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List of CFR Parts Affected

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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.

Presidential Documents

Title 3—The President

PROCLAMATION 4040

Proclamation Revoking Proclamation No. 4031 of February 23, 1971

By the President of the United States of America

A Proclamation

WHEREAS, the provisions of the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494, as amended) and the provisions of all other acts, Executive Orders, proclamations, rules, regulations or other directives providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act, were suspended until otherwise provided by Proclamation No. 4031 [1] of February 23, 1971; and

WHEREAS, I have today issued Executive Order No. 11588;

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, do by this Proclamation revoke Proclamation No. 4031 of February 23, 1971, as to all construction contracts for which solicitations for bids or proposals are issued after the date of this Proclamation, whether direct federal construction or federally assisted construction subject to the previous Proclamation No. 4031.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of March in the year of our Lord nineteen hundred and seventy-one and of the independence of the United States of America the one-hundred ninety-fifth.

Richard Nixon

[FR Doc.71-4716 Filed 4-1-71;3:00 pm]

[1] 36 F.R. 3457.

PROCLAMATION 4041

National Defense Transportation Day and National Transportation Week, 1971

By the President of the United States of America

A Proclamation

The past growth and prosperity of the United States relied heavily on an interconnected, diversified transportation network which linked its cities and its citizens. Our commerce prospered from the ever-increasing proximity of the markets; our citizens, from the availability and accessibility of the great productive wealth of the Nation.

We are now entering into a new era in transportation—an era in which our national mobility will demand the continued conquest of time and space, yet our national conscience will no longer permit irreparable damage to our land, our environment, or the social fabric of our communities. It is in this light that transportation faces its challenge of the future.

To meet that challenge, we will need a truly balanced transportation system—a system that provides our citizens with the ability to choose the most efficient means of transportation at the least possible cost to themselves and to the environment. I ask for the help of all citizens in achieving this goal.

In recognition of the importance of our transportation system to our economy, our national security and our daily lives, and as a tribute to the men and women who move goods and people throughout our land, the Congress by a joint resolution approved May 16, 1957, requested the President to proclaim annually the third Friday of May each year as National Defense Transportation Day, and by a joint resolution approved May 14, 1962, requested the President to proclaim annually the week of May in which that Friday falls as National Transportation Week.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, do hereby designate Friday, May 21, 1971, as National Defense Transportation Day, and the week beginning May 16, 1971, as National Transportation Week.

During National Transportation Week, I ask that the people of this Nation join with the Department of Transportation and also with State

and local officials in reevaluating our goals and reaffirming our commitment to a balanced transportation system for these United States.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of March, in the year of our Lord nineteen hundred seventy-one, and of the Independence of the United States of America the one hundred ninety-fifth.

Richard Nixon

[FR Doc.71-4717 Filed 4-1-71;3:00 pm]

EXECUTIVE ORDER 11588

Providing for the Stabilization of Wages and Prices in the Construction Industry

WHEREAS, the stabilization of wages and prices in the construction industry is essential to the maintenance of a strong national economy; and

WHEREAS, wages and prices in the construction industry have tended in recent years to increase at a rate greater than that for the economy as a whole; and

WHEREAS, the Congress has expressed its concern over the unrestrained rise in wages and prices through the enactment of the Economic Stabilization Act of 1970 (84 Stat. 799 as amended); and

WHEREAS, it was necessary to suspend the prevailing rate provisions of the Davis-Bacon Act in order to assist in alleviating the inflationary spiral of wages and prices in the construction industry, which suspension is no longer required due to the establishment of an equitable stabilization plan under this order; and

WHEREAS, the national leaders of labor and management in the construction industry have indicated, since the suspension of the Davis-Bacon Act, that under such an order they will participate with the Government in fair measures to achieve greater wage and price stability; but are unable to agree on any voluntary arrangement; and

WHEREAS, stabilization of wages and prices is most effectively achieved when accompanied by positive action of labor and management; and

WHEREAS, this order is required to establish an arrangement for the application of general criteria by an operating structure with a minimum of Government involvement and sanctions within which labor and management may act to effectuate the stabilization of wages and prices consistent with and in furtherance of effective collective bargaining in the industry.

NOW, THEREFORE, by virtue of the authority vested in me by the Economic Stabilization Act of 1970 (84 Stat. 799 as amended) and as President of the United States, it is ordered as follows:

SECTION 1(a). A Construction Industry Stabilization Committee (hereafter referred to as "Committee") is hereby established to assure generally conformance of any increase in any wage or salary in the construction industry to the provisions of this order.

(b) The Committee shall be composed of twelve members appointed by the Secretary of Labor and selected as follows: four of the members shall be representative of labor organizations in the construction industry; four of the members shall be representative of employers in the construction industry; and four of the members shall be representative of the public. The Secretary of Labor shall appoint one of the public members as chairman of the committee.

SEC. 2. Associations of contractors and national and international unions shall jointly establish craft dispute boards (hereinafter referred

to as "boards") to determine whether wages and salaries are acceptable in accordance with the criteria established in section 6. Each board shall be composed of appropriate labor and management representatives.

SEC. 3(a). It shall be the responsibility of each board, in relation to the craft or branch over which it has jurisdiction, to provide advice and assistance in an effort to resolve any unresolved collective bargaining disputes involving wages and salaries and to promptly examine every collective bargaining agreement negotiated on or after the date of this order and to determine, in accordance with the criteria established in section 6, whether wage and salary increases in the agreement are acceptable and may thus be approved. The board shall make determinations within a reasonable time and shall notify the parties and the Committee of action taken. When it is determined by the board that a wage or salary increase is not acceptable, the board shall also notify the Secretary of Labor.

(b) Each board shall also have the authority to examine collective bargaining agreements negotiated prior to the date of this order which contain wage or salary increases scheduled to take effect on or after such date to determine whether any increase is unreasonably inconsistent with the criteria established in section 6.

SEC. 4(a). Upon receipt of notification by a board that it has found a wage or salary increase acceptable, the Committee shall have fifteen days in which to determine whether it will assume jurisdiction over the matter. If the Committee does not determine within that time, and so notify the parties and the board, that it will assume jurisdiction, the board's determination will be deemed final and the increase may take effect. If the Committee determines that it will assume jurisdiction it shall be a violation of this order to implement the increase unless and until the Committee affirms the board's initial determination. The Committee shall notify the parties, the board and the Secretary of Labor of its final action.

(b) The Committee is also authorized, upon its own motion, if a board has not yet reported or an appropriate board has not been established, to review any proposed wage or salary increase to determine its acceptability.

(c) Unless and until an increase in wage or salary has been approved in accordance with the provisions of sections 3(a) and 4 of this order, it shall be a violation of this order to put such wage or salary increase into effect.

SEC. 5. Upon a determination by a board or the Committee that a proposed wage or salary increase is not acceptable and certification of that determination by the Secretary of Labor, the following actions shall be taken:

(a) In implementing the provisions of the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494, as amended) and related statutes the provisions of which are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act, and including state statutes or laws requiring similar wage standards, the Secretary of Labor and all states shall not take into consideration any wage or salary increase in excess of that found to be acceptable in making determinations under that Act and related statutes.

(b) In order to assure that unacceptable wage rates shall not be utilized in Federal or federally—related construction, the heads of all Federal departments and agencies, subject to the direction and coordination of the Secretary of Labor:

(1) shall review all plans for construction and financial assistance for construction in localities in which wage or salary increases have been certified by the Secretary of Labor to be unacceptable and shall, on the basis of that review, determine whether such plans can be approved or continued; and

(2) shall review current and prospective construction contracts for Federal construction and for construction on projects receiving Federal financial assistance in the area affected by a certification by the Secretary of Labor and shall, on the basis of such review, determine whether such contracts can be awarded or continued.

(c) The Committee and the boards shall make public their determinations, specifying the craft and area affected and the wages or salaries deemed unacceptable.

(d) Any other action authorized by law to carry out the purposes and policy of this order shall be available to the Secretary of Labor to assure the stabilization of wages and prices in the construction industry.

SEC. 6. The following criteria shall be applied in determining whether any wage or salary increase is acceptable:

(a) Acceptable economic adjustments in labor contracts negotiated on or after the date of this order will be those normally considered supportable by productivity improvement and cost of living trends, but not in excess of the average of the median increases in wages and benefits over the life of the contract negotiated in major construction settlements in the period 1961 to 1968.

(b) Equity adjustments in labor contracts negotiated on or after the date of this order may, where carefully identified, be considered over the life of the contract to restore traditional relationships among crafts in a single locality and within the same craft in surrounding localities.

SEC. 7. The parties to a labor contract negotiated in the construction industry shall promptly submit that contract to the appropriate board or boards. Where there is no appropriate board to consider the acceptability of a proposed wage or salary increase, the affected national or international union, and the affected association of contractors shall promptly submit that contract to the Committee.

SEC. 8. The Interagency Committee on construction (hereinafter referred to as "Interagency Committee"), is hereby established to develop criteria for the determination of acceptable prices in construction contracts as well as criteria for acceptable compensation, including bonuses, stock options and the like. Officers and employees of Federal departments and agencies shall be designated to serve as members of the Interagency Committee by the Secretary of Housing and Urban Development who shall also designate its chairman. The Interagency Committee shall consult with the Secretary of Labor, with major Government procurement agencies and with the Committee in developing such criteria and concerning the application of such criteria. Until criteria have been developed and applied and prices and compensation are

determined to be unacceptable, prices, and compensation shall not be deemed in violation of this order.

SEC. 9. In the conduct of every Federal or federally-assisted construction project or program the affected Federal agency shall assure the conformance of such project or program with the criteria established in section 8.

SEC. 10. The Committee and the Interagency Committee, subject to approval by the Secretary of Labor, and the Secretary of Labor are authorized to issue such rules and regulations as may be necessary to provide for the expeditious and effective conduct of their responsibilities under this order and to effectuate its purposes. Such authority of the Committee under this section shall include the authority to issue such rules and regulations as may be necessary to assure the effective operation of any board which may be established under this order, and to provide for the resolution of impasses within any board.

SEC. 11(a). The term "construction" shall mean, for the purpose of this order (1) all work relating to the erecting, constructing, altering, remodeling, painting, or decorating of installations such as buildings, bridges, highways and the like, when performed on a contract basis, but shall not include maintenance work performed by workers employed on a permanent basis in a particular plant or facility for the purpose of keeping such plant or facility in efficient operating condition; (2) the transporting of materials and supplies to or from a particular building or project by the workers of the contractor or subcontractor performing the construction or the manufacturing of materials, supplies, or equipment on the site of a project by such workers; and (3) all other work classified as construction in section 5.2(g) of Part 5, Title 29 of the Code of Federal Regulations.

(b) The term "wage or salary" shall mean, for the purpose of this order, all wage or salary rate schedules and economic benefits established pursuant to a collective bargaining agreement in the construction industry.

SEC. 12(a). Expenses of the Committee and the Interagency Committee shall be paid from such appropriations to the Department of Labor and other Federal agencies as may be made available therefor.

(b) All departments and agencies of the Federal Government are authorized and directed to cooperate with the Committee and the Interagency Committee in order that they may carry out their responsibilities under this order.

SEC. 13. There shall be periodic examination of the effectiveness of this order to determine whether further measures will be required to effectuate a stabilization of wages and prices in the construction industry.

SEC. 14. This Order shall be effective immediately.

Richard Nixon

THE WHITE HOUSE,
March 29, 1971.

[FR Doc.71-4718 Filed 4-1-71;3:00 pm]

NOTE: For the text of a Presidential statement issued in connection with E.O. 11588 above, see Weekly Comp. of Pres. Docs., Vol. 7, issue of April 5, 1971.

EXECUTIVE ORDER 11589

Delegating to the United States Civil Service Commission Certain Authorities of the President Under the Intergovernmental Personnel Act of 1970 and the Federal Civil Defense Act of 1950

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. The United States Civil Service Commission is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(a) The authority of the President under section 3376 of title 5 of the United States Code to prescribe regulations for the administration of subchapter VI, "Assignments to and from States," of chapter 33 of that title.

(b) The authority of the President under section 205(a)(4) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2286(a)(4)) and as affected by Reorganization Plan No. 1 of 1958 (72 Stat. 1799), relating to the establishment and maintenance of personnel standards on the merit basis.

SEC. 2. To the extent that section 1(b) of this order is inconsistent with the provisions of Executive Order No. 10952 of July 20, 1961, as amended, section 1(b) shall control.

Richard Nixon

THE WHITE HOUSE,
April 1, 1971.

[FR Doc.71-4779 Filed 4-2-71;10:21 am]

Rules and Regulations

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 18—National Aeronautics and Space Administration

REVISION OF REGULATIONS

Parts 18–8, 18–9, 18–10, and 18–11 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 18–8—TERMINATION OF CONTRACTS

AUTHORITY: The provisions of this Part 18-8 issued under 42 U.S.C. 2473(b)(1).

§ 18-8.000 Scope and applicability of part.

(a) This Part 18-8 establishes uniform policies and procedures relating to the complete or partial termination of contracts for the convenience of the Government or for default. It includes uniform contract clauses with respect to termination and excusable delay, and approved termination and settlement forms.

(b) This part applies to contracts which by their terms provide for termination for the convenience of the Government or for the default of the contractor, whether or not the clauses in the contract with respect to termination and excusable delay are those set forth in Subpart 18-8.7. In the event the clauses actually used in the contract are properly authorized termination clauses and are inconsistent with the provisions of this part, the clauses actually used shall control to the extent of the inconsistency. Contracts which do not contain the applicable clauses may, where it is in the best interest of the Government, be amended by agreement prior to or after termination of the contract, to include or substitute such a clause. The provisions of this part, unless inappropriate, shall be used to settle (1) subcontracts terminated as a result of modification of a prime contract, and (2) shall be used as a guide by the contracting officer in evaluating settlements of subcontracts terminated for the convenience of a contractor whenever such settlement is to be the basis of a claim for reimbursement from the Government by a contractor under a cost-reimbursement type contract.

(c) The provisions of this part may be utilized in determining any equitable adjustment as a result of modification of any contract other than a cost-reimbursement type contract pursuant to the Changes clause.

(d) Pursuant to the agreement with the Department of Defense, NASA may request assistance in performing certain contract administration functions, including termination. Sections 18-8.206-50 and 18-8.601 set forth the policy and instructions for requesting such services.

Subpart 18-8.1—Definition of Terms

§ 18-8.101 Definitions.

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

§ 18-8.101-1 Amount of claim or settlement.

When the action to be taken under this part depends upon the amount of a termination claim or settlement, then, in determining such amount, (a) credits for retention or other disposal of termination inventory allocated to the claim and for advance or partial payments shall not be deducted from the gross claim or settlement; but (b) amounts payable for completed articles or work at the contract price, or for the settlement or discharge of termination claims of subcontractors, shall be deducted.

§ 18-8.101-2 Common items.

"Common items" means material which is common in nature to both the terminated contract and the contractor's other work.

§ 18-8.101-3 Continued portion of the contract.

"Continued portion of the contract" means that portion of a partially terminated contract which relates to work or end items not already completed and accepted prior to the effective date of termination and which the contractor must continue to perform.

§ 18-8.101-4 Contractor-acquired property.

"Contractor-acquired property" is property procured or otherwise provided by the contractor for the perfomance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

§ 18-8.101-5 Contractor inventory.

"Contractor inventory" means (a) any property acquired by and in the possession of a contractor or subcontractor (including Government-furnished property) under a contract pursuant to the terms of which title is vested in the Government, and in excess of the amounts needed to complete full performance under the entire contract; and (b) any property which the Government is obligated to or has an option to take over under any type of contract as a result either of any changes in the specifications or plans thereunder or of the termination of such contract (or subcontract thereunder), prior to completion of the work, for the convenience or at the option of the Government.

§ 18-8.101-6 Disbursing officer.

"Disbursing officer" means the officer or agent of the office designated as the paying office under the contract.

§ 18–8.101–7 Effective date of termination.

"Effective date of termination" means the date upon which the notice of termination first requires the contractor to stop performance, in whole or in part, under the contract. If, however, the termination notice is received subsequent to the date fixed for termination, then the effective date of termination means the date on which the notice is received.

§ 18–8.101–8 Government-furnished property.

"Government-furnished property" is property in the possession of or acquired directly by the Government, and subsequently delivered or otherwise made available to the contractor.

§ 18–8.101–9 Material.

"Materal" means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of the contract.

§ 18–8.101–10 Other work.

"Other work" means any current or scheduled work of the contractor, whether Government or commercial, other than work related to the terminated contract.

§ 18–8.101–11 Partial termination.

"Partial termination" means the termination of a part, but not all, of the work which has not been completed and accepted under a contract.

§ 18–8.101–12 Plant clearance period.

"Plant clearance period" means a period beginning with the effective date of the termination for convenience and ending, for each particular property classification (such as raw materials, purchased parts, and work in process) at any one plant or location, 180 days after receipt by the termination contracting officer (TCO) of acceptable inventory schedules covering all items of that particular property classification in the termination inventory at that plant or location, or ending on such later date as may be agreed to by the TCO and the contractor. Final phase of a plant clearance period means that part of a plant clearance period after the receipt of acceptable inventory scheduled covering all items of the particular property classification at the plant or location.

§ 18–8.101–13 Plant equipment.

"Plant equipment" means personal property of a capital nature (consisting of equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items, but excluding special tooling and special test equipment) used or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose.

§ 18–8.101–14 Prime contract.

"Prime contract" means any contract as defined in § 18–1.207 of this chapter entered into by any NASA procurement office.

§ 18–8.101–15 Industrial plant equipment.

"Industrial plant equipment" means that part of plant equipment with an acquisition cost of $1,000 or more which is listed in § 18–13.312 of this chapter.

§ 18–8.101–16 Salvage.

"Salvage" means property which, because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations but which has some value in excess of its scrap value.

§ 18–8.101–17 Scrap.

"Scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

§ 18–8.101–18 Serviceable or usable property.

"Serviceable or usable property" means property that has reasonable prospect of sale or use either in its existing form or after minor repairs or alterations.

§ 18–8.101–19 Settlement agreement.

"Settlement agreement" means a written agreement in the form of an amendment to the contract, between the contractor and the Government settling all or a severable portion of a settlement proposal.

§ 18–8.101–20 Settlement proposal.

"Settlement proposal" means a termination claim submitted by a contractor or subcontractor in the form, and supported by the data, required by this part.

§ 18–8.101–21 Special machinery and equipment.

"Special machinery and equipment" means that part of plant equipment which was acquired or constructed solely for the performance of the terminated contract or the terminated contract and other Government contracts, and as to which the contractor claims loss of useful value.

§ 18–8.101–22 Special tooling.

"Special tooling" shall have the meaning given in § 18–13.101–5 of this chapter.

§ 18–8.101–23 Special test equipment.

"Special test equipment" shall have the meaning given in 18–13.101–6 of this chapter.

§ 18–8.101–24 Subcontract.

"Subcontract" means any contract as defined in § 18–1.207 of this chapter other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

or a subcontract thereunder, and any other claim which this Part 18–8 authorizes to be asserted and settled in connection with a termination settlement.

§ 18–8.101–26 Termination inventory.

"Termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the terminated contract and properly allocable to the terminated portion of the contract. The term does not include any facilities, special test equipment, material, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include contractor-acquired property and Government-furnished property as defined in §§ 18–8.101–4 and 18–8.101–8.

§ 18–8.101–27 Terminated portion of the contract.

"Terminated portion of the contract" means that portion of a terminated contract which relates to work or end terms not already completed and accepted prior to the effective date of termination and which the contractor is not to continue to perform.

§ 18–8.101–28 Unadjusted contract changes.

"Unajusted contract changes" are any contract changes or contract provisions as to which a definitive modification is required but has not been executed.

§ 18–8.101–50 Termination contracting officer.

"Termination contracting officer" (see §§ 18–1.206 of this chapter and 18–8.201(c)).

§ 18–8.101–51 Contracting officer.

"Contracting officer" as used in this part means the NASA contracting officer who awarded the contract and is responsible for its administration.

Subpart 18–8.2—General Principles Applicable to the Settlement of Fixed-Price Type Contracts Terminated for Convenience and to the Settlement of all Terminated Cost-Reimbursement Type Contracts

§ 18–8.200 Scope of subpart.

This Subpart 18–8.2 deals with:

(a) The authority of contracting officers to terminate contracts in whole or in part (1) for the convenience of the Government; and (2) in the case of cost-reimbursement type contracts for default;

(b) Duties of the contractor and the contracting officer after issuance of the notice of termination;

(c) General procedures for the settlement of terminated contracts; and

(d) Settlement agreements.

Subpart 18–8.3 sets forth additional principles applicable only to fixed-price type contracts. Subpart 18–8.4 sets forth additional principles applicable only to cost-reimbursement type contracts. Subpart

§ 18–8.101–25 Termination claim.

"Termination claim" means any claim by a contractor or subcontractor, permitted by the terms of a prime contract, for compensation for the termination, in whole or in part, of the prime contract 18–8.6 sets forth the principles applicable to the termination of fixed-price type contracts for default.

§ 18–8.201 Authority of contracting officers.

(a) The authority of contracting officers to terminate contracts for convenience, and for default in the case of cost-reimbursement type contracts, and to enter into settlement agreements under this chapter is usually found in the termination clause or other provisions of the contract.

(b) Contracts shall be terminated, whether for default or convenience, only when such action is in the best interest of the Government, as determined in accordance with this chapter. Where the contracting officer has ascertained that (1) the contractor will accept a no-cost settlement, (2) Government property was not furnished, and (3) there are no outstanding payments, claims, or other contractor obligations, the contracting officer shall effect a no-cost settlement agreement in lieu of issuing a notice of termination. When a no-cost settlement cannot be obtained, a notice of termination should be issued; however, when the price of the undelivered balance of the contract is less than $1,000, a termination for convenience should normally not be effected but the contract be permitted to run to completion. If a notice of termination has been issued, negotiation of the settlement with the contractor, including a no-cost settlement if appropriate, shall be the responsibility of the termination contracting officer (see §§ 18–8.206 and 18–8.210–4).

(c) Heads of installations shall appoint a termination contracting officer (TCO) (see § 18–1.206 of this chapter) to perform specific duties relating to contract termination as his primary function. Such duties should include: (1) Receiving and reviewing the Termination Authority (NASA Form 1412); (2) reviewing the contract and other related documents, prior to issuing the Notice of Termination, to insure protection of the Government's rights under the contract; (3) issuing notices of termination, reinstatement and recission to contractors; (4) assigning termination docket control numbers; (5) developing, maintaining and managing basic controls relating to contract termination and settlement actions, and (6) carrying out the duties, functions and responsibilities set forth in this Part 18–8.

§ 18–8.202 Prior clearance of significant contract terminations.

(a) Prior clearance by NASA Headquarters is required before any notice or any information concerning a proposed contract termination involving a reduction in employment of 100 or more contractor employees is released to a contractor. Coordination of the timing of the notice to the contractor and release of information to Congress or the public is the responsibility of NASA Headquarters through its liaison point designated in paragraph (b) of this section. In a labor surplus area a lesser number than 100 may be significant, and if so, should be similarly cleared.

(b) The following information will be submitted to the Office of Legislative Affairs, NASA Headquarters (Code C) which, in coordination with the Office of Public Affairs (Code F), has been designated the NASA liaison point:

(1) Contract number, date, type of contract;

(2) Name of company;

(3) Nature of contract or end item;

(4) The reasons for the termination;

(5) Contract price of items terminated;

(6) Total number of contractor employees involved;

(7) Statement of anticipated impact on the company and the community (identify); identify area labor category, and whether contractor is large or small business;

(8) Total number of subcontractors involved as well as the impact in this area, if known; and

(9) Draft (unclassified) of suggested press release of information. Information copies of the above will be furnished the following NASA Headquarters offices: The Office of Public Affairs (Code F), the cognizant Program Office, and the Director of Procurement (Code KDP–3).

(c) Clearance will be requested as soon as possible after the decision has been made to terminate a contract. Pending receipt of clearance, information pertinent to the termination will require "For Official Use Only" handling unless a security clearance is required.

(d) The liaison office will act promptly on the release and not later than 2 working days after receipt so as to avoid the accrual of termination costs.

§ 18–8.203 Notice of termination.

(a) *General.* Contracts shall be terminated for convenience, or for default in the case of cost-reimbursement type contracts, only by a written notice to the contractor (see § 18–8.801), stating:

(1) That the contract is being terminated for the convenience of the Government (or for default) pursuant to the contract provisions authorizing such termination;

(2) The effective date of termination;

(3) The extent of termination and, if a partial termination, the portion of the contract to be continued;

(4) Recommended actions to be taken by the contractor to minimize the impact on his personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor's work force (see paragraph 7 of the letter notice in § 18–8.801–2); and

(5) Any special instructions.

(b) *Distribution of copies.* Simultaneously with issuance of the termination notice to the contractor a copy shall be sent to the office administering the contract and to any known assignee, guarantor, or surety of the contractor.

(c) *Amendment of termination notice.* A notice of termination may be amended to provide for:

(1) The correction of mistakes in the notice, of a nonsubstantive nature;

(2) Addition of supplemental data or instructions; and

(3) Rescission of the notice when it has been determined that the items of work terminated had been completed or shipped prior to the contractor's receipt of the notice.

(d) *Reinstatement of terminated contracts.* The procurement office may authorize reinstatement of the terminated portion of a contract in whole or in part by an amendment to the notice of termination provided that it has been determined in writing that:

(1) Circumstances clearly indicate a requirement for the terminated items; and

(2) Reinstatement is advantageous to the Government;

Provided, That the written consent of the contractor is obtained to the reinstatement.

§ 18–8.204 Methods of settlement.

Settlement of terminated cost-reimbursement type contracts and of fixed-price type contracts terminated for convenience may be effected by (a) negotiated agreement, (b) determination by the TCO, (c) in the case of cost-reimbursement type contracts, costing-out under vouchers using Standard Form 1034, or (d) a combination of these methods. Every effort shall be made to reach a fair and prompt settlement with the contractor. The negotiated agreement is the most expeditious and most satisfactory method of settling termination claims and shall be used whenever feasible. Settlement by determination shall be used only when a termination claim cannot be settled by agreement.

§ 18–8.205 Duties of prime contractor after receipt of notice of termination.

The contractor, after receipt of the notice of termination and except as otherwise directed by the TCO, must comply with the termination clause of the contract and the notice of termination which generally require, among other things, that the contractor:

(a) Stop work immediately on the terminated portion of the contract and discontinue placing subcontracts thereunder;

(b) Terminate all subcontracts related to the terminated portion of the prime contract;

(c) Immediately advise the TCO of any special circumstances precluding the stoppage of work;

(d) If the termination is partial, perform the continued portion of the contract and submit promptly any request for an equitable adjustment of price with respect to the continued portion of the contract, supported by evidence of any increase in the cost thereof;

(e) Take such action as may be necessary, or as the TCO may direct, to protect and preserve property in the possession of the contractor in which the Government has or may acquire an interest; and, to the extent directed by the TCO, deliver such property to the Government;

(f) Promptly notify the TCO in writing of any legal proceedings against the contractor growing out of any subcontract or other commitment related to the terminated portion of the contract;

(g) Settle all outstanding liabilities and all claims arising out of termination of subcontracts, obtaining any approvals or ratifications required by the TCO;

(h) Promptly submit his own settlement proposal, supported by appropriate schedules; and

(i) Dispose of any termination inventory, as directed or authorized by the TCO.

§ 18–8.206 Duties of termination contracting officer after issuance of notice of termination.

(a) In accordance with the termination clause in the contract and with the notice of termination, the TCO shall, among other things:

(1) Direct the action required of the prime contractor including the execution of a no-cost settlement agreement (see § 18–8.210–4) if appropriate;

(2) Examine the settlement proposal of the prime contractor and, when appropriate, the settlement proposals of subcontractors;

(3) Promptly negotiate settlement with the contractor and enter into a settlement agreement; and

(4) To the extent that he is unable to negotiate settlement after due and diligent effort, promptly settle the contractor's claim by determination.

(b) To expedite settlement, the TCO shall seek assistance from specially qualified personnel (such as negotiating, legal, accounting, inspecting, engineering, and property disposal personnel) to:

(1) Assist the TCO in dealings with the contractor;

(2) Render advice on legal and contractual matters;

(3) Conduct accounting reviews and render advice and assistance on accounting matters; and

(4) Perform the following functions with respect to the termination inventory—

(i) Verify its existence;

(ii) Determine qualitative and quantitative allocability;

(iii) Make recommendations concerning serviceability and unserviceability.

(iv) Undertake necessary screening and redistribution; and

(v) Assist the contractor in accomplishing other disposition.

(c) An initial conference shall be held with the contractor as promptly as possible to develop a definite program for effecting the settlement. Where appropriate in the judgment of the TCO, principal subcontractors should be present. The TCO shall prepare and place in the termination case file, a memorandum on the results of the conference. Topics discussed at the conference should include:

(1) General principles relating to the settlement of any termination claim, including obligations of the contractor under the termination clause of the contract;

(2) Extent of the termination, point at which work is stopped, and status of any plans, drawings, and information which would have been delivered had the contract been completed;

(3) Status of any continuing work;

(4) Obligation of the contractor to terminate subcontracts and general principles to be followed in settlement of subcontractor claims;

(5) Names of subcontractors involved and the respective dates termination notices were issued to them;

(6) Contractor personnel handling, and methods for, review and settlement of subcontractor claims;

(7) Arrangements for transfer of title and delivery to the Government of any materials required by the Government;

(8) General principles and procedures to be followed in the protection, preservation, and disposition of contractor's and subcontractor's termination inventory, including the preparation of termination inventory schedules;

(9) Contractor accounting practices and preparation of DD Form 546 (Schedule of Accounting Information) (§ 18–8.802–9);

(10) Form in which settlement proposals shall be submitted;

(11) Accounting review of settlement proposals;

(12) Any requirement for interim financing in the nature of partial payments;

(13) Tentative time schedule for negotiation of the settlement including submission of settlement proposals, termination inventory schedules, and accounting information schedules by the contractor and subcontractors; and

(14) Actions taken by the contractor to minimize impact upon employees affected adversely by the termination (see paragraph 7 of the letter notice in § 18–8.801–2).

§ 18–8.206–1 Termination status report.

Upon issuance of a Notice of Termination and the assignment of the contract for settlement, the TCO will immediately prepare a DD Form 1598, "Termination Status Report" and designate it No. 1 in the "Status Report Number" block. In addition these reports shall be furnished, by the TCO, on a quarterly basis for the quarters ending March, June, September, and December within 30 days after the end of each respective quarter. A final DD Form 1598 shall be submitted by the TCO when the termination actions have been completed and the contract is closed. The DD Form 1598 will be distributed as follows—

DD Form 1598	Contracting officer	Office administering settlement	Procurement office code KDP–3
Initial report	Original	Copy	Copy.
Quarterly report.	Copy	Original	Copy.
Final report	Copy	Original	Copy.

§ 18–8.206–2 Release of excess funds.

An estimate of funds required to settle the termination claim will be made by the TCO at the earliest practicable date. Funds obligated under the contract in excess of an estimated amount required for settlement will be released to the purchasing office within thirty (30) days after receipt of the termination notice by the TCO. Continuous surveillance of required funds will be maintained by the TCO to permit timely release of any additional excess funds. A recommended format for release of excess funds is in § 18–8.807. If it appears that the previous releases of excess funds have resulted in a shortage of the amount which will be required for settlement, the TCO will inform the purchasing office and request by letter the reinstatement of funds, which will be provided within thirty (30) days thereafter.

