as to the estimated amount of additional funds which will be required on the basis of the obligation for performance in accordance with paragraph (b) of this clause for the timely performance of the work under the contract for such further period as may be specified in the Schedule or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the end of the period set forth in the Schedule, or an agreed date in substitution therefor, the Contracting Officer will, upon written request of the Contractor, terminate this contract on such date, or on a date to be specified in such request, on which the Contractor, in the exercise of his reasonable judgment, estimates that he will have discharged his obligation to perform hereunder in accordance with paragraph (b) of this clause, whichever is later, pursuant to the provisions of the clause of this contract entitled "Termination."

(e) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties shall agree as to the applicable period of contract performance which shall be covered by such funds, and the provisions of paragraphs (b), (c), and (d) of this clause apply in like manner to such additional allotted funds and substituted date pertaining thereto, and the contract shall be amended accordingly.

(f) The Government may at any time prior to termination allot additional funds for this contract, and, with the consent of the Contractor, after notice of termination, may rescind such termination in whole or in part, and allot additional funds for this contract.

(g) In the event that sufficient amounts are not allotted to this contract to allow completion of the work contemplated by this contract, the Contractor shall be entitled, subject to the limitations of paragraph (c) of this clause, to a percentage of the fixed fee set forth in the Schedule equivalent to the percentage of completition of the work contemplated by this contract.

(h) Nothing in this clause shall affect the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination."

(i) For the purpose of this clause, the allotment or allotments specified in the Schedule shall not be decreased without the consent of the Contractor.

(j) This clause shall be applicable and the clause of this contract entitled "Limitation of Cost" inapplicable until such time as an amount equal to the total estimated cost and fee set forth in the Schedule is allotted to this contract, and thereafter the clause of this contract entitled "Limitation of Cost" shall be applicable and this clause inapplicable.

§ 18-7.204-55 NASA PERT system.

When reporting of schedule information is required to support the use of the NASA PERT System (see the "NASA PERT and Companion Cost System Handbook," NPC 101), such requirement will be set forth in the Procurement Request, and the clause set forth below shall be used. When both PERT reporting and financial reporting are required, the clause set forth in § 18-7.204-56(d) shall be used.

NASA PERT SYSTEM (APRIL 1967)

(a) Periodic reporting to NASA by the Contractor of time actuals and projections will be accomplished as set forth herein. Contractor reports are required in the operation of NASA's internal project control system called "NASA PERT." Contractor recognizes NASA's responsibility and authority to establish the type, content, and format of information required. Operation of the system and Contractor's obligation in connection therewith are to be as described in the NASA PERT and Companion Cost System Handbook (NPC 101) as in effect on the date of this contract except for those portions pertaining to Contractor Financial Reporting.

(b) Contract requirements under the NASA PERT System shall be implemented through the operation of an implementation team consisting of representatives of the Contractor and NASA. The NASA Project Manager shall determine the NASA representatives on the team and designate from the NASA members a team Chairman. The work breakdown structure to be used by the team as the framework for structuring of the NASA PERT fragnets is shown in Appendix ------ of this contract.

(c) Fragnets (see NPC 101) are to be established for each line or group of line items as indicated in said Appendix. The Contractor's participation, as a member of the implementation team, shall be as follows:

(i) Development of the required fragnets;

(ii) Interconnecting of fragnets so that data can be processed separately for each fragnet or as a group for the Contractor's entire project effort;

(iii) Identification of events and activities comprising each of the fragnets required; and

(iv) Establishment of the initial time estimate for each activity.

(d) Lower level time detail, which Contractor utilizes for its own management purposes to validate information reported to NASA, shall be consistent with NASA requirements hereunder.

(e) Contractor shall exert its best efforts to ensure participation of its subcontractors in implementation and operation of the NASA PERT System.

(f) The approximate scope of each fragnet (in terms of the number of activities) that will be required is also indicated in said Appendix. This number is an approximate estimate included in the contract primarily for purposes of estimating the cost of meeting the requirements under this clause.

(g) Reporting against initially developed fragnets shall commence upon written direction by the NASA Project Manager. Frequency of reporting, as determined by the NASA Project Manager, shall be directed in writing by the NASA Project Manager, but in no event shall such reporting be required more frequently than biweekly. Reporting against all fragnets specified in said Appendix shall commence at the time the Project Manager so directs in writing. Reporting against and updating of individual fragnets shall commence as soon as individual fragnets are developed and not await completion of all fragnets. The computer input data reported shall be current as of the reporting date.

(h) In view of the dynamic character of the work under this contract, the initially developed fragnets referred to in (g) above need continual updating on a current basis to reflect to NASA a true picture of Contractor work plans and status.

(i) To insure responsiveness and adequacy of reporting requirements, the implementation team will review total content and operation of the system annually.

(j) The authority of the NASA Project Manager derived from this clause does not include, and shall not be construed to include authority to issue change orders.

(k) During the performance of this contract, if the NASA Project Manager requires a change, either an increase or decrease, in the information or reporting requirements, or both, specified in said Appendix or in (g) above, such change shall be effected by the Contracting Officer under the "Changes" clause of this contract, and any equitable adjustment therefor shall be determined and accomplished pursuant to said "Changes" clause.

§ 18-7.204-56 NASA financial management reporting.

When financial management reporting on NASA Form 533 and 534 series of reports is required (see NASA Management Instruction 9501.1A, "Contractor Financial Management Reporting System" and NASA Handbook 9501.2, "Procedure for Reporting Cost Information from Contractors), such requirement will be set forth in the Procurement Request, and the appropriate clauses set forth in paragraph (a), (b), (c), or (d) of this section shall be used. The number of copies of the reports to be submitted by the contractor shall be specified in the Schedule of the contract.

(a) The clause set forth below shall be used when the NASA Form 533 series of reports is required without an appendix and the NASA PERT System does not require reporting from the contractor.

NASA FINANCIAL MANAGEMENT REPORTING (WITHOUT PERT, WITHOUT APPENDIX) (APRIL 1967)

Financial Management Reports shall be submitted by the Contractor on NASA Form 533 series of reports in accordance with the instructions on the reverse side of the form and NASA Handbook "Procedures for Reporting Cost Information from Contractors" (NHB 9501.2). The detailed content of the report will be established by NASA and Contractor personnel giving due regard to the Contractor's financial management information system. The Contracting Officer shall provide written notification to the Contractor of the agreed upon detailed content of the reports.

Subsequent changes to the detailed content of the reports wil be similarly determined and written notification by the Contracting Officer of each such change will be specific as to the months to which each shall apply.

(b) The clause set forth below shall be used when the NASA Form 533 series of reports is required with an appendix and the NASA PERT System does not require reporting from the contractor:

NASA FINANCIAL MANAGEMENT REPORTING (WITHOUT PERT, WITH APPENDIX) (APRIL 1967)

(a) Financial Management Reports shall be submitted by the Contractor on NASA Form 533 series of reports in accordance with the instructions set forth in NASA Handbook "Procedures for Reporting Cost Information from Contractors" (NHB 9501.2) and on the reverse side of the form, as supplemented by Appendix ------ of this contract. The said Appendix sets forth the detailed reporting categories to be used. Implementation by the Contractor of reporting under this clause shall include NASA approval of the definitions of the content of each reporting category, and will give due regard to the Contractor's established financial management information system.

(b) Reports shall be submitted in the number of copies, at the time, and in the

manner set forth in the contract Schedule or as designated administratively in writing by the Contracting Officer.

(c) Lower level detail, which the Contractor utilizes for its own management purposes to validate information reported to NASA, shall be compatible with NASA requirements.

(d) Contractor shall exert its best effects to ensure participation of its subcontractors in the Financial Management Reporting required by this clause.

(e) During the performance of this contract, if NASA requires a change, either an increase or decrease, in the information or reporting requirements, or both, specified in said Appendix, or as provided for in (a) or (b) above, such change shall be effected by the Contracting Officer under the "Changes" clause of this contract, and any equitable adjustment therefor shall be determined and accomplished pursuant to said "Changes" clause.

(c) When contractor special cost studies are to be reported on NASA Form 534 series of reports, insert the clause set forth below.

NASA FINANCIAL MANAGEMENT REPORTING (SPECIAL COST STUDY RPORTS) (APRIL 1967)

Special cost study reports shall be submitted by the Contractor on the NASA Form 534 series of reports. The reports shall be submitted in accordance with the instructions in NASA Handbook "Procedures for Reporting Cost Information from Contractors" (NHB 9501.2), the instructions on the reverse side of NASA Form 534 series of reports, and the annual special instructions issued, in writing by the Contracting Officer within the scope of NHB 9501.2.

(d) When both the NASA PERT System reporting and the NASA Form 533 series of reports are to be required of a contractor, the clause set forth below shall be used:

NASA PERT AND COMPANION COST SYSTEM (APRIL 1967)

(a) Periodic reporting to NASA by the Contractor of time and cost actuals and projections will be accomplished as set forth herein. Contractor reports are required in the operation of NASA's internal project control system called "NASA PERT and Companion Cost." Contractor recognizes NASA's responsibility and authority to establish the type, content, and format of information required. Operation of the system and Contractor's obligation in connection therewith are to be as described in and NASA PERT and Companion Cost System Handbook (NPC 101) as in effect on the date of this contract.

(b) Contract requirements under the NASA PERT and Companion Cost System shall be implemented through the operation of an implementation team consisting of representatives of the Contractor and of NASA. The NASA Project Manager shall determine the NASA representatives on the team and designate from the NAS members a team Chairman. The work breakdown structure to be used by the team as the framework for structuring of the NASA PERT fragnets and corresponding cost reporting categories is shown in Appendix ------ of this contract.

(c) Fragnets and subdivision of work cost categories (see NPC 101) are to be established for each line item or group of line items as indicated in said Appendix. The Contractor's participation, as a member of the implementation team, shall be as follows:

(i) Development of the required fragnets;

(ii) Interconnecting of fragnets so that data can be processed separately for each fragnet or as a group for the Contractor's entire project effort;

(iii) Identification of events and activities comprising each of the fragnets required;

(iv) Definition of content of each cost reporting category;

(v) Identification of activities chargeable to each subdivision of work cost category; and

(vi) Establishment of the initial time estimate for each activity.

(d) Lower level time and cost detail, which Contractor utilizes for its own management purposes to validate information reported to NASA, shall be consistent with NASA requirements hereunder.

(e) Contractor shall exert its best efforts to ensure participation of its subcontractors in implementation and operation of the NASA PERT and Companion Cost System.

(f) The approximate scope of each fragnet (in terms of the number of activities) that will be required is also indicated in said Appendix. This number is an approximate estimate included in the contract primarily for purposes of estimating the cost of meeting the requirements under this clause.

(g) Reporting against initially developed fragnets shall commence upon written direction by the NASA Project Manager. Frequency of reporting, as determined by the NASA Project Manager, shall be directed in writing by the NASA Project Manager, but in no event shall such reporting be required more frequently than biweekly. Reporting against all fragnets specified in said Appendix shall commence at the time the Project Manager so directs in writing. Reporting against and updating of individual fragnets shall commence as soon as individual fragnets are developed and not await completion of all fragnets. The computer input data reported shall be current as of the reporting date.

(h) Cost reports of actuals and projections shall be submitted by the Contractor on the NASA Form 533 series of reports in accordance with the NASA Handbook "Procedures for Reporting Cost Information from Contractors" (NHB 9501.2) and the instructions on the reverse side of the form, as supplemented by said Appendix, and in the number of copies set forth in the contract Schedule. Reports shall be submitted at the time and in the manner directed in writing by the Project Manager. The line items within the work breakdown structure indicated in said Appendix will constitute the subdivisions of work to be reported. The elements of cost to be reported within each subdivision of work are listed in said Appendix.

(i) In view of the dynamic character of the work under this contract, the initially developed fragnets referred to in (g) above need continual undating on a current basis to reflect to NASA a true picture of Contractor work plans and status.

(j) To ensure responsiveness and adequacy of reporting requirements, the implementation team will review total content and operation of the system annually.

(k) The authority of the NASA Project Manager derived from this clause does not include, and shall not be construed to include authority to issue change orders.

(l) During the performance of this contract, if the NASA Project Manager requires a change, either an increase of decrease, in the information or reporting requirements, or both, specified in said Appendix or in (g) or (h) above, such change shall be effected by the Contracting Officer under the "Changes" clause of this contract, and any equitable adjustment therefor shall be determined and accomplished pursuant to said "Changes" clause.

§ 18–7.204–58 Safety and health.

In accordance with the requirements of Subpart 18–1.52, insert the clause set forth in § 18–1.5204.

§ 18–7.204–59 Nonuse of foreign-flag vessels engaged in Cuban or North Vietnam trade.

In accordance with the requirements of § 18–1.1410, insert the clause set forth therein.

§ 18–7.204–60 Report on NASA subcontracts.

In accordance with the requirements of § 18–16.902, insert the clause set forth therein.

§ 18–7.204–61 Rights in data for potentially hazardous items.

In accordance with the requirements of § 18–9.204–52, insert the clause set forth in § 18–9.204–52(c).

§ 18–7.204–62 Potentially hazardous items.

In accordance with the requirements of § 18–1.351, insert the clause set forth therein.

§ 18–7.204–63 Disclosure of proposals outside Government.

In accordance with the requirements of § 18–1.304–2(f), insert the clause set forth therein.

§ 18–7.204–64 Financial reporting of Government-owned space hardware.

When reporting of Government-Owned/Contractor-Held Space Hardware is required under contracts over $100,000 (see NHB 9500.2), such requirement will be set forth in the procurement request and the clause set forth below shall be included in the contract.

FINANCIAL REPORTING OF GOVERNMENT-OWNED SPACE HARDWARE (SEPTEMBER 1968)

(a) The Contractor shall prepare and submit semi-annually the "Government-Owned/Contractor-Held Space Hardware Report" (NASA Form 1017) in accordance with the instructions on the reverse of the form and NASA Handbook, "Financial Reporting for Government-Owned/Contractor Held Property and Space Hardware" (NHB 9500.2) on the project items identified by the Contracting Officer.

(b) During the performance of this contract, the Contracting Officer may require a change in the information or reporting requirements. If such change causes an increase or decrease in the estimated cost of this contract, an equitable adjustment shall be made in the estimated cost in accordance with the procedures in the "Changes" clause of this contract.

(c) The Contractor agrees to insert the substance of this clause, in all first tier cost-reimbursement type subcontracts over $100,000 issued hereunder and shall provide for reporting the value of Government-owned space hardware by the subcontractor direct to the Contractor for the purpose of a consolidated report to the Government.

§ 18–7.205 Additional clauses.

The following clauses shall be inserted if it is desired to cover the subject matter thereof.

§ 18–7.205–1 Alterations in contract.

The clause set forth in § 18–7.105–1 may be inserted.

§ 18–7.205–4 Bill of materials.

Under the circumstances stated in § 18–7.705–6, the clause set forth therein may be inserted.

§ 18–7.205–6 Stop work orders.

The clause set forth in § 18–7.105–8 is authorized for use under the criteria and in accordance with the instructions in § 18–7.105–8, if modified by changing—

(a) The words "the 'Termination for Convenience' clause of this contract" to "the 'Termination' clause of this contract," and

(b) The words "an equitable adjustment shall be made in the delivery schedule or contract price, or both" to "an equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other provisions of the contract that may be affected."

§ 18–7.205–50 Notice of delay.

The clause set forth below is authorized for use in situations where it is desirable to provide for notice by the contractor of anticipated delays in performance.

NOTICE OF DELAY (SEPTEMBER 1962)

If the Contractor becomes unable to complete the contract work at the time specified because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in the performance of the work called for hereunder, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons therefor. Such notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than forty-five (45) days before the completion date specified in this contract, unless otherwise directed by the Contracting Officer. When notice is so required, the Contracting Officer may, in his discretion, extend the time specified in the Schedule for such period as he deems advisable.

§ 18–7.205–52 Date of incurrence of costs.

The clause set forth below is authorized for use when specific coverage of precontract costs is considered desirable.

DATE OF INCURRENCE OF COSTS (OCTOBER 1963)

The Contractor shall be entitled to reimbursement for costs incurred in an amount not to exceed $_____ on or after _____ which, if incurred after this contract had been entered into, would have been reimbursable under the provisions of this contract.

§ 18–7.205–53 Contractor's independent research program.

When the New Technology clause is included in the contract (see § 18–9.101–2) and it is determined that the contractor maintains an independent research program, the clause set forth in § 18–9.101–7 may be included in the Schedule at the contractor's request.

§ 18–7.205–54 Reports of work.

A Reports of Work clause is not prescribed for cost-reimbursement type supply contracts. When it is desired to include such a clause, however, the clause set forth in § 18–7.302–54 may be used or it may serve as a model in drafting the desired clause.

Subpart 18–7.3—Clauses for Fixed-Price Research and Development Contracts

§ 18–7.300 Scope of subpart.

This subpart sets forth uniform clauses for use in fixed-price research and development contracts as defined in § 18–7.301.

§ 18–7.301 Applicability.

As used throughout this subpart, the term "fixed-price research and development contract" means any contract, including letter contracts (except notices of award, contracts placed under Small Purchasers Procedures, and amendments or supplemental agreements which do not effect new procurement) which (a) is entered into on a fixed-price basis, (b) is in an amount exceeding $2,500, and (c) if for experimental, developmental, or research work.

§ 18–7.302 Required clauses.

The following clauses shall be inserted, as required, in all fixed-price research and development contracts except as otherwise indicated in this subpart. See § 18–7.350 for short form clauses.

§ 18–7.302–1 Definitions.

Insert the clause set forth in § 18–7.103–1. Additional definitions may be included, provided they are not inconsistent with such clause or the provisions of this chapter.

§ 18–7.302–2 Payments.

Insert the following clause except that in letter contracts insert clause 4 of NASA Form 551–3 set forth in § 18–16.859–4(d).

PAYMENTS (SEPTEMBER 1962)

The Contractor shall be paid, upon submission of proper invoices or vouchers, the prices stipulated herein for work delivered or rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made upon acceptance of any portion of the work delivered or rendered for which a price is saparately stated in the contract.

§ 18–7.302–3 Standards of work.

STANDARDS OF WORK (SEPTEMBER 1962)

The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards.

§ 18–7.302–4 Inspection.

INSPECTION (SEPTEMBER 1962)

The Government, through any authorized representatives, has the right, at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection or evaluation is being made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

Where a more detailed provision covering inspection is desired, as where the primary contract objective is delivery of end items other than designs, drawings, or reports, the clause set forth below shall be substituted for this clause, unless the contracting officer determines that use of the longer clause is impracticable.

INSPECTION (SEPTEMBER 1962)

(a) All work under this contract shall be subject to inspection and test by the Government, to the extent practicable, at all times (including the period of performance) and places, and in any event prior to acceptance. The Government through any authorized representative may inspect the premises of the Contractor or any subcontractor engaged in the performance of this contract.

(b) The Government may reject any work that is defective or otherwise not in conformity with the requirements of this contract. If the Contractor fails or is unable to correct or to replace such work, the Contracting Officer may accept such work at a reduction in price which is equitable under the circumstances. Failure to agree on the reduction in price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide, without additional charge, all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If the Government inspection or test is made at a point other than the premises of the Contractor or subcontractor, it shall be at the expense of the Government. All inspections and tests by the Government shall be performed in such a manner as not unduly to delay the work. Final inspection and acceptance or rejection of the work shall be made as promptly as practicable after delivery except as otherwise provided in this contract; but failure to inspect and accept, or reject the work shall neither relieve the Contractor from responsibility for such of the work as is not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any work shall not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

§ 18–7.302–5 Assignment of claims.

In accordance with the instructions in § 18–7.103–8, insert the clause set forth therein.

§ 18–7.302–6 Examination of records.

Insert the clause set forth in § 18–7.104–15.

§ 18–7.302–7 Federal, State, and local taxes.

Insert the clause set forth in § 18–11.401–1 or § 18–11.401–2 in accordance with the requirements of § 18–11.401.

§ 18–7.302–8 Utilization of small business concerns.

In accordance with the requirements of § 18–1.707–3(a), insert the clause set forth therein.

§ 18–7.302–9 Default.

In accordance with the requirements of § 18–8.710, insert the clause set forth therein.

§ 18–7.302–10 Termination for the convenience of the Government.

In accordance with the requirements of § 18–8.701, insert the clause set forth therein.

§ 18–7.302–11 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.302–12 Renegotiation.

Insert the clause set forth in § 18–7.103–13.

§ 18–7.302–13 Buy American Act.

In accordance with the requirements of Subpart 18–6.1, insert the clause set forth in § 18–6.104–5.

§ 18–7.302–14 Convict labor.

In accordance with the requirements of Subpart 18–12.2, insert the clause set forth in § 18–12.203.

§ 18–7.302–15 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18–12.604.

§ 18–7.302–16 Contract Work Hours Standards Act—overtime compensation.

Insert the clause set forth in § 18–12.303–1. Note the introductory language required by § 18–12.303–2 for inclusion in contracts with a State or political subdivision thereof.

§ 18–7.302–17 Equal opportunity.

Insert one or the other of the following clauses, as required by and in accordance with the instructions in § 18–12.802: (a) the "Equal Opportunity" clause set forth in § 18–12.802–1, or (b) the "Equal Opportunity in Federally Assisted Construction Contracts" clause set forth in § 18–12.802–2.

§ 18–7.302–18 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.302–19 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.302–21 Authorization and consent.

In accordance with the requirements in § 18–9.103, insert the clause set forth in § 18–9.103(b).

§ 18–7.302–22 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.302–23 New technology or property rights in inventions.

In accordance with the requirements of § 18–9.101–2, insert the "New Technolgy" or "Property Rights in Inventions" clause, as appropriate.

§ 18–7.302–24 Rights in data.

If data is to be delivered under the contract, insert the appropriate clause in accordance with the instructions in § 18–9.203

§ 18–7.302–25 Security requirements.

Insert the clause set forth in § 18–7.104–12, except that if the contract is with an educational institution and is awarded on the basis of no profit, insert the clause set forth in § 18–7.451–24.

§ 18–7.302–26 Utilization of concerns in labor surplus areas.

In accordance with the requirements of § 18–1.805–3(a), insert the clause set forth therein.

§ 18–7.302–53 Interest.

Insert the clause set forth in § 18–7.103–53.

§ 18–7.302–54 Reports of work.

A clause requiring the contractor to furnish reports of work shall be included in the Schedule of the contract. An approved clause is set forth below. Changes in this clause may be made to meet the particular requirements of a procurement. Consideration should be given in each case to the desirability of providing for reports on the completion of significant units or phases of the work, in addition to periodic reports and reports on the completion of the entire contract.

REPORTS OF WORK (SEPTEMBER 1962)

(a) *Monthly Progress Reports.* The Contractor shall submit separate monthly progress reports of all work accomplished during each month of contract performance. Reports shall be in narrative form, and brief and informal in content. Monthly reports shall include:

(i) A quantitative description of overall progress;

(ii) An indication of any current problems which may impede performance, and proposed corrective action; and

(iii) A discussion of the work to be performed during the next monthly reporting period.

Monthly reports shall be submitted in ------ copies, plus a reproducible copy.

(b) *Quarterly Progress Reports.* The Contractor shall submit separate quarterly reports of all work accomplished during each 3-month period of contract performance. In addition to factual data, these reports shall include a separate analysis section which interprets the results obtained, recommends further action, and relates occurrences to the ultimate objectives of the contract work. Sufficient diagrams, sketches, curves, photographs, and drawings shall be included to convey the intended meaning. Quartely reports shall be submitted in ------ copies, plus a reproducible copy.

(c) *Final Report.* The Contractor shall submit a final report which documents and summarizes the results of the entire contract work, including recommendations and conclusions based on the experience and results obtained. The final report shall include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to comprehensively explain the results achieved under the contract. The final report shall be submitted in ------ copies, plus a reproducible copy.

§ 18–7.302–55 Scientific and technical information service.

In conformance with section 203(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473), and in the interest of conserving time and funds, and to avoid unnecessary duplication of effort, it is NASA policy to encourage contractors to use scientific and technical information in the possession of NASA in direct support of all NASA contracts involving research and development work. This information, which is available to contractors free of charge, includes past and current reports on research, development, test and evaluation. In order that such scientific and technical information may be provided in a timely manner, it is necessary for the contractor to furnish NASA the information specified in the clause set forth below. Accordingly, the following clause shall be inserted in all research and development contracts.

SCIENTIFIC AND TECHNICAL INFORMATION SERVICE (OCTOBER 1969)

(a) In order that NASA may provide the Contractor scientific and technical information in accordance with the procedures set forth in the introduction section of Scientific and Technical Aerospace Reports (STAR) distributed by NASA, the Contractor shall, within 10 days after receipt of this contract, furnish in writing to the Scientific and Technical Information Division (Code US), NASA Headquarters, Washington, D.C. 20546, (i) name of contractor, (ii) contract number, (iii) date of contract completion, (iv) security classification of contract and (v) name and address of the individual responsible for technical performance of the contract.

(b) NASA reserves the right, in the event of the unavailability of any scientific and technical information requested, to notify the Contractor of such unavailability. Failure of NASA to furnish any information requested shall not entitle the Contractor to any adjustment in the price, cost (estimated or target), fee, time required for performance or delivery schedule of the contract.

§ 18–7.303 Clauses required to be used when applicable.

The following clauses shall be inserted when applicable in all fixed-price research and development contracts except as indicated in this subpart. See § 18–7.350 for short form clauses.

§ 18–7.303–1 Clauses for contracts involving contruction work.

(a) In accordance with the requirements of Subpart 18–12.4, insert in fixed-price research and development contracts which involve construction work the clauses listed below, which are set forth in § 18–12.403–1:

Davis-Bacon Act.
Contract Work Hours Standards Act—Overtime Compensation.

Apprentices.
Payrolls and Payroll Records.
Compliance with Copeland Regulations.
Withholding of Funds.
Subcontracts.
Contract Termination—Debarment.

(b) In accordance with the requirements of § 18–6.207, insert in all contracts for construction, except those executed on Standard Form 19 and NASA Form 1379, the clause entitled "Buy American," as set forth in § 18–6.207(c).

§ 18–7.303–2 Filing of patent applications.

In accordance with the requirements of § 18–9.107, insert the clause set forth therein.

§ 18–7.303–6 Priorities, allocations, and allotments.

In accordance with the requirements of § 18–1.307–2, insert the clause set forth therein.

§ 18–7.303–7 Government property.

In accordance with the requirements set forth in § 18–13.702 or § 18–13.706, insert the appropriate contract clause.

§ 18–7.303–8 Soviet-controlled areas.

In accordance with the requirements of § 18–6.403, insert the clause set forth therein and include in the Schedule of the contract the list of Soviet-controlled areas set forth in § 18–6.401–2.

§ 18–7.303–9 Notice to the Government of labor disputes.

In accordance with the requirements of § 18–7.104–4, insert the clause set forth therein.

§ 18–7.303–10 Limitation on withholding of payments.

In accordance with the requirements of § 18–7.104–21, insert the clause set forth therein.

§ 18–7.303–11 Small business subcontracting program.

In accordance with the provisions of § 18–1.707, insert the clause set forth in § 18–1.107–3(b).

§ 18–7.303–12 Subcontracts.

In accordance with the requirements of § 18–23.201–1, insert the appropriate subcontracts clause.

§ 18–7.303–17 Ground and flight risk.

In all negotiated fixed-price type contracts for the production, modification, maintenance, or overhaul of aircraft, insert the clause set forth in § 18–10.404.

§ 18–7.303–23 Progress payments.

In accordance with the requirements of § 18–7.104–35, insert the appropriate clause as set forth therein.

§ 18–7.303–25 Labor surplus area subcontracting program.

In accordance with the requirements of § 18–1.805–3(b), insert the clause set forth therein.

§ 18–7.303–27 Competition in subcontracting.

In accordance with the requirements of § 18–7.104–40, insert the clause set forth therein.

§ 18–7.303–28 Contractor and subcontractor certified cost or pricing data.

In accordance with the requirements of § 18–3.807–3, insert the clause set forth in § 18–3.807–4.

§ 18–7.303–29 Audit and records.

In accordance with the requirements of § 18–7.104–42, insert the clause set forth therein.

§ 18–7.303–50 Data requirements.

In accordance with the requirements of § 18–9.202, insert the clause set forth in § 18–9.202–1(e).

§ 18–7.303–51 Approval of contract.

In accordance with the requirements of § 18–7.104–51, insert the clause set forth therein.

§ 18–7.303–52 Preference for U.S.-flag vessels.

Under the circumstances described in Subpart 18–1.14, insert the clause set forth in § 18–1.1402–3.

§ 18–7.303–55 NASA PERT system.

In accordance with the requirements of § 18–7.204–55, insert the clause set forth therein.

§ 18–7.303–56 NASA financial management reporting.

Insert the apropriate clause set forth in § 18–7.204–56 in accordance with the instructions set forth therein.

§ 18–7.303–57 Key personnel and facilities.

In accordance with the requirements of § 18–1.352, insert the clause set forth therein.

§ 18–7.303–58 Safety and health.

In accordance with the requirements of Subpart 18–1.52, insert the clause set forth in § 18–1.5204.

§ 18–7.303–59 Nonuse of foreign-flag vessels engaged in Cuban or North Vietnam trade.

In accordance with the requirements of § 18–1.1410, insert the clause set forth therein.

§ 18–7.303–60 Report on NASA subcontracts.

In accordance with the requirements of § 18–16.902, insert the clause set forth therein.

§ 18–7.303–61 Rights in data for potentially hazardous items.

In accordance with the requirements of § 18–9.204–52, insert the clause set forth in § 18–9.204–52(c).

§ 18–7.303–62 Potentially hazardous items.

In accordance with the requirements of §18–1.351, insert the clause set forth therein.

§ 18–7.303–63 Disclosure of proposals outside Government.

In accordance with the requirements of § 18–1.304–2(f), insert the clause set forth therein.

§ 18–7.304 Additional clauses.

Insert the following clauses if it is desired to cover the subject matter.

§ 18–7.304–1 Changes.

CHANGES (SEPTEMBER 1962)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs, or specifications, (ii) method of shipment or packing, (iii) place of inspection, delivery, or acceptance, and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change; *Provided, however*, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

In the foregoing clause, the period of "sixty (60) days" within which any claim for adjustent must be asserted may be reduced to a period of not less than "thirty (30) days."

§ 18–7.304–2 Alterations in contract.

The clause set forth in § 18–7.105–1 may be inserted.

§ 18–7.304–4 Bill of materials.

In accordance with the instructions in § 18–7.105–6, the clause set forth therein may be used.

§ 18–7.304–5 Stop work orders.

The clause set forth in § 18–7.105–8 is authorized for use under the criteria, and in accordance with the instructions, set forth in § 18–7.105–8.

§ 18–7.304–8 Warranty.

In accordance with § 18–1.324, an appropriate warranty clause may be inserted.

§ 18–7.304–50 Notice of delay.

In accordance with the instructions in § 18–7.205–50, the clause set forth therein is authorized for use.

§ 18–7.304–59 Price escalation.

The clauses set forth in §§ 18–7.106 and 18–7.107 are authorized for use in accordance with the instructions set forth therein.

§ 18–7.304–60 Incentive price revision.

The clause set forth in § 18–7.108 is authorized for use in accordance with the instructions set forth therein.

§ 18–7.304–61 Special tooling.

Where special tooling is to be acquired by the contractor, the clause set forth in § 18–13.704 is authorized for use in accordance with instructions contained therein.

§ 18–7.350 Short form clauses for fixed-price research contracts with nonprofit institutions.

Notwithstanding the provisions of §§ 18–7.302 and 18–7.303, the short form clauses set forth or referred to in this § 18–7.350 shall be used in fixed-price contracts for basic or applied research with nonprofit institutions of higher education, or with nonprofit institutions whose primary purpose is the conduct of scientific research, when a short form contract is desired.

§ 18–7.350–1 Definitions.

Insert the clause set forth in § 18–7.103–1.

§ 18–7.350–2 Payment.

PAYMENT (MARCH 1969)

(a) Payment will be made to the Contractor as set forth in the schedule upon submission of status reports indicating the portion of the work which has been performed and after acceptance by the Contracting Officer. The status reports shall also contain a concise statement of the work which has been performed.

(b) A prerequisite to final payment is the submission by the Contractor of a statement of the amount of funds expended in the performance of this contract and the furnishing to the Contracting Officer, and his acceptance, of the technical reports and patent reports required by this contract.

(c) Status reports, statements of funds expended, and technical reports required by the contract shall be submitted by the Contractor directly to the Contracting Officer for the purpose of determining the acceptability of such reports and statements.

§ 18–7.350–3 Technical reports and data.

Insert the clause set forth in § 18–9.204–50.

§ 18–7.350–4 Government-furnished property.

Insert the clause set forth in § 18–13.710.

§ 18–7.350–5 Release of information.

RELEASE OF INFORMATION (SEPTEMBER 1962)

It is the intent of NASA that the useful research information obtained under this contract be published either by NASA or in technical journals. Reports to be published by NASA should be prepared insofar as practicable in accordance with NASA editorial form. Three (3) copies of the manuscript containing research information obtained under this contract shall be furnished to NASA prior to release of the information by formal oral presentation or for publication in a technical journal. Appropriate credits to NASA will be included in any formal oral presentation or published article. Twenty (20) reprints of articles published in journals shall be furnished to NASA.

§ 18–7.350–6 Security.

SECURITY (SEPTEMBER 1962)

If the subject matter of this contract is classified in the interest of national security, or if it appears that performance on the contract will require access to classified information, the Contractor shall be governed by a Department of Defense Security Agreement (DD Form 441), and the attachment thereto, "The Industrial Security Manual for Safeguarding Classified Information." Further, if information or material is developed pursuant to this contract which appears to require protection in the interest of national security, the Contractor shall notify NASA immediately in order that the appropriate classification category may be assigned, and a Security Agreement executed, if necessary.

§ 18–7.350–7 Property rights in inventions.

Insert the clause set forth in §18–9.101–5.

§ 18–7.350–8 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.350–9 Termination at the option of the Government.

TERMINATION AT THE OPTION OF THE GOVERNMENT (SEPTEMBER 1962)

The performance of work under this contract may be terminated by the Government in whole or in part, whenever the Contracting Officer shall determine that such action is in the best interest of the Government. If this contract is so terminated, fair compensation for work performed will be provided for the Contractor.

§ 18–7.350–10 Authorization and consent.

Insert the clause set forth in § 18–9.103(b).

§ 18–7.350–11 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.350–12 Buy American Act.

Insert the clause set forth in § 18–6.104–5.

§ 18–7.350–13 Examination of records.

Insert the clause set forth in § 18–7.104–15.

§ 18–7.350–14 Equal opportunity.

Insert one or the other of the following clauses, as required by and in accordance with the instructions in § 18–12.802: (a) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18–12.802–2, or (b) the Equal Opportunity clause set forth in § 18–12.802–1.

§ 18–7.350–15 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.350–16 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.350–17 Convict labor.

Insert the clause set forth in § 18–12.203.

§ 18–7.350–18 Audit and records.

In accordance with the requirements of § 18–7.104–42, insert the clause set forth therein.

§ 18–7.350–19 Additional clauses.

When circumstances justify it, the clauses prescribed in §§ 18–7.302, 18–7.303, and 18–7.304 may be added to or substituted for the clauses set forth in §§ 18–7.350–1 through 18–7.350–17; however, care should be exercised to ensure that there are no inconsistencies.

Subpart 18–7.4—Clauses for Cost-Reimbursement Type Research and Development Contracts

§ 18–7.400 Scope of subpart.

This subpart sets forth uniform clauses for use in NASA cost-reimbursement type research and development contracts as defined in § 18–7.401.

§ 18–7.401 Applicability.

As used throughout this subpart, the term "cost-reimbursement type research and development contract" means any contract, including letter contracts (except notices of award, contracts placed under Small Purchases Procedures, and amendments or supplemental agreements which do not effect new procurement), which (a) is entered into on a cost, cost-sharing, or cost-plus-a-fixed-fee basis, and (b) is for experimental, developmental, or research work.

§ 18–7.402 Required clauses for contracts with fee.

The following clauses shall be inserted in all cost-reimbursement type research and development contracts providing for a fee.

§ 18–7.402–1 Definitions.

Insert the clause set forth in § 18–7.103–1. Additional definitions may be included provided they are not inconsistent with such clause or the provisions of this chapter.

§ 18–7.402–2 Limitation of cost.

Insert the following clause, except that in letter contracts insert clause 3 of NASA Form 551–3 set forth in § 18–16.859–4(d).

LIMITATION OF COST (OCTOBER 1969)

(a) It is estimated that the total cost to the Government, exclusive of any fee, for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost then set forth in the Schedule, or if at any time the Contractor has reason to believe that the total cost to the Government, exclusive of any fee, for the performance of this contract will be greater or substantially less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the extent that the estimated cost set forth

in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such cost had been incurred after such increase in estimated cost.

§ 18–7.402–3 Allowable cost, fixed fee, and payment.

In accordance with the instructions set forth in § 18–7.203–4, insert the clause set forth therein.

§ 18–7.402–4 Standards of work.

Insert the clause set forth in § 18–7.302–3.

§ 18–7.402–5 Inspection and correction of defects.

INSPECTION AND CORRECTION OF DEFECTS (SEPTEMBER 1962)

(a) All work under this contract shall be subject to inspection and test by the Government (to the extent practicable) at all times (including the period of performance) and places, and in any event prior to acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of its subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, final inspection and acceptance shall be made at the place of delivery as promptly as practicable after delivery and shall be deemed to have been made no later than ninety (90) days after the date of such delivery, if final acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the Schedule) after acceptance of all the end items (other than designs, drawings, or reports) to be delivered under this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any failure by the Contractor to comply with the requirements of this contract. Any time devoted to such correction or replacement shall not be included in the computation of the period of time specified in the preceding sentence, except as provided in (d) below. Except as otherwise provided in paragraph (c) below, the allowability of the cost of any such replacement or correction shall be determined as provided in the clause of this contract entitled "Allowable Cost Fixed Fee, and Payment," but no additional fee shall be payable with respect thereto. Corrected articles shall not be tendered again for acceptance unless the former tender and the requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to perform such replacement of correction, the Government (i) may by contract or otherwise perform such replacement or correction and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under this contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (ii) in the case of articles not delivered, may require the delivery of such articles, and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (iii) may terminate this contract for default. Failure to agree to the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) Notwithstanding the provisions of paragraph (b) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract if such failure is due to fraud, lack of good faith, or willful misconduct on the part of any one of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substanially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (iii) a separate and complete major industrial operation in connection with the performance of this contract. The Government may at any time also require the Contractor to remedy by correction or replacement, without cost to the Government, any such failure caused by one or more individual employees selected or retained by the Contractor after any such supervisory personnel has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) The provisions of paragraph (b) above shall apply to any corrected or replacement end item or component until six (6) months after its acceptance.

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

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace articles which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the clause of this contract entitled "Government Property."

In the foregoing clause, the words "Task Order" or other suitable designation may be substituted for "Schedule," as appropriate.

§ 18–7.402–6 Assignment of claims.

In accordance with the requirements in § 18–7.103–8, insert the clause set forth therein.

§ 18–7.402–7 Examination of records.

Insert the clause set forth in § 18–7.203–7. In the case of contracts which establish separate periods of performance, alternate paragraph (a)(4), set forth in § 18–7.203–7(b), may be substituted for the corresponding paragraph of the clause prescribed in § 18–7.203–7 (a).

§ 18–7.402–8 Subcontracts.

(a) In accordance with the requirements in § 18–23.201–2, and subject to the instructions in paragraphs (b) and (c), below, insert the following clause.

SUBCONTRACTS (AUGUST 1969)

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is cost-reimbursement, time and materials, or labor-hour, or (ii) is fixed-price type and exceeds in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract, (iii) provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment having a value in excess of $1,000 or of any items of industrial facilities; or (iv) has experimental, developmental, or research work as one of its purposes.

(b) In the case of a proposed subcontract which (i) is cost-reimbursement, time and materials, or labor-hour which would involve an estimated amount in excess of $10,000, including any fee, (ii) is proposed to exceed $100,000, or (iii) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate are expected to exceed $100,000, the advance notification required by (a) above shall include:

(1) A description of the supplies or services to be called for by the subcontract;

(2) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(3) The proposed subcontract price, together with the Contractor's cost or price analysis thereof;

(4) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data when such data and certificate are required by other provisions of this contract to be obtained from the subcontractor; and

(5) Identification of the type of subcontract to be used.

(c) The Contractor shall obtain the written consent of the Contracting Officer prior to placing any subcontract for which advance notification is required under (a) above. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(f) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which in the opinion of the Contractor, may result in litigation, related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(g) Notwithstanding (c) above, the Contractor may enter into subcontracts within (i) and (ii) of (a) above, without the consent of the Contracting Officer, if the Contracting Officer has approved in writing the Contractor's procurement system and the subcontract is within the scope of such approval.

(h) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of the "Limitation on Payments" paragraph set forth in the appropriate clause prescribed by paragraph 7.108 of the NASA Procurement Regulation, including subparagraph (4) thereof, modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) thereof relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of the "Limitation on Payments" provision, including subparagraph (4) thereof, modified as outlined in (i) above.

(i) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments on the fixed-price types of subcontracts of those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in paragraphs 503 and 514 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

(b) In contracts of the types listed in § 18–23.201–2(b), insert the following paragraph (g) in lieu of paragraph (g) of the clause set forth in (a) above.

(g) Notwithstanding (c) above, the Contractor may enter into subcontracts within (i), (ii), or (iii) of (a) above without the prior written consent of the Contracting Officer, if the Contracting Officer has in writing approved the Contractor's procurement system and the subcontract is within the scope of such approval. (August 1969)

(c) In contracts without fee with educational institutions, change "(iii)" in paragraph (a) of the clause in (a) above to read:

(iii) Provides for (A) the construction, purchase, rental, installation, or other acquisition of nonseverable industrial facilities, or (B) the fabrication, purchase, rental, installation, or other acquisition, of any item of either (1) severable industrial facilities having a value in excess of $1,000 or the amount, if any, specified in the Schedule or Task Order, whichever is the lesser, or (2) special test equipment having a value in excess of $1,000. (August 1969)

In (iii)(B)(1) thereof, the $1,000 limit may, in the discretion of the contracting officer, be decreased where it is determined to be in the interest of the Government, in view of the circumstances of each particular contract, as, for example, the nature of the contractor's operations, previous experience with the contractor on comparable procurements, the contractor's accounting and procurement systems, and the capability of the office administering the contract to effect close surveillance of the contractor's procurement and accounting practices. Also, in the discretion of the contracting officer, the cumulative total of acquisitions of severable industrial facilities may be limited to a stated dollar amount or an amount equal to a stated percentage of the estimated cost, beyond which amount the contractor will be required to obtain written consent of the contracting officer for any additional acquisitions of such facilities.

§ 18–7.402–9 Utilization of small business concerns.

In accordance with the requirements of § 18–1.707–3(a), insert the clause set forth therein.

§ 18–7.402–10 Termination.

In accordance with the requirements of § 18–8.702, insert the appropriate clause set forth therein.

§ 18–7.402–11 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.402–12 Renegotiation.

Insert the clause set forth in § 18–7.103–13.

§ 18–7.402–13 Buy American Act.

In accordance with the requirements of Subpart 18–6.1, insert the clause set forth in § 18–6.104–5.

§ 18–7.402–14 Convict labor.

In accordance with the requirements in Subpart 18–12.2, insert the clause set forth in § 18–12.203.

§ 18–7.402–15 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18–12.605.

§ 18–7.402–16 Contract Work Hours Standards Act—overtime compensation.

Insert the clause set forth in § 18–12.303–1. Note the introductory language required by § 18–12.303–2 for inclusion in contracts with a State or political subdivision thereof.

§ 18–7.402–17 Equal opportunity.

Insert one or the other of the following clauses, as required by and in accordance with the instructions in § 18–12.802: (a) the Equal Opportunity clause set forth in § 18–12.802–1, or (b) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18–12.802–2.

§ 18–7.402–18 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.402–19 Covenant against contingent fees.

Insert the clause set forth in §18–1.503.

§ 18–7.402–20 Authorization and consent.

Insert the clause prescribed in § 18–9.103(b).

§ 18–7.402–21 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.402–22 New technology.

In accordance with the requirements of § 18–9.101–2, insert the clause set forth in § 18–9.101–4.

§ 18–7.402–23 Rights in data.

If data is to be delivered under the contract, insert the appropriate clause in accordance with the instructions in § 18–9.203.

§ 18–7.402–24 Security requirements.

Insert the clause set forth in § 18–7.204–12.

§ 18–7.402–25 Government property.

Insert the clause set forth in § 18–13.703.

§ 18–7.402–26 Insurance—Liability to third persons.

(a) Except under the circumstances stated in paragraph (b) or (c) of this section, insert the clause set forth in § 18–7.203–22.

(b) If the contractor claims total immunity from tort liability as a State agency or as a charitable institution, the clause set forth below shall be used in lieu of the clause contained in § 18–7.203–22.

LIABILITY TO THIRD PERSONS (SEPTEMBER 1962)

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for his liability to third persons with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract thereunder.

(b) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. The Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith. The Contractor may, at his own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

(c) If the contractor claims partial immunity from tort liability as a State agency or as a charitable institution (as where work may be performed under the contract in a place or under the conditions where the contractor is not immune from tort liability), the paragraph (e) set forth below may be added to the Insurance—Liability to Third Persons clause contained in § 18–7.203–22.

(e) Notwithstanding paragraphs (a) and (c) of this clause, (i) the Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for his liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract hereunder; and (ii) the Contractor need not procure or maintain insurance coverage as provided in paragraph (a) of this clause; provided, the Contractor may obtain

any insurance coverage he deems necessary subject to approval by the Contracting Officer as to form, amount, and duration, in which event the Contractor shall be reimbursed (A) for the cost of such insurance and (B) to the extent provided in paragraph (c) above, for liabilities to third persons for which the Contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount. (September 1962)

§ 18–7.402–27 Utilization of concerns in labor surplus areas.

In accordance with the requirements of § 18–1.805–3(a), insert the clause set forth therein.

§ 18–7.402–28 Payment for overtime premiums.

In accordance with the requirements of § 18–12.102, insert the clause set forth in § 18–12.102–6.

§ 18–7.402–29 Competition in subcontracting.

Insert the clause set forth in § 18–7.104–40.

§ 18–7.402–30 Audit and records.

Insert the clause set forth in § 18–7.104–42.

§ 18–7.402–50 Payment of royalties.

In accordance with the instructions in § 18–7.203–50, insert the clause set forth in § 18–9.108–1, except that if the contractor is a member of the Manufacturers Aircraft Association, the clause set forth in § 18–9.108–2 may be substituted therefor.

§ 18–7.402–51 Estimated cost and fixed fee.

In accordance with the requirements of § 18–7.203–51, insert the clause set forth therein.

§ 18–7.402–52 Payment of fixed fee.

In accordance with the requirements of § 18–7.203–52, insert the clause set forth therein.

§ 18–7.402–53 Interest.

Insert the clause set forth in § 18–7.103–53.

§ 18–7.402–54 Reports of work.

See § 18–7.302–54 for guidance and a clause approved for use.

§ 18–7.402–55 Scientific and technical information service.

Insert the clause set forth in § 18–7.302–55.

§ 18–7.403 Clauses required to be used when applicable.

The following clauses shall be inserted, when applicable, in all cost-reimbursement type research and development contracts providing for the payment of a fee.

§ 18–7.403–1 Clauses for contracts involving construction work.

(a) In accordance with the requirements of Subpart 18–12.4, insert in cost-reimbursement type research and development contracts which involve construction work the clauses listed below, which are set forth in § 18–12.403–1:

Davis-Bacon Act.
Contract Work Hours Standards Act—Overtime Compensation.
Apprentices.
Payrolls and Payroll Records.
Compliance with Copeland Regulations.
Withholding of Funds.
Subcontracts.
Contract Termination—Debarment.

(b) In accordance with the requirements of § 18–6.207, insert in all contracts for construction, except those executed on Standard Form 19 and NASA Form 1379, the clause entitled "Buy American," as set forth in § 18–6.207(c).

§ 18–7.403–2 Filing of patent applications.

In accordance with the requirements of §18–9.107, insert the clause set forth therein.

§ 18–7.403–5 Excusable delays.

Insert the clause set forth in § 18–8.708.

§ 18–7.403–7 Priorities, allocations, and allotments.

In accordance with the requirements of § 18–1.307–2, insert the clause set forth therein.

§ 18–7.403–8 Soviet-controlled areas.

In accordance with the requirements of § 18–6.403, insert the clause set forth therein and include in the Schedule of the contract the list of Soviet-controlled areas set forth in § 18–6.401–2.

§ 18–7.403–9 Negotiated overhead rates.

When negotiated overhead rates are to be used pursuant to Subpart 18–3.7, the appropriate clause set forth in § 18–3.704 shall be included in the contract.

§ 18–7.403–10 Notice to the Government of labor disputes.

Whenever work is to be performed and a work stoppage would result in delay in an urgent NASA program, insert the clause set forth in § 18–7.104–4.

§ 18–7.403–11 Contractor and subcontractor certified cost or pricing data.

In accordance with the requirements of §18–3.807–3, insert the clause set forth in § 18–3.807–4.

§ 18–7.403–12 Limitation on withholding of payments.

In accordance with the requirements of § 18–7.104–21, insert the clause set forth therein.

§ 18–7.403–13 Small business subcontracting program.

In accordance with the requirements of § 18–1.707, insert the clause set forth in § 18–707–3(b).

§ 18–7.403–14 Changes to make-or-buy program.

In accordance with the requirements of § 18–3.901, insert the clause set forth therein.

§ 18–7.403–16 Flight risks.

In contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor by the Government, insert the clause set forth in § 18–10.504.

§ 18–7.403–23 General Services Administration supply sources.

The clause set forth in § 18–5.907 shall be included in contracts in accordance with instructions contained therein.

§ 18–7.403–24 Labor surplus area subcontracting program.

In accordance with the requirements of § 18–1.805–3(b), insert the clause set forth therein.

§ 18–7.403–50 Data requirements.

In accordance with the requirements of § 18–9.202, insert the clause set forth in § 18–9.202–1(e).

§ 18–7.403–51 Approval of contract.

The clause set forth in § 18–7.104–51 shall be included in contracts which require approval by the Director of Procurement.

§ 18–7.403–52 Preference for U.S.-flag vessels.

Under the circumstances described in Subpart 18–1.14, insert the clause set forth in § 18–1.1402–3.

§ 18–7.403–53 Limitation of Government's obligation.

Where funding to complete the entire contract is not available at the time it is entered into, the clause set forth in § 18–7.204–53 shall be included in the contract, with an implementing Schedule provision. The specific approval of the Director of Procurement is not required for the use of the clause when the provisions of § 18–7.403–53 are otherwise applicable.

§ 18–7.403–55 NASA PERT system.

In accordance with the requirements of § 18–7.204–55, insert the clause set forth therein.

§ 18–7.403–56 NASA financial management reporting.

Insert the appropriate clauses set forth in § 18–7.204–56 in accordance with the requirements set forth therein.

§ 18–7.403–57 Key personnel and facilities.

In accordance with the requirements of § 18–1.352, insert the clause set forth therein.

§ 18–7.403–58 Safety and health.

In accordance with the requirements of Subpart 18–1.52, insert the clause set forth in § 18–1.5204.

§ 18–7.403–59 Nonuse of foreign-flag vessels engaged in Cuban or North Vietnam trade.

In accordance with the requirements of § 18–1.1410, insert the clause set forth therein.

§ 18–7.403–60 Report on NASA subcontracts.

In accordance with the requirements of § 18–16.902, insert the clause set forth therein.

§ 18–7.403–61 Rights in data for potentially hazardous items.

In accordance with the requirements of § 18–9.204–52, insert the clause set forth in § 18–9.204–52(c).

§ 18–7.403–62 Potentially hazardous items.

In accordance with the requirements of § 18–1.351, insert the clause set forth therein.

§ 18–7.403–63 Disclosure of unsolicited proposals outside Government.

In accordance with the requirements of § 18–1.304–2(f), insert the clause set forth therein.

§ 18–7.403–64 Financial reporting of Government-owned space hardware.

In accordance with the requirements of § 18–7.204–64, insert the clause set forth therein.

§ 18–7.404 Additional clauses.

The following clauses shall be inserted in cost-reimbursement type research and development contracts providing for the payment of a fee, when it is desired to cover the subject matter.

§ 18–7.404–1 Changes.

CHANGES (SEPTEMBER 1962)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; (iii) place of inspection, delivery, or acceptance; and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of this contract, or otherwise affects any other provision of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the estimated cost of delivery schedule, or both, (ii) in the amount of any fee to be paid to the Contractor, and (iii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change: *Provided, however*, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

In the foregoing clause, the period of "sixty (60) days" within which any claim for adjustment must be asserted may be reduced to a period of not less than "thirty (30) days."

§ 18–7.404–2 Alterations in contract.

The clause set forth in § 18–7.105–1 may be inserted.

§ 18–7.404–4 Bill of materials.

The clause set forth in § 18–7.105–6 may be inserted pursuant to the provisions thereof.

§ 18–7.404–5 Stop work orders.

The clause set forth in § 18–7.105–8, if modified as prescribed in § 18–7.205–6, is authorized for use under the criteria, and in accordance with the instructions, set forth in § 18–7.105–8.

§ 18–7.404–50 Notice of delay.

In accordance with the instructions in § 18–7.205–50, the clause set forth therein is authorized for use.

§ 18–7.404–52 Date of incurrence of costs.

The clause set forth in § 18–7.205–52 may be inserted.

§ 18–7.404–53 Contractor's independent research program.

When the New Technology of Property Rights in Inventions clause is included in the contract (see § 18–9.101–2) and it is determined that the contractor maintains an independent research program, the clause set forth in § 18–9.101–7 may be included in the Schedule at the contractor's request.

§ 18–7.404–57 Federal, State, and local taxes.

At the discretion of the contracting officer and when requested by the contractor, the clause set forth in § 18–11.402 may be inserted in cost-reimbursement type contracts.

§ 18–7.450 Clauses for cost-reimbursement research and development contracts with nonprofit institutions (including educational institutions).

§ 18–7.450–1 Applicability.

Sections 18–7.451, 18–7.452, and 18–7.453, including their subsections, are applicable to cost-reimbursement type research and development contracts with nonprofit organizations (including educational institutions), as defined in § 18–1.236, which involve no fee or profit.

§ 18–7.451 Required clauses.

Except as otherwise provided in § 18–7.460, the following clauses shall be inserted in all contracts specified in § 18–7.450–1.

§ 18–7.451–1 Definitions.

Insert the clause set forth in § 18–7.103–1. Additional definitions may be included provided they are not inconsistent with such clause or the provisions of this chapter.

§ 18–7.451–2 Limitation of cost.

Insert the clause set forth below.

LIMITATION OF COST (MARCH 1969)

(a) It is estimated that the total cost to the Government for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost then set forth in the Schedule, or if at any time the Contractor has reason to believe that the total cost to the Government for the performance of this contract will be greater or substantially less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

§ 18–7.451–3 Allowable cost and payment.

Insert the clause set forth below.

ALLOWABLE COST AND PAYMENT (JANUARY 1964)

(a) For the performance of this contract, the Government shall pay to the Contractor the cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with:

(i) Part 15, Subpart 3, of the NASA Procurement Regulation as in effect on the date of this contract, except that if the Contractor is not an educational institution the allowable costs shall be determined in accordance with Part 15, Subpart 2, of said Regulation; and

(ii) The terms of this contract.

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

(c) (1) Promptly after receipt of each invoice or voucher, the Government shall, subject to the provisions of paragraph (d) below, make payment thereon as approved by the Contracting Officer.

(2) After payment of an amount equal to eighty percent (80%) of the total estimated cost of performance of this contract set forth in the Schedule, further payment on account of allowable cost shall be withheld until a reserve of either one percent (1%) of such total estimated cost, or ten thousand dollars ($10,000), whichever is less, shall have been set aside.

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

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the

provisions relating to patents and the provisions of (f) below), the Government shall promptly pay to the Contractor any balance of allowable cost which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

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

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

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

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

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

(C) Claims for reimbursement of costs, including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

(D) When there is included in this contract a clause entitled "Data Requirements," claims pursuant to such clause when a written request by the Contracting Officer to furnish data is made within the one (1) year period after final payment.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

The provisions of paragraph (c)(2) of the above clause, which pertains to the withholding of payment of allowable costs, may be omitted.

§ 18–7.451–4 Standards of work.

Insert the clause set forth in § 18–7.302–3.

§ 18–7.451–5 Inspection.

Insert the firs clause set forth in § 18–7.302–4. However, where a more detailed provision covering inspection is desired, as where the primary contract objective is the delivery of end items, rather than designs, drawings, or reports, the Inspection clause set forth in § 18–7.402–5 shall be used.

§ 18–7.451–6 Assignment of claims.

In accordance with the requirements of § 18–7.103–8, insert the clause set forth therein.

§ 18–7.451–7 Examination of records.

Insert the clause set forth in § 18–7.203–7. Pursuant to procedures approved by the Comptroller General, original documentary evidence in support of costs of the transportation of things shall not be required pursuant to paragraph (a)(3) of the Examination of Records clause. In the case of contracts which establish separate periods of performance, the alternate paragraph (a)(4) set forth in § 18–7.203–7(b) may be submitted for the corresponding paragraph of the clause prescribed in § 18–7.203–7(a).

§ 18–7.451–8 Subcontracts.

In accordance with the requirements of § 18–7.402–8, insert the clause set forth therein.

§ 18–7.451–9 Utilization of small business concerns.

In accordance with the requirements of § 18–1.707–3(a), insert the clause set forth therein.

§ 18–7.451–10 Termination for the convenience of the Government.

In accordance with the requirements of § 18–8.704–1, insert the clause set forth therein.

§ 18–7.451–11 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.451–12 Renegotiation.

Insert the clause set forth in § 18–7.103–13.

§ 18–7.451–13 Buy American Act.

In accordance with the requirements of Subpart 18–6.1, insert the clause set forth in § 18–6.104–5.

§ 18–7.451–14 Convict labor.

In accordance with the requirements of Subpart 18–12.2, insert the clause set forth in § 18–12.203.

§ 18–7.451–15 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18–12.604.

§ 18–7.451–16 Contract Work Hours Standards Act—overtime compensation.

Insert the clause set forth in § 18–12.303–1. Note the introductory language required by § 18–12.303–2 for inclusion in contracts with a State or political subdivision thereof.

§ 18–7.451–17 Equal opportunity.

Insert one or the other of the following clauses, as required by and in accordance with the instructions in § 18–12.802: (a) the Equal Opportunity clause set forth in § 18–12.802–1, or (b) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18–12.802–2.

§ 18–7.451–18 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.451–19 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.451–20 Authorization and consent.

Insert the clause set forth in § 18–9.103(b).

§ 18–7.451–21 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.451–22 New technology or property rights in inventions.

In accordance with the requirements of § 18–9.101–2, insert the New Technology or Property Rights in Inventions clause, as appropriate.

§ 18–7.451–23 Rights in data.

If data is to be delivered under the contract, insert the appropriate clause in accordance with the instructions in § 18–9.203.

§ 18–7.451–24 Security requirements.

Insert the clause set forth below only in contracts without fee with educational institutions. In contracts with nonprofit institutions which are not educational institutions, insert the clause set forth in § 18–7.204–12.

SECURITY REQUIREMENTS (SEPTEMBER 1962)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential," or higher.

(b) NASA shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Check List (DD Form 254), or other written notification.

(c) To the extent the Government has indicated as of the date of this contract, or thereafter indicates, security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within his own organization in accordance with the requirements of:

(i) the Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for Safeguarding Classified Information as in effect on the date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department having security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility and representatives of NASA shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through these representatives, determine that the Contractor is not complying with the security requirements of this contract, the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

(e) In the event a change in security requirements, as provided in paragraphs (b) and (c), results (i) in a change in the security classification of this contract or any element thereof from a nonclassified status to a classified status or from a lower classification to a higher classification or (ii) in more restrictive area controls than previously required, the Contractor shall exert every reasonable effort compatible with his established policies to continue the performance of work under the contract in compliance with such change in security classification or requirements. If, despite such reasonable efforts, the Contractor determines that the continuation of work under this contract is not practicable because of such change in security classification or requirements he shall so notify the Contracting Officer in writing.

(f) After receiving such written notification, the Contracting Officer shall explore the circumstances surrounding the proposed change in security classification or requirements and shall endeavor to work out a mutually satisfactory method whereby the Contractor can continue performance of the work under this contract.

(g) If, upon the expiration of fifteen (15) days after receipt by the Contracting Officer of the notification of the Contractor's stated inability to proceed, (i) the application to this contract of such change in security classification or requirements has not been with drawn, or (ii) a mutually satisfactory method for continuing performance of work under this contract has not been agreed upon, the Contractor may request the Contracting Officer to terminate the contract in whole or in part. Thereupon the Contracting Officer shall termniate the contract in whole or in part, as may be appropriate, and such termination shall be deemed a termination under the provisions of the clause of this contract entitled, "Termination for the Convenience of the Government."

(h) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (h) but excluding paragraphs (e), (f), and (g) of this clause. In addition, the Contractor may insert in any subcontract, not involving fee or profit, with an educational institution, and any like lower-tier subcontract entered into thereunder may contain, in lieu of paragraphs (e), (f), and (g) of this clause, appropriate provisions extending to such subcontracts relief consistent with that provided for in those paragraphs, on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved. With respect to subcontracts other than those covered by the preceding sentence, "the mutually satisfactory method" provided for in paragraph (f) above may include a provision amending this contract to provide for an equitable adjustment on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved; and the Contractor may insert in any such subcontract, and any like lower-tier subcontract entered into thereunder may contain, in lieu of paragraphs (e), (f), and (g) of this clause, appropriate provisions with respect to such equitable adjustment. Failure of the Contractor and Contracting Officer to agree to any adjustment pursuant to the preceding sentence shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(i) The Contractor also agrees that he shall determine that any subcontractor proposed by him for the performance of a subcontract hereunder which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance which is still in effect, prior to being accorded access to such classified information.

§ 18–7.451–25 Government property.

In accordance with the requirements of § 18–13.707, insert the appropriate clause set forth therein.

§ 18–7.451–26 Insurance—liability to third persons.

In accordance with the requirements of § 18–7.402–26, insert either the clause set forth in § 18–7.203–22 or the appropriate clause indicated in § 18–7.402–26. When the clause in § 18–7.203–22 is used, the title "Allowable Cost, Fixed-Fee, and Payment" in paragraph (c) will be changed to read "Allowable Cost and Payment."

§ 18–7.451–27 Utilization of concerns in labor surplus areas.