§ 18–8.206–3 Termination case file.

A separate termination case file shall be established and maintained for each individual termination by the TCO responsible for negotiating final setlement. Such file shall include records of all actions relative to the settlement. (See § 18–1.308 of this chapter.)

§ 18–8.206–50 Negotiation and settlement by the Department of Defense or other Government agency.

Procurement offices shall utilize the services of the Department of Defense and other Government agencies whenever possible to administer and negotiate settlement of terminated contracts. Delegation of the termination functions will be made in accordance with the provisions of Subpart 18–51.3 of this chapter.

§ 18–8.207 Fraud or other criminal conduct.

Whenever the TCO has reason to suspect fraud or other criminal conduct in connection with the settlement of a terminated contract, he shall discontinue all negotiations with the contractor and shall report the facts in accordance with § 18–1.111 of this chapter.

§ 18–8.208 Audit of prime contract settlement proposals and of subcontract settlements.

(a) Each settlement proposal of $2,500 or over submitted by a prime contractor shall be referred by the TCO to the cognizant audit office for appropriate examination and recommendation. The TCO may, when circumstances indicate the necessity therefor, refer settlement proposals of less than $2,500 to such office. The TCO's referral shall be in writing, indicate any specific information or data which the TCO desires to have developed, and include any facts or circumstances within the knowledge of the TCO which will assist the cognizant audit office in the accomplishment of its function. The auditor shall develop such information and may make such further accounting review as he deems appropriate. The cognizant audit office shall submit written comments and recommendations to the TCO. In claims of less than $2,500 where a formal examination of the settlement proposal is not warranted, a desk review will be performed by the TCO or a qualified member of his staff. A written

summary of the review will be incorporated in the termination case file.

(b) Subcontract settlements submitted by a contractor to the TCO for approval or ratification in accordance with § 18–8.209 shall be referred to the cognizant audit office for review and recommendations if (1) the settlement involves $25,000 or more unless an accounting review of the settlement proposal has been performed by the cognizant audit office; or (2) the TCO considers an accounting review in whole or in part, desirable. The requirements for review under subparagraphs (1) or (2) of this paragraph does not relieve the prime contractor or higher tier subcontractor of the responsibility for performing an accounting review. The audit office shall submit written comments and recommendations to the TCO.

(c) The responsibility of the contractor set forth in § 18–8.209–1 for settlement of immediate subcontractors' settlement proposals applies equally to prime contractors and subcontractors and includes responsibility for performing accounting reviews and any necessary field audits. However, in the situations outlined below, the audit office generally should be requested to perform the accounting review of a subcontractor's settlement proposal where:

(1) A subcontractor objects to an accounting review of his records by an upper-tier contractor for competitive reasons;

(2) The cognizant audit office is currently performing audit work at the subcontractor's plant, or where it can be performed more economically or efficiently;

(3) Audit by the cognizant audit office is necessary for consistent audit treatment and orderly administration; or

(4) The contractor has a substantial or controlling financial interest in the subcontractor.

Duplication by the audit office of accounting reviews performed by the upper-tier contractor on subcontractor settlement proposals will be avoided to the extent possible. However, when appropriate, the Government will make additional reviews. Where the contractor is performing accounting reviews in accordance with this paragraph, the TCO should request the cognizant audit office periodically to examine the contractor's accounting review procedures (including but not limited to audit programs, cost principles applied, working papers, and audit reports) and performance thereunder and make such comments and recommendaitons to the contracting officer as may be deemed appropriate.

(d) The audit report is an advisory document rendered to the TCO for his use in negotiating a settlement or issuing a unilateral determination. Due care and prudence will be exercised by Government personnel in the handling of audit reports covering a contractor's or subcontractor's settlement proposals so as not to reveal privileged information or information that will jeopardize the negotiation position of the Government, prime contractor, or a higher tier subcontractor. Consistent with the foregoing and when considered in the Government's interest, accounting reviews under paragraph (c) of this section may be made available to prime and higher tier subcontractors for their use in settling subcontract claims.

§ 18–8.209 Settlement of subcontract claims.

§ 18–8.209–1 Subcontractor's rights.

A subcontractor has no contractual rights against the Government upon the termination of a prime contract. The rights of a subcontractor are against the prime contractor or intermediate subcontractor with whom he has contracted. Upon termination of a prime contract, the prime contractor and each subcontractor is responsible for the prompt settlement of the termination claims of immediate subcontractors.

§ 18–8.209–2 Prime contractor's rights and obligations.

Each termination clause provides that, after receipt of a notice of termination and except as otherwise directed by the TCO, the prime contractor shall terminate all subcontracts to the extent that they relate to the performance of any work terminated by notice of termination. Prime contractors should therefore, for their own protection, include a termination clause in their subcontracts. A suggested subcontract termination clause is set forth in § 18–8.706. The failure of a prime contractor to include an appropriate termination clause in any subcontract, or to exercise his rights thereunder, shall not (a) affect the right of the Government to require the termination of the subcontract, or (b) increase the obligation of the Government beyond that which would have arisen if the subcontract had contained an appropriate termination clause. In any such case, the reasonableness of the prime contractor's settlement with the subcontractor should normally be measured by the aggregate amount which would be due under subparagraphs (i), (ii), and (iii) of paragraph (e) of the suggested subcontract termination clause. Reimbursement in excess of that amount shall be allowed only in unusual cases and then only when the TCO is satisfied that the terms of the subcontract were negotiated in good faith and did not unreasonably increase the rights of the subcontractor.

§ 18–8.209–3 Settlement procedure.

(a) Settlements with subcontractors shall be made in general conformity with the policies and principles relating to settlement of prime contracts as set forth in this Subpart 18–8.2, and in Subparts 18–8.3 and 18–8.4, as applicable. However, the bases and form of the subcontractor's settlement proposal must be acceptable to the prime contractor or the next higher tier subcontractor. Each such settlement shall be supported by accounting and other data sufficient for adequate review by the Government. In no event shall the Government pay to the prime contractor any amount for loss of anticipatory profits or consequential damages resulting from the termination of any subcontract (but see § 18–8.209–5).

(b) Except as provided in § 18–8.209–4, (1) all subcontractor termination inventory shall be disposed of and accounted for in accordance with Part 18–24 of this chapter and (2) the TCO shall require the prime contractor to submit to him for approval or ratification all termination settlements with subcontractors. In submitting each settlement, the prime contractor shall certify that he has examined the subcontractor's claims included therein, that they are allocable to the terminated portion of the prime contract, and that the settlement is fair and reasonable, was negotiated in good faith, and is not more favorable to the subcontractor than if the Government were not involved. The contractor shall also certify that he has received from all his immediate subcontractors certifications substantially in the form of his own certification. With respect to settlements with more remote subcontractors, the contractor shall certify that he has no information leading him to doubt their reasonableness or their allocability to the terminated portion of the prime contract.

(c) The TCO shall promptly examine such subcontract settlement required to be submitted to him (including the basis and form of the proposal upon which the settlement was based) to satisfy himself that the subcontract termination was made necessary by the termination of the prime contract (or by issuance of a change order—see § 18–8.000(c)), and that the settlement was arrived at in good faith, is reasonable in amount, and is allocable to the terminated portion of the contract (or if allocable only in part, that the proposed allocation is reasonable). In considering the reasonableness of any subcontract settlement, the TCO shall be guided generally by the provisions of this section relating to the settlement of prime contracts, and shall comply with any appreciable requirements of §§ 18–8.208 and 18–8.212 relating to accounting and other reviews. Upon completion of the examination, the TCO shall notify the contractor in writing of (1) his approval or ratification, or (2) his reasons for disapproval.

§ 18–8.209–4 Authorization for subcontract settlements without approval or ratification.

(a) (1) The TCO may, upon the written request of the prime contractor, authorize him in writing to conclude settlements of $10,000 or less (see § 18–8.101–1) of his terminated subcontracts, without approval or ratification by the TCO, if:

(i) The TCO is satisfied with the adequacy of the procedures used by the contractor in settling termination claims (including proposals for retention, sale, or other disposal of termination inventory) of his immediate and lower tier subcontractors. (The TCO shall obtain the advice and recommendations of (a) the cognizant audit agency with respect to the adequacy of the contractor's audit

administration, including personnel; and (b) the cognizant disposal office with respect to the adequacy of the contractor's procedures and personnel for the administration of property disposal matters.);

(ii) Any termination inventory included in determining the amount of the settlement will be disposed of in accordance with § 18–24.212, except that the disposition of such inventory shall not (a) be subject to review by the TCO under § 18–8.209–3(c) or § 18–24.212–3, or (b) be subject to § 18–24.205: *Provided, however,* No industrial plant equipment included in such inventory shall be disposed of prior to screening pursuant to § 18–24.205–3; and

(iii) The settlement will be accompanied by a certificate substantially similar to the certificate set forth in the settlement proposal form referenced in § 18—8.802:

Provided, That the TCO shall not grant to the contractor any authority hereunder for settlements between $2,500 and $10,000 without the written approval as to that contractor of the Procurement Officer concerned, or his designee. Except as provided in paragraph (a)(3) of this section, authority granted to a prime contractor pursuant to this paragraph (a)(1) by any contracting officer within NASA shall be applicable to all prime contracts of all procurement offices within NASA which have been terminated or modified by change orders.

(2) Except as provided in paragraph (a)(3) of this section, the TCO without further approval or ratification shall accept, as part of the prime contractor's termination claim, any settlement of terminated lower tier subcontracts concluded by any of his immediate or lower tier subcontractors who, pursuant to paragraph (a)(1) of this section, have been granted, by any contracting officer within NASA, authority as prime contractors to settle subcontracts: *Provided,* That the settlement of such lower tier subcontracts is within the limit of such authority. Authorization to settle claims of lower tier subcontractors shall not be granted directly to subcontractors. However, a prime contractor authorized to approve subcontractor settlements may also exercise such authority in his capacity as a subcontractor, with respect to his terminated subcontracts and orders. When exercising such authority as a subcontractor, notification thereof shall be furnished the purchaser.

(3) The provisions of paragraphs (a)(1) and (a)(2) of this section shall not apply to any contracts under the administration of any contracting officer within NASA if such contracting officer so notifies the prime contractor concerned. Such notice (i) shall be in writing, (ii) shall be issued only after written approval thereof by the Procurement Officer or his designee, and (iii) if paragraph (a)(2) of this section is involved shall specify any subcontractor affected.

(b) Section 18–24.212 shall apply to any disposal of completed end items allocable to the terminated subcontract, except that completed end items allocable to the terminated subcontract may be disposed of without review by the TCO under § 18–8.209–3 or § 18–24.212–3, and without screening under § 18–24.205, if the total amount thereof (at the subcontract price) when added to the amount of the settlement does not exceed the amount authorized under this § 18–8.209–4.

(c) A TCO granting the above authorization to a contractor shall be responsible for periodically (at least annually) making a selective review of settlements and settlement procedures to determine whether the contractor is making adequate reviews and fair settlements, and whether such authorization shall remain in effect. In connection with these periodic reviews, the TCO shall obtain the advice and recommendations of the cognizant audit office with respect to the auditing aspects of the contractor's review procedures and those of the disposal office with respect to property disposal aspects of the contractor's review procedures. Whenever the TCO determines that the contractor's procedures are not adequate or that improper settlements are being made, he shall revoke the authorization by written notice to the contractor. The revocation shall take effect only from the date of receipt.

(d) Any number of separate settlements may be made with a single subcontractor. However, claims which would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract, shall be consolidated wherever possible, and shall not be divided in order to bring them within an authorization.

(e) Upon written request of the contractor and with the prior written approval of the Procurement Officer or his designee, an authorization granted under paragraph (a)(1), of this section, may be increased to authorize the contractor to conclude settlements of more than $10,000 but not more than $25,000 under a particular prime contract. Such authorization in excess of $10,000 may be limited to specific subcontracts or classes of subcontracts. However, industrial plant equipment, the cost of which is included in determining the amount of the claim, shall not be disposed of prior to screening pursuant to § 18–24.205–3.

(f) Authorizations granted under this paragraph shall not authorize the settlement of requisitions or orders placed with any division or unit within the contractor's corporate entity.

(g) A recommended format of the Contractor's Application for the Grant of an Authorization is in § 18–8.810 and the TCO's Letter of Authorization to the contractor is contained in § 18–8.810–1.

(h) A copy of each Letter of Authorization (§ 18–8.810–1) shall be furnished the Procurement Office, NASA Headquarters (Code KDP–3).

§ 18–8.209–5 Recognition of judgments and arbitration awards.

(a) In the event a subcontractor obtains a final judgment against a prime contractor, the TCO shall, for the purposes of settling the prime contract, treat the amount of the judgment as a cost of settling with the subcontractor, to the extent such judgment is properly allocable to the terminated portion of the prime contract if:

(1) The prime contractor has made reasonable efforts to include in his subcontract the termination clause in § 18–8.706 or a similiar clause excluding payment of anticipatory profits or consequential damages;

(2) The provisions of the subcontract relating to the rights of the parties upon its termination, in whole or in part, are fair and reasonable and do not unreasonably increase the common law rights of the subcontractor;

(3) The contractor has made reasonable efforts to settle the claim of the subcontractor;

(4) The contractor has given prompt notice to the TCO of the initiation of the proceedings in which the judgment was rendered and has not refused to give the Government control of the defense of the proceedings; and

(5) The contractor has diligently defended the suit or, if the Government has assumed control of the defense of the proceedings, has rendered such reasonable assistance as has been requested by the Government.

If the foregoing conditions are not all met, the TCO may allow the contractor such part of the judgment as he considers a fair amount for settling the termination claim under the subcontract, giving due regard to the policies set forth in this Part 18–8 for settlement of such claims.

(b) Where a contractor and his subcontractor submit a subcontractor termination claim to arbitration under any applicable law or contract provision, the TCO shall recognize the amount of the arbitration award as the cost of settling the claim of the subcontractor to the same extent and under the same conditions as specified in paragraph (a) of this section.

§ 18–8.209–6 Delay in settlement of subcontractor claims.

Where a prime contractor is unable to settle with a subcontractor and such inability is delaying the settlement of the prime contract, the TCO may settle with the prime contractor, excepting from the settlement the whole or any part of the claim of such subcontractor and reserving the rights of the Government and of the prime contractor with respect thereto.

§ 18–8.209–7 Government assistance in settlement of subcontracts.

In unusual cases the TCO may determine that it is in the best interest of the Government to offer assistance to the prime contractor in the settlement of a particular subcontract. Such a situation may exist when the prime contractor has made all reasonable efforts to negotiate the settlement without success and the TCO believes that with the assistance of the Government a settlement can be reached. Such assistance shall be furnished only with the consent

of the prime contractor. In such cases, an agreement may be entered into by the Government, the prime contractor, and a subcontractor, covering the settlement of one or more subcontracts. In any such case, payment to the subcontractor shall be effected through the prime contractor as part of the overall settlement with the latter.

§ 18–8.209–8 Assignment of rights under subcontracts.

(a) The termination clauses set forth in Subpart 18–8.7 obligate the prime contractor to assign to the Government, in the manner, at the time, and to the extent directed by the TCO, all his right, title, and interest under any subcontracts terminated by reason of termination of the prime contract. The TCO shall not require such assignment unless he determines that it is in the best interest of the Government.

(b) In giving the Government the right to require the assignment of the prime contractor's interest in terminated subcontracts, the termination clauses set forth in Subpart 18–8.7 also provide that the Government shall have the right, in its discretion, to settle and pay any or all claims arising out of the termination of such subcontracts. This right does not obligate the Government to settle and pay termination claims of subcontractors. As a general rule, the prime contractor is obligated to settle and pay such claims. (Direct settlements with subcontractors are not encouraged.) Where, however, the TCO determines that it is in the best interest of the Government to settle and pay directly a subcontractor's termination claim, he shall first obtain approval of the Procurement Office or his designee, setting forth in the request the pertinent facts and the reason for recommending direct settlement. Upon receipt of the required approval, the TCO shall, after notifying the contractor, proceed to settle the subcontractor's termination claim in accordance with termination procedures applicable to the settlement of prime contracts. An example of a situation in which the best interest of the Government would be served by effecting a direct settlement would be where a subcontractor is the sole source for a product and it appears that a delay by the prime contractor in settlement or payment of the subcontractor's claim will jeopardize the financial position of the subcontractor.

§ 18–8.210 Settlement agreements.

§ 18–8.210–1 General.

When a settlement has been negotiated with respect to the terminated portion of a contract, and all required reviews have been obtained, the contractor and the TCO shall enter into a settlement agreement on Standard Form 30 (Amendment of Solicitation/Modification of Contract). The settlement shall cover (a) any setoffs and counterclaims which the Government may have against the contractor and which may be applied against the terminated contract, and (b) all claims of subcontractors, except claims which are specifically excepted from the agreement and reserved for separate settlement.

§ 18–8.210–2 Reserved items.

Where any rights or claims of the Government or of the contractor other than standard reservations contained in settlement forms in §§ 18–8.805–1 through 18–8.805–8 are to be reserved from the settlement agreement, the agreement shall clearly and specifically describe the nature and extent of the reserved items. However, care shall be taken so that the wording of the reservation does not create any new rights in the parties beyond those in existence prior to the execution of the settlement agreement. The settlement agreement shall be clearly marked "This settlement agreement contains a reservation" and the contract file shall be retained until such reservation is removed. The TCO will assure that sufficient funds are reserved to cover complete settlement of the reserved items. The amount to be reserved will be determined by the TCO based on the best evidence available to him at the time of settlement. The separate settlement of reserved items shall be in accordance with the provisions of this section and shall be set forth in settlement agreements. A recommended format for Settlement of Reservations appears in § 18–8.805–9.

§ 18–8.210–3 Government property.

Before any settlement agreement is executed, the TCO shall determine the status of the Government property account for the terminated contract. If the audit of such property required by B.104 or C.104 discloses property for which the contractor cannot account, the settlement agreement shall reserve the rights of the Government with respect to such property, or make an appropriate deduction from the amount otherwise due the contractor.

§ 18–8.210–4 No-cost settlement.

(a) If no costs have been incurred by the contractor with respect to the terminated portion of the contract or if the contractor is willing to waive the costs incurred by him and if no amounts are due to the Government under the contract, a no-cost settlement agreement shall be executed substantially in the form set forth in § 18–8.805–6 or § 18–8.805–7, as applicable.

(b) Under a terminated cost-reimbursement type contract, the settlement agreement shall cover only the fee, if any, when the contractor has vouchered out all costs within the period specified in § 18–8.402.

§ 18–8.210–5 Partial settlements.

Every effort should be made by the TCO to settle in one agreement all rights and liabilities of the parties under the contract except those arising from any continued portion of the contract. Generally, TCO's shall not attempt to make partial settlements covering particular items of the prime contractor's settlement proposal. However, when a TCO cannot promptly effect a complete settlement under the terminated contract, a partial settlement may be entered into: *Provided* (i) (a) The issues on which agreement has been reached are clearly severable from other issues, and (b) the partial settlement will not prejudice the interest of the Government or the contractor in disposing of the unsettled part of the claim.

§ 18–8.210–6 Joint settlement of two or more claims.

With the consent of the contractor, the contracting officer or officers concerned may negotiate jointly two or more termination claims of the same contractor under different contracts, even though such contracts are with different NASA installations. In such cases, accounting work shall be consolidated to the greatest extent practical. The settlement resulting from such joint negotiation may be evidenced by one settlement agreement covering all contracts involved or by a separate agreement for each contract involved. Where the settlement agreement covers more than one contract, it shall (a) clearly identify the contracts involved; (b) apportion the total amount of the settlement among the several contracts on some reasonable basis; (c) have attached or incorporated therein a schedule showing the apportionment; and (d) be distributed and attached to each contract involved in the same manner as other contract amendments.

§ 18–8.210–7 Settlement by determination.

(a) *General.* To the extent that the contractor and TCO are unable to agree upon the settlement of a terminated contract or if a termination claim is not submitted within the period required by the termination clause in the contract, the TCO shall issue a determination of the amount due in accordance with the termination clause in the contract, including any cost principles incorporated therein by reference. An adjustment for loss, if any, should be made in accordance with § 18–8.304. The TCO shall comply with provisions of § 18–8.210–1 through §§ 18–8.210–6 and 18–8.212–2 in making any such determination. Copies of determinations shall be accorded the same distribution as modifications to a contract.

(b) *Notice to the contractor.* The TCO shall give the contractor not less than 15 days' notice by certified mail (return receipt requested) to submit, on or before a stated date, written evidence substantiating the amount claimed to be due.

(c) *Submission of evidence.* (1) The contractor has the burden of establishing by proof satisfactory to the TCO the amount claimed.

(2) The contractor may submit such vouchers, verified transcripts of books of account, affidavits, audit reports, and other documents as he may wish. The TCO may request the contractor to submit such additional documents and data,

and may cause such accounting, investigations, and audits to be made, as he deems appropriate.

(3) The TCO may accept photostatic or other copies of documents and records, and shall not require original documents, unless there is a question of authenticity.

(4) If the contractor wishes to confer with the TCO, or if the TCO wishes additional information from Government personnel or from independent experts, or wishes to consult persons whose affidavits or reports have been submitted, the TCO, in his discretion, may hold such conferences as he deems appropriate.

(d) *Determinations.* After reviewing the information submitted or otherwise available to him, the TCO shall determine the amount due and shall transmit a copy of his determination to the contractor by certified mail (return receipt requested). The letter of transmittal shall advise the contractor that the determination is a final decision from which an appeal may be taken under the disputes clause. The determination shall set forth the amount due the contractor and shall be supported by detailed schedules conforming generally to the forms for settlement proposals prescribed in § 18–8.802 and by additional information, schedules, and analyses, as appropriate. An adequate explanation shall be given for each major item of disallowance. The TCO need not reconsider (1) any settlement with a subcontractor, (2) any disposition of property, or (3) any other action relating to the terminated portion of the contract, where such settlement, disposition, or other action has been previously ratified or approved by him or another duly authorized contracting officer.

(e) *Preservation of evidence.* The TCO shall retain in appropriate files all written evidence and other data or copies thereof, relied upon by him in making his determination, except that copies of original books of account, need not be made. Books of account together with other original papers and documents, shall be returned to the contractor within a reasonable time.

(f) *Appeals.* The contractor has a right of appeal, under the Disputes clause of the contract, from any settlement by determination, except that the contractor has no such right of appeal where he has failed to submit his settlement proposal within the time provided in the contract and has failed to request extension of such time. The pendency of an appeal shall not affect the authority of the TCO to settle the termination claim or any part thereof by a negotiated agreement with the contractor at any time before the appeal is decided.

(g) *Decision of the NASA Board of Contract Appeals.* A decision of the NASA Board of Contract Appeals will be given effect, when necessary, by a supplement to the contract. Where appropriate, a release should be obtained from the contractor. TCO's are authorized to modify forms of Settlement Agreement in § 18–8.805 to accord with this provision.

§ 18–8.211 Contracting officer's negotiation memorandum.

The TCO shall, at the conclusion of the settlement negotiations, prepare a memorandum setting forth the principal elements of the settlement for inclusion in the termination case file and for the use of reviewing authorities. If the settlement was negotiated on the basis of individual items, the TCO shall specify the factors considered with respect to each item. If the settlement was negotiated on an overall lump sum basis, the TCO need not evaluate each item or group of items individually, but the total amount of the recommended settlement shall be supported in reasonable detail. The memorandum shall include explanations of matters as to which differences and doubtful questions were settled by agreement, and the factors taken into consideration in connection therewith, and any other matters which, in the opinion of the TCO, will assist reviewing authorities in understanding the basis for the settlement. Recommended memorandum formats for settlements requiring review board action appear in §§ 18–8.808 and 18–8.809.

§ 18–8.212 Review and approval of proposed settlements.

§ 18–8.212–1 Settlement review boards.

The Director of Procurement has established a Settlement Review Board at NASA Headquarters to review proposed settlements or determinations in excess of $500,000. Procurement Officers at each NASA installation shall establish a Settlement Review Board to review proposed settlements or determinations as required by § 18–8.212–2(a). Each Settlement Review Board should be composed of at least three qualified employees of the installation, who shall be persons with broad business and contracting experience. The membership of each Board should include a lawyer, and in appropriate cases an accountant, an engineer or industrial specialist. Three members of the Board shall constitute a quorum; the Board may act by a majority of the members present. No person shall serve as a member of a Settlement Review Board in reviewing a settlement in which he has participated.

§ 18–8.212–2 Required review and approval.

(a) *When required.* Prior to executing a settlement agreement, or issuing a determination of the amount due under the termination clause of a contract, or approving or ratifying a subcontract settlement, the TCO shall submit each such settlement or determination for review and approval by a Settlement Review Board if:

(1) The settlement or determination involves $50,000 or more (see § 18–8.101–1);

(2) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract, or subcontract, and (i) in the case of a complete termination, the fee, as adjusted, is $50,000 or more; or (ii) in the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is $50,000 or more;

(3) The Procurement Officer concerned determines that a review is desirable; or

(4) The TCO, in his discretion, desires review by the Settlement Review Board.

The review and approval of each settlement or determination in excess of $500,000 shall be made by the Board at NASA Headquarters.

(b) *Submission of information.* The TCO shall submit to the Settlement Review Board a statement of the settlement, supported by such detailed information as is required for an adequate review. This information should nomally include copies of (1) the contractor's or subcontractor's settlement proposal, (2) the audit report, (3) the property disposal report and any required approvals in connection therewith, (4) the TCO's memorandum explaining the settlement (see § 18–8.211), and (5) when appropriate, the opinion of any other Settlement Review Board which has previously reviewed the settlement. The Board may, in its discretion, require the submission of additional information. Submission of information to the Settlement Review Board shall be in six copies.

§ 18–8.212–3 Scope of review.

The function of a Settlement Review Board is to determine the overall reasonableness of the proposed settlement agreement or determination from the standpoint of protecting the Government's interest. The Board may vary the scope and intensity of the review according to the size and complexity of the proposed settlement agreement or determination and any other relevant factors. It is not intended that the Board examine in detail every element entering into the proposed settlement agreement or determination, but the Board may inquire into selected elements of the proposed settlement agreement or determination to assure that it has been conducted competently and is based on adequate information.

§ 18–8.212–4 Action by Board.

The Settlement Review Board shall submit to the TCO a written opinion with respect to the proposed settlement agreement or determination and any other matter considered by the Board setting forth its approval or disapproval thereof, or other decision thereon. Failure of the Board to submit a written opinion as to any proposed settlement agreement or determination within 30 days after submission to the Board of all the information required pursuant to § 18–8.212–2(b) shall operate as an approval by the Board.

§ 18–8.212–5 Subcontracts.

A TCO may authorize the contract administration office cognizant of an upper-tier subcontractor to grant approval or ratification, including necessary settlement review board approvals, of proposed subcontractor settlements de-

scribed in § 18–8.209–3(c), which are first reviewed and referred by the prime contractor to the TCO. This procedure may be used only for specific contracts and is not applicable to settlements between the contractor and his immediate subcontractors.

§ 18–8.213 Payment.

§ 18–8.213–1 Partial payments upon termination.

(a) *General.* If the contract authorized partial payments on termination claims prior to settlement, a fixed-price prime contractor, or a cost-reimbursement prime contractor whose settlement proposal includes costs, may request such partial payments in the form referenced in § 18–8.802–10 at any time after submission of interim or final settlement proposals. Applications for partial payments shall be processed promptly. A subcontractor's partial payment application shall be submitted through the prime contractor and the prime contractor shall attach his own invoice and recommendations to the subcontractor's application. Partial payments to a subcontractor shall be made only by the prime contractor. An appropriate reservation as to final price with respect to such completed articles shall be incorporated in the supplemental agreement.

(b) *Amount of partial payment.* Before approving any partial payment requested by the contractor, the TCO shall have made such accounting, engineering, or other specialized reviews as he deems proper of the data required by this Part 18–8 to be submitted in support of the contractor's settlement proposals. If such reviews and the TCO's examination of the data indicate that the requested partial payment is proper, the TCO may, in his discretion, authorize payments as follows:

(1) An amount up to 100 percent of the contract price, adjusted in accordance with § 18–8.306 for undelivered acceptable items completed prior to the termination date, or completed thereafter with the approval of the TCO, which are included in the contractor's settlement proposals pursuant to § 18–8.306;

(2) An amount up to 100 percent of the amount of any subcontract settlement effected and paid by the prime contractor; provided the settlement has been approved or ratified by the TCO pursuant to §18–8.209–3(c) or has been authorized pursuant to § 18–8.209–4;

(3) An amount up to 90 percent of the direct cost of termination inventory, including costs of raw materials, purchased parts, supplies, and direct labor;

(4) A reasonable amount, not to exceed 90 percent, of other allowable costs (including manufacturing and administrative overhead) allocable to the terminated portion of the contract and not included in (1), (2), or (3) above; and

(5) An amount up to 100 percent of partial payments made to subcontractors in conformance with this paragraph (b).

No partial payments shall be made on account of profit or fee which may be claimed with respect to the terminated portion of the contract. In exercising his discretion as to the extent to which partial payments shall be made, the TCO shall consider the diligence of the contractor in settling with his subcontractors and in preparing his own claim.

(c) *Recognition of assignments.* Where an assignment of claims has been made under the contract, partial payments shall not be made to other than the assignee unless the parties to the assignment consent to the payments. Where moneys payable under the contract have been assigned, applications of subcontractors for partial payment shall not be approved for payment unless a written statement has been secured by the contractor from the assignee, agreeing to and authorizing the payment of funds in the manner prescribed by Section V of the Application (DD Form 548).

(d) *Security for partial payments.* To the extent that any partial payment is made with respect to completed end items or for direct or indirect costs of termination inventory, the interest of the Government shall be protected by transfer of title to the Government of the completed end items or termination inventory concerned, or by the creation of a lien in favor of the Government, paramount to all other liens, on such completed end items or termination inventory, or by other appropriate means.

(e) *Deductions in computing amount of partial payments.* There shall be deducted from the gross amount of any partial payment otherwise payable under § 18–8.213–1(b):

(1) All unliquidated balances of progress payments and advance payment (including interest thereon) theretofore made to the contractor, which are allocable to the terminated portion of the contract; and

(2) The amounts of all credits arising from the purchase, retention, or sale of property the cost of which are included in the application for partial payment.

(f) *Limitation on total amount: Effect of overpayment.* The total amount of all partial payments shall not exceed the amount which will, in the opinion of the TCO, become due to the contractor by reason of the termination. If the total of partial payments made to the contractor should exceed the amount finally determined to be due to the contractor on his termination claim, the excess shall be repayable to the Government on demand, together with interest computed at the rate of six percent per annum from the date of such excess payment was received by the contractor to the date of repayment: *Provided,* That

(1) No interest shall be charged for any such excess payment attributable to a reduction in the contract termination claim by reason of retention or other disposition of termination inventory, until 10 days after the date of such retention or disposition, or such later date as determined by the TCO by reason of the circumstances, and

(2) No interest shall be charged for overpayment under cost-reimbursement type research and development contracts (without profit or fee to the contractor) if the overpayments are repaid to the Government within 30 days after demand.

(g) *Certification and approval of partial payments.* Partial payments in a specific amount shall be made on the basis of vouchers or invoices certified by the contractor. The certification shall include, in addition to any other provisions ordinarily required to be included in such certificate, the following.