In accordance with the requirements of § 18–1.805–3(a), insert the clause set forth therein.

§ 18–7.451–28 Payment for overtime premiums.

In accordance with the requirements of § 18–12.102, insert the clause as set forth in § 18–12.102–6.

§ 18–7.451–29 Competition in subcontracting.

Insert the clause set forth in § 18–7.104–40.

§ 18–7.451–30 Audit and records.

Insert the clause set forth in § 18–7.104–42.

§ 18–7.451–50 Payment of royalties.

PAYMENT OF ROYALTIES (SEPTEMBER 1962)

Payments by the Contractor of any sum for royalties or patent rights not included in the ordinary purchase price of supplies, materials, or components, shall not constitute items of Allowable Cost hereunder, unless and until approved by the Contracting Officer. Reimbursement to the Contractor on account of any such payments shall not be construed as an admission by the Government of the enforceability, validity or scope or, or title to any of the patents involved, nor shall any such reimbursement constitute a waiver of any rights or defenses respecting such patents.

§ 18–7.451–51 Estimated cost.

Normally, the clause set forth below will be used as the Schedule provision, covering the estimated cost. However, the clause may be modified at the discretion of the contracting officer.

ESTIMATED COST (SEPTEMBER 1962)

The estimated cost of this contract is $_____.

§ 18–7.451–54 Reports of work.

See § 18–7.302–54 for guidance and a clause approved for use.

§ 18–7.451–55 Scientific annd technical information service.

Insert the clause set forth in § 18–7.302–55.

§ 18–7.452 Clauses required to be used when applicable.

Except as otherwise provided in § 18–7.460, the following clauses shall be inserted, when applicable, in all contracts specified in § 18–7.450–1.

§ 18–7.452–1 Clauses for contracts involving construction work.

(a) In accordance with the requirements of Subpart 18–12.4, insert the cost-reimbursement type research and development contracts with educational or nonprofit institutions, where construction work is involved, the clauses listed below, which are set forth in § 18–12.403–1:

Davis-Bacon Act.
Contract Work Hours Standards Act—Overtime Compensation.
Apprentices.
Payrolls and Payroll Records.
Compliance with Copeland Regulations.
Withholding of Funds.
Subcontracts.
Contract Termination—Debarment.

(b) In accordance with the requirements of § 18–6.207, insert in all contracts for construction, except those executed on Standard Form 19 and NASA Form 1379, the clause entitled "Buy American," as set forth in § 18–6.207(c).

§ 18–7.452–2 Filing of patent applications.

In accordance with the requirements of § 18–9.107, insert the clause set forth therein.

§ 18–7.452–7 Priorities, allocations, and allotments.

In accordance with the requirements of § 18–1.307–2, insert the clause set forth therein.

§ 18–7.452–8 Soviet-controlled areas.

In accordance with the requirements of § 18–6.403, insert the clause set forth therein and include in the Schedule of the contract the list of Soviet-controlled areas set forth in § 18–6.401–2.

§ 18–7.452–9 Negotiated overhead rates.

Where negotiated overhead rates are to be used pursuant to Subpart 18–3.7,

the appropriate clause set forth in § 18–3.704 shall be included in the contract.

§ 18–7.452–10 Notice to the Government of labor disputes.

Whenever work is to be performed and a work stoppage would result in delay in an urgent NASA program, insert the clause set forth in § 18–7.104–4.

§ 18–7.452–11 Contractor and subcontractor certified cost or pricing data.

In accordance with the requirements of § 18–3.807–3, insert the clause set forth in § 18–3.807–4.

§ 18–7.452–12 Limitation on withholding of payments.

In accordance with the requirements of § 18–7.104–21, insert the clause set forth therein.

§ 18–7.452–13 Small business subcontracting program.

In accordance with the requirements of § 18–1.707, insert the clause set forth in § 18–1.707–3(b).

§ 18–7.452–14 Changes to make-or-buy program.

In accordance with the requirements of § 18–3.901, insert the clause set forth therein.

§ 18–7.452–23 General Services Administration supply sources.

In accordance with the requirements of § 18–5.907, the clause set forth therein shall be included in the contract.

§ 18–7.452–24 Labor surplus area subcontracting program.

In accordance with the requirements of § 18–1.805–3(b), insert the clause set forth therein.

§ 18–7.452–50 Data requirements.

In accordance with the requirements of Subpart 18–9.2, insert the clause set forth in § 18–9.202–1(e).

§ 18–7.452–51 Approval of contract.

The clause set forth in § 18–7.104–51 shall be included when approval of the contract by the Director of Procurement is required.

§ 18–7.452–52 Preference for U.S.-flag vessels.

Under the circumstances described in Subpart 18–1.14, insert the clause set forth in § 18–1.1402–3.

§ 18–7.452–53 Limitation of Government's obligation.

Where funding to complete the entire contract is not available at the time it is entered into, the clause set forth in § 18–7.204–53 shall be included in the contract, with an implementing Schedule provision. The specific approval of the Director of Procurement is not required for the use of the clause when the provisions of § 18–7.452–53 are otherwise applicable.

§ 18–7.452–55 NASA PERT system.

In accordance with the requirements of § 18–7.204–55, insert the clause set forth therein.

§ 18–7.452–56 NASA financial management reporting.

In accordance with the provisions of § 18–7.204–56, insert the appropriate clause set forth therein.

§ 18–7.452–57 Key personnel and facilities.

In accordance with the requirements of § 18–1.352, insert the clause set forth therein.

§ 18–7.452–58 Safety and health.

In accordance with the requirements of Subpart 18–1.52, insert the clause set forth in § 18–1.5204.

§ 18–7.452–59 Nonuse of foreign-flag vessels engaged in Cuban and North Vietnam trade.

In accordance with the requirements of § 18–1.1410, insert the clause set forth therein.

§ 18–7.452–60 Report on NASA subcontracts.

In accordance with the requirements of § 18–16.902, insert the clause set forth therein.

§ 18–7.452–61 Rights in data for potentially hazardous items.

In accordance with the requirements of § 18–9.204–52, insert the clause set forth in § 18–9.204–52(c).

§ 18–7.452–62 Potentially hazardous items.

In accordance with the requirements of § 18–1.351, insert the clause set forth therein.

§ 18–7.452–63 Disclosure of unsolicited proposals outside Government.

In accordance with the requirements of § 18–1.304–2(f), insert the clause set forth therein.

§ 18–7.452–64 Financial reporting of Government-owned space hardware.

In accordance with the requirements of § 18–7.204–64, insert the clause set forth therein.

§ 18–7.453 Additional clauses.

Except as otherwise provided in § 18–7.460, the following clauses shall be inserted in all contracts prescribed in § 18–7.450–1 if it is desired to cover the subject matter.

§ 18–7.453–1 Changes.

CHANGES (SEPTEMBER 1962)

The Contracting Officer may at any time, by a written order and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs, or specifications; (ii) method of shipment or packing; (iii) place of inspection, delivery, or acceptance; and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of this contract, or otherwise affects any other provision of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the estimated cost of delivery schedule, or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

In the foregoing clause, the period of "sixty (60) days" within which any claim for adjustment must be asserted may be reduced to a period of not less than "thirty (30) days."

§ 18–7.453–2 Alterations in contract.

The clause set forth in § 18–7.105–1 may be inserted.

§ 18–7.453–4 Bill of materials.

The clause set forth in § 18–7.105–6 may be inserted pursuant to the provisions thereof.

§ 18–7.453–50 Notice of delay.

The clause set forth in § 18–7.205–50 is authorized for use when it is desirable to provide for notice by the contractor to the Government of anticipated delays in performance.

§ 18–7.453–52 Date of incurrence of costs.

The clause set forth in § 18–7.205–52 is authorized for use where specific coverages of anticipatory costs is considered desirable.

§ 18–7.453–53 Contractor's independent research program.

In accordance with the instructions in § 18–7.205–53, the clause set forth in § 18–9.101–7 may be inserted.

§ 18–7.453–57 Federal, State, and local taxes.

(See § 18–11.402.)

§ 18–7.453–58 Excusable delays.

The clause set forth in § 18–8.708 may be inserted in the contract.

§ 18–7.460 Short form clauses for cost-reimbursement type research contracts with nonprofit institutions (including educational institutions).

Notwithstanding the provision of §§ 18–7.402, 18–7.403, 18–7.451, and 18–7.452, the clauses set forth or referred to in this paragraph § 18–7.460 shall be used in contracts for basic or applied scientific research at nonprofit institutions of higher education or at nonprofit institutions whose primary purpose is the conduct of scientific research when a short form contract is desired. (See § 18–1.236(c) for the definition of nonprofit institution.)

§ 18–7.460–1 Definitions.

Insert the clause set forth in § 18–7.103–1.

§ 18–7.460–2 Limitation of cost.

Insert the clause set forth in § 18–7.451–2.

§ 18–7.460–3 Government property.

Insert the appropriate clause set forth in § 18–13.707.

§ 18–7.460–5 Insurance — liability to third persons.

In accordance with the requirements of § 18–7.402–26, insert either the clause set forth in § 18–7.203–22 or the appropriate clause indicated in § 18–7.402–26. When the clause in § 18–7.203–22 is used, the title "Allowable Cost, Fixed Fee, and Payment" in paragraph (c) shall be changed to read "Allowable Cost and Payment."

§ 18–7.460–6 Examination of records.

Insert the clause set forth in § 18–7.203–7. Pursuant to procedures approved by the Comptroller General, original documentary evidence in support of costs of the transportation of things will not be required pursuant to paragraph (a)(3) of the "Examination of Records" clause. In the case of contracts which establish separate periods of performance, alternate subparagraph (a)(4), set forth in § 18–7.203–7(b), may be substituted for the corresponding subparagraph of the clause prescribed in § 18–7.203–7(a).

§ 18–7.460–7 Release of information.

Insert the clause set forth in § 18–7.350–5.

§ 18–7.460–8 Property rights in inventions.

Insert the clause set forth in § 18–9.101–5.

§ 18–7.460–9 Data and inspection.

Insert the clause set forth in § 18–9.204–51.

§ 18–7.460–10 Authorization and consent.

Insert the clause set forth in § 18–9.103(b).

§ 18–7.460–11 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.460–12 Security.

Insert the clause set forth in § 18–7.350–6.

§ 18–7.460–13 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.460–14 Termination.

Insert the clause set forth in § 18–8.705–50(b).

§ 18–7.460–15 Buy American Act.

Insert the clause set forth in § 18–6.104–5.

§ 18–7.460–16 Equal opportunity.

Insert one or the other of the following clauses, as required by and in accordance with the instructions in § 18–12.802: (a) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18–12.802–1, or (b) the Equal Opportunity clause set forth in § 18–12.802–2.

§ 18–7.460–17 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.460–18 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.460–19 Convict labor.

Insert the clause set forth in § 18–12.203.

§ 18–7.460–20 Allowable cost and payment.

Insert the clause set forth in § 18–7.451–3.

§ 18–7.460–21 Audit and records.

Insert the clause set forth in § 18–7.104–42.

§ 18–7.461 Additional clauses.

When circumstances justify it, the clauses prescribed in §§ 18–7.402, 18–7.403, 18–7.404, 18–7.451, 18–7.452, and 18–7.453, may be added to or substituted for the clauses set forth in §§ 18–7.460–1 through 18–7.460–19; however, care should be exercised to ensure that there are no inconsistencies.

Subpart 18–7.5—Clauses for Personal Services Contracts

CROSS REFERENCE: See § 18–3.204–3.

Subpart 18–7.7—Clauses for Facilities Contracts

§ 18–7.701 Applicability.

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

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

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

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

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

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

§ 18–7.702 Required clauses for consolidated facilities contracts.

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

§ 18–7.702–1 Definitions.

DEFINITIONS (OCTOBER 1967)

As used throughout this Contract the following terms shall have the meanings set forth below:

(a) The term "Administrator" means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Administrator.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this Contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this Contract, the term "Subcontracts" includes purchase orders under this Contract.

(d) The term "NASA" means the National Aeronautics and Space Administration.

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

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

§ 18–7.702–2 Facilities to be provided.

FACILITIES TO BE PROVIDED (OCTOBER 1967)

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

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

§ 18–7.702–3 Late delivery, diversion, and substitution.

LATE DELIVERY, DIVERSION, AND SUBSTITUTION (MARCH 1963)

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

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

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

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

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

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

orders or subcontracts therefor, shall be at Government expense.

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

§ 18–7.702–4 Changes.

CHANGES (MARCH 1963)

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

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

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted may be varied not to exceed "sixty (60) days."

§ 18–7.702–5 Representations and warranties.

REPRESENTATIONS AND WARRANTIES (MARCH 1963)

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

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

§ 18–7.702–6 Inspection.

INSPECTION (OCTOBER 1967)

(a) The Facilities and work called for by this contract shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the Facilities and work called for by this contract. The Government, through any authorized representative, may inspect such Facilities and work at the plant or plants of the Contractor or any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work to be performed by the Contractor under this contract or any related procurement contract.

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

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

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

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

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

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

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

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

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

§ 18–7.702–7 Excusable delays.

Insert the clause set forth in § 18–8.708.

§ 18–7.702–8 Location of the facilities.

LOCATION OF THE FACILITIES (MARCH 1963)

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

§ 18–7.702–9 Government bills of lading.

GOVERNMENT BILLS OF LADING (MARCH 1963)

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

§ 18–7.702–10 Allowable cost and payment.

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

ALLOWABLE COST AND PAYMENT (OCTOBER 1967)

(a) For the performance of any work, duty, or obligation by the Contractor under this contract which is provided herein to be at Government expense, the Government shall pay the Contractor the cost thereof, determined by the Contracting Officer to be allowable in accordance with (i) Part 15, Subpart 5, of the NASA Procurement Regulation as in effect on the date of this contract and (ii) the terms of this contract.

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

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

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

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

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by

the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

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

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

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

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

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

(b) In paragraph (f)(ii)(B) of the foregoing clause, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor: *Provided*, That a corresponding increase is made in the period for retention of records required in paragraph (a)(4) of the "Examination of Records" clause prescribed by § 18–7.702–13.

§ 18–7.702–11 Limitation of cost.

LIMITATION OF COST (AUGUST 1969)

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

(b) The Government shall not be obligated to reimburse the Contractor under this contract for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue the performance of work under this contract which is provided herein to be at Government expense, or to incur costs therefor, in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performing such work. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

§ 18–7.702–12 Use and charges.

USE AND CHARGES (APRIL 1969)

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

(i) Prime contracts with the Government which specifically authorize use without charge,

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

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

(b) Subject to the payment of a rental therefor, the Contractor may use all or part of the Facilities in the performance of work other than that specified in paragraph (a) above, as authorized in writing by the Contracting Officer or as specifically provided in the Schedule. Use so authorized shall not be construed to constitute a waiver of any rights the Government may have under this contract to terminate the Contractor's right to use all or any part of the Facilities. The amount of rental to be paid for the right to use the Facilities under this paragraph (b) shall be determined in accordance with the following procedures.

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

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

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

(iii) For the purpose of determining the amount of rental due under subparagraph (2) below, the rental period shall be not less than 1 month nor more than 6 months, as may be mutually agreed to.

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

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

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

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

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

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

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

(e) If the Contractor uses any item of the Facilities without authorization, the Contractor shall be liable for the full monthly rental, without credit, for such item for each month or part thereof in which such unauthorized use occurs; *Provided however*, That the installation Director (or the Director, Headquarters Administration Office for the Headquarters Contracts Division) may, in writing, waive the Contractor's liability for such unauthorized use if he determines that the Contractor exercised reasonable care to prevent such unauthorized use. In this latter event, the Contractor shall be liable only

for the rental that would otherwise be due under this clause. The acceptance of any rental by the Government hereunder shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor growing out of the Contractor's unauthorized use of the Facilities or any other failure to perform this contract according to its terms.

ATTACHMENT

RENTAL RATES

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

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

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

Classification Federal Supply Code Nos.	*Description*
3411 through 3419	Machine Tools
3441 through 3449	Secondary Metal-forming Machnery

The following rates shall apply:

Age of equipment	*Monthly rental rate (percent)*
0 to 2 years	3
Over 2 to 3 years	2
Over 3 to 6 years	1.5
Over 6 to 10 years	1.0
Over 10 years	.75

The age of each item of the Facilities shall be based on the year in which it was manufactured, with an annual birthday on January 1, of each year thereafter. On January 1, following the date of manufacture, the item shall be considered 1 year old; and on each succeeding January 1st, it shall become 1 year older. For example, if an item of equipment is manufactured on July 15, 1958, it will be considered to be 1 year old on January 1, 1959, 2 years old on January 1, 1960, 3 years old on January 1, 1961, and so forth. The item of equipment will be considered "over 2 years old" on and after January 1, 1960, "over 6 years old" on and after January 1, 1964, and "over ten years old" on and after January 1, 1968.

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

§ 18–7.702–13 Examination of records.

In accordance with the instructions in § 18–7.203–7, insert the clause set forth therein, except that the first sentence of paragraph (a)(1) shall be deleted and the following sentence inserted in lieu thereof.

The Contractor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of this contract and to the use of and charges for the use of the Facilities (hereinafter collectively called "the records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies, and services, and other costs and expenses of whatever nature, for which reimbursement is claimed under the provisions of this contract, all use of the Facilities, and all charges to be made for the use of the Facilities. (October 1969)

§ 18–7.702–14 Maintenance.

MAINTENANCE (OCTOBER 1967)

(a) Except as otherwise provided in the Schedule, the Contractor shall perform normal maintenance of the Facilities in accordance with sound industrial practice, including protection, preservation, maintenance, and repair of the Facilities, and with respect to equipment, normal parts replacement.

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

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

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

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

(f) The Contractor's obligation under this clause shall continue, with respect to each item of the Facilities, until such item is removed, abandoned, or otherwise disposed of, until expiration of the one hundred and eighty (180) day period prescribed in paragraph (c) of the "Disposition of the Facilities" clause, or until the Contractor has discharged his obligations under this contract with respect to such items, whichever last occurs.

§ 18–7.702–15 Title.

TITLE (OCTOBER 1967)

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

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

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

§ 18–7.702–16 Access.

ACCESS (MARCH 1963)

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

§ 18–7.702–17 Property control.

PROPERTY CONTROL (OCTOBER 1967)

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

§ 18–7.702–18 Liability for the facilities.

LIABILITY FOR THE FACILITIES (OCTOBER 1967)

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

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

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

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

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

(ii) A failure, on the part of the Contractor, due to the willful misconduct or lack

of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (i) above—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Pay such proceeds to the Government.

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

§ 18–7.702–19 Insurance—liability to third persons.

INSURANCE—LIABILITY TO THIRD PERSONS (MARCH 1963)

(a) The Contractor shall procure and thereafter maintain workmen's compensation, employer's liability, comprehensive general liability (bodily injury) and comprehensive automobile liability (bodily injury and property damage) insurance, with respect to performance of work at Government expense under this contract, and such other insurance as the Contracting Officer may from time to time require with respect to performance of work at Government expense under this contract: *Provided*, That the Contractor may with the approval of the Contracting Officer, maintain a self-insurance program: *And provided further*, That with respect to workmen's compensation the Contractor is qualified pursuant to statutory authority. All insurance required pursuant to the provisions of this paragraph shall be in such form, in such amounts, and for such periods of time, as the Contracting Officer may from time to time require or approve, and with insurers approved by the Contracting Officer.

(b) The Contractor agrees, to the extent and in the manner required by the Contracting Officer to submit for the approval of the Contracting Officer any other insurance maintained by the Contractor in connection with the performance of work at Government expense under this contract and for which the Contractor seeks reimbursement hereunder.

(c) The Contractor shall be reimbursed: (i) For the portion allocable to this contract of the reasonable cost of insurance as required or approved pursuant to the provisions of this clause, and (ii) for liabilities to third persons for loss of or damage to property (other than property (A) owned, occupied, or used by the Contractor or rented to the Contractor, or (B) in the care, custody, or control of the Contractor), or for death or bodily injury, not compensated by insurance or otherwise, arising out of the performance of work at Government expense under this contract, whether or not caused by the negligence of the Contractor, his agents, servants, or employees, provided such liabilities are represented by final judgments or by settlements approved in writing by the Government, and expenses incidental to such liabilities, except liabilities (I) for which the Contractor is otherwise responsible under the express terms of the clause or clauses, if any, specified in the Schedule, or (II) with respect to which the Contractor has failed to insure as required or maintain insurance as approved by the Contracting Officer, or (III) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representaitves, who has supervision or direction of (1) all or substantially all of the Contractor's business, or (2) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (3) a separate and complete major industrial operation in connection with the performance of work at Government expense under this contract. The foregoing shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of work at Government expense under this contract, other than insurance required to be submitted for approval or required to be procured and maintained pursuant to the provisions of this clause, provided such cost would constitute

allowable cost under the clause of this contract entitled "Allowable Cost and Payment".

(d) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of work at Government expense under this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract, and the risk of which is then uninsured or in which the amount claimed exceeds the amount of coverage. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. If the amount of the liability claimed exceeds the amount of coverage, the Contractor shall authorize representatives of the Government to collaborate with counsel for the insurance carrier, if any, in settling or defending such claim. If the liability is not insured or covered by bond, the Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith: *Provided, however,* That the Contractor may, at his own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

§ 18–7.702–20 Indemnification of the Government.

INDEMNIFICATION OF THE GOVERNMENT (MARCH 1963)

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

§ 18–7.702–21 Stop work orders.

STOP WORK ORDERS (MARCH 1963)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the acquisition, construction, or installation work called for by the Schedule for a period of ninety (90)[1] days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall, at Government expense, forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90)[1] days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

(i) Cancel the Stop Work Order, or

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

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

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

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

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

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

§ 18–7.702–22 Termination of work.

TERMINATION OF WORK (OCTOBER 1967)

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

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

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

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

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

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

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

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

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

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

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

(A) Shall not be required to extend credit to any purchaser, and

(B) May acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

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

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

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining any item of reimbursable cost under this clause. At any time after expiration of the plant clearance period, as defined in Part 8 of the NASA Procurement Regulation, in effect as of the date of this contract, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter the Government will accept such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than 1 year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such 1-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 1-year period of any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Part 8 of the NASA Procurement Regulation in effect as of the date of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

[1] This clause may provide for less than 90 days.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by Part 8 of the NASA Procurement Regulation in effect as of the date of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to costs to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by Part 8 of the NASA Procurement Regulation in effect as of the date of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

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

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

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

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

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

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

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

§ 18–7.702–23 Notice of use of the facilities.

NOTICE OF USE OF THE FACILITIES (APRIL 1969)

The Contractor shall notify the Contracting Officer in writing whenever—

(i) Use of all Facilities for Government work, in any quarterly period, is on an average less than 75 percent of the total use of the Facilities.

(ii) Any item of the Facilities is no longer needed or usable for purposes of performing existing Government contracts or subcontracts for which use has been authorized.

§ 18–7.702–24 Termination of the use of the facilities.

TERMINATION OF THE USE OF THE FACILITIES (MARCH 1963)

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

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

§ 18–7.702–25 Period of this contract.

PERIOD OF THIS CONTRACT (MARCH 1963)

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

A period or less than 5 years may be specified where appropriate. A period of more than 5 years may be specified only in accordance with the deviation procedures of § 18–1.109.

§ 18–7.702–26 Disposition of the facilities.

DISPOSITION OF THE FACILITIES (OCTOBER 1967)

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

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

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

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

(c) Within one hundred and eighty (180) days after the Contractor accounts for any Facilities pursuant to paragraph (b) above, the Contracting Officer shall give written notice to the Contractor as to the disposition thereof, except as otherwise provided in paragraph (e) below. In effecting such disposition, the Government may either:

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

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

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

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

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

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

(d) If the Contracting Officer fails to give the written notice required by paragraph (c) above within the prescribed one hundred and eighty (180) day period, or within thirty (30) days after notice as hereinafter provided, the Contractor may, upon not less than thirty (30) days' written notice to the Government and at Government risk and expense, (i) retain the Facilities in place or (ii) remove any of the affected severable Facilities located in Contractor-owned buildings or property and store them elsewhere.

at the Contractor's plant or in a public insured warehouse, in accordance with sound practice and in a manner compatible with their security classification, if any. Except as provided in this paragraph, the Government shall not be liable to the Contractor for failure to give the written notice required by paragraph (c) above.

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

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

(g) The Contractor shall, within a reasonable time after the expiration of the one hundred and eighty (180) day period specified in paragraph (c) above, remove all property owned by him from land or buildings owned or acquired by the Government and take such action as the Contracting Officer may direct in writing with respect to restoring such land or buildings, insofar as they are affected by the installation therein of the Contractor's property, to their condition prior to such installation.

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

§ 18–7.702–27 Failure to perform.

FAILURE TO PERFORM (MARCH 1963)

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

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

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

§ 18–7.702–28 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.702–29 Security requirements.

SECURITY REQUIREMENTS (MARCH 1963)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential" or higher.

(b) NASA shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Check List (DD Form 254), or other written notification.

(c) The Contractor agrees to execute, if he has not already done so, a Security Agreement (DD Form 441) with the Government, represented by the Military Department assigned security cognizance over the Contractor's facility. To the extent the Government has indicated, as of the date of this contract, or thereafter indicates, a security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within its own organization in accordance with the requirements of:

(i) The Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for safeguarding Classified Information in effect on the date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) Any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department assigned security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility, and representatives of NASA, shall have the right to inspect at reasonable intervals the procedures, methods and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through these representatives, determine that the Contractor is not complying with the security requirements of this contract, the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

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

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

(g) The Contractor also agrees that he shall determine that any subcontractor proposed by him for the furnishing of supplies and services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information.

§ 18–7.702–30 Authorization and consent.

Insert the clause set forth in § 18–9.103(a) or § 18–9.103(b), as appropriate.

§ 18–7.702–31 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.702–33 Subcontracts.

Insert the clause set forth in § 18–7.203–8, except that paragraph (a) of the clause shall be appropriately modified to delete references to facilities and special tooling.

§ 18–7.702–34 Utilization of small business concerns.

Insert the clause set forth in § 18–1.707–3(a).

§ 18–7.702–35 Utilization of concerns in labor surplus areas.

Insert the clause set forth in § 18–1.805–3(a).

§ 18–7.702–36 Buy American Act.

Insert the clause set forth in § 18–6.104–5.

§ 18–7.702–37 Assignment of claims.

Insert the clause set forth in § 18–7.103–8.

§ 18–7.702–38 Renegotiation.

Insert the clause set forth in § 18–7.103–13.

§ 18–7.702–39 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.702–41 Covenant against contingent fees.

Insert the clause set forth in §18–1.503.

§ 18–7.702–42 Payment for overtime premiums.

In accordance with the requirements of of § 18–12.102, insert the clause in § 18–12.102–6.

§ 18–7.702–43 Convict labor.

In accordance with the requirements of § 18–12.202, insert the clause set forth in § 18–12.203.

§ 18–7.702–44 Equal opportunity.

Insert one or the other of the following clauses, as required by and in accordance with the instructions in § 18–12.802: (a) the Equal Opportunity clause set forth in § 18–12.802–1, or (b) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18–12.802–2.

§ 18–7.702–45 Walsh-Healey Public Contracts Act.

Insert the Clause set forth in § 18–12.605.

§ 18–7.702–46 Contract Work Hours Standards Act—overtime compensation.

Insert the appropriate clause set forth in § 18–12.303.

§ 18–7.702–47 Contractor and subcontractor certified cost or pricing data.

In accordance with the requirements of § 18–3.807–3, insert the clause set forth in § 18–3.807–4.

§ 18–7.702–48 Audit and records.

Insert the clause set forth in § 18–7.104–42, except that paragraph (a) thereof shall be modified to read as follows:

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

§ 18–7.702–50 Competition in subcontracting.

Insert the clause set forth in § 18–7.104–40.

§ 18–7.702–51 Interest.

Insert the clause set forth in § 18–7.103–53, except in contracts with nonprofit organizations.

§ 18–7.702–52 Notice to the Government of labor disputes.

Insert the clause set forth in § 18–7.104–4.

§ 18–7.702–53 General Services Administration supply sources.

The clause set forth in § 18–5.907 will be included in contracts in accordance with the instructions set forth therein.

§ 18–7.702–54 Limitation on withholding of payments.

LIMITATION ON WITHHOLDING OF PAYMENTS (MARCH 1963)

If more than one clause or schedule provision of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for work performed under this contract, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or schedule provision at that time; *Provided*, That this limitation shall not apply to:

(i) Withholdings pursuant to any clause relating to wages or hours of employees;

(ii) Withholdings not specifically provided for by this contract; and

(iii) The recovery of overpayments.

§ 18–7.702–55 Payment of royalties.

In accordance with the instructions of § 18–9.108, insert the appropriate clause set forth therein.

§ 18–7.702–56 Property listings.

PROPERTY LISTINGS (JULY 1968)

(a) Within thirty (30) days of receipt of written request from the Contracting Officer, the contractor shall furnish an up-to-date summary statement of all facilities for which he is accountable under this contract. The summary statement used in support of the clause entitled "Use and Charges" of this contract; shall contain the following information:

(i) Land, land preparations, and land installations other than those items specified in (ii) below—total acquisition cost.

(ii) Buildings and building installations other than those specified in (iii) below—total acquisition cost.

(iii) Machinery, production equipment, machine tools, FSC Code Number 3411 through 3419, and secondary metal—forming machinery, FSC Numbers 3441 through 3449—number of items and total acquisition cost of items in each of the following age categories: 0–2 years; 2–6 years; 6–10 years; and over 10 years of age;

(iv) Electronic test equipment and automotive equipment—total acquisition cost;

(v) Personal property and equipment not covered in (i), (ii), (iii), and (iv) above—total acquisition cost.

Total acquisition cost as referred to above shall be as defined in the "Use and Charges" clause of this contract.

(b) All listings required pursuant to paragraph (a) shall be signed by the Contractor and be submitted to the cognizant Government Property Administrator for verification and forwarding to the Contracting Officer.

(c) In addition to the summary listing required by paragraph (a), the Contractor agrees to furnish a current itemized listing of all Government-owned property accountable under this contract within thirty (30) days of receipt of a written request from the Contracting Officer therefor.

§ 18–7.702–57 Small business subcontracting program.

SMALL BUSINESS SUBCONTRACTING PROGRAM (OCTOBER 1967)

(a) The Contractor agrees to establish and conduct a program to afford small business concerns an equitable opportunity to compete for NASA subcontracts within their capabilities. In this connection, the Contractor shall—

(i) Designate a small business liaison officer, who will (A) maintain liaison with duly authorized representatives of the Government on small business matters, (B) supervise compliance with the clause of this contract entitled "Utilization of Small Business Concerns," and (C) administer the Contractor's Small Business Program;

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

(iii) Insure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate small business participation;

(iv) Maintain records showing (A) whether each prospective subcontractor is a small business concern, and (B) procedures which have been adopted to comply with the policies set forth in this clause;

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

(vi) Submit NASA Form 524 reports in accordance with the instructions contained therein.

(b) A "small business concern" is a concern that meets the pertinent criteria established by the Small Business Administration and set forth in paragraph 1.701 of the NASA Procurement Regulation.

(c) The Contractor further agrees to insert in any subcontract hereunder which is in excess of $500,000 and which contains the clause entitled "Utilization of Small Business Concerns" provisions which shall conform substantially to the language of this clause, including this paragraph (c).

§ 18–7.702–58 Supersedure.

SUPERSEDURE (JULY 1964)

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

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

§ 18–7.702–59 Report on NASA subcontracts.

In accordance with the requirement of § 18–16.902, insert the appropriate clause set forth therein.

§ 18–7.703 Required clauses for facilities acquisition contracts.

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

§ 18–7.703–1 Definitions.

Insert the contract clause set forth in § 18–7.702–1.

§ 18–7.703–2 Facilities to be provided.

Insert the clause set forth in § 18–7.702–2.

§ 18–7.703–3 Late delivery, diversion, and substitution.

Insert the clause set forth in § 18–7.702–3.

§ 18–7.703–4 Changes.

Insert the clause set forth in § 18–7.702–4.

§ 18–7.703–5 Representations and warranties.

Insert the clause set forth in § 18–7.702–5.

§ 18–7.703–6 Inspection.

Insert the clause set forth in § 18–7.702–6.

§ 18–7.703–7 Excusable delays.

Insert the clause set forth in § 18–8.708.

§ 18–7.703–8 Government bills of lading.

Insert the clause set forth in § 18–7.702–9.

§ 18–7.703–9 Allowable cost and payment.

(a) In accordance with the instructions in § 18–7.702–10, insert the contract clause set forth therein.

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

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

(c) If desired, the following additional paragraph may be added to this clause as paragraph (f), in which case paragraph (f) of the clause set forth in § 18–7.702–10 shall be redesignated paragraph (g).

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

§ 18–7.703–10 Limitation of cost.

Insert the clause set forth in § 18–7.702–11.

§ 18–7.703–11 Examination of records.

In accordance with § 18–7.203–7, insert the clauses set forth therein.

§ 18–7.703–12 Title.

Insert the clause set forth in § 18–7.702–15, except that the third sentence of paragraph (a) shall be deleted.

§ 18–7.703–13 Access.

Insert the clause set forth in § 18–7.702–16.

§ 18–7.703–14 Liability for the facilities.

Insert the clause set forth in § 18–702–18, except that the phrase "in accordance with the clause of the contract entitled 'Maintenance'," in paragraph (a)(ii) shall be deleted, and the phrase "in accordance with sound industrial practice" inserted in lieu thereof.

§ 18–7.703–15 Insurance—liability to third persons.

Insert the clause set forth in § 18–7.702–19.

§ 18–7.703–16 Indemnification of the Government.

Insert the clause set forth in § 18–7.702–20.

§ 18–7.703–17 Stop work orders.

Insert the clause set forth in § 18–7.702–21.

§ 18–7.703–18 Termination of work.

Insert the clause set forth in § 18–7.702–22.

§ 18–7.703–19 Failure to perform.

Insert the clause set forth in § 18–7.702–27.

§ 18–7.703–20 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.703–21 Security requirements.

Insert the clause set forth in § 18–7.702–29.

§ 18–7.703–22 Authorization and consent.

Insert the clause set forth in § 18–9.103(a) or § 18–9.103(b), as appropriate.

§ 18–7.703–23 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.703–25 Subcontracts.

Insert the clause set forth in § 18–7.203–8, except that paragraph (a) of the clause shall be appropriately modified to delete references to facilities and special tooling.

§ 18–7.703–26 Utilization of small business concerns.

Insert the clause set forth in § 18–1.707–3(a).

§ 18–7.703–27 Utilization of concerns in labor surplus areas.

Insert the clause set forth in § 18–1.805–3(a).

§ 18–7.703–28 Buy American Act.

Insert the clause set forth in § 18–6.104–5.

§ 18–7.703–29 Assignment of claims.

Insert the clause set forth in § 18–7.103–8.

§ 18–7.703–30 Renegotiation.

Insert the clause set forth in § 18–7.103–13.

§ 18–7.703–31 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.703–33 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.703–34 Payment for overtime premiums.

In accordance with the requirements of § 18–12.102, insert the clause set forth in § 18–12.102–6.

§ 18–7.703–35 Convict labor.

In accordance with the requirements of § 18–12.202, insert the clause set forth in § 18–12.203.

§ 18–7.703–36 Equal opportunity.

Insert one or the other of the following clauses, as required by an in accordance with the instructions in § 18–12.802: (a) the Equal Opportunity clause set forth in § 18–12.802–1, or (b) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18–12.802–2.

§ 18–7.703–37 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18–12.605.

§ 18–7.703–38 Contract Work Hours Standards Act—overtime compensation.

Insert the appropriate clause set forth in § 18–12.303–1.

§ 18–7.703–39 Supersedure.

SUPERSEDURE (OCTOBER 1967)

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

§ 18–7.703–40 Contractor and subcontractor certified cost or pricing data.

In accordance with the requirements of § 18–3.807–3, insert the clause set forth in § 18–3.807–4.

§ 18–7.703–41 Audit and records.

Insert the clause set forth in § 18–7.104–42, except that paragraph (a) thereof shall be modified to read as follows:

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

§ 18–7.703–43 Competition in subcontracting.

Insert the clause set forth in § 18–7.104–40.

§ 18–7.703–44 Interest.

Insert the clause set forth in § 18–7.103–53, except in contracts with nonprofit organizations.

§ 18–7.703–45 Notice to the Government of labor disputes.

Insert the clause set forth in § 18–7.104–4.

§ 18–7.703–46 General Services Administration supply sources.

The clause set forth in § 18–5.907 will be included in contracts in accordance with the instructions set forth therein.

§ 18–7.703–47 Limitation on withholding of payments.

Insert the clause set forth in § 18–7.702–54.

§ 18–7.703–48 Payment of royalties.

In accordance with the instructions of § 18–9.108, insert the appropriate clause set forth therein.

§ 18–7.703–49 Small business subcontracting program.

Insert the clause set forth in § 18–7.702–57.

§ 18–7.703–50 Report on NASA subcontracts.

In accordance with the requirements of § 18–16.902, insert the clause set forth therein.

§ 18–7.704 Required clauses for facilities use contracts.

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

§ 18–7.704–1 Definitions.

Insert the clause set forth in § 18–7.702–1.

§ 18–7.704–2 Use and charges.

Insert the clause set forth in § 18–7.702–12.

§ 18–7.704–3 Allowable cost and payment.

ALLOWABLE COST AND PAYMENT (OCTOBER 1967)

(a) For the performance of any work, duty, or obligation by the Contractor under this contract which is provided herein to be at Government expense, the Government shall pay the Contractor the cost thereof, determined by the Contracting Officer to be allowable in accordance with (i) Part 15, Subpart 5 of the NASA Procurement Regulation in effect as of the date of this contract; and (ii) the terms of this contract.

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

§ 18–7.704–4 Limitation of cost.

Insert the clause set forth in § 18–7.702–11.

§ 18–7.704–5 Examination of records.

In accordance with § 18–7.702–13, insert the clause set forth in § 18–7.203–7.

§ 18–7.704–6 Location of the facilities.

Insert the clause set forth in § 18–7.702–8.

§ 18–7.704–7 Maintenance.

Insert the clause set forth in § 18–7.702–14.

§ 18–7.704–8 Inspection.

Insert the clause set forth in § 18–7.702–6.

§ 18–7.704–9 Title.

Insert the clause set forth in § 18–7.702–15 except that the following paragraph (a) shall be substituted for the corresponding paragraph in that clause:

(a) Title to the Facilities shall remain in the Government. Title to parts replaced by the Contractor in carrying out its normal maintenance obligations pursuant to the clause of this contract entitled "Maintenance" shall pass to and vest in the Government upon completion of their installation in the Facilities.

§ 18–7.704–10 Access.

Insert the clause set forth in § 18–7.702–16.

§ 18–7.704–11 Property control.

Insert the clause set forth in § 18–7.702–17.

§ 18–7.704–12 Representations and warranties.

Insert the clause set forth in § 18–7.702–5.

§ 18–7.704–13 Government bills of lading.

Insert the clause set forth in § 18–7.702–9.

§ 18–7.704–14 Liability for the facilities.

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

§ 18–7.704–15 Indemnification of the Government.

Insert the clause set forth in § 18–7.702–20, deleting the phrase "Except as provided in the 'Insurance—Liability to Third Persons' clause" in the first sentence.

§ 18–7.704–16 Notice of use of the facilities.

Insert the clause set forth in § 18–7.702–23.

§ 18–7.704–17 Termination of the use of the facilities.

Insert the clause set forth in § 18–7.702–24.

§ 18–7.704–18 Period of this contract.

Insert the clause set forth in § 18–7.702–25.

§ 18–7.704–19 Disposition of the facilities.

Insert the clause set forth in § 18–7.702–26.

§ 18–7.704–20 Failure to perform.

Insert the clause set forth in § 18–7.702–27, except that the phrase "Subject to the provisions of the clause hereof entitled 'Excusable Delays'," shall be deleted in paragraph (a).

§ 18–7.704–21 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.704–22 Security requirements.

Insert the clause set forth in § 18–7.702–29.

§ 18–7.704–23 Assignment of claims.

Insert the clause set forth in § 18–7.103–8.

§ 18–7.704–24 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.704–26 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.704–27 Payment for overtime premiums.

In accordance with the requirements of § 18–12.102, insert the clause set forth in § 18–12.102–6.

§ 18–7.704–28 Convict labor.

In accordance with the requirements of § 18–12.202, insert the clause set forth in § 18–12.203.

§ 18–7.704–29 Equal opportunity.

Insert one or the other of the following clauses, as required by and in accordance with the instructions in § 18–12.802: (a) The Equal Opportunity clause set forth in § 18–12.802–1, or (b) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18–12.802–2.

§ 18–7.704–30 Contract Work Hours Standards Act—overtime compensation.

Insert the appropriate clause set forth in § 18–12.303.

§ 18–7.704–31 Supersedure.

Insert the clause set forth in § 18–7.702–58.

§ 18–7.704–33 Audit and records.

Insert the clause set forth in § 18–7.104–42, except that paragraph (a) thereof shall be modified to read as follows:

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

§ 18–7.704–35 Competition in subcontracting.

Insert the clause set forth in § 18–7.104–40.

§ 18–7.704–36 Interest.

Insert the clause set forth in § 18–7.103–53, except in contracts with nonprofit organizations.

§ 18–7.704–37 Property listings.

Insert the clause set forth in § 18–7.702–56.

§ 18–7.705 Clauses required to be used when applicable.

The clauses set forth in this paragraph are to be used with the clauses required for use in (a) Consolidated Facilities Contracts (§ 18–7.702), (b) Facilities Acquisition Contracts (§ 18–7.703), and (c) Facilities Use Contract (§ 18–7.704).

§ 18–7.705–1 Rights in data.

In accordance with the requirements of § 18–9.203, insert the clause in § 18–9.203–1. Particular attention shall be given to obtaining data where necessary to make possible the use or disposal of facilities.

§ 18–7.705–2 Filing of patent applications.

In accordance with the requirements of § 18–9.107, insert the clause set forth therein.

§ 18–7.705–3 Priorities, allocations, and allotments.

In accordance with the requirements of § 18–1.307–2, insert the clause set forth therein.

§ 18–7.705–4 Transfer of title to the facilities.

When it is anticipated, in connection with a contract with a nonprofit institution of higher education or nonprofit organization, that title to equipment may be vested in the contractor, the following clause may be inserted in facilities contracts.

TRANSFER OF TITLE TO THE FACILITIES (OCTOBER 1967)

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

§ 18–7.705–5 Labor standards for construction work.

Except as provided in §§ 18–12.403–3 and 18–12.403–4, every construction contract as this term is defined in § 18–12.402, shall include the following.

LABOR STANDARDS FOR CONSTRUCTION WORK (NOVEMBER 1964)

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

(b) The Contractor shall, in the performance of items of work so determined to be subject to the Davis-Bacon Act, comply with the following clauses set forth in § 18–12.403–1 of the NASA Procurement Regulation in effect as of the date of this contract:

(i) Davis-Bacon Act.
(ii) Contract Work Hours Standards Act—Overtime Compensation.
(iii) Apprentices.
(iv) Payrolls and Payroll Records.
(v) Compliance with Copeland Regulations.
(vi) Withholding of Funds.
(vii) Subcontracts.
(viii) Contract Termination—Debarment.

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

§ 18–7.705–6 Buy American Act—construction contracts.

In accordance with the requirements of § 18–6.207(c), every contract for construction shall include the contract clause set forth therein.

§ 18–7.705–7 Improvements to buildings or land owned by the Government.

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

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

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

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

§ 18–7.705–8 New technology.

In accordance with the requirements of § 18–9.101–2, insert the New Technology clause, as appropriate.

§ 18–7.705–9 Required source for jewel bearings.

In accordance with the requirements of § 18–1.315, insert the clause set forth therein.

§ 18–7.705–10 Changes to make-or-buy program.

In accordance with the requirements of § 18–3.901–4, insert the clause set forth therein.

§ 18–7.705–11 Contractor and subcontractor certified cost or pricing data.

In accordance with the requirements of § 18–3.807–3, insert the clause set forth in § 18–3.807–4.

§ 18–7.705–12 Negotiated overhead rates.

When negotiated overhead rates are to be in contracts with concerns other than educational institutions pursuant to Subpart 18–3.7, insert the contract clause set forth in § 18–3.704–1, except that (a) the reference to the clause of the contract entitled "Allowable Cost, Fixed-Fee and Payment," in paragraph (a) thereof shall be changed to "Allowable Cost and Payment" and (b) the reference to "Part 15, Subpart 2" in paragraph (c) thereof shall be changed to "Part 15, Subpart 5." Where negotiated overrates (postdetermined or predetermined) are to be used in contracts with educational institutions, pursuant to that subpart, insert the appropriate contract clause set forth in § 18–3.704–2, except that reference to "Part 15, Subpart 3", in paragraph (c) of these two clauses shall be changed to "Part 15, Subpart 5."

§ 18–7.705–13 Rights in data for potentially hazardous items.

In accordance with the requirements of § 18–9.204–52, insert the clause set forth in § 18–9.204–52(c).

§ 18–7.705–14 Potentially hazardous items.

In accordance with the requirments of § 18–1.351, insert the clause set forth therein.

§ 18–7.705–15 Safety and health.

In accordance with the requirements of Subpart 18–1.52, insert the clause set forth in § 18–1.5204.

Subpart 18–7.9—Clauses for Time and Material and Labor Hour Contracts

§ 18–7.900 Scope of subpart.

This subpart sets forth uniform contract clauses for use in time and material and labor hour types of contracts as described in §§ 18–3.406–1 and 18–3.406–2.

§ 18–7.901 Required clauses.

The following clauses shall be inserted in all time and material contracts and labor hour contracts. In labor hour contracts, the provisions governing the reimbursement of material costs may be deleted.

§ 18–7.901–1 Definitions.

Insert the contract clause set forth in § 18–7.103–1. Additional definitions may be included in such clause provided they are not inconsistent with such clause or the provisions of this chapter.

§ 18–7.901–2 Changes.

CHANGES (JUNE 1966)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs, or specifications; (ii) method of shipment or packing; (iii) place of delivery; and (iv) the amount of Government-furnished property. If any such change requires an increase or decrease in any hourly rate or in the ceiling price provided for in this contract, or in the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made in the (i) ceiling price, (ii) hourly rates, (iii) delivery schedule, and (iv) in such provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change: *provided, however*, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted may be increased to a period of not more than "sixty (60) days."

§ 18–7.901–3 Excusable delays.

Insert the clause set forth in § 18–8.708.

§ 18–7.901–4 Termination.

TERMINATION (JUNE 1966)

(a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time, in part:

(i) Whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten (10) days (or such longer periods as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or

(ii) Whenever for any reason the Contracting Officer shall determine that such termination is in the best interests of the Government.

Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (i) above, it is determined for any reason that the Contractor was not in default pursuant to (i), or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (ii), above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

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

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

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

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

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

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

(vi) Transfer title (to the extent that title has not already been transferred) and in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (B) the completed or partially completely plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government, and (C) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract;

(vii) Use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above: *Provided, however,* That the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

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

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

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting any amount due or owing under this clause. At any time after expiration of the plant clearance period, as defined in Part 8, NASA Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list. Any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than 1 year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such 1-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 1-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Part 8 of the NASA Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by Part 8 of the NASA Procurement Regulation in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination or work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d) above, as to the amounts to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by Part 8 of the NASA Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination, and shall pay to the Contractor the amount determined as follows:

(i) If the termination of the contract is determined to be for the convenience of the Government, there shall be included—

(A) An amount for direct labor hours (as defined in the Schedule of the contract) which shall be determined by multiplying the number of direct labor hours expended prior to the effective date of the Notice of Termination by the hourly rate or rates set forth in the Schedule, less any hourly rate payments theretofore made to the Contractor;

(B) An amount (computed pursuant to the provisions of the contract providing for payment for materials) for material expenses incurred prior to the effective date of the Notice of Termination, not previously paid to the Contractor for the performance of this contract;

(C) An amount for labor and material expenses computed as if the expenses were incurred prior to the effective date of the termination reasonably incurred after the effective date of the Notice of Termination with the approval of or as directed by the Contracting Officer; *Provided,* That the Contractor shall discontinue such expenses as rapidly as practicable;

(D) To the extent not included in (A), (B), and (C) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of this contract; and

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

(ii) If the termination of the contract is for the default of the Contractor, there shall be included the amounts computed in accordance with (i) above except there shall not be included—

(A) Any amount for the preparation of the Contractor's settlement proposal; or

(B) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.

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

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

(h) In the event of a partial termination, the hourly rates for direct labor hours with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

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

§ 18–7.901–5 Government property.

Insert the clause set forth in § 18–13.703 except that:

(a) The phrase "estimated cost, fixed-fee or delivery or performance dates, or all of them," appearing in lines 14, 15, 23, and 24 of paragraph (a) shall be deleted and the phrase "ceiling price, hourly rate, the delivery or performance date, or all of them," substituted therefor;

(b) Paragraph (i) shall be deleted, and paragraph (i) of the clause set forth in § 18–13.702(a) substituted therefor; and

(c) Add to the end of (g)(3), the following:

For any such repairs or renovations so directed, the Contracting Officer shall, upon written request of the Contractor, equitably adjust the ceiling price, hourly rate, delivery or performance date, or all of them in accordance with the procedures provided for in the clause of this contract entitled "Changes". In any such equitable adjustment due regard shall be given to the liability of the Contractor as determined under (1) above.

§ 18–7.901–6 Payments.

PAYMENTS (JUNE 1966)

The Contractor shall be paid as follows upon the submission of invoices or vouchers approved by the Contracting Officer.

(a) Hourly Rate.

(1) The amounts computed by multiplying the appropriate hourly rate, or rates, set forth in the Schedule by the number of direct labor hours performed, which rates shall include wages, overhead, general and administrative expense and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more freqeunt intervals, if approved by the Contracting Officer), to the Contracting Officer or his designee. The Contractor will substantiate vouchers by evidence of actual payment and by individual daily job timecards or such other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract, and subject to the provisions of (e) below, make payment thereon as approved by the Contracting Officer.

(2) Unless otherwise set forth in the Schedule, five percent (5%) of the amount due under this paragraph (a) shall be withheld from each payment by the Contracting Officer but the total amount withheld shall not exceed $50,000. Such amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) hereof.

(3) Unless provisions of the Schedule hereof otherwise specify, the hourly rate or rates set forth in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates will be negotiated. Failure to agree upon these overtime rates will be treated as a dispute under the "Disputes" clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(b) *Materials and Subcontracts.*

(1) Allowable costs of direct materials shall be determined by the Contracting Officer in accordance with Subpart 2, Part 15, of the NASA Procurement Regulation in effect on the date of this contract. Reasonable and allocable material handling costs may be included in the charge for material at cost to the extent they are clearly excluded from the hourly rate. The Contrator shall support all material costs claimed by submitting paid invoices or storeroom requisitions, or by other substantiation acceptable to the Contracting Officer. Direct materials, as referenced by this clause, are defined as those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of such product.

(2) The cost of subcontracts which are authorized pursuant to the "Subcontracts" clause hereof shall be reimbursable costs hereunder, provided such costs are consistent with subparagraph (3) below. Reimbursable cost in connection with subcontracts shall be limited to the amounts actually required to be paid by the Contractor to the subcontractor and shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, which costs are included in the hourly rate or rates payable under (a)(1) above.

(3) The Contractor shall, to the extent of his ability, procure materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of such benefits, it shall promptly notify the Contracting Officer to that effect, and give the reason therefor. Credit shall be given to the Government for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable, commissions, and other amounts which have been accrued to the benefit of the Contractor, or would have so accrued except for the fault or neglect of the Contractor. Such benefits lost through no fault or neglect on the part of the Contractor, or lost through fault of the Government, shall not be deducted from gross costs.

(c) It is estimated that the total cost to the Government for the performance of this contract will not exceed the ceiling price set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reasons to believe that the hourly rate payments and material costs which will accrue in the performance of his contract in the next succeeding thirty (30) days, when added to all other payments and costs previously accrued, will exceed eighty-five percent (85%) of the ceiling price then set forth in the Schedule, the Contractor shall notify the Contracting Officer to that effect giving his revised estimate of the total price to the Government for the performance of this contract, together with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for the performance of this contract will be substantially greater or less than the stated ceiling price, the Contractor shall so notify the Contracting Officer, giving his revised estimate of the total price for the performance of this contract, together with supporting reasons and documentation. If at any time during the performance of this contract, the Government has reason to believe that the work to be required in the performance of this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(d) The Government shall not be obligated to pay the Contractor any amount in excess of the ceiling price set forth in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such ceiling price has been increased and shall have specified in such notice a revised ceiling which shall

thereupon constitute the ceiling price for performance under this contract. When and to the extent that the ceiling set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price prior to the increase shall be allowable to the same extent as if such hours expended and material costs had been incurred after such increase in the ceiling price.

(e) At any time or times prior to final payment under this contract the Contracting Officer may cause to be made such audit of the invoices or vouchers and substantiating material as shall be deemed necessary. Each payment theretofore made shall be subject to reduction to the extent of amounts which are found by the Contracting Officer not to have been properly payable, and shall also be subject to reduction for overpayments, or to increase for underpayments, on preceeding invoices or vouchers. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all provisions of this contract (including, without limitation, provisions relating to patents and the provisions of (f) and (g) below), the Government shall as promptly as may be practicable pay any balance due and owing the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as may be practicable following completion of the work under this contract, but in no event later than one (1) year (or such longer period as the Contracting Officer may, in his discretion, approve in writing) from the date of such completion.

(f) The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Specified claims in stated amounts, or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

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

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

(g) The Contractor agrees that any refunds, rebates, or credits (including any interest thereon) accruing to or received by the Contractor or any assignee, which arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Government. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of such refunds, rebates, or credits (including any interest thereon) in form and substance satisfactory to the Contracting Officer.

The following may be inserted as paragraph (b)(4) in the foregoing "Payments" clause where 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, and in accordance with the limitations contained in § 18–3.406–1(d)(i) and (ii):

(4) 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 price to be paid for such material, notwithstanding (b)(1), above, shall be on the basis of an established catalog or list price, in effect when the 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.

§ 18–7.901–7 signment of claims.

In accordance with § 18–7.103–8, insert the clause set forth therein.

§ 18–7.901–8 Disputes.

Insert the clause set forth in § 18–7–103.12.

§ 18–7.901–9 Convict labor.

Insert the clause set forth in § 18–12.203.

§ 18–7.901–10 Subcontracts.

SUBCONTRACTS (JUNE 1966)

(a) No contract shall be made by the Contractor for the furnishing of any of the work herein contracted for without the written approval of the Contracting Officer. For the purpose of this clause, purchase of raw material or commercial stock items shall not be considered work.

(b) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-percentage-of-cost basis.

§ 18–7.901–11 Contract Work Hours Standards Act—overtime compensation.

Insert the clause set forth in § 18–12.303–1.

§ 18–7.901–12 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18–12.605.

§ 18–7.901–13 Equal opportunity.

In accordance with the instructions in § 18–12.802–1, insert the clause set forth therein.

§ 18–7.901–14 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.901–15 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.901–16 Audit and records.

Insert the clause set forth in § 18–7.104–42.

§ 18–7.901–17 Examination of records.

In accordance with § 18–7.203–7, insert the clause set forth therein.

§ 18–7.901–19 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18–9.105.

§ 18–7.901–20 Authorization and consent.

Insert the clause set forth in § 18–9.103(a), or §18–9.103(b) if the contract is required in support of research and development work.

§ 18–7.901–21 Inspection and correction of defects.

INSPECTION AND CORRECTION OF DEFECTS (JUNE 1966)

(a) All materials furnished and services performed by the Contractor under this contract shall be subject to inspection and test by the Government to the extent practicable at all times (including the period of performance) and places, and in any event prior to acceptance. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, acceptance of services performed and materials furnished under this contract shall be made at the place of delivery as promptly as practicable after delivery and shall be deemed to have been made no later than sixty (60) days after the date of such delivery, if acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the schedule) after acceptance of the services or materials last delivered in accordance with the requirements of this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any services or materials which at the time of delivery thereof failed to comply with the requirement of this contract. Except as otherwise provided in paragraph (c) hereof, below, the allowability of the cost of any such replacement or correction shall be determined as provided in the "Payments" clause of this contract, but the "hourly rate" for labor hours incurred in such replacement or correction shall be reduced so as to exclude the portion of such rate attributable to profit. Corrected or replacement materials and services shall not be tendered again for acceptance unless the former tender and the requirement of correction or replacement is disclosed. If the Contactor fails to proceed with reasonable promptness to perform such replacement or correction, and if such replacement or correction may be performed within the ceiling price, or the ceiling price as increased by the Government, the Government (i) may by contract or otherwise perform such replacement or correction and charge to the Contractor any increases.

occasioned the Government thereby, and may deduct such increased cost from any amounts due the Contractor under this contract (or require repayment of any payments theretofore made), or (ii) may terminate this contract for default as provided in the "Termination" clause of this contract. Failure to agree to the amount of any such increased cost to be charged to the Contractor, or to such reduction in, or repayment of, any amount due under this contract, shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) Notwithstanding the provisions of paragraph (b) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if such failure is due to fraud, lack of good faith or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business; (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; (iii) a separate and complete major industrial operation in connection with the performance of this contract; or (iv) all or substantially all of the Contractor's operations under this contract. The Government may at any time also require the Contractor to remedy by correction or replacement, without cost to the Government, any such failure caused by one or more individual employees selected or retained by the Contractor after any such supervisory person has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) The provisions of this clause shall apply to any corrected or replacement services or materials.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the material, fabricating methods, and the work and services hereunder. Records of all inspection work by the Contractor shall be complete and available to the Government at all reasonable times during performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace materials furnished and services performed under this contract which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the "Government Property" clause of this contract.

In cases where inspection and acceptance are desired at the contractor's plant, the following should be substituted for the last sentence in paragraph (a):

Acceptance by the Government of all the items (other than aircraft to be flown away, if any) to be furnished under this contract shall be at the plant or plants of the Contractor specified in the Schedule, or any other plant or plants approved for such purpose in writing by the Contracting Officer. The Contractor shall inform the inspector or Contracting Officer when the work is ready for inspection. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when items are not ready at the time such inspection and test are requested by the Contractor.

§ 18–7.901–22 Insurance—liability to third persons.

In accordance with the requirements of § 18–7.402–26, insert the appropriate clause from § 18–7.203–22 or § 18–7.402–26.

§ 18–7.901–23 Interest.

Insert the clause set forth in § 18–7.103–53.

§ 18–7.901–24 Renegotiation.

Insert the clause set forth in § 18–7.103–13.

§ 18–7.902 Clauses to be used when applicable.

§ 18–7.902–1 Utilization of small business concerns.

In accordance with § 18–1.707–3, insert the clause set forth therein.

§ 18–7.902–2 Utilization of concerns in labor surplus areas.

In accordance with § 18–1.805–3(a), insert the clause set forth therein.

§ 18–7.902–3 Security requirements.

In accordance with § 18–7.104–12, insert the clause set forth therein.

§ 18–7.902–4 Priorities, allocations, and allotments.

In accordance with § 18–1.307–2, insert the clause set forth therein.

§ 18–7.902–5 Buy American Act.

In accordance with § 18–6.104–5, insert the clause set forth therein.

§ 18–7.902–6 Notice to the Government of labor disputes.

In accordance with § 18–7.104–4, insert the clause set forth therein.

§ 18–7.902–7 Filing of patent applications.

In accordance with § 18–9.107, insert the clause set forth therein.

§ 18–7.902–8 New technology.

In accordance with § 18–9.101–2, insert the clause set forth in § 18–9.101–4.

§ 18–7.902–9 Data.

In accordance with Subpart 18–9.2, insert the appropriate clause or clauses prescribed therein.

§ 18–7.902–10 Alterations in contract.

When required, insert the clause set forth in § 18–7.105–1.

§ 18–7.902–11 Limitation on withholding of payments.

In accordance with § 18–7.104–21, insert the clause set forth therein.

§ 18–7.902–12 Soviet-controlled areas.

In accordance with § 18–6.403, insert the clause set forth therein.

§ 18–7.902–13 Flight risks.

Where appropriate, insert the clause set forth in § 18–10.504, revising paragraph (c) thereof to read as follows:

(c) If any aircraft is damaged, lost, or destroyed, during flight, and if the amount of such damage, loss, or destruction exceeds one hundred thousand dollars ($100,000) or twenty percent (20%) of the ceiling price of this contract, whichever is less, and If the Contractor is not liable for the damage, loss, or destruction pursuant to the "Government Property" clause of this contract together with paragraph (a) above, then an equitable adjustment for any resulting repair, restoration, or replacement that is required under this contract shall be made in the ceiling price, hourly rate, delivery or performance date, or all of them and the contract shall be modified in writing accordingly; provided, in determining the amount of adjustment in the hourly rate that is equitable, any faults of the Contractor, his employees, or any subcontractor which materially contributed to the damage, loss, or destruction shall be taken into consideration. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

§ 18–7.902–15 Payment of royalties.

In accordance with § 18–9.108, insert the appropriate clause from § 18–9.108–1 or § 18–9.108–2.

§ 18–7.902–20 Contractor and subcontractor certified cost or pricing data.

In accordance with the requirements of § 18–3.807–3, insert the clause set forth in § 18–3.807–4.

§ 18–7.902–21 Order of precedence.

In accordance with § 18–7.104–56, insert the clause set forth therein.

§ 18–7.902–50 Competition in subcontracting.

In accordance with the requirements of § 18–7.104–40, insert the clause set forth therein.

§ 18–7.902–51 Approval of contract.

In accordance with the requirements of § 18–7.104–51, insert the clause set forth therein.

§ 18–7.902–52 Liability for Government property furnished for repair or other services.

In accordance with the requirements of § 18–13.702(c), insert the clause set forth therein.

§ 18–7.902–53 New material.

In accordance with § 18–1.1208, insert the clause set forth in § 18–1.1208(a).

§ 18–7.902–54 Government surplus.

In accordance with § 18–1.1208, insert the clause set forth in § 18–1.1208(d).

§ 18–7.902–55 NASA financial management reporting.

Insert the appropriate clauses set forth in § 18–7.204–56 in accordance with the requirements set forth therein.

§ 18–7.902–56 Safety and health.

In accordance with the requirements of Subpart 18–1.52, insert the clause set forth in § 18–1.5204.

§ 18–7.902–57 Report on NASA subcontracts.

In accordance with the requirements of § 18–16.902, insert the clause set forth therein.

§ 18–7.902–58 Potentially hazardous items.

In accordance with the requirements of § 18–9.204–52, insert the clause set forth in § 18–9.204–52(c).

Subpart 18–7.50—Clauses for Negotiated Utility Service Contracts

§ 18–7.5000 Scope of subpart.

This subpart sets forth uniform contract clauses for use in negotiated utility service contracts as defined in § 18–4.5001.

§ 18–7.5001 Required clauses—contracts for more than $2,500.

Insert the following clauses in all negotiated utility service contracts which involve an estimated annual cost of more than $2,500, or whenever the negotiated utility service contract form prescribed by § 18–16.501–50(a) is to be used.

§ 18–7.5001–1 Definitions.

Insert the clause set forth in § 18–7.103–1. Additional definitions may be included, provided they are not inconsistent with such clause or the provisions of this chapter.

§ 18–7.5001–2 Payments.

PAYMENTS (JULY 1963)

(a) Payments for the service rendered under this contract shall be made monthly by the designated disbursing office or officer for the service herein contracted for, under the terms and conditions herein set forth, upon the submission of proper invoices.

(b) All bills shall be paid without penalty or interest and the Government shall be entitled to any discounts customarily applicable to payment of bills by all customers of the Contractor.

(c) Invoices for service rendered hereunder shall contain statements of the meter readings at the beginning of the billing period, meter constants, consumption during the billing period, and such other pertinent data as shall be required by the Government.

§ 18–7.5001–3 Assignment of claims.

ASSIGNMENT OF CLAIMS (JULY 1963)

No claim under this contract shall be assigned.

When requested by a prospective contractor and determined by the contracting officer to be in the public interest, the above clause may be deleted and the clause set forth in § 18–7.103–8 shall be included in the contract.

§ 18–7.5001–4 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.5001–5 Equal opportunity.

Insert one or the other of the following clauses, as required by and in accordance with the instructions in § 18–12.802: (a) the Equal Opportunity clause set forth in § 18–12.802–1, or (b) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18–12.802–2.

§ 18–7.5001–6 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.5001–7 Convenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.5001–8 Termination.

TERMINATION (JULY 1963)

This contract may be terminated at the option of the Government by the giving of not less than thirty (30) days advance written notice of the effective date of termination.

In the foregoing clause the period of 30 days may be varied not to exceed 90 days.

§ 18–7.5001–9 Convict labor.

Insert the clause set forth in § 18–12.203.

§ 18–7.5001–10 Rates.

RATES (JULY 1963)

(a) For and in consideration of the faithful performance of the stipulations of this contract, the Contractor shall be paid at the rates set out in Appendix A: *Provided*, That the Government shall be liable for the minimum monthly charge, if any, specified in this contract commencing with the billing period in which service is initially furnished thereto, and continuing until this contract is terminated, except that the minimum monthly charge, if any, specified in this contract shall be equitably prorated for the billing periods in which commencement and termination of this contract shall become effective.

(b) The Contractor hereby declares that the rates applicable to the service furnished under this contract are not in excess of the lowest rates available to any prospective customer under like conditions, and agrees that during the life of this contract the Government shall continue to be billed at the lowest rates applicable for similar conditions of service.

§ 18–7.5001–11 Public regulation and change of rates.

PUBLIC REGULATION AND CHANGE OF RATES (JULY 1963)

(a) Rates established under this contract shall be subject to regulation in the manner and to the extent prescribed by law by any Federal, State, or local regulatory agency having jurisdiction. The Contractor agrees to give the Contracting Officer written notice of the filing of an application for rate changes concurrently with the filing of the application. Such notice shall fully describe the proposed rate change. If during the term of this contract the public regulatory agency having jurisdiction approves rates that are higher or rates that are lower than those stipulated herein, for like conditions of service, the Contractor agrees to continue to furnish service as stipulated in this contract and the Government agrees to pay for such service at the higher or lower rates from and after the date when such rates are made effective. In the event that the regulatory agency promulgates any regulation concerning matters other than rates which affects this contract, the Contractor shall immediately notify the Contracting Officer. The Government shall not be bound to accept any new regulation inconsistent with Federal laws or regulations.

(b) In the event the Contractor, during the term of this contract, shall make effective any new rate schedule or amended rate schedule applicable to the class of service furnished the Government at the service location, which may contain a lower rate or conditions more favorable to the Government for such class of service, the Contractor shall forward to the Contracting Officer a copy of such rate schedule or amended rate schedule within fifteen (15) days after the effective date thereof, and, upon receipt of written request from the Government, shall substitute such rate schedule or amended rate schedule for the rate schedule then in effect hereunder for such service location, commencing with the billing period in which such written request is received.

§ 18–7.5001–12 Change in class of service.

CHANGE IN CLASS OF SERVICE (JULY 1963)

(a) In the event of a permanent change in the class of service furnished the Government at the service location, service shall be furnished to such service location at the lowest available rate schedule of the Contractor which is applicable to the class of service furnished following such permanent change subject to the clause hereof entitled "Rates."

(b) Where the Contractor's rate schedule on file with the regulatory agency and applicable to services provided by the Contractor does not contain a schedule applicable to the class of service furnished the Government, no clause in this contract shall preclude the parties from negotiating a rate schedule applicable to the class of service furnished.

§ 18–7.5001–13 Contractor's facilities.

CONTRACTOR'S FACILITIES (JULY 1963)

(a) The Contractor, at his expense, shall furnish, install, operate, and maintain all facilities required to furnish service hereunder to, and measure such service as of, the point of delivery specified in the Service Specifications. Title to all such facilities shall be and remain in the Contractor and the Contractor shall be responsible for all loss of or damage to such facilities.

(b) The Government hereby grants to the Contractor, free of any rental or similar charge, but subject to the limitations specified in this contract, a revocable permit or license to enter the service location for any proper purpose under this contract, including use of the site or sites agreed upon by the parties hereto for the installation, operation, and maintenance of the facilities of the Contractor required to be located upon Government premises, all of which facilities shall be and remain the sole property of the Contractor and shall, at all times during the life of this contract, be operated and maintained by the Contractor at his expense; and all taxes and other charges in connection therewith, together with all liability of the Contractor in construction, operation, or maintenance of such facilities, shall be assumed by the Contractor. Authorized representatives of the Contractor will be allowed access to the facilities of the Contractor at suitable times to perform the obligations of the Contractor with respect to such facilities. Such facilities shall be removed and Government premises restored to their original condition by the Contractor at his expense within a reasonable time after the Government shall revoke the permit or license herein granted and in any event within a reasonable time after termination of this contract: *Provided*, That in the event of termination of this contract due to the fault

of the Contractor such facilities may be retained in place at the option of the Government until service comparable to that provided for hereunder is obtained elsewhere. It is expressly understood, however, that proper Governmental authority may limit or restrict the right of access herein granted in any manner considered by such authority to be necessary for the national security.

§ 18–7.5001–14 Technical provisions.

TECHNICAL PROVISIONS (JULY 1963)

(a) *Measurement of Service.*

(i) All service furnished by the Contractor shall be measured by suitable metering equipment of standard manufacture, to be furnished, installed, maintained, calibrated, and read by the Contractor at his expense. When more than a single meter is installed at the service location, the readings thereof shall be billed conjunctively. In the event any meter fails to register or registers incorrectly the service furnished therethrough, the parties shall agree upon the length of period during which such meter failed to register or registered incorrectly and the quantity of service delivered therethrough during such period and, upon agreement, an appropriate adjustment based thereon shall be made in the Government's bills. For the purpose of the preceding sentence, any meter which registers not more than two (2) percent slow or fast shall be deemed correct.

(ii) The Contractor shall read meters on the same day of each month; if, however, that day falls on a Saturday, Sunday, or legal holiday, or if the Contractor is otherwise prevented from reading the meters on that day, he shall read the meters on the next succeeding business day on which he is able to do so: *Provided,* That all bills based on meter readings of less than twenty-seven (27) days or more than thirty-three (33) days shall be prorated accordingly: *And provided further,* That there shall be not more than twelve (12) billings in any 1 year.

(b) *Meter Test.* The Contractor, at his expense, shall periodically inspect and test the meters installed by him at intervals not exceeding one (1) year. At the written request of the Contracting Officer the Contractor shall make additional tests of any or all of such meters in the presence of Government representatives. The cost of such additional tests shall be borne by the Government if the percentage of errors is found to be not more than two (2) percent slow or fast. No meter shall be placed in service or allowed to remain in service which has an error in registration in excess of two (2) percent under normal operating conditions.

(c) *Change in Volume or Character.* Reasonable notice shall, so far as possible, be given by the Contracting Officer to the Contractor respecting any material changes proposed in the volume or characteristics of the utility service required at each location.

(d) *Continuity of Service and Consumption.*

(i) The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at the service location, but shall not be liable for damages, breach of contract or otherwise to the Government for failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the control of the Contractor, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes or other catastrophes, strikes, or failure or breakdown of transmission or other facilities: *Provided,* That when any such failure, suspension, diminution, or variation of service shall aggregate more than ten (10) hours during any billing period hereunder, an equitable adjustment shall be made in the monthly rates specified in this contract (including the minimum monthly charge).

(ii) In the event the Government is unable to operate the service location in whole or in part for any cause beyond its control, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, or other catastrophes, or strikes, an equitable adjustment shall be made in the monthly rates specified in this contract (including the minimum monthly charge) if the period during which the Government is unable to operate such service location in whole or in part shall exceed fifteen (15) days during any billing period hereunder.

Minor changes may be made in the above clause when insisted upon by the contractor to conform with established procedure or with procedures contained in the contractor's published rates filed with a regulatory agency. The following types of changes, when made for this purpose, are not considered within the intent of § 18–4.5006(d) relating to contracts requiring NASA Headquarters approval.

(a) *Measurement of Service.*

(1) The words "billed conjunctively" in the second sentence of paragraph (a)(i) refer to the combination of similar quantities measured by two or more meters into a single quantity for the purpose of billing as if the bill were prepared for a single meter. This sentence may be deleted, or the word "separately" may be inserted in lieu of the word "conjunctively," to conform to the contractor's regulated practice and/or when the schedule under which bills are computed is such that billing separately will be more economical than billing conjunctively.

(2) In paragraph (a)(ii), the periodic intervals prescribed between meter readings may be changed to conform to the contractor's regulated practice.

(b) *Meter Test.*

(1) The first sentence of paragraph (b), requiring testing at intervals not exceeding one year, may be changed to provide for meter tests in accordance with the Contractor's regulated practice.

(2) In the third sentence of paragraph (b), the percentage error (shown as 2 percent) may be changed to comply with the contractor's regulated practice.

(c) *Continuity of Service and Consumption.*

(1) In paragraph (d)(i), the adjustment proviso may be deleted or changed, if necessary, to conform with the provisions of the contractor's field rate schedules. This paragraph may be ended after the word "facilities" and before the word "provided," or the period "ten hours" may be changed.

(2) Paragraph (d)(ii) may be deleted or changed, if the contractor's filed rates contain a provision requiring a continuation of demand, or similar charges, on a ready-to-serve basis during a period that the Government is unable to operate the service location for any cause beyond its control.

§ 18–7.5002 Clauses required to be used when applicable.

§ 18–7.5002–1 Federal, State, and local taxes.

In accordance with the requirements of § 18–11.401–2, insert the clause set forth therein.

§ 18–7.5002–2 Contract Work Hours Standards Act—overtime compensation.

Insert the clause set forth in § 18–12.303–1. Note the prefatory language required by § 18–12.303–2 for use in contracts with a State or political subdivision thereof.

§ 18–7.5002–3 Examination of records.

Insert the clause in § 18–7.104–15, except where the public utility services are to be furnished at rates not in excess of those established for uniform applicability to the general public or at such rates plus reasonable service or connection charges incident to such utility services.

§ 18–7.5002–4 Approval of contract.

When contractual approval by NASA Headquarters is required by § 18–4.5006, insert the clause set forth in § 18–7.104–51.

§ 18–7.5003 Additional clauses.

The clauses set forth in this § 18–7.5003 will be inserted in negotiated utility service contracts referred to in § 18–7.5001 when it is desired to cover the subject matter thereof. In addition, any other clause authorized by this chapter, in accordance with the instructions pertaining thereto, may be inserted in such contracts when it is necessary or desirable to cover the subject matter contained in such clauses.

§ 18–7.5003–1 Renewal of contract.

It is permissible to provide that a contract may be renewed annually for a number of years upon the execution by the Government of a renewal notice: *Provided,* That the number of successive years for which the contract is in effect does not exceed five. In any contract in which it is desirable that the service be provided under the same terms and conditions for a number of years, insert the following clause:

RENEWAL OF CONTRACT (JULY 1963)

This contract is renewable on an annual basis at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor at least ——— days before this contract is to expire. If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed ——— years.

In selecting the expiration date to be stated on NASA Form 550, consideration should be given to the selection of a date sufficiently past the end of the fiscal year to assure that appropriations will be available for the renewal period of the contract at the time the renewal notice is issued. The exercise of the option is a new procurement and the contract file shall be documented accordingly. (See Subpart 18–1.15.)

§ 18–7.5003–2 Public regulation and change of rates.

If the rates applicable to the service furnished under the contract are negotiated between the contractor and the Government without recourse to the approval of any Federal, State, or local regulatory agency, or if the service to be furnished under the contract is otherwise not subject to regulation by any

Federal, State, or local regulatory agency, or if the contractor also acts as the local public regulatory agency and his decisions are not subject to review by a higher regulatory agency, the following clause will be used in lieu of the clause set forth in § 18–7.5001–11.

CHANGES IN RATES (JULY 1963)

(a) If at any time during the term of this contract either of the parties hereto considers it appropriate that all or part of the rates applicable to the service furnished under this contract be changed, the parties agree to promptly negotiate such rates upon receipt by one party of a written request from the other (i) specifying the rates as to which a change is considered appropriate, (ii) setting forth the proposed change in rates, and (iii) stating in detail the reasons for the proposed change. Any rate changes agreed to by the parties as the result of such negotiations shall be made a part of this contract by the issuance of a supplemental agreement hereto and shall become effective as of the date of the request for a change in rates, unless otherwise agreed to by the parties. Failure of the parties to agree upon the appropriate adjustment of rates, if any, shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(b) The Contractor agrees that a duly authorized representative of NASA shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor relating to costs which form the basis for the rates.

§ 18–7.5003–3 Connection charge.

When (a) a connection charge is to be paid by the Government and (b) the conditions permitting the incorporation of a nonrecurring, nonrefundable fee in Appendix A do not exist (§ 18–16.501–52 (a)), attach Appendix C (§ 18–16.501–52 (c)) to the contract, and insert the following clause in the contract:

CONNECTION CHARGE (JULY 1963)

(a) *Charge.* The Government, in consideration of the furnishing and installation by the Contractor at his expense of the New Facilities described in Appendix C, attached hereto and made a part hereof, shall pay the Contractor, as a connection charge, after receipt of satisfactory evidence of completion of the facilities, the sum of $_____, representing the sum of $_____, less the agreed salvage value in the amount of $_____, as shown in Appendix C: *Provided,* That, as a condition precedent to final payment, the Contractor shall, if required by the Contracting Officer, execute a release in terms acceptable to the Contracting Officer, of claims against the Government arising under or by virtue of such installation:

(b) *Ownership, Operation, and Maintenance of New Facilities To Be Provided Hereunder.* The facilities to be supplied by the Contractor under this clause, notwithstanding the payment by the Government of a connection charge, shall be and remain the property of the Contractor and shall, at all times during the life of this contract or any renewals thereof, be operated and maintained by the Contractor at his expense, and all taxes and other charges in connection therewith, together with all liability arising out of the construction, operation, or maintenance of such facilities, shall be the obligation of the Contractor.

(c) *Credits.*

(1) The Contractor agrees to allow the Government on each monthly bill for service furnished under this contract to the Service Location, a credit of _____ percent of the amount of each such bill as rendered until the accumulation of credits shall equal the amount of such connection charge: *Provided,* That the Contractor may at any time so allow a credit up to 100 percent of the amount of each such bill.

(2) In the event the Contractor, prior to any termination of this contract but subsequent to completion of the facilities provided for in this clause, serves any customer other than the Government (regardless of whether the Government is being served simultaneously, intermittently, or at all) by means of such facilities, the corresponding benefit to the Contractor is hereby recognized. It is, therefore, agreed that upon initiation of such service, the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge, or accelerate the credits provided for under paragraph (c)(1) of this clause to 100 percent of each monthly bill until there is fully credited a sum equitably representing the same proportion of the uncredited balance of the connection charge as of the date of initiation of such service, as agreed upon by the parties hereto, as the portion of the facilities utilized in serving such customer bears to complete facilities described in Appendix C.

(d) *Termination Prior to Completion of Facilities.* The Government reserves the right to terminate this contract at any time prior to completion of the facilities provided for herein with respect to which the Government is to pay a connection charge. In the event the Government exercises this right, the Contractor shall be paid fair compensation, exclusive of profit, with respect to such facilities.

(e) *Termination Subsequent to Completion of Facilities.*

(1) *Termination by the Government.* In the event the Government terminates this contract subsequent to completion of the facilities provided for herein with respect to which the Government is to pay a connection charge, but prior to the crediting in full by the Contractor of any connection charge in accordance with the terms of this contract, the possible continued usefulness of such facilities is hereby recognized. It is, therefore, agreed that upon such termination the Contractor shall have the following options:

(A) To retain in place for 12 months or more after the notice of termination by the Government such facilities on condition that (i) if, during such 12-month period, the Contractor serves any other customer by means of such facilities, the Contractor shall, in lieu of allowing credits, pay the Government during such period installments in like amount, manner, and extent as the credits provided for under paragraph (c) of this clause prior to such termination; (ii) immediately after such 12-month period the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge.

(B) To remove such facilities at his own expense within 12 months after the effective date of the termination by the Government: *Provided,* That if the Contractor elects to so remove such facilities, the Government shall then have the option of purchasing such facilities at the agreed salvage value set forth in Appendix C hereto: *And provided further,* That the Contractor will, at the request of the Government, leave in place such facilities located on Government property which the Contractor elects to so remove and which the Government elects to purchase at the agreed salvage value.

(2) *Termination by the Contractor.* In the event the Contractor terminates service under, or otherwise defaults in performance of, this contract prior to the crediting in full, in accordance with the terms of this contract, of any connection charge paid by the Government, the Contractor shall pay to the Government an amount equal to the uncredited balance of the connection charge as of the date of such termination.

§ 18–7.5003–4 Termination charge.

When a payment is to be made to the contractor upon termination of service in lieu of a connection charge upon completion of the facilities, attach Appendix C (§ 18–16.501–52(c)) to the contract, and insert the following clause in the contract:

TERMINATION CHARGE (JULY 1963)

In consideration of the furnishing and installation by the Contractor at his expense of the New Facilities described in Appendix C, attached hereto and made a part hereof the Government shall, in the event of termination of this contract by the Government prior to _____ months from the date on which service commences, pay the Contractor as a termination charge _____ less _____ multiplied by the number of months service has been received prior to the date of such termination.

The length of time, not in excess of 60 months, as negotiated with the contractor will be entered in the first blank. In the second blank enter the amount of the maximum termination charge as negotiated with the contractor, but not in excess of cost of facilities furnished and installed by the contractor less the agreed salvage value as shown in Appendix C. Enter in the third blank the figure obtained by dividing the figure in the second blank by the figure in the first blank. The use of this clause does not affect the term of the contract; however, its use is subject to headquarters approval in accordance with § 18–4.5006 (b).

§ 18–7.5003–5 Multiple service locations.

When it is desired to provide for possible alternative service locations, insert the following clause:

MULTIPLE SERVICE LOCATIONS (JULY 1963)

(a) The Contracting Officer may at any time, by written order, designate any service location within the service area of the Contractor at which service shall be furnished or discontinued thereunder, and the contract shall be modified in writing accordingly by adding to or deleting from the Service Specifications the name and location of the appropriate service location, by specifying a different rate if applicable, the appropriate point of delivery, different service specification if applicable, and any other appropriate terms and conditions.

(b) The minimum monthly charge specified in this contract shall be equitable prorated for the billing period in which commencement or discontinuance of service at any service location designated under the Service Specifications shall become effective.

§ 18–7.5004 Required clauses—contracts for $2,500 or less annually.

The following clauses shall be inserted in all negotiated utility service contracts of $2,500 or less annually whenever the negotiated utility service contract form prescribed by § 18–16.501–51 is to be used.

§ 18–7.5004–1 Definitions.

Insert the clause set forth in § 18–7.103–1.

§ 18–7.5004–2 Payments.

Insert the clause set forth in § 18–7.5001–2.

§ 18–7.5004–3 Assignment of claims.

Insert the clause set forth in § 18–7.5001–3.

§ 18–7.5004–4 Disputes.

Insert the clause set forth in § 18–7.103–12.

§ 18–7.5004–5 Equal opportunity.

Insert one or the other of the following clauses, as required by and in accordance with the instructions in § 18–12.802: (a) the Equal Opportunity clause set forth in § 18–12.802–1, or (b) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18–12.802–2.

§ 18–7.5004–6 Officials not to benefit.

Insert the clause set forth in § 18–7.103–19.

§ 18–7.5004–7 Covenant against contingent fees.

Insert the clause set forth in § 18–1.503.

§ 18–7.5004–8 Termination.

Insert the clause set forth in § 18–17.5001–8.

§ 18–7.5004–9 Convict labor.

Insert the clause set forth in § 18–12.203.

§ 18–7.5004–10 Rates.

Insert subclause (b) of the clause set forth in § 18–7.5001–10.

§ 18–7.5004–11 Public regulation and change of rates.

Insert the clause set forth in § 18–7.5001–11.

§ 18–7.504– 2 Contractor's facilities.

CONTRACTOR'S FACILITIES (JULY 1963)

The Contractor, at his expense, shall furnish, install, operate, maintain, retain title, to, and be responsible for all loss of or damage to, and all facilities required to furnish the service provided for herein. The Contractor will be allowed access to his facilities on Government premises at suitable times and he shall, at his expense, remove them and restore the premises to original condition within a reasonable time after termination of this contract.

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

[FR Doc.71–2784 Filed 3–2–71;8:45 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 70–PC–1]

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

Alteration of Control Zone

On December 30, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 19795) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Wake Island control zone.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. No comments were received.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., April 29, 1971, as hereinafter set forth.

In § 71.171 (36 F.R. 2055) the Wake Island control zone is amended to read as follows:

WAKE ISLAND

Within a 5-mile radius of Wake Island Airport (lat. 19°16'50" N., long. 166°38'30" E.); within 3.5 miles each side of the Wake Island VORTAC 307° radial, extending from the 5-mile radius zone to 11.5 miles northwest of the VORTAC; within 3.5 miles each side of the 281° bearing from the Wake Island RBN (AXX), extending from the 5-mile radius zone to 11.5 miles west of the RBN; within 3.5 miles each side of the 101° bearing from the Wake Island RBN (AWK), extending from the RBN to 11.5 miles east of the RBN; and within 4.5 miles each side of the Wake Island VORTAC 111° radial, extending from the 5-mile radius zone to 20.5 miles east of the VORTAC.

(Sec. 307(a), 1110, Federal Aviation Act of 1958, 49 U.S.C. 1348(a), 1510, Executive order 10854, 24 F.R. 9565; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on February 26, 1971.

H. B. HELSTROM,
Chief, Airspace and Air
Traffic Rules Division.

[FR Doc.71–2876 Filed 3–2–71;8:48 am]

[Airspace Docket No. 71–SW–6]

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

Alteration of Federal Airway Segment

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to make a two degree realignment to the segment of VOR Federal Airway No. 54 north between Hot Springs, Ark., VOR and the Alpine, Ark., Intersection.

A recent flight check of the Hot Springs VOR indicated a need to raise the MRA/MEA to 5,500 feet. The MEA can be lowered to 3,500 feet by a small realignment of the airway radial predicated on the Hot Springs VOR. Accordingly, action is taken herein to alter V–54N segment two degrees in order to retain a 3,500-foot MEA.

Since this amendment is minor in nature and no substantive change in the regulation is effected, notice and public procedure thereon are unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, this amendment will become effective more than 30 days after publication.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., April 29, 1971, as hereinafter set forth.

In § 71.123 (36 F.R. 2010) V–54 is amended by deleting "Hot Springs, Ark., 223°" and substituting "Hot Springs, Ark., 225°" therefor.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on February 26, 1971.

H. B. HELSTROM,
Chief, Airspace and Air
Traffic Rules Division.

[FR Doc.71–2878 Filed 3–2–71;8:48 am]

[Airspace Docket No. 70–SO–43]

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

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Alteration of Federal Airways and Jet Route Segments

On January 14, 1971, F.R. Doc. 71–743 was published in the FEDERAL REGISTER (36 F.R. 494) effective April 29, 1971.

This document amended Part 71 of the Federal Aviation Regulation in part by realigning VOR Federal airway No. 16 north alternate segment between Nashville, Tenn., and the Vanleer Intersection through use of the Nashville 285° radial.

Subsequent to the publication of this amendment, it has been determined that use of the Nashville 286° radial in lieu of the 285° radial will provide a better junction of V–16 north with VOR Federal airway No. 49 at the Vanleer Intersection. Accordingly, action is taken herein to reflect this 1° radial change.

Since this amendment is minor in nature and no substantive change in the regulation is effected, notice and public procedure thereon are unnecessary.

In consideration of the foregoing, effective upon publication, F.R. Doc. 71-743 (36 F.R. 494) is amended as hereinafter set forth.

In Item 1b "Nashville 285°" is deleted and "Nashville 286°" is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on February 26, 1971.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.71-2877 Filed 3-2-71;8:48 am]

[Airspace Docket No. 70-SW-65]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Alteration of Jet Route Segment

On December 22, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 19364) stating that the Federal Aviation Administration was considering an amendment to Part 75 of the Federal Aviation Regulations that would realign Jet Route No. 74 segment from Texico, N. Mex., direct to Oklahoma City, Okla.

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

In consideration of the foregoing, Part 75 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., April 29, 1971, as hereinafter set forth.

Section 75.100 (36 F.R. 2371) is amended as follows:

In the caption Jet Route No. 74 "Greater Southwest, Tex." is deleted and "Oklahoma City, Okla." is substituted therefor, and in the text all after "Texico, N. Mex.; is deleted and "to Oklahoma City, Okla." is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on February 25, 1971.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.71-2875 Filed 3-2-71;8:48 am]

[Airspace Docket No. 70-WA-31]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Designation of Area High Routes

On November 26, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 18125) stating that the Federal Aviation Administration was considering an amendment to Part 75 of the Federal Aviation Regulations that would designate four area high routes between New York City, N.Y., and Oakland, Calif./Los Angeles, Calif. This notice was amended on December 3, 1970 (35 F.R. 18402) to correct typographical errors. On December 29, 1970 (35 F.R. 19678) the comment period was extended to January 11, 1971, after the Department of the Air Force had requested additional time for comment.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. The Department of the Air Force objected to the proposed alignment of J803R through Restricted Area R-6405 which is a joint-use restricted area used by the Commander of Hill Air Force Base, Utah, and under the air traffic control jurisdiction of the Salt Lake City Air Route Traffic Control Center. The alignment of J803R as proposed will not cause any hazard to flight, nor will the defense mission of Hill AFB be compromised in any way. In order to obtain maximum use of available airspace, joint-use restricted areas are established so that the airspace of certain restricted areas is available for general use when the restricted area is not being used by the using agency for its established purpose. The alignment of J803R through R-6405 does not alter this procedure and does not in any way decrease the availability of this restricted area for use by Hill AFB. Whenever Hill AFB uses R-6405, Salt Lake City ARTCC will not clear traffic through that area. When Hill AFB releases R-6405 back to the Salt Lake City ARTCC, nonparticipating traffic will be cleared through the area.

The Air Force commented further that each of the proposed routes would possibly conflict with Oil Burner routes and air refueling operations conducted by the Strategic Air Command. Such possible conflictions will be resolved by use of air traffic control separation procedures precisely the same as those procedures employed to resolve potential conflictions between crossing jet routes or airways; i.e., by employment of vertical, longitudinal, or lateral separation. All other comments received were favorable toward the proposed action.

The area navigation route alignments as adopted herein are essentially the same as those proposed in the notice, even though minor changes are made. In several instances, the waypoints incorporated in the rule differ from those proposed since flight checks of the proposed routes revealed that additional navigational aids and waypoints were required in some areas. Such changes are made herein without changing the route alignment.

In J802R, the alignment of the route as incorporated in the rule between Emerald, Nebr., at lat. 40°55'26" N., long. 96°44'30" W., and Coaldale, Nev., at lat. 38°00'12" N., long. 117°46'10" W., differs slightly from that proposed in the notice. This realignment was made to shorten the route and eliminate the dogleg resulting from use of a waypoint as proposed at lat. 38°04'35" N., long. 116°50'45" W. In J801R, the alignment of the route as incorporated in the rule west of Dresden, Kans., at lat. 39°38'14" N., long. 100°23'38" W., differs slightly from that proposed in the notice. This realignment was made to avoid Restricted Area R-2601B and to cause the western tip of the area high route to coincide with terminal procedures frequently employed for use by aircraft departing Los Angeles. Since the realignments of J802R and J801R are insignificant in terms of centerline displacement, and since the designation of controlled airspace is not affected, further notice and public procedure are not required.

In consideration of the foregoing Part 75 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., April 29, 1971, as hereinafter set forth.

1. In § 75.400 the following area high routes are added:

Waypoint name	Location						Reference facility
	North latitude			West longitude			
J800R:	°	′	″	°	′	″	
Robbinsville, N.J., VORTAC	40	12	08	74	29	44	Robbinsville, N.J.
Riddle, Pa	39	58	04	78	04	45	Philipsburg, Pa.
Horn, Pa	40	00	43	80	13	38	Elwood City, Pa.
Thackery, Ohio	39	59	34	84	01	53	Rosewood, Ohio
Newton, Ind	39	53	23	87	00	54	Lafayette, Ind.
Chapin, Ill	39	39	58	90	35	08	St. Louis, Mo.
Kansas City, Mo., VORTAC	39	16	46	94	35	28	Kansas City, Mo.
Culver, Kans	38	51	00	97	43	31	Wichita, Kans.
Granada, Colo	37	59	43	102	37	19	Lamar, Colo.
Delhi, Colo	37	40	09	104	13	02	Pueblo, Colo.
Sanford, Colo	37	19	13	105	48	11	Alamosa, Colo.
Flora, N. Mex	36	46	10	108	06	23	Farmington, N. Mex.
Cameron, Ariz	35	58	37	111	12	21	Tuba City, N. Mex.
Fenner, Calif	34	48	12	115	00	57	Parker, Calif.
Morrow, Calif	34	02	51	117	14	54	Hector, Calif.
J801R:							
Mesquite, Calif	35	42	41	115	36	17	Las Vegas, Nev.
Paria, Ariz	36	53	51	111	55	43	Bryce Canyon, Utah
Gypsum, Colo	37	51	16	108	33	32	Farmington, N. Mex.
Powder Horn, Colo	38	15	52	106	57	50	Gunnison, Colo.
Rosemont, Colo	38	46	01	104	51	03	Pueblo, Colo.
Dresden, Kans	39	38	14	100	23	38	Hayes Center, Nebr.
Ruskin, Nebr	40	08	16	97	56	34	Wolback, Nebr.
Garden Grove, Iowa	40	53	49	93	30	28	Des Moines, Iowa
Joliet, Ill., VORTAC	41	32	47	88	19	06	Joliet, Ill.
Wolverine, Ohio	42	13	36	83	58	14	Flint, Mich.
Ormsby, Pa	41	48	09	78	38	27	Buffalo, N.Y.
Sparta, N.J., VORTAC	41	04	03	74	32	19	Sparta, N.J.

Waypoint name	Location						Reference facility
	North latitude			West longitude			
	°	′	″	°	′	″	
J80R2:							
Robbinsville, N.J., VORTAC	40	12	08	74	29	44	Robbinsville, N.J.
Furnace, Pa	40	36	35	78	02	40	Philipsburg, Pa.
Shiloh, Ohio	40	57	44	82	30	16	Appleton, Ohio
San Pierre, Ind	41	08	24	87	02	53	Lafayette, Ind.
Hartsburg, Ill	41	09	35	89	35	16	Iowa City, Iowa.
Emerald, Nebr	40	55	26	96	44	30	Pawnee City, Nebr.
Melton, Nebr	40	39	38	100	57	02	Hayes Center, Nebr.
Gilcrest, Colo	40	16	43	104	49	59	Denver, Colo.
Blanco, Colo	39	53	01	107	52	45	Meeker, Colo.
Hill Creek, Utah	39	33	51	109	58	03	Myton, Utah
Nebo, Utah	39	16	43	111	38	27	Fairfield, Utah
Grafton, Nev	38	43	06	114	32	58	Wilson Creek, Nev.
Coaldale, Nev., VORTAC	38	00	12	117	46	10	Coaldale, Nev.
J83R:							
Gabbs, Nev	38	33	55	118	01	55	Coaldale, Nev.
Bristol, Nev	39	23	01	114	50	10	Wilson Creek, Nev.
Clear Lake, Utah	39	52	08	112	42	38	Delta, Utah
Ouray, Utah	40	22	59	110	12	19	Myton, Utah
Maybelle, Colo	40	45	44	108	07	47	Meeker, Colo.
Tank, Wyo	41	17	12	104	47	30	Cheyenne, Wyo.
Sand, Nebr	41	44	19	101	09	59	Hayes Center, Nebr.
Plum Creek, Nebr	42	07	05	96	53	26	Lincoln, Nebr.
Scales Mound, Ill	42	22	53	90	24	00	Iowa City, Iowa
Haven, Mich	42	19	27	86	17	17	South Bend, Ind.
Wolverine, Ohio	42	13	36	83	58	14	Flint, Mich.
Ormsby, Pa	41	48	09	78	38	27	Buffalo, N.Y.
Sparta, N.J., VORTAC	41	04	03	74	32	19	Sparta, N.J.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Washington, D.C., on February 25, 1971.

T. McCORMACK,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.71-2822 Filed 3-2-71;8:45 am]

Title 29—LABOR

Subtitle A—Office of the Secretary of Labor

PART 1—PROCEDURE FOR PREDETERMINATION OF WAGE RATES

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS STANDARDS ACT)

Amendments to Effectuate the Presidential Proclamation Suspending the Davis-Bacon Act

By Proclamation No. 4031 (36 F.R. 3457) promulgated by the President on February 23, 1971, under authority of section 6 of the Davis-Bacon Act (40 U.S.C. 276a–5) the President suspended until otherwise provided the provisions of the Davis-Bacon Act and all other acts providing for the payment of wages which are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act. Parts 1 and 5 of Title 29, Code of Federal Regulations, are hereby amended to effectuate that Proclamation.

As Proclamation No. 4031 was effective February 23, 1971, and as these changes merely implement that Proclamation, I hereby find that notice, public procedure, and delay in the effective date of these changes are contrary to the public interest within the meaning of 5 U.S.C. 553. Accordingly, these changes shall be effective on February 23, 1971, the date of Proclamation No. 4031 which it implements.

Title 29 of the Code of Federal Regulations is hereby amended as follows:

1. The table of contents preceding the text of Part 1 is amended by adding at the head thereof § 1.0 entitled:

Sec.
1.0 Suspension of procedures in this part.

2. Part 1 is amended by adding immediately before § 1.1 a new section reading as follows:

§ 1.0 Suspension of procedures in this part.

(a) The procedures for predetermination of wage rates contained in this part have been suspended, effective February 23, 1971, and until otherwise provided, pursuant to Proclamation 4031 (36 F.R. 3457) promulgated by the President on February 23, 1971, under the authority provided in section 6 of the Davis-Bacon Act (40 U.S.C. 276a–5).

(b) Proclamation 4031 suspends, as to all contracts entered into on or subsequent to February 23, 1971, and until otherwise provided—

(1) The provisions of the Davis-Bacon Act of March 31, 1931, as amended, and the provisions of all other acts providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act; and

(2) The provisions of any Executive order, proclamation, rule, regulation, or other directive providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act.

3. The table of contents preceding the text of Part 5 is amended by adding at the head thereof § 5.0 entitled:

Sec.
5.0 Suspension of certain provisions of this part.

4. Part 5 is amended by adding immediately before § 5.1 a new section reading as follows:

§ 5.0 Suspension of certain provisions of this part.

(a) Effective February 23, 1971, and until otherwise provided, certain of the provisions of this part, as set forth in paragraph (c) of this section, have been suspended pursuant to Proclamation 4031 (36 F.R. 3457) promulgated by the President on February 23, 1971, under the authority provided in section 6 of the Davis-Bacon Act (40 U.S.C. 276a–5).

(b) Proclamation 4031 suspends, as to all contracts entered into on or subsequent to February 23, 1971, and until otherwise provided—

(1) The provisions of the Davis-Bacon Act of March 31, 1971, as amended, and the provisions of all other acts providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act; and

(2) The provisions of any Executive order, proclamation, rule, regulation, or other directive providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act.

(c) Except with respect to contracts entered into prior to February 23, 1971, the following provisions of this part are suspended, effective on such date and until otherwise provided, pursuant to Proclamation 4031 as set forth in paragraphs (a) and (b) of this section:

(1) The provisions of §§ 5.3 and 5.4, in their entirety;

(2) The provisions of paragraph (a) of § 5.5, insofar as they prescribe the inclusion in contracts of clauses set forth in subparagraphs (1) through (4) of such paragraph or authorized modifications thereof;

(3) The provisions of subparagraphs (6) and (7) of § 5.5(a), insofar as they require the inclusion in contracts and subcontracts of references to the clauses prescribed by subparagraphs (1) through (4) of § 5.5(a); and

(4) The provisions of § 5.6 and § 5.7.

(d) The suspension referred to in paragraphs (a) and (b) of this section does not apply to:

(1) The provisions of § 5.5(c) of this part; or to

(2) The application of any provisions of this part to contracts entered into prior to February 23, 1971. With respect to contracts entered into prior to such date all provisions of this part, as modified in accordance with the guidelines, orders, and organizational description published in the FEDERAL REGISTER of Friday, January 8, 1971 (36 F.P. 304–308) remain in effect.

(Proclamation No. 4031, 36 F.R. 3457, 40 U.S.C. 276a–5)

Signed at Washington, D.C. this 1st day of March 1971.

ROBERT D. MORAN,
Administrator of Workplace Standards.

[FR Doc.71-2998 Filed 3-2-71;10:01 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Part 22]

DRAWBACK

Proof of Export

This notice is supplemental to the notice of proposed rule making relating to proof of export for drawback purposes published on April 23, 1970 (35 F.R. 6505), in which comments were solicited on proposed amendments to §§ 22.6(f)(19) and (g–1)(10), 22.7, 22.8, 22.9, 22.10, 22.11, 22.13(a), 22.17(a), 22.18(b), 22.20(d), 22.21(a), 22.23(c), 22.26(a), 22.37(a), and 22.45 of the Customs regulations. It was proposed to eliminate usage of the notice of exportation and the shipper's export declaration for drawback purposes and to provide two alternate procedures by which the drawback claimant would establish export of the goods upon which drawback would be claimed. The date for filing comments was previously extended to July 8, 1970.

Evaluation of the many comments received disclosed the desire for greater flexibility in the export procedures. The proposed amendment has therefore been broadened to include three available procedures, namely: (1) Carrier Document; (2) Export Examination; and (3) Exporter's Summary.

Under the Carrier Document procedure the bill of lading, master air waybill, or cargo manifest, or copies thereof, issued by the exporting carrier, together with any additional evidence needed to describe the export, would be filed with the drawback entry.

The Export Examination procedure provides for the submission of a Certificate of Registration, Customs Form 4455, to Customs at the port of export for certification at or before the time of export. Evidence of exportation, such as the bill of lading, master air waybill, or cargo manifest or any indirect evidence of a sale or other transfer of the product to a foreign country are not required to be filed with the drawback entry but must be retained by the claimant for 3 years after payment of the drawback for Government audit purposes. Exports by mail and Government shipments would be exempt from the "retention of evidence" requirement.

An entirely new procedure is proposed which would be known as the Exporter's Summary procedure. Claimants who are the exporters of the articles on which they claim drawback and who have a sufficient volume of drawback exports to justify periodic filing would be eligible to use the procedure if they can establish that such use would substantially reduce the paperwork involved. Application to use this procedure would be made (in advance of filing drawback claims) to the regional commissioner of customs with whom the claims would be filed. Under the system the claimant would be required to retain evidence of the facts of exportation, including the identity and location of the ultimate consignee of the merchandise, for a period of 3 years after payment of the claim. Further, each claimant would be required to furnish a bond to reimburse the Government in the event any improper payments are made.

The terms of the proposed amendments of the Customs Regulations, in tentative form, are as follows:

Section 22.6 (f)(19) and (g–1)(10) are amended to read:

§ 22.6 General drawback rates in effect; approval of drawback statements by the Bureau and by collectors.

* * * * *

(f) * * *

(19) The drawback entry shall be in the following form:

DRAWBACK ENTRY FOR SUGARS AND SIRUPS

U.S. Customs Service,
Port of _____, 19__.

Entry for drawback on exported sugars and sirups together with the designation of imported raw sugar containing sucrose of the quantity used in the manufacture of such merchandise, based on the relative value of the refined sugars and sirups manufactured during the period covered by abstract No. _____ (customs No. _____) on file with the district director of customs at the port of _____. Drawback claimed under section 22.6(f) of the Customs Regulations.

Exporting carrier	Date of clearance	Name of shipper	No. of packages	Quantity and description of exported merchandise

DESIGNATION OF IMPORTED SUGAR

No. of import entry	By whom imported or withdrawn from warehouse	Name of importing carrier	When imported	Where imported	Quantity sugar (pounds)	Polarization	Sucrose (pounds)	Certificate of delivery No.

I, _____, the _____ of _____, located at _____ declare that the sugar (or sirup) described in this entry, was manufactured by said company at its refinery at _____ and is part of the sugar (or sirup) covered by abstract No. _____, filed at the port of _____; that the refinery and other records of the company verifying the statements contained in said abstract are now and at all times hereafter will be open to inspection by Customs officers. I further declare that the above-designated imported sugar (upon which the duties have been paid) was received by said company on _____ and was used in the manufacture of sugar and sirup during the period covered by abstract No. _____, customs No. _____, on file with the district director of customs at _____.

I further declare that the sugar or sirup specified herein was delivered to the above-named shippers.

Dated _____, 19__.

_____
(Signature)

* * * * *

(g–1) * * *

(10) The refiner shall file a combination drawback entry and certificate of manufacture showing the products exported in the quantities established by the notices of lading and other evidence of exportation. Inasmuch as exported products, as described on the notices of lading and the other evidence of exportation, may include quantities of non-petroleum additives, a recapitulation shall be made showing quantities exported and the quantity of each product (less additives) in terms of the abstract.

* * * * *

Section 22.7 is amended to read:

§ 22.7 Evidence of exportation.

(a) *Optional procedures.* Exportation of articles covered by a drawback claim shall be established by compliance with the provisions of any one of the following procedures:

(1) Carrier Document described in paragraph (b) of this section;

(2) Export Examination described in paragraph (c) of this section;

(3) Exporter's Summary described in paragraph (d) of this section.

(b) *Carrier document.* The drawback entry shall be supported by a bill of lading, master air waybill, or cargo manifest, or certified copies thereof, issued by the exporting carrier, and any additional evidence needed by Customs officers to identify the time and place of shipment, exporting vessel or other carrier and the exported goods described in the entry.

(1) If a copy of the original bill of lading, master air waybill, or cargo manifest is filed, it shall legibly identify the representative of the transportation company issuing it.

(2) When no bill of lading is issued to cover the exportation or, if issued, cannot be obtained by the drawback claimant, the district director may accept a drawback entry supported by an inland bill of lading covering transportation of the merchandise to the port of export, and a certificate of the forwarder or exporter at the port of export showing the foregoing facts and the name of the person for whose account the mechandise was exported, that exportation was made by a specified conveyance, and any additional information needed by Customs officers. This procedure may also be followed when articles such as aircraft, automobiles, and other vehicles are exported under their own power.

(3) When the bill of lading, master air waybill, or cargo manifest, or certified copy thereof, is lost or destroyed, the person making the drawback entry may submit in lieu thereof, to the district director of customs, a statement showing the cause of loss, with satisfactory evidence of exportation and of his right to make the drawback entry.

(c) *Export examination.* The drawback entry shall be supported by a Certificate of Registration, Customs Form 4455: *Provided* that:

(1) To permit examination, the Certificate showing the names of the exporter, the drawback claimant if known, and the exporting vessel or other carrier, the time and place of lading, the number and kind of packages and their marks and numbers, the description of the merchandise and its weight (gross and net), gage, measure or number, was filed at or before the time of export with Customs at the port of export for examination, certification of exportation, and return;

(2) Evidence of exportation, to wit, the bill of lading, master air waybill, cargo manifest, or certified copies thereof, or circumstantial evidence of sales or transfers, are retained for a period of 3 years by the claimant for examination by authorized Government officials. It is not necessary to establish that the bill of lading, master air waybill, cargo manifest, or certified copies thereof, cannot be obtained in order to satisfy the fact of exportation by other documentation. When no bill of lading is issued to cover the exportation, or the drawback claimant cannot obtain the bill of lading, master air waybill, or cargo manifest, or certified copies thereof, an inland bill of lading covering transportation of the merchandise to the port of export, and a certificate of the exporter or forwarder at the port of export showing the foregoing facts and the name of the person for whose account the merchandise was exported, or other satisfactory evidence of exportation, shall be retained for a period of 3 years.

(3) When merchandise is laden on a vessel for transshipment at a domestic port outside the continental United States, such as San Juan, P.R., or Honolulu, Hawaii, the Certificate shall be presented to the Customs officer at the port where the merchandise was last transshipped for its foreign destination. Otherwise, a bill of lading, master air waybill, or cargo manifest, or certified copies thereof, shall be submitted with the drawback entry and must show the facts of transshipment.

(d) *Exporter's Summary procedure.* A procedure consolidating claims for drawback on a periodic basis shall be available when such procedure will substantially reduce the paper work involved. Under this procedure the drawback entry shall be supported by a chronological summary of the exports and any additional evidence required by Customs officers to fully establish the fact of exportation and shall be permitted only when complete and accurate information is available from the records of the exporter-claimant. Application to use this procedure shall be made to the regional commissioner of customs with whom drawback claims will be filed. Permission to use the procedure may be granted if, in the regional commissioner's discretion, he shall conclude that the circumstances so warrant and provided that the following conditions are met:

(1) Prior to filing the drawback claim the claimant's export volume is found sufficient to justify the proposed usage of the Exporter's Summary procedure by the Regional Commissioner of Customs in whose region the claims are to be filed;

(2) A bond is furnished by the exporter-claimant in an amount determined by the district director, subject to approval of the regional commissioner of customs, to protect the revenue against erroneous payments of drawback due to the incorrect description of (i) the exported articles, (ii) the party entitled to drawback, or (iii) the facts of exportation;

(3) For a period of 3 years from the date of payment of the drawback, evidence of exportation, that must include the identity and location of the ultimate consignee of the exported goods, shall be retained by the exporter-claimant for examination by authorized Government officials.

Section 22.8 is amended to read:

§ 22.8 Certificate of registration, mail shipments.

(a) If the merchandise on which drawback is to be claimed is to be exported by mail or parcel post, the Certificate of Registration, Customs Form 4455, shall be prepared in triplicate. Compliance with § 22.7(c)(2) shall not be required. The original and two copies shall be filed with the postmaster at the place of mailing, and the merchandise shall be delivered to the postmaster at the same time and mailed under his supervision. Such certificates shall be numbered by the exporter in accordance with § 22.10.

(b) Each package to be exported shall have stamped or written thereon a waiver of the right to withdraw the package from the mails, signed by the exporter.

(c) After the packages have been mailed, the postmaster will date stamp the Certificate of Registration, mark "Copy" on the copies and return the original and one copy to the person who presented the certificate for subsequent use in filing the drawback entry. One copy of the Certificate of Registration will be retained by the postmaster as his record of the transaction.

Section 22.9 is amended to read:

§ 22.9 Evidence of exportation, Government shipments.

(a) In the case of a shipment by a department, branch, or agency of the U.S. Government, the exportation may be established as provided by any one of the procedures set forth under § 22.7 when the drawback is to be claimed by such department, branch, or agency. The supplier of the merchandise may establish exportation under § 22.7 (b) or (c) only. Compliance with § 22.7(c)(2) shall not be required. No bond shall be required when the U.S. Government claims drawback under the provisions of § 22.7(d).

(b) When the § 22.7(c) procedure is to be used:

(1) Three copies of the Certificate of Registration, Customs Form 4455, shall be filed by the exporter or his agent with the Government officer in charge of transportation at the port of exportation. Such certificates shall be numbered by the exporter in accordance with § 22.10.

(2) The Certificate of Registration shall bear an endorsement in the following form, to be placed thereon by the exporter, for execution by the Government transportation officer at the port of exportation.

CERTIFICATE OF EXPORTATION

This is to certify that the merchandise described herein was laden at the port of _____, for _____ (Foreign destination—actual or code); that the exporting conveyance departed from the above-named port on _____ (Date); and that _____ (Name) was the actual shipper of the merchandise.

_____ (Name)

_____ (Date)

_____ (Rank, organization, title)

(3) The Government transportation officer at the port of exportation will certify exportation on the Certificate of Registration, mark "Copy" on the copies and return the original and one copy to the person who presented the certificate. One copy of the Certificate of Registration will be retained by the Government transportation officer as his record of the transaction.

§ 22.10 [Amended]

Section 22.10 is amended by substituting "Certificates of Registration" for "notices of exportation" in the title, and by substituting "Certificates of Registration, Customs Form 4455," for "Notices of exportation" in the first sentence.

Section 22.11 is amended to read:

§ 22.11 Incorrect certificates of registration or exporter's summary.

The exportation of articles covered by an incorrect certificate of registration, Customs Form 4455, must be established

as provided by § 22.7(b). At any time within the 3-year period prescribed for the completion of the drawback claim, an Exporter's Summary may be amended if the district director is satisfied as to the correctness of the amendment. Every application for amendment and its supporting evidence shall be in writing and submitted to the district director where the drawback entry is filed.

Section 22.13(a) is amended to read:

§ 22.13 Completion of drawback claims.

(a) A drawback entry and certificate of manufacture shall be filed within 3 years after the date the articles are exported. Such entry and certificate shall be filed on Customs Form 7575 except in cases covered by paragraph (c) or (e) of this section. If such entry and certificate is filed on Customs Form 7575, such form shall be filed in duplicate; and, if the entry is filed on Customs Form 7573, only one copy (the original) need be filed, provided that an additional copy of either form may be required by the district director of customs if he deems such additional copy necessary for administrative use in his office. The bill of lading, master air waybill, cargo manifest, or certified certificate of registration, Customs Form 4455, shall show that the merchandise was shipped by the person making the drawback entry, or shall bear an endorsement of the person in whose name the merchandise was shipped, showing that the person making entry is authorized to make it and to receive the drawback. One entry may cover several shipments. All documents necessary to the liquidation of the entry, including those issued by one Customs officer to another, shall be filed or applied for, as the case may require, within the 3-year period prescribed above, except that any required landing certificate shall be filed within the time prescribed in § 22.17(c). Claims not completed within the 3-year period prescribed above shall be treated as abandoned and no extension will be granted, unless it is established that failure to complete the claim within 3 years was occasioned by action of a responsible Customs officer.

* * * * *

Section 22.17(a) is amended to read:

§ 22.17 Landing certificates.

(a) A landing certificate shall be required (1) whenever the district director of customs at the port of exportation or at the port where the drawback entry is filed shall have reason to believe that the shipment is not a bona fide exportation, (2) when the Bureau specifically directs that a landing certificate shall be produced, (3) when a landing certificate is otherwise required by law or regulation, and (4) for every aircraft which departs from the United States under its own power if drawback is claimed on the aircraft or any part thereof. Landing certificates for aircraft shall show the exact time of landing of the aircraft in the foreign country and describe the aircraft or parts thereof on which drawback is claimed in sufficient detail to enable the district director of customs to identify them with the bill of lading, master air waybill, cargo manifest, or certificate of registration, Customs Form 4455.

* * * * *

Section 22.18(b) is amended to read:

§ 22.18 Supplies for certain vessels and aircraft.

* * * * *

(b) The procedure prescribed in this part as to the filing of an application for a rate of drawback and other required documents shall be followed, so far as applicable, in filing claims for drawback under this section, except that notices of lading on Customs Form 7515 shall be filed in lieu of bills of lading, master air waybills, cargo manifests, or the certificate of registration, Customs Form 4455.

§ 22.20 [Amended]

Section 22.20(d) is amended by deleting the phrase "notices of exportation."

Section 22.21(a) is amended to read:

§ 22.21 To whom payable.

(a) The person named as exporter in the bill of lading, master air waybill, cargo manifest, or certificate of registration, Customs Form 4455, shall be held to be the exporter and entitled to the drawback, unless the manufacturer or producer, on the sale or consignment of such articles, shall have reserved to himself the right to claim the drawback, in which case such manufacturer or producer may make entry for such drawback and it shall be paid to him upon the production of satisfactory evidence that such reservation was made with the knowledge and consent of the exporter.

* * * * *

Section 22.23(c) is amended to read:

§ 22.23 Procedure.

* * * * *

(c) When the exportation covers duty-paid imported merchandise, in addition to the tax-paid alcohol, two sets of drawback entries shall be filed, one set for Customs drawback and the other for internal revenue drawback.

* * * * *

Section 22.26(a) is amended to read:

§ 22.26 Statement of drawback due.

(a) When the drawback claim has been completed by the filing of the entry and other documents, as required by the regulations in this part, any required landing certificate has been produced, and clearance of the exporting conveyance has been established by the records of clearance in the case of direct exportation or by a certificate when the merchandise was exported at another port, the regional commissioner of customs shall proceed to ascertain the amount of drawback due by reference to the certificate of manufacture and the drawback rate under which the drawback claimed is allowable.

* * * * *

Section 22.37(a) is amended to read:

§ 22.37 Articles manufactured or produced in the United States.

(a) The procedure prescribed in this part as to the filing of an application for a rate of drawback and other required documents shall be followed, so far as applicable, in filing claims for drawback under the fourth proviso to section 3 of the Act of June 18, 1934, as amended (19 U.S.C. 81c), on articles manufactured or produced in the United States with the use of imported or substituted merchandise, and on flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced with the use of domestic tax-paid alcohol, except that notices of transfer on Customs Form 7513 shall be filed in lieu of bills of lading, master air waybills, cargo manifests, or certificates of registration, Customs Form 4455.

* * * * *

§ 22.45 [Amended]

Section 22.45 is amended by deleting the phrase "or notices of exportation" and substituting therefor the phrase "master air waybills, cargo manifests, or certificates of registration, Customs Form 4455."

(Secs. 313, 624, 46 Stat. 693, as amended, 759; 19 U.S.C. 1313, 1624)

Prior to the issuance of the proposed amendment, consideration will be given to any relevant data, views, or arguments which are submitted in writing to the Commissioner of Customs, Bureau of Customs, Washington, D.C. 20226, and received not later than 60 days from the date of publication of this notice in the FEDERAL REGISTER. No hearing will be held.

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved: February 18, 1971.

WILLIAM L. DICKEY,
Acting Assistant Secretary of the Treasury.

[FR Doc.71-2846 Filed 3-2-71;8:46 am]

Internal Revenue Service

[26 CFR Parts 194, 196, 197, 201, 245]

LIQUOR DEALERS; STILLS; DRAWBACK ON DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS; DISTILLED SPIRITS PLANTS; AND BEER

Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Director, Alcohol, Tobacco and Firearms Division, Internal Revenue Service,

Washington, D.C. 20224, within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Director, Alcohol, Tobacco and Firearms Division, within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

In order to: (1) Implement the provisions of Public Law 87–863 which amended the Internal Revenue Code by providing that only one special tax as a retail dealer in liquors need be paid by a State, a political subdivision of a State, or the District of Columbia, regardless of the number of locations at which such business is conducted; (2) implement the provisions of Public Law 90–615 which amended the Internal Revenue Code by extending the period in which a nonbeverage drawback claim may be filed from 3 to 6 months following the quarter in which the distilled spirits are used; (3) implement the provisions of Public Law 90–618 which amended the Internal Revenue Code by repealing the requirement that district directors maintain a list of special taxpayers for public inspection and by exempting persons who pay special tax pursuant to Subtitle E of the Code from posting occupational tax stamps; (4) conform to the change in name of the Alcohol and Tobacco Tax Function; and (5) make miscellaneous and clarifying and editorial changes, the regulations in 26 CFR Parts 194, 196, 197, 201, and 245 are amended as follows:

Paragraph A. 26 CFR Part 194 is amended as follows:

1. Section 194.4 is amended to change the words "this part" to "Chapter 51, I.R.C." and to restrict application of § 194.4 to certain taxes by inserting a reference to § 194.1. As amended, § 194.4 reads as follows:

§ 194.4 Relation to State and municipal law.

The payment of any tax imposed by Chapter 51, I.R.S., for carrying on any trade or business specified in § 194.1 shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on such trade or business within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes.

(72 Stat. 1348; 26 U.S.C. 5145)

§ 194.11 [Amended]

2. Section 194.11 is amended by changing "alcohol and tobacco tax" to read "alcohol, tobacco and firearms" in the definition of assistant regional commissioner and by changing "Alcohol and Tobacco Tax Division" to read "Alcohol, Tobacco and Firearms Division" in the definition of Director.

3. Section 194.31 is amended to provide that States, political subdivision thereof, or the District of Columbia need pay only one special tax as a retail dealer in liquors regardless of the number of retail liquor stores operated. As amended, § 194.31 reads as follows:

§ 194.31 States, political subdivisions thereof, or the District of Columbia.

A State, a political subdivision thereof, or the District of Columbia which engages in the business of selling, or offering for sale, distilled spirits, wines, or beer is not exempt from special tax. However, no such governmental entity shall be required to pay more than one special tax as a retail dealer in liquors regardless of the number of locations at which such entity carries on business as a retail dealer in liquors. Any such governmental entity which has paid the applicable wholesale dealer special tax at its principal office, and has paid the applicable special tax as a retail dealer, shall not be required to pay additional wholesale dealer special tax at its retail stores by reason of the sale thereat of distilled spirits, wines, or beer, to dealers qualified to do business as such within the jurisdiction of such entity.

(72 Stat. 1340, 1343, 1344, as amended; 26 U.S.C. 5111, 5113, 5121, 5123)

4. Section 194.51 is amended by inserting a reference to § 194.31 and by deleting the reference to Subpart L and inserting in lieu thereof reference to §§ 194.181–194.193. As amended, § 194.51 reads as follows:

§ 194.51 Special tax liability incurred at each place of business.

Except as provided in §§ 194.31 and 194.181–194.193, liability to special tax is incurred at each and every place where distilled spirits, wines, or beer are sold or offered for sale: *Provided,* That the term "place" as used in this section means the entire office, plant or area of the business in any one location under the same proprietorship; and passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises shall not be deemed sufficient separation to require the payment of additional special tax, if the various divisions are otherwise contiguous.

(72 Stat. 1347; 26 U.S.C. 5143)

5. The center heading preceding § 194.131 and § 194.131 are amended by deleting the reference to posting of a special tax stamp and providing instead that the stamp be available for examination by any internal revenue officer. As amended, the center heading and § 194.131 read as follows:

STAMP TO BE AVAILABLE FOR EXAMINATION

§ 194.131 General.

A dealer shall keep his special tax stamp available in his place of business for inspection by any internal revenue officer during business hours. A dealer holding a special tax stamp as a retail dealer in liquors or a retail dealer in beer "At Large" or "In the United States" shall keep the stamp available for inspection where he is conducting such business.

(72 Stat. 1348; 26 U.S.C. 5146)

6. The center heading "Missing Stamps" immediately preceding §194.132 is deleted.

7. Section 194.132 is amended to provide that a "Certificate in Lieu of Lost or Destroyed Special Tax Stamp" shall be kept available for examination by any internal revenue officer. As amended, § 194.132 reads as follows:

§ 194.132 Lost or destroyed.

If a special tax stamp has been lost or destroyed, the dealer shall immediately notify the director of the service center who issued the stamp. A "Certificate in Lieu of Lost or Destroyed Special Tax Stamp" will be issued to the dealer who submits an affidavit showing to the satisfaction of the director of the service center that the stamp was lost or destroyed. The certificate shall be kept available for inspection in the same manner as prescribed for a special tax stamp in § 194.131.

§§ 194.140–194.142 [Revoked]

8. The center heading "Record 10" immediately preceding § 194.140 and §§ 194.140, 194.141, and 194.142 are revoked.

9. Sections 194.230, 194.234, 194.239 (a), and 194.241 are amended to provide that the application referred to in each section is to be submitted in duplicate. As amended, §§ 194.230, 194.234, 194.239(a), and 194.241 read as follows:

§ 194.230 Recapitulation records.

Every wholesale dealer in liquors shall, daily, prepare a recapitulation record showing the total quantities of distilled spirits received and disposed of during the day: *Provided,* That, upon receipt of an application, in duplicate, and on his finding that preparation of the recapitulation daily is not necessary to law enforcement or protection of the revenue, the assistant regional commissioner may authorize a dealer to prepare such record less frequently until otherwise notified. The assistant regional commissioner's authorization shall specify the intervals at which the recapitulation shall be prepared and shall provide that the authorization may be withdrawn if, in the opinion of the assistant regional commissioner, preparation of a daily recapitulation by the dealer is necessary to law enforcement or to protection of the revenue.

§ 194.234 Daily reports, Forms 52A and 52B.

Except as provided in §§ 194.223 and 194.224, every wholesale dealer in liquors shall prepare and submit, daily, a report on Form 52A of all distilled spirits received by him, and on Form 52B of all distilled spirits disposed of by him. The reports shall be filed with the assistant regional commissioner or other officer designated by him. Each report shall bear the following declaration signed by the dealer or his authorized agent:

I declare under the penalties of perjury that this report, consisting of ------ pages, has been examined by me and to the best of my knowledge and belief is a true, correct, and complete report of all the transactions which occurred during the period covered thereby, and each entry therein is correct.

If any case the assistant regional commissioner shall so authorize, the reports, in lieu of being filed daily, may be filed for such periods and at such times as he may deem necessary in the interest of the Government, or, upon receipt of an application, in duplicate, and a finding by the assistant regional commissioner that such reporting is not necessary to law enforcement or protection of the revenue, he may relieve a dealer from the requirement of preparing and submitting such daily or periodic reports on Forms 52A and 52B until otherwise notified.

(68A Stat. 749, 72 Stat. 1342; 26 U.S.C. 6065, 5114)

§ 194.239 Requirements for retail dealers.