> The payment covered by this voucher is a partial payment on account of the Contractor's termination claim under contract No. ------, made pursuant to Part 8 of the NASA Procurement Regulation.

The invoice or voucher, if proper, shall be approved by the TCO by noting thereon the following.

> Payment in the amount of $---------- approved.

§ 18–8.213–2 Final payment.

(a) *Negotiated settlement.* Upon execution of a settlement agreement, a voucher or invoice showing the amount agreed upon, less any portion previously paid, shall be prepared and certified in the usual form and presented to the disbursing officer for payment. A copy of the settlement agreement shall be attached to the voucher or invoice.

(b) *Settlement by determination.* In the event of a settlement by determination:

(1) If the contractor has not appealed the determination a voucher or invoice showing the amount so determined to be due, less any portion previously paid, shall be prepared and certified in the usual form and presented to the disbursing officer for payment; or

(2) If the contractor has appealed the determination, a voucher or invoice showing the amount finally determined on such appeal to be due, less any portion previously paid, shall be prepared and certified in the usual form and presented to the disbursing officer for payment. Pending determination of any appeal, an invoice or voucher pursuant to paragraph (b)(1) of this section may be presented to the disbursing officer for payment, without prejudice to the rights of either party on the appeal.

(c) *Interest.* No interest shall be paid by the Government on the amount due under a settlement agreement or a settlement by determination.

§ 18–8.214 Cost principles applicable to the settlement of research and development contracts with educational institutions.

The cost principles and procedures set forth in Subpart 18–15.3 shall, subject to the general policies set forth in § 18–8.301, be a guide for the negotiation of settlements under fixed price or cost-reimbursement type contracts for experimental, developmental or research work with educational institutions, in accordance with §§ 18–15.103 and 18–15.6.

§ 18–8.215 Settlement of unadjusted contract changes.

(a) Prior to settlement of a completely terminated contract, the TCO shall ob-

tain from the contracting officer a list of all unadjusted contract changes pertaining thereto. The TCO shall settle, as part of final settlement, all unadjusted contract changes after obtaining the recommendations of the purchasing office concerning such changes.

(b) When the contract has been partially terminated, any outstanding unadjusted contract changes will be handled by the contracting officer. However, delegation may be made by the contracting officer to the TCO.

§ 18–8.217 Settlement of terminated contracts with incentive provisions.

(a) *FPI contracts.* The settlement of terminated contracts containing an incentive clause shall be in accordance with the provisions of paragraph (1) of the clause in §§ 18–7.108 and 18–8.701.

(1) *Partial termination.* Under a partial termination of a FPI contract, the TCO shall negotiate a settlement pursuant to the termination for convenience clause, as provided in paragraph (1) of the clause in § 18–7.108. The application of the incentive price revision provisions to completed items accepted by the Government, including any for which reimbursement may be claimed in the settlement proposal, shall be accomplished by the contracting officer. Reimbursement for completed articles included in the settlement proposal for which a final price has not been established shall be at target price.

(2) *Complete termination.* If any items were delivered and accepted by the Government, prices shall be established by the contracting officer under the incentive provisions of the contract. On the terminated portion of the contract, the provisions of the termination clause (see § 18–8.701) shall govern and the provisions of the incentive clause shall not be applicable. The TCO responsible for the termination settlement will assure himself, on the basis of evidence he deems proper (including coordination with the contracting officer), that no portion of the costs considered in the negotiations under the incentive provisions are included in the termination settlement.

(b) *CPIF contracts.* The settlement of terminated contracts containing an incentive clause shall be in accordance with the provisions of § 18–8.702.

(1) *Partial termination.* Under a partial termination of a CPIF contract, settlement by the TCO shall be limited to an adjustment of target fee as provided in paragraph (h) of the clause in § 18–7.203–4. The supplemental agreement shall include a reservation with respect to any adjustment of target cost resulting from the partial termination. Adjustment of target cost, if required, shall be accomplished by the contracting officer.

(2) *Complete termination.* The settlement will be negotiated in accordance with the provisions of Subpart 18–8.4 and § 18–8.702. The fee shall be adjusted on the basis of the target fee, and the incentive provisions shall not be applied or considered.

Subpart 18–8.3—Additional Principles Applicable to the Settlement of Terminated Fixed-Price Type Contracts

§ 18–8.301 General.

(a) A settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including an allowance for profit thereon which is reasonable under the circumstances. Fair compensation is a matter of judgment and cannot be measured exactly. In a given case, various methods may be equally appropriate for arriving at fair compensation. The application of standards of business judgment, as distinguished from strict accounting principles, is the heart of a settlement.

(b) The primary objective is to negotiate a settlement by agreement. The parties may agree upon a total amount to be paid the contractor without agreeing on or segregating the particular elements of costs or profit comprising this amount.

(c) Cost and accounting data may provide guides, but are not rigid measures, for ascertaining fair compensation. In appropriate cases, costs may be estimated, differences compromised, and doubtful questions settled, by agreement. Other types of data, criteria, or standards may furnish equally reliable guides to fair compensation. The amount of recordkeeping, reporting and accounting, in connection with the settlement of termination claims shall be kept to the minimum compatible with the reasonable protection of the public interest.

§ 18–8.302 Cost principles.

The principles set forth in the applicable subpart of Part 18–15 shall be used as a guide for the evaluation of cost information in the negotiation of a termination settlement.

§ 18–8.303 Allowance for profit.

(a) *General.* Profit shall be allowed on preparations made and work done by the contractor for the terminated portion of the contract. Although the contractor's settlement efforts will be considered, profit will not be based on the dollar amount of the contractor's settlement expenses. Anticipatory profits and consequential damages shall not be allowed (but see § 18–8.209–5). Any reasonable method may be used to arrive at a fair profit, separately or as a part of the whole settlement.

(b) *Factors to be considered.* In negotiating or determining profit, factors to be considered include:

(1) Extent and difficulty of the work done by the contractor as compared with the total work required by the contract; engineering estimates of the percentage of completion ordinarily should not be required, but if available should be considered;

(2) Engineering work, production scheduling, planning, technical study and supervision, and other necessary services;

(3) Efficiency of the contractor, with particular regard to—

(i) Attainment of quantity and quality production,

(ii) Reduction of costs,

(ii) Economy in the use of materials, facilities, and manpower; and

(iv) Disposition of termination inventory.

(4) Amount and source of capital employed and extent of risk assumed;

(5) Inventive and developmental contributions, and cooperation with the Government and other contractors in supplying technical assistance;

(6) Character of the business, including the source and nature of materials and the complexity of manufacturing techniques;

(7) The rate of profit which the contractor would have earned had the contarct been completed;

(8) Character and difficulty of subcontracting including selection, placement, and management of subcontracts; engineering, technical assistance, and other services rendered; and effort in in negotiating settlement of terminated subcontracts. The profit allowed for the contractor's efforts shall not be measured by the amount of the contractor's payment to subcontractors for settlement of their termination claims. The termination of a contract removes risks and responsibilities with respect to material or services which have not been delivered or furnished by the subcontractor. Therefore, no allowance to the prime contractor for profit may be made for such material or services which, as of the effective date of termination, have not been delivered by the subcontractor, regardless of the percentage of completion; and

(9) The rate of profit both parties contemplated at the time the contract was negotiated.

§ 18–8.304 Adjustment for loss.

(a) In the negotiation or determination of any settlement, no profit shall be allowed if it appears that the contractor would have incurred a loss had the entire contract been completed. The amount of loss shall be negotiated or determined and an adjustment in the amount of settlement shall be made as specified in paragraphs (b) or (c) of this section. In estimating the cost to complete, consideration shall be given to expected production efficiencies and to other factors affecting the cost to complete.

(b) If the settlement is on an inventory basis, the contractor shall not be paid more than:

(1) The amount negotiated or determined for settlement expenses;

(2) The contract price, as adjusted, for acceptable completed end items (see § 18–8.306); and

(3) The remainder of the settlement amount otherwise agreed or determined (not excluding the allocable portion of initial costs (see § 18–15.205–42(c))), reduced by multiplying that remainder by the ratio of (i) the total contract price,

to (ii) the total cost incurred prior to termination plus the estimated costs to complete the entire contract;

less all disposal credits and all unliquidated advance and progress payments previously made to the contractor under the contract.

(c) If the settlement is on a total cost basis, the contractor shall not be paid more than:

(1) The amount negotiated or determined for settlement expenses; and

(2) The remainder of the total settlement amount otherwise agreed or determined, reduced by multiplying that remainder by the ratio of (i) the total contract price, to (ii) that remainder plus the estimated cost to complete the entire contract;

less all disposal and other credits, all advance and progress payments, and all other amounts previously paid to the contractor under the contract.

§ 18–8.305 Deductions.

From the amount payable to the contractor under a settlement, there shall be deducted (a) the agreed price for any part of the termination inventory purchased or retained by the contractor, and the proceeds of sale of any materials sold by him, which have not otherwise been paid or credited to the Government; (b) the fair value, as determined by the TCO, of any part of the termination inventory which, prior to transfer of title to the Government or to a buyer pursuant to Part 18–24, is destroyed, lost, stolen, or so damaged as to become undeliverable, except for normal spoilage or to the extent the Government has expressly assumed the risk of loss; and (c) such other amounts as appropriate in the particular case.

§ 18–8.306 Completed end items.

Promptly after the effective date of termination, the TCO shall have all undelivered completed end items inspected and accepted if they comply with the prime contract requirements, and shall determine which accepted end items shall be delivered under the contract. The contractor shall be paid for completed end items so accepted and delivered by invoicing them at the contract price in the usual manner and shall not include such end items in his termination claim. Where completed end items, though accepted, are not to be delivered under the contract, the contractor shall include such end items in his settlement proposal at the contract price, appropriately adjusted for any saving of freight or other charges, together with any credits for their purchase, retention, or sale.

§ 18–8.307 Settlement proposals.

§ 18–8.307–1 Submission of settlement proposals.

(a) Subject to the provisions of the Termination clause in the contract, the contractor should promptly submit to the TCO a settlement proposal setting forth the amount claimed to be due by reason of the termination. The proposal must be submitted within 1 year from the effective date of the termination, unless the period has been extended in accordance with the terms of the contract. Termination charges under a single prime contract involving two or more divisions or units of the prime contractor must be consolidated and included in a single termination claim.

(b) The settlement proposal must cover all elements of the contractor's claim, including settlements with subcontractors. With the consent of the TCO, proposals may be filed in successive steps covering separate portions of a claim. Such interim proposals shall include all costs of a particular type, except as the TCO may authorize otherwise.

(c) Settlement proposals must be in the form prescribed in § 18–8.802. When none of those forms is adequate for a particular contract, the Director of Procurement may authorize appropriate modifications. Settlement proposals must be in reasonable detail supported by adequate accounting data. Actual, standard (appropriately adjusted), or average costs, may be used in preparing settlement proposals: *Provided*, That such costs are determined in accordance with generally recognized accounting principles consistently followed by the contractor. When actual, standard, or average costs are not reasonably available, estimated costs may be used if the method of arriving at the estimates is approved by the TCO. A contractor shall not be required to maintain unduly elaborate cost accounting systems merely because his contracts may subsequently be terminated.

(d) DD Form 8: 1 (see § 18–8.802–3) may be used when the total claim is less than $10,000, unless otherwise instructed by the TCO. Claims which would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract, must be consolidated wherever possible and must not be divided in such a way as to bring them below $10,000.

(e) The Scedule of Accounting Information, DD Form 546, must be submitted for each termination under a contract on which a claim for reimbursement of costs is made, except that the Schedule is not required when the Short Form Settlement Proposal, DD Form 831, is used. Although several interim proposals may be submited, DD Form 546 need be submitted only once unless, subsequent to filing of the original form, major changes occur in the information contained therein.

§ 18–8.307–2 Bases for settlement proposals.

(a) *Inventory basis.* Use of the inventory basis for settlement proposals is preferred. Under this basis the contractor may claim only costs chargeable or allocable to the terminated portion of the contract, and the settlement proposal must itemize separately:

(1) At purchase or manufacturing cost, each of the following metals, raw materials, purchased parts, work in process, finished parts, components, dies, jigs, fixtures, and tooling;

(2) Charges such as engineering costs, initial costs, and general administrative costs;

(3) Costs of settlements with subcontractors;

(4) Settlement expenses; and

(5) Other proper charges.

An allowance for profit (see § 18–8.303) or adjustment for loss (see § 18–8.304(b)) must be made to complete the gross termination claim. All unliquidated advance and progress payments, and all disposal and other credits known when the proposal is submitted, must then be deducted.

(b) *Total cost basis.* (1) When use of the inventory basis is not practicable or will unduly delay settlement, the total cost basis may be used if approved in advance by the TCO. The following are examples of situations where use of the total cost basis may be permitted by the TCO:

(i) If production has not commenced and the accumulated costs represent planning and preproduction or "get ready" expenses;

(ii) If the contractor's accounting system will not readily lend itself to the establishment of unit costs for work in process and finished products;

(iii) If the contract does not specify unit prices; or

(iv) If the termination is complete and involves a letter contract.

(2) When the total cost basis is used under a complete termination, all costs incurred under the contract up to the effective date of termination must be itemized and the costs of settlements with subcontractors and applicable settlement expenses must be added. An allowance for profit (see § 18–3.303) or adjustment for loss (see § 18–8.304(c)) must be made. The contract price for all end items which have been or are to be delivered and accepted must be deducted. All unliquidated advance and progress payments, disposal and other credits known when the proposal is submitted, must also be deducted.

(3) When the total cost basis is used under a partial termination, the settlement proposal must not be submitted until completion of the continued portion of the contract. The settlement proposal must be prepared in accordance with paragraph (b)(2) of this section except that all costs incurred to the date of completion of the continued portion of the contract must be included.

(c) *Other basis.* Termination claims may not be submitted on any basis other than paragraph (a) or paragraph (b) of this section without the prior approval of the Director of Procurement.

§ 18–8.308 Limitation on settlements.

The total amound payable to the contractor on account of a settlement, whether through negotiation or by determination, before deducting disposal or other credits and exclusive of settlement costs, must not exceed the contract price less payments otherwise made or to be made under the contract.

§ 18–8.309 Equitable adjustment in unit prices under fixed-price contracts in cases of partial termination.

(a) If, as a result of a partial termination, the contractor submits in writing a request according to the termination clause for an equitable adjustment of the price or prices specified in the contract which are related to the continued portion, the request must be sent to the purchasing office.

(b) The contracting officer shall have final responsibility for negotiating an equitable adjustment in the price relating to the continued portion of the contract and will effect a supplemental agreement covering any changes in price. The contracting officer shall assure himself, on the basis of evidence he deems proper (including coordination with the TCO), that no portion of any increase in price has been included in any termination settlement previously made or currently in process.

(c) The TCO shall assure himself, on the basis of evidence he deems proper (including coordination with the contracting officer), that no portion of the costs included in the equitable adjustment for the continued portion of the contract are included in the termination settlement.

Subpart 18–8.4—Additional Principles Applicable to the Settlement of Terminated Cost-Reimbursement Type Contracts

§ 18–8.401 General considerations.

The termination clauses for cost-reimbursement type contracts (see §§ 18–8.702 and 18–8.704) provide for the settlement of costs and of fee, if any. The provisions of the particular contract governing costs shall determine what costs are allowable.

§ 18–8.402 Discontinuance of vouchers.

(a) When the contract has been completely treminated, the contractor shall not use Standard Form 1034 (Public Voucher) after the last day of the sixth month folowing the month in which the termination notice is effective; however, he may elect to discontinue the use of such vouchers at any time prior thereto. When the contractor has vouchered out all costs within the 6-month period, his claim for fee, if any, may be submitted on DD Form 547 (see § 18–8.803) or by letter appropriately certified. The contractor must substantiate the amount of the fee he claims. The claim for fee must be submitted to the contracting officer within 1 year from the effective date of termination, unless the period has been extended in accordance with the trems of the contract. When the use of vouchers has been discontinued, all unvouchered costs and claim for fee, if any, shall thereafter be submitted in accordance with § 18–8.404.

(b) When the contract has been partially terminated, the provisions of § 18–8.405 shall be applied.

§ 18–8.404 Procedure after vouchers are discontinued.

§ 18–8.404–1 Submission of settlement proposal.

The contractor shall submit a settlement proposal covering unvouchered costs and his claim for a fee, if any. Such proposal shall be submitted to the TCO within 1 year from the effective date of termination, unless the period has been extended in accordance with the terms of the contract and in the form prescribed in § 18–8.803 unless the Director of Procurement authorizes modification thereof. The proposal shall contain only unvouchered costs and the contractor may not include in such proposal costs which:

(a) Have been finally disallowed by the contracting officer; or

(b) Are the subject of a reclaim voucher or any costs of a similar nature.

§ 18–8.404–2 Audit of settlement proposal.

The TCO shall submit the settlement proposal to the cognizant audit office for appropriate examination and recommendation in accordance with § 18–8.208. However, if the settlement proposal is limited to an adjustment of fee, no referral to the audit office is required.

§ 18–8.404–3 Partial payments.

Requests for partial payments shall be made and processed in accordance with § 18–8.213–1.

§ 18–8.404–4 Adjustment of overhead costs.

(a) If the contract contains a negotiated overhead rate clause (see § 18–3.704) and it appears that adjustment of overhead costs applicable to vouchered costs under the procedure established for determining such negotiated overhead rates will unduly delay final settlement, the TCO after obtaining appropriate information from the cognizant auditor may agree with the contractor:

(1) To negotiate the amount of overhead for the contract for the period for which fixed overhead rates have not previously been negotiated, based upon audit recommendations requested by the TCO for such purpose or utilize provisional rates for this period to expeditiously effect final settlement if the provisional rate appears reasonable (see § 18–3.706(d)); or

(2) That any overhead adjustment shall be reserved in the final settlement agreement, pending establishment of negotiated rates in accordance with Subpart 18–3.7.

(b) When an amount of overhead is negotiated pursuant to paragraph (a)(1) of this section, the contractor will eliminate such overhead and the related direct costs on which it was based from the total pool and base used to compute overhead for other contracts performed during the applicable accounting period.

§ 18–8.404–5 Final settlement.

(a) The TCO shall proceed with the settlement and execution of an appropriate settlement agreement upon receipt of the audit report, if applicable, and the contract audit closing statement covering vouchered cost (see § 18–51.310–3).

(b) The fee shall be adjusted as provided in § 18–8.406.

(c) The final settlement agreement may include all claims of the Government and of the contractor under the terminated contract, except that no amount may be allowed for any item of cost disallowed by the contracting officer, or for any other item of cost of the same nature.

(d) The provisions of the contract governing the types of reimbursable costs shall constitute the basis of negotiations; however, if an overall settlement of costs is agreed upon, agreement on each separate element of cost is not necessary. In appropriate cases, differences may be compromised and doubtful questions settled by agreement. An overall settlement shall not, under any circumstances, be made the means of reimbursing contractors for costs which under the provisions of the contract are clearly not allowable.

§ 18–8.405 Procedure for partial termination.

§ 18–8.405–1 General.

(a) In the event of a partial termination, the settlement shall be limited to an adjustment of the fee, if any, and, subject to the concurrence of the contracting officer a reduction in estimated cost. The fee shall be adjusted in accordance with §§ 18–8.405–2 and 18–8.406 unless the termination contracting officer determines that:

(1) The terminated portion is clearly severable from the balance of the contract; or

(2) Performance of the contract is virtually complete, or that performance of any continued portion is only on subsidiary items or spare parts, or is otherwise not substantial.

(b) In the case of the foregoing exceptions, the procedures in §§ 18–8.402, and 18–8.404 are applicable.

§ 18–8.405–2 Submission of settlement proposal (fee only).

The contractor shall submit a settlement proposal which shall be limited to a proposed reduction in the amount of fee, if any. Such proposal shall be submitted to the TCO within 1 year from the effective date of determination, unless the period has been extended in accordance with terms of the contract. The proposal may be submitted in the form prescribed in § 18–8.803 or by letter appropriately certified. The contractor shall substantiate the amount of the fee he claims in accordance with § 18–8.406.

§ 18–8.405–3 Submission of vouchers.

In the event of a partial termination when settlement is limited to adjustment of fee, if any, the contractor shall continue to submit on Standard Form 1034 all costs reimbursable under the contract, including (a) his own costs allocable to the terminated portion of the contract, (b) cost of settlements with subcontractors properly identified as such, and

(c) applicable settlement expenses. The contractor shall not be reimbursed for costs of settlements with subcontractors unless the approval or ratifications required pursuant to the contract have been obtained (see § 18–8.209).

§ 18–8.406 Adjustment of fee.

The adjusted fee to be paid, if any, shall be determined in the manner provided by the contract, generally based on percentage of completion of the contract or of the terminated portion thereof. Where this basis is used, factors such as the extent and difficulty of the work performed by the contractor (including but not limited to planning, scheduling technical study, engineering work production and supervision, placing and supervising subcontracts to the extent reasonably required, and work performed by the contractor in (a) stopping performance, (b) settling claims of subcontractors, and (c) disposing of termination inventory) shall be compared with the total work required by the contract or by the terminated portion thereof. The prime contractor's adjusted fee shall not include an allowance for fee for subcontract effort included in subcontractors' termination claims. The ratio of costs incurred to the total estimated cost of performing the contract or the terminated portion thereof is only one factor in computing the percentage of completion. This percentage may be either greater or less than that indicated by the ratio of costs incurred, depending upon the evaluation by the TCO of the above factors and other relevant considerations.

§ 18–8.407 Termination of default.

The right to terminate a cost-reimbursement type contract for default is provided for in the Termination clause set forth in § 18–8.702(a). In the event of termination, the contractor shall be reimbursed his allowable costs in accordance with the clause, and an appropriate reduction shall be made in the total fee, if any, computed in accordance with the default provisions of the contract (see paragraph (e)(i)(D)(II) of the clause in § 18–8.702(a)). The costs of preparing the contractor's settlement proposal are not allowable. A cost-reimbursement type contract does not contain any provision for recovery of excess costs of reprocurement after termination for default, but see paragraph (b) of the clause set forth in § 18–7.203–5 with respect to failure of the contractor to replace or correct defective supplies. The procedures set forth in § 18–8.602 shall be used to the extent appropriate in considering the termination for default of a cost-reimbursement type contract. A 10-day notice to the contractor prior to termination for default is required in every case by the Termination clause in § 18–8.702(a).

Subpart 18–8.6—Termination for Default

§ 18–8.600 Scope of subpart.

This subpart 18–8.6 sets forth policies and procedures for the utilization and application of the Default clause set forth in § 18–8.707 for fixed-price supply contracts, and the "Termination for Default—Damages for Delay—Time Extensions" clause set forth in § 18–8.709 for fixed-price construction contracts. (For cost-reimbursement type contracts, see § 18–8.407.)

§ 18–8.601 General.

(a) Termination for default is generally the exercise of a contractual right of the Government to terminate the contract in whole or in part by reason of the contractor's failure, actual or anticipatory, to perform his obligations under the contract.

(b) If the contractor can establish this his failure to perform arose out of causes beyond his control and without his fault or negligence, the contract clauses in §§ 18–8.707 and 18–8.709 provide that a termination for default shall be deemed to have been a termination for the convenience of the Government, and the rights and obligations of the parties shall be governed accordingly.

(c) The Government may also in appropriate cases exercise termination or cancellation rights in addition to those set forth in the contract clauses (see for example, paragraph (f) of the Default clause in § 18–8.707).

(d) When a fixed-price type contract is to be terminated for default, the contracting officer of the NASA installation responsible for issuing the contract normally shall accomplish the termination for default. However, anothr NASA installation or the Department of Defense may be requested to assist in the termination for default when it is considered to be economical and practicable.

(e) When it is proposed to utilize the services of another NASA installation, the contracting officer shall arrange with the contracting officer of that installation to perform those duties that are appropriate.

(f) When it is proposed to utilize the services of the Department of Defense, a request for such services shall be made by letter prepared in accordance with the agreement with the Department of Defense. (See Subpart 18–51.3.)

§ 18–8.602 Termination of fixed-price supply contracts for default.

§ 18–8.602–1 The Government's right to terminate for default.

Under contracts containing the Default clause in § 18–8.707 the Government has the right, subject to the notice requirements of the clause, to terminate the whole or any part of the contract for default if the contractor (a) fails to make delivery of the supplies or to perform the services within the time specified in the contract (b) fails to perform any other provision of the contract, or (c) fails to make progress so as to endanger performance of the contract.

§ 18–8.602–2 Effect of termination for default.

(a) Under a termination for default the Government is not liable for the contractor's costs on undelivered work, and is entitled to the repayment of advance payments and progress payments, if any, applicable to such work. The Government may elect, pursuant to paragraph (d) of the Default clause (see § 18–8.707), to require the contractor to transfer title and deliver to the Government completed supplies and manufacturing materials, in the manner and to the extent directed by the contracting officer. The contracting officer shall not use the Default clause as authority to acquire any completed supplies or manufacturing materials unless he has made certain that the Government does not already have title thereto under some other provision of the contract. In the event manufacturing materials are to be acquired by the Government under the authority of the Default clause for the purpose of furnishing the materials to any other contractor, the contracting officer shall take such action only after giving due consideration to the difficulties that such contractor may encounter in making use of the materials.

(b) Subject to the provisions of paragraph (c) of this section, the Government shall pay to the contractor the contract price for any completed supplies, and the amount agreed upon by the contracting officer and the contractor for any manufacturing materials, acquired by the Government pursuant to the Default clause.

(c) To protect the Government from overpayment for any completed supplies or manufacturing materials, that might result from failure to make provision for the Government's potential liability to laborers and materialmen for lien rights outstanding against such supplies or materials after the Government has paid the contractor therefore, the contracting officer shall take one or more of the following measures before making the payment referred to in (b) above:

(1) Ascertain whether the payment bonds, if any, furnished by the contractor are adequate to satisfy all lienors' claims; or whether it is feasible to obtain similar bonds to cover outstanding liens;

(2) Require the contractor to furnish appropriate statements from laborers and materialmen disclaiming any lien rights they may have to the supplies and materials;

(3) Obtain appropriate agreement by the Government, the contractor and lienors assuring release of the Government from any potential liability to the contractors or lienors;

(4) Withhold from the amount otherwise due for the supplies or materials such amount as the contracting officer determines to be necesary to protect the Government's interest, but only if the measures set forth in subparagraphs (1), (2), and (3) of this paragraph cannot be accomplished or are otherwise deemed inadequate;

(5) Take any other action the contracting officer deems appropriate considering the particular circumstances and the degree of the contractor's solvency.

(d) The contractor is liable to the Government for any excess costs incur-

red in procuring supplies and services similar to those terminated for default (see § 18–8.602–6), and for any other damages, whether or not repurchase is effected (see § 18–8.602–7).

§ 18–8.602–3 Procedure for default.

(a) Where a default termination is being considered, a decision as to the type of termination action to be taken (i.e., for default, for convenience or a no-cost cancellation) shall be made only after review by procurement and technical personnel, and by counsel to assure the propriety of the proposed action. A Show Cause Notice or Cure Notice shall not be issued without the prior approval of the contracting officer. Approval should be obtained by the most expeditious means including telephone or other electronic communications media. The contracting officer shall consider the following factors in determining whether to terminate a contract for default:

(1) The provisions of the contract, and applicable laws and regulations;

(2) The specific failure of the contractor and, unless time does not permit, the excuses, if any, for such failure;

(3) The availability of the supplies or services from other sources;

(4) The urgency of the need for the supplies or services and the period of time which would be required to obtain the supplies or services from other sources as compared with the time in which delivery could be obtained from the delinquent contractor;

(5) The degree of essentiality of the contractor in the Government procurement program and the effect of a termination for default upon the contractor's capability as a supplier under other contracts;

(6) The effect of a termination for default on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments; and

(7) Any other pertinent facts and circumstances.

(b) (1) If the foregoing consideration indicates that termination for default is appropriate, the contracting officer should, if practicable, notify the contractor by letter of the possibility of such termination. This letter shall call the contractor's attention to his contractual liabilities in the event the contract is terminated for default and request an explanation of the contractor's failure to perform the contract. The letter may further state that failure of the contractor to present such explanation may be taken as an admission that no valid explanation exists. When appropriate, the letter may invite the contractor to discuss the matter at a conference.

(2) When a termination for default appears imminent, a written notification of that fact (not an actual notice of default) may be given by the contracting officer to the surety at both its home and local offices.

(3) If it is requested by the surety, and agreed to by the contractor and his assignees, if any, arrangements may be made to have future checks mailed to the contractor in care of the surety. In such a case, the contractor must forward a written request to the designated disbursing officer specifically directing a change in address for mailing of checks.

(c) If, after compliance with the foregoing procedures, the contracting officer determines that termination for default is proper, he shall, where the termination is predicated upon the contractor's failure to make timely deliveries, issue a notice of termination at once. If the termination is predicated upon any other failure of the contractor, the contracting officer shall give the contractor written notice specifying such failure and providing a period of 10 days (or such longer period as the contracting officer may authorize) in which to cure such failure. Where appropriate, this notice may be made a part of the letter described in paragraph (b) of this section. Upon expiration of the 10 days (or longer period), the contracting officer may issue a notice of termination for default unless he determines that the failure to perform has been cured. Formats of letters that may be used by the contracting officer with respect to paragraph (b) above and this paragraph (c) are set forth in § 18–8.811.

(d) The notice of termination for default shall:

(1) Set forth the contract number and date;

(2) Describe the acts or omissions constituting the default;

(3) State that the contractor's right to proceed further with performance of the contract (or a specified portion of the contract) is terminated;

(4) State that the supplies or services terminated may be procured against the contractor's account, and that the contractor will be held liable for any excess costs;

(5) State that the Government reserves all rights and remedies provided by law or under the contract, in addition to charging excess costs; and

(6) State that the notice constitutes a decision that the contractor is in default as specified, and that the contractor has the right to appeal as specified in the "Disputes" clause.

If the contracting officer has investigated the contractor's excuses for the failure to perform, the notice of termination shall also state that it constitutes a decision that the failure to perform was not due to causes beyond the control and without the fault or negligence of the contractor, and that the contractor has the right to appeal as specified in the "Disputes" clause.

(e) The same distribution shall be made of the termination notice as was made of the contract. A copy thereof shall also be furnished to the contractor's surety at the same time that the notice is furnished to the contractor. The surety at the same time should be requested to advise if he desires to enter into any arrangement for completion of the work. In addition, the disbursing officer involved shall be notified to withhold further payments under the terminated contract pending further advice which should be furnished at the earliest practicable time.

(f) If the contracting officer determines that the contractor's failure to perform arose from causes beyond his control and without his fault or negligence, the contract shall not be terminated for default. If it is in the best interest of the Government to do so, the contract may be terminated for the convenience of the Government.

(g) If the contracting officer has not been able to determine, prior to issuance of the notice of termination, whether the contractor's failure to perform arose from causes beyond his control and without his fault or negligence, he shall make a written decision on that point as soon as practicable after issuance of the notice of termination. Such decision shall be delivered promptly to the contractor with a notification that he has the right to appeal as specified in the Disputes clause.

§ 18–8.602–4 Procedure in lieu of termination for default.