(a) *Records of receipts.* Each retail dealer in liquors and each retail dealer in beer shall keep at his place of business complete records of all distilled spirits, wines, or beer received, showing (1) the quantities thereof, (2) from whom received, and (3) the receiving dates: *Provided,* That in cases where wines and beer are retailed only for off-premises consumption, the assistant regional commissioner may, pursuant to an application in duplicate, authorize the records to be maintained at other premises under control of the same dealer if he finds that such maintenance will not cause undue inconvenience to internal revenue officers desiring to examine such records. Records of receipts shall consist of all purchase invoices or bills covering distilled spirits, wines, and beer received, or, at the option of the dealer, a book record containing all of the required information.

* * * * *

§ 194.241 Place of filing.

Prescribed records of receipt and disposition and file copies of Forms 52A, 52B, 338, and the recapitulation records required by § 194.230, shall be maintained in chronological order in separate files at the premises where the distilled spirits are received and sent out: *Provided,* That the assistant regional commissioner may, pursuant to an application, in duplicate, submitted by the wholesale dealer, authorize the files, or any individual file, to be maintained at other premises under control of the same dealer, if he finds that such maintenance will not delay the timely filing of any document, or cause undue inconvenience to internal revenue officers desiring to examine such files.

(72 Stat. 1342; 26 U.S.C. 5144)

10. Section 194.247 is amended by deleting the reference to the posting of special tax stamps. As amended § 194.247 reads as follows:

§ 194.247 Other dealers; no sign required.

Internal revenue laws do not require the posting of signs by retail dealers in liquors, retail dealers in beer, or wholesale dealers in beer.

PAR. B. 26 CFR Part 196 is amended as follows:

§§ 196.2, 196.8, 196.32 [Amended]

1. Sections 196.2, 196.8, and 196.32 are amended by changing "Alcohol and Tobacco Tax Division", wherever such term appears, to read "Alcohol, Tobacco and Firearms Division".

§ 196.6 [Amended]

2. Section 196.6 is amended by changing "Assistant Regional Commissioner, Alcohol and Tobacco Tax," to "assistant regional commissioner, alcohol, tobacco and firearms,".

3. Section 196.31 is amended to provide that the notice referred to is to be submitted in duplicate and to delete "of the region." As amended, § 196.31 reads as follows:

§ 196.31 Manufacturer to notify assistant regional commissioner.

Any person making such changes, repairs, or alterations of a still or condenser will immediately give notice, in duplicate, to the assistant regional commissioner of the extent of such repairs or alterations, advising him of the quantity and cost of new materials and parts and the precise nature of the changes. If the changes, repairs, or alterations are involved or complicated, a sketch of the apparatus showing the changes or alterations should also be furnished the assistant regional commissioner for determination of tax liability. If such is available, information as to the initial cost of the construction of the apparatus should likewise be furnished the assistant regional commissioner.

(72 Stat. 1339; 26 U.S.C. 5102)

4. Section 196.37 is amended to provide that the special tax stamp shall be available for inspection by any internal revenue officer. As amended, § 196.37 reads as follows:

§ 196.37 Examination of special tax stamp.

The stamp issued as a receipt for the payment of the special (occupational) tax shall be kept at the still manufacturer's place of business, available for inspection by any internal revenue officer during business hours.

(72 Stat. 1348; 26 U.S.C. 5146)

5. Section 196.80 is amended to delete the reference to "the territory of Hawaii" and to provide that the application referred to is to be submitted in duplicate. As amended, § 196.80 reads as follows:

§ 196.80 Removal for domestic use.

Distilling apparatus which is to be used within the United States and the District of Columbia for purposes other than for distilling, as defined in § 196.10, is exempted from the procedure and requirements set forth in §§ 196.42 to 196.47. Manufacturers and vendors of distilling apparatus for purposes other than for distilling shall maintain at their premises a record showing all stills manufactured, received, and removed or otherwise disposed of. Such record shall show the name and address of the purchaser and the purpose for which each still is to be used. Such records will be kept available for a period of 2 years for inspection by internal revenue officers. At the close of each month, and not later than 10 days thereafter, the manufacturer or vendor shall submit a report to the assistant regional commissioner of the region in which his premises are located showing the number of stills on hand at the beginning of the month, the number received, the number disposed of, the number on hand at the end of the month, and as to each such still removed, the name and address of the purchaser and the type, capacity, and kind. Each report shall be signed by the manufacturer or vendor or his authorized agent and immediately above the signature there shall appear the following statement, "I declare under the penalties of perjury that this report has been examined by me and to the best of my knowledge and belief is a true and correct report." Upon application, in duplicate, by the manufacturer or vendor, the assistant regional commissioner may waive the requirement for the submission of such report when he finds that such waiver will not jeopardize the revenue. Such waiver shall terminate upon notification by the assistant regional commissioner to the manufacturer or vendor.

§ 196.81 [Amended]

6. Section 196.81 is amended to provide a correct cross-reference by changing "§ 196.63" to read "§ 196.61".

PAR. C. 26 CFR Part 197 is amended as follows:

§§ 197.2, 197.8, 197.98 [Amended]

1. Sections 197.2, 197.8 and 197.98 are amended by changing "Alcohol and Tobacco Tax Division", wherever the term appears, to read "Alcohol, Tobacco and Firearms Division."

§ 197.6 [Amended]

2. Section 197.6 is amended by changing "Alcohol and Tobacco Tax" to "alcohol, tobacco and firearms".

3. Section 197.40 is amended to provide that the special tax stamp shall be kept available for inspection by any internal revenue officer. As amended, § 197.40 reads as follows:

§ 197.40 Issuance of stamps.

Each manufacturer of nonbeverage products, upon filing a properly executed return on Form 11, together with the

proper remittance in the full amount due, will be issued a special tax stamp designated "Manufacturer of Nonbeverage Products." Such special tax stamp may not be sold or otherwise transferred to another person. The stamp shall be kept available for inspection by any internal revenue officer during business hours.

(72 Stat. 1348; 26 U.S.C. 5146)

4. Section 197.41 is amended to provide that a "Certificate in Lieu of Lost or Destroyed Special Tax Stamp" shall be kept available for inspection by any internal revenue officer. As amended, § 197.41 reads as follows:

§ 197.41 Lost or destroyed stamps.

If a special tax stamp is lost or accidentally destroyed, the taxpayer should immediately notify the director of the service center who issued the stamp, who will issue to the taxpayer a "Certificate in Lieu of Lost or Destroyed Special Tax Stamp." The certificate shall be kept available for inspection in the same manner as prescribed for a special tax stamp in § 197.40.

5. Section 197.95 is amended by changing "Alcohol and Tobacco Tax Division", wherever the term appears, to "Alcohol, Tobacco and Firearms Division", and by deleting "Washington 25, D.C." inasmuch as the address appears on Form 1678. As amended, § 197.95 reads as follows:

§ 197.95 Products requiring formulas.

Manufacturers intending to file drawback claims are required to file quantitative formulas for all preparations except those covered by § 197.96. Such formulas should be sent direct to the Director, Alcohol, Tobacco and Firearms Division, on Form 1678, in quadruplicate, before or at the time of manufacture of the products. Upon receipt by the Director, Alcohol, Tobacco and Firearms Division, the formulas will be examined and if found to be medicines, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for beverage purposes they will be approved. If the formulas do not meet the requirements of the law for drawback products, they will be disapproved. No drawback will be allowed on distilled spirits used in a disapproved product, unless such product is later used in the manufacture of an approved nonbeverage product. The formulas should be serially numbered, commencing with number one and continuing thereafter in numerical sequence. Amended or revised formulas will be considered as new formulas and serially numbered accordingly. One copy of each formula will be retained by the Director, Alcohol, Tobacco and Firearms Division, one copy returned to the manufacturer, and the original and one copy will be sent to the assistant regional commissioner for filing. The formulas returned to manufacturers shall be filed in serial order by the manufacturer and made available for examination by internal revenue officers in the investigation of drawback claims. In the case of food products, such as preserved fruits, cakes, soups, etc., it will be sufficient if the formulas therefor show the quantity of proof gallons of distilled spirits used in the production of a given quantity of finished product.

6. Section 197.96 is amended to specify that only current revisions and editions of the United States Pharmacopoeia, National Formulary, or Homeopathic Pharmacopoeia of the United States are acceptable. As amended, § 197.96 reads as follows:

§ 197.96 Products not requiring formulas.

Quantitative formulas need not be submitted if the products are medicinal preparations, tinctures, or fluid extracts produced under formulas prescribed by current revisions or editions of the United States Pharmacopoeia, the National Formulary, or the Homeopathic Pharmacopoeia of the United States, and such products are identified in the supporting data by name and followed by the letters "U.S.P.," "N.F.," or "H.P.U.S.," as the case may be.

7. Section 197.106 is amended to incorporate the provisions of Revenue Ruling 63–67 which held that a manufacturer who is qualified to file claims on a monthly basis may file one, two, or three claims covering alcohol used during a quarter.

As amended, § 197.106 reads as follows:

§ 197.106 Claims.

The claim for drawback shall be filed on Form 843 (original only) with the assistant regional commissioner, for the region in which the place of manufacture is located, and shall pertain only to distilled spirits used in the manufacture or production of nonbeverage products during any one quarter of the year, and only one claim may be filed for each quarter: *Provided*, That where the manufacturer has notified the assistant regional commissioner, in writing, of his intention to file claims on a monthly basis, in lieu of a quarterly basis, and has filed a bond in compliance with the provisions of § 197.107, claims may be filed monthly in lieu of quarterly. The election to file claims on a monthly basis will not preclude a manufacturer from filing a single claim covering alcohol used during a quarter, or a single claim for two months of a quarter, or two claims, one for 1 month and one for 2 months. The month or months covered by the claim should be specifically identified, and the claimant may be required to separate the necessary data into the individual months covered by the claim. An election for the filing of monthly claims may be revoked upon filing of notice thereof, in writing, with the assistant regional commissioner.

8. Section 197.108 is amended to extend the filing period for claims from three to six months to conform to the amendment of section 5134(b), I.R.C., made by Public Law 90–615. As amended, § 197.108 reads as follows:

§ 197.108 Date of filing claim.

Quarterly claims for drawback shall be filed with the assistant regional commissioner within the 6 months next succeeding the quarter in which the distilled spirits covered by the claim were used in the manufacture of nonbeverage products. Monthly claims for drawback may be filed at any time after the end of the month in which the distilled spirits covered by the claim were used in the manufacture of nonbeverage products, but must be filed not later than the close of the sixth month succeeding the quarter in which such spirits were used.

(72 Stat. 1346, as amended, 26 U.S.C. 5134)

9. Section 197.113 is amended by deleting the reference to Form 2630 and by inserting in lieu thereof a reference to Form 179 and to the commercial invoice provided for in § 197.130b. As amended, § 197.113 reads as follows:

§ 197.113 Distilled spirits received in barrels, drums, or other portable containers.

Each claim covering distilled spirits received in barrels, drums, or other portable containers bearing distilled spirits stamps shall be accompanied by a statement showing: the date of receipt; the name and address of the vendor; the kind and serial number of the stamp affixed to the container and the date the stamp was issued or affixed as stated on the stamp; the serial number, if any, of the container; the name of the producer, blender, or warehouseman as shown on Form 179 or on the commercial invoice provided for in § 197.130b; and the kind, quantity, and proof of the spirits. (When the container is emptied, the stamp shall be completely destroyed.)

10. Section 197.114 is amended by deleting the requirement that the statement accompanying a claim covering distilled spirits received in bottles show the serial number of the strip stamp affixed to the bottle. As amended, § 197.114 reads as follows:

§ 197.114 Distilled spirits received in bottles.

Each claim covering distilled spirits received in bottles will be accompanied by a statement showing: the date of receipt; the name and address of the vendor; the name of the bottler; and the kind, quantity, and proof of the spirits.

11. A new section, § 197.130a, which incorporates the provisions of Revenue Ruling 68–259, is inserted immediately following § 197.130, to provide that the quantity of distilled spirits received shall be determined accurately. The new section, § 197.130a, reads as follows:

§ 197.130a Distilled spirits received and used.

(a) *Receipts.* Each manufacturer shall, at the time of receipt, determine, preferably by weight, and record in his permanent records, the exact quantity of distilled spirits received: *Provided*, That if the spirits are received in a tank car or tank truck and the result of the manufacturer's gauge of the spirits is within 0.2 percent of the quantity reported on the Form 179 covering the tax-determination of such spirits, the quantity reported on the Form 179 may be recorded

in the manufacturer's permanent records as the quantity received. However, the receiving gauge shall be noted on Form 179. Losses in transit, other than those attributable to variations in gauge not exceeding the 0.2 percent limitation as provided in this paragraph, must be determined but shall not be recorded in the manufacturer's permanent records as distilled spirits received.

(b) *Use.* Each manufacturer shall accurately determine, by weight or volume, the quantity of all distilled spirits used and enter such quantity in his permanent records. Where the quantity used is determined by volume, adjustments shall be made if the temperature of the spirits is above or below 60 degrees Fahrenheit. A correction table, Table No. 7, is available in 26 CFR Part 186, Gauging Manual. Losses after receipt, due to leakage, spillage, evaporation, or other causes shall be accurately recorded in the manufacturer's permanent records at the time such losses are determined.

12. A new section, § 197.130b, is inserted immediately following new § 197.130a, to provide that where shipments of spirits are made from a taxpaid room, a commercial invoice may be utilized as evidence of taxpayment in lieu of Form 179. The new section, § 197.130b, reads as follows:

§ 197.130b Evidence of taxpayment of distilled spirits.

Forms 179, required to be furnished by the supplier with each shipment of distilled spirits, shall be retained by the manufacturer as evidence of taxpayment of the spirits and to support information required to be furnished in supporting data filed with a claim: *Provided*, That where shipments are made from a taxpaid room operated in connection with a distilled spirits plant, the vendor's commercial invoice may be utilized in lieu of Form 179 if the invoice bears a certification as to taxpayment by the person who paid the tax, and includes the following information:

(a) The name and address of vendor;

(b) The registry number of the distilled spirits plant from which the spirits were withdrawn on determination of tax;

(c) The release number of the applicable Form 179;

(d) The name of the producer, blender, or warehouseman of the spirits;

(e) The serial number of the container;

(f) The serial number and date of the distilled spirits stamp; and

(g) The kind of spirits, proof, and proof gallons in the container.

Form 179 shall be secured and retained by the manufacturer for each shipment received from the bonded premises of a distilled spirits plant.

13. Section 197.133 is amended by inserting a reference to the commercial invoice provided for in § 197.130b. As amended, § 197.133 reads as follows.

§ 197.133 Retention of records.

Each manufacturer shall retain for a period of not less than 2 years all records required by this part, all Forms 179 received by him evidencing tax determination of the spirits, or commercial invoices as provided in § 197.130b, and all bills of lading received by him in respect of shipment of the spirits. In addition, a copy of each approved formula returned to the manufacturer shall be retained by him for not less than 2 years from the date he files his last claim for drawback under such formula. Such records, forms, and formulas shall be readily available during the manufacturer's regular business hours for examination and taking abstracts therefrom by internal revenue officers.

PAR. D. 26 CFR Part 201 is amended as follows:

1. Section 201.31 is amended to provide that the special tax stamp shall be available for inspection by any internal revenue officer. As amended, § 201.31 reads as follows:

§ 201.31 Rectifier's special tax.

Every person engaging in business as a rectifier, within the meaning of the term as defined in Subpart B of this part, shall file Form 11 and pay special tax at the applicable rate prescribed in section 5081, I.R.C. Form 11 shall be filed with the district director, except that, where instructions on or relating to Form 11 so provide, Form 11 shall be filed with the director of the service center serving the internal revenue district in which the business is located. The tax is imposed as of the first day of July in each year, or on commencing such business. In the former case the tax is reckoned for 1 year and in the latter case it is reckoned proportionately from the first day of the month in which the liability to special tax commenced and to and including the 30th day of June following. Section 5142, I.R.C., provides that no person shall engage in or carry on the business of a rectifier until he has paid the special tax therefor. A stamp issued as a receipt for the payment of the special tax shall be kept at the rectifier's place of business, available for inspection by any internal revenue officer during business hours.

(68A Stat. 846, 72 Stat. 1338, 1346, 1347, 1348; 26 U.S.C. 7011, 5081, 5082, 5142, 5143, 5146)

2. Sections 201.307 and 201.308 are amended to change Form 1685 from an application to a notice. As amended, §§ 201.307 and 201.308 read as follows:

§ 201.307 Permissible blending.

Fruit brandies distilled from the same kind of fruit at not more than 170° of proof may, for the sole purpose of perfecting such brandies according to commercial standards, be mixed or blended with each other, or with any mixture or blend of such fruit brandies on bonded premises. Rums may, for the sole purpose of perfecting them according to commercial standards, be mixed or blended with each other, or with any mixture or blend of rums on bonded premises. Before blending such rums or brandies, the proprietor shall give notice on Form 1685, in triplicate, in accordance with the instructions on the form and deliver one copy to the assigned officer. When spirits in packages are to be dumped, the proprietor shall also deliver to the assigned officer a list (one copy) of the serial numbers of the packages. Brandies or rums mixed or blended in accordance with this subpart may be packaged, stored, transported, transferred in bond, withdrawn free of tax, withdrawn without payment of tax, withdrawn on payment or determination of tax, or be otherwise disposed of, in the same manner as brandies or rums not mixed or blended. If brandy or rum, mixed or blended in accordance with this subpart is transferred in bond, Form 236 and Form 2630 (if any) shall show such fact and whether the brandy or rum is subject to tax imposed by section 5023, I.R.C.

(72 Stat. 1367; 26 U.S.C. 5234)

§ 201.308 Blending procedure.

The proprietor shall dump the brandy or rum to be blended, gauge the contents of the blending tank, gauge the packages (if the spirits are repackaged), and complete Form 1685. The proprietor shall record the gauge of packages (if any) on Form 2630 and the tank gauge on Form 1685, deliver the original of each form to the assigned officer, and retain a copy of each form for his files.

(72 Stat. 1367; 26 U.S.C. 5234)

3. Section 201.322 is amended to clarify the language. As amended, § 201.322 reads as follows:

§ 201.322 Entry and gauge.

Proprietor shall make entry for the bottling of distilled spirits in bond on Form 1515. A separate Form 1515 shall be executed for each lot of spirits to be so bottled. Before dumping packages of spirits, the proprietor shall notify the assigned officer and shall give him a suitable list (one copy) of the serial numbers of the packages to be dumped. Each package shall be carefully examined by the proprietor, and if any package bears evidence of loss due to theft or unauthorized voluntary destruction, or loss in excess of normal storage losses, such package shall not be dumped until released by the assigned officer; Form 1515 will be amended when necessary. The proprietor shall dump packages promptly after the assigned officer has given his approval therefor on Form 1515; however, no more spirits shall be dumped at any time than can be bottled expeditiously. After dumping the packages, the proprietor shall gauge the spirits and make a report of such gauge on Form 1515. Such gauge shall be made by weight and proof unless the assistant regional commissioner approves another method of gauging. The spirits shall be gauged either in the storage portion of the bonded warehouse or in the bottling-in-bond facilities; spirits may be transferred to such facilities by pipeline. The Form 1515 will then be resubmitted to the assigned officer for the release of the spirits.

(72 Stat. 1366; 26 U.S.C. 5233)

4. Two sections, §§ 201.331a and 201.467a, are inserted immediately following §§ 201.331 and 201.467, respectively, to make it clear that shipments of spirits without payment of tax to Puerto Rico are subject to the provisions of 27 CFR Part 5 with respect to standards of fill and labeling requirements. Also, shipments of wines and spirits with benefit of drawback to Puerto Rico are subject to the provisions of 27 CFR Parts 4 and 5, respectively, with respect to standards of fill and labeling requirements. The new sections, §§ 201.331a and 201.467a, read as follows:

§ 201.331a Spirits withdrawn for shipment to Puerto Rico.

Spirits withdrawn without payment of tax for shipment to Puerto Rico under the provisions of Part 252 of this chapter are subject to the provisions of 27 CFR Part 5 in respect of labeling requirements and standards of fill for bottles.

§ 201.467a Spirits and wines removed for shipment to Puerto Rico.

Taxpaid wines and spirits removed for shipment to Puerto Rico with benefit of drawback under the provisions of Part 252 of this chapter are subject to the provisions of 27 CFR Parts 4 and 5, respectively, in respect of labeling requirements and standards of fill for bottles.

5. Section 201.524 is amended to remove the requirement that certain additional marks be placed on portable containers when withdrawn from bonded premises (1) on determination of tax, (2) for use in wine production, and (3) for transfer in bond. As amended, § 201.524 reads as follows:

§ 201.524 Additional marks on portable containers.

In addition to the other marks required by this part, portable containers (other than bottles enclosed in cases) of spirits (including denatured spirits, as applicable) to be withdrawn from the bonded premises—

(a) Without payment of tax, for export, transfer to customs manufacturing bonded warehouses, transfer to foreign-trade zones or supplies for certain vessels and aircraft shall be marked as provided in Part 252 of this chapter;

(b) On determination of tax shall be marked, if wooden packages, with the words "Rinsed" or "Not Rinsed", if rinsed, the temperature of the water used shall be shown as provided in § 201.377; or

(c) Tax-free shall be marked to show the number of the permit of the tax-free user, the date of withdrawal, and the purpose of withdrawal, as, for example, "Hospital Use", "Scientific Purposes", "Use of U.S."

The proprietor may show the brand or trade name and may place caution notices and other material required by Federal, State, or local law and regulations on the Government head or side if such names and attachments do not interfere with or detract from the markings required by this subpart. Also the proprietor may show wine gallons or proof gallons. No other marks may be placed on the Government head or side except as authorized by the Director.

(72 Stat. 1360; 26 U.S.C. 5206)

6. Sections 201.527 and 201.529 are amended to remove the requirement that certain additional marks be placed on cases of bottled-in-bond spirits and on cases of bottled alcohol on the date tax is determined or when cases are otherwise withdrawn or removed. As amended, §§ 201.527 and 201.529 reads as follows:

§ 201.527 Marks on cases of bottled-in-bond spirits.

(a) *Mandatory marks.* The following information shall be plainly marked at the time of bottling on the Government side of each case of spirits bottled in bond:

(1) Serial number;
(2) The words "Bottled in Bond";
(3) Kind of spirits;
(4) Proof gallons;
(5) Plant number of bottler;
(6) Proof (if bottled in bond for export);
(7) Date filled.

Cases withdrawn for export, transfer to customs manufacturing bonded warehouses, transfer to foreign-trade zones, or supplies for certain vessels and aircraft shall bear the additional marks required by Part 252 of this chapter. Cases withdrawn tax-free shall be marked to show the number of the permit of the tax-free user and the purpose of the withdrawal as provided in § 201.524(c).

(b) *Other marks.* The proprietor may also show the real name and/or the trade name of the producer of the spirits, and may place other material required by Federal, State, or local law and regulations on the Government side, if such names and attachments do not interfere with or detract from the markings required by this subpart. No other marks may be placed on the Government side except as authorized by the Director as provided in § 201.530.

(72 Stat. 1360, 1366; 26 U.S.C. 5206, 5233)

§ 201.529 Cases of bottled alcohol.

(a) *Mandatory marks.* The Government side of each case of alcohol bottled in accordance with the provisions of Subpart K of this part shall be marked with the word "Alcohol", shall be serially numbered, and shall be marked to show the plant number, proof, and proof gallons. Cases withdrawn for export, transfer to customs manufacturing bonded warehouses, transfer to foreign-trade zones, or supplies for certain vessels and aircraft shall bear the additional marks required by Part 252 of this chapter. Cases withdrawn tax-free shall be marked to show the number of the permit of the tax-free user and the purpose of the withdrawal as provided in § 201.524(c).

(b) *Other marks.* The proprietor may also show the brand or trade name, and may place other material required by Federal, State, or local law and regulations on the Government side, if such names and attachments do not interfere with or detract from the marks required by this subpart. No other marks may be placed on the Government side except as authorized by the Director as provided in § 201.530.

(72 Stat. 1360, 1369; 26 U.S.C. 5206, 5235)

§ 201.548 [Deleted]

7. Section 201.548 is deleted.

8. Section 201.563 is amended to conform to the language in section 5008, I.R.C. As amended, § 201.563 reads as follows:

§ 201.563 Claims.

Claims for refund or credit of tax on spirits voluntarily destroyed under this subpart shall be filed pursuant to the provisions of Subpart C of this part. Where spirits destroyed on bottling premises contain alcoholic ingredients which were not withdrawn by the proprietor from bond on tax determination, such ingredients shall not be included in any claim for refund or credit. The quantity of all spirits and alcoholic ingredients destroyed on bottling premises shall be reported on Form 2611. All claims under this subpart must be filed within 6 months from the date of destruction.

(72 Stat. 1323; 26 U.S.C. 5008)

§ 201.601 [Amended]

9. The last sentence of § 201.601 is amended to read "When the assistant regional commissioner finds that any samples withdrawn were in excess of the size and number necessary for the conduct of the proprietor's business, or that any samples were used or disposed of in any manner not authorized by this part, he shall proceed to collect the tax thereon."

§ 201.635 [Deleted]

10. Section 201.635 is deleted.

PAR. E. 26 CFR Part 245 is amended as follows:

§ 245.2 [Amended]

1. Section 245.2, 245.57, 245.66, 245.105, 245.111a, 245.126, 245.221, 245.222, 245.225, 245.233, 245.236, 245.237, 245.238, 245.239, 245.253, and 245.257 are amended by changing "Alcohol and Tobacco Tax Division", wherever the term appears, to "Alcohol, Tobacco and Firearms Division."

§ 245.5 [Amended]

2. Section 245.5 is amended by changing "alcohol and tobacco tax" to read "alcohol, tobacco and firearms" in the definition of "Assistant regional commissioner" and by changing "Alcohol and Tobacco Tax Division" to read "Alcohol, Tobacco and Firearms Division" in the definition of "Director, Alcohol and Tobacco Tax Division."

3. Section 245.82 is amended by changing the heading from "Posting special tax stamp" to "Examination of special tax stamps" and by changing the requirement in the text that a special tax stamp be posted to a requirement that the stamp be available for inspection. As amended, § 245.82 reads as follows:

§ 245.82 Examination of special tax stamps.

All stamps denoting payment of special tax shall be kept available for inspection by any internal revenue officer during business hours.

(72 Stat. 1348; 26 U.S.C. 5146)

4. Section 245.125 is amended by changing "Alcohol and Tobacco Tax Division" to "Alcohol, Tobacco and Firearms Division" and by adding a definition of "Breweries of the same ownership." As amended, § 245.125 reads as follows:

§ 245.125 Barrels and kegs.

(a) *General.* The brewer's name or trade name and the place of production (city and, where necessary for identification, State) shall be embossed on, idented or branded in, or (subject to the approval of the Director, Alcohol, Tobacco and Firearms Division) otherwise durably marked on each barrel and keg of beer: *Provided,* That where the place of production is clearly shown on the bung or on the tap cover or on a label securely affixed to each barrel or keg, the place of production need not be embossed on, idented or branded in, or otherwise durably marked on the barrel or keg. No statement as to payment of internal revenue taxes shall be shown.

(b) *Breweries of same ownership.* Where two or more breweries are owned and operated by the same person, firm, or corporation, the place of production may be shown as provided in paragraph (a) of this section, or the locations of more than one such brewery may be so shown. Where such marking includes a location or locations other than that at which the beer currently in the container was produced, the location of the brewery at which the beer was produced must be shown on the bung or on the tap cover or on a label securely affixed to each barrel or keg: *Provided,* That the brewer may employ on the label a system of coding or marking, satisfactory to the assistant regional commissioner, which will permit internal revenue officers to readily identify the particular brewery at which the beer was produced. If more than one commonly owned brewery is located in the same city, the location by street number will also be shown on the label (printed or indicated by code as provided in this section). For the purposes of this subpart, the conditions and requirements of § 245.140 regarding breweries belonging to the same brewer shall be applicable in establishing that breweries are of the same ownership.

(72 Stat. 1389; 26 U.S.C. 5412)

§ 245.208 [Amended]

5. Section 245.208 is amended by changing "Alcohol and Tobacco Tax" to "Alcohol, Tobacco and Firearms."

§ 245.227 [Amended]

6. Section 245.227 is amended by changing the reference to "district director" to "director of the service center."

§ 245.241 [Amended]

7. Section 245.241 is amended by changing "alcohol and tobacco tax" to "alcohol, tobacco and firearms."

[FR Doc.71-2847 Filed 3-2-71;8:46 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 221]

FORT PECK INDIAN IRRIGATION PROJECT, MONT.

Operation and Maintenance Charges

FEBRUARY 25, 1971.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2 (32 F.R. 13938).

Notice is hereby given that it is proposed to revise § 221.38, of Part 221, Subchapter T, Chapter I of Title 25 of the Code of Federal Regulations. This revision is proposed pursuant to the authority contained in the act of August 1, 1914 (38 Stat. 583), the act of May 18, 1916 (39 Stat. 142); and the act of March 7, 1928 (45 Stat. 210).

The purpose of this revision is to establish the assessment charges for the season 1971 and thereafter until further notice.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule-making process. Accordingly, interested persons may submit written comments, suggestions or objections with respect to the proposed amendment to the Area Director, Billings Area Office, Bureau of Indian Affairs, 316 North 26th Street, Billings, MT 59101, within 30 days from the date of publication of this notice in the FEDERAL REGISTER.

It is proposed to revise § 221.38 of Part 221, Subchapter T, Chapter I of Title 25 of the Code of Federal Regulations to read as follows:

FORT PECK INDIAN IRRIGATION PROJECT, MONT.

§ 221.38 Charges.

(a) On that part of the Big Porcupine Unit that is under the service area of the Big Porcupine or Wiota pumping plant, water, when available, will be furnished to all irrigable non-Indian lands and to all Indian lands leased to non-Indians, to which delivery of water can be made, during the 1971 irrigation season and thereafter until further notice, at a minimum rate of $4.50 per acre per annum whether water is used or not. Payment of the minimum rate entitles the water user to the delivery of 2 acre-feet of water per acre of irrigable land included in each farm unit or allotment. Any additional water delivered shall be charged for at the rate of $2.25 per acre-foot or fraction thereof for the first additional acre-foot, $2.25 per acre-foot or fraction thereof for the second additional acre-foot and $2.25 per acre-foot or fraction thereof for water delivered in excess of the second additional acre-foot.

(b) (1) For Indian land farmed by the Indian owner or leased and farmed by Indians, under that part of the Big Porcupine Unit that is within the service area of the Wiota pumping plant, water, when available, will be furnished during the 1971 season and until further notice at a minimum rate of $4.50 per acre per annum for the entire irrigable area included in the allotment whether water is used or not. Payment of the minimum rate entitles the Indian water user to the delivery of 2 acre-feet of water per acre included in the allotment. Any additional water delivered shall be charged for at the rate of $2.25 per acre-foot or fraction thereof for the first additional acre-foot, and $2.25 per acre-foot or fraction thereof for the second additional acre-foot, and $2.25 per acre-foot or fraction thereof for water delivered in excess of the second additional acre-foot.

(2) For all irrigable lands situated adjacent to and outside of that part of the Big Porcupine Unit that is under the service area of the Big Porcupine Unit or Wiota pumping plant, surplus water, when available and not required for irrigation of lands within the Big Porcupine Unit, will be furnished at the flat rate of $3 per acre-foot. Water measurement and delivery thereof will be made at the project limits.

(c) On the Frazer-Wolf Point Unit (comprising all irrigable lands supplied with water from the Little Porcupine Reservoir and the Frazer pumping plant) water, when available, will be furnished to all irrigable non-Indian lands and to all irrigable Indian-owned allotments leased to non-Indians (whether subjugated or not) to which delivery of water can be made during the 1971 irrigation season and until further notice at a minimum rate of $4.50 per acre per annum whether water is used or not. Water, when available, will be furnished at a like minimum rate for the irrigable area for all subjugated Indian-owned allotments to which delivery of water can be made. Payment of the minimum rate entitles the water user to the delivery of 2 acre-feet of water per acre of irrigable land included in each farm unit or allotment. Any additional water delivered shall be charged for at the rate of $2.25 per acre-foot or fraction thereof for the first additional acre-foot, $2.25 per acre-foot or fraction thereof for the second additional acre-foot and $2.25 per acre-foot or fraction thereof for water delivered in excess of the second additional acre-foot.

(d) For all Indian lands farmed by the Indian owner, or leased and farmed by Indians in the Frazer-Wolf Point Unit, not subjugated but to which water can be delivered, water, when available will be furnished during the 1971 irrigation season and thereafter until further notice at a minimum rate of $4.50 per acre per annum for the entire irrigable

area included in each allotment whether water is used or not. Payment of the minimum rate entitles the Indian water user to the delivery of 2 acre-feet of water per irrigable acre included in the allotment. Any additional water delivered shall be charged for at the rate of $2.25 per acre-foot or fraction thereof for the first additional acre-foot, $2.25 per acre-foot or fraction thereof for the second additional acre-foot and $2.25 per acre-foot or fraction thereof for water delivered in excess of the second additional acre-foot.

LOUIS R. BRUCE,
Commissioner.

[FR Doc.71-2863 Filed 3-2-71;8:47 am]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 916]

[Docket No. AO-303-A2]

NECTARINES GROWN IN CALIFORNIA

Notice of Recommended Decision and Opportunity To File Written Exceptions with Respect to Proposed Further Amendment of the Marketing Agreement and Order

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of the marketing agreement, and Order No. 916 (7 CFR Part 916), regulating the handling of nectarines grown in California, hereinafter referred to collectively as the "order". The order is effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "act".

Interested persons may file written exceptions to this recommended decision with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, DC 20250, not later than the close of business of the 15th day after publication thereof in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate. All such communications will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Preliminary statement. The public hearing on the record of which the recommended amendment of the order was formulated was held in Fresno, Calif., on January 13, 1971, pursuant to a notice thereof which was published in the FEDERAL REGISTER on December 24, 1970 (35 F.R. 19579). The notice contained amendment proposals which had been submitted to the Secretary of Agriculture by the Nectarine Administrative Committee, the administrative agency established pursuant to the order.

Material issues. The material issues presented on the record of the hearing involve amendatory action to:

(1) Change the term of office of the Nectarine Administrative Committee and the Shippers Advisory Committee;

(2) Authorize production research;

(3) Change the provisions of termination; and

(4) Make conforming changes.

Findings and conclusions. The following findings and conclusions on the material issues are based on the evidence adduced at the hearing and the record thereof;

(1) The order should be amended, as hereinafter set forth to change the term of office of both the Nectarine Administrative Committee and the Shippers Advisory Committee to 2 years, ending on the last day of February of odd numbered years, and provide that nomination meetings be held accordingly. Currently, the order provides for a 1-year term ending the last day of February each year. There have been few changes in the nominees chosen from year to year to fill positions on the committees. Over the past 3 years there have been only two, one on each of the above-mentioned committees, and both involved alternates. Therefore, the longer term is desirable. The change to a 2-year term would allow the Nectarine Administrative Committee to schedule and hold its nomination meetings concurrently with those of Marketing Order No. 917 and the three California State Marketing Orders (Marketing Program for Processing Pears, As Amended, Marketing Order for Fresh Bartlett Promotion and Marketing Order for Fresh Bartlett Pears, As Amended), all of which are under a joint management arrangement with the order. This arrangement would give added inducement to more grower participation and eliminate the need for growers to attend a number of meetings in order to participate in the nomination of persons to fill positions on the committees. The joint meetings enabled by the amendment would conserve both time and expense for the growers and program management and effectuate the purposes of the order and the act.

Accordingly, if the order is amended as proposed, the term of office of the then incumbent committees should be extended to end on the last day of February 1973. The selection order appointing the Nectarine Administrative Committee provides that appointees shall serve for the term for which appointed and until their successors have been selected and qualified. Therefore, extension of the term should be accomplished by delaying the selection of successors. The Shippers Advisory Committee is elected by handlers at meetings arranged by the Nectarine Administrative Committee. Hence, the Shippers Advisory Committee election should be delayed for a year.

(2) The order should be amended to allow the expenditure of marketing order funds for production research. Such research was not previously permitted under the act, but an amendment to the act (Public Law 91-292), effective June 25, 1970, makes possible the inclusion of authority to carry out such research under marketing agreement and order programs. Many of the problems affecting the quality, appearance and shelf-life of nectarines begin during the preharvest development period. Hence, marketing research often cannot be of maximum effectiveness unless the scope of study concerns itself not only with what occurs to the fruit after picking but also in its development prior to harvesting. For example, the control of decay in nectarines has been increasingly difficult in recent years due largely to buildup of brown rot in the orchards and subsequent spread of infection in the packinghouses. The reduction of losses due to decay during marketing requires integrated control measures that reduce infections in the orchard, in the packinghouse, during transit and during marketing.

The foregoing are examples of the kinds of problems on which the committee may wish to undertake production research studies. They should not be viewed as limiting the committee's production research authority which should include any such research that is permitted under the act. All such projects should be subject to the approval of the Secretary and should be financed from assessments collected pursuant to the order in the same manner as is currently required for marketing research and development projects under the order.

(3) The provisions of the order concerning the quadrennial referendum on continuance should be revised to require that the next such referendum shall be required within the period beginning December 1, 1974, and ending February 15, 1975. The order currently requires that such a referendum shall be held with the period beginning December 1, 1972, and ending February 15, 1973. Ample provision is otherwise made in the order for growers to express their desires with respect to its continuance.

The required quadrennial referendum is only one of several ways in which termination proceedings may be initiated. The Secretary may at any time terminate or suspend the operation of any or all of the provisions of the order whenever he finds that these provisions do not tend to effectuate the declared policy of the act. The Nectarine Administrative Committee is required to consider all petitions from growers, submitted to it prior to October 1 of the then fiscal period, for termination and if considered advisable, to recommend a referendum. Upon receipt of any such recommendation, received not later than December 1, the Secretary shall conduct a referendum prior to the following February 15 to ascertain whether continuance of the order is favored by the growers. In view of these provisions and the fact that a referendum will be conducted to ascertain if the growers favor this amendment, it was advanced without opposition that the order should be amended, as hereinafter set forth, to specify that the Secretary shall conduct

a referendum within the period beginning December 1, 1974, and February 15, 1975 instead of during the period December 1, 1972, and ending February 15, 1973, to ascertain the sentiments of growers with respect to continuance.

(4) A proposal in the notice of hearing was that consideration be given to making such other changes in the order as may be necessary to make the entire order conform to any amendments that may result from this proceeding. This proposal was supported at the hearing, without opposition and such conforming changes as are necessary are incorporated in the order.

Rulings on proposed findings and conclusions. February 8, 1971 was fixed as the latest date for the filing of briefs with respect to the facts presented in evidence at the hearings and on findings and conclusions which should be drawn therefrom. No brief was filed.

General findings. Upon the basis of the evidence adduced at such hearing and the record thereof, it is found that:

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

(2) The said marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of nectarines grown in the production area in the manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) The said marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of such production areas would not effectively carryout the declared policy of the act;

(4) There are no differences in the production and marketing of nectarines grown in the production area which make necessary different terms and provisions applicable to different parts of such area;

(5) All handling of nectarines grown in the production area as defined in said marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Recommended further amendment of the marketing agreement and order. The following amendment of the amended marketing agreement and order is recommended as the detailed means by which the aforesaid conclusions may be carried out:

1. Section 916.21 *Term of office* is amended to read as follows:

§ 916.21 Term of office.

The term of office of each member and alternate member of the committee shall be for 2 years beginning on March 1 of an odd numbered year and ending on the last day of February of an odd numbered year. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

2. Paragraph (b)(1) of § 916.22 *Nomination* is revised to read as follows:

§ 916.22 Nomination.

* * * * *

(b) *Successor members.* (1) The committee shall hold or cause to be held, not later than February 15 of each odd numbered year, a meeting or meetings of growers in each district for the purpose of designating nominees for successor members and alternate members of the committee. These meetings shall be supervised by the committee which shall prescribe such procedure as shall be reasonable and fair to all persons concerned.

* * * * *

3. Paragraphs (a) and (b) of § 916.37 *Shippers' Advisory Committee* are revised to read as follows:

§ 916.37 Shippers' Advisory Committee.

(a) A Shippers' Advisory Committee, consisting of five members and their respective alternates who shall be handlers, or employees of handlers, selected by the handlers in accordance with the provisions of this section, is hereby established. The members and their respective alternates shall be selected biennially for a term ending on the last day of February of odd numbered years. An alternate member shall, in the event of the member's absence from a meeting of the committee, act in the place and stead of such member, and, in the event of a vacancy in the office of such member, shall act in the place and stead of such member until a successor for the unexpired term of such member has been selected.

(b) The members and alternate members of the Shippers' Advisory Committee shall be elected by handlers at a general meeting of all handlers and shall serve in such capacities during the marketing seasons subsequent to such election. Such meeting shall be supervised by the Nectarine Administrative Committee which may prescribe such rules and procedures as may be necessary to assure a membership representative of all shippers.

* * * * *

4. Section 916.45 *Marketing research and development* is amended to read as follows:

§ 916.45 Marketing research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of nectarines. Such projects may provide for any form of marketing promotion including paid advertising. The expense of such projects shall be paid by funds collected pursuant to § 916.41.

5. Paragraph (e) of § 916.64 *Termination* is revised to read as follows:

§ 916.64 Termination.

* * * * *

(e) The Secretary shall conduct a referendum within the period beginning December 1, 1974, and ending February 15, 1975, to ascertain whether continuance of this part is favored by the growers. The Secretary shall conduct such referendum within the same period of every fourth fiscal period thereafter.

* * * * *

Dated: February 26, 1971.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.71-2915 Filed 3-2-71;8:51 am]

[7 CFR Part 917]

[Docket No. AO-90-A5]

FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Notice of Recommended Decision and Opportunity To File Written Exceptions With Respect to Proposed Further Amendment of the Marketing Agreement and Order (Partial)

Pursuant to the Rules of Practice and Procedure as amended, governing proceedings to formulate Marketing Agreements and Orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed further amendment of the marketing agreement and Order No. 917 (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in California, hereinafter referred to collectively as the "order". The order is effective pursuant to provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "act".

Interested persons may file written exceptions to this recommended decision with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, DC 20250, not later than 10 days after publication of this recommended decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate. All such communications will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Preliminary statement. The public hearing on the record of which the recommended amendment of the order was

formulated was held in Fresno, California, on January 13, 1971, pursuant to a notice thereof which was published in the FEDERAL REGISTER on December 24, 1970 (35 F.R. 19579), and a supplemental notice published December 31, 1970 (35 F.R. 20010). The notice and supplemental notice contained amendment proposals which had been submitted to the Secretary of Agriculture by the Control Committee, and the Plum Commodity Committee, administrative agencies for the order.

Material issues. The material issues presented on the record of the hearing involve amendatory proposals to:

(1) Change the definition of fruit to extend the regulatory provisions to all varieties of peaches.

(2) Change the definition of fruit to extend the regulatory provisions to additional varieties of pears.

(3) Change the definition of grower as it applies to peaches.

(4) Realign the boundaries of certain districts.

(5) Change the provisions as to qualifications of nominees to represent the Peach Commodity Committee as grower members on the Control Committee.

(6) Change the provisions as to qualifications of nominees to represent the Pear and Plum Commodity Committees as grower members on the Control Committee.

(7) Increase the number of members on the Peach Commodity Committee, and increase the term of office of such members from 1 to 2 years.

(8) Increase the term of office of the Pear and Plum Commodity Committees from 1 to 2 years.

(9) Change the representation areas for peaches and reallocate representation on the Peach Commodity Committee among such areas.

(10) Change the quorum requirement for the Peach Commodity Committee; and increase the number of affirmative votes necessary by such committee to approve actions with respect to research and regulations.

(11) Add authority for production research for peaches.

(12) Add authority for production research for pears and plums, and for paid advertising for plums.

(13) Change the provisions on termination, with respect to peaches, to delay for 2 years the next scheduled referendum on continuance.

(14) Change the provisions on termination, with respect to pears and plums, to delay for 2 years the next scheduled referendum on continuance.

This is a partial recommended decision dealing only with issues applicable to peaches. The issues pertaining to pears and plums are reserved for a later decision.

(1) The term "fruit" should be redefined in the order as hereinafter set forth to extend the regulatory provisions of the order to all varieties of peaches.

Current provisions of the order define the term "fruit" with respect to peaches as the edible product from the trees of the peach varieties Elberta (Regular Elberta), Early Elberta (Gleason, Early Fay, Golden Elberta), Fay Elberta (Gold Medal, Golden Elberta), Burbank July Elberta (Early Elberta, Burbank Elberta, Burbank Jewel, Kim Elberta, July Elberta, and Socala). Regulation has been limited to Elberta-type peaches since the order was first made effective in 1939. Initially, such peaches constituted the major volume of shipments of fresh peaches shipped from the production area. By 1969, however, Elberta-type peaches constituted only about 25 percent of the volume of fresh peaches shipped in interstate channels. The other 75 percent was made up of about 50 non-Elberta varieties.

All varieties of peaches grown in the production area and shipped to markets within such area are subject to regulation under a California State Marketing Order. Hence, the State order and the order complement each other in the regulation of Elberta peaches, but since no regulations may be made to apply under the order to out-of-State shipments of varieties other than Elberta, only the intrastate shipments of such varieties are regulated.

In recent years when mandatory size, grade, and inspection requirements were in effect for intrastate shipments of peaches, shipments of the varieties of peaches other than Elberta were uncontrolled and sizable quantities of small size and off-grade peaches of such varieties were dumped in out-of-State markets. Actually, the institution of grade and size regulations applicable to intrastate shipments apparently results in the shipment to interstate markets of greater quantities of the lower grade and smaller sized fruit which do not meet the requirements of the State regulations than when no such regulations are instituted. In 1969 no size or quality controls were instituted under the State order. In 1970 regulations were so instituted, small sizes could not legally be distributed to markets within the State. Such sizes were shunted to out-of-State markets. Moreover, it was testified that handlers pack peaches of the smaller sizes even though demand is marginal for such sizes, and accumulate quantities of such peaches in the packinghouses when sales decline or fail to materialize. When prices fail to strengthen, the peaches are sold at any price that can be obtained without regard to the detrimental effect on the prices of the more desirable sizes. It is therefore concluded that all varieties of peaches grown in the production area and shipped in interstate marketing channels should be made subject to the provisions of the order. Such provisions, including the regulatory provisions, which provide for regulation by variety or varieties, contain the necessary flexibility to recognize differences in varieties in the establishment and application of appropriate regulations. Persons familiar with peaches, including inspectors, can distinguish one variety of peaches from another. Hence, the issuance of regulation recognizing differences in such characteristics as size, color, or season of ripening is appropriate and practical, and would tend to effectuate the purposes of the order and the act.

(3) The term "grower" is defined in the order to identify the persons who are eligible to vote as "growers" in referenda in connection with the order, to vote for nominees to fill positions on the respective committees under the order and to serve in such positions. Currently, "grower" is defined with respect to peaches as any person who produces such for market in fresh form in the current of interstate or foreign commerce, and who has a proprietary interest therein.

The order should be amended as hereinafter set forth to redefine the term "grower" as it applies to peaches to mean any person who produces peaches for market in fresh form and who has a proprietary interest therein.

This amended definition would make all growers of peaches eligible to vote for nominees to fill positions on the Peach Commodity Committee, irrespective of the markets (intrastate or interstate), to which their peaches are shipped. It is the intent of the peach industry to provide for the selection of identical persons on the Peach Commodity Committee administering the order and the Fresh Peach Advisory Board which administers the marketing order for California fresh peaches. It likewise is the intent to arrange for the two orders to be managed by the same management staff so that complementary and supplementary activities of the two programs may be appropriately coordinated. The objective is increased efficiency of operations. Since the current definition of "grower" as it applies to peaches provides that only growers of interstate shipments may vote for nominees to fill position on the Peach Commodity Committee or to serve in such position, the definition should be changed as indicated to remove such limitation. This would facilitate the objectives of better coordination of program activities and improved efficiency of operations, and this, in turn, would tend to effectuate the objectives of the order and the declared policy of the act.

(4), (5), (7), and (9) In addition to redefinition of "grower", as previously discussed, the order should be amended, as hereinafter set forth, to establish a 2-year term of office for the Peach Commodity Committee, to effect a realignment of districts, change the peach representation areas, increase the number of members on the Peach Commodity Committee, and allocate such members among the peach representation areas in such manner as will facilitate the coordination of activities under the order, the marketing order for California fresh peaches, and other jointly managed programs.

Districts and representation areas are established in the order to provide a basis for geographic representation on the commodity committees under the order. The districts are comprised of

combinations of specified delineated portions of the production area. The representation areas consist of specified districts or combinations thereof. Representation on the Peach Commodity Committee is allocated among the representation areas principally on the basis of the relative volume of production. Currently the order prescribes a seven-member Peach Commodity Committee allocated among four described representation areas. The provisions of §§ 917.4, 917.20, and 917.22 should be amended as hereinafter set forth to realign the districts to place Los Angeles County entirely within the South Coast District, increase the membership of the Peach Commodity Committee from seven to 13, and the number of representation areas for peach growers from four to six, and to allocate the enlarged membership of the committee among such areas as hereinafter specified. Such action is necessary to provide appropriate representation for all varieties of peaches, and to provide for staffing the Peach Commodity Committee, under the order, and the Peach Advisory Board, under the State order, with the same persons. The grower membership of the Board is comprised of 13 members and the geographic allocation of membership is essentially the same as that set forth in the order, as proposed to be amended.

The evidence indicates that while the realignment of districts as specified would not result in identical districts under the two orders, the differences involve counties in which there is no plantings of peaches.

The order should be amended to specify a 2-year term of office for the Peach Commodity Committee members instead of a 1-year term as currently provided. Such 2-year term should end on the last day of February of odd numbered years. The evidence indicates that there is little change in the membership of the commodity committee from year to year, hence it appears that the longer term is desirable. Nomination meetings do make demands on growers' time, and to the extent such meetings are unnecessary they should not be required. The evidence further indicates that the industry desires to arrange terms of office so such terms and nomination meetings under the State and Federal Marketing Orders under the same management coincide. At the time of the hearing on January 13, 1971, nomination meetings to fill positions on the Peach Commodity Committee had been held but appointments had not been made. It is likely that such appointments will have been made, prior to the effective time of this amendment, under current provisions of the order. However, the evidence indicates that, with respect to the Peach Commodity Committee, it is desirable that provision be made for selection of a committee of 13 members who are the same persons as those chosen to serve on the Peach Advisory Board. In this connection it was advanced that at the effective time of the amendment it would be agreeable to terminate the appointments of those serving on the Peach Commodity Committee and to appoint, as a new Peach Commodity Committee, those who are serving on the Board. For reference purposes the names and addresses of the Board members and alternates were introduced into the record for consideration as the nominees for the Peach Commodity Committee, if and when the amendment becomes effective. It is likely that the amendment would not become effective until the beginning of the 1971 peach season. The order as amended would cover additional varieties of peaches, and such varieties should have representation on the Peach Commodity Committee, hence a new committee with the enlarged membership should be selected promptly. The procedure suggested would provide nominees having the necessary qualifications on a timely basis. It is concluded therefore that the order should provide for selection of a Peach Commodity Committee in the manner heretofore indicated.

In addition to the three commodity committees representing the three fruits under the order, the order provides for a Control Committee, comprised of 12 shipper members and 13 grower members. The Control Committee performs local administration of the program in all intercommodity matters under the order, while each respective commodity committee deals with matters related specifically to its fruit. The grower members of the Control Committee are nominated by the commodity committees on the basis of an allocation to each as specified under the order. The order provides that each such grower so nominated shall be an individual person who produced fruit during the previous season. Except in rare instances, each commodity committee, including the Peach Commodity Committee, has nominated persons for its positions on the Control Committee from among its own membership. The order should be amended, as hereinafter set forth, to require that each person nominated by the Peach Commodity Committee to fill a grower position on the Control Committee shall be a member or alternate member of the Peach Commodity Committee. Such requirement would assure that there will be among the grower membership of the Control Committee persons who are familiar with the problems of peaches.

(10) Currently, based on a seven-member committee the quorum requirement for the Peach Commodity Committee is five members. The order should be amended to increase the quorum requirement for the Peach Commodity Committee to nine members. Such increased requirement is consistent with the increased size of such committee, which would be effected by this amendment. Such number would be adequate to secure a wide representation of views within the industry, and would not be so large as to be difficult to secure. The evidence indicates that it is desirable to require an affirmative vote equal to the quorum requirement of the committee on actions relative to research and recommendations for regulations. To effect this, § 917.35(a) should be changed to specify that approval of actions of the Peach Commodity Committee pursuant to § 917.39 *Market research and development and recommendations* under § 917.40 *Recommendations for regulations*, § 917.42 *Modification, suspension, or termination of regulations*, and § 917.43 *Special purpose shipments* shall require an affirmative vote of at least nine members. The order now requires a vote equal to the quorum requirement for recommendations pursuant to §§ 917.40 through 917.43. The modification which would add such requirement for recommendations pursuant to § 917.39 is related to the fact that, as hereinafter discussed, it is proposed to add authority in the order for the committee to establish production research projects in addition to marketing research and development projects. Such projects which are designed to assist, improve, or promote the marketing, distribution, and consumption, or efficient production of peaches may involve substantial expenditures. It is highly desirable that the recommendations with respect to any such projects, as well as recommendations on regulations under the sections previously cited, have a high degree of support by the committee and the industry. It is therefore concluded that the order should be amended, as hereinafter set forth, to increase the quorum requirement for the Peach Commodity Committee, and to require an affirmative vote for the approval of actions and recommendations pursuant to the specified sections as indicated.

(11) The order should be amended as hereinafter set forth to authorize the Peach Commodity Committee to establish production research projects for peaches.

The evidence indicates that there is a number of problem areas related to the production of peaches on which research may prove to be beneficial. Many problems which affect the fruit in the orchard affect the quality and shelf-life manifested by the fruit in marketing channels. Hence, many marketing research projects cannot be of maximum effectiveness unless the scope of study concerns itself not only with what happens to the fruit after it is picked from the tree but also how it develops prior to harvest.

The control of decay in peaches has become increasingly difficult in recent years, due largely to buildup of brown rot in the orchards and subsequent spread of infection in the packinghouses. The reduction of losses from decay in the market requires integrated control measures that reduce infections in the orchard, in packinghouses, during transit, and during marketing. Research on methods of preventing infection in the orchard, and sanitation measures in the packinghouses are appropriate areas for investigation.

The foregoing are examples of the kinds of problems on which the committee may wish to undertake studies.

They should not be viewed as limiting the committee's production research authority which should include any such research that is permitted under the act.

(13) Current provisions of the order require quadrennial referenda to ascertain whether continuance of the order as to any fruit covered thereunder is favored by growers. The next such referenda would be required during the period December 1, 1972–February 15, 1973. The order also provides that the Control Committee may, upon the basis of a petition from growers received prior to October 1 of any year, recommend to the Secretary that such a referendum be held. It further provides that if the Secretary receives such a recommendation not later than December 1 of the then current fiscal period, he shall conduct such referendum prior to February 15. Based on this and the fact that a referendum will be conducted to ascertain if the peach growers favor this amendment, it was advanced without opposition that the next regularly scheduled referendum on continuance should be resheduled to be required during the period beginning December 1, 1974, and ending February 15, 1975. Since ample opportunity otherwise exists for peach growers to express their sentiments with respect to continuance between the present time and foregoing period, it is concluded that the order should be amended as hereinafter set forth to reschedule said referendum as it applies to peaches.

Except as heretofore discussed conforming changes are not required.

Rulings on proposed findings and conclusions. February 8, 1970, was fixed as the latest date for filing proposed findings and conclusions, written arguments or briefs based upon the evidence received at the hearing. One brief was filed. Each point in such brief was fully and carefully considered along with the evidence in the record, in making the findings and conclusions herein set forth. To the extent that any suggested findings or conclusions contained in the brief are inconsistent with the findings and conclusions contained herein, they are denied on the basis of the facts found and stated in connection with this decision.

General findings. Upon the basis of the evidence adduced at such hearing, and the record thereof it is found that:

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

(2) The said order, as amended and as hereby further amended, regulates the handling of pears, plums, and peaches grown in the State of California in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity, specified in the marketing agreement upon which hearings have been held;

(3) The said order, as amended and as hereby further amended, is limited in its application to the smallest regional production area that is practicable, consistently with carrying out the declared policy of the act; and the issuance of several orders applicable to subdivisions of such regional production area would not effectively carry out the declared policy of the act;

(4) The said order, as amended and as hereby further amended, prescribes, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to the differences in production and marketing of the fruit covered thereby; and

(5) All handling of plums grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Recommended amendment of the marketing agreement and order. The following amendment of the order is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. Section 917.4 *Fruit* is revised to read as follows:

§ 917.4 Fruit.

"Fruit" means the edible product of the following three kinds of trees (a) all varieties of plums, (b) all varieties of peaches, and (c) the varieties of pears set forth below together with all mutations thereof which are grown in the production area and shipped in fresh form:

Pears. Bartlett, Dr. Jules Guyot (Guyot, Early Bartlett), Clapps Favorite (Hill Bartlett), Max-Red (Max-Red Bartlett, Red Bartlett), Rosired (Rosired Bartlett), Winter Bartlett, Gorham (Late Bartlett).

3. Section 917.5 *Grower* is revised to read as follows:

§ 917.5 Grower.

"Grower" is synonymous with producer and means (a) with respect to plums and peaches any person who produces such for market in fresh form, and who has a proprietary interest therein, and (b) with respect to pears any person who produces such for market in fresh form in the current of interstate or foreign commerce, and who has a proprietary interest therein.

4. Paragraphs (k), (q), and (r) of § 917.14 *District* are amended to read as follows:

§ 917.14 District.

* * * * *

(k) "South Coast District" includes and consists of San Luis Obispo County, Santa Barbara County, Ventura County, and that portion of Los Angeles County south of the Tehachapi Mountains and west of a straight line running from the town of Saugus to Point Fermin; except as to peaches "South Coast District" includes and consists of San Luis Obispo County, Santa Barbara County, and Ventura County.

* * * * *

(q) "Tehachapi District" includes and consists of that portion of Los Angeles County north of the San Gabriel Mountains and north of that portion of Kern County not included in Kern District, and Inyo County; except as to peaches "Tehachapi District" includes and consists of that portion of Kern County not included in Kern District, and Inyo County.

(r) "Southern California District" includes and consists of San Bernardino County, Orange County, San Diego County, Imperial County, Riverside County, and that portion of Los Angeles County not included in the South Coast District and the Tehachapi District; except as to peaches "Southern California District" includes and consists of San Bernardino County, Orange County, San Diego County, Imperial County, Riverside County, and Los Angeles County.

5. Paragraph (b) of § 917.18 *Nomination of grower members of the Control Committee* is revised to read as follows:

§ 917.18 Nomination of grower members of the Control Committee.

* * * *

(b) A person nominated by any commodity committee for membership on the Control Committee shall be a member who produced fruit during the previous season: *Provided,* That Peach Commodity Committee nominees shall be members or alternate members of that committee: *And provided further,* That a person nominated by any commodity committee for membership on the Control Committee shall have the qualifications specified in § 917.24(c). Each member of each commodity committee shall have only one vote in the selection of nominees for membership on the Control Committee.

7. Section 917.20 *Designation of members of commodity committees* is amended to read as follows:

§ 917.20 Designation of members of commodity committees.

There are hereby established a Pear Commodity Committee and a Plum Commodity Committee each consisting of 12 members, and a Peach Commodity Committee consisting of 13 members. The members of each commodity committee, except the Peach Commodity Committee, shall be selected annually for a term ending on the last day of February, and such members shall serve until their respective successors are selected and have qualified. The members of the Peach Commodity Committee shall be selected biennially for a term ending on the last day of February of odd numbered years, and such members shall serve until the respective successors are selected and have qualified. The members of each commodity committee shall be selected in accordance with the provisions of Section 917.25.

9. Section 917.22 *Nomination of Peach Commodity Committee members* is revised to read as follows:

§ 917.22 Nomination of Peach Commodity Committee members.

(a) Nominations for membership on the Peach Commodity Committee shall be made by growers of peaches in the respective representation area, as follows:

(1) South Coast District and Southern California District one nominee.

(2) Tehachapi District and Kern District one nominee.

(3) Tulare District one nominee.

(4) Fresno District eight nominees.

(5) Stanislaus District and Stockton District one nominee.

(6) All of the production area not included in the Southern California District, Tehachapi District, Kern District, Tulare District, Fresno District, Stanislaus District, Stockton District, and the South Coast District one nominee.

(b) Notwithstanding the provisions of paragraph (a) of this section and of § 917.24 with respect to time and manner of nomination, on the effective date of this section, § 917.22, the appointment of members and alternates of the Peace Commodity Committee previously selected for a term ending the last day of February 1972 shall be terminated, and a new committee selected in conformance with the representation areas specified in said paragraph (a). The grower members and alternates of the Fresh Peace Advisory Board under the California State "Marketing Order for Fresh Peaches" shall then be considered as nominated and eligible for selection by the Secretary to positions on such new Peach Commodity Committee without further action as to nominations by the Control Committee.

10. Paragraph (b) of § 917.20 *Organization of committees* is amended to read as follows:

§ 917.29 Organization of committees.

* * * * *

(b) A quorum of the Pear Commodity Committee and of the Plum Commodity Committee shall each consist of eight members; and a quorum of the Peach Commodity Committee shall consist of nine members.

10a. The introductory language and paragraph (a) of § 917.35 *Powers and duties of each commodity committee* are amended to read as follows:

§ 917.35 Powers and duties of each commodity committee.

Each commodity committee shall have the following powers and duties:

(a) With regard to the respective fruit for which it was established, to establish production research and marketing research and development projects as authorized under § 917.39, to recommend to the Secretary regulation of shipments pursuant to the provisions of this part, and to possess such other powers and exercise such other duties as will properly effectuate the purpose of this part: *Provided, however*, That the Pear and Plum Commodity Committees shall each make said recommendation pursuant to § 917.40 through § 917.43 only upon the affirmative vote of not less than eight members of each said committee: *Provided further*, That the Peach Commodity Committee shall approve such actions pursuant to § 971.39 or make said recommendations pursuant to § 917.40 through § 917.43 only upon the affirmative vote of not less than nine members of said committee.

11. Section 917.39 *Market research and development* is amended to read as follows:

§ 917.39 Market research and development.

The committees with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of fruit. Also, the Peach Commodity Committee with the approval of the Secretary may establish or provide for the establishment of production research projects designed to assist, improve, or promote the marketing, distribution, and consumption, or efficient production of peaches. The expenses of such projects shall be paid from funds collected pursuant to § 917.37.

12. Paragraph (e) of § 917.61 *Termination* is revised to read as follows:

§ 917.61 Termination.

* * * * *

(e) The Secretary shall conduct a referendum within the period beginning December 1, 1968, and ending February 15, 1969, to ascertain whether continuance of this part as to any fruit, included in this part is favored by the growers. Except as the peaches, the Secretary shall conduct such a referendum within the same period of every fourth fiscal period thereafter. The Secretary shall conduct a referendum within the period beginning December 1, 1974, and ending February 15, 1975, to ascertain whether continuance of this part as to peaches included in this part is favored by the growers. The Secretary shall conduct such a referendum within the same period of every fourth fiscal period thereafter.

* * * * *

Dated: February 26, 1971.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.71-2916 Filed 3-2-71;8:51 am]

[7 CFR Part 991]

HOPS OF DOMESTIC PRODUCTION

Notice of Proposed Salable Quantity and Allotment Percentage for the 1971–72 Marketing Year

Notice is hereby given of a proposal to establish, for the 1971–72 marketing year, which begins August 1, 1971, a salable quantity and allotment percentage applicable to hops produced in Washington, Oregon, Idaho, and California. The proposed salable quantity and allotment percentage would be established in accordance with provisions of Marketing Order No. 991, as amended (7 CFR Part 991), regulating the handling of hops of domestic production, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal was unanimously recommended by the Hops Administrative Committee.

Consideration will be given to any written data, views, or arguments pertaining to the proposal which are received by the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, DC 20250, not later than 21 days after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice should be made in quadruplicate and will be made available for public inspection at the office of the Hearing Clerk during official hours of business (7 CFR 1.27(b)).

The proposed salable quantity and allotment percentage are based upon recommendations of the Committee made at their meeting of January 18, 1971, and derive from the following determinations for the marketing year beginning August 1, 1971:

(1) Total domestic consumption of 38 million pounds of hops;

(2) Minus imports of 12,500,000 pounds of hops to result in domestic consumption of U.S. hops of 25,500,000 pounds;

(3) Plus total U.S. exports of 20 million pounds of hops to equal 45,500,000 pounds total usage of U.S. hops;

(4) Minus a desirable inventory adjustment, as of September 1, 1972, of 131,000 pounds; and

(5) Plus an adjustment of 3 million pounds to assure production of the quantity needed to meet market requirements, resulting in adjusted requirements for salable hops of 48,369,000 pounds.

The proposal is as follows:

§ 991.209 Allotment percentage and salable quantity for hops during the marketing year beginning August 1, 1971.

The allotment percentage during the marketing year beginning August 1, 1971, shall be 82 percent, and the salable quantity shall be the amount resulting from multiplying the total of all producer allotment bases by the allotment percentage.

Dated: February 26, 1971.

FLOYD F. HEDLUND,
Director,
Fruit and Vegetable Division.

[FR Doc.71-2917 Filed 3-2-71;8:51 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 16]

ENRICHED MACARONI PRODUCTS WITH IMPROVED PROTEIN QUALITY

Proposal To Establish Identity Standard

Notice is given that the Commissioner of Food and Drugs, on his own initiative, proposes the establishment of a standard

of identity for "enriched macaroni products with improved protein quality." Two temporary permits have been issued for this type of product in which the nutritional elements are identifying features of the product. The U.S. Department of Agriculture is interested in making available to all consumers enriched macaroni products with minimum protein levels of quality and quantity.

Accordingly, the Commissioner proposes that a new section be added to Part 16 as follows:

§ 16._____ **Enriched macaroni products with improved protein quality; identity; label statement of ingredients.**

(a) (1) Enriched macaroni products with improved protein quality are the class of food each of which is prepared by mixing one or more suitable farinaceous ingredients with water and the nutrients as provided for in paragraph (b) of this section. Optional ingredients which are safe and suitable as defined in paragraph (c) may be used. The resulting dough is fabricated into formed units and dried.

(2) The total solids of the finished food shall be not less than 87 percent by weight as determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th edition (1970), § 14.125 of this chapter, "Vacuum Oven Method-Official."

(3) Protein requirements of the finished food are as follows:

(i) The quantity of protein shall be not less than 20 percent by weight. For purposes of this section, protein is 6.25 times the nitrogen as determined by the method described in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th edition (1970), under "Improved Kjeldahl Method for Nitrate-Free Samples," section 2.51.

(ii) The quality of protein shall be not less than 95 percent of that of casein as determined by the method described in the same book under "Biological Evaluation of Protein Quality," §§ 39.166–39.170 of this chapter.

(b) Each such food contains nutrients as follows:

(1) Each pound of the finished food shall contain 5 milligrams of thiamin, 2.2 milligrams of riboflavin, 34 milligrams of niacin or niacinamide, and 16.5 milligrams of iron in an assimilable form.

(2) Optional nutrients, which are safe and suitable as defined in paragraph (c) of this section, may be added as follows:

(i) One or more edible proteins.

(ii) One or more amino acids, provided they are added in amounts no more or no less than those required to improve the biological quality of the total protein present as determined by the methods specified in paragraph (a) (3) (ii) of this section.

(iii) Calcium in such quantity that each pound of the finished food contains 625 milligrams of calcium (Ca). Calcium may be added only in forms that are safe and assimilable.

(3) The requirements of subparagraphs (1) and (2) (iii) of this paragraph shall be deemed to have been met if reasonable overages of the required vitamins and minerals, within limits of good manufacturing practice, are present to insure that the required levels of the vitamins and minerals are maintained throughout the expected shelf life of the food under customary conditions of distribution. The nutrients may be added in a harmless carrier, such carrier being used only in the quantity reasonably necessary to effect an intimate and uniform admixture of such substances with the other ingredients of the food.

(c) The ingredients referred to in paragraph (a) of this section are any safe and suitable ingredients which are not color additives, artificial flavorings, artificial sweeteners, chemical preservatives, or starches. An ingredient will be deemed suitable if it serves a useful purpose and if the amount is not in excess of that required to achieve its intended nutritional, technical, or other effect, including conformity to nutrient levels specified in this section. An ingredient will be deemed safe if it is not a food additive within the meaning of section 201(s) of the Federal Food, Drug, and Cosmetic Act; or if it is a food additive, it is used only in conformity with a regulation established pursuant to section 409 of the act.

(d) (1) Enriched macaroni with improved protein quality is the product the units of which are tube-shaped and more than 0.11 inch but not more than 0.27 inch in diameter.

(2) Enriched spaghetti with improved protein quality is the product the units of which are tube-shaped or cord-shaped (not tubular) and more than 0.06 inch but not more than 0.11 inch in diameter.

(3) Enriched vermicelli with improved protein quality is the product the units of which are cord-shaped (not tubular) and not more than 0.06 inch in diameter.

(e) (1) The name of each food for which a definition and standard of identity is prescribed by this section is "enriched macaroni product with improved protein quality, _____"; or alternatively, the name is "enriched macaroni with improved protein quality, _____," "enriched spaghetti with improved protein quality, _____," or "enriched vermicelli with improved protein quality, _____," as the case may be, when the units comply with the requirements of paragraph (d) (1), (2), or (3) respectively of this section. The blank in each instance is filled in with the name or names of the farinaceous ingredient used and in addition with the name or names of any other ingredient that significantly contributes to the protein quality of the food in order of descending predominance by weight; for example, "enriched macaroni with improved protein quality, made from corn-soy-wheat and nonfat dry milk."

(2) In the case of a macaroni or noodle product complying with another section of this part that meets all the compositional requirements of this section, the statement "with improved protein quality" may be incorporated into the established name of the food: *Provided*, That all the labeling requirements of this section are met. For example, a food complying with § 16.14 that contains not less than 20 percent protein by weight and the quality of the protein is not less than 95 percent of that of casein may be named "enriched macaroni product with improved protein quality made with nonfat milk."

(f) (1) The common or usual names of all ingredients (except that spices and flavorings may be designated as such) shall be listed on the label in descending order of predominance by weight.

(2) When a seasoning is used, the label shall bear the statement "seasoned with _____," the blank being filled in with the common name of the ingredient.

(3) The words and statements specified in this paragraph showing the ingredients present shall be listed on the principal display panel or panels or any appropriate information panel without obscuring design, vignettes, or crowding. The declaration shall appear in conspicuous and easily legible letters of boldface print or type, the size of which shall be not less than one-half of that required by Part 1 of this chapter for the statement of net quantity of contents appearing on the label, but in no case less than one-sixteenth inch in height. The entire ingredient statement shall appear on at least one panel of the label.

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and in accordance with authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), interested persons are invited to submit their views in writing (preferably in quintuplicate) regarding this proposal within 30 days after its date of publication in the FEDERAL REGISTER. Such views and comments should be addressed to the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–62, 5600 Fishers Lane, Rockville, MD 20852, and may be accompanied by a memorandum or brief in support thereof.

Dated: March 1, 1971.

CHARLES C. EDWARDS,
Commissioner of Food and Drugs.

[FR Doc.71-2947 Filed 3-2-71;8:51 am]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[49 CFR Part 574]

[Docket No. 70–12; Notice No. 6]

TIRE IDENTIFICATION AND RECORDKEEPING

Proposed Interim Procedures; Withdrawal of Rule Making

On December 4, 1970, the National Highway Traffic Safety Administration

(formerly the National Highway Safety Bureau) published in the FEDERAL REGISTER (35 F.R. 18476) a notice of proposed rulemaking providing for an interim procedure that would require tire manufacturers, brand name owners and retreaders to maintain the name and address of purchasers of tires sold after May 1, 1971, but manufactured before that date (docket No. 70–12; notice No. 3).

Many comments that were received objected to the proposed interim procedures. Comments from retreaders stressed that there would be no practical way of identifying retreaded tires unless they had a standardized identification number such as the one prescribed by the tire identification and recordkeeping regulation which becomes effective May 22, 1971. No such number could, of course, be developed for these tires. New tire manufacturers commented that the imposition of an interim system in addition to the permanent system, would create an insurmountable recording task at both the manufacturer and dealer level, would create an economic hardship, and would be detrimental to the effectiveness of the system that will go into effect for tires manufactured after May 22, 1971.

In view of the demonstrated impracticability of the interim system, the proposal is hereby withdrawn and the rulemaking action discontinued.

(Secs. 103, 112, 119, and 201, National Traffic and Motor Vehicle Safety Act, as amended, 15 U.S.C. 1392, 1401, 1407, 1421; delegation of authority at 49 CFR 1.51 and 49 CFR 501.8)

Issued on February 24, 1971.

RODOLFO A. DIAZ,
Acting Associate Administrator, Motor Vehicle Proframs.

[FR Doc.71–2868 Filed 3–2–71;8:47 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 25]

[Docket No. 16495; FCC 71–197]

DOMESTIC COMMUNICATION-SATELLITE FACILITIES BY NONGOVERNMENTAL ENTITIES

Order Regarding Establishment

1. On February 18, 1971, Fairchild Hiller Corp. (FHC) filed a motion for an extension of time until March 15, 1971, to submit an application for a domestic communications satellite system. In support of this request FHC states that it is experienced in space technology and satellite design as a defense contractor, and has been awarded contracts for the Applications Technology Satellites F and G by the National Aeronautics and Space Administration (NASA). It further asserts that its proposed system would provide major benefits in frequency conservation, reduce the costs of the system on a per channel mile basis and provide other benefits which would not be available from the proposals now pending before the Commission. While regretting that the press of other corporate matters of equal importance (such as the NASA project) did not enable its management to focus sooner on the domestic satellite field, FHC asserts that the requested 15-day extension would not unduly delay this proceeding and would serve the public interest by making available to the Commission an alternative for comparison with other proposed systems.[1]

2. On February 22, 1971 Western Tele-Communications, Inc. (Western), also moved for an extension until March 15, 1971, to submit applications for its own end-to-end domestic satellite facilities. By previous order in this proceeding (FCC 70–1238) Western has until March 30, 1971, to apply for earth stations to be operated with systems proposed by other applicants. Having now decided to add satellite capacity to its originally planned earth stations and terrestrial links, Western asserts that the additional 15-day extension "is necessary for the final preparation and reproduction of its proposal without extreme haste and excessive cost."

3. On August 7, 1970, the Commission gave public notice that the domestic satellite applications of The Western Union Telegraph Co. (Western Union) had been accepted for filing, and requested other potential applicants desiring consideration with Western Union to state how much time was desired for submission of their applications (FCC Public Notice 70–865). In light of the responses thereto, the Commission prescribed a cutoff date of December 1, 1970 (FCC Public Notice 70–953). Following the issuance of the Further Notice of Inquiry and Proposed Rule Making herein (FCC 70–1015) and various requests for extension of that deadline, the Commission granted an extension until March 1, 1971, with special provision for a March 15 statement of intent by the television networks and March 30 submissions by various entities (including Western) desiring to apply for earth stations to operate with systems proposed by others (Memorandum Opinion and Order, FCC 70–1238). The Commission also specified March 30, and April 26, 1971, as the dates for comments and reply comments on the applications and on the rule making issues. In so acting, the Commission noted Western Union's opposition to the postponement and stated its "desire to avoid any unnecessary delay in a resolution of this proceeding and to commence the lengthy task of processing applications as soon as possible."

4. In light of the foregoing and the good faith efforts of other applicants to meet the prescribed filing times, we would be reluctant to grant any extension which would substantially delay consideration of those who have made timely submissions, unless such delay is clearly required in the public interest. However, in view of the shortness of the time requested and our desire for resolving the important public interest questions involved herein on the most informed basis, we have decided to grant the requests.

5. *Accordingly, it is ordered*, That the time for submission of applications for domestic communication satellite systems is extended to March 15, 1971, and the dates heretofore specified for the filing of statements by TV networks and applications for earth stations to be operated with systems proposed by others, and the time for filing comments and reply comments as previously ordered herein, are each extended by 2 weeks.

Adopted: February 24, 1971.

Released: February 25, 1971.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71–2918 Filed 3–2–71;8:51 am]

[1] The FHC motion is opposed by MCI Lockheed Satellite Corp. and GTE Service Corp.

[47 CFR Part 73]

[Docket No. 19160; FCC 71–191]

TABLE OF ASSIGNMENTS FOR CERTAIN FM BROADCAST STATIONS

Notice of Proposed Rule Making

In the matter of amendment of § 73.202, table of assignments, FM Broadcast Stations (Muskegon Heights, Mich.; Newport, R.I.; Pennington Gap, Va.; Heath, Ohio; Columbus, Tex.; Middlebury, Vt.; Three Rivers, Mich.; Ashdown, Ark.; Vandalia, Ill.; Lincoln, Maine; Bossier City, La.; Vevay, Ind.; Delphos, Ohio; Georgetown, Ohio; Bonita Springs, Fla.; Jenkins, Ky.; Peterborough, N.H.; Santa Paula, Calif.; Crown Point, Ind.; Luverne, Minn.; Red Bank-White Oak, Tenn.; North Myrtle Beach, S.C.; Napoleon, Ohio; Central City, Pa.; Waseca, Minn.; Quebradillas, P.R.; Security, Colo.; and Ord, Nebr.; and Vail, Colo.), RM–1618, RM–1634, RM–1641, RM–1642, RM–1647, RM–1649, RM–1657, RM–1662, RM–1663, RM–1664, RM–1668, RM–1669, RM–1671, RM–1672, RM–1565, RM–1673, RM–1676, RM–1690, RM–1692, RM–1699, RM–1704, RM–1705, RM–1707, RM–1708, RM–1717, RM–1718, RM–1720, RM–1721, RM–1730, RM–1582.

1. In this notice of proposed rule making, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Rules, to add first channels at the communities listed above, none of which now has an assignment, as requested in the rule-making petitions listed above. In the case of the first 28 communities listed, there is one proposal for a first Class A assignment. In the case of Vail, Colo., two separate parties have proposed a Class A and a Class C assignment; as discussed below our primary proposal is for the Class C assignment in order to provide service to areas now without it. With one exception, the petitions are

unopposed.[1] Population figures herein are from the 1970 U.S. Census (preliminary or final) reports.

2. Except for a few petitions which involve changes in present assignments, conflicts with other requests, substantial oppositions, or other problems, this document covers all of the FM petitions filed until the end of 1970, which request Class A channels as first FM assignments in the respective communities, and require no other changes in the table. In the preparation of this notice, the Commission's staff has deviated to some extent from the general practice of processing FM petitions in order of filing. This has been done in order to permit more expeditious consideration of a large group of proposals which in general are not expected to present substantial problems or require extended deliberation, and which have the obvious merit of providing the opportunity for a first FM station in these places. We expect to issue, in the very near future, appropriate documents dealing with the other FM proposals which have been on file for some time, including proposals for Class B or C channels as first assignments, and petitions involving conflicts, oppositions, or channel changes.[2]

3. Except for Vail, Colo. (discussed separately below), all of the communities listed are of more than 1,500 population, and most are considerably larger. Of the 29 communities, none have multiple local AM stations; 18 have no AM station assigned, eight have daytime-only stations, and three have full-time Class IV stations (which, as we have pointed out many times, have quite limited coverage areas at night). Therefore, all of the proposals listed above warrant consideration in rule making. However, in some cases discussed individually below, the communities are located in Standard Metropolitan Statistical Areas or are otherwise situated close to larger centers with AM and FM outlets; and therefore, as indicated in these cases, we have reservations at this time about whether the proposed assignment should be made, and a showing will be required.

4. Communities in Standard Metropolitan Statistical Areas. Six of the communities listed are in Standard Metropolitan Statistical Areas. These are Santa Paula, Calif. (Oxnard-Ventura), Security, Colo. (Colorado Springs), Crown Point, Ind. (Gary-Hammond-East Chicago), Bossier City, La. (Shreveport), Muskegon, Mich. (Muskegon-Muskegon Heights) and Red Bank-White Oak, Tenn. (Chattanooga). As we have indicated in earlier situations, under these circumstances the proponents of the assignment must establish that use of the channel as requested is preferable to its use in another community in the general area, farther removed from the main city and its multiple AM and FM services. This requires the submission of a "preclusion showing", showing what impact the proposed assignment would have on potential uses of the same channel and the six adjacent channels in other places, particularly those of substantial size now without FM assignments; and, to the extent there is such a preclusion impact, what other channels could be assigned to such places. See the report and order in Docket No. 18905, Millington, Tenn. et al., FCC 70-1260, 20 R.R. 2d 1649, 26 FCC 2d 575 (December 1970), paragraph 12.[3]

5. In the case of the Crown Point, Ind., proposal, another consideration is presented. In Docket 18881, there is under consideration the assignment of Channel 296A at Lowell, Ind., a community in the same county as Crown Point (Lake), smaller in size than Crown Point and farther removed from Gary and other large population centers. While the two proposals are not technically related, it is open to question whether two additional assignments in this county should be made. Proponents of the Crown Point assignment should discuss whether, assuming the Lowell assignment is made (which has not yet been decided), the additional channel should be assigned to Crown Point or whether one would be sufficient. It appears that Channel 296A, if assigned to Lowell, could be used by a station licensed to Crown Point although it would have to be located a few miles outside of that city.

6. Other individual situations. In three other cases, although the communities involved are not in SMSA's, questions are presented which should be answered before affirmative action is taken. In the cases of Heath, Ohio, and North Myrtle Beach, S.C., the communities are close to larger cities, which have FM channels and AM stations (Newark, Ohio, with one Class B channel, and Myrtle Beach, S.C., with two Class A), and Heath itself has a daytime only station. Therefore, the proponents of these assignments should submit a preclusion showing of the type described in paragraph 4, above. In the case of Bonita Springs, Fla., a different type of problem is presented. The AM-FM licensee in Immokalee, Fla., wishes to move his FM station some 25 miles west to Bonita Springs,[4] a somewhat larger community but also one which is relatively close to a larger population center (Fort Myers), whereas Immokalee, the present location of the channel and station, is more isolated and the station can serve underserved areas. Comments are requested on whether, from this standpoint, the move would be in the public interest. If this shift in assignments is made, and no other party expresses an interest in the channel at Bonita Springs, we propose to modify the license of this station, WCOF-FM, accordingly.

7. Vail, Colo. (RM-1565 and 1582). Two petitioners, Aspen Broadcasting Co., Inc. (Aspen), and Nathanial B. Harris (Harris), in RM-1565 and RM-1582 respectively, seek channels for Vail, Colo. Aspen requests Class A Channel 272A; Harris seeks Class C Channel 268. Either or both may be assigned from a technical standpoint. Vail was not listed in the 1960 or previous censuses; the 1970 Census lists it as having a population of 484 persons, but Aspen estimates its actual year-round population as 1,500. It has developed into a prominent ski and winter sports resort, and the need for a first local broadcast service is urged in what is a rather isolated community and area, some 75 miles west of Denver. Harris urges that a Class C assignment would bring needed wide-coverage service to an area where it is now lacking, and that with such broad coverage the station would have a broad economic base.

8. It appears that an assignment in Vail is clearly warranted; however, there does not appear reason to assign two channels to such a small community, and therefore the question is whether the Class A or Class C assignment should be made. We are inclined to favor the latter, in view of the coverage benefits which would accrue. If Channel 268 is assigned, it may be desirable to condition its use by requiring that the facilities be substantial, such as power of at least 75 kw. and antenna height of at least 1,000 feet above average terrain, the assumptions used in the Harris petition. Comments upon this question are invited.

9. Showings required. We have set forth in paragraphs 4 and 6, above, certain questions which exist with respect to some of the particular cases included herein. The proponents of these assignments are expected to submit the showings mentioned; otherwise their requests are subject to denial. More generally, the proponents of any of the proposals covered herein should submit comments in response to this notice, even if they do nothing more than resubmit or incorporate by reference their petitions, and they should indicate their intention to apply for the channel if assigned, and build the station. Failure to file may lead to denial of the request.

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[1] The petition requesting Channel 240A for Three Rivers, Mich., was opposed by the licensee of Station WMCB-FM, operating on that channel at Michigan City, Ind., on the ground that the petition apparently contemplates operation at petitioner's AM location, which would be at substandard spacing to WMCB-FM. However, petitioner's reply makes it clear that its request is not contingent on use of this site, and our proposal is for use of this channel at Three Rivers in compliance with the separation rules. WMCB-FM also claims that any transmitter location within the city of Three Rivers would be similarly short-spaced; but our rules do not require, in FM or any other service, that the station's transmitter be located in its city. Many AM, FM, and TV stations are in fact not so located.

[2] None of the proposals covered herein conflict with any of the petitions which are pending and not included.

[3] This decision was affirmed on reconsideration, memorandum opinion and order in Docket 18905, FCC 71-151, adopted Feb. 10, 1971.

[4] The companion AM station would remain at Immolakee.

10. Cutoff procedure. As in other recent FM rule-making proceedings, the following procedures will govern:

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered, if advanced in reply comments.

(b) With respect to petitions for rule making which conflict with any of the proposals in this notice, they will be considered as comments in the proceeding, and public notice to this effect will be given, as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision herein.

11. In view of the foregoing, pursuant to authority contained in sections 4(i), 303 (g) and (4), and 307(b) of the Communications Act of 1934, as amended, it is proposed to amend § 73.202(b) of the Commission's rules, the FM Table of Assignments, to add the following entries. Footnote indicators indicate situations where the channel proposed will have to be used at a location outside of the community mentioned to meet mileage separations.

City	Channel No.
Ashdown, Ark	280A
Santa Paula, Calif	244A
Security, Colo	288A
Vail, Colo	272A or 268
Bonita Springs, Fla. (deleting his assignment from Immokalee, Fla)	240A
Vandalia, Ill	296A
Crown Point, Ind	[1] 280A
Vevay, Ind	[1] 240A
Jenkins, Ky	[2] 276A
Bossier City, La	261A
Lincoln, Maine	257A
Muskegon Heights, Mich	269A
Three Rivers, Mich	[1] 240A
Luverne, Minn	265A
Waseca, Minn	[1] 221A
Ord, Nebr	280A
Peterborough, N.H	221A
Delphos, Ohio	[1] 296A
Georgetown, Ohio	[1] 249A
Heath, Ohio	[1] 269A
Napoleon, Ohio	[1] 276A
Central City, Pa	269A
Newport, R.I	296A
North Myrtle Beach, S.C	288A
Red Bank-White Oak, Tenn	[1] 232A
Columbus, Tex	252A
Middlebury, Vt	265A
Pennington Gap, Va	[1] 288A
Quebradillas, P.R	252A

[1] The assignments indicated must be used outside of the communities shown, as follows: Crown Point, Ind., 6 miles south; Vevay, Ind., 5 miles northeast; Waseca, Minn., 2 miles south; Three Rivers, Mich., south and east; Delphos, Ohio, west; Heath, Ohio, 3 miles southwest; Georgetown, Ohio, 4 miles east; Napoleon, Ohio, south, Red Bank-White Oak, Tenn., 1 mile north; and Pennington Gap, Va., 1 mile south.

[2] The proposed assignment for Jenkins must be used slightly over a mile east of Jenkins. Petitioner requests a waiver of § 73.207 of the rules to permit location of the FM station at the AM site, at short separation. Such petitions are not considered in rule making proceedings; it appears that locations meeting separations are available, and the proposal is advanced on the assumption that it will be used consistent with the rules.

12. Pursuant to applicable procedures set out in § 1.415 of the Commission's rules, interested persons may file comments on or before April 6, 1971, and reply comments on or before April 16, 1971. All submissions by parties to this proceeding or persons acting in behalf of such parties must be made in written comments, reply comments or other appropriate pleadings.

13. In accordance with the provisions of § 1.419 of the rules, an original and 14 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission.

Adopted: February 24, 1971.

Released: February 26, 1971.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-2906 Filed 3-2-71;8:50 am]

[47 CFR Part 73]

[Docket No. 19161; FCC 71-192]

TABLE OF ASSIGNMENTS FOR CERTAIN FM BROADCAST STATIONS

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b) of the Commission's rules, the FM Table of Assignments (West Allis, Berlin, Hartford, Neenah-Menasha, Shawano, Watertown, and Waupun, Wis., and Escanaba, Mich.; Coal City, Dwight, or Marseilles, Ill.; St. Charles and St. Louis, Mo.; Muncie, Ind., and Celina, Fostoria, and Lima, Ohio; Anamosa and Iowa City, Iowa; Terrell and Corsicana, Tex.; Sullivan, Bedford, and Paoli, Ind.; Orangeburg, S.C.; Danville, Ind.; Decatur or Paris, Ill.; Manning and Kingstree, S.C.), RM-1476, RM-1489, RM-1523, RM-1524, RM-1528, RM-1540, RM-1552, RM-1554, RM-1559, RM-1561, RM-1563, RM-1566, RM-1571, RM-1626, RM-1660.

1. Notice of proposed rule making is hereby given concerning the amendments to § 73.202(b) of the Commission's rules, the FM Table of Assignments, as listed and discussed below, including assignments proposed in all of the above petitions except RM-1476. Except where indicated, all population figures are from the 1970 U.S. Census. Briefly, the petitions involved are:

(a) First assignments (Class A) at Hartford and Waupun, Wis., a second Class A assignment at Neenah-Menasha, Wis., and a substitution of unused channels at Escanaba, Mich., to permit more flexibility in use of a Sturgeon Bay, Wis., assignment; and related changes in the table (three involving existing stations). The Hartford proposal requires denial of a proposal for a first assignment at West Allis, Wis.

(b) First assignments (Class A) at Coal City, Ill., and Danville, Ind., both of which would be the second FM channels in their counties and were opposed by the FM stations there.

(c) A first assignment at St. Charles, Mo. (B or C), by changing the channel of a St. Louis station, which opposed the petition.

(d) First assignments, unopposed but requiring changes of unoccupied channels, at Sullivan, Ind., Anamosa, Iowa, and Terrell, Tex.

(e) Provision of a second FM channel at Muncie, Ind., by shifting three existing channels and stations in Ohio, one of which opposed the request.

(f) Second assignments (Class A) at Manning and Orangeburg, S.C.; the Manning assignment would actually be for the first FM station there since the existing assignment is used at Kingstree, S.C.

(g) Substitution of a Class B for the present Class A channel at Paris, Ill.

2. The proposals summarized above are advanced herein for comments. In some cases, as discussed below, we have substantial reservations about whether the proposed amendment should be adopted, and the fact that comments are invited does not indicate a present Commission view, even tentatively, that they should be.

3. Changes in Wisconsin and Michigan. As revised to eliminate some conflicts, the petitions for changes in these States include requests by the licensees of the AM stations (daytime) in Waupun and Hartford for Class A channels as first assignments in these cities; a request by the Reverend Arthur T. Gregg for a second Class A assignment at Menasha or Neenah-Menasha (which he would use for religious programing), and a change in unoccupied Class C channels at Escanaba, Mich., to permit the existing Class A station at Sturgeon Bay, Wis., to move to the Class C channel there at its present location (which would be short-spaced to the present Escanaba assignment if it remained). The Waupun and Hartford proposals involve changes in the existing assignments at Berlin (unoccupied) and Watertown and Neenah-Menasha (Stations WTTN-FM and WNRR respectively); these licensees state that they do not object to the change provided they are reimbursed for the costs thereof.[1] The proposal for a second assignment at Neenah-Menasha (or Menasha) also requires a change in the channel of the assignment and station (WTCH-FM) at Shawano, Wis.; the licensee thereof takes the same position. The proposal which would benefit Sturgeon Bay requires only a shift in unoccupied assignments at Escanaba, Mich.

4. We conclude that all of these proposals clearly warrant consideration in rule-making. Waupun and Hartford are cities of about 8,000 and 6,500 persons respectively, each with one daytime AM station and therefore no fulltime local aural service, and both are more than 10 miles from larger centers. However, it is noted that Hartford is in the Milwaukee Standard Metropolitan Statistical Area (SMSA) as defined in the 1970 Census, although in a different county

[1] The licensee of the existing station at Neenah-Menasha, which would have to change channels, is the major stockholder in the Waupun petitioner (Jerry J. Collins and Collins Broadcasting Corp., respectively).

from the central city; therefore a "preclusion showing" will be required (as in other similar cases recently). Proponents of this assignment should submit a showing as to what effect the proposal would have on use of Channel 285A, and the six adjacent channels, in other places, particularly places farther from Milwaukee and its multiple stations, of substantial size and without FM assignments. As to the proposal for Menasha or Neenah-Menasha, these two communities (which are nearly contiguous and are "hyphenated" for many purposes including their present FM assignment and one AM station) have a combined 1970 Census population of over 33,000 and therefore clearly warrant a second FM assignment. We propose to continue the practice of assigning channels to these communities jointly. The proposal to change unoccupied channels at Escanaba, Mich., clearly warrants exploration in order to permit the best use of the Class C assignment at Sturgeon Bay, which was added to the table in 1966 in order to improve the service potential for the somewhat under-served area to the north.

5. The proposal for Hartford is inconsistent with the petition first captioned above, for a first FM channel at West Allis (filed by Dr. Alfred C. Valdez and Lew Breyer & Associates, seeking Channel 285A). West Allis is a community of very substantial size—over 70,000 in 1970—but it is contiguous to Milwaukee and in the same county, well served by the multiple Milwaukee AM and FM station, and has a daytime AM station of its own (under common ownership with one of the Milwaukee FM stations). Therefore, its claim is less meritorious than that of Hartford. We do not here decide whether we would consider this request in the absence of a competing demand; if we did the petitioner would certainly have to submit the type of preclusion showing mentioned above, and the result would probably ultimately have been denial of the request.

6. Coal City, Ill. and Danville, Ind. (RM–1540 and RM–1563). These two petitions seek Class A assignments which would be the first local outlets in their communities and the second FM assignments in their counties; both were opposed by the existing FM licensees. Coal City is a community of 2,937, located in Grundy County (26,193), and some 7 miles from the larger city and county seat of Morris (8,280). Petitioner Grundy County Broadcasters, Inc. is the licensee of the AM station at Morris (daytime-only). The licensee of the FM station at Morris (WRMI–FM, licensed to Mrs. Ottila E. Greiner, doing business as Radio Morris), opposed the petition on the grounds of the proximity and alleged economic interdependence of the two places, the alleged economic injury, the extent to which WRMI–FM actually serves Coal City, both technically and, assertedly, through presenting programs of particular value to it, and the plethora of other signals available, from Chicago, Joliet, and elsewhere. It is claimed that petitioner really wants simply an AM–FM combination to improve its competitive position vis-a-vis WRMI–FM. It is also claimed that the channel could better be assigned at other places in the area larger than Coal City, such as Dwight or Marseilles. In the Danville case, Danville is the county seat of Hendricks County (in the Indianapolis SMSA, although not its central county), and has a population of 3,771. The larger community of Plainfield (population 8,211) is 8 miles away in the same county, and the licensee of the FM station there (WJMK, licensed to James T. Barlow) opposed the petition. There are no AM stations in the county; petitioner is the licensee of an FM station at West Terre Haute, some 55 miles away. The opposition is based on much the same grounds as in the Coal City case mentioned above, including alleged injury from competition additional to the numerous stations already in the area, and service of a local nature which WJMK is said to provide for Danville.

7. Whatever significance these objections may ultimately have, they clearly are not sufficient to warrant rejection of these proposals without rule making. However, in the case of Coal City, we believe that possible alternative uses of the proposed channel should be considered. It appears that it may be as appropriate, and perhaps more so, to assign the proposed channel to Dwight (3,838), which is somewhat farther from any community with a radio station (17 miles) or to Marseilles (4,317) which is about the same distance from a local station as is Coal City, and is larger than either Coal City or Dwight. Therefore, we are proposing the assignment in the alternative (the listing of the communities is in alphabetical order, without any preference indicated).[2]

8. St. Charles and St. Louis, Mo. (RM–1523). Contemporary Media, Inc. requests the assignment of Class B/C channel 246 as a first assignment at St. Charles, Mo., through shifting a St. Louis assignment and Station KADI, St. Louis, from Channel 243 to 242 (one of 7 St. Louis FM assignments). St. Charles, population 31,834, is the county seat of St. Charles County (92,954), both city and county having increased more than 35% in population since 1960. The county has no FM assignments and one AM station, daytime-only, licensed to petitioner. No Class A channels can be assigned. St. Charles, and its county are in the St. Louis SMSA, although not adjacent to St. Louis city (it is some 20 miles between the centers of the cities). The licensee of KADI, Vanguard Broadcasting Corporation, opposed the petition, on the ground that the assignment is not shown to be feasible because of the distance from St. Charles at which the transmitter would have to be located (requiring a tall tower which might present air-hazard problems), and also because, allegedly, the station would provide complete coverage of St. Louis and raise, in essence, a "suburban issue" as to whether it is really a St. Louis proposal. To meet mileage separations and signal requirements with respect to St. Charles, a transmitter using Channel 246 must be in one of two areas: Either 15 miles north of that city in Illinois (Zone I), or some 32 miles southwest in Missouri (Zone II). In reply, petitioner asserted that there is already an equally tall tower in the Zone I area, and no additional problems would be created.

9. In view of the size and recent population increase of St. Charles, rule making on this proposal is clearly warranted. However, we are concerned about the question raised in the opposition, as to whether this channel would in fact be used by a station primarily serving as a St. Louis outlet. Some assurance on this score should be given. Also, while the petition and reply to opposition contain some information concerning preclusion, a more complete submission in this respect should be made, setting forth in one place a showing as to what areas would be precluded on each of the seven channels involved, the communities of substantial size in these areas (particularly those without assignments), and what other assignment possibilities remain for such communities.

10. First assignments at Anamosa, Iowa, Terrell, Tex., and Sullivan, Ind. (RM–1540, 1552, 1554). The first of these three petitions seeks a first assignment (Channel 232A) for Anamosa, Iowa, population 4,248, the county seat and largest community in Jones County, which is not in an SMSA. The assignment would be accomplished by changing an unoccupied assignment at Iowa City, Iowa, from Class C Channel 230 to Channel 228A. Iowa City (population over 46,000) has one Class C commercial FM station and a daytime-only AM station, as well as educational AM and FM stations licensed to the University of Iowa. An unoccupied Class C channel at Cedar Rapids can be moved to Iowa City if needed. Despite the mixture of A and C channels at Iowa City which would result from the proposed change (which we have tried in general to avoid) the proposal appears clearly to warrant consideration in rule making.

11. In RM–1552, Billy D. Pirtle seeks the assignment of a first channel to Terrell, Tex., a city of 13,803,[3] the largest city in (though not the seat of) Kaufman County, and whose daytime-only AM station is the only aural facility in that county. This city and county are located in the eastern portion of the Dallas SMSA; it is some 30 miles from Dallas to Terrell. Mr. Pirtle requests as a first alternative the assignment of Class C Channel 300, by deleting that channel at

[2] In the case of Danville, petitioner has submitted a fairly complete preclusion study. The only preclusion area is cochannel, and it includes only two communities of substantial size, Crawfordsville and West Lafayette. The former has an FM assignment; West Lafayette does not, but it has an unlimited-time (Class IV) AM station and is adjacent to Lafayette, with 3 FM stations (it is in the Lafayette SMSA).

[3] This is the 1960 census population. The 1970 preliminary census report gives a population of only 3,985; but it appears that this may be a typographical error.

Corsicana, Tex., replacing it with Channel 228A. As an alternative, it is proposed that Channel 296A should be dropped into Terrell, with no other changes. In both cases, the transmitter would have to be some 6 miles east of Terrell in order to meet minimum separation requirements with respect to Station KNOK–FM on Channel 298 at Fort Worth; and Mr. Pirtle suggests that this would present problems with respect to coverage of Terrell by a Class A station, and that therefore (and for wider coverage) the Class C assignment is preferable.

12. Clearly, a city of the size and importance of Terrell, fairly far from a large population center even though it is in the SMSA, merits an FM assignment if one can be made consistent with the rules and FM allocation policies. A 6-mile distance out of town, while larger than what is optimum, does not necessarily preclude even a Class A station from providing principal-city coverage as required by the rules, and a number of Class A assignments have been made on this basis. Accordingly, our first proposal is for the assignment of Channel 296A. With respect to the alternative preferred by Mr. Pirtle, Channel 300C, we are not persuaded that this should be removed from Corsicana, Tex., a somewhat larger city (19,839), the county seat and largest city in its county, farther from Dallas (40 miles) and not in the SMSA. At least this appears to be true unless a suitable replacement channel can be provided; and Channel 228A, which Mr. Pirtle proposes as a substitute, would have to be used even farther from Corsicana (7 miles) than would 296A or 300C outside of Terrell. Unless Channel 296A can be appropriately assigned at Terrell, or unless a suitable replacement channel can be found at Corsicana, it may be necessary to deny the Terrel request.

13. As to Sullivan, Indiana, in RM–1554, Donnie Joe Spiller seeks to provide a first FM assignment at Sullivan by moving to that city Channel 237A, now assigned to Bedford, Ind., replacing it at Bedford with Channel 288A. Channel 237A is unoccupied and not sought for use at Bedford, but there is a long-pending application for its use at Paoli, Ind., some 22 miles away.[4] The proposal is to reassign the channel at Paoli as well as at Sullivan, which can be done consistent with the rules. All three of these cities are the county seats and largest communities in their counties, with populations ranging from 3,281 (Paoli) to 13,087 (Bedford); Sullivan and Paoli each has one daytime-only station while Bedford has a fulltime Class IV station. Rulemaking on this proposal is clearly warranted, since it would add an assignment to the Table in a community meriting it.

14. Muncie, Ind., and Celina, Lima, and Fostoria, Ohio (RM–1524). Muncie, Ind., is a city of 69,080 persons, in its own SMSA. It now has four commercial broadcast outlets, in addition to two educational FM stations: WLBC (daytime AM), WERK (daytime AM), WMUN (FM) and WLBC–TV television. All but WERK are licensed to Tri-City Radio Corp. WERK is licensed to Muncie Broadcasting Corp., the petitioner here, who seeks Channel 244A as a second FM channel at Muncie. We have in the past denied a previous proposal by petitioner to achieve this objective, which would have involved substandard spacings; but we recognized in that action the desirability of providing such a channel if possible, to achieve greater diversity and ownership balance in the broadcast media in Muncie.[5] Petitioner now seeks to add Channel 244A by three shifts of channels and stations at cities in Ohio: essentially, Channel 244A, now assigned at Celina and Fostoria, Ohio, would be replaced with Channel 249A; and Channel 249A, now assigned at Lima, would be replaced with Channel 244A. Stations WBOB–FM, Fostoria, WCSM–FM, Celina, and WTNG, Lima, would be reimbursed for their reasonable expenses, and it is asserted that the change of only 1 MHz in dial position would not significantly affect listener habits. Station WTGN opposed the change, on the ground of disruption of listener habits and the assertion that listeners in the area between Celina and Lima, accustomed to tuning to Channel 249A to receive it, would do so and get WCSM–FM instead. The petition was also opposed by the licensee of Station WGLM on Channel 241 at Richmond, Ind., on the ground that the assignment at Muncie would prevent it from using one of various new transmitter sites north and northwest of Richmond which it had been investigating in order to improve facilities.[6]

15. While we are of the view that rulemaking should be instituted on this proposal, we are not at this time persuaded that it would be in the public interest, in view of the rather large cost involved in requiring three stations to change channels (we attach no significance to the matter concerning Station WGLM last mentioned). This is a higher cost than anything we have required so far in terms of shifts of existing stations. However, comments upon the matter are invited. These stations will of course be reimbursed for the reasonable costs of the move if it is decided that the proposal should be adopted.

16. In advancing this proposal for comment, we again reject an alternative approach suggested by Muncie Broadcasting, of assigning Channel 221A to Muncie, and directing one of the Muncie educational FM stations to move from Channel 218 to Channel 210. Even though one of the educational FM stations in the general area has ceased operation and been deleted since this petition was filed (WHCI, Hartford City, in August 1970), the situation in central Indiana with respect to educational FM facilities and the potential for further assignments is one of the tightest in the entire country. This is particularly true since television Station WFBM–TV, Indianapolis, operates on TV Channel 6,[7] and therefore the problem of FM interference to television is a potentially serious one, particularly with respect to stations on the frequencies at the lower end of the educational FM band. Any further expansion of educational FM service in this general area must in all probability be on the higher frequencies, where the existence of Channel 221A as a commercial assignment at Muncie could well preclude it. Until we have more of an idea of what the principles governing educational FM assignments will be, we are not disposed to compound this situation.

17. Assignments at Orangeburg and Manning, S.C. (RM–1559 and RM–1571). In RM–1559, the licensee of one of the two AM stations at Orangeburg, S.C. (both daytime-only) seeks the addition of Channel 280A as a second FM assignment there, the other AM station and the existing Class C FM station being under common ownership. Orangeburg is a city of over 13,000, the county seat and largest city in its county and the center of a large area. It is shown that assignment of the channel would have a preclusion only on use of this channel, and that the only city within the "preclusion area" of over 2,000 population is Hampton, S.C., which has an FM assignment. Under these circumstances, rule-making on this proposal is clearly warranted.

18. In RM–1571, the licensee of the AM station at Manning, S.C., seeks the addition of Channel 221A at Manning, as the second assignment in the Table but in reality only the first, since the channel now assigned there in the Table, 261A, is used by a station at Kingstree, S.C., some 22 miles away and in a different county, under the former "25-mile rule". Petitioner's daytime AM station at Manning is the only broadcast outlet in the county, and there are no other FM channels assigned. Manning is a city of some 4,025 persons, the county seat and largest community in Clarendon County. With respect to preclusion impact, the proposed assignment would preclude Channel 222 from assignment in a small area and 221A from use in a larger area, and there would be some preclusion effect on use of educational

[4] Section 73.203(b) of the rules now limits such use of channels assigned to other communities to 10 miles for Class A and 15 miles for Class B or C. The Paoli application was filed under earlier rules, when the applicable distance was 25 miles.

[5] Amendment of § 73.202, Muncie, Indiana and Celina, Ohio (RM–1063), 19 FCC 2d 921, 17 R.R. 2d 1658 (October 1969).

[6] The present Richmond station location would limit use of Channel 244A at Muncie to a point at least 2 miles northwest of the center of that city. It is noted that, although the WGLM opposition was filed more than a year ago, no application for change in transmitter site has been filed.

[7] Muncie, some 50 miles from Indianapolis, is well within the WFBM Grade B contour, and its county (Delaware) shows 50 percent or more weekly viewing of this station. See Television Factbook, 1970–71 edition, p. 262b.

FM channels 218, 219, and 220. However, the impact on use of Channel 221A and 222 is not great (including no community as large as Manning which does not have an assignment), and, as to the impact on educational FM, it appears that there are a large number of assignment possibilities on other such channels for any needs which may arise in the area. Unlike the Muncie situation referred to above, this is not a situation where interference to television Channel 6 is likely to be a problem.[8] Accordingly, since this would represent in effect a first assignment to Manning, consideration of the proposal in rule making is clearly warranted.

19. Substitution of Class B Channel 253 for 252A at Paris, Ill. In RM-1566, Paris Broadcasting Corp., the licensee of WPRS (daytime AM) and WPRS-FM, Paris, Ill., seeks the substitution of Class B Channel 253 for the present 252A assignment in that city, and modification of the license of WPRS-FM accordingly. Paris is a city of 9,828 population, the largest city and county seat of Edgar County (21,254). There is no other FM assignment in the county, and WPRS is the only AM station; but it is less than 20 miles from Paris to the large center of Terre Haute, Ind., and the two cities are in adjacent counties. Petitioner seeks a Class B channel in order to increase its coverage area, to a claimed 3,419 square miles containing 251,809 persons, compared to coverage with its Class A facilities of 480 square miles containing 18,875 persons, or increases of nearly 233,000 persons and over 2,900 square miles. Of the increase area, it is stated that 20 square miles and 655 persons have available no present 1 mv/m or greater service FM signal, and 7,555 persons in 207 square miles have only one such signal available (using the assumptions which have been specified in previous Commission notices and decisions in this area).

20. The showing was submitted as to the preclusion impact which the proposal would have. On 5 of the 7 channels involved it would have none; but on two, 253 and 254, the proposed assignment would preclude use of these channels in a number of places of substantial size. For example, if Channel 253 is not assigned at Paris but Channel 252A remains there, either 253 or 254 could be assigned at Decatur, Ill., a city of over 89,000 persons with only one FM channel (Class B) assigned, or at Taylorville, a city of 10,425, slightly larger than Paris and with one Class A assignment. Channel 254 could be assigned at Sullivan, a community of 4,197 persons now without an assignment.

21. We are of the view that consideration of assigning Channel 253 in this general area of Illinois should be considered, but not necessarily that the public interest would be served by assigning it to Paris, a city rather near a large population center and which already has a channel. As noted above, the amount of population gained which now has none or only one 1 mv/m or greater FM signal available would be small, and there is a substantial preclusion area. Therefore, we are proposing the assignment of this channel in the alternative to Decatur or Paris, with the understanding that it may also be sought in comments for other communities in the general area.

22. Showings required. Comments are invited upon the various proposals discussed above and listed below. As indicated, in some cases the Commission has reservations or questions concerning the proposal, and proponents of the proposed assignment will be expected to answer them. More generally, the proponents of the various proposals contained herein are expected to file comments, even if they do nothing more than resubmit or refer to their petitions. They are expected, among other things, to state their intention to apply for the channel if assigned, and if authorized to promptly build their stations. Failure to make these showings may result in denial of the proposals.

23. Cutoff procedure. As in other recent FM rule-making proceedings, the following procedures will govern:

(a) Counterprosposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered, if advanced in reply comments.

(b) With respect to petitions for rule making which conflict with any of the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given, as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision herein.

24. In view of the foregoing, subject to the conditions and reservations set forth hereinabove in certain respects, and pursuant to authority found in sections 4(i), 303 (g) and (r) of the Communications Act of 1934, as amended, it is proposed to amend § 73.202(b) of the Commission's rules, the FM Table of Assignments, as follows (where indicated by footnote indicators below, the assignment must be used a short distance outside of the specified city):

City	Channel No.	
	Present	Proposed
Coal City, Dwight, or Marseilles, Ill.		288A.
Decatur, Ill.	275	253, 275.
Paris, Ill.	252A	252A or 253.[1]
Bedford, Ind.	237A	288A.[1]
Danville, Ind.		296A.[1]
Muncie, Ind.	281	244A, 281.[1]
Paoli, Ind.		237A.
Sullivan, Ind.		237A.[1]
Anamosa, Iowa		232A.
Iowa City, Iowa	230, 264	228A, 264.[1]
Escanaba, Mich.	227, 246	246, 284.
St. Charles, Mo.		246.[1]
St. Louis, Mo.	243 (plus 6 others).	242 (plus 6 others).
Celina, Ohio	232A, 244A	232A, 249A.
Fostoria, Ohio	244A	249A.
Lima, Ohio	249A, 271, 285A.	224A, 271, 285A.
Kingstree, S.C.		261A.
Manning, S.C.	261A	221A.
Orangeburg, S.C.	294	280A, 294.[1]
Corsicana, Tex.	300	300 or 228A.[1]
Terrell, Tex.		296A or 300.[1]
Berlin, Wis.	232A	272A.
Hartford, Wis.		285A.[1]
Neenah-Menasha, Wis.	257A	232A, 261A.[1]
Shawano, Wis.	261A, 274	257A, 274.
Watertown, Wis.	284	231.
Waupun, Wis.		257A.[1]

[1] The proposed assignments listed and so indicated must be used at points outside of the communities, approximately as follows: Paris, Ill. (253), 3 miles south or southwest; Bedford, Ind., 2 miles southwest; Danville, Ind., 2 miles west or northwest; Muncie, Ind., 2 miles northwest; Sullivan, Ind., north, west or northwest; St. Charles, Mo., 15 miles north or 32 miles southwest; Orangeburg, S.C., south; Corsicana, Tex. (228A), 7 miles northeast; Terrell, Tex. (either), 6 miles east; Hartford, Wis., south; Waupun, Wis., 7 miles northwest; Neenah-Menasha (Ch. 261A), 7 miles west or north; Iowa City, Iowa (228A), 2 miles east.

25. *It is further ordered*, Pursuant to section 316 of the Communications Act of 1934, as amended, that, if the assignments above which involve changes in the channels of existing stations are concluded to be in the public interest and are adopted, the following licensees shall show cause why the licenses of their station should not be modified to specify the new channels instead of their present channels, as indicated below (subject to reimbursement by parties which become the permittees on the new assignments thus made possible, of the reasonable costs of changing channel):

Station and location	Licensee	Present channel	Proposed channel
KADI, St. Louis, Mo.	Vanguard Broadcasting Corp.	243	242
WCSM-FM, Celina, Ohio.	Central Broadcasting Corp.	244A	249A
WFOB-FM, Fostoria, Ohio.	Seneca Radio Corp.	244A	249A
WTGN, Lima, Ohio.	Associated Christian Broadcasters.	249A	244A
WNRR, Neenah-Menasha, Wis.	Jerry J. Collins.	257A	232A
WTCH-FM, Shawano, Wis.	Shawano County Leader Publishing Co.	261A	257A
WTTN-FM, Watertown, Wis.	Watertown Radio, Inc.	284	231

[8] Manning and Clarendon County are outside of the Grade B contours of the closest Channel 6 stations (at Augusta, Ga. and Wilmington, N.C.) and the Television Factbook, 1970-1971 edition, shows no appreciable viewing in the county of either station.

26. *It is further ordered,* That the petition, RM-1476, filed by Dr. Alfred C. Valdez and Lew Breyer & Associates, seeking the assignment of Channel 285A at West Allis, Wis., is denied.

27. Pursuant to applicable procedures set out in § 1.415 of the Commission's rules, interested persons may file comments on or before April 13, 1971, and reply comments on or before April 23, 1971. All submissions by parties to this proceeding or persons acting in behalf of such parties must be made in written comments, reply comments or other appropriate pleadings.

28. In accordance with the provisions of § 1.419 of the rules, an original and 14 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission.

Adopted: February 24, 1971.

Released: March 1, 1971.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-2907 Filed 3-2-71;8:50 am]

[47 CFR Part 73]

[Docket No. 18179; FCC 71-210]

NON-NETWORK SUPPLIERS TO COMMERCIAL TELEVISION STATIONS AND CATV SYSTEMS

Order Regarding Availability of Television Programs

1. The Commission has before it the petition filed on February 9, 1971, by nine television producers,[1] represented by the law firm of Phillips, Nizer, Benjamin, Krim, and Ballon, for extension of time to file comments and reply comments in the above-entitled proceeding, from the present dates of March 3 and April 5, 1971, to July 2 and September 3, 1971. In support thereof, petitioners set forth their great interest, their desire to conduct in-depth studies of the issues raised in the notice, and to submit detailed factual data. In view of the difficulty and complexity of the matter, they assert that they will not have a reasonable opportunity to present meaningful comments within the short time now set. In short, petitioners assert that there are "compelling" reasons for the 4 month extension requested.

2. We set out in our further notice the reasons for reaching an expeditious decision—particularly "* * * the possible ramifications of this matter on UHF development and the present critical juncture of that industry." (Par. 9, notice.) We appreciate the desire of petitioners for additional time to prepare and present in-depth study.[2] It thus becomes a matter of striking a balance between competing considerations. In the circumstances, we shall permit an additional 2-month period for filing the initial comments; this amounts to close to 4 months in all, and petitioners and other interested parties will simply have to submit as detailed studies as this time period will permit.

It is ordered, That the time for filing comments is extended to on or before May 3, 1971, and reply comments on or before June 3, 1971.

Adopted: February 25, 1971.

Released: February 26, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[3]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-2908 Filed 3-2-71;8:50 am]

[47 CFR Part 73]

[Docket No. 19139; RM-1653]

TABLE OF ASSIGNMENTS OF TELEVISION BROADCAST STATIONS ALLIANCE, BOWLING GREEN, AND CAMBRIDGE, OHIO

Order Extending Time for Filing Comments and Reply Comments

1. This proceeding was begun by a notice of proposed rule making, adopted January 20, 1971 (FCC 71-61), and published in the FEDERAL REGISTER on January 29, 1971 (36 F.R. 1428). The dates specified for filing comments and reply comments are February 23, 1971 and March 2, 1971.

2. On February 22, 1971, counsel for the Ohio Educational Television Network Commission (OETNC) filed a request for a 2-week extension of the filing dates. OETNC states that when it filed the petition for rule making, all of its affiliates approved the proposal and pledged their support for OETNC's plan. However, one of its affiliates has now raised some questions with respect to certain parts of the proposal. Therefore, in order to resolve the differences between the OETNC and its affiliate, the extension is necessary.

3. It appears that the requested extension is warranted and would serve the public interest. *Therefore, it is ordered,* That the time for filing comments and reply comments in this proceeding is extended, to and including March 9, 1971, and March 16, 1971, respectively.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281(d)(8) of the Commission's rules.

Adopted: February 22, 1971.

Released: February 24, 1971.

[SEAL] FRANCIS R. WALSH,
Chief, Broadcast Bureau.

[FR Doc.71-2909 Filed 3-2-71;8:51 am]

[47 CFR Part 73]

[Docket No. 19045; RM-1637]

TABLE OF ASSIGNMENTS OF TELEVISION BROADCAST STATIONS; CLARKSVILLE, TENN.

Order Extending Time for Filing Reply Comments

1. This proceeding was begun by a notice of proposed rule making (FCC 70-1099), adopted October 7, 1970, and published in the FEDERAL REGISTER October 15, 1970 (35 F.R. 16181). The date designated for reply comments has expired and reply comments are presently due on February 19, 1971.

2. On February 17, 1971, counsel for Tennessee Televentures, the proponent in this proceeding, filed a request for a 3-week extension of the reply comment date, to and including March 12, 1971. Counsel states that due to the press of other business which will keep it away from the city for several days during the next few weeks, this extension is necessary. Counsel for Professional Telecasting Systems, Inc., licensee of Station WBKO, Bowling Green, Ky., has consented to the requested extension of time.

3. It appears that the requested extension is warranted and would serve the public interest. *Accordingly, it is ordered,* That the request of Tennessee Televentures is granted to and including March 12, 1971, for reply comments.

4. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.281(d)(8) of the Commission's rules.

Adopted: February 23, 1971.

Released: February 24, 1971.

[SEAL] FRANCIS R. WALSH,
Chief, Broadcast Bureau.

[FR Doc.71-2910 Filed 3-2-71;8:51 am]

[47 CFR Part 74]

[Docket No. 19121]

TELEVISION BROADCAST TRANSLATOR STATIONS

Order Extending Time for Filing Comments and Reply Comments

1. This proceeding was begun by notice of proposed rule making (FCC 71-40) adopted January 13, 1971, released January 15, 1971 and published in the FEDERAL REGISTER January 20, 1971, 36 F.R. 936. The dates for filing comments and reply comments are presently February 22 and March 4, 1971.

[1] These producers are: Allied Artists Pictures Corp.; Columbia Pictures Industries (and its wholly owned subsidiary, Screen Gems, Inc.); Independent Television Corp.; Metro-Goldwyn-Mayer, Inc.; Metromedia Producers Corp.; Twentieth Century-Fox Film Corporation; United Artists Corp.; and Warner Bros. Inc.

[2] In this respect, however, we note that petitioners three times requested extensions of time as to the filing date in the original notice in this proceeding, stating, inter alia, that the additional time was needed to permit the submission of a detailed factual study; that extensions totalling roughly 8 months were granted; and that petitioners nevertheless submitted comments of only 10 pages, containing no such showing.

[3] Commissioner Bartley dissenting.

2. On February 19, 1971, Frontier Broadcasting Co. (Frontier) filed a request to extend the time for filing comments to March 8, 1971. Frontier states that urgent press of other matters before the Commission has made it impossible for its counsel to turn its attention to this matter in order to be able to file comments by the present due date.

3. We are of the view that the additional time is warranted and would serve the public interest. *Accordingly, it is ordered,* That the time for filing comments and reply comments in Docket No. 19121 is extended to and including March 8, 1971 and March 19, 1971, respectively.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281(d)(8) of the Commission's rules.

Adopted: February 23, 1971.

Released: February 24, 1971.

[SEAL] FRANCIS R. WALSH,
Chief, Broadcast Bureau.

[FR Doc.71-2911 Filed 3-2-71;8:51 am]

[47 CFR Part 97]

[Docket No. 19163; FCC 71-196]

AMATEUR EXTRA CLASS LICENSE

Licensing and Operating Requirements

1. Notice of proposed rule making is hereby given in the above-entitled matter.

2. The Commission has under consideration two petitions filed by the American Radio Relay League (ARRL) relating to licensing and operating requirements for the attainment of the Amateur Extra Class license. To the extent that the matters contained in the Petition RM-1646 filed by William K. Smith (WA3JHB) of Pittsburgh, Pa., are identical to the proposals in ARRL's petitions they are incorporated in this notice. A proposal contained in RM-1646, not germane to this proceeding, is being considered separately.

3. In their respective petitions, RM-1590 and RM-1646, ARRL and William K. Smith propose amendment of § 97.25(c) of the Commission's Rules to give an examination credit to former holders of the Amateur Extra First Class license (issued between June 1923 and June 1933) seeking to obtain an Amateur Extra Class license. In support of its request, ARRL states that the average person, 60 or more years old, generally experiences difficulty in undergoing an Amateur Extra Class examination. Further, correspondence received by ARRL from former holders of Amateur Extra First Class licenses state that they successfully passed examinations which were allegedly equal in difficulty to the present Amateur Extra Class examination. Mr. Smith also suggests that the requirements for the former Amateur Extra First Class license closely parallel present requirements for the Amateur Extra Class license.

4. A comparison of the present day and former examinations indicates that the level of difficulty of the Extra First Class license examination was far below that for the present Amateur Extra Class license. Since the period during which the Extra First Class license was originally available, the title of the license has been changed successively to "Class A" and then to "Advanced Class". Thus, without further examination, those former Extra First Class licensees who have kept renewing their licenses on time are now holders of Advanced Class licenses. When the Extra Class license was established in 1952, it was intended to be a new class, indicative of attainment of a level of achievement distinctly above that of any then existing or previously available amateur operator license. Therefore, it is determined that no credit should be given for the written portion of the examination. However, since the 20-word code test requirement remains unchanged from the earlier requisite, the Commission agrees that it is unfair to require eligible former holders of the Amateur Extra First Class license to again take the code test. Accordingly, the proposal below would require those licensees seeking to receive credit for the 20-word-per-minute code requirement to establish that they held an Amateur Extra First Class license and have continued, without interruption, to hold its successor, the Advanced Class license. Authentication of a claim to having held the older Extra First Class license may present something of a problem and comments regarding this are invited. In general, copies of licenses, other official Government documents or correspondence and other material giving a reasonably clear indication of the facts regarding the claim, are examples of the possibilities in this regard.

5. Both ARRL (in RM-1591) and Mr. Smith request that § 97.9(a) of the Commission's rules be modified to reduce the eligibility period for the Amateur Extra Class operator license from 2 years to 1 year. In support of their requests, the petitioners state that the 2-year waiting period tends to decrease rather than increase interest in advancement to the Amateur Extra Class license because the licensees' sustained interest is dependent on rapid upward movement in rank. It appears that the 2-year waiting period requirement for attainment of the Amateur Extra Class operator license may present an unwarranted deterrent to obtaining the higher class license. Adoption of the petitioners' request to reduce the waiting period to 1 year will achieve a continuing movement toward the goals set forth in § 97.1 of the Commission's rules and be consistent with the incentive licensing program in effect since August 1967.

6. Accordingly, we propose to amend §§ 97.9(a) and 97.25 of the rules as set forth below. Authority for these proposed amendments is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

7. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before June 1, 1971, and reply comments on or before June 18, 1971. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

8. In accordance with the provisions of § 1.415 of the Commission's rules, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

Adopted: February 24, 1971.

Released: February 26, 1971.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE,
Secretary.

I. Part 97 of the Commission's rules is proposed to be amended as follows:

1. Section 97.9(a) is amended to read as follows:

§ 97.9 Eligibility for new operator license.

* * * * *

(a) *Amateur Extra Class.* Any citizen or national of the United States who either (1) any time prior to receipt of his application by the Commission has held for at least 1 year an amateur operator license of other than the Novice or Technician Class, issued by any agency of the U.S. Government, or submits proof that he held for a period of 1 year an amateur operator license at least equivalent to a General Class license issued by a foreign government, or (2) submits evidence of having held a valid amateur radio station or operator license issued by any agency of the U.S. Government during or prior to April 1917.

* * * * *

2. Section 97.25 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 97.25 Examination credit.

* * * * *

(d) An applicant for the Amateur Extra Class operator license will be given credit for examination element 1(C) if he so requests and submits evidence of having held the Amateur Extra First Class license, having continuously held its successor licenses and currently holding an amateur operator license of the Advanced Class.

* * * * *

[FR Doc.71-2912 Filed 3-2-71;8:51 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 230]

[Release No. 33-5132]

PROCEDURE REGARDING ABANDONED REGISTRATION STATEMENTS AND POST-EFFECTIVE AMENDMENTS

Notice of Proposed Rule Making

Notice is hereby given that the Securities and Exchange Commission had under consideration a proposed new Rule 479 [17 CFR 230.479] under the Securities Act of 1933. The proposed rule would provide a procedure whereby the Commission may determine whether a registration statement or a posteffective amendment to such a statement has been abandoned and remove such statement or amendment from consideration as a pending matter.