The following courses of action, among others, are available to the contracting officer in lieu of termination for default, when in the best interest of the Government:

(a) Permit the contractor, his surety, or his guarantor, to continue performance of the contract under a revised delivery schedule (see § 18–10.111–2 for requirements for notification of surety);

(b) Permit the contractor to continue performance of the contract by means of a subcontract, or other business arrangement with an acceptable third party; provided the rights of the Government are adequately preserved; or

(c) If the requirement for the supplies and services specified in the contract no longer exists, and the contractor is not liable to the Government for damages as provided in § 18–8.602–7, execute a no-cost termination settlement agreement utilizing the form set forth in § 18–8.805–6 and § 18–8.805–7 as a guide.

§ 18–8.602–5 Memorandum by the contracting officer.

In all cases where a contract is terminated for default or where a procedure authorized by § 18–8.602–4 is followed, the contracting officer shall prepare a memorandum for the contract file explaining fully the reasons for the action taken.

§ 18–8.602–6 Repurchase against contractor's account.

(a) Where the supplies or services are still required after termination, repurchase of supplies or services which are the same as or similar to those called for in the contract, shall be made against the contractor's account as soon as practicable after termination. Such repurchase shall be at as reasonable a price as practicable considering the quality required by the Government and the time within which the supplies or services are required. The contract of repurchase may be made for a quantity in excess of the undelivered quantity terminated for default, when such excess quantity is needed, but excess cost may be charged

against the defaulting contractor for no more than the undelivered quantity terminated for default (including variations in quantity permitted by the terminated contract). Generally, the contracting officer's decision to repurchase will be made prior to issuance of the termination notice.

(b) If the repurchase is for a quantity not in excess of the undelivered quantity terminated for default, the requirements of 10 U.S.C. 2304(a), with respect to formal advertising, are inapplicable. However, the contracting officer may use formal advertising procedures. If the contracting officer decides to negotiate the repurchase contract, he may either (1) use any authority listed in §§ 18–3.201 through 18–3.217 (10 U.S.C. 2304(a)(1)–(17)), as appropriate, or (2) if none of those authorities to negotiate is used, the contract shall identify the procurement as a repurchase in accordance with the provisions of the Default clause in the defaulted contract. If the repurchase is for a quantity in excess of the undelivered quantity terminated for default, the entire quantity shall be treated as a new procurement.

(c) If repurchase is effected at a price in excess of the supplies terminated, the contracting officer shall make a written demand on the contractor for the total amount of such excess giving due consideration to any increases or decreases in other ascertainable costs such as transportation, discounts, etc., and shall take such other action as is required by NMI 9640.1, "Collection of Civil Claims of the United States Arising Out of the Activities of NASA."

§ 18–8.602–7 Other damages.

(a) If a contract is terminated for default or if a course of action in lieu of termination for default is followed (see § 18–8.602–4), the contracting officer shall take appropriate action for ascertainment and collection of any liquidated damages to which the Government may be entitled under the contract. Pursuant to the contract provisions for liquidated damages in § 18–7.105–5 such damages are in addition to any excess cost of reprocurement.

(b) If the Government has suffered any other ascertainable damages as a result of the contractor's default, the contracting officer, on the basis of legal advice, shall take appropriate action to assert the Government's claim for such damage.

§ 18–8.650 Termination of fixed-price construction contracts for default.

§ 18–8.650–1 Termination of the contractor's right to proceed.

Under contracts containing the "Termination for Default-Damages for Delay-Time Extensions" clause set forth in § 18–8.709, the Government has the right, to the extent provided in such clause, to terminate the contractor's right to proceed with the work, or any separable part thereof, if the contractor does not prosecute the work required by the contract with such diligence as will insure its completion, or fails to complete it, within the time specified in the contract or any extension thereof.

§ 18–8.650–2 Effect of termination for default.

If a contractor's right to proceed is terminated for default, the Government may take over and complete the work or cause it to be completed, and the contractor and his sureties shall be liable to the Government for any increased costs caused thereby. The contractor and his sureties shall, in addition to increased costs in completing the work, be liable for liquidated damages, if liquidated damages are provided in the contract, or for actual damages, if liquidated damages are not so provided.

§ 18–8.650–3 Preliminary notice to surety.

(a) Whenever a termination for default appears imminent, a written notification of that fact (not an actual notice of default) may be given by the contracting officer to the surety at both its home and local offices.

(b) If it is requested by the surety, and agreed to by the contractor and his assignees, if any, arrangement may be made to have future checks mailed to the contractor in care of the surety. In such a case, the contractor must forward a written request to the designated disbursing officer specifically directing a change in address for mailing of checks.

§ 18–8.650–4 Procedure in case of default.

(a) The contracting officer shall consider the following factors in determining whether to terminate a contract for default:

(1) The provisions of the contract and applicable laws and regulations;

(2) The specific failure of the contractor and excuses, if any, made by the contractor for such failure;

(3) The period of time which would be required for the Government or another contractor to complete the work as compared to the time required for completion by the delinquent contractor;

(4) The effect of a termination for default on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments; and

(5) Any other pertinent facts and circumstances.

(b) If the contracting officer determines that the contractor's failure to perform arises from causes which are excusable under the terms of the contract, the contracting officer shall not terminate the contractor's right to proceed, nor shall he charge the contractor with liquidated damages (or if no liquidated damages, then actual damages) because of any delays occasioned by such causes.

(c) If the contracting officer determines that termination for default is in the best interest of the Government, he shall promptly send a written notice to the contractor terminating his right to proceed. The notice shall:

(1) Set forth the contract number and date;

(2) Describe the act or omissions, and the extent of the resultant delay, constituting the default;

(3) State that the contractor's right to proceed further with performance of the contract (or of a specified portion of the contract) is terminated;

(4) State that the Government may cause the contract to be completed and that the contractor will be held liable for any increased costs;

(5) State that the Government reserves all rights and remedies provided by law or under the contract, in addition to charging increased costs;

(6) State that the notice constitutes a decision (see § 18–1.314), pursuant to the "Disputes" clause, that the contractor is in default as specified and that the contracting officer has determined that the delay is not excusable; and

(7) State that the contractor has the right to appeal as specified in the "Disputes" clause.

(d) The same distribution shall be made of the termination notice as was made of the contract. A copy thereof shall also be furnished to the contractor's surety at the same time that the notice is furnished to the contractor. The surety at the same time should be requested to advise if he desires to enter into any arrangement for completion of the work. In addition, the disbursing officer involved shall be notified to withhold further payments under the terminated contract pending further advice which should be furnished the earliest practicable time.

(e) Promptly after issuance of the termination notice, the contracting officer shall determine the manner in which the work is to be completed and whether the materials, appliances, and plant which are on the site will be needed.

§ 18–8.650–5 Dealings with surety—take over agreements.

(a) By reason of the surety's liability for damages resulting from the contractor's default, the surety has certain rights and interests in connection with the completion of the contract work and the application of the undisbursed funds available therefor. Because of such interests of the surety, proposals by the surety concerning the completion of the work should be given due consideration, and the decision as to the action to be taken shall be made on the basis of the best interest of the Government, including the possible effect of such action upon the Government's rights against the surety.

(b) Where the surety desires to complete the contract work, completion by the surety should normally be permitted unless the contracting officer has reason to believe that the persons, firms, or corporation by whom the surety proposes to have the work done are incompetent or unqualified so that the interests of the Government would be substantially prejudiced by their efforts.

(c) Because of the possibility of conflicting claims to unpaid prior earnings (retained percentages or amounts representing unpaid progress estimates) of

the defaulting contractor, the surety may condition its offer of completion upon the execution by the Government of a "take over" agreement fixing the surety's rights to payment from such funds. In that event the contracting officer may in his discretion (but not before the effective date of termination) enter into a written agreement with the surety. Further, consideration should be given to having the agreement include both the surety and the defaulting contractor in order to eliminate any disagreement as to the contractor's residual rights, such as claims to unpaid prior earnings. The agreement shall provide that the surety will undertake to complete the work required by the contract in accordance with all the terms and conditions of the contract, and that the Government will pay the surety in the manner provided by the contract, but not in excess of the surety's costs and expenses, the balance of the contract price unpaid at the time of default; subject, however, to the following conditions:

(1) Any unpaid earnings of the defaulting contractor, including retained percentages and progress estimates for work accomplished prior to termination, shall be subject to claims by the Government against the contractor, except to the extent that such unpaid earnings may be required to permit payment to the completing surety of its actual costs and expenses incurred in the completion of the work, exclusive of its payments and obligations under the payment bond given in connection with the contract.

(2) Such agreement shall not waive or release the Government's right to liquidated damages for delays in completion of the work, except to the extent that such delays may be excused under the provisions of the contract.

(3) If the proceeds of the contract have been assigned to a financing institution, the surety may not be paid from retained percentages or amounts representing unpaid progress estimates earned by or payable to the contractor unless the assignee shall consent in writing to such payment.

(4) In no event shall the surety be entitled to be paid any amount in excess of its total expenditures necessarily made in completing the work and discharging its liabilities under the payment bond of the defaulting contractor. Furthermore, payments to the surety to reimburse it for discharging its liabilities under the payment bond of the defaulting contractor shall be only on authority of (i) mutual agreement between the Government, the defaulting contractor, and the surety, or (ii) determination of the Comptroller General as to payee and amount, or (iii) order of a court of competent jurisdiction.

§ 18–8.650–6 Completion by another contractor.

Where the surety does not complete performance of the contract, the contracting officer normally will complete the performance of work by awarding a new contract based on the same plans and specifications. Such award may be the result of competitive bidding or negotiation, whichever procedure is most appropriate under the circumstances. The contracting officer must use reasonable diligence to obtain the lowest price available for completion.

§ 18–8.650–7 Procedure in lieu of termination for default.

If, after due consideration, the contracting officer determines that termination is not in the best interests of the Government although the contractor is in default, the contracting officer may permit the contractor to continue the work, and the contractor and his sureties shall be liable to the Government for liquidated damages, as specified in the contract, or if liquidated damages are not so specified, for any actual damages occasioned by the failure of the contractor to complete the work in accordance with the terms of the contract.

§ 18–8.650–8 Documentation in contract file.

In all cases where a contractor's right to proceed is terminated for default or where the procedure authorized by §18–8.650–7 is followed, the contract file shall be well documented to explain fully the reasons for the action taken.

§ 18–8.650–9 Withholding for labor violations.

Any amounts necessary to pay laborer and mechanic wages due under the contract shall be withheld until evidence of proper payment is given, or such amounts shall be transferred to the Comptroller General.

§ 18–8.650–10 Liquidation of liability.

In accordance with the provisions of the contract, the contractor and his surety are liable to the Government for resultant damages. All retained percentages of progress payments previously made to the contractor and any progress payments due for work completed prior to the termination of the right to proceed shall be used for the purpose of liquidating the liability of the contractor and his surety to the Government for such damages. Where the retained and unpaid amounts are insufficient to liquidate such liability, steps shall be taken to recover the additional sum from the contractor and his surety.

§ 18–8.650–11 Excusable default.

Paragraph (e) of the clause in § 18–8.709 provides that if, after the issuance of a notice of termination of the contractor's right to proceed, it is determined for any reason that the contractor was not in default or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for the convenience of the Government clause.

Subpart 18–8.7—Clauses

§ 18–8.700 Scope of subpart.

This Subpart 18–8.7 contains contract clauses related to the termination of contracts for the convenience of the Government and for default.

§ 18–8.701 Termination clause for fixed-price contracts.

(a) Except as otherwise permitted by § 18–8.705, the following clause shall be used in any fixed-price contract in excess of $2,500 for supplies or experimental, developmental, or research work other than experimental, developmental, or research work with educational or nonprofit institutions, where no profit is contemplated. The following clause shall be used in all fixed-price construction contracts in excess of $10,000 except that paragraphs (e) and (f) thereof shall be deleted and the paragraphs in (b) below shall be used.

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(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 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 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 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, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and 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) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(vi) Transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with 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 have been 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 the Contractor and in which the Government has or may acquire an interest.

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 title to 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 certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one (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 with such one (1) year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one (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 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 of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done: *Provided,* That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Office 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, pay to the Contractor the amount determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) For completed supplies accepted by the Government (or sold or acquired as provided in paragraph (b)(vii) above) and not theretofore paid for, a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(ii) The total of—

(A) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under paragraph (e)(i) hereof;

(B) 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 (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (A) above); and

(C) A sum, as profit on (A) above, determined by the Contracting Officer pursuant to 8.303 of the NASA Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however,* That if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(iii) 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 property allocable to this contract.

The total sum to be paid to the Contractor under (i) and (ii) of this paragraph (e) shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (e) (i) and (ii) (A) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b)(vii).

(f) Any determination of costs under paragraph (c) or (e) hereof shall be governed by the principles for consideration of costs set forth in Part 15 Subpart 2, of the NASA Procurement Regulation as in effect on the date of this contract.

(g) 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.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments on account 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.

(i) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

(j) 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 this 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 agreed or 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 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 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.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of 3 years after final settlement under this contract, shall preserve and make available to the Government

at all reasonable times at the office of the Contractor but without direct charge to the Government, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

(b) The following paragraphs shall be used in place of (e) and (f) of the above clause when the contract is for construction in excess of $10,000.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree, as provided in paragraph (d), upon the whole amount to be paid to the Contractor by reason of 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, pay to the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) With respect to all contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of—

(A) The cost of such work;

(B) 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, exclusive of the amounts paid or payable on account of supplies or materials delivered or service furnished by the subcontractor prior to the effective date of the Notice of Termination of Work under this contract, which amounts shall be included in the cost on account of which payment is made under (A) above; and

(C) A sum, as profit on (A) above, determined by the Contracting Officer pursuant to § 8.303 of the NASA Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however,* That if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(ii) The reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b)(ix); and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this contract.

The total sum to be paid to the Contractor under (i) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (i) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b)(vii).

(f) Any determination of costs under paragraph (c) or (e) hereof shall be governed by the principles for consideration of costs set forth in Part 15, Subpart 4 of the NASA Procurement Regulation, as in effect on the date of this contract. (October 1969)

§ 18-8.701-1 Fixed-price type letter contracts.

In accordance with the requirements of § 18-16.859-3, the following clause shall be included in letter contracts which are expected to be converted to fixed-price type definitive contracts.

TERMINATION (OCTOBER 1969)

(a) In case a definitive contract is not executed by the date specified in Article VI of the Schedule, because of the inability of the parties to agree upon a definitive contract, this Letter Contract may be terminated in its entirety by either party by delivering to the other party a notice in writing specifying the effective date of termination, which date shall not be earlier than thirty (30) days after receipt of such notice.

(b) The performance of work under this Letter Contract also may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be affected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under this Letter Contract is terminated, and the date upon which such termination becomes effective.

(c) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) Stop work under this Letter 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 this Letter 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, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and 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;

(vi) Transfer title 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, and (B) the completed or partially completed plans, drawings, information, and other property which, if this Letter 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 Letter Contract or shall otherwise be credited to the price or cost of the work covered by this Letter 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 Letter Contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in the NASA Procurement Regulation, Part 8, 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 title to 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.

(d) 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 one (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 one (1) year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one (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 on the date of the execution of this Letter 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.

(e) Subject to the provisions of paragraph (d) hereof, 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 Letter 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. In the event of any termination pursuant to paragraph (a) hereof, such amount or amounts shall not include any allowance for profit. In the event of any termination pursuant to paragraph (b) hereof, such amount or amounts may include a reasonable allowance for profit, but

only on work actually done in connection with the terminated portion of this Letter Contract. Any such amount shall not exceed the maximum amount specified in Article IIIa of the Schedule. Any such agreement shall be embodied in an amendment to this Letter Contract, and the Contractor shall be paid the agreed amount.

(f) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (e), as to the amount or amounts to be paid to the Contractor by reason of 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 in effect as of the date of execution of this Letter Contract, determine, on the basis of information available to him, and in accordance with the applicable cost principles of the NASA Procurement Regulation as in effect on the date of this Letter Contract, the amount, if any, due to the Contractor by reason of the termination and shall pay such amount to the Contractor. In the event of the termination of this Letter Contract pursuant to paragraph (a) hereof, no allowance for profit shall be included in the amount to be paid the Contractor.

(g) The Contractor shall have the right of appeal, under the clause of this Letter Contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (d) or (f) above (including any disputes as to whether termination has in fact taken place pursuant to paragraph (a) hereof), except that if the Contractor has failed to submit a claim within the time provided in paragraph (d) 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 or the amount due under paragraph (d) or (f) above, the Government shall pay to the Contractor the following:

(i) If there is no right or 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.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted:

(i) All unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Letter Contract;

(ii) Any claim which the Government may have against the Contractor in connection with this Letter 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.

(i) 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 this Letter 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 agreed or 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 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 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.

(j) Unless otherwise provided in this Letter Contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three (3) years after final settlement under this Letter Contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, without direct charge to the Government, all his books, records, documents, and other evidence bearing on the cost and expenses of the Contractor under this Letter Contract and relating to the work terminated hereunder or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

§ 18–8.702 Termination clause for cost-reimbursement type contracts.

(a) The following clause shall be used in any cost-reimbursement type contract, as defined in § 18–3.405, for supplies and experimental, developmental, or research work other than experimental, developmental, or research work with educational or nonprofit institutions where no fee is contemplated. The following clause shall be used in all cost-reimbursement type construction contracts except that paragraph (e) (i) (D) (II) thereof shall be deleted and the paragraph in (b) below substituted therefor:

TERMINATION (JULY 1970)

(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 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 interest 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 (1) above, it is determined for any reason that the Contractor was not in default pursuant to (i), or that the Contractors' 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 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 costs of which would be reimbursable 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 completed 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, and 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 matter, 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 obliga-

tions notwithstanding any delay in determining or adjusting the amount of the fee, or any item of reimbursable cost, 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, 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 one (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 one (1) year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one (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 (including an allowance for the fee) 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 and fee, or as to the amount of the fee, 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 settlement includes cost and fee—

(A) 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;

(B) There shall be included therein, so far as not included under (A) 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;

(C) 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: *Provided, however*, That if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal; and

(D) There shall be included therein a portion of the fee payable under the contract determined as follows—

(I) In the event of the termination of this contract for the convenience of the Government and not for the default of the Contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, but exclusive of subcontract effort included in subcontractors' terminations claims, less fee payments previously made hereunder; or

(II) In the event of the termination of this contract for the default of the Contractor, the total fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of article under construction) as the total number of articles delivered to and accepted by the Government bears to the total number of articles of a like kind called for by this contract;

If the amount determined under this subparagraph (i) is less than the total payment theretofore made to the Contractor, the Contractor shall repay to the Government the excess amount; or

(ii) If the settlement includes only the fee, the amount thereof will be determined in accordance with subparagraph (i) (D) above.

(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) In the event of a partial termination, the portion of the fee which is payable 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 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 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.

(j) The provisions of this clause relating to the fee shall be inapplicable if this contract does not provide for payment of a fee.

(b) In all cost-reimbursement type construction contracts paragraph (e) (i) (D) (II) above should be deleted and the following substituted:

(II) in the event of the termination of this contract for the default of the Contractor, the total fee payable shall be such proportionate part of the fee as the actual work in place bears to the total work in place required by the contract; (October 1969).

§ 18–8.702–1 Cost-reimbursement type letter contracts.

In accordance with the requirements of § 18–16.859–2, the following clause shall be included in letter contracts which are expected to be converted to cost-reimbursement type definitive contracts:

TERMINATION (OCTOBER 1969)

(a) In case a definitive contract is not executed by the date specified in Article VI of the Schedule, because of the inability of the parties to agree upon a definitive contract, this Letter Contract may be terminated in its entirety by either party by

delivering to the other party a notice in writing specifying the effective date of termination, which date shall not be earlier than thirty (30) days after receipt of such notice.

(b) The performance of work under this Letter Contract also 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 Letter 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 10 days (or such longer period 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 interest 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 this Letter Contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this Letter Contract for default under (i) above, it is determined for any reason that the Contractor was not in default pursuant to (i) above, 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 Letter Contract relating to excusable delays, the Notice of Termination shall be considered to have been issued under (ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(c) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer the Contractor shall:

(i) Stop work under this Letter 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 this Letter 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, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and 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 Letter 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 completed plans, drawings, information, and other property which, if this Letter Contract had been completed, would be required to be furnished to the Government; and (C) the jigs, dies, and fixtures, and other special tools, and tooling acquired or manufactured for the performance of this Letter Contract for the cost of which the Contractor has been or will be reimbursed under this Letter 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 aproved 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 Letter Contract or shall otherwise be credited to the price or cost of the work covered by this Letter 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 Letter 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 the amount of any items of reimbursable cost, 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 vertification 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.

(d) 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 one (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 one (1) year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one (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 on the date of the 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.

(e) Subject to the provisions of paragraph (d) hereof, 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 Letter 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. In the event of any termination pursuant to paragraph (a) or (b)(i) hereof, such amount or amounts shall not include any allowance for fee. In the event of any termination pursuant to paragraph (b)(ii) hereof, such amount or amounts may include a reasonable allowance for fee, but only on work actually done in connection with the terminated portion of this Letter Contract. Any such amount shall not exceed the maximum amount specified in Article IIIa of the Schedule. Any such agreement shall be embodied in an amendment to this Letter Contract and the Contractor shall be paid the agreed amount.

(f) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (e) above, as to the amount or 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 Letter Contract, determine, on the basis of information available to him, and in accordance with the applicable cost principles of the NASA Procurement Regulation as in effect on the date of this Letter Contract, the amount, if any, due to the Contractor by reason of the termination and shall pay such amount to the Contractor. In the event of the termination of this Letter Contract pursuant to paragraph (a) or (b)(i) hereof, no allowance for fee shall be included in the amount to be paid the Contractor.

(g) The Contractor shall have the right of appeal, under the clause of this Letter Contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (d) or (f) above (including any disputes as to whether termination has in fact taken place pursuant to paragraph (a) or (b)(i) hereof), except that if the Contractor has failed to submit a claim within the time provided in paragraph (d) 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 (d) or (f) 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 so determined by the Contracting

(h) 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 Letter Contract;

(ii) Any claim which the Government may have against the Contractor in connection with this Letter 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.

(i) 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 this Letter 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 agreed or 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 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 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.

§ 18–8.703 Termination clause for cost-reimbursement type subcontracts.

The following termination clause is suggested for use in cost-reimbursement type subcontracts.

SUBCONTRACT TERMINATION CLAUSE—COST-REIMBURSEMENT TYPE (JULY 1970).

(a) The performance of work under the contract may be terminated by the Buyer in accordance with this clause in whole, or from time to time in part:

(i) Whenever the Seller shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Seller 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 7 days (or such longer periods as the Buyer may allow) after receipt from the Buyer of a notice specifying the default; or

(ii) Whenever for any reason the Buyers shall determine that such termination is in the best interest of the Buyer.

Any such termination shall be effected by delivery to the Seller of a Notice of Termination specifying whether termination is for the default of the Seller or for the convenience of the Buyer, 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 Seller was not in default pursuant to (i), or that the Seller'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 Seller 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 Buyer, the Seller 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 of 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 Buyer in the manner, to the extent and as directed by the Buyer all of the right, title, and interest of the Seller under the orders or subcontracts so terminated, in which case the Buyer 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 Buyer, 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) 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 Buyer, deliver (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 completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Buyer, and (C), the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Seller has been or will be reimbursed under this contract;

(vii) Use his best efforts to sell in the manner, at the time, to the extent, and at the price or prices directed or authorized by the Buyer, any property of the types referred to in (vi) above: *Provided, however,* That the Seller (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 Buyer: *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 Buyer to the Seller 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 Buyer may direct;

(viii) Complete performance of such part of work as shall not have been terminated by the Notice of Termination; and

(ix) Take such action as may be necessary, or as the Buyer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Seller and in which the Buyer or the Government has or may acquire an interest.

The Seller shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fee, or any items of reimbursement cost, under this clause.

(c) After receipt of a Notice of Termination, the Seller shall submit to the Buyer his termination claim in the form and with the certification prescribed by the Buyer. Such claim shall be submitted promptly, but in no event later than 6 months from the effective date of termination, unless one or more extensions in writing are granted by the Buyer, upon request of the Seller made in writing within such 6-month period or authorized extension thereof. However, if the Buyer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 6-month period or any extention thereof. Upon failure of the Seller to submit his termination claim within the time allowed, the Buyer may determine, on the basis of information available to him, the amount, if any, due to the Seller by reason of the termination and shall thereupon pay to the Seller the amount so determined.

(d) Subject to the provisions of paragraph (c), the Seller and the Buyer may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the Seller by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Seller shall be paid the agreed amount.

(e) In the event of the failure of the Seller and the Buyer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to cost and fee, or as to the amount of the fee, to be paid to the Seller in connection with the termination of work pursuant to this clause, the Buyer shall determine, on the basis of information available to him, the amount, if any, due to the Seller by reason of the termination and shall pay to the Seller the amount determined as follows:

(i) If the settlement includes cost and fee—

(A) There shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Seller 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 Buyer: *Provided, however,* That the Seller shall proceed as rapidly as practicable to discontinue such costs;

(B) There shall be included therein so far as not included under (A) above, the costs 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;

(C) 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: *Provided, however,* That if the termination is for default of the Seller there shall not be included any amounts for the preparation of the Seller's settlement proposal; and

(D) There shall be included therein a portion of the fee payable under the contract determined as follows:

(I) In the event of the termination of this contract for the convenience of the Buyer and not for the default of the Seller, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, less fee payments previously made hereunder; or

(II) In the event of the termination of this contract for the default of the Seller, the total fee payable shall be such proportionate part of the fee (or, if this contract

calls for articles of different types, of such part of the fee as is reasonably allocable to the type of article under consideration) as the total number of articles delivered to and accepted by the Buyer bears to the total number of articles of a like kind called for by this contract;

If the amount determined under this subparagraph (i) is less than the total payment theretofore made to the Seller, the Seller shall repay to the Buyer the excess amount; or

(ii) If the settlement includes only the fee, the amount thereof will be determined in accordance with subparagraph (i)(D) above.

(f) In arriving at the amount due the Seller under this clause there shall be deducted (i) all unliquidated advance or other payments theretofore made to the Seller, applicable to the terminated portion of this contract, (ii) any claim which the Buyer may have against the Seller 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 Seller or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Buyer.

(g) In the event of a partial termination, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Seller and the Buyer, and such adjustment shall be evidenced by an amendment to this contract.

(h) The Buyer 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 Seller in connection with the terminated portion of the contract whenever in the opinion of the Buyer the aggregate of such payments shall be within the amount to which the Seller 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 Seller to the Buyer 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 Seller to the date on which such excess is repaid to the Buyer: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Seller'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 Buyer by reason of the circumstances.

§ 18–8.704 Research and development contracts with educational and other nonprofit institutions.

§ 18–8.704–1 Termination clause.

Except as otherwise required by § 18–8.705–50, the following clause shall be used in any contract for experimental, developmental, or research work (whether fixed-price or cost-reimbursement type) with an educational or nonprofit institution: *Provided,* That such contract is placed on a no-profit or no-fee basis.

TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT (OCTOBER 1969)

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the Government whenever for any reason the Contracting Officer shall determine that such termination is in the best interests of the Government. Termination of work hereunder shall be effected by delivery to the Contractor of a 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 the Notice of termination the Contractor shall cancel his outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition, the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of his outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such canceled commitments, the Contractor agrees to (i) settle all outstanding liabilities and all claims arising out of such cancellation of commitments with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all purposes of this clause, and (ii) assign to the Government, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders and 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.

(c) The Contractor shall submit his termination claim to the Contracting Officer promptly after receipt of a Notice of Termination, but in no event later than 1 year from the effective date thereof, unless one or more extensions in writing are granted by the Contracting Officer upon written request of the Contractor within such one year period or authorized 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) Any determination of costs under paragraph (c) shall be governed by the cost principles set forth in 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 determination shall be governed by Part 15 Subpart 2, thereof.

(e) Subject to the provisions of paragraph (c) above, 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 termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments for personal services which he is unable to cancel: *Provided, however,* That in connection with any outstanding commitments for personal services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to its other activities and operations. Any such agreement shall be embodied in an amendment to this contract and the Contractor shall be paid the agreed amount.

(f) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of this contract, whenever, in the opinion of the Contracting Officer, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand: *Provided,* That if such excess is not so paid upon demand, interest thereon shall be payable by the Contractor to the Government at the rate of 6 percent per annum, beginning thirty (30) days from the date of such demand.

(g) The Contractor agrees to transfer title and deliver to the Government, in the manner, at the time and to the extent, if any, directed by the Contracting Officer, such information and items which, if the contract had been completed, would have been required to be furnished to the Government, including:

(i) Completed or partially completed plans, drawings, and information; and

(ii) Materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.

Other than the above, any termination inventory resulting from the termination of the contract may, with the written approval of the Contracting Officer, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Contracting Officer. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such other manner as the Contracting Officer may direct. Pending final disposition of property arising from the termination, the Contractor agrees to 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.

(h) Any disputes as to questions of fact which may arise hereunder shall be subject to the "Disputes" clause of this contract.

§ 18–8.704–2 Suggested clause for subcontracts.

The above clause, suitably altered to indicate the relationship between the prime contractor and subcontractor, is suggested for use in subcontracts placed with educational or nonprofit institutions; *Provided,* Such subcontracts incorporate, or are negotiated on the basis of, the cost principles set forth in Subpart 18–15.3: *And provided further,* Such subcontracts are placed on the no-fee or no-profit basis.

§ 18–8.705 Short form termination clauses for fixed-price type contracts.

§ 18–8.705–1 Supply and service contracts.

(a) To facilitate the handling of purchases under fixed-price supply or service contracts not to exceed $10,000, the short form termination clause set forth below is authorized for use in lieu of any other clause providing for termination for the convenience of the Government: *Provided,* Such contracts obligate the Government to order or otherwise to be liable for a minimum quantity.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (OCTOBER 1969)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the Government. If this contract is so terminated, the Contractor shall be compensated in accordance with Part 8 of the NASA Procurement Regulation in effect on this contract's date.

(b) To facilitate the obtaining of services where it can reasonably be determined that the kind and volume of service required would not, in the event of termination for convenience of the Government, present a basis for a termination claim other than for services rendered, the short form termination clause set forth below is authorized for use in such service contracts, regardless of dollar value, in lieu of any other clause providing for termination for the convenience of the Government.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (OCTOBER 1969)

The Contracting Officer, by writen notice, may terminate this contract, in whole or in part, when it is in the best interest of the Government. If this contract is so terminated, the Government shall be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

§ 18-8.705-2 Construction contracts.

Generally, there is no need for a termination clause in construction contracts not in excess of $10,000. However, where the contracting officer determines that a termination clause should be included in such contract, the following clause shall be used:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (OCTOBER 1969)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the interest of the Government. If this contract is so terminated, the rights, duties and obligations of the parties hereto shall be in accordance with the applicable Parts of the NASA Procurement Regulation in effect on the date of this contract.

§ 18-8.705-50 Research contracts with educational and other nonprofit institutions.

(a) *Fixed-price type.* The following clause shall be used in any short form fixed-price research contract with an educational or nonprofit institution.

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 the Contractor.

(b) *Cost-reimbursement type.* The following clause shall be used in any short form cost-reimbursement type research contract with a nonprofit institution.