At any given time there are on file with the Commission a limited number of registration statements or posteffective amendments which appear to have been abandoned by the registrant. This situation may develop for various reasons. For example, because of market or other conditions the registrant may have determined not to proceed with the offering or may have been liquidated or may have gone into bankruptcy. Whatever the reason, the registration statement or amendment is not up to date and should not be relied upon for the accuracy of the information contained therein. Hence it should be withdrawn or otherwise removed from consideration as a pending registration statement or posteffective amendment.

The proposed rule provides that when a registration statement or amendment has become out of date by the passage of 9 months from the filing date, or the filing of the latest substantive amendment, and the registrant has not furnished a satisfactory explanation as to why it has not amended or withdrawn the registration statement, the Commission may, in its discretion, follow the procedure set forth in the proposed rule. The proposed rule also provides that an abandoned registration statement or amendment shall be suitably marked and shall remain in the files of the Commission.

I. Part 230 of Chapter II of Title 17 of the Code of Federal Regulations would be amended by adding thereunder a new § 230.479 reading as follows:

§ 230.479 Procedure with respect to abandoned registration statements and posteffective amendments.

When a registration statement, or a posteffective amendment to such a statement, has been on file with the Commission for a period of 9 months and has not become effective the Commission may, in its discretion, proceed in the following manner to determine whether such registration statement or amendment has been abandoned by the registrant. If the registration statement has been amended, otherwise than for the purpose of delaying the effective date thereof, or if the posteffective amendment has been amended, the 9-month period shall be computed from the date of the latest such amendment.

(a) A notice will be sent to the registrant, and to the agent for service named in the registration statement, by registered or certified mail, return receipt requested, addressed to the most recent addresses for the registrant and the agent for service reflected in the registration statement. Such notice will inform the registrant and the agent for service that the registration statement or amendment is out of date and must be either amended to comply with the applicable requirements of the Act and the rules and regulations thereunder or be withdrawn within 30 days after the date of such notice.

(b) If the registrant or the agent for service fails to respond to such notice by filing a substantive amendment or withdrawing the registration statement and does not furnish a satisfactory explanation as to why it has not done so within such 30 days, the Commission may, where consistent with the public interest and the protection of investors, enter an order declaring the registration statement or amendment abandoned.

(c) When such an order is entered by the Commission the papers comprising the registration statement or amendment will not be removed from the files of the Commission but will be plainly marked in the following manner: "Declared abandoned by order dated _____."

All interested persons are invited to submit their views and comments on the proposed rule, in writing, to the Securities and Exchange Commission, Washington, DC 20549, on or before March 17, 1971. All such communications will be available for public inspection.

By the Commission, February 17, 1971.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[F.R. Doc. 71-2840 Filed 3-2-71; 8:45 am]

[17 CFR Parts 249, 274]

[Release Nos. IC-6349, 34-9075]

ANNUAL AND PERIODIC REPORTS BY INVESTMENT COMPANIES AND BY BROKER-DEALERS WHO ARE MARKET-MAKERS IN SECURITIES

Notice of Proposed Rule Making

Proposed use by the Securities and Exchange Commission of the CUSIP system for identification of securities.

In 1969 a long-needed universal system for the identification of securities became available to the financial community. Developed under the sponsorship of the Committee on Uniform Security Identification Procedures (CUSIP) of the American Bankers Association, the CUSIP numbering system provides a common language for identifying securities in communications between brokers, transfer agents and other organizations involved in the trading cycle.

The CUSIP system is the result of several years of cooperative effort by the financial community. In addition to the American Bankers Association, organizations such as the New York Stock Exchange, the American Stock Exchange, the National Association of Securities Dealers, the Association of Stock Exchange Firms, the Investment Bankers Association and other organizations and representatives of individual firms participated in the development of the CUSIP system, together with representatives of the Securities and Exchange Commission.

The eight digit CUSIP number[1] specifically, uniformly and permanently identifies both the issuer of a publicly traded security and the particular issue. Its wide-spread use will constitute the essential first step toward the goal of full automation of the trading cycle, and make possible the automated handling of much of the present data flow in the financial community.

To realize the benefits of the CUSIP system in its own operations, the Commission proposes to use the CUSIP numbers in its electronic data processing (EDP) systems related to certain reporting forms. The Commission also plans to use the CUSIP numbers in other EDP systems involving the analysis of securities and in the publication of certain directories. The Commission further proposes to require the use of the CUSIP numbers in other public-use forms as the necessary EDP systems related thereto are developed and perfected.

The CUSIP system represents a basic industry effort to improve the speed and accuracy in the processing of securities and transactions involving them. The Commission urges industry-wide implementation of the CUSIP system in order to obtain maximum benefits from this common language for the identification of securities.

PROPOSED REVISION OF REPORTING FORMS TO PROVIDE FOR INCLUSION OF CUSIP NUMBERS TO IDENTIFY SECURITIES

Notice is hereby given that the Securities and Exchange Commission has under consideration a proposed revision of certain of its reporting forms to require the inclusion of securities identification numbers assigned under the CUSIP system.

The reporting forms affected by the present proposal are Form N-1Q [17 CFR 274.106] for quarterly reports and Form

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[1] The full CUSIP identification number includes an optional check digit in addition to the eight numbers and letters which describe a security. The check digit provides a method of testing the accuracy of the numbers transmitted or recorded.

The directories of CUSIP numbers are published by the CUSIP Service Bureau of Standard Statistics Co., Inc., New York City, under an agreement with the American Bankers Association. Directories are available on a subscription basis in book form and on magnetic tape.

N–1R [17 CFR 274.101] for annual reports filed by registered management investment companies (except, in the case of Form N–1R, those companies issuing periodic payment plan certificates and small business investment companies) pursuant to section 30 [15 U.S.C. 80a–29] of the Investment Company Act of 1940 and Section 13 [15 U.S.C. 78m] or 15(d) [15 U.S.C. 78o(d)] of the Securities Exchange Act of 1934; and Forms X–17A–9(1) [17 CFR 249.917(1)], X–17A–9(2) [17 CFR 249.917(2)], and X–17A–9(3) [17 CFR 249.917(3)], herein after referred to as the X–17A–9 reports, filed pursuant to Rule 17a–9 [17 CFR 240.17a–9] under the latter Act by registered broker-dealers who are market makers in, or who effect certain transactions in, common stocks listed or traded on national securities exchanges. Under the proposal, the X–17A–9 reports and Item 1 of Form N–1Q [17 CFR 240.106] would be revised to require that CUSIP numbers be included for securities reported therein, and the requirements to report exchange symbols would be rescinded. Item 1.27 of the EDP attachments to Form N–1R [CFR 274.101 and 274.101a–1; 101a–2], as it is proposed to be revised under a pending proposal of the Commission described below, would be further revised to require the inclusion of CUSIP numbers for "restricted securities" reported in that item.

Form N–1Q [17 CFR 249.31, 274.106] Quarterly Report for Registered Investment Companies. Form N–1Q is prescribed by the Commission for quarterly reports filed with the Commission by management investment companies registered under the Investment Company Act of 1940. Item 1 of the form requires the listing, in numbers of shares (or other unit) or principal amount of debt securities, of total purchases, total sales, and holdings of each portfolio security. The item presently requires that the exchange symbol be included for each security listed or traded on a national securities exchange. No identifying symbol or number is required for other securities.

In the absence of symbols or numbers under a common identification system for over-the-counter securities and other securities not listed or traded on national securities exchanges, the Commission has been unable to utilize its EDP equipment for processing the information on such securities in the N–1Q reports. It is proposed that Item 1 be revised to require the inclusion of CUSIP numbers in reporting the portfolio securities and to rescind the present requirement that exchange symbols be reported. This would permit the Commission, through automated processing, to make more effective use of the data in the reports in reviewing the activity in portfolios of individual investment companies and fund complexes and the overall investment company and institutional activity in over-the-counter securities as well as in other issues. In addition, the use of CUSIP numbers would enable reporting services to make more effective use of the portfolio information for distribution to investors, which was one of the principal objectives of the reporting of portfolio data.

Form N–1R [17 CFR 249.330, 274.101] Annual Report of Registered Management Investment Companies. Form N–1R is prescribed by the Commission for annual reports filed with the Commission by most registered management investment companies. The Commission gave notice on December 16, 1970, that it has under consideration the revision of Form N–1R and invited interested persons to submit views and comments with respect thereto on or before February 16, 1971 (Investment Company Act Release No. 6284) [35 F.R. 19525].

One of the revisions to Form N–1R under that proposal would consolidate into Item 1.27 the information required by the form on "restricted securities" [2] and would prescribe in Item 1.27 of the EDP attachments to the form a single schedule to present in a more usable manner the data on restricted securities. It is proposed that Item 1.27 of the EDP attachments (open-end and closed-end companies) to the form also be revised to require the inclusion of the CUSIP numbers of the restricted securities reported in the item. This would facilitate the processing by automated means of investment company holdings, purchases, sales, and manner of sales of restricted securities, and would be an important aid to regulation in the complex area of restricted securities investments.

X–17A–9 Reports [17 CFR 249.917] Forms for Reports to be made by Market Makers and certain other Registered Broker-Dealers in Securities traded on National Securities Exchanges. The X–17A–9 reports are required by Rule 17a–9 [17 CFR 240.17a–9], under the Securities Exchange Act of 1934. Rule 17a–9 and its related reporting forms provide a system for the notification by broker-dealers making off-board markets in common stocks traded on national securities exchanges (commonly called "the third market") and for the reporting of summaries of transactions by market makers and of certain other over-the-counter transactions in common stocks listed on the New York Stock Exchange. The latter reports contain the name and address of the broker-dealer who is making the report, statistics on total dollar and share volume, and share volume in individual stocks which are identified by exchange (ticker) symbols.

The information submitted on such forms is received and analyzed by the Commission in carrying out its regulatory responsibilities. As a part of the analyses, third market volume is compared on a stock-by-stock basis by means of the Commission's computer with volume on the New York Stock Exchange and with other related data. The information is summarized and published in the Commission's Statistical Bulletin for the use of interested parties.

Form X–17A–9(1) [§ 249.917(1) of this chapter] would be amended by adding a space for the CUSIP number on the "Name of Stock" line. Form X–17A–9(2) [§ 249.917(2) of this chapter], Part I, would be revised to require the inclusion of the names of the stocks and their CUSIP numbers. Form X–17A–9(2) [§ 249.917(2) of this chapter], Part II and Form X–17A–9(3) [§ 249.917(3) of this chapter] would be revised to require the inclusion of CUSIP numbers. In both the X–17A–9(2) and X–17A–9(3) reports the present requirement to include exchange symbols would be rescinded.

The proposed revisions of Forms N–1Q and N–1R would be adopted pursuant to sections 30, 31, 38(a) and 45(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–29, 80a–30, 80a–37a, and 80a–44; 54 Stat. 836, 898, 841, and 845] and sections 13, 15(d), and 23(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78m, 78o(d) and 78w; 48 Stat. 849, 895, and 901]. The Proposed Revision of the X–17A–9 reports would be adopted pursuant to section 17(a), 19(b), and 23(a) of the Securities Exchange Act of 1934 [15 USC 17q(a), 78s(b), and 78w(a); 48 Stat. 897, 898 and 901]. The revision of Form N–1Q would be made effective for quarters ending on or after September 30, 1971. The revision of Form N–1R would be effective for fiscal years commencing on or after January 1, 1971. The revisions of the X–17A–9 reports would be effective with respect to reports for quarters ending on or after September 30, 1971 and notifications filed on or after that date.

All interested persons are invited to submit views and comments on the proposed revisions. Any views or comments should be submitted in writing to the Securities and Exchange Commission, Washington, D.C. 20549, on or before March 16, 1971. All communications with respect to the proposed revisions should refer to Investment Company Act Release No. 6349 or to Securities Exchange Act Release No. 9075. Such communications will be available for public inspection.

By the Commission, February 16, 1971.

(Sec. 30, 54 Stat. 836, 15 U.S.C. 80a–29; sec. 31, 54 Stat. 838, 15 U.S.C. 80a–30; sec. 38, 54 Stat. 841, 15 U.S.C. 80a–37; sec. 45, 54 Stat. 845, 15 U.S.C. 80a–44; sec. 13, 48 Stat. 849, 15 U.S.C. 78m; sec. 15, 48 Stat. 895, 15 U.S.C. 78o; sec. 17, 48 Stat. 897, 15 U.S.C. 78q; sec. 19, 48 Stat. 898, 15 U.S.C. 78s and sec. 23, 48 Stat. 901, 15 U.S.C. 78w)

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71–2841 Filed 3–2–71;8:45 am]

[2] "Restricted securities" are those which must be registered under section 5 [15 U.S.C. 77e] of the Securities Act of 1933 prior to a public sale.

INTERSTATE COMMERCE COMMISSION

[49 CFR Parts 1056, 1307]

[Ex Parte Nos. MC–19, MC–61; Released Rates Order No. MC–505]

PRACTICES AND RELEASED RATES OF MOTOR COMMON CARRIERS OF HOUSEHOLD GOODS

Notice of Proposed Rule Making

FEBRUARY 16, 1971.

On December 8, 1970, the Household Goods Carriers' Bureau, for itself and on behalf of its member carriers, filed a petition with the Interstate Commerce Commission seeking modification of Released Rates Order No. MC–505, entered in Practices of Motor Common Carriers of Household Goods, 102 M.C.C. 267, 277–280, on June 7, 1966, regarding carrier responsibility for loss and damage in excess of that at its lowest rates, to increase the minimum declared lump sum value of household goods shipments from $1.25 to $1.50 times the weight (in pounds) of the shipment, which would increase the valuation charge, on shipments released to a lump sum declared valuation equivalent to less than $1.50 per pound, by generally 50 cents per $100 applied to the amount representing the difference between total valuation based on $1.50 per pound and total valuation based on $1.25 per pound. For example, on a 6,000-pound shipment between any two points, the present minimum lump sum declarable value is $7,500 at a charge (50 cents per $100) of $37.50, whereas under the proposal the minimum lump sum declarable value would be $9,000 at a charge of $45, which reflects an increase of $7.50.

On January 10, 1971, we received from General Services Administration a letter statement urging that any increase in the minimum lump sum declared value should be contingent upon a proportionate increase in the maximum released liability of 60 cents per pound per article, which governs the base rate. On January 28, 1971, we received a reply from the petitioner to the letter statement, urging the rejection of such statement because it is not in the form of a petition, does not oppose the modification sought by petitioner but to broaden the issue to include consideration of increasing the maximum released liability for the lowest level of rates, which petitioner urges will necessitate consideration of increasing the lowest level of rates. The modification sought also would require simultaneous and corresponding changes in rules governing the practices of motor common carriers of household goods, prescribed by the order in Ex Parte No. MC–19 and Ex Parte No. MC–61. Practices of Motor Common Carriers of Household Goods, supra, on pages 274 to 277. These regulations are now published in 49 CFR § 1056.12 and § 1307.201.

General public notification of the filing of the petition and the statement of General Services Administration will be given by publication of this notice in the FEDERAL REGISTER.

Any persons interested in the matters involved and who wish to actively participate in the proceedings and to file and receive copies of pleadings shall make that fact known by notifying the Commission on or before 30 days from the publication of this notice in the FEDERAL REGISTER, advising the Status Branch, Office of Proceedings, Interstate Commerce Commission, whether they support or oppose the modifications. To avoid duplication, the Household Goods Carriers' Bureau and General Services Administration will be considered as parties without further notification. Although individual participation is not precluded, to conserve time and to avoid unnecessary expense, persons having common interests should endeavor to consolidate their presentation to the greatest extent possible. The Commission desires participation only of those who intend to take an active part in the proceedings.

As soon as possible after the date for indicating a desire to participate in the proceedings has passed, a determination will be made of the further action necessary, and if required the Commission's Office of Proceedings, if further proceedings are deemed warranted by the Commission, will serve a list of the names and addresses of all persons upon whom service of future pleadings must be made. It is not contemplated that any further general public notices will be published in the FEDERAL REGISTER. Subsequent notices and/or orders entered in these proceedings will be served solely on the persons who become parties by responding to this notice, on the petitioner, and on the General Services Administration.

Copies of this notice are being sent to the petitioner, the General Services Administration, and Federal, and all known State, county, city, and voluntary consumer offices and organizations.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71–2886 Filed 3–2–71;8:48 am]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Customs

[T.D. 71-65]

FISH

Tariff Rate Quota

FEBRUARY 24, 1971.

In accordance with item 110.50 of part 3, schedule 1, Tariff Schedules of the United States, it has been ascertained that the average aggregate apparent annual consumption in the United States of fish, fresh, chilled or frozen, fillets, steaks, and sticks, of cod, cusk, haddock, hake, pollock, and rosefish, in the 3 years preceding 1971, calculated in the manner provided for in headnote 1, part 3A, schedule 1, was 202,193,637 pounds. The quantity of fish that may be imported for consumption during the calendar year 1971 at the reduced rate of duty under item 110.50 is, therefore, 30,329,046 pounds.

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

[FR Doc.71-2845 Filed 3-2-71;8:46 am]

WELDED-WIRE MESH FROM BELGIUM

Antidumping Proceeding Notice

FEBRUARY 23, 1971.

On November 23, 1970, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), indicating a possibility that welded-wire mesh from Belgium is being, or likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

There is evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

Having conducted a summary investigation as required by § 153.29 of the Customs regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the Bureau of Customs is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of information received from all sources is as follows:

The information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the prices for home consumption.

This notice is published pursuant to § 153.30 of the Customs regulations (19 CFR 153.30).

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

[FR Doc.71-2894 Filed 3-2-71;8:49 am]

[T.D. 71-66]

LESLIE H. GRAVES

Cancellation of Customhouse Broker's Licenses

FEBRUARY 25, 1971.

Notice is hereby given that the Commissioner of Customs on February 25, 1971, pursuant to section 641, Tariff Act of 1930, as amended, and § 111.51(b), Customs Regulations, as amended, upon the specific requests of Leslie H. Graves canceled with prejudice customhouse broker's license No. 2119 issued to him on May 14, 1946, for Customs District No. 23 (now the Customs District of Laredo) and customhouse broker's license No. 2882 issued to him on August 15, 1955, for Customs District No. 22 (now the Customs District of Houston). The Commissioner's decision is effective as of February 25, 1971.

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

[FR Doc.71-2895 Filed 3-2-71;8:49 am]

[T.D. 71-67]

WILLIAM RAYMOND ROWE

Cancellation of Customhouse Broker's License

FEBRUARY 25, 1971.

Notice is hereby given that the Commissioner of Customs on February 25, 1971, pursuant to section 641, Tariff Act of 1930, as amended, and section 111.51 (b), Customs Regulations, as amended, upon the specific request of William Raymond Rowe, San Francisco, Calif., canceled with prejudice customhouse broker's license No. 3538 issued to him on September 19, 1963, for Customs District No. 28 (now the Customs District of San Francisco). The Commissioner's decision is effective as of February 25, 1971.

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

[FR Doc.71-2896 Filed 3-2-71;8:49 am]

[T.D. 71-68]

COFFEE

Special Classes of Merchandise; Import Quota

Notice of extension of International Coffee Agreement Act of 1968 and import quota on coffee from nonmember countries of the International Coffee Organization.

Public Law 91-694 (84 Stat. 2077), approved January 12, 1971, has amended section 302 of the International Coffee Agreement Act of 1968 (19 U.S.C. 1356f) by striking out the date of October 1, 1970, and inserting in lieu thereof July 1, 1971. The law provides that this amendment shall take effect as of October 1, 1970.

The Department of State has requested the Bureau to authorize the entry during the period of January 1, 1971–June 30, 1971, of 1,773,427 pounds of green coffee from nonmember countries, in order to maintain conformity with Article 45 of the International Coffee Agreement.

Accordingly, the following quota is prescribed for coffee of nonmember origin imported into the United States.

Period	*Quota (in pounds of green coffee)*
January 1, 1971–June 30, 1971	1,773,427

[SEAL] MYLES J. AMBROSE,
Commissioner of Customs.

Approved: February 23, 1971.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.71-2897 Filed 3-2-71;8:49 am]

Internal Revenue Service

JOHN STANLEY CICHON

Notice of Granting of Relief

Notice is hereby given that John Stanley Cichon, 36 Maywood Lane, Bristol, CT, has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his convictions on September 22, 1964, and on December 16, 1965, in the Hartford County Superior Court, Hartford, Conn., of crimes punishable by imprisonment for a term exceeding 1 year. Unless relief is granted it will be unlawful for John Stanley Cichon because of such convictions, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code, as a firearms or ammunition importer, manufacturer, dealer, or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such convictions, it would be unlawful for John Stanley Cichon to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered John Stanley Cichon's application and:

1. I have found that the convictions were made upon charges which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act, and

2. It has been established to my satisfaction that the circumstances regarding the convictions and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144, it is ordered that John Stanley Cichon be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the convictions hereinabove described.

Signed at Washington, D.C., this 10th day of February 1971.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[FR Doc.71-2848 Filed 3-2-71;8:46 am]

EVERETT D. DAWSON

Notice of Granting of Relief

Notice is hereby given that Everett D. Dawson, 3985 Woodside Road, Woodside, Calif., has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his conviction on May 27, 1965 in the U.S. District Court, San Francisco, Calif., of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Everett D. Dawson because of such conviction, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer, or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such conviction, it would be unlawful for Everett D. Dawson to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Everett D. Dawson's application and:

(1) I have found that the conviction was made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144, it is ordered that Everett D. Dawson be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the conviction hereinabove described.

Signed at Washington, D.C., this 11th day of February 1971.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[FR Doc.71-2849 Filed 3-2-71;8:46 am]

DAVID HERBERT HANSON

Notice of Granting of Relief

Notice is hereby given that David Herbert Hanson, 216 West Curtis Street, Space 33, Aberdeen, WA, has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his conviction on March 2, 1970, in the Superior Court of the State of Washington for Thurston County, of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for David H. Hanson because of such conviction, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer, or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such conviction, it would be unlawful for David H. Hanson to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered David H. Hanson's application and:

(1) I have found that the conviction was made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144, it is ordered that David H. Hanson be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the conviction hereinabove described.

Signed at Washington, D.C., this 11th day of February 1971.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[FR Doc.71-2850 Filed 3-2-71;8:46 am]

OTIS JACKSON

Notice of Granting of Relief

Notice is hereby given that Otis Jackson, 4709 McDougall, Detroit, MI 48207, has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his conviction on November 16, 1961, in the Bessemer Division of the 10th Judicial Circuit Court, Jefferson County, Ala., of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Otis Jackson because of such conviction, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer, or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such conviction, it would be unlawful for Otis Jackson to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Otis Jackson's application and:

(1) I have found that the conviction was made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144, it is ordered that Otis Jackson be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the conviction hereinabove described.

Signed at Washington, D.C., this 12th day of February 1971.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[FR Doc.71-2851 Filed 3-2-71;8:46 am]

RUDOLPH POE

Notice of Granting of Relief

Notice is hereby given that Rudolph Poe, 18400 Conley Street, Detroit, MI, has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his conviction on October 18, 1949, in The Recorders Court of the City of Detroit, Mich., of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Rudolph Poe because of such conviction, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer, or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such conviction, it would be unlawful for Rudolph Poe to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Rudolph Poe's application and:

(1) I have found that the conviction was made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, Title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), Title 18, United States Code and delegated to me by 26 CFR 178.144, it is ordered that Rudolph Poe be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the conviction hereinabove described.

Signed at Washington, D.C., this 11th day of February 1971.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[FR Doc.71-2852 Filed 3-2-71;8:46 am]

EDWIN RAY WELLS

Notice of Granting of Relief

Notice is hereby given that Edwin Ray Wells, Post Office Box 15, West Hartford, VT, has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his conviction on September 12, 1949, in the Hartford Municipal Court, Windsor County, Vt., of three counts of grand larceny, crimes punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Edwin Ray Wells because of such convictions, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code, as a firearms or ammunition importer, manufacturer, dealer, or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such convictions, it would be unlawful for Edwin Ray Wells to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Edwin Ray Wells' application and:

1. I have found that the convictions were made upon charges which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

2. It has been established to my satisfaction that the circumstances regarding the convictions and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144, it is ordered that Edwin Ray Wells be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the convictions hereinabove described.

Signed at Washington, D.C., this 12th day of February 1971.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[FR Doc.71-2853 Filed 3-2-71;8:46 am]

DEPARTMENT OF THE INTERIOR

Geological Survey

MONTANA, ET AL.

Definitions of Known Geologic Structures of Producing Oil and Gas Fields

Pursuant to 43 CFR 3120.2-2(b) notice is hereby given that the known geologic structures of producing oil and gas fields have been defined as follows:

NAMES OF FIELD, EFFECTIVE DATE, ACREAGE

(26) MONTANA

Keg Coulee, December 30, 1970; 4,081.

(31) NEW MEXICO

Cinta Rojo, October 20, 1970; 1,000.
Red Hills, October 20, 1970; 2,560.
West Jal, October 20, 1970; 1,840.

(34) NORTH DAKOTA

Blue Buttes, October 29, 1970; 24,363.
Medora, October, 29, 1970; 7,419.

(50) WYOMING

East Salt Creek, November 12, 1970; 1,880.
Fence Creek, December 28, 1970; 1,494.
Gas Draw, November 9, 1970; 8,700.
North Oregon Basin, January 11, 1971; 5,036.
Ute, November 5, 1970; 7,859.
Yellow Hammer, January 15, 1971; 840.

Maps and diagrams showing the boundaries of the defined structures have been filed with the appropriate land office of the Bureau of Land Management and are also of record in the Geological Survey, Washington, D.C.

W. A. RADLINSKI,
Acting Director.

FEBRUARY 24, 1971.

[FR Doc.71-2839 Filed 3-2-71;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA-Petition-No. 24]

SOUTHERN RAILWAY SYSTEM

Petition for Relief From Requirement of Initial Terminal Road Train Air Brake Tests

Petition of Southern Railway System for relief from the requirement of initial terminal road train air brake tests, 49 CFR 232.12.

At the request of counsel for the United Transportation Union and the Brotherhood of Railroad Carmen the hearing in this proceeding now set in Atlanta, Ga., on March 16, 1971, is changed to Cincinnati, Ohio.

This is a place change only. The hearing will be now held in room 9017, Federal Office Building, 550 Main Street, Cincinnati, Ohio, on March 16, 1971, beginning 9:30 a.m., e.s.t.

Dated this 24th day of February 1971 in Washington, D.C.

ROBERT R. BOYD,
Director, Office of Hearings & Proceedings and Hearing Examiner.

[FR Doc.71-2836 Filed 3-2-71;8:45 am]

CENTRAL RAILROAD COMPANY OF NEW JERSEY

Notice of Intention of Secretary of Transportation To Make Findings

The Trustee of the property of the Central Railroad Company of New Jersey has filed an application for the guarantee of trustee certificates in the

principal amount of $10 million by the Secretary of Transportation under the Emergency Rail Services Act of 1970 (Public Law 91-663, 84 Stat. 1975).

Notice is hereby given of the Secretary of Transportation's intention to make findings not less than 15 days from publication in accordance with the authority vested in him by section 3(a) of the Emergency Rail Services Act of 1970. Interested persons may submit such written data, views, and arguments as they deem desirable. Requests for opportunity to make oral presentation may be addressed to me, Carl V. Lyon, Acting Administrator, Federal Railroad Administration, Room 5424, 400 Seventh Street SW., Washington, DC 20591.

Issued in Washington, D.C., on the 1st day of March, 1971.

[SEAL] CARL V. LYON,
Acting Administrator.

[FR Doc.71-2997 Filed 3-2-71;9:33 am]

Urban Mass Transportation Administration

PROPOSED URBAN MASS TRANSPORTATION DEMONSTRATION OF A TRACKED AIR CUSHION VEHICLE (TACV) SYSTEM IN THE WASHINGTON, D.C. METROPOLITAN AREA

Notice of Draft Environmental Statement

The proposed project is a demonstration of an innovative 150 m.p.h. ground transportation technology, employing a linear induction propulsion system, and an air cushion suspension system. A 60-passenger vehicle will utilize a specially constructed guideway along the median strip of the Dulles Airport Access Road from Dolley Madison Boulevard (Virginia route 123) to the Dulles International Airport terminal, connecting with two temporary loading platforms and related facilities.

Pursuant to the National Environmental Policy Act of 1969, Council on Environmental Quality (CEQ) guidelines, and Departmental policy, notice is hereby issued that a draft environmental statement on the proposed Dulles Airport TACV Access Project is being circulated for comment to Federal agencies having jurisdiction by law or special expertise with regard to the environmental impact of the project, and to State and local agencies and units of government.

The public and interested organizations are also invited to comment on the environmental impact of the proposed action. The draft statement is available upon written request or in person at the address below. Information relating to the project (including preliminary route alignment and technical specifications) may be inspected by appointment during the hours of 8:30 to 5 p.m. weekdays.

Comments should be addressed in writing to:

Director of Special Projects, Urban Mass Transportation Administration, Department of Transportation, 400 Seventh Street SW. (Room 9315), Washington, DC 20590.

Comments should be received not later than 12:01 p.m. e.s.t., March 29, 1971.

Issued at Washington, D.C., on February 25, 1971.

H. W. MERRITT,
Director of Special Projects.

[FR Doc.71-2842 Filed 3-2-71;8:46 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50-187]

NORTHROP CORP.

Notice of Issuance of Amended Facility License

The Atomic Energy Commission has issued Amendment No. 8 to Facility License No. R-90 to the Northrop Corp. The license authorizes the Northrop Corp. to possess and operate its TRIGA Mark F nuclear reactor located at Hawthorne, Calif. The amendment incorporates Technical Specifications for operation of the reactor facility in accordance with the application for license amendment dated June 6, 1967, and supplements thereto. The amendment, which republishes the license in its entirety, eliminates the record keeping and reporting requirements since they are now incorporated in the Technical Specifications.

The Commission has found that the application for the amendment complies with the requirements of the Atomic Energy Act of 1954, as amended ("the Act"), and the Commission's regulations published in 10 CFR Chapter I. The Commission has made the findings required by the Act and the Commission's regulations which are set forth in the amendment, and has concluded that the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public. The Commission has also found that prior public notice of the proposed issuance of this amended license is not required since the amendment does not involve significant hazards considerations different from those previously evaluated.

Within fifteen (15) days from the date of publication of the notice in the FEDERAL REGISTER, the applicant may file a request for a hearing and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions to intervene shall be filed in accordance with the Commission's "Rules of Practice" 10 CFR Part 2. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to this amendment, see (1) the licensee's application for license amendment dated June 6, 1967, and supplements thereto dated July 26, 1968, July 1 and 22, and November 19, 1969, and (2) the amendment to the facility license, which are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. Copies of the amendment may be obtained upon request sent to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 18th day of February 1971.

For the Atomic Energy Commission.

DONALD J. SKOVHOLT,
Assistant Director for Reactor Operations, Division of Reactor Licensing.

[FR Doc.71-2854 Filed 3-2-71;8:46 am]

CIVIL AERONAUTICS BOARD

[Dockets Nos. 23147, 22859; Order 71-2-119]

AIR WEST AND UNITED AIR LINES, INC.

Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 26th day of February 1971.

Increased rates on fish and seafood proposed by Air West (Hughes Air Corp. doing business as Air West) and United Air Lines, Inc., Docket 23147; Domestic Air Freight Rate Investigation, Docket 22859.

By tariff revisions[1] filed January 29, and marked to become effective March 1, United Air Lines, Inc. (United), and Air West[2] propose to increase or cancel joint rates on fish and seafood applying from Twin Falls, Idaho, to selected eastern destinations via Air West to Salt Lake City, and United beyond, as follows:

(1) Rates to Chicago, Cleveland, Detroit, and New York/Newark would be raised to levels equal to currently effective general commodity rates from Salt Lake City.

(2) Rates to Akron/Canton would be canceled, resulting in the application of the sum of the local general commodity rates.

The proposed higher joint specific commodity rates are subject to an expiration date of December 31, 1971. At the end of this period, the sums of local general commodity rates would be applicable unless other rates are made effective.

[1] Revisions to Airline Tariff Publishers, Inc., Agent's Tariff CAB No. 158.

[2] Certificates of public convenience and necessity formerly held by Air West, Inc. were transferred to Hughes Air Corp. by Order 70-4-15 dated Apr. 3, 1970. By Order 70-6-27, June 3, 1970, the Board authorized Hughes Air Corp. to use the trade name and engage in air transportation under the name of Air West.

In support of their proposal, the carriers state, inter alia, that the joint rates from Twin Falls are considerably lower than United's general commodity rates from Salt Lake City to eastern destinations for shorter distances, and that in consideration of the value of service and the traffic volume currently moving under the existing joint rates, the lower rate levels from Twin Falls via Salt Lake City are no longer justified. Rates to Akron/Canton are to be canceled due to insufficient traffic and lack of available service.

A complaint requesting investigation and suspensions has been filed jointly by Thousand Springs Trout Farms, Inc., and Clear Springs Trout Co., Inc. The complainants assert, in their petition, inter alia, that (1) the proposed rates would seriously injure the shippers of fresh fish; (2) the present traffic amounts to over 350,000 pounds per year to the involved destinations, and (3) trout farmers have invested large sums in trepans and processing plants.

Upon consideration of the complaint and other relevant matters, the Board finds that the proposed rates from Twin Falls to Chicago and New York/Newark may be unjust, unreasonable, unjustly discriminatory, unduly preferential, or unduly prejudicial, or otherwise unlawful, and should be suspended pending investigation.

The rates proposed in these markets will result in increases ranging between 25 and 51 percent, relatively sharp increases which would apparently result in significant shipper impact. The annual volume of traffic of fresh trout transported under the current specific commodity rates amounts to 150,000 pounds to New York and 70,000 pounds to Chicago. Our suspension is based on the concept, implemented in a number of previous Board orders, that carriers should not be permitted large increases at one time because of the significant impact the increases may have on shippers. (Orders 69–2–111, 69–3–94, 69–5–65, and 69–5–105).

The carriers present no cost evidence purporting to show that the current rates for the commodities and markets in the proposal are unduly low and that the proposed rates would be reasonable. The carriers' contention that the current rates from Twin Falls are lower than the rates from Salt Lake City, involving shorter distances is not, per se, persuasive that the rates from Twin Falls are unduly low, nor does it support the application of a significant increase in the rates in the absence of investigation.

The Board is aware of United's overall financial situation and all-cargo operating losses. (Air West has been reporting operating losses after subsidy). By Order 70–12–143, December 28, 1970, the Board permitted United, inter alia, to cancel the 100-pound weight break for most specific commodity rates and to increase numerous specific commodity rates from $1.25 to $1.50 per 100 pounds. The Board stated that adjustments to specific commodity rates aimed at improving the economics of such transportation lie to a substantial degree within the discretion of the carriers. No complaints had, however, been filed against United's specific commodity rate proposals.

With respect to the tariff revisions proposed for Cleveland, Detroit, and Akron/Canton, the Board, upon consideration of all relevant matters, finds that the complaint does not set forth facts sufficiently to warrant suspension, and the request therefor will consequently be denied. The rates will automatically be under investigation in Docket 22859, Domestic Air Freight Rate Investigation.

The moderate increases proposed to Cleveland and Detroit, ranging between 3 and 9 percent, will apparently not result in significant shipper impact. The traffic involved in these two markets is apparently of relatively small volume: 35,000 pounds annually to Cleveland and 7,000 pounds to Detroit, according to the complaint.

The proposed cancellation of the joint current specific commodity rates to Akron/Canton would result in the application of the sum of local general commodity rates. While the resulting increases in rates will be relatively high, the carriers in their support indicate that the traffic volume is insignificant, a claim not denied in the complaint.

As indicated, except for the proposed rate increases to Chicago and New York-Newark, the Board is permitting the proposed tariff revisions to become effective. In this regard the carriers have proposed to extend the present expiry date on these commodity rates to all the named markets (except Akron/Canton) from June 30, 1971, to December 31, 1971, and this revision will also be permitted to become effective.

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 provisions (except those provisions reading "Expires with December 31, 1971") on Item No. 920 from Twin Falls, Idaho, to Chicago, Ill., and New York, N.Y.-Newark, N.J., via the routing RW–SLC–UA on Original Page 230 and 1st Revised Page 230 of the Airline Tariff Publishers, Inc., Agent's CAB No. 158, and rules, regulations, or practices affecting such rates and provisions (except those provisions reading "Expires with December 31, 1971"), 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 provisions (except those provisions reading "Expires with December 31, 1971"), and rules, regulations, and provisions (except those provisions reading "Expires with December 31, 1971");

2. Pending hearing and decision by the Board, the rates and provisions (except those provisions reading "Expires with December 31, 1971"), on Item No. 920 from Twin Falls, Idaho, to Chicago, Ill., and New York, N.Y.-Newark, N.J., via the routing RW-SLC-UA on original Page 230 and 1st Revised Page 230 of Airline Tariff Publishers, Inc., Agent's CAB No. 158 are suspended and their use deferred to and including May 29, 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, designated as Docket 23147, is assigned for hearing before an examiner of the Board, at a time and place hereafter to be designated;

4. The complaint of Thousand Springs Trout Farms, Inc., and Clear Springs Trout Co., Inc., in Docket 23094, is dismissed, except to the extent granted herein; and

5. Copies of this order shall be filed with the tariffs and served upon United Air Lines, Inc., Air West (Hughes Air Corp. doing business as Air West), Thousand Springs Trout Farms, Inc., and Clear Springs Trout Co., Inc., which are hereby made parties to Docket 23147.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71–2880 Filed 3–2–71;8:48 am]

[Docket No. 23146; Order 71–2–117]

L. T. C. AIR CARGO INC.

Order of Suspension and Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 26th day of February 1971.

By tariff revision[1] filed January 29, and marked to become effective March 1, 1971, L. T. C. Air Cargo Inc. (LTC), an air freight forwarder, proposes to increase its excess valuation charge on all commodities domestically from 20 cents to 25 cents for each $100 (or fraction thereof) by which the declared value of the shipment exceeds 50 cents per pound or $50 per shipment, whichever is greater. Most major forwarders currently have an excess valuation charge of 15 cents per $100 by which the declared value exceeds 50 cents per pound or $50 per shipment, whichever is greater. The Board has consistently suspended, pending investigation, proposed increases above this level, absent a showing that the charges do not cover the loss stemming from excess valuation declarations.[2]

[1] Revision to L. T. C. Air Cargo Inc., Tariff C.A.B. No. 1.

[2] In recent actions, the Board suspended, pending investigation, increased excess valuation charges proposed by: (1) Shulman Air Freight (Order 69–5–78, May 19, 1969, and Order 69–9–107, Sept. 18, 1969); (2) Eagle Air Dispatch, Inc. (Order 69–10–155, Oct. 31, 1969); (3) Satellite Air Freight, Inc. (Order 70–10–92, Oct. 19, 1970), and Hop Air Freight Forwarder, Inc. (Order 70–11–84, Nov. 19, 1970).

LTC has provided no data on the relationship between revenues from current excess value charges and losses from claims paid on shipments for which such valuation charges have been paid, nor otherwise supported the proposed increase.

Upon consideration of all relevant factors, the Board finds that the proposed excess valuation charges may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. We further conclude that the proposed rule should be suspended pending investigation.

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 provisions and charges in rule No. 95(A) on 3d Revised Page 9 of L.T.C. Air Cargo Inc.'s CAB No. 1, and rules, regulations, or practices affecting such provisions 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 provisions and charges, and rules, regulations, and practices affecting such provisions and charges;

2 Pending hearing and decision by the Board, the provisions and charges in rule No. 95(A) on 3d Revised Page 9 of L.T.C. Air Cargo Inc.'s CAB No. 1 are suspended and their use deferred to and including May 29, 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 designated as Docket 23146, be assigned before an examiner of the Board at a time and place hereafter to be designated; and

4. Copies of this order shall be filed with the tariffs and served upon L.T.C. Air Cargo Inc., who is hereby made a party to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-2881 Filed 3-2-71;8:48 am]

[Dockets Nos. 23145, 21474; Order 71-2-116]

TRANS WORLD AIRLINES, INC.

Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 26th day of February 1971.

Increased specific commodity rates on live animals and birds proposed by Trans World Airlines, Inc., Docket 23145; in the matter of air freight rates on live animals and birds, Docket 21474.

By tariff [1] filed January 29, 1971, and marked to become effective March 1, 1971, Trans World Airlines, Inc. (TWA) proposes, inter alia, to delete most specific commodity rates at weight breaks under 500 pounds. This would result in the application of the general commodity rates to those shipment weights.

A complaint requesting suspension pending investigation of TWA's proposal as it would apply to rates on Item 466, tropical fish and live animals (when in mixed shipments with tropical fish but not exceeding 10 percent of the total shipment weight), has been filed by the Aquarium Supply Co., Division of Sternco Industries, Inc. (ASCO). The complaint states, inter alia, that TWA's proposal is inadequately justified; that the economic impact of the proposal would cause irreparable harm to ASCO; and that ASCO cannot tender shipments of 500 pounds and over in most of its markets.

In answer to the complaint and in justification of its proposal, TWA asserts, among other things, that the proposed increases are not penalizing live animal and bird traffic but that this traffic is being required to carry the same cost burden as other general commodity traffic; that the present Item 466 rates are economically unsound, particularly under TWA's present financial situation; that only a miniscule portion of ASCO's traffic would be affected; and that the other carriers have been permitted to similarly increase their specific commodity rates.

Upon consideration of the complaints and other relevant matters, the Board finds that TWA's proposal, to the extent that it applies to Item 466, may be unjust, unreasonable, unjustly discriminatory, unduly preferential, or unduly prejudicial, or otherwise unlawful, and should be suspended pending investigation.

TWA's proposal to cancel weight breaks below 500 pounds for Item 466 rates would result in increases of about 30 percent that would have a significant impact upon shippers as evidenced by the complaint. The proposed increases of this magnitude would be contrary to the Board's policy against large freight rate increases in one step. While carriers have generally been permitted considerable flexibility in adjusting specific commodity rates, the instant proposal goes well beyond any previously established parameters on the maximum increases acceptable without investigation when there is indication of a sharp impact on shippers. All of TWA's proposed rates will automatically be under investigation in Docket 22859, Domestic Air Freight Rate Investigation and the rates on live animals in Docket 21474. In the matter of air freight rates on live animals and birds.

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 provisions described in Appendix A attached hereto,[2] and rules, regulations, and practices affecting such rates 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 rates and provisions, and rules, regulations, or practices affecting such rates and provisions;

2. Pending hearing and decision by the Board, the rates and provisions described in Appendix A hereto are suspended and their use deferred to and including May 29, 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. Except to the extent granted herein, the complaint by the Aquarium Supply Co., Division of Sternco Industries, Inc., in Docket 23086 is dismissed;

4. The proceeding herein, designated Docket 23145, be assigned to hearing before an examiner of the Board at a time and place hereafter to be designated; and

5. Copies of this order shall be filed with the tariffs and served upon Trans World Airlines, Inc., and the Aquarium Supply Co., Division of Sternco Industries, Inc., which are hereby made parties to Docket 23145.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc. 71-2882 Filed 3-2-71;8:48 am]

[Docket No. 22098]

UNIVERSAL AIRLINES, INC.

Notice of Hearing Regarding Cargo Charter Charges

Notice is hereby given pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on March 30, 1971, at 10 a.m., e.s.t., in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before the undersigned examiner.

Dated at Washington, D.C., February 26, 1971.

[SEAL] JOHN E. FAULK,
Hearing Examiner.

[FR Doc.71-2879 Filed 3-2-71;8:48 am]

ENVIRONMENTAL PROTECTION AGENCY

RETZLOFF CHEMICAL CO.

Notice of Filing of Petition Regarding Pesticide Chemicals

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a (d)(1)), notice is given that a petition

[1] Airline Tariff Publishers, Inc., Agent, Tariff CAB No. 158.

[2] Attachment A filed as part of the original document.

(PP 1F1115) has been filed by The Retzloff Chemical Co., Post Office Box 45296, Houston, TX 77045, proposing the establishment of an exemption from requirement of tolerances (21 CFR Part 420) for residues of poly(methylene-*p*-*tert*-butylphenoxy)-poly(oxyethylene) ethanol, the poly(oxyethylene) content averaging 4–12 moles, when used as an adjuvant in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

The analytical method proposed in the petition for determining residues of the adjuvant is the method of P. W. Flanagan and R. A. Greff, J. Amer. Oil Chemist, 40:118 (1963).

Dated: February 26, 1971.

R. E. JOHNSON,
Acting Commissioner,
Pesticide Office.

[FR Doc.71-2900 Filed 3-2-71;8:50 am]

RETZLOFF CHEMICAL CO.

Notice of Filing of Petition Regarding Pesticide Chemicals

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a (d)(1)), notice is given that a petition (PP 1F1114) has been filed by the Retzloff Chemical Co., Post Office Box 45296, Houston, TX 77045, proposing the establishment of an exemption from requirement of tolerances (21 CFR Part 420) for residues of poly(methylene-*p*-nonylphenoxy)-poly(oxyethylene) ethanol, the poly(oxyethylene) content averaging 4–12 moles, when used as an adjuvant in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

The analytical method proposed in the petition for determining residues of the adjuvant is the method of P. W. Flanagan and R. A. Greff, J. Am. Oil Chemist, 40:118 (1963).

Dated: February 26, 1971.

R. E. JOHNSON,
Acting Commissioner,
Pesticides Office.

[FR Doc.71-2901 Filed 3-2-71;8:50 am]

RETZLOFF CHEMICAL CO.

Notice of Filing of Petition Regarding Pesticide Chemicals

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a (d)(1)), notice is given that a petition (PP 1F1113) has been filed by the Retzloff Chemical Co., Post Office Box 45296, Houston, TX 77045, proposing the establishment of an exemption from requirement of tolerances (21 CFR Part 420) for residues of alpha-(*p*-*tert*-butyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monothanolamine, potassium, sodium, and zinc salts of the phosphate esters; the poly(oxyethylene) content averaging 4–12 moles, when used as an adjuvant in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

The analytical method proposed in the petition for determining residues of the adjuvant is the method of L. E. Cohen and F.W. Czech, Chem. Analyst, 47:86–87 (1958).

Dated: February 26, 1971.

R. E. JOHNSON,
Acting Commisioner,
Pesticides Office.

[FR Doc.71-2902 Filed 3-2-71;8:50 am]

SHELL CHEMICAL CO.

Notice of Filing of Petition Regarding Pesticide Chemicals

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a (d)(1)), notice is given that a petition (PP 1F1132) has been filed by the Shell Chemical Co., Suite 1103, 1700 K Street NW., Washington, DC 20006, proposing the establishment of tolerances (21 CFR Part 420) for residues of the insecticide 2,2-dichlorovinyl dimethyl phosphate in or on nonperishable bulk stored raw agricultural commodities at 0.5 part per million resulting from dispersion of the insecticide from resin strips used in bulk storage areas.

The analytical method proposed in the petition for determining residues of the insecticide is a gas chromatographic procedure with a thermionic detector.

Dated: February 26, 1971.

R. E. JOHNSON,
Acting Commisioner,
Pesticides Office.

[FR Doc.71-2903 Filed 3-2-71;8:50 am]

FEDERAL COMMUNICATIONS COMMISSION

[FCC 71-164]

SINGLE SIDEBAND EMISSIONS

Order Deleting Limitations on Certain Aircraft Radio Station Licenses

1. The Commission on June 26, 1968, adopted a report and order in Docket 17858 which, among other things, amended § 87.67(b)(1) of the Commission's rules to provide for the regular use of suppressed carrier single sideband emissions in aircraft stations when it is known that the receiving station is capable of receiving such emissions.

2. Prior to the above amendment of the rules, aircraft stations, when using single sideband equipment, were not authorized to use suppressed carrier emissions except under a developmental authorization. Aircraft radio station licenses which were issued prior to the rule amendment contained special provisions limiting the single sideband operation to the transmission of full carrier (A3H) emission. These provisions were included in order to protect stations using double sideband equipment.

3. In a letter to the Commission, Aeronautical Radio, Inc. directs attention to an operational evaluation of 3A3J emission on a family of high frequencies used on the North Atlantic air routes. ARINC suggests that license restrictions may prevent some U.S. aircraft from participating in the program; and in light of the amended rule, recommends that the Commission lift the restriction on current aircraft licenses in order that single sideband suppressed carrier operations may be conducted in accordance with the present rule. ARINC suggests that the license restrictions be lifted without the administrative need for license modification.

4. The use of single sideband suppressed carrier operations continues to increase in the aeronautical mobile service. The remaining double sideband operation is protected by the present provisions of the rules. Suppressed carrier emissions may be used when it is known that the receiving station is capable of handling that kind of emission, and full carrier must be used at the request of any other user of the same frequency. Accordingly, it appears that the license restrictions are no longer necessary and should be removed.

5. In view of the above: *It is ordered,* That effective immediately, the licensee of any aircraft radio station authorized to use frequencies below 30 MHz as set forth in Part 87 of the Commission's rules and an appropriate transmitter may employ A3A and A3J emission in accordance with § 87.67(b) of the Commission's rules notwithstanding license provisions to the contrary.

Adopted: February 18, 1971.

Released: February 24, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-2913 Filed 3-2-71;8:51 am]

FEDERAL MARITIME COMMISSION

[No. 70-46; Independent Ocean Freight Forwarder License No. 1132]

MARIO J. MACCHIONE

Notice of Adoption of Initial Decision; Order of Suspension

Notice is hereby given that the Commission has determined to adopt the initial decision of the Examiner in this proceeding served February 9, 1971, the effect of which is to suspend respondent's freight forwarder license for a period of 90 days.

Therefore, it is ordered, that independent ocean freight forwarder license No. 1132, issued in the name of Mario J. Macchione, is hereby suspended for a period of 90 days from the date of service of this order.

[1] Commissioner Bartley absent.

It is further ordered that license No. 1132 be returned to the Commission to be held during the period of suspension which will expire May 27, 1971.

It is further ordered that copy of this notice be published in the FEDERAL REGISTER.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.71-2864 Filed 3-2-71;8:47 am]

COMPAGNIE MARITIME DES CHARGEURS REUNIS, S.A. AND ELDER DEMPSTER LINES, LTD.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Raymond P. de Member, Esquire, Haight, Gardner, Poor & Havens, Federal Bar Building, 1815 H Street NW., Washington, DC 20006.

Agreement No. 9475-2, between Compagnie Maritime des Chargeurs Reunis, S.A. and Elder Dempster Lines, Ltd. modifies the basic sailing agreement in the trade between U.S. Atlantic and Gulf ports and West African ports (south of the southerly border of Rio de Oro, Spanish Sahara, and north of the northerly border of Southwest Africa), including the Atlantic Islands of the Azores, Madeira, Canary, and Cape Verdes, also the Islands of Fernando Po, Principe, and San Thome in the Gulf of Guinea. The modification expands the geographic scope to include U.S. Great Lakes ports in the trade covered by the agreement, and further provides authority for the parties to agree upon and establish rates and charges in any trades within the scope of the agreement where the parties are not conference members.

Dated: February 25, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY, *Secretary.*

[FR Doc.71-2865 Filed 3-2-71;8:47 am]

GREAT LAKES-UNITED KINGDOM WESTBOUND CONFERENCE

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street, NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

L. S. Bissell, Executive Officer, Great Lakes-United Kingdom Westbound Conference, 1 Como Street, Romford, RM7 7DL, Essex, England.

Agreement No. 8140-5 modifies the Conference's self-policing provisions to include the mandatory provisions required by the Commission's General Order 7 as revised on October 27, 1970, and restates the basic agreement in its entirety.

Dated: February 26, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY, *Secretary.*

[FR Doc.71-2866 Filed 3-2-71;8:47 am]

SOUTH ATLANTIC STEAMSHIP CONFERENCE

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interesting parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

E. J. Middleton, Chairman, South Atlantic Steamship Conference, Post Office Box 96, Savannah Bank and Trust Building, Savannah, GA 31402.

Agreement No. 8310-8 amends the basic agreement to include the mandatory self-policing provisions required by the Commission's General Order 7 as revised on October 27, 1970.

Dated: February 26, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY, *Secretary.*

[FR Doc.71-2867 Filed 3-2-71;8:47 am]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (71-2)]

VARIOUS DRAFT ENVIRONMENTAL IMPACT STATEMENTS

Public Notice Regarding Availability

Notice is hereby given of the public availability of draft Environmental Impact Statements with respect to the following programs and installations of the

National Aeronautics and Space Administration:

(a) The NASA Quiet Engine Program. The objective of this program is to develop and demonstrate the feasibility of significantly reducing the generation of noise by aircraft engines. As the statement relates, the main testing under this program at NASA installations will be at the Lewis Research Center and adjacent Hopkins Airport, Cleveland, Ohio.

(b) The NASA Space Shuttle Program. The objective of this program is to develop a reusable rocket-powered booster and orbiting vehicle system capable of a high launch rate and a short turnaround time for reuse. The environmental statement discusses, in particular, the proposed shuttle engine testing at the NASA Mississippi Test Facility, Bay St. Louis, Miss., and at the Arnold Engineering Development Center, Tullahoma, Tenn.

(c) The NASA installation at the John F. Kennedy Space Center, Kennedy Space Center, Fla. This statement describes the Kennedy Space Center, its missions and operations, and the responsibilities and operations of the Kennedy Space Center at the Eastern Test Range (Cape Kennedy Air Force Station), and at the Western Test Range, Vandenburg Air Force Base, Calif.

(d) The NASA installation at the Langley Research Center, Langley Field, Va. This statement describes the Langley Center, its missions and operations.

(e) The NASA installation at the Lewis Research Center, Cleveland, Ohio. The statement describes the center, its missions and operations, and the Plum Brook Station of the Lewis Research Center located near Sandusky, Ohio.

Comments on the draft Environmental Statements and on matters set forth therein are solicited from, and may be submitted by, State and local agencies and members of the public. Such comments should be submitted to the Associate Administrator, National Aeronautics and Space Administration, Washington, D.C. 20546. All comments must be received by May 1, 1971, in order to be considered in the preparation of any final environmental statement and in the ultimate program or activity reassessment.

Copies of the draft statements may be purchased (price $1 each) or examined at any of the following locations:

(a) NASA Public Documents Room (Room 126), 600 Independence Avenue SW., Washington, DC 20546.

(b) NASA Ames Research Center (Building 201, Room 17), Moffett Field, Calif. 94035.

(c) NASA Flight Research Center (Building 4800, Room 1017), Post Office Box 273, Edwards, CA 93523.

(d) NASA Goddard Space Flight Center (Building 8, Room 150), Greenbelt, Md. 20771.

(e) NASA John F. Kennedy Space Center (Headquarters Building, Room 1207), Kennedy Space Center, Fla. 32899.

(f) NASA Langley Research Center (Building 1219, Room 304), Langley Station, Hampton, Va. 23365.

(g) NASA Lewis Research Center (Administration Building, Room 120), 21000 Brookpark Road, Cleveland, Ohio 44135.

(h) NASA Manned Space Center (Building 1, Room 136), Houston, Tex. 77058.

(i) NASA George C. Marshall Space Flight Center (Building 4200, Room G–11), Huntsville, Ala. 35812.

(j) NASA Mississippi Test Facility (Building 1100, Room A–213), Bay St. Louis, Miss. 39520.

(k) NASA Pasadena Office (Jet Propulsion Laboratory, Building 180, Room 600), 4800 Oak Grove Drive, Pasadena, Calif. 91103.

(l) NASA Wallops Station (Library Building, Room E–105), Wallops Island, Va. 23337.

Done at Washington, D.C. this 1st day of March, 1971.

By direction of the Acting Administrator.

HOMER E. NEWELL,
Associate Administrator, National Aeronautics and Space Administration.

[FR Doc.71–2977 Filed 3–2–71;8:51 am]

FEDERAL RESERVE SYSTEM

MIDATLANTIC BANKS INC.

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 Midatlantic Banks Inc., which is a bank holding company located in Newark, N.J., for prior approval by the Board of Governors of the acquisition by applicant of 100 percent (less directors' qualifying shares) of the voting shares of the successor by merger to Citizens National Bank, Englewood, N.J.

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 New York.

By order of the Board of Governors, February 25, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71–2837 Filed 3–2–71;8:45 am]

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

FREEMAN COAL MINING CORP.

Application for Renewal Permit; Notice of Opportunity for Public Hearing

Application for a renewal permit for noncompliance with the Interim Mandatory Dust Standard (3.0 mg/m3) has been accepted for consideration as follows:

(1) ICP Docket No. 11108, Freeman Coal Mining Corporation, Orient No. 3 Mine, USBM ID No. 11 00600 0, Waltonville, Jefferson County, Ill., section ID No. 010 (7 West Main South West North).

In accordance with the provisions of section 202(b)(4) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91–173), notice is hereby given that requests for public hearing as to an application for renewal may be filed within 15 days after publication of this notice. Requests for public hearing must be completed in accordance with 30 CFR Part 505 (35 F.R. 11296, July 15, 1970), copies of which may be obtained from the Panel on request.

A copy of the application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Suite 800, 1730 K Street NW., Washington, DC 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

FEBRUARY 25, 1971.

[FR Doc.71–2844 Filed 3–2–71;8:46 am]

TARIFF COMMISSION

CERTAIN WINDOW GLASS

Report to the President

FEBRUARY 26, 1971.

The U.S. Tariff Commission, in a report sent to the President today on recent developments in the trade in certain window glass, reported that both

domestic shipments and imports of window glass declined in 1970. U.S. producers' shipments during the period January–September 1970 were 7 percent smaller in volume than in the corresponding period of 1969; domestic shipments of window glass had been at a high point in 1969. U.S. imports of all window glass were 29 percent smaller in January–September 1970 than in the first 9 months of 1969. Imports of window glass in January–September 1970 supplied about 21 percent of apparent U.S. consumption of such glass, compared with about 25 percent in the corresponding period of 1969.

The Commission report was submitted to the President in accordance with section 351(d)(1) of the Trade Expansion Act of 1962, which provides as follows:

> So long as any increase in, or imposition of, any duty or other import restriction pursuant to this section or pursuant to section 7 of the Trade Agreements Extension Act of 1951 remains in effect, the Tariff Commission shall keep under review developments with respect to the industry concerned, and shall make annual reports to the President concerning such developments.

Most window glass (i.e., that measuring 100 united inches (length plus width) or less) is currently dutiable at escape-clause rates that are considerably higher than the trade-agreement rates. The escape-clause rates are presently scheduled to remain in effect until January 31, 1972; thereafter, the rates are scheduled to be reduced to the trade-agreement rates in three equal annual steps.

Copies of the public report (TC Publication 364) will be available on request as long as the supply lasts. Requests should be addressed to the Secretary, U.S. Tariff Commission, 8th and E Sts. NW., Washington, DC 20436.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.71-2893 Filed 3-2-71;8:49 am]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATION FOR RELIEF

FEBRUARY 26, 1971.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the General Rules of Practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42141—*Ethylene Glycol from Taft, La.* Filed by Southwestern Freight Bureau, agent (No. B-214), for interested rail carriers. Rates on ethylene glycol, in tank carloads, as described in the application, from Taft, La., to Graingers and Rocky Mount, N.C.

Grounds for relief—Market competition.

Tariff—Supplement 65 to Southwestern Freight Bureau, agent, tariff ICC 4867.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-2887 Filed 3-2-71;8:49 am]

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

FEBRUARY 26, 1971.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's Rules of Practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

State Docket No. 36947, received in the Interstate Commerce Commission on February 21, 1971. Applicant: ORTNER AIR SERVICE, INC., Wakeman, OH. Applicant's representative: Bernard S. Goldfarb, 1625 The Illuminating Building, 55 Public Square, Cleveland, OH 44113. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities*, having a prior or subsequent movement by air, over irregular routes, in an express service, between Lorain, and its commercial zone, and all airports within a radius of 50 miles of Lorain, Ohio, and its commercial zone. Both intrastate and interstate authority sought.

HEARING: Time, place, and date not yet assigned. Requests for procedural information including the time for filing protests concerning this application should be addressed to the State of Ohio Public Utilities Commission, 111 North High Street, Columbus, OH 42315, and should not be directed to the Interstate Commerce Commission.

State Docket No. 71015-CCT, filed January 20, 1971. Applicant: FLORIDA TERMINALS & TRUCKING COMPANY, Post Office Box 13607, Orlando, FL 32809. Applicant's representative: James E. Wharton and Gregory A. Presnell, 506 First National Bank Building, Post Office Box 231, Orlando, FL 32802. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of: (1) *Modular and prefabricated homes and buildings* designed to be assembled and erected at a permanent site (specifically excluding the transportation of mobile homes as defined by the Florida Public Service Commission), complete or knocked down, or sections, including all *component parts, fixtures, appliances, equipment, supplies, and materials*, incidental to the erection and completion of such homes or buildings and when shipped in connection therewith and (2) *General commodities*, except items of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk, between points in Orange, Brevard, Lake, Osceola, Polk, Seminole, Marion, Volusia, Indian River, and St. Lucie Counties and that portion of Martin County north of the St. Lucie River, Fla., restricted to traffic having a prior or subsequent movement by rail. NOTE: Applicant does not seek any duplicate authority, and intends to tack the requested authority with that which it presently holds. Both intrastate and interstate authority sought.

HEARING: April 13–16, 1971, at Winter Park District Office. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Florida Public Service Commission, Tallahassee, FL 32304 and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-2888 Filed 3-2-71;8:49 am]

[Notice 6]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

FEBRUARY 26, 1971.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Passengers, 1969 (49 CFR 1042.2(c)(9)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.2(c)(9)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PASSENGERS

No. MC-13300 (Deviation No. 18), CAROLINA COACH COMPANY, 1201 South Blount Street, Raleigh, NC 27602, filed February 19, 1971. Carrier's representative: Lawrence E. Lindeman, 1032 Pennsylvania Building, Pennsylvania

Avenue and 13th Street NW., Washington, DC 20004. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From Greenwood, Del., over Delaware Highway 16 to junction Delaware Highway 36, thence over Delaware Highway 36 to Milford, Del., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: From Greenwood, Del., over U.S. Highway 13 to junction Delaware Highway 14, thence over Delaware Highway 14 to Milford, Del., and return over the same route.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-2889 Filed 3-2-71;8:49 am]

[Notice 7]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

FEBRUARY 26, 1971.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969 (49 CFR 1042.4(d)(11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(d)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(d)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC-52110 (Deviation No. 7), BRADY MOTORFRATE, INC., 2150 Grand Avenue, Des Moines, IA 50312, filed February 16, 1971. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Fort Wayne, Ind., over Interstate Highway 69 to Indianapolis, Ind., thence over Interstate Highway 70 to St. Louis, Mo., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service route as follows: (1) From Pittsburgh, Pa., over U.S. Highway 30 to Mansfield, Ohio, thence over U.S. Highway 30 to Dyer, Ind., thence over Alternate U.S. Highway 30 to Chicago, Ill.; and (2) from St. Louis, Mo., over U.S. Highway 66 to Chicago, Ill., and return over the same routes.