TERMINATION (JANUARY 1964)

The performance of work under this contract may be terminated in whole or in part by the Government whenever the Contracting Officer shall determine that such action is in the best interests of the Government. Such termination shall be effected by written notice to the Contractor describing the extent of the termination and the date upon which it becomes effective. Upon receipt of such notice, the Contractor shall take necessary action to cancel outstanding subcontracts and/or purchase orders and any other commitment relating to costs which would be chargeable to this contract; and shall exercise reasonable diligence to cancel or direct commitments for personal services to his other activities and operations. The Contractor shall submit a termination claim to the Contracting Officer as promptly as possible after receipt of the notice of termination, describing in detail those commitments which will involve costs incident to cancellation. The Contractor and the Contracting Officer shall agree on the the amounts to be paid as a result of a termination under this clause, and such agreement shall be evidenced by a supplemental agreement to this contract. Payment of the Contractor's termination claim shall be governed by the cost principles set forth in Part 15, Subpart 3, of the NASA Procurement Regulation, except that if the Contractor is not an educational institution, payment shall be governed by Part 15, Subpart 2 thereof.

§ 18-8.706 Subcontract termination clause.

The following termination clause is suggested for use in fixed-price subcontracts.

TERMINATION (JULY 1970)

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the buyer in accordance with this clause. Termination of work thereunder shall be effected by delivery to the seller of a 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 buyer, the seller 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 portions of the work under the contract as may not be terminated;

(iii) Terminate all orders and subcontracts to the extent that they relate to the performance of any work terminated by the Notice of Termination.

(iv) Assign to the buyer, in the manner, and to the extent directed by the buyer, all of the right, title, and interest of his seller under the orders of subcontracts so terminated;

(v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts subject to the approval or ratification of the buyer to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(vi) Transfer title and deliver in the manner, to the extent, and at the times directed by the buyer (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with 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 buyer;

(vii) Use his best efforts to sell in the manner, to the extent, at the time, and at the price or prices directed or authorized by the buyer, any property of the types referred to in (vi) above: *Provided, however,* That the seller (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 buyer: *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 buyer to the seller 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 buyer 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 buyer may direct for protection and preservation of the property related to this contract which is in the possession of the seller and in which the buyer or the Government has or may acquire an interest.

(c) After receipt of a Notice of Termination, the seller shall submit to the buyer his termination claim, in the form and with the certification prescribed by the buyer. Such claim shall be submitted promptly, but not later than six (6) months from the effective date of termination unless one or more extensions in writing are granted by the buyer, upon request of seller made in writing within such 6-month period or authorized extensions thereof. However, if the buyer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 6-month period or any extension thereof. Upon failure of the seller to submit his termination claim within the time allowed, the buyer may determine, on the basis of information available to him, the amount, if any, due to the seller in respect to the termination and such determination shall be final. After the buyer has made a determination under this paragraph, he shall pay the seller the amount so determined.

(d) Subject to the provisions of paragraph (c) the seller and the buyer may agree upon the whole or any part of the amount or amounts to be paid to the seller by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done and the buyer shall pay the agreed amount or amounts: *Provided,* That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Nothing in paragraph (e) below prescribing the amount to be paid to the seller in the event of the failure of the seller and the buyer to agree upon the whole amount to be paid to the seller by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the seller pursuant to this paragraph (d).

(e) In the event of the failure of the seller and the buyer to agree as provided in paragraph (d) upon the whole amount to be paid to the seller by reason of the termination of work pursuant to this clause, the buyer shall pay to the seller the amounts determined by the buyer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) For completed supplies accepted by the buyer (or sold or acquired as provided in paragraph (b)(vii) above) and not theretofore paid for, forthwith a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(ii) The total of—

(A) The cost of such work, including initial costs and preparatory expenses allocable thereto, exclusive of any costs attributable to supplies paid to or to be paid for under (i) above; and

(B) The cost of settling and paying claims arising out of the termination work under subcontracts or orders as provided in paragraph (b)(v) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this contract, which amount shall be included in the cost on account of which payment is made under (A) above; and

(C) A sum, as profit on (A) above, determined by the buyer pursuant to § 18–8.303 of the NASA Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however,* That if it appears that the seller would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C), and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(iii) 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 allocable to this contract.

The total sum to be paid to the seller under (i) and (ii) above shall not exceed the total contract price reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage and except to the extent that the buyer or the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the seller under (i) and (ii)(A) above the fair value, as determined by the buyer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the buyer or to a purchaser pursuant to paragraph (b)(vii).

(f) The obligation of the buyer to make any payments under this clause shall be subject to deductions with respect to (i) all unliquidated advance or other payments on account theretofore made to the seller applicable to the terminated portion of this contract, (ii) any claim which the buyer may have against the seller, in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things retained by the seller or sold, and not otherwise recovered by or credited to the buyer.

(g) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the seller may file with the buyer a request in writing that an equitable adjustment be made in the price or prices specified in the contract for the work in connection with the continued portion not terminated by the Notice of Termination, and the appropriate equitable adjustment shall be made in such price or prices.

(h) The buyer may, from time to time, under such terms and conditions as he may prescribe, make partial payments and payments on account against costs incurred by the seller in respect to the terminated portion of the contract, whenever in the opinion of the buyer the aggregate of such payments shall be within the amount to which the seller will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed upon or determined to be due under this clause, such excess shall be payable by the seller to the buyer upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the seller to the date on which such excess is repaid: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the seller's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition, or such later date as determined by the buyer by reason of the circumstances.

(i) For the purpose of paragraphs (c) and (e) above, the amounts of the payments to be made by the buyer to the seller shall be determined in conformity with the policies and principles set forth in Part 8 of the NASA Procurement Regulation in effect at the date of this contract. Unless otherwise provided for in this contract, or by applicable statute, the seller, for a period of 3 years after final settlement under the contract, shall make available to the buyer and the Government at all reasonable times at the office of the seller all his books, records, documents, or other evidence bearing on the costs and expenses of the seller under the contract and in respect of the termination of work hereunder or, to the extent approved by the Government, photographs, microphotographs, or other authentic reproductions thereof.

§ 18–8.707 Default clause for fixed-price supply contracts.

The following clause shall be included in all formally advertised fixed-price type supply contracts and in all negotiated fixed-price type supply contracts in excess of $2,500.

DEFAULT (OCTOBER 1969)

(a) The Government may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(i) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(ii) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Government for any excess costs for such similar supplies or services: *Provided,* That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer protect and preserve property in possession of the Contractor in which the Government has an interest. Payment for completed supplies delivered to and accepted by the Government shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Government and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." The Government may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(e) If after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly;

failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(f) 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.

(g) As used in paragraph (c) of this clause the term "subcontractor" and "subcontractors" means subcontractor(s) at any tier.

§ 18–8.708 Excusable delays clause for cost-reimbursement type contracts.

The following clause shall be used in all cost-reimbursement type supply contracts as defined in § 18–7.202, in all cost-reimbursement type construction contracts, and in all cost-reimbursement type research and development contracts that contain the "Termination" clause in § 18–8.702. It may be used in contracts that contain the "Termination" clause in § 18–8.704.

EXCUSABLE DELAYS (OCTOBER 1969)

Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to: Acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to be in default, unless (i) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (ii) the Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other souces, and (iii) the Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the clause of this contract providing for termination. (As used in this clause, the term "subcontractor" and "subcontractors" means subcontractor(s) at any tier.)

§ 18–8.709 Default clause for fixed-price construction contracts.

(a) The following clause shall be used in all fixed-price construction contracts in excess of $10,000.

TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS (OCTOBER 1969)

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the Government resulting from his refusal or failure to complete the work within the specified time.

(b) If fixed and agreed liquidated damages are provided in the contract and if the Government so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If fixed and agreed liquidated damages are provided in the contract and if the Government does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(d) The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

(i) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the Government in either its soverign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from the unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

(ii) The Contractor, within 10 days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract), notifies the Contracting Officer in writing of the causes of delay.

The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the clause of this contract entitled "Disputes."

(e) If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(f) 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.

(g) As used in paragraph (d)(i) of this clause, the term "subcontractors" or "suppliers" means subcontractors or suppliers at any tier.

(b) During a period of national emergency, paragraph (d)(i) of the above clause shall be amended by deleting the words "unforeseeable causes" in the two places where they appear and substituting the words "causes, other than normal weather." Where Standard Form 23A is used, the words "the clause of this contract entitled Disputes" in paragraph (d) of the above, clause need not be substituted for "Clause 6 of these General Provisions."

(c) The following clause shall be used in all fixed-price construction contracts not in excess of $10,000.

TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS (SEPTEMBER 1962)

(a) If the Contractor does not prosecute the work so as to insure completion, or fails to complete it, within the time specified, the Government may, by written notice to the Contractor, terminate his right to proceed. Thereafter, the Government may have the work completed, and the Contractor shall be liable for any resulting excess cost to the Government. If the Government does not terminate the Contractor's right to proceed, he shall continue the work and shall be liable to the Government for any actual damages occasioned by such delay unless liquidated damages are stipulated.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with actual or liquidated damages under (a) above because of any delays in completion of the work due to causes other than normal weather, beyond his control and without his fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts of the Government (in either its sovereign or contractual capacity), acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or delays of subcontractors or suppliers due to causes beyond their control and without their fault or negligence: *Provided*, That the Contractor shall, within 10 days from the beginning of any such delay, unless the Contracting Officer shall grant a further period of time prior to the date of final settlement of the contract, notify the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when in his judgment the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties hereto, subject only to appeal as provided in the clause of this contract entitled "Disputes."

(d) When Standard Form 19 is used, the words "the clause of this contract entitled Disputes" in paragraph (b) of the above clause need not be substituted for "Clause 3 hereof."

§ 18–8.710 Default clause for fixed-price research and development contracts.

The following clause shall be used in all fixed-price research and development contracts as defined in § 18–7.301, except contracts with educational or nonprofit

institutions which are awarded on the basis of no profit.

DEFAULT (OCTOBER 1969)

(a) The Government may, subject to the provisions of paragraph (c) of this clause, by written Notice of Default to the Contractor terminate the whole or any part of this contract in any one of the following circumstances:

(i) If the Contractor fails to perform the work called for by this contract within the time(s) specified herein or any extension thereof; or

(ii) If the Contractor fails to perform any of the other provisions of this contract, or so fails to prosecute the work as to endanger performance of this contract in accordance with its terms, and in either or these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, work similar to the work so terminated and the Contractor shall be liable to the Government for any excess costs for such similar work: *Provided*, That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule or other performance requirements.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer any of the completed or partially completed work not theretofore delivered to, and accepted by, the Government and any other property, including contract rights, specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon the direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Government has an interest. The Government shall pay to the Contractor the contract price, if separately stated, for completed work accepted by the Government and the amount agreed upon by the Contractor and the Contracting Officer for (i) completed work for which no separate price is stated, (ii) partially completed work, (ii) other property described above which is accepted by the Government, and (iv) the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." The Government may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(f) 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.

(g) As used in paragraph (c) of this clause, the term "subcontractor" and "subcontractors" means subcontractor(s) at any tier.

Subpart 18–8.8—Forms

§ 18–8.800 Scope of subpart.

This Subpart 18–8.8 prescribes certain forms related to the termination and settlement of contracts.

§ 18–8.801 Notice of termination.

§ 18–8.801–1 Telegraphic notice of termination.

(a) The following form of telegraphic notice is approved for use where a contract is being completely terminated.

Date: _____

XYZ CORP.,
NEW YORK, N.Y.

Your Contract No. _____ is hereby terminated in its entirety pursuant to Clause _____ of the contract effective [*here insert* "Immediately" *or* "On _____ 19__." (*Insert the date*) *or* "As soon as you have delivered thereunder including previous deliveries the following items" (*listing items*)]. Immediately stop all work, terminate subcontracts and place no further orders except to extent (*insert if applicable*—Necessary to perform any portions thereof not terminated hereby or) that you or a subcontractor wish to retain and continue for own account any work in process or other materials. Telegraph similar instructions to all subcontractors and suppliers. Letter and instructions follow.

_____
(Contracting Officer)

(b) The following form of telegraphic notice is approved where a contract is being partially terminated.

Date: _____

XYZ CORP.,
NEW YORK, N.Y.

Your Contract No. _____ is hereby partially terminated pursuant to clause _____ of the contract effective on _____ 19__, on which date you will reduce its total number of items to be delivered as follows (*inserting instructions as to reduced deliveries*) immediately stop all work, terminate subcontracts and place no further orders except to extent necessary to perform any portion thereof not terminated hereby or that you or a subcontractor wish to retain and continue for own account any work in process or other materials. Telegraph similar instructions to all subcontractors and suppliers. Letter and instructions follow.

_____
(Contracting Officer)

(c) The following form of telegraphic notice is approved for use where a contract for construction is being completely terminated for the convenience of the Government.

Date: _____

XYZ CORP.,
NEW YORK, N.Y.

Your Contract No. _____ for construction of _____ is hereby terminated effective immediately for the convenience of the Government pursuant to clause _____ of the contract. Immediately stop all work, terminate subcontracts and place no further orders. Telegraph similar instructions to all subcontractors and suppliers. Letter and instructions follow.

_____
(Contracting Officer)

(d) The following form of telegraphic notice is approved for use where a contract for construction is being partially terminated for the convenience of the Government:

Date: _____

XYZ Corp.,
New York, N.Y.

Your contract No._____ for construction of _____ is hereby partially terminated effective immediately for the convenience of the Government pursuant to clause _____ of the contract to the following extent _____ immediately stop all work, terminate subcontracts and place no further orders except to extent necessary to perform portion thereof not terminated hereby. Telegraph similar instructions to all subcontractors and suppliers. Letter and instructions follow.

_____
(Contracting Officer)

§ 18–8.801–2 Letter notice of termination.

(a) The following form of Notice of Termination is approved for use where a prime contract for supplies and services is being terminated. With appropriate modifications, it is suitable for use in terminating subcontracts.

LETTER NOTICE OF TERMINATION TO PRIME CONTRACTORS

[At the top of the Notice set out all special details relating to the particular termination: e.g., name and address of company, number of prime contract terminated, service involved, appropriation or allotment, etc.]

[Two alternative forms of paragraph No. 1 are set out below. If this written termination notice confirms a telegraphic notice previously sent, use the first of the alternative pragraphs No. 1 below. If no previous telegraphic notice has been set, use the second.]

1. *Effective Date of Termination.* This letter will confirm the Government's telegram to you dated _____, 19 __, terminating [in part] your Contract No. _____ (hereinafter referred to as "the contract") for the convenience of the Government, in accordance with the clause thereof entitled "Termination for the Convenience of the Government" [or, in the case of a cost-reimbursement-type contract, "Termination"]. Such termination is effective on the date and in the manner stated in such telegram.

(or)

1. *Effective Date of Termination.* You are notified that your Contract No. _____ (hereinafter referred to as "the contract") is hereby terminated [in part] for the convenience of the Government, in accordance with the clause hereof entitled "Termination for the Convenience of the Government" [or in the case of a cost-reimbursement-type contract, "Termination"]. Such termination will be effective: _____ [Here insert either "immediately upon your receipt of this Notice" or "on _____, 19__," (inserting the date) or "as soon as you have delivered under the contract the following number of each of the items listed below, including those heretofore delivered, to wit: _____" or, "on _____, 19__, on which date you are hereby directed to reduce the total number of items to be delivered under the contract as follows"; (here insert instructions as to reduced deliveries.)]

2. *Cessation of Work and Notification to your Immediate Subcontractors.* (a) You shall stop all work, make no further shipment, and place no further orders in connection with the contract, except (1) to the extent necessary to perform any portion thereof not terminated by ths Notice, or (2) to the extent that you may wish to retain and continue any work in process or other materials for your own account, or (3) to the extent the Contracting Officer authorizes you to continue work-in-process for reasons of safety, or to clear [or avoid damage to] equipment or to avoid immediate complete spoilage of work-in-process having a definite commercial value, or otherwise to prevent undue loss to the Government. [If you believe the authorization referred to in (3) above is necessary or advisable, you shall immediately notify the Contracting Officer by telephone or personal conference and obtain instructions.] You shall keep adequate records of your compliance with this paragraph 2(a) showing (i) the date you received your Notice of Termination, (ii) the effective date of such termination, and (iii) the extent of completion of performance on such effective date.

(b) You shall give notice of termination to each of your immediate subcontractors (including suppliers) who will be affected by the termination of your contract. In such notice you shall (1) give him the number of your contract with the Government, (2) state that it has been terminated (or terminated in part, if that is the case) for the convenience of the Government, (3) instruct him to stop all work, to make no further shipments to place no more orders, and to terminate all subcontracts under this contract with you (subject to the same exceptions stated in paragraph 2(a)), (4) direct him to submit his settlement proposal promptly in order to expedite settlement, and (5) request him to give similar notice and instructions to his immediate subcontractors.

(c) You shall notify the Contracting Officer of any pending legal proceedings which relate to any subcontracts or purchase orders under the terminated contract or which have resulted in or which are extended to result in a lien or encumbrance on any termination inventory other than termination inventory you propose and are authorized to purchase, retain, or dispose of. (The Contracting Officer shall also be promptly notified of any such proceedings brought after receipt of this Notice.)

(d) You shall take such other action as may be required by the Contracting Officer or under the termination clause contained in your contract.

3. *Termination Inventory.* (a) You shall forthwith transfer title to and deliver to the Government, in accordance with any instructions of the Contracting Officer, all items of termination inventory (including subcontractor termination inventory which under the terms of the subcontract or purchase order concerned you have the right to take over) of the following types or classes: [Insert proper identification or "None"].

(b) In connection with settlement of your claim, it will be necessary to establish that all your termination inventory and that of your subcontractors has been properly accounted for. For detailed information, see Part 24 of the NASA Procurement Regulation.

4. *Completed End Items.* You shall notify the Contracting Officer of the number of articles completed under the contract and still on hand, and arrange with him for their delivery or other disposal. Subject to paragraph § 18-8.306 of the NASA Procurement Regulation, you will invoice acceptable completed end items under the contract in the usual way and not include them in your settlement proposal.

5. *Patents.* If the contract contains either the New Technology clause or the Property Rights in Inventions clause, your attention is called to the provisions of the clause which requires reports, disclosures and other information regarding any invention, discovery, improvement, or innovation made in the performance of the contract. You are urged to forward such reports, disclosures, and other information to the Contracting Officer promptly, since these contractual obligations must be complied with before execution of the final settlement agreement.

6. *Settlements With Subcontractors.* You remain liable to your subcontractors and suppliers for claims arising by reason of the termination of their subcontracts or orders. You are requested to settle such termination claims as promptly as possible. For purposes of reimbursement by the Government, such settlements will be governed by the provisions of Part 8 of the NASA Procurement Regulation.

7. *Employees Affected.* (a) If this termination, together with all other outstanding terminations, will necessitate a significant reduction in your work force, as described in (b) below, you are urged to (1) promptly inform the local State Employment Service of your reduction-in-force schedule in numbers and occupations, so that they can take timely action in assisting displaced workers; (2) give affected employees maximum practical advance notice of the employment reduction, and inform them of the facilities and services available to them through the local State Employment Service Offices; (3) advise affected employees to file applications with State Employment Service in order to qualify for unemployment insurance, if necessary; (4) inform officials of local unions having agreements with you of the impending reduction-in-force; and (5) inform local Chamber of Commerce and other appropriate organizations, which are prepared to offer practical assistance in finding employment for displaced workers, of impending reduction-in-force.

(b) Normally, a reduction of 100 or more workers during any 1 month of the period of the reduction-in-force will be considered significant. However, a reduction of a lesser number of workers in any 1 month, or in several successive months, also may have a serious impact in a small community affected by other layoffs.

(c) To the extent appropriate and practicable, you are requested to urge subcontractors, if any, to take actions similar to those described above.

8. The procurement office named in your contract will furnish you the name of the Contracting Officer who will be in charge of the settlement of the termination, and who will, upon request, provide you with the necessary settlement forms. Matters not covered by this Notice should be brought to the attention of the undersigned.

9. Please acknowledge receipt of the Notice as provided below.

_____
(Contracting Officer)

Acknowledgment of Notice

The undersigned hereby acknowledges receipt of a signed copy of the foregoing Notice on _____, 19__. Two copies of this Notice, both signed, are herewith returned.

_____
(Name of Contractor)
By _____
_____
(Title)

(b) The following form of Notice of Termination is approved for use to confirm telegraphic notification where a contract for construction has been totally or partially terminated.

NOTICE OF TERMINATION

Date _____

XYZ CORP.,
New York, N.Y.

GENTLEMEN:

Re: Contract No. _____
for construction of _____.

1. *Effective Date of Termination.* This letter will confirm the Government's telegram to you dated _____, terminating [in part] your Contract No. _____ (hereinafter referred to as "the contract") for the convenience of the Government, in accordance with Clause _____ thereof. Such termination is effective on the date and in the manner stated in such telegram.

2. *Cessation of Work and Notification to Your Immediate Subcontractors.* (a) You shall stop all work, and place no further orders in connection with the contract, except (1) to the extent necessary to perform any portion thereof not terminated by this notice or (2) to the extent necessary to perform any work directed by the Contracting Officer.

(b) You shall give notice of termination to each of your immediate subcontractors and suppliers who will be affected by the termination of your contract. In such notice you shall (1) give him the number of your contract with the Government; (2) state that it has been terminated for the convenience of the Government and the extent thereof; (3) instruct him to stop all work, to place no more orders and to terminate all subcontracts under this contract with you (subject to the same exceptions stated in 2(a) above); (4) direct him to submit his settlement proposal promptly in order to expedite settlement; and (5) request him to give similar notice and instructions to his immediate subcontractors.

(c) You shall notify the Contracting Officer of any pending or subsequent legal proceedings which relate to any subcontracts or purchase orders under the terminated contract.

(d) You shall take such other action as may be required by the Contracting Officer or under the termination clause contained in your contract.

3. *Termination Inventory.* (a) You shall forthwith transfer title to and deliver to the Government, in accordance with any instructions of the Contracting Officer, all items of termination inventory (including subcontractor termination inventory which under the terms of the subcontract or purchase order concerned you have the right to take over) of the following types or classes [insert proper identification or "None".]

(b) In connection with settlement of your claim, it will be necessary to establish that all your termination inventory and that of your subcontractors has been properly accounted for. For detailed information, see Part 24 of the NASA Procurement Regulation.

4. *Settlements With Subcontractors.* You remain liable to your subcontractors and suppliers for claims arising by reason of the termination of their subcontracts or orders. You are requested to settle such termination claims as promptly as possible. For purposes of reimbursement by the Government, such settlements will be governed by the applicable provisions of Part 8 of NASA Procurement Regulation.

5. This office will be in charge of the settlement of your claim and should be consulted on any matter not covered by this Notice.

6. Please acknowledge receipt of this Notice as provided below.

(Contracting Officer)

Acknowledgment of Notice

The undersigned hereby acknowledges receipt of a signed copy of the foregoing Notice on ----------. Two copies of this Notice, both signed, are returned herewith.

(Name of Contractor)

By ----------

(Title)

§ 18–8.802 Forms for settlement of fixed-price contracts.

The forms listed in §§ 18–8.802–1 through 18–8.802–10 are prescribed for use in settling terminated fixed-price contracts.

§ 18–8.802–1 DD Form 540—Settlement proposal—Inventory basis.

§ 18–8.802–2 DD Form 541—Settlement proposal—Total cost basis.

§ 18–8.802–3 DD Form 831—Settlement proposal—Short form.

§ 18–8.802–4 DD Form 542—Inventory schedule A—Metals in mill product form and DD Form 542c—Inventory schedule A—Continuation sheet.

§ 18–8.802–5 DD Form 543—Inventory schedule B—Raw materials and DD Form 543c, Inventory schedule B—Continuation sheet.

§ 18–8.802–6 DD Form 544—Inventory schedule C—Work in process and DD Form 544c—Inventory schedule C—Continuation sheet.

§ 18–8.802–7 DD Form 545—Inventory schedule D—Dies, jigs, fixtures, etc., and special tools and DD Form 545c—Inventory schedule D, continuation sheet.

§ 18–8.802–8 DD Form 832—Inventory schedule E—Short form for use with DD Form 831 only.

§ 18–8.802–9 DD Form 546—Schedule of accounting information.

DD Form 546 is required to be filed only once with respect to any termination. It is not required when the settlement proposal is submitted on DD Form 831.

§ 18–8.802–10 DD Form 548—Application for partial payment.

§ 18–8.802–11 DD Form 1593—Contract termination status report.

§ 18–8.802–50 DD Form 1114 (NASA edition)—Instructions for use of contract termination settlement and inventory schedule forms.

§ 18–8.802–51 DD Form 1115 (NASA edition)—Instructions in preparing inventory schedules of contractor inventory.

§ 18–8.802–52 NASA Form 1412—Termination authority.

§ 18–8.802–53 NASA Form 1413—Termination docket checklist.

§ 18–8.803 DD Form 547—Settlement proposal for cost-reimbursement type contracts.

DD Form 547 is to be used by prime contractors submitting termination claims on cost-reimbursement type contracts. It is also suitable for use in connection with terminated cost-reimbursement type subcontracts.

§ 18–8.805 Forms of settlement agreement.

See § 18–8.210.

§ 18–8.805–1 Settlement agreement for use in settling fixed-price prime contracts after complete termination.

This Supplemental Agreement of Settlement, entered into this ------ day of ----------, 19-- between the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and ----------

---

(i) a corporation organized and existing under the Laws of the State of ----------;

(ii) a partnership consisting of ----------

(iii) an individual doing business as ----------; (hereinafter called "the Contractor").

Witnesseth That:

Whereas, the Contractor and the Government have entered into Contract No. ------ under date of ----------, 19-- which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, The Termination for Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated ---------- the Government advised the Contractor of the complete termination of the contract for the convenience of the Government; and

Whereas, as used herein the following terms shall have the meanings hereinafter set forth:

The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract, but shall not include any facilities, materials, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property as defined below.

(i) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(ii) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "subcontract" means any contract as defined in NASA Procurement Regulation 1.207 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "scrap" means property that has no reasonable prospect of being sold except for the recovery of its basic material content.

Now, Therefore, the parties hereto do mutually agree as follows:

Article 1. The Contractor certifies that all contract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this agreement.

Article 2. a. The Contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all of his subcontract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts, and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in his claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title, and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of his rights relating thereto.

Article 3. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement; (i) all such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such items do not include any items reasonably usable without loss to the Contractor, on his other work; and (iv) the Contractor has in-

formed the Contracting Officer of any substantial change in the status of such items between the dates of his termination inventory schedules and the date of this agreement.

Article 4. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of its immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

Article 5. a. The Contractor has received the sum of $_____ on account of work and services performed, or articles delivered, under the completed portion of the contract. The Government as part of this negotiated settlement hereby confirms and acknowledges the right of the Contractor, subject to the provisions of Article 6 hereof, to retain such sum heretofore paid and agrees that such sum constitutes a portion of the total amount to which the Contractor is entitled in settlement of the Contract.

b. In addition, upon execution of this agreement the Government agrees to pay to the Contractor or his assignee, upon presentation of properly certified invoices or vouchers, the sum of $_____ [insert net amount of settlement], arrived at by deducting from the sum of $_____ [for claim submitted on inventory basis, insert gross amount of settlement; for claim submitted on total cost basis, insert gross amount of settlement less amount set forth in 5a above], (1) the amount of $_____ representing all unliquidated partial or progress payments previously made on account to the Contractor or his assignee and all unliquidated advance payments (with interest, if any, thereon), and (2) the amount of $_____ representing all applicable property disposal credits [and (3) the amount of $_____ representing all other amounts due the Government under this contract except as hereinafter provided in Article 6].[1] Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the complete termination of work under the contract and of all other claims and liabilities of the Contractor and the Government under the contract, except as hereinafter provided in Article 6.

Article 6. Notwithstanding any other provision of this agreement, the following rights and liabilities of the parties under the contract are hereby reserved:

[The following list of reserved or excepted rights and liabilities is intended to cover those which should most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see § 18–8.210–2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this method of enumerating reserved rights and liabilities may be followed. Omit any of the following which are not applicable and add any additional exceptions or reservations required.]

(1) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19____ [insert reference to applicable Renegotiation Act].

(2) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(3) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of 1942 (35 U.S.C. 89–96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with the performance of the contract.

(4) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, covenants of indemnity.

(5) All rights and liabilities of the parties under agreements with respect to the future care and disposition by the Contractor of Government-owned property remaining in his custody.

(6) All rights and liabilities of the parties under the contract with respect to any contract termination inventory stored for the Government pursuant to Article 1 hereof.

(7) All rights and liabilities of the parties under the contract with respect to any and all Government property furnished to the Contractor for the performance of this contract.

(8) All rights and liabilities of the parties arising under the contract, or otherwise concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(9) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit." [If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive orders, the suggested langauge should be appropriately modified.]

In Witness Whereof, etc.

§ 18–8.805–2 Settlement agreement for use in settling fixed-price prime contracts after partial termination.

This Supplemental Agreement Of Settlement, entered into this _____ day of _____, 19__ between the United States Of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and _____

(i) A corporation organized and existing under the Laws of the State of_____;

(ii) A partnership consisting of_____;

(iii) An individual doing business as _____; (hereinafter called "the Contractor").

Witnesseth That:

Whereas, the Contractor and the Government have entered into Contract No. _____ under date of _____, 19__ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the Termination for Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by Notice of Termination dated _____ the Government advised the Contractor of the partial termination of the contract for the convenience of the Government as of the date and to the extent provided in such Notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as the "terminated portion of the contract"; and

Whereas, as used herein, the following terms shall have the meanings hereinafter set forth:

The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract, but shall not include any facilities, materials, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property as defined below.

(i) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(ii) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "subcontract" means any contract as defined in NASA Procurement Regulation 1.207 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

Now, therefore, the parties hereto do mutually agree as follows:

Article 1. The terminated portion of the contract is designated as follows: (specify the terminated portion clearly as to items, including (i) item numbers, (ii) descriptions, (iii) quantity terminated, (iv) unit price of items, (v) total price of terminated items, and (vi) any other explanation necessary to avoid uncertainty or misunderstanding.)

Article 2. The Contractor certifies that all contract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this agreement.

Article 3. a. The Contractor certifies that, prior to the execution of this agreement, each of the contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all his subcontract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim

[1] To be inserted where appropriate.

was included in his claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of his rights relating thereto.

Article 4. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) All such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such items do not include any items reasonably usable, without loss to the Contractor, on his other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of his termination inventory schedules and the date of this agreement.

Article 5. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of his immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

Article 6. Upon execution of this agreement, the Government agrees to pay to the Contractor or his assignee, upon presentation of properly certified invoices or vouchers, the sum of $_____ [insert net amount of settlement], arrived at by deducting from the sum of $_____ [insert gross amount of settlement], (1) the amount of $_____ representing all unliquidated partial or progress payments previously made on account to the Contractor or his assignee and all unliquidated advance payments (with interest, if any, thereon) applicable to the terminated portion of the contract and (2) the amount of $_____ representing all applicable property disposal credits. Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor with respect to the terminated portion of the contract, except as hereinafter provided in Article 7.

Article 7. Upon payment of said sum of $_____ [insert net amount of settlement] all obligations of the Contractor to perform further work or services or to make further deliveries under the terminated portion of the contract and all obligations of the Government to make further payments or to carry out other undertakings in connection therewith shall cease: *Provided, however,* That nothing herein contained shall impair or affect in any way any covenants, terms or conditions of the contract relating to the completed or continued portion thereof: *And provided further,* That, with respect to the terminated portion of the contract, the following rights and liabilities of the parties are reserved.

[The following list of reserved or excepted rights and liabilities relating to the terminated portion of the contract is intended to cover those which should most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see § 18-8.210-2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exception needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question this method of enumerating reserved rights and liabilities may be followed. Omit any of the following which are not applicable and add any additional exceptions or reservations required.]

(1) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19____ [insert reference to applicable Renegotiation Act].

(2) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of 1942 (35 U.S.C. 89-96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with the performance of the contract.

(3) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit." [If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive orders, the suggested language should be appropriately modified.]

(4) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(5) All rights and liabilities of the parties arising under the contract, or otherwise concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(6) All rights and liabilities of the parties with respect to any contract termination inventory stored for the Government pursuant to Article 2 hereof.

In Witness Whereof, etc.

§ 18-8.805-3 Partial settlement agreement for use in settling fixed-price prime contracts after complete or partial termination where settlement pertains only to settlements with subcontractors.

This Supplemental Agreement of Settlement, entered into this _____ day of _____ _____, 19__ between the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and _____ _____

(i) a corporation organized and existing under the Laws of the State of _____;

(ii) a partnership consisting of _____ _____;

(iii) an individual doing business as _____ _____;

(hereinafter called "the Contractor").

Witnesseth That:

Whereas, the Contractor and the Government have entered into Contract No. ____ under date of _____, 19__, which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the Termination for Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated _____ the Government advised the Contractor of the [complete termination of the contract for the convenience of the Government;][1] [partial termination of the contract for the convenience of the Government as of the date and to the extent provided in such Notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as "the terminated portion of the contract";][1] and

Whereas, the Contractor, in connection with the performance of the contract, has entered into the following subcontracts [among others]:[2] [Insert here a list of the terminated subcontracts included in this settlement], which subcontracts were terminated by the Contractor in accordance with the termination for convenience clause of the contract and in accordance with the Notice of Termination received by him from the Government; and

Whereas, the parties desire to settle that portion of the termination claim of the Contractor which is based upon the termination of the subcontracts listed herein; and

Whereas, as used herein, the following terms shall have the meanings hereinafter set forth:

The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract, but shall not include any facilities, materials, production or other equipment, or special tooling which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property as defined below.

(i) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(ii) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "subcontract" means any contract as defined in NASA Procurement Regulation 1.207 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

Now, therefore, the parties hereto do mutually agree as follows:

Article 1. a. The Contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all his subcontract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third par-

[1] Insert appropriate phrase.

[2] Insert where appropriate.

ties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the the settlement of the subcontract or subcontracts and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in its claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title, and interest, if any, which the Contractor has received, or is entitled to receive, in and to such subcontract termination inventory, to the extent that it is not otherwise properly accounted for, and hereby assigns to the Government any and all of his rights relating thereto.

Article 2. In all cases where the Contractor has not previously made such payments, the Contractor shall, within (10) days after receipt of the payment provided for hereunder, pay to each of his immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

Article 3. The Contractor certifies that, with respect to all items of subcontract termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) All such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such items do not include any items reasonably usable, without loss to the Contractor, on his other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of his termination inventory schedules and the date of this agreement.

Article 4. Upon execution of this agreement the Government agrees to pay to the Contractor or his assignee, upon presentation of properly certified invoices or vouchers, the sum of $_____, which sum, [together with the amount of $_____ heretofore paid the Contractor as partial, progress, or advance payments],[1] constitutes payment in full and complete settlement, except as hereinafter provided in Article 5, of the amount due the Contractor with respect to that portion of his termination claim which is based upon termination of the subcontracts listed hereinabove. [The first sum to be inserted above should be the net amount of this partial settlement, arrived at by deducting from the gross amount of settlements with subject subcontractors as approved by the Contracting Officer the second amount to be inserted above which is that portion of partial, progress, or advance payments liquidated by this agreement.]

Article 5. Notwithstanding any other provision of this agreement, the following rights and liabilities of the parties under the contract are hereby reserved:

[Insert here a list of the reserved or excepted rights and liabilities of the Government and the Contractor (see § 18-8.210-2). Reference is made to instructions set forth in Article 6 of the agreement set forth in § 18-8.805-1 and Article 7 of the agreement set forth in § 18-8.805-2 and to the reserved or excepted rights and liabilities set forth in those articles, which may be used as appropriately modified to meet the requirements of any given settlement hereunder.]

In Witness Whereof, etc.

[1] Insert where appropriate.

§ 18-8.805-4 Settlement agreement for use in settling cost reimbursement type prime contracts after complete termination where settlement includes costs.

This Supplemental Agreement Of Settlement, entered into this _____ day of _____, 19 _____ between the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and _____

(i) A corporation organized and existing under the Laws of the State of _____;

(ii) A partnership consisting of _____;

(iii) An individual doing business as _____; (hereinafter called "the Contractor").

Witnesseth That:

Whereas, the Contractor and the Government have entered into Contract No. _____ under date of _____, 19_____ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the Termination clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated _____ the Government advised the Contractor of the complete termination of the contract for the convenience of the Government; and

Whereas, as used herein, the following terms shall have the meanings hereinafter set forth:

The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract, but shall not include any facilities, materials, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property as defined below.

(i) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(ii) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "subcontract" means any contract as defined in NASA Procurement Regulation 1.207 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

Now therefore, the parties hereto do mutually agree as follows:

Article 1. The Contractor certifies that all contract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this agreement.

Article 2. a. The contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all of his subcontract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to supplier, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in his claim a substantially similar certificate.

b. The contractor hereby transfers and conveys to the Government all the right, title and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of his rights relating thereto.

Article 3. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) All such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such terms do not include any items reasonably usable, without loss to the Contractor, on his other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of his termination inventory schedules and the date of this agreement.

Article 4. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of his immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

Article 5. a. The Contractor has received the sum of $_____ on account of work and services performed, or articles delivered, under the contract prior to the effective date of termination. The Government as part of this negotiated settlement hereby confirms and acknowledges the right of the Contractor, subject to the provisions of Article 6 hereof, to retain such sum heretofore paid and agrees that such sum constitutes a portion of the total amount to which the Contractor is entitled in complete and final settlement of the contract.

b. In addition, upon execution of this agreement the Government agrees to pay to the Contractor or his assignee, upon presentation of properly certified invoices or vouchers, the sum of $_____ [insert net amount of settlement], arrived at by deducting from the sum of $_____ [insert gross amount of settlement less amount set forth in Article 5a above], (1) the amount of $_____ representing all unliquidated partial or progress payments previously made on account to the Contractor or his assignee and all unliquidated advance payments (with interest, if any, thereon) and (2) the amount

of $_____ representing all applicable property disposal credits [and (3) the amount of $_____ representing all other amounts due the Government under this contract except as hereinafter provided in Article 6].[1] Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the complete termination of work under the contract and of all other claims and liabilities of the Contractor and the Government under the contract, except as hereinafter provided in Article 6.

Article 6. Notwithstanding any other provision of this agreement the following rights and liabilities of the parties under the contract are hereby reserved:

[The following list of reserved or excepted rights and liabilities is intended to cover those which should most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see § 18–8.210–2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this method of enumerating reserved rights and liabilities may be followed. Omit any of the following rights which are not applicable and add any additional exceptions or reservations required.]

(1) Claims by the Contractor against the Government for items of cost which are the subject of General Accounting Office exceptions (or other items of cost of the same nature), which are excluded from the settlement without projudice to the rights of either party, as follows: [Insert the amounts and describe the claims not waived by Contractor.]

(2) Claims by the Contractor against the Government, as to which his right of reimbursement is disputed, which are excluded without prejudice to the rights of either party as follows: [Insert the amounts and describe the claims with respect to which findings have been made by the Contracting Officer disallowing the item and with respect to which the Contractor has taken, or intends to take, timely appeal.]

(3) Claims by the Contractor against the Government which are unknown in amount and which involve costs claimed to be reimbursable under the contract, as follows: [Insert the estimated amounts and describe the claims.]

(4) Claims by the Contractor against the Government whose existence is unknown, based upon responsibility of the Contractor to third parties and which involve costs reimbursable under the contract.

(5) Claims by the Government against the Contractor which are based upon refunds, rebates, credits, or other accounts not now known to the Government, together with interest thereon, now due or which may become due the Contractor from third parties to the extent that such amounts arise out of transactions for which reimbursement has been made to the Contractor under the contract. Any such amounts which may hereafter become due to the Contractor from any third party or other source shall be paid to the Government within 30 days after receipt by the Contractor. Interest at 6 percent per annum shall accrue and shall be paid to the Government on any such accounts as remain unpaid after the 30-day period.

(6) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19__. [Insert reference to applicable Renegotiation Act.]

(7) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(8) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of 1942 (35 U.S.C. 89–96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with the performance of the contract.

(9) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, covenants of indemnity.

(10) All rights and liabilities of the parties under agreements with respect to the future care and disposition by the Contractor of Government-owned property remaining in his custody.

(11) All rights and liabilities of the parties under the contract with respect to any contract termination inventory stored for the Government pursuant to Article 1 hereof.

(12) All rights and liabilities of the parties under the contract with respect to any and all Government property, furnished to or acquired by the Contractor for the performance of this contract.

(13) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(14) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit." [If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.]

In Witness Whereof, etc.

§ 18–8.805–5 Settlement agreement for use in settling cost-reimbursement type prime contracts after complete termination where settlement is limited to fee.

This supplemental agreement of settlement entered into this _____ day of _____, 19__, between the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and _____.

(i) A corporation organized and existing under the Laws of the State of _____;

(ii) A partnership consisting of _____;

(iii) An individual doing business as _____; (hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. _____ under date of _____, 19__, which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the Termination clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated _____ the Government advised the Contractor of the complete termination of the contract for the convenience of the Government; and

Whereas, settlement of said terminated contract has been limited to adjustment of the fee.

Now, therefore, the parties hereto do mutually agree as follows:

Article 1. a. The Contractor has received the sum of $_____ on account of his fee under the contract prior to the effective date of termination.

b. In addition, upon execution of this agreement, the Government agrees to pay to the Contractor or his assignee, upon presentation of properly certified invoices or vouchers, the sum of $_____ [insert net amount to be paid on account of fee]. Said sum, together with all other sums heretofore paid on account of fee, constitutes payment in full and complete settlement of the amount due the Contractor on account of his fee under the contract.

Article 2. The Contractor's allowable costs under the contract will continue to be reimbursed on Standard Form 1034 cost vouchers in accordance with the applicable provisions of the contract and of Part 8 of the NASA Procurement Regulation.

Article 3. Not withstanding any other provision of this agreement the following rights and liabilities of the parties under the contract are hereby reserved:

[The following list of reserved or excepted rights and liabilities is intended to cover those which should most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see § 18–8.210–2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this method of enumerating reserved rights and liabilities may be followed. Omit any of the following which are not applicable and add any additional exceptions or reservations required.]

(1) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19__ [insert reference to applicable Renegotiation Act].

(2) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringement, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(3) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of 1942 (35 U.S.C. 89–96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with performance of the contract.

(4) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work

[1] To be inserted where appropriate.

under the contract), covenants not to compete, covenants of indemnity.

(5) All rights and liabilities of the parties under agreements with respect to the future care and disposition by the Contractor of Government-owned property remaining in his custody.

(6) All rights and liabilities of the parties under the contract with respect to any and all Government property, furnished to or acquired by the Contractor for the performance of this contract.

(7) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(8) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the following topics: Labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit." [If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive orders, the suggested language should be appropriately modified].

In Witness Whereof, etc.

§ 18–8.805–6 No cost settlement agreement—partial termination.

This Supplemental Agreement of Settlement, entered into this _____ day of _____, 19__, between the United States Of America (hereinafter called "the Government"), represented by the Contracting Officer executing this contract, and _____

(i) A corporation organized and existing under the Laws of the State of _____;

(ii) A partnership consisting of _____;

(iii) An individual doing business as _____;

(hereinafter called "the Contractor").

Witnesseth That:

Whereas, the Contractor and the Government have entered into Contract No. __ under date of _____, 19__ which, together with any and all amendments, changes modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the contract provides that the performance of work thereunder may at the convenience or option of the Government be terminated by the Government in whole or from time to time, in part, whenever any such termination is determined to be for the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

Whereas, by the Notice of Termination dated _____, 19__, the Government advised the Contractor of the partial termination of the contract for the convenience or at the option of the Government as of the date and to the extent provided in such Notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as "the terminated portion of the contract"; and

Whereas, the Contractor is willing to waive unconditionally any claim against the Government by reason of such termination.

Now, therefore, the parties hereto agree as follows:

Article 1. The terminated portion of the contract is designated as follows: (Specify the terminated portion clearly as to items including (i) item numbers, (ii) descriptions, (iii) quantity terminated, (iv) unit price of items, (v) total price of terminated items, and (vi) any other explanation necessary to avoid uncertainty or misunderstanding.)

Article 2. The Contractor hereby unconditionally waives any claim against the Government arising under the terminated portion of the contract or by reason of its termination including, without limitation, all obligation of the Government to make further payments or to carry out other undertakings in connection with said terminated portion, and the Government acknowledges that the Contractor has no obligation to perform further work or services or to make further deliveries of articles or materials under the terminated portion of the contract: *Provided, however,* That nothing herein contained shall impair or affect in any way any other covenants, terms or conditions of the contract. *And provided further,* That, with respect to the terminated portion of the contract, the following rights and liabilities of the parties are reserved:

[List reserved or excepted rights and liabilities; see §18–8.210–2 and Article 7 of the agreement set forth in § 18–8.805–2.]

In Witness Whereof, etc.

§ 18–8.805–7 No cost settlement agreement—complete termination.

This Supplemental Agreement Of Settlement, entered into this _____ day of _____, 19__, between the United States Of America (hereinafter called "the Government"), represented by the Contracting Officer executing this contract, and _____.

(i) A corporation organized and existing under the Laws of the State of _____;

(ii) A partnership consisting of _____;

(iii) An individual doing business as _____; (hereinafter called "the Contractor").

Witnesseth That:

Whereas, the Contractor and the Government have entered into Contract No. _____ under date of _____, 19__, which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the contract provides that the performance of work thereunder may at the convenience or option of the Government be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

[1] Whereas, by the Notice of Termination dated _____, 19__, the Government advised the Contractor of the termination of the contract for the convenience or at the option of the Government; and

Whereas, the Contractor is willing to waive unconditionally any claim against the Government by reason of such termination;

Now, Therefore, the parties hereto agree as follows:

Article 1. The Contractor hereby unconditionally waives any claim against the Government by reason of the termination of the contract and, except as set forth below, releases it from any and all obligations arising under the contract or by reason of it termination, and the Government agrees that all obligations arising under the contract or by reason of its termination, shall be deemed to be concluded; except as follows:

[List reserved or excepted rights and liabilities; see § 18–8.210–2 and Article 6 of the agreement set forth in § 18–8.805–1.]

In Witness Whereof, etc.

§ 18–8.805–8 Settlement agreement for use in settling cost-reimbursement type prime contracts after partial termination.

This supplemental agreement of settlement, entered into this _____ day of _____, 19__ between the United States of America (hereinafter called "the Government"), represented by the Contracting Officer executing this contract, and _____.

(i) A corporation organized and existing under the Laws of the State of _____;

(ii) A partnership consisting of _____;

(iii) An individual doing business as _____ (hereinafter called the "Contractor").

Witnesseth That:

Whereas the Contractor and the Government have entered into Contract No. _____ under date of _____, 19__ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the Termination clause of the contract provides that the performance of work under the contract may, at the convenience of the Government, be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated _____ the Government advised the Contractor of the partial termination of the contract for the convenience of the Government as of the date and to the extent provided in such Notice, to which reference is hereby made as to the part terminated, and said part is hereby referred to as "the termination portion of the contract"; and

Whereas, it is the desire of the parties that an adjustment be made of the fee [1](and of the estimated cost) under the contract as a result of such partial termination;

Now, therefore, the parties agree as follows:

Article 1. The contract is amended by deleting therefrom the terminated portion of the contract as follows: (Specify the terminated portion clearly as to items, including (i) item numbers, (ii) descriptions, and (iii) quantity terminated.)

[1] Article 2. The estimated cost of the contract is decreased by $_____.

Article 3. The fee stated in the contract is decreased by $_____.

Article 4. The Contractor's allowable costs and earned fee, if any, for the terminated portion of the contract will continue to be reimbursed on Form 1034 cost vouchers in accordance with the applicable provisions of the contract and of Part 15 of the NASA Procurement Regulation.

In Witness Whereof, the parties have executed this agreement as of the date above written.

§ 18–8.805–9 Format for settlement of reservations.

This Supplemental Agreement of Settlement, entered into this _____ day of _____, 19__ between the United States of America (hereinafter called "the Government"), represented by the Contracting Officer executing this contract, and _____.

[1] Omit when notice of termination has not been issued.

[1] Insert if appropriate.

(i) A corporation organized and existing under the Laws of the State of _____;

(ii) A partnership consisting of _____;

(iii) An individual doing business as _____.

Witnesseth That:

Whereas, the Contractor and the Government have entered into Contract No. _____ under date of _____, 19__ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the contract has been terminated; and

Whereas, a settlement agreement was executed in connection with the termination of the contract, said settlement agreement being dated _____, and being designated as Supplement No. _____ to the contract; and

Whereas, said settlement agreement excepted from the settlement therein contained certain items as more fully described in said final settlement agreement including the item(s) described in Clause 1 of this Agreement; and

Whereas, the Government and the Contractor have agreed to a settlement of said item(s) described in Clause 1 of this Agreement;

Now, therefore, the parties hereto do mutually agree as follows:

Clause 1. The Government agrees to pay to the Contractor the sum of $_____ on account of the following item(s):

Item 1:

Clause 2. The Contractor hereby releases and forever discharges the Government from all liability, and from all claims and demands which the Contractor now has or may hereafter have, under the contract insofar as it pertains to the contract based upon the Item(s) described in Clause 1 of this Agreement.

In witness whereof, the parties hereto have executed this Agreement on the date first herein written.

[Type or print names under all signatures]

THE UNITED STATES OF AMERICA
By _____
(Contracting Officer)
_____
(Name of Contractor)
By _____
Its business address:
_____
_____

§ 18–8.807 Format for the release of excess funds under terminated contracts.

FROM: Termination Contracting Officer located at _____.
TO: Procurement Office located at _____
_____.
SUBJ: Terminated Contract No. _____ with _____.
(Contractor)
Refs:
(a) (Cite Termination Notice and effective date.)
(b) (Cite previous letters releasing excess funds, if any.)[1]

1. By the referenced Termination Notice, the subject contract was (completely) (partially) terminated for the convenience of the Government.

2. On the basis of the best evidence available, it is estimated that the gross settlement costs will approximate $_____. Therefore, the amount available for release as excess to the contract is $_____. Any payments previously made to the Contractor for terminated items have been considered in arriving at the above amounts.

3. The related appropriation(s) and amount(s) involved are:

Appropriation(s)	*Allocated amount(s)*
_____	_____
_____	_____
_____	_____

(Contracting Officer)
(Location) _____.

Copies to:

[1] When prior letters releasing excess funds are cited, the following shall be used as the text of paragraph 2.

The estimated settlement costs previously reported by reference (b) in the total amount of $_____ is hereby revised. On the best evidence now available, it is estimated that the settlement costs will approximate $_____. Therefore, the additional amount available for release is $_____.

§ 18–8.808 Format for termination contracting officer's settlement memorandum for fixed-price type contract terminated for convenience of the Government.

This memorandum shall be addressed to a reviewing authority or the file in accordance with § 18–8.211. Contractors and subcontractors should be encouraged to use this format appropriately modified to cover subcontract settlements submitted for review and approval.

PART I—GENERAL INFORMATION

1. *Identification.* (Identify memorandum as to its purpose and content.)

a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

b. Names and titles of both contractor and Government personnel who participated in the negotiation.

2. *Description of Terminated Contract.* a. Date of contract and contract number.

b. Type of contract (e.g., fixed price, or fixed price incentive).

c. General description of contract items.

d. Total contract price.

e. Furnish reference to the contract termination provisions (cite NASA Procurement Regulation designation or other special provisions).

3. *Termination Notice.* a. Reference termination notice and state effective date of termination.

b. Scope and nature of termination (complete or partial), items terminated, unit price and total price of items terminated).

c. State whether termination notice was amended, and if so, explain.

d. Statement whether contractor stopped work on effective termination date. If he did not, furnish details. Also state whether subcontracts were terminated promptly by the contractor.

e. Statement as to diversion of common items and return of goods to suppliers, if any.

f. Furnish information as to contract performance and timely deliveries on part of contractor.

PART II—CONTRACTOR'S SETTLEMENT PROPOSAL

1. *Date and Amount.* Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)

2. *Basis of Claim.* State whether claim was filed on inventory, total cost or other basis. Explain approval granted in connection with submission on other than inventory basis.

3. *Examination of Proposal.* State type of reviews made and by whom (audit, engineering, legal, or other).

PART III—TABULAR SUMMARY OF CONTRACTOR'S CLAIM

Prepare a summary substantially as follows:

(Where Field Recommendations Are To Be Considered, Expand The Format To Include Such Recommendations.)

Item claimed	Auditor's recommendation				
	Contractor's proposal	$ Accepted	Cost questioned	Unresolved items	TCO negotiated amount
1. Contractor's Cost as set forth on Settlement Proposal. Metals, Raw materials, etc. Total.					
2. Profit.					
3. Settlement Expense.					
4. Total.					
5. Settlement with Subs.					
6. Acceptable Finished Product.					
7. Gross Total.					
8. Disposal and Other Credits.					
9. Net Settlement.					
10. Partial, Progress and Advance Payments.					
11. Net Payment Requested.					

PART IV—DISCUSSION OF SETTLEMENT

1. *Contractor's Cost.* a. If the settlement was negotiated on the basis of individual items, specify the factors and consideration with respect to each item.

b. In the case of a lump sum settlement, comment on the general basis for and major factors concerning each element of cost and profit included therein.

c. Comment on any important adjustments made to costs claimed or any significant amounts in relation to the total claim.

d. If a partial termination is involved, state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.

e. Comment on any unadjusted contractual changes which are included in the settlement.

f. Comment on whether or not a loss would have been incurred and explain adjustment for loss, if any.

g. Furnish other information believed helpful to the Settlement Review Board or any reviewing authority in understanding the recommended settlement.

2. *Profit.* Explain the basis and factors considered in arriving at a fair profit.

3. *Settlement Expenses.* Comment on and summarize those expenses not included in audit review.

4. *Subcontractor's Settlements.*

	No. of Settlements	*Net Amount*
Approved by contracting officer		
Concluded by contractor under delegation of authority		
Approved by Settlement Review Board		
No Cost Settlements		
Total		

5. *Partial Payments.* Furnish total amount of partial payments, if any.

6. *Progress or Advance Payments.* Furnish total of unliquidated amounts, if any.

7. *Claims of the Government Against the Contractor Included in Settlement Agreement Reservations.* List all outstanding claims, if any, which the Government has against the contractor in connection with the terminated contract or terminated portion thereof.

8. *Assignments.* List any assignments, giving name and address of assignee.

9. *Disposal Credits.* Furnish information as to applicable disposal credits and give dollar amounts of all disposal credits.

10. *Plant Clearance.* State whether all plant clearance action has been complete and all inventory sold, retained or otherwise properly disposed of in accordance with applicable plant clearance regulations. Comment on any unusual matters pertaining to plant clearance. Consolidated closing plant clearance report is attached.

11. *Government Property.* State whether all Government property has been accounted for.

12. *Special Tooling.* If involved, furnish comment on disposition.

13. *Summary of Settlement.* Summarize the settlement in tabular form substantially as follows:

Tabular summary for complete or partial termination	Amount claimed	Allowed amount
Prime Contractor's Charges (before disposal credits)	$	$
Plus: Subcontractor Charges (after disposal credits)		
Gross Settlement	$	$
Less: Disposal Credits—Prime	XXXXX	
Net Settlement	$	
Less: Prior Payment Credits (This Settlement)		
Previous Partial Settlements		
Other Credits or Deductions		
Total		$
Net Payment		
Total Contract Price (Complete Termination)		$
CPIT (for partial termination)		
Less: Total Payments to date		
Net Payment from this Settlement		
Fund Reserved for Reservations		
Final Contract Price (Terminated Portion for partial t rmination)		$
Reduction in Contract Price		

14. *Exclusions.* Describe any proposed reservation of rights to the Government or to the contractor.

PART V—RECOMMENDATION

1. *Recommendation.* Include statement as to the amount of the gross settlement and recommendation that it is fair and reasonable to the Government and the contractor.

2. *Signature.* The Contracting Officer will sign and date the memorandum.

§ 18–8.809 Format for termination contracting officer's settlement memorandum for cost-reimbursement type contracts.

This memorandum shall be addressed to a reviewing authority or the file in accordance with § 18–8.211. This format may be appropriately modified and used to cover subcontract settlements.

PART I—GENERAL INFORMATION

1. *Identification.* (Identify memorandum as to its purpose and content.)

a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

b. Names and titles of contractor and Government personnel who participated in the negotiation.

2. *Description of Terminated Contract.* a. Date of contract and contract number.

b. Type of contract.

c. General description of contract items.

d. State total contract cost and fee data if complete termination.

e. Furnish reference to the contract termination provisions (cite NASA PR designation or other special provisions).

3. *Termination Notice.* a. Reference termination notice and state effective date of termination.

b. Scope and nature of termination (complete or partial, items terminated, estimated costs and fee data applicable to items terminated).

c. State whether termination notice was amended, and if so, explain.

d. Explain scope of the settlement as to whether settlement concerns fee only or whether costs are also included.

PART II—CONTRACTOR'S SETTLEMENT PROPOSAL

1. *Date and Amount.* Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)

2. *Examination of Proposal.* State type of reviews made and by whom (audit, engineering, legal, or other).

PART III—TABLE SUMMARY OF SETTLEMENT

1. *Summary.* Summarize the proposed settlement in tabular form substantially as shown in Attachments A and B. Partial settlements may be summarized on Attachment B.

2. *Comments.* Furnish comments in amplification of tabular summaries.

a. Summary of Final Settlement (see Attachment A).

(1) If the auditor's final report was not available for consideration, state the circumstances.

(2) Explain how the fixed fee was adjusted. Identify basis used, such as percentage of completion. Include a description of factors considered and how they were considered. Include any tabular summaries and breakdowns deemed helpful to an understanding of the process. Factors which may be given consideration are outlined in § 18–8.406.

(3) Briefly identify matters included in liability for property and other charges against the contractor arising from the contract.

(4) Identify reservations included in the settlement that are other than standard reservations required by regulations and which are concerned with pending claims and refunds.

(5) Explain substantial or otherwise important adjustments made in cost figures submitted by the contractor in arriving at the proposed settlement.

(6) If unreimbursed costs were settled on a lump sum basis, explain the general basis for and the major factors considered in arriving at this settlement.

(7) Comment on any unusual items of cost included in the claim and on any phase of cost allocation requiring particular attention and not covered above.

(8) If auditor's recommendations for nonacceptance were not followed, explain briefly the main reasons why such recommendations were not followed.

(9) On items recommended for further consideration by the auditor, explain, in general, the basis for the action taken thereon.

(10) If any cost previously disallowed by a contracting officer is included in the proposed settlement, identify and explain the reason for inclusion of such costs.

(11) Show settlements with subcontractors by breakdown as follows:

	Number settlements	*Total dollar amount*
Approved by Termination Contracting Officer		
Concluded by contractor under delegation of authority		
Approved by Settlement Review Board		
No Cost Settlements		
Total		

(12) The following summary will be followed where settlement includes costs and fixed fee in a complete termination.

Gross Settlement		$
Less: Disposal credits		$
Net Settlement		
Less: Prior Payments		
Other credits or deductions		
Total		
Net Payment		$
Total contract estimated cost plus fixed fee		
Less:		
Net settlement		
Estimated reserve for exclusions		
Final contract price (Consisting of $_____ for reimbursement of costs and $_____ for adjusted fixed fee)		
Reduction in contract price (credit)		

(13) If the settlement is restricted to an adjustment of the fixed fee only, then the following summary will be included.

Amount of reduction in estimated costs:	$
Amount of reduction in fixed fee	
Reduction in contract price (credit)	

PART IV—RECOMMENDATION

1. *Recommendation.* Set forth the amount of the proposed negotiated settlement and make recommendation that the settlement is fair and reasonable to the Government and the Contractor and as such should be approved.

2. *Signature.* The termination contracting officer and negotiator will sign and date the memorandum.

ATTACHMENT A—SUMMARY OF SETTLEMENT—COST TYPE CONTRACT [1]

Contract No. _____
Termination No. _____

	Amount claimed	Amount allowed
1. Previous Reimbursed Costs—Prime and Subs	$	$
2. Previous Unreimbursed Costs		
3. Total Cost Settlement	$	$
4. Previous Fees Paid—Prime	$	$
5. Previous Fees Unpaid—Prime		
6. Total Fee Settlement	$	$
7. Gross Settlement		
	$	$
Less: Deductions not reflected in Items 1–7:		
a. Disposal credits	$	
b. Other charges against contractor arising from contract	$	
8. Net Settlement		$
Less Prior Payment Credits		
9. Net Payment		$
10. Amount allowed for prime contractor acquired property taken over by Government in connection with this settlement		$
11. Recapitulation of previous settlements (insert number of previous partial settlements effected on account of this particular termination):		
Aggregate gross amount of previous partial settlements		$
Aggregate net amount of previous partial settlements		$
Aggregate net payment provided in previous partial settlements		$
Aggregate amount allowed for prime contractor acquired property taken over by the Government in connection with previous partial settlements		$
12. Status of Contract (Fill out to extent applicable):		
a. Date of discontinuance of Form 1034, Cost Vouchers		Date
b. Audit Status Date		Date
c. Total amount of any GAO Exceptions outstanding at date of settlement		$

[1] Use applicable portion for partial settlement.

ATTACHMENT B—UNREIMBURSED COSTS SUBMITTED ON DD FORM 547 [1]

Costs	Amounts claimed by contractor's proposal	Auditor's recommendation: Cost questioned	Auditor's recommendation: Unresolved items	TCO's computation
1. Direct material				
2. Direct labor				
3. Indirect factory expense				
4. Dies, jigs, fixtures and special tools				
5. Other costs				
6. General and administrative expense				
7. Fee				
8. Settlement				
9. Settlement with subs				
10. Total costs (Items 1–9)				

[1] Expand the format to include recommendations of technical personnel as required.

§ 18–8.810 Format for application for grant of authorization.

APPLICATION FOR GRANT OF AUTHORIZATION

(a) Name of contractor.

(b) Address of the principal office of the contractor.

(c) Name and location of divisions of the applicant's plant for which authorization requested.

(d) An explanation of the necessity and justification for the authorization requested.

(e) A full description of applicant's organization for handling terminations, including the names of the officials in charge of processing and settling claims.

(f) The number and dollar amount (estimated if necessary) of uncompleted contracts with Government contracting agencies and the percentage thereof applicable to NASA.

(g) The number and dollar amount (estimated if necessary) of uncompleted subcontracts under Government contracts and the percentage thereof applicable to NASA.

(h) The extent of the applicant's experience in termination matters, including the handling of claims of subcontractors.

(i) The approximate amount and general nature of termination of the applicant currently in process.

(j) A statement that no other such application has been made for any division of the applicant's plant covered by the application; or, if one has been made, a full statement of the facts.

(k) The limits of authorization requested.

§ 18–8.810–1 Format of letter authorization.