No. MC 52110 (Deviation No. 8), BRADY MOTORFRATE, INC., 2150 Grand Avenue, Des Moines, IA 50312, filed February 16, 1971. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Fort Wayne, Ind., over Interstate Highway 69 to Indianapolis, Ind., thence over Interstate Highway 70 to Kansas City, Mo., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: (1) From Pittsburgh, Pa., over U.S. Highway 30 to Mansfield, Ohio, thence over U.S. Highway 30N to Delphos, Ohio, thence over U.S. Highway 30 to Dyer, Ind., thence over Alternate U.S. 30 to Chicago, Ill.; (2) from St. Louis, Mo., over U.S. Highway 66 to Chicago, Ill.; (3) from Omaha, Nebr., over U.S. Highway 6 to Council Bluffs, Iowa, thence over Iowa Highway 375 to junction Iowa Highway 92, thence over Iowa Highway 92 to junction U.S. Highway 59, thence over U.S. Highway 59 to Tarkio, Mo., thence over U.S. Highway 136 to Maryville, Mo., thence over U.S. Highway 71 to St. Joseph, Mo., thence over U.S. Highway 36 to Springfield, Ill.; and (4) from Des Moines, Iowa, over Iowa Highway 90 to junction Interstate Highway 35, thence over Interstate Highway 35 to junction U.S. Highway 34, thence over U.S. Highway 34 to Osceola, Iowa, thence over U.S. Highway 69 to Kansas City, Mo., and return over the same routes.

No. MC-104004 (Deviation No. 38), ASSOCIATED TRANSPORT, INC., 380 Madison Avenue, New York, NY 10017, filed February 16, 1971. Carrier's representative: Robert R. Redmon, 2001 Massachusetts Avenue NW., Washington, DC 20036. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Chicago, Ill., over Business Route U.S. Highway 6 to junction U.S. Highway 6, thence over U.S. Highway 6 to junction U.S. Highway 20 at or near Fremont, Ohio, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Chicago, Ill., over U.S. Highway 20 to junction Ohio Highway 120 (formerly Business Route U.S. Highway 20), thence over Ohio Highway 120 to Toledo, Ohio; and (2) from Toledo, Ohio, over Ohio Highway 51 (formerly Ohio Highway 120) to junction U.S. Highway 20, thence over U.S. Highway 20 to junction unnumbered highway (formerly portion of U.S. Highway 20), thence over unnumbered highway via Fremont, Ohio, to junction U.S. Highway 20, thence over U.S. Highway 20 to Cleveland, Ohio, thence over U.S. Highway 422 to Youngstown, Ohio, and return over the same routes.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-2890 Filed 3-2-71;8:49 am]

[Notice 15]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

FEBRUARY 26, 1971.

The following publications are governed by the new Special Rule 247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

MOTOR CARRIERS OF PROPERTY

No. MC 79135 (Sub-No. 44) (Republication) filed January 28, 1970, published in the FEDERAL REGISTER issue of February 27, 1970, and republished this issue. Applicant: COSSITT MOTOR EXPRESS, INC., 63 West Kendrick Avenue, Hamilton, NY 13346. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. The modified procedure has been followed in this proceeding and an order of the Commission, Operating Rights Board, dated February 2, 1971, and served February 22, 1971, finds; that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of (1) calendars, calendar bases, calendar date pads, calendar stands, and stationery, and (2) equipment, materials, and supplies used in the manufacture and sale of advertising matter and novelties, except in bulk, between Sidney, N.Y., on the one hand, and, on the other, points in Delaware, the District of Columbia, Maryland, New Jersey, New York, Ohio, Pennsylvania, and Virginia; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; and that an appropriate certificate should be issued, subject to the following conditions: (1) The coincidental cancellation at applicant's request of its certificate No. MC-79135 (Sub-No. 33) dated August 31, 1964, and (2) that because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be

prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be permitted for a period of 30 days from the date of such publication, during which period any proper party in interest may file petition to reopen or for other appropriate relief, setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 104104 (Republication) (Petition for Modification of Certificate), filed October 23, 1969, published in the FEDERAL REGISTER issue of December 10, 1970, and republished this issue. Petitioner: GEORGE A. FETZER, INC., Augusta, N.J. Petitioner's representative: Edward F. Bowes, 1060 Broad Street, Newark, NJ 07102. A decision and order of the Commission, Review Board No. 1, dated January 28, 1971, and served February 8, 1971, finds, upon consideration of the petition, as amended, and the record in the above-entitled proceeding, that the present and future public convenience and necessity require operation by petitioner in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of plastic articles, and insulating material, from, and to the same points specified in the last two conferring paragraphs of petitioner's certificate No. MC–104104, such authority to be substituted for authority to transport rock wool and rock wool, in bags, rolls, and cartons, presently contained in the two referred to conferring paragraphs of certificate No. MC–104104. (1) From Netcong, N.J., to points in Connecticut, points in that part of Pennsylvania on and east of a line beginning at the Pennsylvania-Maryland State line and extending along unnumbered highway through Shrewsbury and Jacobus, Pa., to junction Interstate Highway 83, thence along Interstate Highway 83 through York, Pa., to junction unnumbered highway, thence along unnumbered highway to junction Pennsylvania Highway 295, thence along Pennsylvania Highway 295 through Zions View and Strinestown, Pa., to junction Interstate Highway 83, thence along Interstate Highway 83 to Harrisburg, Pa., thence along U.S. Highway 15 to the Pennsylvania-New York State line, and points in Putnam, Dutchess, Orange, Ulster, and Sullivan Counties, N.Y., with no transportation for compensation on return except as otherwise authorized.

(2) From Stanhope, N.J., to Washington, D.C., and points in Delaware, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New York (except New York, N.Y., and points in Nassau, Suffolk, Westchester, Rockland, Putnam, Dutchess, Orange, Ulster, and Sullivan Counties, N.Y.), Pennsylvania (except points in that part of Pennsylvania on and east of a line extending from the Pennsylvania-Maryland State line along unnumbered highway through Shrewsbury and Jacobus, Pa., to junction Interstate Highway 83, thence along Interstate Highway 83 through York, Pa., to junction unnumbered highway (formerly portion U.S. Highway 111), thence along unnumbered highway to junction Pennsylvania Highway 295, thence along Pennsylvania Highway 295 through Zions View and Strinestown, Pa., to junction Interstate Highway 83, thence along Interstate Highway 83 to Harrisburg, Pa., thence along U.S. Highway 15 to the Pennsylvania-New York State line), North Carolina, Ohio, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia, with no transportation for compensation on return except as otherwise authorized. Because it is possible that other parties who have relied upon the notice in the FEDERAL REGISTER of the petition as originally published may have an interest in and would be prejudiced by the lack of proper notice of the grant of authority in the findings herein, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a modified certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party interested may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 107295 (Sub-No. 335) (Republication) filed March 16, 1970, published in the FEDERAL REGISTER issue of April 16, 1970, and republished this issue. Applicant: PRE-FAB TRANSIT CO., a corporation, 100 South Main Street, Farmer City, IL 61842. Applicant's representative: Dale L. Cox (same address as above). The modified procedure has been followed in this proceeding and a Report and Order of the Commission, Review Board No. 2, decided January 29, 1971, and served February 4, 1971, find that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of buildings, complete, knocked down, or in sections, from Westville, N.H., to points in Vermont, New York, Connecticut, Massachusetts, Rhode Island, Maine, and New Jersey, subject to the condition that the certificate herein be limited in point of time to a period expiring 3 years from the date of issue; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the grant of authority as originally published in the FEDERAL REGISTER may have an interest in and would be prejudiced by the lack of proper notice of the grant of authority in the findings herein, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition to reopen or for other relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 114284 (Sub-No. 45) (republication) filed August 10, 1970, published in the FEDERAL REGISTER issue of September 3, 1970, and republished this issue. Applicant: FOX-SMYTHE TRANSPORTATION CO., a corporation, Post Office Box 82307, Stockyards Station, Oklahoma City, OK. Applicant's representative: John E. Jandera, 641 Harrison Street, Topeka, KS 66603. The modified procedure has been followed in this proceeding and an order of the Commission, Operating Rights Board, dated January 28, 1971, and served February 22, 1971, finds: that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier, by motor vehicle, over irregular routes, of meats, meat products, meat byproducts, dairy products, and articles distributed by meat packinghouses, as described in sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Oklahoma City, Okla., to points in Arizona, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Inasmuch as the grant of authority described herein duplicates applicant's existing authority to a certain extent, such grant of authority and applicant's existing authority that it duplicates shall be construed as conferring only a single operating right. Since it is possible that other parties who have relied upon the notice in the FEDERAL REGISTER of the application as originally published may have an interest in and would be prejudiced by the lack of proper notice of the grant of authority without the requested limitation in our findings herein, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of the certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in the proceeding setting forth in detail the precise manner in which it has been prejudiced.

No. MC 121673 (Republication) filed October 28, 1970, published in the FEDERAL REGISTER issue of November 18, 1970, under State Docket No. MC 27289 Sub-1, and republished this issue. Applicant: JAMES SWINDLE, doing business as WESTERN MOTOR FREIGHT, 1430 West Sheridan, Oklahoma City, OK 73106. Applicant's representative: Rufus H. Lawson, 106 Bixler Building, 2400 Northwest 23d Street, Oklahoma City, OK 73107. An order of the Commission, Operating Rights Board, dated January 29, 1971, and served February 5, 1971, finds that a certificate of registration should be issued to the above applicant, unless otherwise ordered, as evidence of

a right to engage in operations in interstate or foreign commerce, as a common carrier, by motor vehicle, transporting the commodities or passengers from, to, or between the points, over the routes, or within the territory and in the manner described in the appendix below, and subject to such additional and further conditions as may be necessary to give effect to the provisions of section 206(a)(6) of the Interstate Commerce Act, as amended. Because it is possible that other parties who have relied upon the notice in the FEDERAL REGISTER of the application as originally published may have an interest in and would be prejudiced by the lack of proper notice of the grant of authority without the requested limitation set forth in the appendix below, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of the certificate of registration in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in the proceeding setting forth in detail the precise manner in which it has been so prejudiced.

Appendix: Description of the transportation service authorized to be conducted solely within the State of Oklahoma in intrastate commerce, as a common carrier by motor vehicle, pursuant to that portion of Motor Carrier Certificate No. MC-27289 Sub 1, granted by order dated January 19, 1971, issued by the Corporation Commission of Oklahoma: General commodities; (1) between Oklahoma City, Okla., and Madge, Okla., serving the intermediate points of Mangum, Reed, Vinson, Hobart, Lone Wolf, and Granite, Okla., serving the off-route points of Willow and Brinkman, Okla. From Oklahoma City, Okla., via U.S. Highway 66 and Interstate Highway 40 to Clinton, Okla., thence via U.S. Highway 183 to Hobart, Okla., thence via State Highway 9 to Madge, Okla., and return over the same route; (2) between Oklahoma City, Okla. and Altus, Okla., serving the intermediate points of Lugert and Blair, Okla. From Oklahoma City, Okla. via U.S. Highway 66 and Interstate Highway 40 to Clinton, Okla., thence via U.S. Highway 183 to Hobart, Okla., thence via State Highway 9 to Lone Wolf, Okla., thence via State Highway 44 to Altus, Okla., and return over the same route; (3) between Oklahoma City, Okla., and Snyder, Okla., serving all intermediate points between Snyder and Hobart, Okla. From Oklahoma City, Okla., via U.S. Highway 66 and Interstate Highway 40 to Clinton, Okla., thence via U.S. Highway 183 to Snyder, Okla., and return over the same route; (4) between Oklahoma City, Okla., and Hobart, Okla., serving all intermediate points between Snyder and Hobart, Okla. From Oklahoma City, Okla., via U.S. Highway 62 to its intersection with the H. E. Bailey Turnpike, thence via H. E. Bailey Turnpike to Lawton, Okla., thence via U.S. Highway 62 to Snyder, Okla., thence via U.S. Highway 183 to Hobart, Okla., and return over the same route;

(5) Between Oklahoma City, Okla., and Madge, Okla., serving all intermediate points between Snyder and Madge, Okla. From Oklahoma City, Okla., via U.S. Highway 62 to its intersection with the H. E. Bailey Turnpike, thence via H. E. Bailey Turnpike to Lawton, Okla., thence via U.S. Highway 62 to Altus, Okla., thence via U.S. Highway 283 to Mangum, Okla., thence via State Highway 9 to Madge, Okla., and return over the same route; (6) between Oklahoma City, Okla., and Hollis, Okla., serving the intermediate points of Duke and Gould, Okla., and between Hollis, Okla., and Madge, Okla., serving all intermediate points by the way of State Highway 30. From Oklahoma City, Okla., via U.S. Highway 62 to its intersection with the H. E. Bailey Turnpike to Lawton, Okla., thence via U.S. Highway 62 to Hollis, Okla., and return over the same route; (7) between Oklahoma City, Okla., and Eldorado, Okla., serving the intermediate point of Olustee, Okla. From Oklahoma City, Okla., via U.S. Highway 62 to its intersection with the H. E. Bailey Turnpike, thence via H. E. Bailey Turnpike to Lawton, Okla., thence via U.S. Highway 62 to junction with State Highway 44, thence via State Highway 44 to Eldorado, Okla., and return over the same route; and (8) between Oklahoma City, Okla., and Hobart, Okla., as an alternate route only, serving no intermediate points. From Oklahoma City, Okla., via U.S. Highway 62 to H. E. Bailey Turnpike, thence via H. E. Bailey Turnpike to its intersection with State Highway 9, thence via State Highway 9 to Hobart, Okla., and return over the same route.

APPLICATION FOR CERTIFICATES OR PERMIT WHICH IS TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE.

No. MC 121066 (Sub-No. 3) filed February 8, 1971. Applicant: NEBRASKA TRANSPORT CO., INC., Post Office Box 621, Scottsbluff, NE 69321. Applicant's representative: Marion F. Jones, 420 Denver Club Building, Denver, CO 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities generally* (except those requiring special equipment), between points in Box Butte, Morrill, Scottsbluff, Dawes, Sioux, and Sheridan Counties, Nebr., on the one hand, and, on the other, points in Nebraska. NOTE: Applicant states that the requested authority would be tacked at points in Morrill County, Nebr., and Omaha, Nebr., permitting through service between Denver and Chicago. The instant application is a matter directly related to MC-F-11076, published in the FEDERAL REGISTER issue of February 10, 1971. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's Special Rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-11092. Authority sought for control by CANADA STEAMSHIP LINES, LIMITED, 759 Victoria Square, Montreal PQ Canada 126, of SICOTTE TRANSPORTS LIMITED, 1025 Ottawa Street, Montreal PQ Canada and PROVINCIAL TRANSPORT ENTERPRISES LIMITED, ET AL., also of Montreal PQ Canada. Applicants' attorney: S. Harrison Kahn, Suite 733, Investment Building, Washington, D.C. 20005. Operating rights sought to be controlled: No. MC-126672, *Commodities*, the transportation of which of size or weight requires the use of special equipment (except motor vehicles), as a *common carrier*, over irregular routes, betwen ports of entry on the United States-Canada boundary line at or near Morses Line, West Berkshire, Richford, East Richford, North Troy, Beeble Plain, Derby Line, High Gate Springs, and Norton, Vt., Beecher Falls and Scott Bog, N.H., and Fort Covington, Trout River, Mooers Forks, Champlain and Rouses Point, N.Y., on the one hand, and, on the other, points in Maine, New Hampshire, Vermont, Connecticut, Rhode Island, and New York; *cement* in bulk, in tank vehicles and in bags, from the same ports of entry on the United States-Canada boundary line to points in described portions of Vermont, New Hampshire, and New York; No. MC-126923 and subs, passengers and their baggage, in the same vehicle with passengers, as a common carrier over regular routes, between the port of entry of the United States-Canada boundary line at or near North Troy, and Newport, Vt., serving all intermediate points; passengers and their baggage, and express, newspapers, and mail, in the same vehicle with passengers, between Newport, Vt., and the United States-Canada boundary line at a point 1 mile northeast of Derby Line, Vt., serving all intermediate points; with restriction, over one alternate route; passengers and their baggage, in round trip charter operations over irregular routes, beginning and ending at ports of entry on the United States-Canada boundary line located in Maine, New Hampshire, New York, and Vermont and extending to points in the United States, except Alaska and Hawaii.

No. MC-83928 and subs, passengers and their baggage, and express, mail, and newspapers, in the same vehicle with passengers, over regular routes, between the boundary of the United States and Canada south of Roosevelt Bridge, and Massena, N.Y., serving the intermediate point of Rooseveltown and Racket River, N.Y. between Ogdensburg, N.Y., and the United States-Canada boundary line at Ogdensburg-Prescott Bridge, located approximately 4 miles east of Ogdensburg, serving all intermediate points; passengers and their baggage, restricted to traffic originating at the points indicated,

in charter operations, from the boundary of the United States and Canada at the ports of Ogdensburg, Morristown, and Massena, N.Y., to points in that part of New York bounded by a line beginning at Oswego, N.Y., and extending through Lowville, N.Y., to Lake Placid, N.Y., thence in a northwesterly direction through McColloms and Massena, N.Y., to the St. Lawrence River, thence along the St. Lawrence River and the Lake Ontario shore to point of beginning, and return; passengers and their baggage, in round-trip charter operations, beginning and ending at ports of entry on the United States-Canada boundary line, located in Maine, New Hampshire, Vermont, New York, Michigan, and Minnesota and extending to points in the United States, except to points in Hawaii; passengers and their baggage in the same vehicle with passengers, in round-trip charter operations, and in round-trip special operations limited to round-trip all-expense sightseeing and pleasure tours, beginning and ending at points of entry on the United States-Canada boundary line located in Maine, New Hampshire, Vermont, New York, Michigan, Minnesota, North Dakota, Montana, Idaho, and Washington and extending to points in the United States (including Alaska but excluding Hawaii); with restriction. CANADA STEAMSHIP LINES LIMITED, holds no authority from this Commission. However, it is affiliated with No. MC–112908, KINGSWAY TRANSPORT LIMITED, which is authorized to operate as a *common carrier* in Washington, Alaska, and Idaho. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11093. Authority sought for purchase by C & H TRANSPORTATION CO., INC., 1935 West Commerce, Post Office Box 5976, Dallas, TX 75222, of a portion of the operating rights and property of EQUIPMENT TRANSPORT, INC., Post Office Box 665, West Columbia, SC 29169, and for acquisition by TYLER CORPORATION, and, in turn by JOSEPH F. McKINNEY, 3100 Southland Center, Dallas, TX 75201, of control of such rights and property through the purchase. Applicants' attorneys: Thomas E. James, The 904 Lavaca Building, Austin, TX 78701 and I. F. Belser, 1213 Lady, Columbia, SC 29201. Operating rights sought to be transferred: (1) *Roadbuilding machinery*, and (2) *commodities*, the transportation of which, because of size or weight, requires the use of special equipment, and *related machinery parts and related contractors' materials and supplies*, when their transportation is incidental to the transportation of commodities which by reason of size or weight require special equipment (except aircraft and missiles, and parts thereof), as a *common carrier* over irregular routes, between points in South Carolina, on the one hand, and, on the other, points in North Carolina, Florida and Georgia; *heavy machinery*, between points in Virginia, on the one hand, and, on the other, points in North Carolina, between Johnson City, Tenn., on the one hand, and, on the other, points in Virginia and North Carolina within 100 miles of Johnson City; *construction and roadbuilding materials, supplies, and equipment*, the transportation of which, because of size or weight, requires the use of special equipment, between certain specified points in Virginia, on the one hand, and, on the other, points in North Carolina, South Carolina, Tennessee, Georgia, West Virginia, Pennsylvania, New Jersey, and New York. Vendee is authorized to operate as a *common carrier* in Kansas, New Mexico, Texas, Oklahoma, Louisiana, Illinois, Indiana, Kentucky, Mississippi, Arkansas, Wisconsin, Colorado, Wyoming, North Dakota, South Dakota, Ohio, Pennsylvania, Minnesota, Michigan, Iowa, New Jersey, New York, Missouri, Nebraska, Oregon, Washington, Alaska, Alabama, Georgia, Florida, North Carolina, South Carolina, Virginia, West Virginia, Montana, Utah, California, Arizona, Maryland, District of Columbia, Delaware, Connecticut, Rhode Island, and Massachusetts. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11095. Authority sought for purchase by LEE WAY MOTOR FREIGHT, INC., 3000 West Reno, Oklahoma City, OK 73108, of a portion of the operating rights and property of THEATRES SERVICE COMPANY, 830 Willoughby Way NE., Atlanta, GA 30312, and for acquisition by R. E. LEE and M. S. LEE, both also of Oklahoma City, OK 73108, of control of such rights and property through the purchase. Applicants' attorneys: Richard H. Champlin, Post Office Box 82488, Oklahoma City, OK 73108, and Allen Post, First National Bank Building, Atlanta, GA 30312. Operating rights sought to be transferred: *General commodities*, excepting among others, classes A and B explosives, household goods and commodities in bulk, as a common carrier over regular routes, between Nashville, Tenn., and Huntsville, Ala., between Nashville, Tenn., and Lewisburg, Tenn., serving no intermediate points, between Huntsville, Ala., and Gadsden, Ala., serving all intermediate points, between Birmingham, Ala., and Huntsville, Ala., serving no intermediate points, between Huntsville, Ala., and the site of the Chemical Manufacturing Plant and Arsenal located approximately 10 miles southwest of Huntsville, serving no intermediate points, between Louisville, Ky., and Nashville, Tenn., serving the intermediate point of Edenwold, Tenn., on southbound traffic only, serving the intermediate point of Scottsville, Ky., without restriction, and serving the intermediate point of Elizabethtown, Ky., solely as a point of joinder; over one alternate route, between Elizabethtown, Ky., and Nashville, Tenn., serving no intermediate points; *general commodities*, except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, between Birmingham, Ala., and Atlanta, Ga., serving all intermediate points; with restrictions, between Birmingham, Ala., and Nashville, Tenn., serving all intermediate points, and the off-route points of Madison, Greenbriar, Mooresville, Belle Mina, Somerville, Daniels, Eva, Trafford, Boyles, Bessemer, Fairfield, Woodward, Dolomite, and Brighton, Ala.; *general commodities*, excepting among other, classes A and B explosives, household goods and commodities in bulk, over regular and irregular routes, between Huntsville, Ala., and the site of the Chemical Warfare Corp., near Triana, Ala. Vendee is authorized to operate as a *common carrier* in Texas, Oklahoma, Missouri, Kansas, Illinois, Colorado, Indiana, Ohio, Pennsylvania, West Virginia, Arkansas, Arizona, New Mexico, and California. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11096. Authority sought for purchase by INTERSTATE MOTOR FREIGHT SYSTEM, 134 Grandville SW., Grand Rapids, MI 49502, of the operating rights of M. & E. TRANSPORTATION CORP., Box 248, Dover, NH 03820, and for acquisition by FUQUA INDUSTRIES, INC., 3800 First National Bank Building, Atlanta, GA 30303, of control of such rights through the purchase. Applicants' attorney: Leonard D. Verdier, Jr., 900 Old Kent Building, Grand Rapids, MI 49502. Operating rights sought to be transferred: *General commodities*, except those of unusual value, and except dangerous explosives, household goods (when transported as a separate and distinct service in connection with so-called "household movings"), commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, as a common carrier over regular routes, between Boston, Mass., and Springvale, Maine, and between Milton Mills, and Portsmouth, N.H., between Rochester, N.H. and Farmington, N.H. serving all intermediate points; *general commodities*, with exceptions as specified above, over irregular routes, between Brockton and Taunton, Mass., and points and places in certain specified counties in Massachusetts, on the one hand, and, on the other, points and places in York County, Maine, and those in Strafford and Rockingham Counties, N.H. Vendee is authorized to operate as a *common carrier* in Ohio, Illinois, Indiana, New York, Missouri, Pennsylvania, Michigan, Minnesota, Wisconsin, Kentucky, West Virginia, Maryland, Massachusetts, New Jersey, Iowa, Delaware, Colorado, Nebraska, Wyoming, Kansas, Connecticut, Rhode Island, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11097. Authority sought for purchase by OGDEN & MOFFETT COMPANY, 6465 Wyoming Avenue, Dearborn, MI 48126, of the operating rights and property of W. FORD JOHNSON CARTAGE, INC., 7260 Dix Avenue, Detroit, MI 48209, and for acquisition by NEIL MARSHALL, also of Dearborn, Mich., of control of such rights and property through the purchase. Applicants' attorney: Walter N. Bieneman, Suite 1700, 1 Woodward Avenue, Detroit, MI 48226.

Operating rights sought to be transferred: *General commodities*, excepting among others, dangerous explosives, household goods, and commodities in bulk, as a *common carrier* over regular routes, between certain specified points in Michigan, serving all intermediate points. Vendee is authorized to operate as a *common carrier* in Michigan, Illinois, Indiana, and Ohio. Application has been filed for temporary authority under section 210a(b). NOTE: Certificate of registration under MC–28675 Sub–7, will be canceled upon transfer becoming effective.

No. MC–F–11098. Authority sought for purchase by LESTER FELLOWS CO., 110 Halstead Street, East Orange, NJ 07108, of the operating rights and property of C. RIDGWAY MARTER, INC., Beverly Road, Burlington, NJ 08106, and for acquisition by WINFRED F. REINHARD of East Orange, NJ, and GEORGE W. REINHARD, Box 586, Burlington, NJ 08016, of control of such rights and property through the purchase. Applicants' attorney: Charles J. Williams, 47 Lincoln Park, Newark, NJ 07102. Operating rights sought to be transferred: *Cast iron pipe and fittings*, as a *contract carrier* over irregular routes, from Burlington, N.J., to all points in Connecticut, Delaware, Maryland, Massachusetts, Rhode Island, and the described portions of New York and Pennsylvania, returning with; *damaged or defective shipments; machinery*, from Burlington, N.J., to all points in Delaware, Maryland, and the described portions of New York and Pennsylvania, returning with; *damaged machinery*. Vendee is authorized to operate as a *contract carrier* in New Jersey, New York, Connecticut, Massachusetts, and Rhode Island. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11099. Authority sought for purchase by S. F. DOUGLAS, doing business as S. F. DOUGLAS TRUCK LINE, Post Office Box 2766, St. Paul, MN 55112, of the operating rights of CHARLES STUHAUG, doing business as CHARLES STUHAUG TRUCKING, Fertile, MN 56540. Applicants' representative: A. F. Fowler, 2288 University Avenue, St. Paul, MN 55114. Operating rights sought to be transferred: *General commodities*, excepting among others, classes A and B explosives, household goods, and commodities in bulk, as a *common carrier* over regular routes, between Fertile, Minn., and Fargo, N. Dak., serving intermediate and off-route points within 25 miles of Fertile, on southbound traffic only; and *livestock*, over irregular routes, between Fertile, Minn., and points within 25 miles of Fertile, on the one hand, and, on the other, West Fargo and Union Stockyards, Cass County, N. Dak. Vendee is authorized to operate as a *common carrier* in North Dakota and Minnesota. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11100. Authority sought for purchase by JOHN F. IVORY STORAGE CO., INC., 8035 Woodward Avenue, Detroit, MI 48202, a portion of the operating rights of GUIGNARD FREIGHT LINES, INC., Post Office Box 26067, Charlotte, NC 28213, and for acquisition by JOHN F. IVORY, SR., RUSSELL E. GARRETT, HARRY M. TODD and ARTHUR P. BOYNTON, all of Detroit, MI 48202, of control of through the purchase. Applicants' attorney: Arthur P. Boynton, 1600 First Federal Building, Detroit, MI 48226. Operating rights sought to be transferred: *Household goods*, as a *common carrier*, over irregular routes, between points and places in North Carolina and South Carolina, from Orwigsburg, Pa., Greenville, Ky., Princeton, W. Va., New York, N.Y., and Charlotte, N.C., to Philadelphia, Pa., and Concord, N.C., and points in North Carolina and Georgia. Vendee is authorized to operate as a *common carrier* in Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Virginia, West Virginia, Wisconsin, District of Columbia, Texas, Louisiana, Mississippi, Florida, Maine, New Hampshire, North Dakota, South Dakota, New Mexico, Arizona, Utah, Wyoming, Idaho, Montana, Nevada, Oregon, and Washington. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11101. Authority sought for control by MOTEK CORPORATION, a noncarrier, 1330 North Broad Street, Lansdale, PA 19446, of BEANEY TRANSPORTED, LIMITED, Post Office Box 973, Paoli, PA 19301, and for acquisition by MARK R. HERR and BYRON E. READING, both of Lansdale, Pa. 19446, of control of BEANEY TRANSPORT, LIMITED, through the acquisition by MOTEK CORPORATION. Applicants' attorney: Maxwell A. Howell, 1511 K Street NW., Washington, DC 20005. Operating rights sought to be controlled: *General commodities*, excepting among others, classes A and B explosives, household goods and commodities in bulk, as a *common carrier* over regular routes, extending from Philadelphia, Pa., to New York, N.Y., Newark and Trenton, N.J., and Wilmington, Del., with restriction; also holds alternate route authority between New York, New Jersey, and Pennsylvania; *general commodities*, excepting among others, classes A and B explosives, household goods, and commodities in bulk, over irregular routes, between Rochester, N.Y., on the one hand, and on the other, points in Monroe and Orleans Counties, N.Y., within 50 miles of Rochester, N.Y., between points in Essex, Passaic, Bergen, Monmouth, and Middlesex Counties, N.J., on the one hand, and, on the other, Newark, N.J., with restriction; *frozen fruits and frozen vegetables, and fresh fruits, fresh vegetables, and fresh berries* when moving in the same vehicle with frozen fruits and frozen vegetables, from points in the New York, N.Y., commercial zone, as defined by the Commission, and points in that part of New York on, north, and west of a line beginning at Buffalo, N.Y., and extending eastward along U.S. Highway 20 to junction U.S. Highway 11, thence northerly along U.S. Highway 11 to Syracuse, N.Y., thence northwesterly along New York Highway 57 to junction U.S. Highway 104, and thence along U.S. Highway 104 to Oswego, N.Y., to ports of entry on the United States-Canada boundary line at Alexandria Bay, Buffalo, Ivey Lee, Niagara Falls, Ogdensburg, and Rooseveltown, N.Y.;

Frozen vegetables, and fresh fruits, fresh vegetables, and fresh berries when moving in the same vehicle with frozen vegetables, from Trappe, Md., and points in Cumberland, Salem, and Gloucester Counties, N.J., to ports of entry on the United States-Canada boundary line at Alexandria Bay, Buffalo, Ivey Lee, Niagara Falls, Ogdensburg, and Rooseveltown, N.Y.; *frozen berries, coffee beans, and tea, and fresh fruits, fresh vegetables, and fresh berries* when moving in the same vehicle with frozen berries, coffee beans, and tea, from points in the New York, N.Y., commercial zone, as defined by the Commission, to ports of entry on the United States-Canada boundary line at Alexandria Bay, Buffalo, Ivey Lee, Niagara Falls, Ogdensburg, and Rooseveltown, N.Y.; *cocoa beans, and fresh fruits, fresh vegetables, and fresh berries*, when moving in the same vehicle with cocoa beans, from points in the New York, N.Y., commercial zone, as defined by the Commission, and from Philadelphia, Pa., to ports of entry on the United States-Canada boundary line at Alexandria Bay, Buffalo, Ivey Lee, Niagara Falls, Ogdensburg, and Rooseveltown, N.Y.; *bananas, and fresh fruits, fresh vegetables, and fresh berries* when moving in the same vehicle with bananas, from points in the New York, N.Y., commercial zone, as defined by the Commission, to Rochester, N.Y.; *frozen foods*, from Brockport, N.Y., and points within 75 miles thereof, to New York, N.Y., Allentown, and Philadelphia, Pa. and points in New Jersey, Massachusetts, Connecticut, and Rhode Island;

Empty frozen food containers, from New York, N.Y., Allentown, Bethlehem, and Philadelphia, Pa., and points in New Jersey, Massachusetts, Connecticut, and Rhode Island, to Brockport, N.Y., and points within 74 miles thereof; *packinghouse products* as described in paragraphs A, B, and C of the appendix in Ex Parte No. MC–38, *Modification of Motor Contract Carriers of Packing-House Products*, 46 M.C.C. 23, from ports of entry on the United States-Canada boundary line at Buffalo and Niagara Falls, N.Y., to New York, N.Y., and points within 50 miles thereof; *fresh fruits, fresh vegetables, and the commodities* described in paragraphs A, B, and C, in the appendix to the report in *Modification of Permits Packing-House Products*, 48 M.C.C. 628, between ports of entry on the United States-Canada boundary line at Alexandria Bay, Buffalo, and

Niagara Falls, N.Y., on the one hand, and, on the other, points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and the District of Columbia. MOTEK CORPORATION, holds no authority from this Commission. However, it is affiliated with LANSDALE TRANSPORTATION CO., INC., 1330 North Broad Street, Post Office Box 392, Lansdale, Pa. 19446, which is authorized to operate as a *common carrier* in Pennsylvania, New York, New Jersey, District of Columbia, Virginia, Delaware, and Maryland. Application has been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-2891 Filed 3-2-71;8:49 am]

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Wednesday, March 3, 1971 • Washington, D.C.

PART II

FEDERAL COMMUNICATIONS COMMISSION

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Primer on Ascertainment of Community Problems by Broadcast Applicants



FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 18774; FCC 71-176]

PRIMER ON ASCERTAINMENT OF COMMUNITY PROBLEMS BY BROADCAST APPLICANTS

Report and Order

1. The Commission has before it: (a) A Notice of Inquiry, 20 FCC 2d 880, adopted December 19, 1969, in which a Primer was proposed to clarify and provide guidelines as to the Commission's requirements and policies with respect to the ascertainment of community problems by broadcast applicants; and (b) comments and reply comments filed in response to the notice.[1] The Primer, as revised upon consideration of those comments, is adopted by this report and order as set forth in Appendix B.

2. This proceeding was initiated at the request of the Federal Communications Bar Association. The FCBA was of the view that the Commission's standards with respect to part I of sections IV–A and IV–B of the Commission's broadcast application forms had been given different interpretations by applicants, members of the FCBA and the Commission's staff. Clarification was therefore requested. A tentative Primer answering commonly raised questions with respect to those standards was prepared by the staff. Commissioner Robert T. Bartley, who has long been active in the evolution of ascertainment policy, discussed that Primer with representatives of the FCBA on December 2, 1969. The matter was further discussed by the Commission on December 19, 1969. As a result of those meetings, the Primer was modified and issued along with the notice.

3. Black Efforts for Soul in Television (BEST), had asked for and had been denied access to the meeting of December 2, 1969. BEST contends that its exclusion from a meeting where the legal representatives of the industry were present, denied it (BEST) and similar groups the opportunity to effectively present their views. Therefore, BEST alleges that the origins of the Primer are clouded by ex parte processes. BEST seeks access to the "original formulation of a policy." However, the Primer is a statement intended to clarify and provide guidelines as to Commission policies and requirements. As such, it is neither an adjudicatory proceeding nor a restricted rule-making proceeding under our rules, see §§ 1.1201–1.1251. Moreover, BEST subsequently met with Commissioner Bartley, received copies of both stages of the proposed Primer and commented extensively upon both. We have given its comments careful consideration. We conclude, therefore, that the procedure followed has not denied BEST or any other party procedural or substantive due process.

4. The comments filed in this proceeding have been very helpful to us and many changes have been made in the Primer as a result of those comments. However, many comments were adopted only in part or were rejected. For those whose comments fall in the latter category, we have tried to be explicit as to our reasons for rejection, but specific variations of a particular concept may not be separately discussed. One consideration should be kept in mind that is generally applicable. The Primer is applicable to all classes of broadcasters filing specified applications. Thus, it applies to a group of operations that vary widely with respect to the area and population they propose to serve, the number of competing broadcast services, and potential revenues, profits or losses. The Primer must be, of necessity, broad enough to encompass that diversity. We recognize that there are several areas covered in the Primer where more specificity might be viewed by some as desirable. But the diversity is too great, and attempts to establish more precise criteria raise more questions than are answered. Moreover, in times when problems, needs and interests are constantly changing, we believe that we must retain a degree of flexibility. Guidelines that are too specific may result in too rigid an approach. Nonetheless, the amended Primer, in our view, will aid broadcasters in being more responsive to the problems of their communities, add more certainty to their efforts in meeting Commission standards, make available to other interested parties standards by which they can judge applications for stations licensed to their community, and aid our staff in applying our standards uniformly. With these considerations in mind, we turn now to the specific questions.

A. General

5. *Question and Answer 1.* Those applications to which the Primer is applicable are specified in the answers to Question 1.[2] Answer (1a) specifies applications for construction permits for new broadcast stations but exempts applications for noncommercial FM and television channels. Several parties have suggested that all new applicants, including educators, should be required to ascertain community problems in the manner described in the Primer. However, it is the purpose of this inquiry to provide clarification and guidelines with respect to commercial applicants. Given the reservation of channels for specialized kinds of programing, educational stations manifestly must be treated differently than commercial stations. Thus, the suggested extension of the Primer to include educational stations is beyond the scope of the Notice and will not be considered here.[3]

6. What the Bible Says, Inc. (WTBSI), requests that Answer 1(a) be amended to exempt from the Primer's requirements applicants that are religious organizations proposing "noncommercial specialized religious programing on a 100 percent sustaining basis." WTBSI's position is founded in the First Amendment to the Constitution, which provides in part that, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * *" WTBSI's concludes, in light of that language, "* * * that the imposition of any rule or issue which seeks to compel 'an establishment of religion' to ascertain community problems, * * * is a direct violation of the First Amendment." (Emphasis in original.[4] WTBSI also reasons that since the Commission has exempted educational applicants from conducting surveys due to a presumption that there is a need for specialized educational programing, a similar exemption should be available to noncommercial religious applicants based on the need for specialized religious programing.

7. In dealing with the Establishment and Free Exercise Clauses of the First Amendment, the Supreme Court has attempted to steer a neutral course. Due to the difficulty of reconciling those two clauses, a clear standard or formula that is generally applicable has not been evolved, and case-by-case decisions appear to be the rule. Recently, in Walz v. Tax Commission, 397 U.S. 664, 90 S. Ct. 1409 (1970), the Court stated:

> The general principle deducible from the First Amendment and all that has been said by the Court is this: that we will not tolerate either governmentally established religion or governmental interference with religion. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference. (397 U.S. at 669, 90 S. Ct. at 1411–12)

Earlier, in Everson v. Board of Education, 330 U.S. 1, 67 S. Ct. 504 (1947), the Court said:

> The "establishment of religion" clause of the First Amendment means at least this: Neither a State nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. (330 U.S. at 15, 67 S. Ct. at 511)

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[1] Appendix A lists the 61 parties filing comments. One party, Pierson, Ball & Dowd, filed a request for declaratory ruling, pursuant to section 1.2 of the Commission's rules. If a party consists of two or more entities commenting jointly, the names of the entities are listed under the name of the lead entity. The short designation of every party in the present document appears in parentheses following the full name in Appendix A.

[2] Section IV–A is submitted for AM or FM stations, while section IV–B is submitted for television stations.

[3] Mr. Davidson has suggested that CATV systems be required to ascertain community problems. That, too, is beyond the scope of this proceeding.

[4] WTBSI apparently uses the phrase "establishment of religion" in the sense of a place or organization where religion is practiced, rather than in the sense of governmental creation or support of a religious organization.

In our view, exempting religious organizations that are applicants for broadcast stations from the ascertainment process, while imposing such requirements on other commercial applicants, would serve to aid the religious applicant, an obvious departure from the neutrality required by the Court. As to WTBSI's analogy of religious and educational applicants, the First Amendment does not prohibit government aid to, or interference with, education, so that the analogy must fail. Since there is a rational basis for applying different standards to educational as compared to commercial applicants, the distinction can not be classed as arbitrary. Accordingly, we must reject WTBSI's suggestion. Of course, consistent with our prior statements on the subject, religious organizations that are applicants for, or holders of, Commission authorizations may present sectarian programs. They can not, however, turn their backs on secular problems. For that reason, they must ascertain community problems and devote portions of their programing toward meeting those problems.

8. The exemption afforded educational organizations filing applications for noncommercial educational stations was stated in proposed Answer 1(a) to apply only to operation on noncommercial educational FM and television channels. As of July 1970, there were 25 educational stations operating on the AM band. Moreover, educational organizations may apply for noncommercial educational authorizations on nonreserved channels. At present, there are 15 educational FM and eight educational television stations operating on nonreserved channels. We believe, therefore, that the exemption is more appropriately phrased in terms of the nature of the applicant and the proposed service. Finally, educational organizations are not required to file part I, section IV, with respect to the other applications specified in the answers to Question 1. Therefore, we will delete the parenthetical insert from answer 1(a) and the following will be added: "Educational organizations filing applications for noncommercial educational broadcast stations are exempt from the provisions of this Primer."

9. *Answer 1(b): Applications for changes in facilities.* This answer reflects our policy that applicants for changes in facilities proposing to increase their area of coverage by more than 50 percent should ascertain the problems of the gain area. Metromedia states that this involves a change from the present forms which have obtained approval of the Bureau of the Budget. Metromedia refers to instruction two of section IV. That instruction refers to the sections of the rules that define major changes, §§ 1.571(a)(1), 1.572(a)(1), and 1.573(a)(1). Instruction two also states that applicants for major changes are not required to file section IV "unless there is proposed a substantial change in programing, increased facilities serving a substantial amount of new area or population, or unless the information is requested by the Commission."[5] It cannot be argued that a 50 percent increase in area is not "substantial." Therefore, this concept is within the terms of the existing form. We also note that our requirement is well within the discretion afforded by the last clause in the quoted language. Consequently, in our view, Budget Bureau approval is not required. It has also been noted that under the proposed wording of Answer 1(b), a change that would result in coverage of a new area that is 55 percent greater than that covered by the authorized facilities, but which also resulted in a 10 percent loss area, would not require the submission of section IV, since there has been only a 45 percent increase. Answer 1(b) has been reworded to avoid that construction, as follows:

(b) construction permit for a change in authorized facilities when the station's proposed field intensity contour (Grade B for television, 1 mv/m for FM, or 0.5 mv/m for AM) encompasses a new area that is equal to or greater than 50 percent of the area within the authorized field intensity contours.

10. Several parties suggest that population, not area, should be the criterion used for requiring an ascertainment of community problems in gain areas. They argue that it is service to people, not square miles, which should govern. However, that approach is not without its problems. Most importantly, it is administratively impracticable. In processing applications, a determination as to area is relatively easy. Population studies, on the other hand, require time-consuming detailed work, and we do not have the staff to conduct such studies routinely. As a general rule, there is a rough correlation between the area and the population served. Daly & Joyce points to one extreme where the gain area is sparsely populated.[6] Since a lesser standard is applied to ascertainment of community problems outside the city of license, no unduly burdensome requirement is imposed on the applicant. (See Answer 7.) Of course, if there is virtually no population in the gain area, an applicant may submit a showing to that effect, and be relieved of the Primer's requirements. BEST and Georgetown University Law Center Task Force on the Mass Media (Georgetown), on the other hand, point to areas around major cities where slight extensions of the field intensity contours encompass substantial new populations. That problem is not too significant for two reasons. First, the incidence of facility increases by large-city stations is not likely to be great in the near future, with all but a few VHF television, most AM and many FM stations now having maximum or near-maximum facilities. Second, a station's primary obligation is to its city of license, with only a secondary obligation to other areas within its field intensity contours. It becomes virtually impossible for a station in a major market to serve every political subdivision that receives its signal if service is defined as being responsive to community problems. Therefore, we have accorded broadcasters considerable discretion as to serving outlying areas. Thus, a New York City broadcaster might broadcast news and public affairs programing concerning major events in outlying cities or areas receiving its signal, but could hardly be expected to give in-depth coverage of local elections from Connecticut to central New Jersey. A Connecticut or New Jersey station might cover such elections, but we would not fault a New York City station that chose, in its discretion, to ignore them. Applicants for major changes should refer to questions 6–8.

11. *Answer 1(c): Change in station location.* Under this answer, applicants proposing to change a station's location, in terms of the city of license, are required to submit a new section IV. Dempsey & Koplovitz proposes exempting from this requirement moves from one city to another of a multiple, hyphenated allocation, or within a metropolitan statistical area. We think the proposed exemption is unwarranted. A station licensed to one community has a primary obligation to that community. If an applicant proposes to shift that obligation to another city, it should do so only after becoming thoroughly aware of the problems of the second community. See too, Question 6, below.

12. *Answer 1(d): Daytime AM stations seeking fulltime facilities.* The proposed Primer would require daytime AM stations seeking nighttime facilities to file part I, section IV–A. However, as noted by the NAB and Daly & Joyce, the problems of the community do not change after sundown. The requirement that part I should be submitted will, therefore, be deleted. However, the number of problems, and the approach to meeting them, may be substantially different if the station is able to increase its broadcast time. Therefore, we shall require such applicants to submit part III of section IV–A.

13. *Answer 1(d): Satellite television stations.* Applicants for satellite television stations are required to submit section IV–B under Answer 1(d). Since a station that is primarily a satellite does originate some local programing, the Primer's requirements obviously applies to it. However, Dempsey & Koplovitz suggest that 100 percent satellites, that is, stations originating no local programing, should be exempt. Typically, satellites are owned by the parent station. Since the parent should allocate some of their news and public affairs programing to meeting the needs of the

[5] See instruction two, section IV, FCC Form 301 and the cited sections of the rules. The 50 percent criterion is much the same as that used in §§ 1.572 and 1.573. There are, of course, other applications that qualify as major changes under the rules, which do not require the submission of part I; for example, a change of frequency.

[6] Broadcasters may propose such changes to improve signal strength over their city of license and adjacent areas. This may result in an extension of the field intensity contours into areas with little population.

area served by the satellite, the applicant must ascertain the problems of that area. Accordingly, we believe that such applicants should submit a complete section IV–B. There are a few rare cases where a 100 percent satellite is not owned by the parent corporation. In these cases, a problem is presented since the satellite licensee is not legally in a position to control the programing of the originating station. Nonetheless, we shall not exempt such stations from the Primer's requirements. Because such a satellite must rely on some agreement with the originating station as to both revenues and rebroadcast consent, a working relationship must be established. As part of that relationship, the licensee of a satellite would be able to provide news stringers, notice of significant upcoming events, and other material to the originating station only if he is sufficiently familiar with the community he serves. The Primer forces an awareness of the problems of the community on such a licensee, so that there is good reason for requiring him to ascertain community problems in accordance with the requirements of the Primer.

14. *Answer 1(e): Renewal applications.* We have concurrently released today a Notice of Inquiry and Notice of Proposed Rule Making, FCC 71–156, Docket No. 19153 and a Notice of Inquiry, FCC 71–159, Docket No. 19154 in which new standards are to be considered for the licensees of operating stations. Since different standards are under consideration, we have revised the Primer to delete references to renewal applicants, reserving judgment in this regard until we have reviewed the comments filed in those proceedings. We shall not further comment about the revisions caused by the deletion of renewal applications, except to the extent that it may be required for clarity. However, as an interim measure until other standards are adopted, renewal applicants will be required to comply with the Primer.

15. *Question and Answer 2.* In this question and answer we have attempted to consider our need for current information without requiring the broadcaster to unnecessarily duplicate recent efforts in ascertaining community problems. Our conclusion was that if the same applicant had provided a complete section IV within the previous year, he would not be required to repeat the process. The NAB states that this is unnecessarily short, and recommends 18 months. We will retain the 1-year standard, since, in our view, the information submitted would otherwise not be current enough for us to make an informed judgment. It should be noted in this respect that an applicant can begin preparation of an application up to 6 months prior to the filing of the application. (See Question 15, below.) If the NAB's proposal were adopted, we could conceivably be granting applications on the basis of information up to 2 years old at the time of filing, and older at the time of grant. Under the standard we have chosen, that information can be no older than one-half the license period, or 18 months, at the time of filing.

16. Metromedia notes in this connection the instructions in section IV of the program reporting form in assignment, transfer, and renewal applications (FCC Forms 314, 315, and 303 respectively) to the effect that proposed assignors and transferors need not file section IV, the program reporting form (of which the ascertainment showing is Part I), if they have filed a renewal application within the last 18 months. The significance of Metromedia's reference is not clear. As far as the present matter is concerned, assignors and transferors are not directly involved at all, since they are not required to file the ascertainment showing, part I of section IV, even if they have to file other portions of that section. If Metromedia means that the same 18-month principle should be extended generally so as not to require a new showing if one has been filed within that period, this argument must be rejected, for reasons stated in the preceding paragraph.

17. *Question and Answer 3: The purpose of section IV.* In the past, we have generally stated that the purpose of section IV was to show what the applicant had done to ascertain the needs and interests of the community to be served and the broadcast matter he proposed to meet these needs and interests. However, our experience has shown that a large segment of the broadcast industry has steadfastly interpreted community "needs" to mean program preferences. We are shown, for example, communities with "needs" for more country and western music, or for more sports programs, but which apparently are not believed to have needs for improved schools, roads, or welfare programs. Therefore, having failed, in large measure, in our earlier efforts to impress upon applicants that the phrase "community needs" encompasses a much larger area than program preferences, we sought in preparing the Primer to use a new word to emphasize our intent; hence, "problems." A review of new and changed applications filed since the proposed Primer was issued indicates that the use of the word is having the desired effect. We were careful to state in Answer 3, that the word "problems" as used in the Primer would be considered by us to be generally synonymous with "community needs and interests." Despite this explicit statement, those filing comments universally interpreted the wording of Answer 3 to be a major shift of Commission policy. For example, one broadcaster states that "the limitation of the term to 'problem' * * * creates doubts as to the needs for instructional, agricultural and other special kinds of programs." Others have charged that the "problem-oriented" approach of the Primer emphasizes matters having utility for limited segments of the community and that, in effect, the Primer unduly imposes the judgment of the government on broadcasters.

18. In our view, a careful reading of the Primer would not warrant these interpretations. Problems exist with respect to agricultural activities and we fail to understand why the language of the Primer would establish doubts as to the need for broadcast matter to meet those problems. Nor do we understand a charge that community problems affect only limited portions of the community. Most problems directly affect all segments of the community. Those problems that directly affect a lesser population have an indirect impact on the larger community. As to the alleged imposition of the Government's judgment on the broadcaster, we note that the choice of broadcast matter, whether it be entertainment programing, public affairs programing, public service announcements, or news, is left to the applicant's discretion. Within broad limits, the percentage of these kinds of programing is also left to the applicant. The judgment "imposed" by the Commission is no more than requiring broadcasters to be responsive to the problems of their communities. That judgment is required under the Communications Act.

19. The above serve only as examples of the statements submitted. While we believe that most of the interpretations given to Question and Answer 3 are not warranted, it is obvious that the proposed language has provided confusion among the commenting parties, rather than the clarification we hoped to bring about by issuing a Primer. Accordingly, some revision is in order. Westinghouse recommends the phrase "problems and issues," as a broader substitute, and the Mexican-American Committee suggests "needs, interests, and problems." As between the two, we believe that the latter is more in keeping with our policies. Again, to emphasize that we are not primarily concerned with program preferences, we think it appropriate to use the phrase "problems, needs, and interests." For the reasons set forth in paragraph 50, we will also indicate at this point that the phrase "to meet community problems" will be used to include the obligation to meet, aid in meeting, be responsive to, or stimulate the solution for community problems. Accordingly, Answer 3 will be changed to read as follows:

> Answer: To show what the applicant has done to ascertain the problems, needs and interests of the people of his community of license and other areas he undertakes to serve (see Question 6, below), and what broadcast matter he proposes to meet those problems, needs and interests, as evaluated. The word "problems" will be used subsequently in this Primer as a short form of the phrase "problems, needs and interests." The phrase "to meet community problems" will be used to include the obligation to meet, aid in meeting, be responsive to, or stimulate the solution for community problems.

20. *Question and Answer 4: How the ascertainment of problems is to be made.* Several parties noted that parts of Answer 4 are repeated in subsequent questions and answers. They recommend, therefore, that revisions be made to avoid those repetitions. We concur in that view

and believe that it would be appropriate to make the answer a general statement, leaving the details of how the applicant goes about ascertaining community problems to subsequent questions and answers. Several broadcasters commented that consultations with the general public were, in their view, unnecessary, confusing, or served no purpose. We have imposed this requirement on the assumption that members of the general public may perceive community problems differently than community leaders. Mr. Baldwin, in his comments, submitted a study of Columbia, Md., that supports that assumption. Therefore, the requirement of consultations with members of the general public will be retained. We will also add language to Answer 4 to make clear that the word "group" is not restricted to groups with formal organization. Accordingly, Answer 4 is revised to read as follows:

Answer: By consultations with leaders of the significant groups in the community to be served and surrounding areas the applicant has undertaken to serve, and by consultations with members of the general public. In order to know what significant groups comprise the community, its composition must be determined, see Question and Answer 9. The word "group," as used here, is broad enough to include population segments, such as racial and ethnic groups, and informal groups, as well as groups with formal organization.

21. *Question and Answer 5: Reliance on area familiarity.* CBS recommends that Answer 5 be changed to make "clear that long-time familiarity by a licensee of the area he serves is a significant plus factor." However, a long period of residency does not compel familiarity with the entire range of problems facing a community. Indeed, the claimed familiarity may be restricted to the problems of a rather narrow range of persons or groups. Therefore, an applicant's familiarity with the community he serves will be judged upon the showing he submits in response to section IV of the application form, and not upon the length of time the applicant has resided in or served the particular community. Accordingly, Answer 5, which makes a specific ascertainment effort mandatory, will be retained without change.

22. *Question and Answer 6: The applicant's obligation to ascertain community problems outside his city of license.* Since an applicant's primary obligation is to his city of license, his obligation to other areas is, of course, secondary. Instead of trying to set out a formula or standard differentiating those terms that would be applicable to all stations in cities of widely varying population and composition, the Primer permits an applicant, in his discretion, to choose those outlying areas or communities he will serve on a secondary basis. (In this context, we mean "serve" in the sense of programing that is responsive to specific community problems, not in the broader sense of providing programing to any person who receives the station's signal.) Thus, the Primer referred to Question 1(A)(2) of section IV (A and B) where the applicant is requested to set forth the other areas or communities he undertakes to serve. Several other formulas have been suggested by those submitting comments. The variety of those suggestions emphasizes the difficulty in establishing a standard that differentiates an applicant's primary and secondary obligations with respect to stations in such diverse cities as Chicago and Miles City, Mont.

23. There are, of course, limits on the applicant's discretion. AM stations that are licensed to two or more communities must, of course serve all those communities. FM or television stations that operate on channels allocated to two cities, Minneapolis-St. Paul television channels, for example, are license to one community but must also ascertain community problems in the second city. We also believe that applicants for assignment or transfer of stations which are licensed to one city but which have obtained waiver of the station identification rules to permit a secondary identification with one or more other cities must ascertain community problems in the additional cities. Although this was not specified in the proposed Primer, we believe that obtaining such a waiver is tantamount to an undertaking to serve the other city or cities. The proposed Primer would also require an applicant for a station licensed to a city within a standard metropolitan statistical area (SMSA) as defined by the U.S. Census Bureau, to ascertain community problems in each of the cities within that area. We will remove that requirement for two reasons. First, many metropolitan areas have numerous political subdivisions. For example, there are more than 100 communities within the SMSA of New York City and Chicago. We do not, and can not, require a station licensed to Chicago to present broadcast matter that is specifically responsive to the problems of each of those subdivisions. Second, as presently stated, an applicant for a station licensed to Joliet, Ill., part of Chicago's SMSA, would be required to ascertain community problems in all the political subdivisions surrounding and including Chicago, if its signal actually encompassed that area. That, too, is an unnecessary result, since it would apply a more stringent requirement as to applicants for stations licensed to suburban communities than to those in the central city.

24. We are adopting, instead, a somewhat different limitation on the discretion of all applicants, as to the communities in which an ascertainment of community problems must be made. That is that an applicant will be required to submit a showing as to why he does not undertake to serve a particular major city that falls within his service contours, up to a maximum of a 75-mile radius from the transmitter site.[7] The word "major", as we use it here is relative. Thus, a city of 25,000 residents might be considered minor for a station licensed to Los Angeles, but a city of 10,000 may be considered major for a station licensed to a city of 25,000. An applicant's showing in this regard might be that the major city in the outlying area has several broadcast stations in the same service licensed to it, or that the residents of that major city turn to the stations of another closer city for their broadcast service. Accordingly, Answer 6 will be amended as follows:

Yes. Of course, an applicant's principal obligation is to ascertain the problems of his city of license. But he should also ascertain the problems of the other communities that he undertakes to serve, as set forth in his response to Question 1(A)(2) of section IV–A or IV–B. Applicants for stations licensed to more than one city, or for channels assigned to two or more cities, or proposed transferees or assignees of stations which have obtain waiver of the station identification rules to permit secondary identification with additional cities, are expected to ascertain problems in each of the cities. If an applicant chooses not to serve a major community that falls within his service contours, a showing must be submitted explaining why. No major city more than 75 miles from the transmitter site need be included in the applicant's ascertainment, even if the station's service contours exceed that distance.

25. *Question and Answer 7: Ascertainment in outlying areas.* Since we have determined that applicant's obligation to ascertain community problems outside his city of license is secondary, it follows that he would be expected to be responsive to only major problems in that area. An ascertainment of major problems need not be as inclusive or exhaustive as that required for a city of license. Thus, Answer 7 indicates that an applicant has wide latitude as to how he ascertains community problems. Georgetown states that "cursory ascertainment of outlying areas is unlikely to provide sufficient responsiveness." However, we must again recognize that broadcast stations are primarily licensed to serve one city, and that the time allotted to meeting a secondary obligation to other areas must be distributed to numerous political subdivisions. We will, however, revise Answer 7 to indicate that in areas other than the city of license, consultations

[7] The 75-mile limitation is in deference to the extensive areas of Class I AM stations. This proceeding does not primarily relate to the obligation which such stations have by reason of the nature of their authorized facilities, designed to provide primary and secondary service to very large areas. This matter relates, rather, to the ascertainment of and efforts to meet problems more particularly associated with a particular community or area, those which can be ascertained by the process involved here and with which stations generally must be concerned.

with community leaders who can be expected to have a broad overview of community problems would be sufficient. We believe this will provide more guidance to applicants than the initially proposed language. In view of the above, Answer 7 is revised as follows:

Answer: No. Normally, consultations with community leaders who can be expected to have a broad overview of community problems would be sufficient to ascertain community problems.

26. *Question and Answer 8: Ascertainment in "gain" areas.* Because the first sentence of Answer 8 repeats the criteria discussed in Answer 1(b), our comments with respect to that answer (paragraphs 9 and 10, above) will not be repeated here. As to the extensiveness of the ascertainment in the gain area, upon which several parties commented, the answer is revised to refer the applicant to Answer 7.

27. *Question and Answer 9: Determining the composition of the city of license.* As previously noted, there are two broad parts to ascertaining community problems; consultations with community leaders and consultations with members of the general public. The applicant is expected to choose members from each of those broad groups that reflect the composition of the city of license. Obviously, an applicant does not rely on a random sample to choose community leaders. Rather, he is expected to contact leaders of each significant group within the community.[8] Thus, in reference to community leaders, we were speaking of a "statistically reliable sampling" in the proposed Primer, only in the sense that it denoted one means of determining what significant groups are found in the community; that is, its composition. Answer 9 also gives examples of other means of determining the composition of the community, including data from the U.S. Census Bureau, which, of course, bases its information on statistically reliable surveys. Data from the Chamber of Commerce or other reliable reports or studies may also be used to assist in determining the composition of the community. Two criticisms have been leveled at these sources. Bay Area TV comments that Chamber of Commerce data is business oriented, so that the Commission is "saying that the composition of the community shall be determined by the business Establishment." However, listing the Chamber of Commerce as one source of data does not lead to the conclusion that it should be considered the sole source of informaton. Moreover, those studies submitted by applicants as to the composition of their respective communities indicate that Chamber of Commerce profiles and city directories provide much useful information. Granted, much of that information duplicates that found in Census Bureau publications and much of it is business oriented. Nonetheless, many provide outlines of local government, lists of schools, and lists and total membership of benevolent, fraternal, religious, business, civic, professional, labor and miscellaneous organizations. The second criticism was made by several parties who claim that information from the Census Bureau is too general and not sufficiently current at the end of the decade to be of use. This is not, in fact, the case.[9] The Census Bureau periodically publishes updated information and, far from being too general, provides extensive detail. While the Primer permits the use of an outside organization to compile this information as to a community's composition, in our view, the ready availability of the sources of that information make such studies easily within the resources of all broadcast applicants.

28. Another problem that we have with these criticisms is that we do not require minutely or detailed information as to a community's composition. As discussed in conjunction with Question and Answer 13(a), those community leaders who are consulted should be chosen on the basis of the composition of the community. For example, we would expect consultations with labor leaders in cities with industries that are typically unionized. On the other hand, labor leaders would not necessarily be a part of the ascertainment process of a station licensed to a suburban "bedroom" community or a retirement community. Thus, for our purposes, it is sufficient to provide data indicating the minority, racial or ethnic breakdown of the community, its economic organizations, and any other factors that make the particular community distinctive. A retirement or university community would be examples of the latter. We are not concerned with minutia, and those challenging an applicant's showing must demonstrate that the applicant has failed to recognize a significant group. It should be noted that if an applicant finds that there are ten labor unions in the community, the "group" we consider significant is that of unions generally, and each union is not considered a separate group. However, we would expect that if there are a substantial number of unions in a community, the applicant's ascertainment process would include more than one union or a group consisting of more than one union, such as a Labor Council, if there is one.

29. Georgetown suggests that we should indicate that the data used should be as current as possible. We will so indicate in Answer 9. Apparently as a means to an end, Georgetown and other parties also suggest that language be inserted to the effect that submission of a "strong showing" as to the composition of the community will be a significant factor in considering performance when applicants are involved in comparative proceedings. We do not believe that these suggestions are appropriate. An applicant has either shown consultations with leaders of significant groups within a community and with the general public or he has not. Moreover, the performance that concerns us is not the degree of sophistication used by the applicant in obtaining data. Rather, it is his proposed programing. To make more clear the kinds of data we require in the applicant's study of the composition of his community, we have added the following sentence to Answer 9: "The applicant must submit such data as is necessary to indicate the minority, racial, or ethnic breakdown of the community, its economic activities, governmental activities, public service organizations, and any other factors or activities that make the particular community distinctive with respect to its composition."