LETTER OF AUTHORIZATION

(a) In consideration of your written request of (Date) and pursuant to paragraph 8.209–4 of the NASA Procurement Regulation, you are authorized, subject to the limitations of the NASA Procurement Regulation and those stated below, to settle without further approval of the Government, all subcontracts and purchase orders terminated by you as a result of the NASA contract being modified or terminated for the convenience of the Government, or subcontracts or purchase orders which have been terminated under any other circumstances that may require the Government to bear the cost of their settlement. This authorization does not extend to the disposition of Government-furnished material and completed articles not delivered under the subcontract or purchase order, as these require screening and approval of disposal actions by the Government; except that allocable completed articles may be disposed of without Government approval or screening if the total amount (at subcontract price) when added to the amount of settlement (as computed below) does not exceed $_____ (insert limit of authorization being granted).

(b) This authorization is subject to the following conditions and requirements:

(i) The amount of such subcontract termination settlement does not exceed $_____ (insert limit of authorization being granted), computed as follows:

(A) credits for retention or other disposal of termination inventory allocated to the claim, and for advance or partial payments, shall not be deducted from the gross claim or settlement; but

(B) amounts payable for completed articles or work at the contract price, or for the settlement or discharge of termination claims of subcontractors (except those settlements which have not been approved by the Government), shall be deducted.

(ii) Any termination inventory involved has been disposed of in accordance with the NASA Procurement Regulation, except that screening and Government approval of scrap and salvage determinations are not required.

(iii) The contracting officer may incorporate specific instructions in each Notice of Termination as to the disposition of specific items of termination inventory, or the contracting officer may, at any time prior to final settlement, issue such specific instructions. No such instructions, however, will affect any disposal action taken by you or your subcontractors prior to receipt thereof.

(iv) The settlements made by you with your subcontractors and suppliers pursuant to the authorization granted herein, including sales, retention, or other dispositions of property involved in making such settlements, shall thereupon be reimbursable in accordance with Part 8 of the NASA Procurement Regulation and the termination clause of the contract, and will not require approval of the contracting officer or his authorized representative.

(v) Any number of separate settlements of $_____ (insert limit of authorization granted) or less may be made with a single subcontractor. Claims which would normally

be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract, should be consolidated whenever possible and must not be divided in such a way as to bring them within the authorization.

(vi) The authorization to make settlements provided for herein is not to be exercised in the case of a subcontractor or supplier who is affiliated with you. For this purpose, you should consider a contractor to be affiliated with you if you are under common control or there is any common interest between you by reason of stock ownership, or otherwise, which is sufficient to create a reasonable doubt that the bargaining between you is completely at arm's length.

(vii) A representative of this office will, from time to time, review your methods used in negotiating settlements with your subcontractors and make a selective examination of such settlements made by you. Where such a review indicates that you are not adequately protecting the Government's interest, this delegation will be revoked.

§ 18–8.811 Delinquency Notices.

The following are formats of delinquency notices which may be used to satisfy the requirements of § 18–8.602–3. All notices will be sent with proof of delivery requested.

CURE NOTICE [1]

You are notified that the Government considers your (specify the Contractor's failure or failures), a condition that is endangering performance of the contract in accordance with its terms. Therefore, unless such condition is cured within ten (10) days after receipt hereof (or such longer time as the Contracting Officer may deem reasonably necessary) the government may terminate subject contract for default under General Provision No. _____ (Default).

The "Cure Notice" is required by the terms of the "Default" clause in the contract and derives its authority therefrom. Before using this notice, it must be ascertained that an amount of time equal to or greater than the period of "cure" remains in the contractually established delivery schedule or any extension thereof. If the time remaining in the contract delivery schedule is not sufficient to permit a realistic "cure" period of ten (10) days or more, the "Cure Notice" should not be issued and the following "Show Cause Notice" may be used, if desired, immediately upon the expiration of the delivery period.

SHOW CAUSE NOTICE [2]

Since you have failed to (perform Contract No. _____ within the time required by the terms thereof) (cure the conditions endangering performance under Contract No. _____ as described to you in the Government's letter of (date)), the Government is considering terminating said contract pursuant to General Provision No. _____ (Default). Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose out of causes beyond your control and without fault or negligence on your part. Accordingly, you are hereby afforded the opportunity to present, in writing, any facts bearing on the question to the Contracting Officer (insert complete address, including symbol, of activity where the Contracting Officer is located), with copy thereof to the undersigned for information within ten (10) days after receipt of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist. Your attention is invited to the respective rights of the Contractor and the Government under General Provision No. _____ (Default) and the liabilities that may be invoked in the event a decision is made to terminate for default of the Contractor.

Any assistance rendered to you on this contract or acceptance by the Government of delinquent goods or services hereunder, will be solely for the purpose of mitigating damages, and is not to be construed as an intention on the part of the Government to condone any delinquency, or as a waiver of any rights the Government may have under subject contract.[3]

[1] Use only when the delivery schedule has not expired.

[2] Delivery schedule in part or in whole has expired.

[3] Stop work instructions may be used when it is definitely known that there are no further requirements for the items or services, but an investigation must be conducted to determine whether an actionable default exists in lieu of termination for convenience. In such a situation, the following may be inserted as the final paragraph of the Show Cause Notice:

Pending decision you are instructed to stop all work immediately and to make no further commitments under subject contract. Advise all subcontractors and suppliers to do likewise.

PART 18–9—INNOVATIONS, INVENTIONS, PATENTS, DATA, AND COPYRIGHTS

Sec.

AUTHORITY: The provisions of this Part 18–9 issued under 42 U.S.C. 2473(b)(1).

§ 18–9.000 Scope of part.

This Part 18–9 sets forth policies and procedures pertaining to innovations, inventions, patents, data, and copyrights in connection with the procurement of supplies and services.

Subpart 18–9.1—Innovations, Inventions, and Patents

§ 18–9.100 Scope of subpart.

(a) This Subpart 18–9.1 prescribes contract clauses and instructions which define and implement the policy of NASA with respect to:

(1) Inventions and innovations made in the performance of work under contract with NASA;

(2) Patent and copyright infringement liability of the United States resulting from work performed under contract with NASA;

(3) Security requirements covering patent applications containing classified subject matter; and

(4) Patent and copyright royalties payable in connection with the performance of contracts with NASA.

(b) The Office of General Counsel, NASA Headquarters, should be consulted for policies, instructions, and contract clauses concerning innovations, inventions, patents, data, and copyrights for

use in contracts which are to be performed outside the United States, its possessions, and Puerto Rico.

§ 18–9.101 Property rights in inventions made in the performance of work under NASA contracts.

§ 18–9.101–1 General.

(a) Except for any invention made in the performance of any work under any contract with NASA, it is the policy of NASA to pay reasonable compensation for the acquisition of rights in any invention covered by a valid patent issuing thereon and enforceable against the Government. Such rights in "background" patents will not be acquired in contracts for supplies and services except by specific negotiation for such rights, unless the patents and the rights thereunder are listed and priced as a separate contract item. Questions of validity, enforceability and infringement of patents will be determined by the Office of the General Counsel, NASA Headquarters.

(b) It is also the policy of NASA to refer to the NASA Inventions and Contributions Board for consideration for an award each invention made by an employee of a NASA contractor or subcontractor to which NASA has acquired title and with respect to which an application for patent by NASA has been filed. In addition, the Administrator, upon his own initiative, may make monetary award on any such invention in such amount and upon such terms as he shall determine to be warranted.

(c) It is the policy of NASA to require reports of innovations and inventions which are made in the performance of work done under NASA contracts in order to protect the Government's interest therein and to provide for the widest practicable and appropriate dissemination thereof to the scientific and industrial communities.

§ 18–9.101–2 Use of new technology clause.

Except as provided in § 18–9.101–5, the New Technology clause set forth in § 18–9.101–4 shall be included in every contract made by or on behalf of NASA, and in every modification of such a contract, where the performance of research, experimental, design, engineering or developmental work is contemplated. Whenever an existing contract is modified by inserting the clause set forth in § 18–9.101–4, see the instruction contained in § 18–9.101–8. As illustrative, but without limitation, contracts for the following purposes are considered to contemplate work of the type described above:

(a) Conduct of basic or applied research;

(b) Design, or development, or manufacture for the first time of any machine, article of manufacture, or composition of matter to satisfy NASA's specifications or special requirements;

(c) Development of any process or technique for attaining a NASA objective not readily attainable through the practice of a previously developed process or technique; or

(d) Testing or experimenting with a machine, process, or technique to determine whether the same is suitable or could be made suitable for a NASA objective.

Architect-Engineer contracts and construction contracts which require only "state of the art" or "brick and mortar" construction need not include the clause in § 18–9.101–4.

§ 18–9.101–3 Special instructions for waived inventions.

(a) The New Technology clause set forth in § 18–9.101–4 contains a section IV pertaining to "Waived Inventions." In appropriate cases the Administrator may grant the request of a prospective contractor or subcontractor and waive title to any invention which may be made under the contract or subcontract (see the NASA Patent Waiver Regulations, 14 CFR § 1245.104; NASA Management Instruction 5109.2A). In such cases the contracting officer will be informed that the waiver has been granted, and when the contract or subcontract is executed, section IV of the New Technology clause shall be made applicable to the contract to implement the waiver by including the following statement in the Schedule of the contract or subcontract:

> The Administrator has granted the contractor's request for waiver under 14 CFR § 1245.104, and section IV of the New Technology clause is applicable to this contract.

(b) The contracting officer shall not include the statement set forth in paragraph (a) of this section in any contract, or approve its inclusion in any subcontract, unless at the time of or prior to the execution of the contract or subcontract he has been notified by the Chairman of the Inventions and Contributions Board that the Administrator has granted the contractor's or subcontractor's request for waiver with respect to the contract or subcontract concerned.

(c) The procedures established by these special instructions for waived inventions and 14 CFR § 1245.104 are designed to afford an opportunity to settle questions of the allocation of rights in inventions at the time of contracting in cases where the facts are readily determinable. Petitions for waiver submitted to the contracting officer with respect to contracts or subcontracts which will be awarded shall be referred to the Patent Counsel servicing the installation for analysis and forwarding to the Inventions and Contributions Board at NASA Headquarters.

(d) Upon receipt from Patent Counsel of a petition for waiver at the time of contracting, the Inventions and Contributions Board will promptly review the matter in order to determine if the following six findings can be made (the word "contract" includes "subcontract of any tier").

(1) It is not a principal purpose of the contract to create, develop or improve products, processes, or methods which are intended for commercial use (or which are otherwise intended to be made available for use) by the general public at home or abroad, or which will be required for such use by governmental regulations.

(2) It is not a principal purpose of the contract to explore into fields which directly concern the public health or public welfare.

(3) The contract is not in a field of science or technology in which there has been little significant experience outside of work funded by the Government, or where the Government has been the principal developer of the field, with respect to which the acquisition of exclusive rights at the time of contracting might confer on the contractor a preferred or dominant position.

(4) The contract is not for services of the contractor for (i) the operation of a Government-owned research or production facility; or (ii) coordinating and directing the work of others.

(5) The purpose of the contract is to build upon existing knowledge or technology to develop information, products, processes, or methods for use by the Government.

(6) The work called for by the contract is in a field of technology in which the contractor has required technical competence (demonstrated by factors such as know-how, experience, and patent position) directly related to an area in which the contractor has an established nongovernmental commercial position.

(e) If the findings set forth in paragraph (d) of this section cannot be made without unduly delaying the execution of the contract or subcontract in question, the Inventions and Contributions Board will so notify the contracting officer, who shall notify the contractor or subcontractor concerned. In such cases the statement set forth in paragraph (a) of this section shall not be included in the contract or authorized for inclusion in the subcontract, and the contractor or subcontractor may execute the contract or subcontract and request the Inventions and Contributions Board to consider the matter further under 14 CFR § 1245.105.

(f) When the "New Technology" clause is to be applicable to the procurement, the following provision will be included in the Request for Proposals:

> WAIVED INVENTIONS (MAY 1966)
>
> (a) Under the NASA Patent Waiver Regulation, 14 CFR § 1245.100 et seq., waiver of title to inventions made under NASA contracts may be requested at three different times. Waiver of title to an individual invention may be requested under § 1245.106 after the invention has been identified and reported to NASA. Waiver of title to inventions not yet identified and reported may be requested under § 1245.104, prior to execution of the contract, or under § 1245.105, within sixty (60) days of contract execution. Waiver of title may be requested under any of these sections even though a request under a different section was not made or, if made, was not granted.
>
> (b) If you intend to petition prior to contract execution for waiver of title to all inventions which may be made under the contract, you must present such petition with your proposal. The findings which must be made in order for such a petition to be granted are set forth in 14 CFR § 1245.104 and in paragraph 9.101–3(d)

(1)–(6) of the NASA Procurement Regulations.

(c) In the event that it is decided to negotiate a contract based on your proposal, your petition will be forwarded to the Inventions and Contributions Board for consideration. The Board will either make the necessary findings and recommend to the Administrator of NASA that the waiver be granted, or inform the Contracting Officer that facts which are readily available are insufficient to permit a decision to be made without unduly delaying the execution of the contract. In the latter event, you will be so notified and, upon execution of the contract, you may request the Board to consider the matter further. If your request for waiver is granted, section IV of the "New Technology" clause set forth in § 18–9.101–4 will be made applicable to the contract implementing the waiver.

(g) It will be noted from section IV of the "New Technology" clause and from the NASA Patent Waiver Regulations (NASA Management Instruction 5109.2A) that although the title to inventions may have been waived to a contractor or subcontractor, such waiver is subject to a number of conditions, reservations, and obligations on the part of the contractor or subcontractor concerned.

(h) Where NASA requests another Government agency to perform work of a type defined in § 18–9.101–2 on behalf of NASA and it is contemplated that a contract will be awarded, instructions for transmittal of petitions for waiver shall be provided to the other agency in accordance with § 18–9.101–9(a)(5). The written decision of the NASA Administrator whether or not to grant the requested waiver will be transmitted to the NASA contracting officer by the Chairman of the NASA Inventions and Contributions Board who shall also transmit copies of the decision directly to the contractor and contracting officer of the other agency.

(i) Where the clause set forth in § 18–9.101–4 will be included in a contract resulting from a formally advertised procurement, the invitations for bids shall include the following statement:

"Section IV (Waived Inventions) of the 'New Technology' clause will not be made applicable to this contract."

(j) If the "New Technology" clause is added to an existing contract by a modification, the special instructions set forth in § 18–9.101–3 shall not be applied.

§ 18–9.101–4 New technology clause.

NEW TECHNOLOGY (MAY 1966)

(This clause comprises five sections: I—Definitions, II—Reporting and Subcontracts, III—Rights, IV—Waived Inventions, and V—Withholding; and the clause paragraphs are lettered consecutively throughout the sections.)

I—DEFINITIONS

(a) As used in this clause, the following terms shall have the meanings set forth below:

(i) "Reportable item" means any invention, discovery, improvement or innovation, whether or not the same is susceptible of protection under the U.S. patent laws, which is made in the performance of work under this contract or in the performance of any work done upon an understanding in writing that this contract would be awarded or made in the performance of any work which is reimbursable under any clause in this contract providing for reimbursement of costs incurred prior to the effective date of this contract;

(ii) "Made" means conceived or first actually reduced to practice, and "making" means conceiving or first actually reducing to practice;

(iii) "Invention" means any reportable item which, in the opinion of the Administrator, falls within a statutory class of patentable subject matter (35 U.S.C. 101, 161, and 171);

(iv) "Person" means any individual, partnership, group, corporation, association, institution or other entity;

(v) When this clause is included in any subcontract, "contractor" means subcontractor and "contract" means subcontract; and

(vi) "Administrator" means the Administrator of NASA or his duly authorized representative.

II—REPORTING AND SUBCONTRACTS

(b) The Contractor shall furnish to the Contracting Officer a written report concerning each reportable item promptly upon the making thereof. Such report shall include such technical detail as is necessary to identify and to describe fully the nature, purpose, operation and physical (electrical, chemical, etc.) characteristics of the reportable item.

(c) In addition to the reports required in paragraph (b) above, the Contractor shall conduct frequent periodic reviews of the work performed by the Contractor to assure that all reportable items have been reported to the Contracting Officer. Within 1 month following each annual anniversary date of this contract, until completion of the contract work, and within 1 month following completion of the contract work, the Contractor shall furnish to the Contracting Office a written summary of the review activities performed, including a report as required by paragraph (b) above for each reportable item not previously reported, or certifying that there are no reportable items.

(d) (1) The Contractor shall include sections I through IV (paragraphs (a) through (q)) of this clause in each subcontract he awards under this Contract where the performance of research, experimental, design, engineering, or developmental work is contemplated and shall set forth in each subcontract the identification of the prime contract and the identification and mailing address of the Contracting Officer.

(2) As to each subcontract of any tier for which the Inventions and Contributions Board makes the findings referred to in paragraph (k) of this clause, the Contractor shall include in the Schedule or elsewhere in such subcontract the statement set forth in said paragraph (k).

(3) In the event of refusal by a subcontractor to accept any of the provisions of this clause other than paragraph (r), the Contractor shall promptly notify the Contracting Officer of such refusal and shall not execute the subcontract in question until provisions have been approved in writing by the Contracting Officer for inclusion in said subcontract.

(4) The Contractor shall furnish promptly to the Contracting Officer a statement listing each subcontract he awards under this contract of over fifty thousand dollars ($50,000) of the type described in paragraph (d)(1) above, stating the name and address of the subcontractor, describing the work to be performed, stating the estimated cost, and giving the estimated completion date of the subcontract. Within 1 month following each annual anniversary date of this contract, until completion of the contract work, and within 1 month following completion of the contract work, the Contractor shall furnish to the Contracting Officer a written report listing each such subcontract not previously reported or certifying that no such subcontracts were awarded during the reporting period.

(e) With respect to each subcontract awarded by the Contractor of over fifty thousand dollars ($50,000) of the type described in paragraph (d)(1) above, the Contractor shall, within 1 month following completion of the work under such subcontract:

(i) Obtain from an official having authority to execute such subcontract on behalf of the subcontractor a letter certifying compliance by the subcontractor with the paragraphs of this "New Technology" clause included in such contracts; and

(ii) Submit a copy of such letter directly to the Contracting Officer upon receipt from the subcontractor.

III—RIGHTS

(f) (1) An invention reported under this clause shall be presumed to have been made in the manner specified in paragraph (1) or (2) of section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)(1958)) (hereinafter called "the Act").

(2) The presumption of paragraph (f)(1) above shall be conclusive unless the Contractor at the time of reporting the invention submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the invention was not made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(3) Regardless of whether the Inventions and Contributions Board has considered the matter, if the Schedule of this contract does not include the statement set forth in paragraph (k) below, the Contractor may, within 60 days from the date of execution of this Contract, petition the Administrator for waiver of title to inventions, pursuant to 14 CFR § 1245.105, or after reporting an invention, may petition for waiver of title to that invention, pursuant to 14 CFR § 1245.106.

(g) Regardless of whether title to a given invention would otherwise be subject to a waiver or is the subject of a petition for waiver, the Contractor may nevertheless file the statement described in paragraph (f)(2) above. The Administrator will review the information furnished by the Contractor in any such statement and any other available information relating to the circumstances surrounding the making of the invention and will notify the Contractor whether the Administrator has determined that the invention was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(h) With respect to each invention which becomes the exclusive property of the United States, the Contractor shall:

(1) Inform the Contracting Officer at the earliest practicable date of any public use or sale by the Contractor of the invention or of any publication by the Contractor describing the invention; and

(2) Furnish, upon written request by the Contracting Officer, such full and complete technical and other information available to the Contractor as is necessary for the preparation of a patent application and for prosecution of such patent application, and, in addition, shall execute or endeavor to secure execution of all lawful documents and instruments determined by the Administrator to be necessary for the preparation and prosecution of applications for Letters Patent covering the invention.

(i) Regardless of any other disposition of rights in the invention, in the case of each reported invention which is determined to have been made in the matter specified in paragraph (1) or (2) of section 305(a) of the Act, 14 CFR § 1245.113 provides that the Contractor is granted a nonexclusive, irrevocable, royalty-free license to practice such invention together with the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. Such license and right will be nontransferable except to a successor of that part of the Contractor's business to which the invention pertains.

(j) (1) The Government may duplicate, use and disclose in any manner and for any purpose whatsoever, and have others do so, all reports furnished pursuant to paragraphs (b), (c), and (h)(2) of this clause.

(2) Nothing contained in this "New Technology" clause shall be deemed to grant any license under any invention as to which rights of the Government are not expressly obtained pursuant to the Act, as implemented by this clause.

IV—WAIVED INVENTIONS

(k) This section IV paragraphs (k) through (q) of this clause shall be applicable to this contract only if, pursuant to the NASA Patent Waiver Regulations, 14 CFR § 1245.104, and 9.101–3 of the NASA Procurement Regulations, there is included in the Schedule of this contract the following statement:

The Administrator has granted the Contractor's request for waiver under 14 CFR § 1245.104, and section IV of the New Technology clause is applicable to this contract.

(l) When this section is applicable to the contract, as provided in paragraph (k) above, the title to any invention made in the performance of work under this contract is subject to a waiver granted by the Administrator pursuant to 14 CFR § 1245.104 and to the conditions, reservations, and obligations contained in paragraphs (m), (n), (o), (p), and (q) below.

(m) With respect to any particular invention, the waiver referred to in paragraph (l) above is subject to the following conditions:

(1) That the Contractor report the invention during the term of this contract;

(2) That the invention is determined to have been made in the manner specified in paragraph (1) or (2) of section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) in the performance of work under this contract; and

(3) That the invention is designated at the time of reporting as being an invention upon which the Contractor intends to file or has filed a U.S. patent application.

(n) With respect to any particular invention, the waiver referred to in paragraph (l) above is subject to the following reservations:

(1) The reservation of an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of the invention throughout the world by or on behalf of the United States or any agency thereof, State, or domestic municipal government, or any foreign government pursuant to any existing or future treaty or agreement with the United States;

(2) The reservation by the Administrator of the right to require the granting of a license to any applicant on a nonexclusive, royalty-free basis unless:

(i) The Contractor, his licensee, or his assignee has brought the invention to a point of practical application within 3 years after a U.S. patent issues on the invention and makes its benefits reasonably accessible to the public or;

(ii) Within 3 years after a U.S. patent issues on the invention, such patent has been made available for nonexclusive licensing to any responsible applicant, royalty-free or on the terms that are reasonable in the circumstances; or

(iii) The Contractor shows cause why he should retain the full benefits of waiver for a further period of time; and

(3) The reservation by the Administrator of the right to require the granting of a license to any responsible applicant royalty-free or on terms that are reasonable in the circumstances for such practice of the invention as may be appropriate to satisfy the requirements which may be made by governmental regulations for public use of the invention, as may be necessary to fulfill health needs, or for other public purposes, if any, stipulated in the Schedule of this contract.

(o) With respect to any particular invention, the waiver referred to in paragraph (l) above is voidable at the option of the Administrator unless the Contractor shall:

(1) File within 8 months from the date of reporting of such an invention, an application for U.S. Letters Patent disclosing and claiming the invention, and include within the first paragraph of the specification of such application and any patent issuing thereon the following statement:

The invention described herein was made in the performance of work under a NASA contract and is subject to the provisions of section 305 of the National Aeronautics and Space Act of 1958, Public Law 85–568 (72 Stat. 435; 42 U.S.C. 2457).

(2) Furnish to the Administrator a copy of each patent application, domestic or foreign, filed thereon, together with identifying serial number and filing date promptly upon receipt thereof;

(3) Execute and furnish to the Administrator instruments fully confirmatory of the rights herein reserved by the Government;

(4) In the event the Contractor elects not to continue prosecution of any application filed thereon, notify the Administrator within sufficient time to allow assumption of prosecution by the Government, and deliver to the Administrator such duly executed instruments as are necessary to vest in the Administrator title thereto, including an instrument of assignment to such application;

(5) Convey to the Administrator, on written request, the Contractor's entire right, title and interest in any foreign country in which the Contractor has not filed an application on said invention within—

(i) Nine months from the date a corresponding U.S. application is filed;

(ii) Six months from the date permission is granted to file foreign applications where such filing has been prohibited for security reasons; or

(iii) Such longer periods as may be expressly approved by the Administrator.

(6) Grant any license which the Administrator may require to be granted pursuant to paragraph (n) (2) or (3) above.

(7) Report, upon NASA's written request not more often than annually, the commercial use that is being made or is intended to be made of the invention.

(p) With respect to any particular invention, the waiver referred to in paragraph (l) above is voidable at the option of the Administrator if the patent disclosing and claiming such invention is held to have been used in violation of the antitrust laws in an unappealed or unappealable judgment or order of a court or administrative tribunal of competent jurisdiction.

(q) Before a Contractor is required to grant a license under either paragraph (n) (2) or (3) above, he shall be given an opportunity to show cause before the NASA Inventions and Contributions Board why he should not be required to grant such a license.

V—WITHHOLDING

(r) (1) Except as provided in subparagraphs (3) and (4) below, if the Contractor fails to comply with the provisions of this clause after receipt of a written decision of the Contracting Officer, pointing out wherein the Contractor has failed to comply and setting a time limit for compliance, there shall be withheld from payment, unless such failure has been corrected within the time limit set, either five percent (5%) of the amount of this contract as from time to time amended, or fifty thousand dollars ($50,000), whichever is less.

(2) Without regard to whether a written decision as described in subparagraph (1) above has been issued, after payment of eighty-five percent (85%) of the amount of this contract, as from time to time amended, payment shall be withheld until a reserve of either five percent (5%) of such amount, or fifty thousand dollars ($50,000), whichever is less, shall have been set aside, such reserve or balance to be retained until the Contractor shall have complied with the provisions of this clause, as well as with such written decision or decisions as may have been issued pursuant to subparagraph (1) above and not withdrawn or successfully challenged on appeal pursuant to the "Disputes" clause.

(3) The maximum amount which may be withheld under this paragraph (r) shall not exceed five percent (5%) of the amount of this contract or fifty thousand dollars ($50,000), whichever is less. If this contract is a no-fee contract with a Contractor other than an educational institution, the amount which may be withheld shall not exceed one percent (1%) of the amount of the contract or fifty thousand dollars ($50,000), whichever is less. No amount shall be withheld pursuant to this section V so long as an equivalent amount is being withheld under other provisions of this contract.

(4) The withholding provisions of subparagraphs (1) through (3) of this paragraph (r) do not apply to the provisions of paragraph (e) or section IV of this clause, or to no-fee contracts with an educational institution. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

§ 18–9.101–5 Property rights in inventions clause.

(a) The clause set forth below 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 research. See § 18–1.236 for the definition of "nonprofit organization."

PROPERTY RIGHTS IN INVENTIONS (NOVEMBER 1962)

This contract and all subcontracts hereunder are subject to section 305 of the National Aeronautics and Space Act of 1958 relating to property rights in inventions. The term "invention" includes any invention, discovery, improvement, or innovation. Any invention made in performance of work under this contract shall be presumed to have been made under the conditions described in paragraphs (1) or (2) of section 305(a) of the Act. The Contractor shall furnish to the Contracting Officer a written report containing full and complete technical information concerning any invention made in the performance of any work under this contract promptly upon the making of such invention and shall require all subcontractors to do so. Upon written request of the Contract-

ing Officer, the Contractor shall furnish additional information available to him, and shall secure the execution of such documents as may be necessary to enable the Administrator, NASA, to file and prosecute patent applications on any such invention. Prior to completion of this contract, the Contractor shall furnish to NASA a report as to whether or not any inventions of the type referred to herein have been made in the performance of work under this contract.

§ 18-9.101-6 Contracts relating to atomic energy.

Whenever any contract is entered into with or for the benefit of the Atomic Energy Commission, the Office of General Counsel, NASA Headquarters, shall be consulted for policies, instructions, and contract clauses relating to innovations, inventions, patents, data, and copyrights.

§ 18-9.101-7 Patent rights under product improvement programs or independent research and development programs.

Where NASA under its established procedures provides, as an item in the computation of overhead, financial support to (a) a contractor's product improvement program, or (b) a contractor's independent research and development program, the inventions resulting from such programs are not subject to the "New Technology" or the "Property Rights in Inventions" clauses merely by virtue of the provision of such financial support. The clause set forth below may be included in the Schedule of a cost-reimbursement type contract wherein NASA is providing such support to the contractor's product improvement program or independent research and development program.

INVENTIONS MADE UNDER CONTRACTOR'S INDEPENDENT RESEARCH AND DEVELOPMENT PROGRAMS (AUGUST 1963)

Any invention made in the performance of any work by the Contractor under the Contractor's own product improvement program, or the Contractor's independent research and development program, even though supported by an allowance of costs for such program as a part of the overhead costs hereof, will not be subject to the "New Technology" clause or the "Property Rights in Inventions" clause (whichever is included in this contract) unless said work is identified in writing as being required in the performance of this contract.

§ 18-9.101-8 Updating patent rights clauses.

(a) If a contract containing a clause providing for patent rights earlier than the version of the clause set forth in § 18-9.101-4 is amended to include that clause, the clause set forth below also shall be included in the contract.

NEW TECHNOLOGY—SUBCONTRACT AMENDMENTS (SEPTEMBER 1964)

The provisions of paragraph (d) (1) of the New Technology clause of this contract do not require amendment of existing subcontracts to substitute in such subcontracts the New Technology clause of this contract, although such amendment is permissible at the option of the Contractor, and if amendment is made, this clause may also be inserted in the subcontract.

(b) Where contracts described in paragraph (a) of this section are updated, the clause entitled "Implied Licenses" may be cancelled, if previously included in the contract; in which event appropriate amendment shall be made in the "Rights in Data" clause by revising paragraph (e) to substitute the paragraph (d) contained in § 18-9.203-1.

§ 18-9.101-9 Procurement through another Government agency.

(a) Except in the situation wherein special patent agreements exist between NASA and another Government agency, such as in the case of AEC, whenever NASA requests another Government agency to perform work of a type defined in §18-9.101-2 on behalf of NASA (see § 18-5.1002-1(d), Block 10) the agency shall be furnished the following information if it is contemplated that a contract will be awarded for such work:

(1) Names and addresses of NASA New Technology Representative and Patent Representative;

(2) Instructions pursuant to § 18-9.101-2 to include either the "New Technology" clause set forth in § 18-9.101-4 or the "Property Rights in Inventions" clause set forth in § 18-9.101-5, whichever is appropriate, in any contract which it awards for the performance of research, experimental, design, engineering or developmental work for the purpose of fulfilling the NASA request;

(3) Instructions to furnish the NASA New Technology Representative with the name and address of the office or unit within the agency having technical cognizance of the work to be performed under any contract of the type referred to in subparagraph (2) above;

(4) request to supply a copy of any contract, of the type referred to in subparagraph (2) above, to the NASA New Technology Representative;

(5) Instructions for contractors to forward promptly, through the agency contracting officer, requests and petitions for waiver to the Chairman, Inventions and Contributions Board, NASA Headquarters, Washington, D.C. 20546. Section IV (Waived Inventions) of the "New Technology" clause shall be made applicable to contracts pursuant to the special instructions set forth in § 18-9.101-3, and

(6) Instructions to forward promptly to the NASA New Technology Representative all reports of reportable items and inventions made during the performance of work under such contracts and a copy of the contractor's final report for each contract as required by the "New Technology" or "Property Rights in Inventions" clause, whichever is included in the contract.

§ 18-9.102 Procurement of patented items by NASA.