30. *Question and Answer 10: Must a compositional showing always be submitted.* This question and answer have been the subject of several comments which we believe are valid. In sum, these comments argue that the burden of determining the composition of a particular community is not great; that such

[8] It should be made clear that the significance of a group is not determined solely by its size. Whether a group is to be considered "significant" may rest on several criteria, including its size, its influence or its lack of influence in the community.

[9] As an example, the Census Bureau periodically issues the County and City Data Book—A Statistical Abstract Supplement. This publication does not contain the most detailed information published by the Census Bureau. However, the following partial listing of data set forth there as to cities is indicative of the extensive information that is readily available: total population; land area; population density; percent nonwhite; percent Negro; percent foreign born; total foreign born; country of origin as a percent of total foreign stock; median age; percent under 18 years of age; percent 65 years of age and over; population per household; as to persons 25 years old and over, the median number of school years completed, the percent completing less than 5 years of school; as to persons 5 to 34 years old, the percent enrolled in all schools and in private schools; percent of work force employed in manufacturing, retail, wholesale, and white collar occupations; total income; median family income; percent families earning less than $3,000; percent of families earning $10,000 or more; total number of housing units; number of manufacturing establishments; number of employees; number of production workers; total payroll and wages; number of man hours; value added by manufacture; total and per capita retail sales; number or retail establishments; number of retail employees and payroll; number of establishments and sales of nine types of selected businesses (data similar to those set forth for retail trade are also given for wholesale trade and selected services); hospitals; total general city revenues and breakdown as to source; total city expenditures and a breakdown as to disposition, including public welfare, education, highways, health and hospitals, police protection, fire protection, sewerage, other sanitation, parks and recreation, interest on general debt, outstanding debt, and city payroll. This information is given for every city with a population over 25,000. Similar information is given for each county, with more agricultural data, so that cities less than 25,000 would be included in the county portion of the publication. More detailed information or source of information as to other areas may be found in the following Government publications which may be available in local libraries or can be purchased from the Government Printing Office: Statistical Abstract of the United States; Directory of Federal Statistics for Local Areas, A Guide to Sources; Directory of Federal Statistics for States, A Guide to Sources.

a determination is beneficial in that it apprises both the applicant and the Commission of the significant groups within a community; that no community can be described as "average" in composition; and, therefore, that each applicant should be required to submit a showing as to the composition of his community, rather than assume a prima facie showing if leaders of certain groups are consulted. The merits of this position are obvious. Suppose, for example, an applicant showed consultations with leaders of the Black community. The applicant would have made a prima facie showing that he had, under the present wording of Question and Answer 10, contacted leaders of racial and/or ethnic groups. Nevertheless, there may be, for example, significant American Indian or Spanish-speaking groups within the community. We would have no way of ascertaining the presence of such groups without information as to the community's composition. Since the burden of providing that information is not great, we will require each applicant to submit such a study.

31. The Citizens Committee suggests that an applicant's obligation does not end with "establishment" leaders, and includes "voluntary associations and agencies dealing with the needs of the elderly, the indigent and the handicapped, with welfare associations, tenant groups, youth and student groups, and civic improvement organizations, taxpayer groups, property owners associations, and other groups organized for the express purpose of protecting particular needs and interests." The question is whether those groups comprise a significant segment of the community, not whether they fall within or without the "establishment", however that word is defined. Leaders of the listed organizations should be consulted, if they represent a significant group within the particular community. Since all these groups or organizations listed by the Citizens Committee will not necessarily appear in all communities, it would be inappropriate to set them forth in a Primer that is generally applicable.

32. In referring to challenges to an applicant's determination, many parties commented that more than an allegation should be required, and suggested that either the applicant should be assumed to be correct, or that a challenger should be required to make a showing with supporting data. If we are to assume the applicant to be correct, we assume away all challenges, and, therefore, we reject that position. However, we believe that it is appropriate to change the word from "allegation" to "showing". This change emphasizes that those challenging do more than state that the applicant has omitted a significant group. Rather, they must show that a significant group has been omitted, by means of supporting data. Bay Area TV criticizes this approach, stating that this places the burden on the public to come forward with evidence that the composition of the community is not what the applicant states it to be. However, the applicant has already submitted a showing in good faith, based on reliable data. If a significant group has been omitted, a challenger should be able to easily show it. Our approach is quite consistent with the statutory scheme. For example, those filing petitions to deny are required to make specific allegations of fact sufficient to show that a grant of an application would be prima facie inconsistent with the public interest; see section 309(d) of the Communications Act. We are only asking a similar showing for those challenging an applicant's determination of the composition of the particular community. The last sentence of the initially proposed answer 10 will be deleted, since, as noted by several parties, the thought expressed is self-evident. Answer 10 is, therefore, revised as follows:

Answer: Yes. The purpose of requiring a determination of the community is to inform the applicant and the Commission what groups comprise the community. The applicant must use that information to select those who are to be consulted as representatives of those groups. That determination may be challenged on a showing, including supporting data, that a significant group has been omitted. The "significance" of a group may rest on several criteria including its size, its influence or lack of influence in the community.

B. Consultations With Community Leaders and Members of the General Public

33. *Question and Answer 11(a): Consultation with community leaders.* It is our view that the principals and the management of an applicant should consult with community leaders. If nondecision-making personnel, or some organization or person other than the applicant were used, the information that would be gathered would go through a filtering process that might exclude much valuable information. It is doubtful that a written report can fully convey the nuances of any extensive conversation, or the extent of the sincerity, frustration or anger that may be associated with some community problems. Moreover, the person-to-person interview with the management of the station is more likely to establish a contact with the station in the interviewee's mind. Thus, a community leader knows someone to call if he believes there are matters that warrant further discussion. In this manner we believe that a dialogue can be established and maintained between the community and the decision-making personnel of the applicant. This would be largely lacking if we permitted an outside organization to conduct the consultations. We recognize that principals or management-level personnel may not be as expert in conducting consultations as some lower-level members of their staffs, or as those associated with a professional research organization. On balance, however, we believe that the lack of expertise is outweighed by the factors discussed above.

34. Welch & Morgan noted that the phrase "top-level employees" was not defined. It is difficult to be precise since there are innumerable ways of organizing a licensee. We are seeking those whose position is high enough in the organization to be an effective voice in the decision-making process. We believe that the phrase "management-level employees" is as precise as we can get, and we will use that phrase.

35. NBC requests the addition of the following language, "Consultations may be joint consultations, as with community leaders luncheons." We are seeking the individual views of each community leader, from the standpoint of the particular group represented, in an interview with one of the principals or management-level employees of the applicant. If this can be done, consistent with our goal, by community leader meetings or luncheons, the applicant is free to use this method. We do not, however, believe the matter to be so significant as to warrant separate comment in the revised Primer. Georgetown requests that Answer 11(a) be revised to make clear that the phrase "prospective employees" applies only to applicants for new stations. Our intention is to limit the use of prospective employees to those situations where an applicant is newly formed and has not yet hired a full staff. Answer 11(a) will be revised to indicate that limitation, as follows:

Answer: Principals or management-level employees. In the case of newly formed applicants who have not yet hired a full staff, principals, management-level employees, or prospective management-level employees, must be used to consult with community leaders.

36. *Question and Answer 11(b): Consultations with members of the general public.* The applicant has a wider choice as to who can conduct consultations with members of the general public. The answer will be revised to make clear that employees of the applicant that are not management-level may conduct consultations with the general public. In addition, Answer 11(b) would permit the use of a professional research or survey service. The Mexican-American Committee has expressed its concern with Answer 11(b) in that it might permit an applicant to use a professional service to avoid or minimize person-to-person contacts with members of the less organized segments of the community. The concern is heightened by a fear that an applicant may not classify Mexican-American leaders as community leaders, thus leaving the Mexican-American community without any direct dialogue with the applicant. We appreciate this concern, which, of course, might have been raised by other minority groups. If, however, such a group constitutes a significant group within the community, and an applicant fails to consult leaders of that group, his showing will be questioned by the Commission and is potentially subject to petitions or informal objections from others. In addition, our concern with this problem is in part reflected in our discussion of what constitutes a "significant" group in footnote 9, above, and in Answer 10. Furthermore, changes will

be made in Answer 13(a) as to the identification of leaders of less formally organized groups. Answer 11(b) is, therefore, revised as follows:

Answer: Principals or employees. In the case of newly formed applicants who have not hired a full staff, principals, employees, or prospective employees may conduct the consultations. If the consultations are conducted by employees who are below the management level, the consultation process must be supervised by principals, management-level employees or prospective management-level employees. Also, the applicant may choose to use a professional research or survey service to consult with members of the general public.

37. *Question and Answer 12: Use of professional research organizations.* Most of the professional research organizations that filed comments take the position that we should adopt rigorous standards in order to assure that the sampling techniques are scientifically conducted and result in statistically reliable findings. Because no broadcaster has as much expertise in sampling techniques as the professional research organization, they urge for themselves a much larger, if not primary, role in the ascertainment of community problems. We have rejected the necessity of using such organizations, although they will be permitted to assist in parts of the process. We have taken this position for several reasons, including our interest in establishing a direct dialogue between decision making personnel in the applicant and the community. Moreover, the ascertainment of problems is the goal, and there comes a point of diminishing returns as to the sophistication of the procedures used to reach that goal. We believe that any problem of significance will be uncovered by the procedures described in the Primer. While recognizing that those procedures may not approach standards acceptable to a statistician, they will, for our purposes, provide the necessary information. Thus, imposing requirements that will assure statstical reliability serve little purpose. The costs of obtaining such information, therefore, do not warrant the imposition of higher standards than those we have adopted.[16] Question and Answer 12 have been modified to more clearly indicate the areas where a professional research or survey service are permitted, but not required, to enter the ascertainment process, as follows:

Question: To what extent may a professional research or survey service be used in the ascertainment process?

Answer: A professional service would not establish a dialogue between decision-making personnel in the applicant and community leaders. Therefore, such a service may not be used to consult community leaders. However, a professional service, as indicated in Answer 11(b), may be used to conduct consultations with the general public. A professional service may also be used to provide the applicant with background data, including information as to the composition of the city of license. The use of a professional research or survey service is not required to meet Commission standards as to ascertaining community problems. The applicant will be responsible for the reliability of such a service if it is utilized.

38. *Question and Answer 13(a): Which community leaders should be consulted?* The answer will be changed to make clear that the selection of community leaders for consultation flows from the applicant's determination of the composition of the community. In addition to those leaders, Bay Area TV suggests that Answer 13(a) should be amended to indicate that applicants should also consult with four or five members of the rank and file of each group, as well as its leaders. This position is based on the belief that the leaders may view community problems differently from the members of those groups. However, to the extent that their views may differ, the differences should show up in the consultations with the general public. There is, therefore, no reason for imposing the suggested requirement, since it is essentially duplicative.

39. In our discussion of Question and Answer 11, we noted that it was permissible for consultations with the general public to be conducted by those who were not decisionmaking personnel of the applicant, including outside professional services. The Mexican-American Committee, as a spokesman for a minority group that may lack formal organization in some communities, was concerned that a lack of easily identifiable leaders might relegate the ascertainment of that group's problems to nondecisionmaking personnel or an outside professional service. In this way, the applicant could avoid personal consultations with such groups, thereby avoiding the establishment of the desired dialog between the applicant and the group. We would hope that applicants would not take such a course of action. However, to allay the concern of the Mexican-American Committee and of other similarly situated groups, and to make clear that an applicant may not arbitrarily avoid personal consultations with significant groups because the group lacks a highly developed formal structure, we believe that it is appropriate to revise the answer to indicate that additional efforts may be needed to identify leaders of less organized groups. This may require, as suggested by some parties, asking members of the particular group to identify those who they consider to be their local leaders. Accordingly, the answer is revised as follows:

Answer: The applicant has already determined the composition of the community, and should select for consultations, those community leaders that reflect the community's composition. Groups with the greatest problems may be the least organized and have the fewest recognized spokesmen. Therefore, additional efforts may be necessary to identify their leaders so as to establish a dialog with such groups and better ascertain their problems.

40. *Question and Answer 13(b): Which members of the general public should be consulted.* In view of our discussion with respect to professional research or survey services, we will specify that a "random sample" of the general public must be consulted. References to a "representative range" or to a "statistically reliable sampling" will be omitted. For our purposes a random selection may be taken from a city directory, or may be done on a geographical distribution basis. Moreover, given the pervasiveness of the telephone in this country, a random selection of names from a telephone directory is sufficient for our purposes. Since the last sentence of the answer in the initial Primer has essentially been included in Answer 13(a), it will not be repeated here. However, language has been added to indicate that an applicant may, in addition to a random sample, consult with additional members of a particular group to obtain better insights into their particular problems. The language is precatory in nature, and serves only to encourage applicants to take whatever steps he thinks is reasonably necessary to make him better informed.

41. *Question and Answer 14: Number of persons to be consulted.* The question of how many to consult is a difficult one. Many of those filing comments requested that specific figures be given. However, we believe that the question is not one of numbers, but whether the applicant has consulted leaders of the significant groups found in the community. Since consultations with members of the general public will be by a roughly random sample, that sample will generally reflect the community's composition, although, as previously noted, statistical accuracy is not required. In this regard, numerical superiority, by itself, does not automatically indicate a more representative selection of community leaders or of the general public. The questions that will be raised in this regard are: Have community leaders from each significant group been consulted? As to members of the general public, has the applicant used a method that will result in a generally random selection? Has the applicant elicited sufficient information as to community problems in those consultations? Accordingly, Answer 14 will be revised as follows:

Answer: No set number or formula has been adopted. Community leaders from each significant group must be consulted. A sufficient number of members of the general public to assure a generally random sample must also be consulted. The number of consultations will vary, of course, with the size of the city in question and the number of distinct groups or organizations. No formula has been adopted as to the number of consultations in the city of license compared to other communities falling within the station's coverage contours. Applicants for stations in relatively small communities that are near larger communities are reminded that an ascertainment of community problems primarily in the larger community raises a question as to whether the station will realistically serve the smaller city, or intends to abandon its obligation to the smaller city.

42. Dempsey & Koplovitz suggests that some formula be adopted as to the number of consultations in outlying communities. In view of the considerable discretion afforded applicants in ascertaining problems in areas outside the city of

[16] For example, CBS states that a professional research organization estimated that a survey of the Chicago area market could be done for $79,500.

license, see Questions and Answers 6 and 7, above, we see no need for a formula.

43. *Question and Answer 15: Time of consultations.* The proposed Primer specified that consultations must be made within 6 months before the filing of the application involved. In our view, this requirement is an appropriate one, with respect to the types of applications which are covered by the Primer adopted herein (for new facilities and some major changes, and the assignee/transferee portion of assignment and transfer applications). This should give the applicant ample time to make the consultations, evaluate the information gathered, and propose broadcast matter based on that information. Language has been included in the answer to make it clear that it applies to licensees or permittees of operating stations applying for increases in facilities. As revised, Answer 15 will read as follows:

Answer: Applicants, including licensees or permittees of operating stations filing for major changes, are required to conduct consultations within six (6) months prior to filing the application.

44. *Question and Answer 16: Failure to consult with representatives of a significant group.* Question and Answer 16 were included to counter the impression of some applicants that because they did not believe a certain group would be a part of their normal listening or viewing audience, the problems of that group need not be ascertained. This does not follow, however, since the solution to those problems may lie, in part, within the control of the group or groups that do constitute the station's audience. The necessary conclusion, if leaders of a significant group are not consulted, is that the ascertainment process is defective. Thus, as recommended by Georgetown and BEST, the answer will be revised to indicate that the ascertainment process is not just "subject to question," as stated in the proposed Primer, but is defective. BEST also suggests that not only omission, but "low representation," would make a showing defective. Again, we believe the question should be generally one of representativeness, not one of specific numbers. However, it should be noted that it is impossible to require a one-to-one ratio in terms of number because most people belong to several groups, and because groups vary widely as to their membership. Thus, an applicant who consults two leaders of a small but significant group, and four leaders of a group that is 20 times as large, has a low representation of leaders of the larger group. We would not normally, however, fault such a distribution of consultations.

45. Question and Answer 17 of the proposed Primer are directed toward renewal applicants. They have been, therefore, deleted from the revised Primer.

46. *Question and Answer 17 (18): Use of questionnaires.* (Our subsequent discussion will be correlated to the numbers of the revised Primer. For clarity's sake, however, the number of the question of the Primer proposed in the notice of inquiry will be indicated in parentheses.) Professional research organizations indicate that a sampling technique wherein the person whose views are sought is to voluntarily return a questionnaire by mail produces a strong "cooperation bias" that renders almost meaningless the information gathered by this method. Thus, we shall place no reliance on such a method. That does not negate the usefulness of questionnaires as a guide for consultations with community leaders or where the method of collection from members of the general public does not require the interviewee's voluntary return of the questionnaire by mail. We have also revised the answer to indicate that questionnaires are not a substitute for consultations with community leaders. It should be obvious that the questions used in the questionnaire must meet our requirements. For example, questionnaires primarily seeking program suggestions or approval of a preplanned program schedule are of little or no value. In view of these comments, Answer 17 will be revised as follows:

Answer: Yes. A questionnaire may serve as a useful guide for consultations with community leaders, but cannot be used in lieu of personal consultations. Members of the general public may be asked to fill out a questionnaire to be collected by the applicant. If the applicant uses a form or questionnaire, a copy should be submitted with the application.

47. *Question and Answer 18 (19): Solicitation of program suggestions.* Several broadcasters commented that program suggestions should be elicited from community leaders. In view of our experience that many applicants have translated "community problems" into "community program preferences", we approach those comments with circumspection. Badger Broadcasting has perceptively understood our concern, but believes "that the goal of programing responsive to community problems would be better served by realistic acknowledgement of the relationship between problems and programing." We recognize that relationship, but believe our encouragement of such comments may tend to make consultations primarily a discussion of programing and programing preferences, rather than a discussion to ascertain community problems. Obviously, we do not expect an applicant to ignore comments from the general public or community leaders as to the kinds of programing that they believe should be presented. We expect, however, that the applicant will guide the consultations so as to elicit community problems. In this regard, if a person offers program suggestions, further questioning by the applicant may elicit a more detailed picture of community problems. Suppose, for example, a community leader states, "We need more programs dealing with the activities of city government." Further questioning might reveal such problems as poor community-police relations, underutilization of certain welfare agencies while other similar agencies were overcrowded, or low utilization of a city adult vocational training program despite a high unemployment rate and a need for the skills offered by the training program.

48. Other parties suggest that community leaders should be consulted as to the kinds of programs best suited to meeting community problems. Since an applicant will have a broader overview of community problems due to the ascertainment process, is more aware of the kinds of broadcast matter available from others, is more aware of his own resources for producing programs and announcements, we see little need to consult community leaders as to the kinds of broadcast matter presented to meet community problems. Accordingly, the first three sentences of Answer 18 will remain as proposed.

49. Several parties commented that Answer 18 was unduly restrictive in that it seems to indicate that comments by a particular community leader as to areas not related to his particular field were not acceptable. To clarify this point, Westinghouse, for example, suggests that the answer should be revised to indicate that "individual leaders may have significant comments well beyond their particular field." We believe the point is well taken. While a leader in the educational field is a useful source of information on educational matters, and while he should be encouraged to comment about problems related to education, we did not intend to indicate that his comments as to areas outside the educational field should be discouraged or were not an appropriate part of the ascertainment process. Therefore, we have inserted the following sentence after the third sentence in the present answer: "However, it is also recognized that individual leaders may have significant comments outside their particular field, and the applicant should consider their comments with respect to all community problems."

50. The last sentence of the answer now states that the applicant has the responsibility to present broadcast matter "to provide information on community problems." As correctly noted by several parties, the broadcaster's responsibility encompasses more than providing information, although providing information may be a large part of that responsibility. Thus, it is appropriate to change the language to indicate that his responsibility is to present broadcast matter to "meet community problems." We use the word "meet" to include a responsibility to meet, aid in meeting, be responsive to, or stimulate the solution for community problems.

51. *Question and Answer 19 (20): The applicant who finds few community problems.* Several parties noted the omission of "members of the general public" from Question 19. The question will be revised to include that phrase. Since Question and Answer 19 are directed to the applicant in the process of preparing his application, and who has had limited success in eliciting information, Answer 19 will be expanded to point out some of the more common

practices that result in inadequate responses. Accordingly, Question and Answer 19 will be revised as follows:

Question: If, in consulting with community leaders and members of the general public, an applicant receives little information as to the existence of community problems, can he safely assume that only a few problems exist?

Answer: No. The assumption is not safe. The applicant should reexamine his efforts to determine whether his consultations have been designed to elicit sufficient information. Obviously, a brief or chance encounter will not provide adequate results. The person interviewed should be specifically advised of the purpose of the consultation. The applicant should note that many individuals, when consulting with broadcast applicants, either jump to the conclusion that the applicant is seeking programming preferences, or express community problems in terms of exposure or publicity for the particular group or groups with which they are affiliated. The applicant may properly note these comments, but should ask further questions designed to elicit more extensive responses as to community problems.

52. *Question and Answer 20 (21): Identification of community leaders consulted.* The purpose of the information required in Answer 20 is to enable us and others inspecting applications to be able to determine whether those community leaders consulted are representative, and to provide a means of verification if questions should arise. Thus, additional information as to the age of the community leader and the address of his particular organization are not required. In some circumstances, his home address may be necessary to clearly identify the leader, especially where the group he represents lacks a formal organization. Since we have recognized that there may be community leaders of groups that are not organizations in the sense that they have a formal structure, see Question and Answer 13(a), we will require identification by name, position and/or organization. Thus, John Jones, Executive Vice President, XYZ Corporation, would be an appropriate identification for a business leader. John Jones, 123 First Street, spokesman for welfare recipients, would be an appropriate identification for a leader of a group lacking a high degree of formal organization. His address is required because, in the city in question, the group he represents has no office as such, and there are several people with the same name living in the city. Therefore, Answer 20 is revised as follows:

Answer: By name, position, and/or organization of each. If further information is required to clearly identify a specific leader, it should be submitted.

53. *Question and Answer 21 (22): Attribution of comments to particular community leaders.* Several parties suggest that the comments as to community problems elicited from community leaders should be attributed to that leader. However, we believe that there are many instances where those consulted will speak more candidly if their comments are not attributed to them in a document open to public inspection. We, therefore, reject the suggested revision. The applicant is, of course, free to make such an attribution, as recognized by the first sentence of Answer 21. The choice of attributing specific comments to community leaders is a matter left to the applicant and the particular leader.

C. Information Received

54. *Question and Answer 22 (23): Listing of all ascertained community problems required.* Several parties inquired as to what constituted a "significant" problem, or suggested definitions for the word. However, other parties noted that the significance of a problem is really part of the applicant's evaluation, and should not be included in questions and answers dealing with the applicant's information-gathering process. Thus, we will revise Answer 22 to require that all community problems the applicant has ascertained be listed, with the exception of those that are clearly frivolous. Therefore, Answer 22 will be revised as follows:

Answer: All ascertained community problems should be listed, whether or not he proposes to treat them through his broadcast matter. An applicant need not, however, list comments as to community problems that are clearly frivolous.

D. The Application's Evaluation

55. *Question and Answer 23 (24): The applicant's evaluation.* The process of evaluation of community problems is the basis for the applicant's choice of broadcast matter to meet those problems. As such, the process is left to the licensee's discretion, with certain general exceptions, see questions and answers 24, 26, and 31. That discretion is implicit in questions and answers 23, 25, and 27. Answer 23 will be revised to incorporate the somewhat broader definition of "evaluation" that constitutes the first full sentence of Answer 28 of the proposed Primer as follows:

Answer: The applicant's evaluation is the process by which he determines the relative importance of the community problems he has ascertained, the timeliness of the various comments, and the extent to which he can present broadcast matter to meet the problems.

56. *Question and Answer 24 (25): inclusion of the evaluation in the application.* Answer 24 states that the applicant need not submit his evaluation with the application. The Mexican-American Committee and Bay Area TV opposed that position on the grounds that such information is, in their view, essential to an acurate evaluation of the application. However, it is not our desire to intrude upon the applicant's thought process, Sioux Empire Broadcasting Co., 16 FCC 2d 995, 5 RR 2d 961 (1969). Our review of his evaluation will be indirect; that is, by a review of the broadcast matter proposed. Dempsey & Koplovitz suggests that if a question exists as to the applicant's responsiveness to community problems, a letter of inquiry will be sent to the applicant as a matter of course to allow him an opportunity to respond. In processing applications we normally try to make one such inquiry prior to designation, if a hearing is required by other circumstances. But the exigencies of the processing lines are such that we do not guarantee such a letter. Therefore, Answer 24 will remain as it is, in that an applicant may be asked for an explanation where his broadcast matter does not appear sufficiently responsive to the community problems disclosed in his consultations. Of course, in applications where a hearing is not otherwise required, the applicant must make the required showing and he will be asked for an explanation if he fails to do so.

57. *Question and Answer 25 (26): What problems should be treated by the applicant.* The FCBA, the NAB and BEST all urge that Answer 25 be revised to indicate that in making an evaluation, the applicant may take into consideration the nature of its program format and composition of its audience. There was similar language in a prior draft of the Primer. That may well be a consideration, but our reason for deleting the language of the prior draft, and for rejecting the suggested language, is that it is too restrictive. It indicates to us and, apparently, to broadcasters, as evidenced by the comments that have been submitted, that a station need only meet problems directly related to the group or groups that comprise a large segment of its audience. The NAB suggests, for example, that a "rock" station, which has a predominantly young audience, "would be most effective in treating problems which are germane to that age group." In our view, the station's obligation is clearly greater than to that group. By way of illustration, suppose there is a city with three radio stations, each of which has determined the composition of its listening audience through market studies. One, a Spanish-language station, finds that a large part of its audience is relatively poor. The second is a "rock" station with a youthful audience. The last presents "middle-of-the-road" popular music and has a generally middle class audience. In consultations with community leaders and the general public, these stations have found that one of the city's welfare programs is grossly inadequate; that there is an eleemosynary organization that supplements the city's program, but which would not totally alleviate the problem even if it were working at full capacity; that neither the city program or the eleemosynary organization's program are at full capacity because many of those eligible for the services offered are either misinformed about, or unware of, the programs; and that the eleemosynary organization would be better able to implement its program if it had more money and volunteer workers.

58. Under the rationale of the NAB, since welfare programs are "germane" to the poor, two of the stations in the city might ignore or only minimally treat these problems for the reason that their audiences have relatively few poor people. That is an undesirable result. We do not accept the thesis that all those who might be eligible for the welfare programs do not listen to popular, "rock"

or classical music. Moreover, the inadequacy of the city's welfare program might well be a topic of news, discussion, and editorials on all three stations. However, we believe the applicant's knowledge of his audience may properly be used in the following manner. The station with an audience that has a large proportion of poor people might emphasize the services available, the criteria for eligibility, and locations where those who are eligible should call or go to avail themselves of the services. The "rock" station might emphasize the need for volunteers while the popular station might emphasize the need for volunteers and for contributions to the program sponsored by the eleemosynary organization. These are offered only as possible ways of meeting a community problem. Innovative broadcasters would, no doubt, have different points of emphasis or other means of meeting the problems. While we believe that this use of the applicant's knowledge of the characteristics of his audience is implicit in Answer 25, the matter is of sufficient importance to be made explicit by appropriate revisions in the answer.

59. Answer 25 does rest on the applicant's good faith determination, which, of course, gives him considerable discretion. Thus, he may choose to meet as many problems as he believes he can. He may be selective, giving more extensive treatment to those problems he believes most important or to nascent problems, which if not met now are likely to become critical. Or he may recognize that another station in the community traditionally presents extensive broadcast matter to meet a particular problem. If it is an important problem, and if the stations' respective audiences differ only slightly in their composition, the broadcaster may decide to present some broadcast matter to meet that problem, but less than he would ordinarily due to the efforts of the other station. In view of this discretion, we believe unwarranted the implication read into answers 25 through 27 by some broadcasters, that a station must program to meet most or all community problems. He may do so if he wishes. Other programing policies are within his discretion. There are, of course, broad limitations, so that his discretion may be subject to review and inquiries may be made by the Commission, see answers 24 and 26. To be consistent, the phrase "to deal with all community problems" appearing in Question 25 will be changed to "to meet all community problems." Therefore, Question and Answer 25 will be changed to read:

Question: Must an applicant plan broadcast matter to meet all community problems disclosed by his consultations?

Answer: Not necessarily. However, he is expected to determine in good faith which of such problems merit treatment by the station. In determining what kind of broadcast matter should be presented to meet those problems, the applicant may consider his program format and the composition of his audience, but bearing in mind that many problems affect and are pertinent to diverse groups of people.

60. *Question and Answer 26 (27): Questions raised as to the applicant proposing to treat only one or two problems.* Several parties commenting on Question 26 believed that "several" community problems indicated too restricted a range and that "many", "numerous", or "a number of" community problems reflect more accurately the condition of our communities today. We do not believe the distinctions to be that important, but will use the latter phrase. What is important, no matter how one describes the number of problems extant in the particular community, is that there comes a point where the applicant proposes to meet so few community problems that his proposal is prima facie inconsistent with the public interest. At that point, the Commission and, perhaps, other parties will raise questions about the applicant's proposal. Most comments raised in conjunction with Answer 26 have been disposed of in our discussion of prior questions. Question and Answer 26 will be revised, primarily editorially, to conform to that prior discussion, as follows:

Question: If an applicant lists a number of community problems but in his evaluation determines that he will present broadcast matter to meet only one or two of them, would the proposal be defective?

Answer: A prima facie question would arise as to how the proposal would serve the public interest, and the applicant would have the burden of establishing the validity of his proposal.

61. *Question and Answer 27 (28): Proportioning broadcast matter in relation to the number of people affected not required.* NBC comments that the proposed wording of the last sentence of Answer 27 indicates that "life or death" is an absolute criterion so that the applicant has no discretion. NBC's concern is that a licensee who gives a higher priority to the problem of pollution, which affects all people, than to a traffic light problem, which affects a very small number of people, but conceivably in a life-or-death manner, might be subject to challenge. In our view, an applicant who followed the priority suggested by NBC would be well within his discretion. However, we believe the situation referred to in Answer 27 provides useful guidance to applicants and should be retained. We have revised the answer to indicate that it is only an example and is not a limit on the licensee's discretion. Since the first sentence of Answer 27 repeats the definition of the "applicant's evaluation" that now appears in Answer 23, it will not be repeated here. Therefore, Answer 27 will be revised as follows:

Answer: No. For example, the applicant, in his evaluation, (see Question and Answer 23) might determine that a problem concerning a beautification program affecting all the people would not have the relative importance and immediacy of a problem relating to inadequate hospital facilities affecting only a small percentage of the community, but in a life-or-death way.

E. Broadcast Matter Proposed to Meet the Problems as Evaluated

62. *Question and Answer 28 (29).* "Broadcast matter" was defined in Answer 28 as programs and public service announcements. The FCBA notes that public service announcements, by definition, are announcements for which no charge is made.[11] The FCBA further notes that a sponsored program is a recognized vehicle for meeting community problems. The FCBA and others suggest that a sponsored and unsponsored announcement can meet community problems with equal efficacy. The NAB states that, "Commercial sponsors are responsible for airing of a variety of spot announcements covering such subjects as employment of the handicapped, safe driving, fire prevention, minority job training, air and water pollution, narcotics information, etc." We believe that the point is well taken, and Answer 28 will be revised to read. "Programs and announcements." Our experience indicates, however, that most "spots" that are designed to meet community problems are public service announcements. Sponsored announcements that meet community problems are relatively rare,[12] and applicants proposing to meet community problems through extensive sponsored announcements are reminded that the standard by which they are judged is the public interest, not their private economic interests.

63. *Question and Answer 29 (30): Linking broadcast matter with problems.* Paragraph 1(c) of section IV–A and IV–B asks for "typical and illustrative programs or program series" the applicant plans to broadcast to meet community problems. Appendix B to the application forms indicates that the applicant's program service (broadcast matter) is to be related to the community problems. Thus, Question and Answer 29 indicate that the applicant must show what broadcast matter is proposed to meet what problems. In order to determine the relationship between broadcast matter and problems, as required by Appendix B of the application forms, we must have more than general statements. Therefore, Answer 30 requires the applicant to state the title, time segment, duration, and frequency of broadcast of the proposed broadcast matter. Several broadcasters commented that the required information was too inflexible, and encouraged adherence to schedules and formats which became outdated due to changes in the community and its problems. When speaking of proposed programing, the requirements of Answer 29 appear too precise, especially in view of the length of the license period. We believe it appropriate, therefore, to indicate that changes in broadcast matter throughout the license period may be warranted.

64. The comments on Question and Answer 29 were usually combined with proposed Question and Answer 33. The latter discusses specific examples of overly broad descriptions which sometimes appear in applications, that are inadequate. We believe it is appropriate to combine those examples as a part of Answer 29,

[11] See definition 13, section IV–A and IV–B of the application forms.

[12] Public safety announcements sponsored by insurance companies provide one of the more common examples.

and eliminate proposed Question and Answer 33. Accordingly, Question and Answer 29 will be revised as follows:

Question: In the application, must there be a showing as to what broadcast matter the applicant is proposing to meet what problem?

Answer: Yes. See Public Notice of August 22, 1968, FCC 68-847, 13 RR 2d 1303. The applicant should give the description, and anticipated time segment, duration and frequency of broadcast of the program or program series, and the community problem or problems that are to be treated by it. One appropriate way would be to list the broadcast matter and, after it, the community problem or problems the broadcast matter is designed to meet. Statements such as "programs will be broadcast from time to time to meet community problems," or "news, talk and discussion programs will be used to meet community problems," are clearly insufficient. Applicants should note that they are expected make a postive, diligent and continuing effort to meet community problems. Therefore, they are expected to modify their broadcast matter if warranted in light of changed community problems. If announcements are proposed, they should be identified with the community problem or problems they are designed to meet.

65. *Question and Answer 30(31): Questions raised as to applicants proposing to meet community problems exclusively through announcements.* It has been previously noted that a licensee may meet community problems by announcements as well as programs. However, Answer 30 indicates that, in our judgment, sole reliance on announcements raises a question as to the adequacy of the proposal. Our judgment is founded on the recognition that our society is confronted with many complex problems that cannot be met by the brief comment afforded by announcements. Therefore, the broadcaster's stewardship of the frequency includes programs, as a general rule. Accordingly, we stated in Answer 30 that before we make a public interest finding, we will place on the applicant proposing only announcements the burden of establishing the adequacy of his proposal. Bonneville is concerned that Answer 30 may raise First Amendment questions since it "directs the licensee how to program his station." We disagree because the Commission's policies do not dictate the content of programs or announcements. The courts have upheld our right to look at program proposals and to make determinations as to how those proposals serve the public interest, Henry *et al.* (Suburban Broadcasters) v. FCC, 302 F. 2d 191, 23 RR 2016 (1962), cert. denied, 371 U.S. 821, 83 S. Ct. 37 (1962). See too, National Broadcasting Company v. United States, 319 U.S. 190, 63 S. Ct. 997 (1943). We believe the policy expressed in Answer 30 is well within constitutional limitations, as defined by those cases.

67. NBC comments that Answer 30 does not make it clear that some community problems may be best handled by announcements only. Since the answer only refers to those who place sole reliance on announcements, considerable discretion is implicit, and we believe no revisions are required. Rev. Stockford suggests that a separate policy statement should be submitted with the application as to the applicant's policies on the selection, placement and utilization of announcements, and that these policies should be made part of the license. However, we are concerned here with the use of announcements as they are used as a part of the applicant's general policies on presenting broadcast matter to meet community problems. We do not believe that it is necessary to provide separate policy statements on programs and announcements, since they are closely related. These policies are part of the application, which is available for inspection at each station, so there is no need to state those policies on the actual license. To keep the wording consistent, minor editorial changes will be made in Question and Answer 30.

67. *Question and Answer 31 (32): Amount of time allotted to meeting community problems.* We are concerned here with the proportion of time that must be devoted to meeting community problems. The very general guidelines provided by Answer 31 are indicative of the difficulties in defining the applicant's obligation in this area. However, we are now considering some more definite guidelines. For the present, general guidlines must suffice. We will afford applicants considerable discretion. That discretion is, of course, subject to review if it appears to be inconsistent with the public interest. A previous draft of the Primer made such review explicit. Since we have indicated elsewhere that the applicant's discretion can be reviewed (see questions and answers 24, 26, and 31) in situations where the proposals do not appear consistent with the public interest, we did not believe it necessary to restate that point in Answer 31. However, BEST believes that the point should be made explicit to make clear the Commission's concern that an applicant provide a "substantial proportion" of broadcast time toward meeting community problems. We will, therefore, revise Answer 31 to emphasize that the applicant's judgment, while afforded considerable latitude, may be subject to Commission review, if appropriate. NBC suggests that the standard should be "the good faith judgment of the applicant," and that the only questions that can be raised should go to the applicant's good faith, not his judgment. Such a course of action leads us to an untenable result. It is quite conceivable that a programing proposal appears on its face to be inconsistent with the public interest. We do not believe it appropriate to drop any inquiry as to that proposal on the showing that it was reached in good faith. The public interest demands more. Answer 31 will be revised to read as follows:

Answer: There is no single answer for all stations. The time required to deal with community problems can vary from community to community and from time to time within a community. Initially, this is a matter that falls within the discretion of the applicant. However, where the amount of broadcast matter proposed appears patently insufficient to meet significantly the community problems disclosed by the applicant's consultations, he will be asked for an explanation by letter of inquiry by the Commission.

68. *Question and Answer 32 (34): Use of station editorials.* We have previously indicated that the applicant's obligation is greater than providing information on community problems. Therefore, in accord with the wording of previous questions and answers. Question 32 will be reworded to use the phrase "to meet community problems," rather than "discuss and present information on community problems." BEST and Georgetown both request that it be made clear that editorials cannot be used exclusively to meet community problems. In view of our position, set forth in paragraph 65, that, absent a special showing, an applicant's obligation includes programs to meet community problems, it is clear that sole reliance on editorials, which are typically brief, would be unacceptable. Therefore, Question 32 will be revised as follows:

Question: Can station editorials be used as a part of a licensee's efforts to meet community problems?

69. Question and Answer 33 of the proposed Primer have been incorporated and discussed in Answer 29 of the revised Primer.

70. *Question and Answer 33 (35): Use of news programs.* Answer 33 makes explicit that news programs may, in part, be used to meet community problems. This position follows from the definition of a news program: "News programs (N) include reports dealing with current, local, national, and international events, including weather and stock market reports; and when an integral part of a news program, commentary, analysis and sports." (Emphasis supplied).[13] A report of facts, in a general way, aids in understanding problems, but it is clear that news programs encompass more than reporting facts. Westinghouse believes that this raises problems for stations proposing an all-news format, apparently on the basis that "commentary (and) analysis," as "an integral part of a news" would all be logged as news. Such a station would show, it is claimed, no public affairs programing. This appears to be more a question of logging criteria than of the validity of Answer 33. Discernable segments of an all-news format that qualify as public affairs programing[14] may be so logged. Other than minor editorial changes, we believe Answer 33 should stand as it is.

71. *Question and Answer 34 (36): Specialized format stations.* Here it is made clear that the applicant's choice of format does not change his obligation to

[13] Instruction 11(c) of section IV-A and IV-B of the application forms.

[14] See instruction 11(d) of section IV-A and IV-B of the application forms.

meet community problems. Our discussion in paragraphs 57 and 58, in conjunction with Question and Answer 25, as to how an applicant may wish to emphasize certain aspects of a particular problem, is equally pertinent here. The Question and Answer will be revised to reflect wording previously discussed, as follows:

Question: If an applicant proposes a specialized format (all news, rock and roll, religious, etc.), must it present broadcast matter to meet community problems?

Answer: Yes. The broadcast matter can be fitted into the format of the station.

72. *Question and Answer 35 (37): Relevance of nonbroadcast activities.* Westinghouse believes that Answer 35 discourages licensees from taking steps in response to community problems, other than presenting broadcast matter. In our view, the answer does not have this implication. Certainly, it is encouraging to see broadcasters engaged in such activities, both for the benefits to the community which result and for the insight gained as to community problems by the broadcaster. Nevertheless, we believe that however commendable a licensee's nonbroadcast activities may be, our public interest finding with respect to the use of the frequency must rest upon how the broadcast matter presented meets community problems. We believe this is axiomatic. The matter is raised to counter a contrary impression on the part of a few broadcasters. To bring Question 35 into conformity with the wording of previous material, the phrase "to meet" will be substituted for "in dealing with."

73. *Question and Answer 36 (38): Time of presentation of broadcast matter.* Answer 36 reflects our belief that given the diversity of stations, markets, and problems, the time that announcements and programs are to be presented is best left to the applicant with general limitation that it should be presented at a time when it could reasonably be expected to be effective. That limitation precludes the possibility, suggested by some parties, that the applicant would be free to present all the broadcast matter that is designed to meet community problems from 2 to 4 a.m. Many comments suggested that certain minimum criteria should be established for the presentation of public service programing in prime time. We believe such a requirement would require a rule-making proceeding. In any event, we do not have sufficient information as to the effect of such a requirement before us. In accordance with previous discussion, "meeting" will be substituted for the phrase "dealing with" in Question 36.

74. There are several matters that have not been discussed in conjunction with any specific question. Since this is an inquiry concerning clarification of Commission policies, and not a rule-making proceeding, we have not discussed those comments looking toward the revision of specific rules. For example, several parties suggested that sections 73.30, 73.230, and 73.630 of the rules should be amended so that only one-third of the stations in a particular community would come up for renewal each year. That suggestion, which certainly has merit, can not be acted upon in this Inquiry. Other suggestions were directed toward revisions in the application forms, which we also believe are beyond the scope of this Inquiry. And finally, some comments were directed toward major changes in Commission policy. For example, it was suggested that the Commission establish certain minimum criteria as to the presentation of public service programing during prime time, which is contrary to our present policy as expressed in Question and Answer 36. Since the purpose of the Inquiry has been to provide clarification and guidelines as to existing policies, and since we are not convinced that such a policy change is appropriate, we have not discussed this and other suggested changes in programing policies.

75. Other parties have suggested additional questions. These have been rejected mostly because they do not reflect Commission policy, or because the matters raised are treated by the existing questions. Thus, for example, separate questions as to ascertaining the problems of children are not warranted, since an applicant would ordinarily consult adults responsible for children's care and education.

76. *Changes in program formats; the recent decision in The Citizens Committee v. FCC.* As should be clear from our discussion of the various questions and answers, the Primer emphasizes community problems and needs. It is only secondarily concerned with the preferences of the people in the community or service area with respect to program formats or the type of entertainment programing they would like to receive. Our view has been that the station's program format is a matter best left to the discretion of the licensee or applicant, since as a matter of public acceptance and of economic necessity he will tend to program to meet the preferences of his area and fill whatever void is left by the programing of other stations.[15] Therefore, we have excluded a question recommended by BEST relating to the showing that must be made in cases where a station proposes to change its format. However, a recent decision of the U.S. Court of Appeals (D.C.) in The Citizens Committee, etc. v. FCC (Case No. 23,515, October 30, 1970) necessitates a re-examination of this approach. There, the Court reversed our action granting consent to transfer of control of the licensee of an AM–FM combination in Atlanta, where the transferee would abandon, at least in part, the station's present classical music format and no other Atlanta station presents similar material. A hearing was held to be required in the circumstance.

77. The Commission has not completed its review of this decision and its implications, to determine what is required under it in terms of the Commission's obligations in passing on various types of applications. Therefore, and since the Primer is essentially directed at a different subject and it is desirable to get it out as soon as possible, we are not here discussing this matter at length. Suffice it to say that any application involving a substantial change in program format—including assignment and transfer applications (where this type of question has usually arisen) and also applications for renewal or major changes in facilities if they involve a basic programing change—will be scrutinized in light of this decision; and applicants should be prepared to support their proposals to change formats in light of the needs and tastes of the community and the types of programing available from other stations.[16] A careful reading of this decision is recommended.

78. As amended, we believe the attached Primer serves substantially to clarify and provide guidelines for our programing policies. As with our other Primers, revisions will be made from time to time where appropriate or necessary.

79. Under § 1.522 of the rules, applicants who believe their showing is deficient under the guidelines of this Primer, may amend their application as a matter of right prior to designation for hearing. Applicants in pending hearing cases may amend their applications if deemed necessary in view of our action here, within ninety (90) days of the release of the report and order, or such further time as the presiding tribunal may allow for cause shown.

80. In view of the above, the attached Primer is adopted.

Adopted: February 18, 1971.

Released: February 23, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[17]

[SEAL] BEN F. WAPLE,
Secretary.

APPENDIX A—PARTIES FILING COMMENTS

Action for Children's Television.
Alk and Lubic.
American Broadcasting Co. (ABC).
Association of Afro-American Television Producers.
Badger Broadcasting Co., Inc. et al. (Badger Broadcasting):

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[15] The Commission's abstaining from review in this area relates only to types and forms of entertainment programing, or changes therein. It does not include matters such as an increase in commercial matter or decrease in the amount of nonentertainment programing, both of which are subjects of review and concern, and have been for some time.

[16] The Court's holding related only to assignment and transfer applications. As to changes in format not involving application, the court noted that these do not require Commission permission; but that the licensee making such changes "would have done so knowing that the change would have been a factor to be weighed when its application for renewal was filed." (The Citizens Committee, etc., v. FCC, slip opinion, p. 16.)

[17] Commissioner Johnson concurring in the result.

Badger Broadcasting Co., Inc.
Fetzer Broadcasting Co.
560 Broadcasting Corp.
Kansas Association of Radio Broadcasters.
Quincy Broadcasting Co.
Quincy Newspapers, Inc.
RadiOhio, Inc.
Rock Island Broadcasting Co.
Stauffer Publications, Inc.
WBNS–TV, Inc.
Thomas F. Baldwin and Stuart H. Surlin.
Black Efforts for Soul in Television (BEST).
Bonneville International Corp. (Bonneville).
The Church Federation of Greater Chicago.
Lauren A. Colby.
Columbia Broadcast System, Inc. (CBS).
Committee to Improve Bay Area Television (Bay Area TV).
Cosmos Broadcasting Corp.
Daly & Joyce.
Jon Paul Davidson.
Dempsey & Koplovitz.
Department of Justice, Community Relations Service.
Empire Broadcasting Corp.
Federal Communications Bar Association (FCBA).
Franklin Broadcasting Co.
Milton Friedman et al.:
Milton Friedman.
Harry Kalvin, Jr.
Maurice Rosenfield.
Radio Station WAIT.
Georgetown University Law Center Task Force on the Mass Media (Georgetown).
Golden West Broadcasters.
Hampton Roads Broadcasting Corp.
L. L. Hilliard.
KMSO–TV, Inc.
McClatchy Newspapers.
John J. McGonagle, Jr.
Media Statistics, Inc.
Metromedia, Inc. (Metromedia).
National Association of Broadcasters, Inc. (NAB).
National Broadcasting Co. (NBC).
National Citizens Committee For Broadcasting (Citizens Committee).
National Mexican-American Anti-Defamation Committee, Inc. (Mexican-American Committee).
National Research Center, Inc.
Office of Communication of the United Church of Christ.
Oregon Association of Broadcasters.
Pierson, Ball & Dowd.
Robert D. Raiford.
Red Lion Broadcasting Co., Inc.
Herschel Shosteck Associates.
William H. Siemering.
Donald Stockton et al:
Donald Stockton.
Sanford E. Markey.
J. Jerome Lackamp.
Storer Broadcasting Co.
Tri-State Broadcasting Co., Inc.
Turner Broadcasting Corp.
William M. Weir et al:
William M. Weir.
Dee W. Norton.
Alan Spitzer.
Sue Rosner.
Peter Roberts.
John Spaulding.
Dorothea Dilkes.
Welch & Morgan.
Westinghouse Broadcasting Co., Inc. (Westinghouse).
What the Bible Says, Inc. (WTBSI).

APPENDIX B—FEDERAL COMMUNICATIONS COMMISSION PRIMER ON PART I SECTION IV–A AND IV–B OF APPLICATIONS FORMS CONCERNING ASCERTAINMENT OF COMMUNITY PROBLEMS AND BROADCAST MATTER TO DEAL WITH THOSE PROBLEMS

A. General.

1. Question: With what applications does this Primer apply in answering part I, section IV (A or B) of the application forms?

Answer: With applications for:

a. Construction permit for new broadcast stations;

b. Construction permit for a change in authorized facilities when the station's proposed field intensity contour (Grade B for television, 1 mV/m for FM, or 0.5 mV/m for AM) encompasses a new area that is equal to or greater than 50 percent of the area within the authorized field intensity contours.

c. Construction permit or modification of license to change station location;

d. Construction permit for satellite television station, including a 100 percent satellite;

e. The assignee's or transferee's portion of applications for assignment of broadcast license or transfer of control, except in pro forma cases where Form 316 is appropriate.

Educational organizations filing applications for educational noncommercial stations are exempt from the provisions of this Primer.

2. Question: If section IV (A or B) has been recently submitted, must an applicant conduct a new ascertainment of community problems and submit a new section IV?

Answer: Needless duplication of effort will not be required. Prior filings within the year previous to the tender of the present application will generally be acceptable, where they were filed by the same applicant, for the same station or for another station in the same community and there are no significant coverage differences involved. Parties relying on previous filings must specifically refer to the application relied on and state that in their judgment there has been no change since the earlier filing. Proposed assignors and transferors of control are not required to file part I even where they must file other parts of section IV.

3. Question: What is the general purpose of part I, section IV–A or IV–B?

Answer: To show what the applicant has done to ascertain the problems, needs and interests of the residents of his community of license and other areas he undertakes to serve (See Question 6, below), and what broadcast matter he proposes to meet those problems, needs and interests, as evaluated. The word "problems" will be used subsequently in this Primer as a short form of the phrase "problems, needs and interests." The phrase "to meet community problems" will be used to include the obligation to meet, aid in meeting, be responsive to, or stimulate the solution for community problems.

4. Question: How should ascertainment of community problems be made?

Answer: By consultations with leaders of the significant groups in the community to be served and surrounding areas the applicant has undertaken to serve, and by consultations with members of the general public. In order to know what significant groups are found in a particular community, its composition must be determined, see Question and Answer 9. The word "group" as used here is broad enough to include population segments, such as racial and ethnic groups, and informal groups, as well as groups with formal organization.

5. Question: Can an applicant rely upon long-time residency in or familiarity with, the area to be served instead of making a showing that he has ascertained community problems?

Answer: No. Such an ascertainment is mandatory.

6. Question: Is an applicant expected to ascertain community problems outside the community of license?

Answer: Yes. Of course, an applicant's principal obligation is to ascertain the problems of his community of license. But he should also ascertain the problems of the other communities that he undertakes to serve, as set forth in his response to Question 1(A) (2) of section IV–A or IV–B. Applicants for stations licensed to more than one city, or for channels assigned to two or more cities, or proposed transferees or assignees of stations which have obtained waiver of the station identification rules to permit secondary identification with additional cities, are expected to ascertain problems in each of the cities. If an applicant chooses not to serve a major community that falls within his service contours a showing must be submitted explaining why. However, no major city more than 75 miles from the transmitter site need be included in the applicant's ascertainment, even if the station's contours exceed that distance.

7. Question: Must the ascertainment of community problems for the other areas the applicant undertakes to serve be as extensive as for the city of license?

Answer: No. Normally, consultations with community leaders who can be expected to have a broad overview of community problems would be sufficient to ascertain community problems.

8. Question: Should an applicant for a major change in facilities (see Answer 1(b), above) make a new ascertainment of community problems for the entire service area or just the additional area to be served?

Answer: Only the additional area to be served need be subjected to a new ascertainment of community problems. Only communities or areas covered by Question and Answer 6 need be ascertained, to the extent indicated in Answer 7.

9. Question: How does an applicant determine the composition of his city of license?

Answer: The applicant may use any method he chooses, but guesswork or estimates based upon alleged area familiarity are inadequate. Current data from the U.S. Census Bureau, Chamber of Commerce and other reliable studies or reports are acceptable. The applicant must submit such data as is necessary to indicate the minority, racial, or ethnic breakdown of the community, its economic activities, governmental activities, public service organizations, and any other factors or activities that make the particular community distinctive.

10. Question: If the applicant shows consultations with leaders of groups and organizations that represent various economic, social, political, cultural and other elements of the community, such as government, education, religion, agriculture, business, labor, the professions, racial and/or ethnic groups, and eleemosynary organizations, is the applicant still required to submit a showing in support of its determination of the composition of the community?

Answer: Yes. The purpose of requiring a determination of the community is to inform the applicant and the Commission what groups comprise the community. The applicant must use that information to select those who are to be consulted as representatives of those groups. That determination may be challenged on a showing, including supporting data, that a significant group has been omitted. The "significance" of a group may rest on several criteria, including its size, its influence, or its lack of influence in the community.

B. Consultations with Community Leaders and Members of the General Public.

11(a). Question: Who should conduct consultations with community leaders?

Answer: Principals or management-level employees. In the case of newly formed applicants who have not hired a full staff and are applying for new stations, or for transfer or assignment of an authorization, principals, management-level employees, or prospective management-level employees, must be used to consult with community leaders.

11(b). Question: Who should consult with members of the general public?

Answer: Principals or employees. In the case of newly formed applicants who have not hired a full staff and are applying for new stations, or for transfer or assignment of an authorization, principals, employees or prospective employees may conduct consultations. If consultations are conducted by employees who are below the management level, the consultation process must be supervised by principals, management-level employees, or prospective management-level employees. In addition, the applicant may choose to use a professional research or survey service to conduct consultations with members of the general public.

12. Question: To what extent may a professional research or survey service be used in the ascertainment process?

Answer: A professional service would not establish a dialogue between decision-making personnel in the applicant and community leaders. Therefore, such a service may not be used to consult community leaders. However, a professional service, as indicated in Answer 11(b), may be used to conduct consultations with the general public. A professional service may also be used to provide the applicant with background data, including information as to the composition of the city of license. The use of a professional research or survey service is not required to meet Commission standards as to ascertaining community problems. The applicant will be responsible for the reliability of such a service.

13(a). Question: With what community leaders should consultations be held?

Answer: The applicant has already determined the composition of the community, and should select for consultations those community leaders that reflect that composition. Groups with the greatest problems may be the least organized and have the fewest recognized spokesmen. Therefore, additional efforts may be necessary to identify their leaders so as to better establish a dialogue with such groups and better ascertain their problems.

13(b). Question: With what members of the general public should consultations be held?

Answer: A random sample of members of the general public should be consulted. The consultations should be designed to further ascertain community problems which may not have been revealed by consultations with community leaders. In addition to a random sample, if the applicant has reason to believe that further consultations with a particular group may reveal further problems or may elicit viewpoints that will give him further insight into its problems, he is encouraged to consult with additional members of that group.

14. Question: How many should be consulted?

Answer: No set number or formula has been adopted. Community leaders from each significant group must be consulted. A sufficient number of members of the general public to assure a generally random sample must also be consulted. The number of consultations will vary, of course, with the size of the city in question and the number of distinct groups or organizations. No formula has been adopted as to the number of consultations in the city of license compared to other communities falling within the station's coverage contours. Applicants for stations in relatively small communities that are near larger communities are reminded that an ascertainment of community problems primarily in the larger community raises a question as to whether the station will realistically serve the smaller city, or intends to abandon its obligation to the smaller city.

15. Question: When should consultations be held?

Answer: In preparing applications for major changes in the facilities of operating stations, a complete new ascertainment must be made within six (6) months prior to filing the application. Applicants for a new facility, or the party filing the assignee or transferee portion of an application for assignment or transfer, are also required to hold consultations within six (6) months prior to filing an appropriate application.

16. Question: Is a showing on the ascertainment of community problems defective if leaders of one of the groups that comprise the community, as disclosed by the applicant's study, are not consulted?

Answer: The omission of consultations with leaders of a significant group would make the applicant's showing defective, since those consulted would not reflect the composition of the community.

17. Question: In consultations to ascertain community problems, may a preprinted form or questionnaire be used?

Answer: Yes. A questionnaire may serve as a useful guide for consultations with community leaders, but cannot be used in lieu of personal consultations. Members of the general public may be asked to fill out a questionnaire to be collected by the applicant. If the applicant uses a form or questionnaire, a copy should be submitted with the application.

18. Question: In consulting with community leaders to ascertain community problems, should an applicant also elicit their opinion on what programs the applicant should broadcast?

Answer: It is not the purpose of the consultations to elicit program suggestions. (See Question and Answer 3.) Rather, it is to ascertain what the person consulted believes to be the problems of the community from the standpoint of a leader of the particular group or organization. Thus, a leader in the educational field would be a useful source of information on educational matters; a labor leader, on labor matters; and a business leader on business matters. However, it is also recognized that individual leaders may have significant comments outside their respective fields, and the applicant should consider their comments with respect to all community problems. The applicant has the responsibility for determining what broadcast matter should be presented to meet the ascertained community problems as he has evaluated them.

19. Question: If, in consulting with community leaders and members of the general public, an applicant receives little information as to the existence of community problems, can he safely assume that only a few problems actually exist?

Answer: No. The assumption is not safe. The applicant should reexamine his efforts to determine whether his consultations have been designed to elicit sufficient information. Obviously, a brief or chance encounter will not provide adequate results. The person interviewed should be specifically advised of the purpose of the consultation. The applicant should note that many individuals, when consulting with a broadcast applicant, either jump to the conclusion that the applicant is seeking programing preferences, or express community problems in terms of exposure or publicity for the particular group or groups with which they are affiliated. The applicant may properly note these comments, but should ask further questions designed to elicit more extensive responses as to community problems.

20. Question: In responding to part I of section IV–A or IV–B how should the applicant identify the community leaders consulted?

Answer: By name, position, and/or organization of each. If further information is required to clearly identify a specific leader, it should be submitted.

21. Question: Should the information elicited from a community leader, from the standpoint of the group he represents, be set forth after his name?

Answer: It is not required, but the applicant may find it desirable. The information can be set forth in a general list of community problems.

C. Information Received.

22. Question: Must all community problems which were revealed by the consultations be included in the applicant's showing?

Answer: All ascertained community problems should be listed, whether or not he proposes to treat them through his broadcast matter. An applicant need not, however, list comments as to community problems that are clearly frivolous.

D. Applicant's Evaluation.

23. Question: What is meant by an "applicant's evaluation" of information received as to community problems?

Answer: The applicant's evaluation is the process by which he determines the relative importance of the community problems he has ascertained, the timeliness of the various comments, and the extent to which he can present broadcast matter to meet the problems.

24. Question: Is the applicant's evaluation to be included in his application?

Answer: It is not required. Where the applicant's broadcast matter does not appear to be sufficiently responsive to the community problems disclosed by his consultations, the applicant may be asked for an explanation by letter of inquiry from the Commission. See Questions and Answers 25 and 26.

25. Question: Must an applicant plan broadcast matter to meet all community problems disclosed by his consultations?

Answer: Not necessarily. However, he is expected to determine in good faith which of such problems merit treatment by the station. In determining what kind of broadcast matter should be presented to meet those problems, the applicant may consider his program format and the composition of his audience, but bearing in mind that many problems affect and are pertinent to diverse groups of people.

26. Question: If an applicant lists a number of community problems but in his evaluation determines that he will present broadcast matter to meet only one or two of them, would the proposal be defective?

Answer: A prima facie question would arise as to how the proposal would serve the public interest, and the applicant would have the burden of establishing the validity of his proposal.

27. Question: As a result of the evaluation process, is an applicant expected to propose broadcast matter to meet community problems in proportion to the number of people involved in the problem?

Answer: No. For example, the applicant, in his evaluation (see Question and Answer 23) might determine that a problem concerning a beautification program affecting all the people would not have the relative importance and immediacy of a problem relating to inadequate hospital facilities affecting only a small percentage of the community, but in a life-or-death way.

E. *Broadcast Matter To Meet the Problems as Evaluated.*

28. Question: What is meant by "broadcast matter"?

Answer: Programs and announcements.

29. Question: In the application, must there be a showing as to what broadcast matter the applicant is proposing to what problem?

Answer: Yes. See Public Notice of August 22, 1968, FCC 68-847, 13 RR 2d 1303. The applicant should give the description, and anticipated time segment, duration and frequency of broadcast of the program or program series, and the community problem or problems which are to be treated by it. One appropriate way would be to list the broadcast matter and, after it, the particular problem or problems the broadcast matter is designed to meet. Statements such as "programs will be broadcast from time to time to meet community problems," or "news, talk and discussion programs will be used to meet community problems," are clearly insufficient. Applicants should note that they are expected to make a positive, diligent and continuing effort to meet community problems. Therefore, they are expected to modify their broadcast matter if warranted in light of changed community problems. If announcements are proposed, they should be identified with the community problem or problems they are designed to meet.

30. Question: Can an applicant specify only announcements and no programs to meet community problems?

Answer: A proposal to present announcements only would raise a question as to the adequacy of the proposal. The applicant would have the burden of establishing that announcements would be the most effective method for meeting the community problems he proposes to meet. If the burden is not met by the showing in the application, it will be subject to further inquiry.

31. Question: What is meant by devoting a "significant proportion" of a station's programing to meeting community problems? [City of Camden 18 FCC 2d 412, 421, 16 RR 2d 555, 568 (1969)]

Answer: There is no single answer for all stations. The time required to deal with community problems can vary from community to community and from time to time within a community. Initially, this is a matter that falls within the discretion of the applicant. However, where the amount of broadcast matter proposed to meet community problems appears patently insufficient to meet significantly the community problems disclosed by the applicant's consultations, he will be asked for an explanation by letter of inquiry from the Commission.

32. Question: Can station editorials be used as a part of a licensee's efforts to meet community problems?

Answer: Yes.

33. Question: Can news programing be considered as programing to meet community problems?

Answer: Yes. However, they cannot be relied upon exclusively. Most broadcast stations, of course, carry news programs regardless of community problems. News programs are usually considered by the people to be a factual report of events and matters—to keep the public informed—and, therefore, are not designed primarily to meet community problems.

34. Question: If an applicant proposes a specialized format (all news, rock and roll, religious, etc.), must it present broadcast matter to meet community problems?

Answer: Yes. The broadcast matter can be fitted into the format of the station.

35. Question: May an applicant rely upon activities other than programing to meet community problems?

Answer: No. Many broadcasters do participate personally in civic activities, but the Commision's concern must be with the licensee's stewardship of his broadcast time in serving the public interest.

36. Question: Are there any requirements as to when broadcast matter meeting community problems should be presented?

Answer: The applicant is expected to schedule the time of presentation on a good faith judgment as to when it could reasonably be expected to be effective.

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