(a) Upon timely notice by a patent owner, including an exclusive licensee or other person legally entitled to license under the patent, that a proposed NASA procurement, either formally advertised or negotiated, will infringe his privately owned U.S. patent, and upon a determination by patent counsel that the procurement will infringe the patent, NASA will enter into a preprocurement license agreement with the patent owner prior to the procurement using NASA Form 1333 "Patent License Agreement" provided the following conditions are satisfied:

(1) The pertinent claim or claims of the patent have not been held invalid by an unappealed or unappealable judgment or decree of a court of competent jurisdiction or determined to be unenforceable against the Government by any department or agency in an administrative claim procedure;

(2) The patent owner demonstrates that his patent is respected commercially as evidenced by one or more royalty-bearing commercial licenses under the patent, or the patent owner shows that his patent has been held valid by an unappealed or unappealable judgment of a court of competent jurisdiction;

(3) The patent owner offers to license NASA for the proposed procurement at a reasonable rate which in no event should exceed the lowest rate at which he has licensed a private concern; and

(4) The contracting officer, in consultation with NASA patent counsel, determines that entering into the license agreement will not unduly delay the procurement.

(b) If the conditions of paragraph (a) of this section are satisfied and a preprocurement license agreement is entered into, royalties which will be payable to the patent owner under the agreement if a contract is awarded to an unlicensed supplier will be considered by the contracting officer as a factor in determining which bid or proposal is most advantageous to the United States. The preprocurement license agreement will apply only to contracts to be awarded under the proposed procurement, and under the agreement royalties will be payable to the patent owner only if the patented items are procured from an unlicensed source, and only upon acceptance by NASA of the patented item.

(c) Notice that a proposed NASA procurement will infringe a privately owned patent and an offer by the patent owner to enter into a preprocurement license agreement with NASA will be considered by the contracting officer only if the patent owner:

(1) Gives timely notice to the contracting officer in writing of the alleged infringement, identifying the proposed procurement or those portions thereof which he believes will infringe his patent.

(2) Submits a copy of his patent to the contracting officer together with a brief explanation outlining the claim or claims of his patent which he believes will be infringed by the proposed procurement.

(3) Submits evidence showing that his patent is respected commercially, or that it has been held to be valid by an unappealed or unappealable judgment of a court of competent jurisdiction;

(4) Establishes his interest in the patent and that he has the right to enter into a license agreement with NASA; and

(5) Specifies the terms, including the royalty, upon which he will license NASA for the proposed procurement, which

royalty shall not exceed the lowest rate at which he has licensed a private concern.

If the contracting officer determines that entering into a procurement license agreement would not unduly delay the procurement, he shall refer the matter to patent counsel who shall determine whether the proposed procurement would infringe the patent and if so shall negotiate the terms of such agreement at a royalty rate which in no event shall exceed the rate specified in subparagraph (5) above. Negotiations regarding the terms of such an agreement shall be coordinated with the Office of General Counsel, NASA Headquarters, and in the case of formally advertised procurements a mutually acceptable royalty rate must be established prior to bid opening. Preprocurement licenses will be binding upon NASA only upon execution thereof by the General Counsel of NASA.

(d) (1) In order to notify prospective bidders in formally advertised procurements that royalties payable to a patent owner may be a factor in evaluating their bids, the following "Patent Royalties" clause should be inserted in all invitations for bids; except (i) when each contract to be awarded is not likely to exceed $2,500; (ii) when the invitation calls for nonpersonal services.

PATENT ROYALTIES (OCTOBER 1966)

Upon timely notice by a patent owner to the Contracting Officer that this procurement will infringe his privately owned U.S. patent, and upon a determination by NASA patent counsel that this procurement will infringe the patent, NASA may enter into a patent license agreement with the patent owner prior to an award of a contract pursuant to this Invitation for Bids provided the following conditions are satisfied.

(i) The pertinent claim or claims of the patent have not been invalid by an unappealed or unappealable judgment or decree of a court of competent jurisdiction or determined to be unenforceable against the Government by any department or agency in an administrative claim procedure;

(ii) The patent owner demonstrates that his patent is respected commercially as evidenced by one or more royalty-bearing commercial licenses under the patent, or the patent owner shows that his patent has been held valid by an unappealed or unappealable judgment of a court of competent jurisdiction;

(iii) The patent owner offers to license NASA for the proposed procurement at a reasonable rate which in no event should exceed the lowest rate at which he has licensed a private concern;

(iv) A mutally acceptable royalty rate is established prior to bid opening; and

(v) The Contracting Officer, in consultation with NASA patent counsel, determines that entering in to the license agreement will not unduly delay the procurement.

Under the agreement royalties will be payable to the patent owner if the patented item is procured from an unlicensed source and only upon acceptance by NASA of the patented item. These royalties will be considered by NASA as a factor in the evaluation of bids of unlicensed suppliers in determining the bid which is most advantageous to the United States. Before any royalty payments are considered for evaluation purposes, each bidder will be given an opportunity to show that he is a licensee under the patent determined by NASA patent counsel to be infringed by the procurement. Any bidder who fails to show that he is a licensee under such patent will be regarded as an unlicensed supplier for evaluation purposes.

(2) In order to notify prospective offerors in negotiated procurements that royalties payable to a patent over may be a factor in evaluating their offers or quotations the following "Patent Royalties" clause should be inserted in all requests for proposals and requests for quotations; except (i) when each contract to be awarded is not likely to exceed $2,500; (ii) when the request calls for nonpersonal services.

PATENT ROYALTIES (OCTOBER 1966)

Upon timely notice by a patent owner to the contracting officer that this procurement will infringe his privately owned U.S. patent, and upon a determination by NASA patent counsel that this procurement will infringe the patent, NASA may enter into a patent license agreement with the patent owner prior to an award of a contract pursuant to this Request provided the following conditions are satisfied:

(i) The pertinent claim or claims of the patent have not been held invalid by an unappealed or unappealable judgment or decree of a court of competent jurisdiction or determined to be unenforceable against the Government by any department or agency in an administrative claim procedure;

(ii) The patent owner demonstrates that his patent is respected commercially as evidenced by one or more royalty-bearing commercial licenses under the patent, or the patent owner shows that his patent has been held valid by an unappealed or unappealable judgment of a court of competent jurisdiction;

(iii) The patent owner offers to license NASA for the proposed procurement at a reasonable rate which in no event should exceed the lowest rate at which he has licensed a private concern; and

(iv) The contracting officer, in consultation with NASA patent counsel, determines that entering into the license agreement will not unduly delay the procurement.

Under the agreement royalties will be payable to the patent owner only if the patented item is procured from an unlicensed source and only upon acceptance by NASA of the patented item. These royalties will be considered by NASA as a factor in determining the proposal which is most advantageous to the United States. Before any royalty payments are considered for evaluation purposes, each offeror will be given an opportunity to show that he is a licensee under the patent determined by NASA patent counsel to be infringed by the procurement. Any offeror who fails to show that he is a licensee under such patent will be regarded as an unlicensed supplier for evaluation purposes.

(e) If NASA does not enter into a preprocurement license agreement with a patent owner prior to the procurement of patented items, competing bids, proposals or quotations will be evaluated without regard to royalties or compensation which may ultimately be payable to the patent owner. In such event, the patent owner may bring a claim for patent infringement in accordance with § 18–9.106.

§ 18–9.103 Authorization and consent.

(a) Under 28 U.S.C. 1498, any suit for infringement of a patent or copyright based on the manufacture or use of a patented invention or copying of copyrighted material for the Government by a contractor or by a subcontractor (including lower tier subcontractors) can be maintained only against the Government in the Court of Claims, and not against the contractor or subcontractor, in those cases where the Government has authorized or consented to such infringement. Accordingly, in order that work by a contractor or subcontractor under a Government contract may not be enjoined by reason of patent infringement, authorization and consent will be given as herein provided. The "Authorization and Consent" clause set forth below shall be included in all contracts for supplies (including construction work), and construction contracts, as follows:

AUTHORIZATION AND CONSENT (JANUARY 1964)

The Government hereby gives its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance.

(b) Since greater latitude in the use of patented inventions is to be allowed in a contract for research, experimental, design, engineering or developmental work than in a contract for supplies, the "Authorization and Consent" clause set forth below shall be used in contracts, including Facilities contracts, involving such work.

AUTHORIZATION AND CONSENT (SEPTEMBER 1962)

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower tier subcontract).

§ 18–9.104 Patent indemnification of Government by contractor.

(a) A patent indemnity clause is not appropriate in contracts for experimental, developmental, or research work. When it is known that an item being procured is protected, or probably will be protected, by a United States patent or patents, the inclusion of a "Patent Indemnity" clause may be appropriate. In such case, where the patent owner informs a prospective bidder or otherwise contends that the item being procured would infringe his patent or patents, the patent indemnity clause set forth below, limited to the specifically designated patents in question, may be included in the contract (other than construction contracts made with Standard

Form 23A) if its use is approved by Patent Counsel.

PATENT INDEMNITY (NOVEMBER 1964)

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of the U.S. letters patent designated in paragraph (b) below and the U.S. letters patents which may mature on the patent applications, if any, designated in paragraph (b) below arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work"), under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply if: (i) The infringement results from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor; or (ii) the infringement results from the addition to, or change in, the supplies furnished or construction work performed, which addition or change was made subsequent to delivery or performance by the Contractor; or (iii) the claimed infringement is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(b) This "Patent Indemnity" clause is applicable to such U.S. patents and patent applications as are next designated (here designate the patents or patent applications).

(b) In construction contracts made with Standard Form 23A, retain the "Patent Indemnity" clause contained therein.

§ 18-9.105 Notice and assistance.

The Government should be notified by the contractor of all claims of infringement in connection with the performance of a contract which come to the contractor's attention, especially where the Government has given its authorization and consent for the use and manufacture of any patented invention in the performance of the contract or where the contract calls for the delivery to the Government of supplies, models, or prototypes. The contractor should also assist the Government, to the extent of evidence and information in the possession of the contractor, in connection with any suit against the Government, or any claim against the Government made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of or resulting from the performance of the contract. Accordingly, the "Notice of Assistance Regarding Patent and Copyright Infringement" clause set forth below shall be included in contracts in excess of $10,000.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (NOVEMBER 1964)

(The provisions of this clause shall be applicable only if the amount of this contract exceeds ten thousand dollars ($10,000).)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

§ 18-9.106 Processing of infringement claims.

Any claim for infringement of a patent or a copyright should be addressed to or brought to the attention of the Office of General Counsel, NASA Heaquarters, and should identify (a) the U.S. copyright, patent, or patent application, (b) the interest of the claimant, and (c) the acts alleged to constitute the infringement.

§ 18-9.107 Classified contracts.

Unauthorized disclosure of classified subject matter, whether in patent applications or resulting from an issuance of a patent, may be a violation of 18 U.S.C. 791 et seq. (Espionage and Censorship) and related statutes and may be contrary to the interest of national security. Accordingly, the "Filing of Patent Applications" clause set forth below shall be included in every classified contract and in every unclassified contract which covers or is likely to cover classified subject matter.

FILING OF PATENT APPLICATIONS (SEPTEMBER 1962)

(a) Before filing or causing to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Secret" or higher, the Contractor shall, citing the thirty (30) day provision below, transmit the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be placed under an order of secrecy or sealed in accordance with the provisions of 35 U.S.C. 181–188 or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations; and the Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the U.S. Patent Office for filing, but the Contractor shall not be denied the right to file such patent application. If the Contracting Officer shall not have given any such instructions within thirty (30) days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) The Contractor shall furnish to the Contracting Officer, at the time of or prior to the time when the Contractor files or causes to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Confidential," a copy of such application for determination whether, for reasons of national security, such application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations.

(c) In filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter.

§ 18-9.108 Payment of royalties.

The Government has acquired license and other rights under a large number of inventions as the result of Government-sponsored research and development. In order that the Government may determine whether the approval as an item of allowable cost of the payment of royalties by the contractor under license agreement is consistent with the rights which the Government has acquired, these payments of royalties by the contractor are allowable only to the extent authorized by the contracting officer. Accordingly, the "Payment of Royalties" clause set forth in § 18-9.108-1 below shall be included in all NASA cost-reimbursement type contracts. This clause may be omitted from contracts with members of the Manufacturers Aircraft Association and the clause set forth in § 18-9.108-2 below substituted therefor.

§ 18-9.108-1 Payment of royalties—Standard clause.

PAYMENT OF ROYALTIES (SEPTEMBER 1962)

Payment 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 of, or title to any of the patents involved, nor shall any such reimbursement constitute a waiver of any rights or defenses respecting such patents.

§ 18-9.108-2 Payment of royalties—Manufacturers aircraft association deviation.

PAYMENT OF ROYALTIES (NOVEMBER 1964)

Payment 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 of, or title to any of the patents involved, not shall any such reimbursement constitute a waiver of any rights or defenses respecting such patents: *Provided, however,* That the approval of the Contracting Officer shall not be required for the payment of royalties pursuant to the terms of licenses issued under patents awarded compensation in accordance with that agreement known

as the Cross-Licensing Agreement of the Manufacturers Aircraft Association, Inc., in effect as of December 31, 1928, as supplemented by the Agreement of September 30, 1935.

§ 18–9.109 Facilities license.

Where facilities are being constructed or acquired for the first time under a contract, the following clause shall be included therein.

LICENSE FOR SUBSEQUENT USE (AUGUST 1963)

Whenever the Contractor directly or by any subcontractor intends under this contract either (i) to acquire facilities for the account of the Government and to install such facilities or (ii) to fabricate facilities, or to do both (i) and (ii), which facilities are for the purpose either (1) of producing a patented product, or (2) of producing a product in accordance with a patented or proprietary process, the Contractor, before doing so, shall notify the Contracting Officer of his intention, so that consideration can be given to negotiating a license agreement for the use of such facilities by persons to whom the Government may subsequently sell or transfer the facilities. Such negotiation shall be for the purpose of determining the terms and conditions under which the Contractor will grant to or obtain for the Government (in addition to the rights granted by any clause which may be included in this contract entitled "New Technology") the right to convey to any purchaser or transferee of all or a part of the facilities under this contract an irrevocable license to practice and cause to be practiced solely in the maintenance or operation of the facilities any and all inventions (whether or not patented) of the Contractor or a subcontractor hereunder incorporated in, or used by the Contractor or subcontractor in the operation of, the facilities acquired or fabricated by the Contractor for the account of the Government under this contract.

§ 18–9.110 Proposals of equivalent merit.

When two or more potential contractors are judged to have presented proposals of equivalent merit, willingness to permit the Government to acquire and retain title to resulting inventions will be an additional factor in the evaluation of the proposals.

§ 18–9.150 Designation of representative for new technology and for patents.

(a) (1) When a NASA contract contains the clause entitled "New Technology" set forth in § 18–9.104–4 (hereinafter referred to as "the clause"), the contracting officer shall designate representatives (hereinafter referred to as the "New Technology Representative" and the "Patent Representative") to administer the clause.

(2) When a NASA contract contains the Property Rights in Inventions clause set forth in § 18–9.101–5, the contracting officer shall designate a New Technology Representative and a Patent Representative to administer that clause. The respective responsibilities and authorities of these representatives in administering that clause shall be as set forth in paragraphs (c) and (f) of this section and §§ 18–9.151, 18–9.152 and 18–9.153 with respect to the "New Technology" clause, to the extent applicable in view of the more limited requirements of the "Property Rights in Inventions" clause.

(b) Designation of these representatives shall be accomplished by incorporation of a provision into the contract schedule containing the following or similar statements:

DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE (AUGUST 1969)

(a) For purposes of facilitating administration of the clause of this contract entitled "New Technology" or "Property Rights in Inventions," whichever is included, the following named representatives are hereby designated by the contracting officer to administer the clause:

Title	Address code	Address
New technology representative. Patent representative.	(Office Code).	(Address including ZIP Code).

(b) Correspondence with respect to the clause should be directed to the New Technology Representative unless transmitted in response to correspondence from the Patent Representative.

(c) For contracts containing the New Technology clause, the requirements to identify the contracting officer in subcontracts set forth in paragraph (d)(1) of the clause may be satisfied by the inclusion of this entire provision.

(c) Except as provided in paragraph (d) of this section, the New Technology Representative shall be the Technology Utilization Officer or the staff member (by titled position) having cognizance of technology utilization matters for the NASA installation concerned; and the Patent Representative shall be the Patent Counsel or the staff member (by titled position) having cognizance of patent matters for the NASA installation concerned.

(d) The New Technology Representative shall be furnished a copy of the contract, modifications thereto, progress reports, and other pertinent material by the contracting officer, and shall be notified by the contracting officer of the organizational unit of the NASA installation having technical cognizance of the contract.

(e) The Patent Representative shall be furnished a copy of the contract and modifications thereto, by the contracting officer, as well as copies of findings pursuant to § 18–9.101–3.

(f) The New Technology Representative and the Patent Representative shall maintain complete files of correspondence and other actions involving their respective administration of the clause. Copies of documents which are appropriate for inclusion in the general contract files shall be furnished the contracting officer.

§ 18–9.151 Contract review.

(a) The New Technology Representative shall review, as necessary, the technical progress of work performed under the contract to ascertain whether the contractor and his subcontractors, where appropriate, are complying with paragraphs (b), (c), (d), and (e) contained in section II of the clause.

(b) The New Technology Representative shall forward to the Patent Representative copies of all contractors' and subcontractors' written reports, and a copy of the written statement, if any, submitted with the report of the reportable item. All correspondence relating to inventions and waivers will also be forwarded to the Patent Representative. The Patent Representative shall review each reported item to determine the presence of inventions and notify the contractor and the New Technology Representative if he determines that any reportable item constitutes an invention.

(c) Consultations will be held by the New Technology Representative and the Patent Representative with cognizant technical personnel and others concerned, where required, to determine the relationship of inventions, discoveries, improvements and innovations made under contracts and subcontracts to work performed under the contract, and the value thereof to NASA or other Government agencies.

(d) No action shall be taken by either the New Technology Representative or the Patent Representative which would involve a change or increase in the work required to be performed under the contract, or which otherwise is outside the scope of obligations imposed upon the contractor by the contract. Any written decision pursuant to paragraph (q) of the clause or other correspondence relating thereto shall be prepared for and signed by the contracting officer.

(e) Upon completion of the contract work, the New Technology Representative shall determine whether the contractor and his subcontractors, where appropriate, have complied with paragraphs (b), (c), (d), and (e), contained in section II of the clause. Such determinations generally will require consultation with the cognizant technical personnel.

(f) Upon completion of the contract work, the Patent Representative shall determine whether the contractor, and his subcontractors, where appropriate, have complied with paragraph (h) and section IV of the clause.

§ 18–9.152 Contract clearance.

(a) Upon submission by the contractor of the final reports required by paragraphs (c) and (d)(3) of the clause, the New Technology Representative shall determine whether the contractor has complied with paragraphs (b), (c), and (d) of the clause, and, if so, shall certify such compliance promptly to the contracting officer, with copy to the Patent Representative.

(b) Upon receipt of the copy of the New Technology Representative's certification of compliance, the Patent Representative shall determine whether the contractor has complied with paragraph (h) of the clause, and, if so, shall certify such compliance to the contracting officer.

(c) Pursuant to the withholding provisions of the clause, final payment under the contract shall not be approved by the contracting officer until he has received

the certifications of compliance referred to in paragraphs (a) and (b) of this section.

§ 18-9.153 Consultation with patent representative.

The New Technology Representative shall consult with the Patent Representative whenever a question arises as to:

(a) Whether a given invention, discovery, improvement, or innovation was made in the performance of work under the contract;

(b) Whether a given subcontract is of the type for which section 305(b) of the National Aeronautics and Space Act of 1958 requires insertion of effective provisions for the reporting of reportable items;

(c) Whether a proposed modification of the New Technology clause for insertion in a given subcontract meets the requirements of section 305(b) of the National Aeronautics and Space Act of 1958; and

(d) The identity of inventors or other originators of a reportable item.

Subpart 18-9.2—Data and Copyrights

§ 18-9.200 Scope of subpart.

This Subpart 18-9.2 sets forth NASA policy, implementing instructions, and contract clauses with respect to acquisition and use of data and copyrights. The policy and procedures set forth in this subpart apply to all data delivered to the Government under a contract whether such data originates with the contractor or a subcontractor.

§ 18-9.201 Definitions.

For the purpose of this subpart, the following terms have the meanings set forth below:

(a) "Data" means writings, recordings, pictorial representations and works of any similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) "Proprietary data" means data providing information concerning the details of a contractor's secrets of manufacture, such as may be contained in but not limited to his manufacturing methods or processes, treatment and chemical composition of materials, plant layout, and tooling, to the extent that such information is not readily disclosed by inspection or analysis of the product itself and to the extent that the contractor has protected such information from unrestricted use by others.

(c) "Other data" means all data other than "proprietary data" and includes:

(1) Operational data which provides information suitable, among other things, for instruction, operation, maintenance, evaluation or testing; and

(2) Descriptive data which provides descriptive or design drawings or descriptive material in the nature of design specifications which, although not including any "proprietary data," may nevertheless be adequate to permit manufacture by other competent firms.

(d) "Standard commercial items" means supplies or services which normally are or have been sold or offered to the public commercially by any supplier.

§ 18-9.202 Acquisition and use of data.

§ 18-9.202-1 Acquisition of data.

(a) *General.* NASA's needs for data are concerned principally with research and development. In a research and development program the needs for data may not always be determinable at the time of contracting. NASA has developed a general clause designed to preserve a contractual right to call for such data as is retained in the normal course of business at any time up to one year after final payment under the contract. The "Data Requirements" clause set forth in paragraph (e) of this section has been developed to serve this need of NASA, and the instructions for its use are set Discussion of known requirements for forth in paragraph (d) of this section. data, in general, is set forth in paragraph (b) of this section and the requirements for data in supply contracts are treated in paragraph (c) of this section.

(b) *Known requirements for data.* Use of a "Rights in Data" clause does not obtain for the Government the delivery of any data whatsoever, but only rights to use that data which is specified elsewhere in the contract to be delivered. When the requirements for data are known in advance of making the contract and delivery of data is definitely to be required in the performance of the contract, the requirements for data must be specified in the Schedule of the contract. These data requirements should be made known to the contracting officer prior to the preparation of invitations for bids in the case of formally advertised procurements or prior to the preparation of requests for proposals in the case of contracts to be awarded by negotiation. Also, in the case of contracts to be awarded by negotiation, the requirements for data should be discussed as a part of the negotiation proceedings.

(c) *Requirements for data in supply contracts.* "Proprietary data" will not be requested by the Government in formally advertised procurements and procurements for standard commercial items. The requirements for data in a supply contract should be known in advance of making the contract and should be specifically set forth in the purchase request. If the negotiator feels that the data requirements furnished him are inadequate to obtain all the data which the Government should have, he should obtain further guidance from the cognizant technical office. If further data is then believed to be necessary, the services of legal counsel should be requested in drafting a suitable Schedule provision requiring the furnishing of such data, using the "Data Requirements" clause set forth in paragraph (e) of this section as a guide, where appropriate.

(d) *Requirements for data in contracts for experimental, developmental, or research work.* (1) If the contract calls for the development and delivery of hardware, or for the development of a practical process, the clause set forth in paragraph (e) below shall be included in the contract. Subparagraphs (a)(2) (ii) and (iii) of the clause may be deleted or modified in accordance with NASA's requirements as indicated by the project engineer. Also, upon request of the contractor, provision (2) of paragraph (c) may be deleted, in which case the indentification "(1)" for provision (1) should also be deleted.

(2) In addition to the "Data Requirements" clause of paragraph (e) below, the Schedule of the contract may contain such specific provisions for the furnishing of data as may have been requested by the cognizant technical office or the contracting officer. If the contract does not call for the development and delivery of hardware, or for the development of a practical process, the instructions as to what data the contractor is to be required to furnish should ordinarily be set forth in the work statement or be included in a Schedule provision calling for reports. In any event, the contractor shall be required to furnish to the Government for the price of the work all data resulting directly from performance of the contract, whether or not it would otherwise be "proprietary data." The "Data Requirements" clause set forth in paragraph (e) below is not appropriate for use in research or study contracts unless hardware is to be furnished or a practical process is to be developed in the performance of the contract. However, nothing herein shall preclude the use of a data requirements clause in such contracts, but if such a clause is to be used, the assistance of legal counsel shall be obtained in drafting the clause.

(e) *Data requirements clause.*

DATA REQUIREMENTS (NOVEMBER 1965)

(a) To the extent that the following data is not elsewhere required to be furnished to the Government under this contract, and is of the type customarily retained in the normal course of business, the Contractor, upon written request of the Contracting Officer at any time during contract performance or within one year after final payment, shall furnish the following:

(1) A set of engineering drawings which will be sufficient to enable the manufacture of items or equipment furnished under this contract (other than components or items of standard commercial design, or items fabricated heretofore) by a firm skilled in the art of manufacturing items or equipment of the general type and character of the items or equipment furnished under this contract or a set of flow sheets and engineering drawings which will be sufficient to enable performance of any process developed under this contract by a firm skilled in the art of practicing processes of the general type and character of such process. Such set or sets of drawings and flow sheets shall be reproducible copies incorporating all changes made in the equipment or process in the form in which it was delivered to the Government.

(2) Any of the following data which is necessary to explain or help Government technical personnel understand any equipment, items, or process developed under the contract and furnished to the Government:

(i) A copy (which shall be a reproducible master if one is so requested) of drawings and other technical data used in or prepared in connection with the development, practice, and testing of any process or processes required under the contract, or with the de-

velopment, fabrication, and testing of prototype models of equipment or items (other than items of standard commercial design or items fabricated heretofore), if required under the contract.

(ii) A report of all studies made in planning the work, and in developing background research for the work, including citation references to all such background research, and a copy of all compilations, digests, or analyses of such background research compiled in connection with the performance of this contract.

(iii) A copy (which shall be a reproducible master if one is so requested) of design studies, research notes, parameter and tolerance studies, drawings, including Contractor's identification of symbols and markings, specifications, test results, and any other technical information used in any research, development, design, engineering, and testing required in the performance of this contract, including test equipment and related items, together with any information as to safety precautions which may be necessary in connection with the manufacture, storage, or use of the equipment, material, or process, if any, in the event that an equipment, material, or process is the subject of research under this contract.

The Contractor shall not be required to furnish any background data which may be described in (ii) or (iii) above unless such data is essential and closely related to the contract work.

(b) All reports, data, and recorded information which are required to be furnished by the Contractor under this provision, as well as all other reports of a technical nature required to be furnished under this contract, are "Subject Data" within the meaning of the clause of the General Provisions of this contract entitled "Rights in Data."

(c) Nothing contained in this "Data Requirements" clause shall require the Contractor to deliver (1) any data, the delivery of which is excused by paragraph (i) of the clause of the General Provisions of this contract entitled "Rights in Data"; or (2) data previously developed by parties other than the Contractor, independently of this contract and acquired by the Contractor prior to this contract under conditions restricting the Contractor's right to disclose the same. If any of the data requested is in the public domain or copyrighted, it will be sufficient for the Contractor to identify the data and furnish a citation as to where it may be found.

(d) Any reproducible copies requested under this "Data Requirements" clause shall be of a type and prepared in accordance with good commercial practice.

(e) In the event the Contracting Officer requests the delivery of data by the Contractor, as contemplated by (a) above, prior to final payment, such request shall be treated as a change under the clause of this contract entitled "Changes" and an equitable adjustment in the price, if this is a fixed-price contract, or estimated cost and any fixed fee, if this is a cost-type contract, shall be made to cover the cost of preparing drawings called for in (a)(1) above, and of collecting, preparing, editing, duplicating, assembling, and shipping the data requested under (a) above, but only to the extent that the Contractor warrants that such costs were not included in the price (or estimated cost and fixed fee) of the contract. The Contractor shall comply with requests of the Contracting Officer made under (a) above, within 1 year following final payment: *Provided*, That suitable provision is made for reimbursement of the additional costs of complying with such request, together with a reasonable fee or profit thereon, such additional costs being limited to the costs set forth above, and warranted to have been excluded from the price (or estimated cost and fixed fee) of the contract. Any adjustment or payment under this paragraph (e) shall not include any amount for the value of the data, as distinguished from the costs set forth above.

(f) *Administration.* In all contracts containing the "Data Requirements" clause of § 18-9.202-1(e), the contracting officer will, at an appropriate time and in any event not later than the time of delivery of the end items under such contracts, request, in writing, information from the appropriate technical office monitoring the contract as to whether it is likely that follow-on procurement for the item or any component part thereof or process developed under the contract is probable. The appropriate technical office will also be requested to identify the data which the contractor will be required to furnish in the event follow-on procurement is probable or to justify why such data is not required. If such data is not already required by the contract as specified in the Schedule thereof, the contracting officer will request the contractor to furnish such data pursuant to the "Data Requirements" clause.

§ 18-9.202-2 Use of data.

(a) *Other data.* When data other than "proprietary data" is obtained, it shall be obtained without any limitation on its use by the Government.

(b) *"Proprietary data"*—(1) *Supply contracts.* When "proprietary data" is obtained by negotiation under a supply contract, in accordance with § 18-9.202-1, the purposes for obtaining it will govern its use. If it is obtained for the purpose of enabling the Government to establish additional sources of supply, it shall be obtained without limitation as to its use; in such case the "Rights in Data" clause defined and prescribed in § 18-9.203-2 shall be included in the contract and the requirement for the "proprietary data" shall be specified in the contract Schedule. However, where it has been determined to be necessary to obtain "proprietary data" for some limited purpose, such as emergency manufacture by the Government, such data may be obtained subject to limitation as to its use; in such case the "Rights in Data" clause required by § 18-9.203-2 together with the paragraph (g) set forth in § 9.203-3 shall be included in the contract, and the contract Schedule shall suitably identify the data which shall be subject to limited use.

(2) *Contracts for experimental, developmental, or research work.* When "proprietary data" is obtained under a contract having as one of its principal purposes experimental, developmental, or research work, it shall be obtained without limitation as to its use; in such case the "Rights in Data" clause set forth in § 18-9.203-1 shall be included in the contract.

§ 18-9.202-3 Copyright policy.

(a) *Data not first produced under contract.* It is the general policy of NASA that the contractor shall not, without the permission of the contracting officer, include copyrighted material in data furnished to the Government as "subject data" (see §§ 18-9.203-1 and 18-9.204-1) unless the contractor acquires, without cost reimbursement from the Government, a royalty-free, nonexclusive, irrevocable, worldwide license for governmental purposes for the Government and others acting on behalf of the Government, to publish, translate, copy and perform such copyrighted data. In event the contractor cannot acquire such a license to copyrighted material, the inclusion of which the contractor believes necessary to the performance of the contract, the contractor shall so notify the contracting officer, whereupon the need for, and acquisition of rights to, the copyrighted material may be considered. Since such consideration could involve the exercise of the authorization or consent of the Government under 28 U.S.C. 1498, or special copyright license terms, the contracting officer should seek advice of counsel.

(b) *Data first produced under contract*—(1) *General.* (i) It is NASA's policy normally to permit the contractor to secure a copyright on data first produced or prepared incidental to or as the by-product of a contract, subject to the reservation by the Government for itself and others acting on its behalf of a royalty-free, nonexclusive, irrevocable, worldwide license for governmental purposes to publish, translate, copy and perform such data copyrighted by the contractor. However, as an exception to this policy, the contractor is not permitted to assert any rights at common law or equity or to establish any claim to statutory copyright in any computer program, computer data base, or documentation thereof first produced under the contract. The "Rights in Data" clause (§ 18-9.203-1), normally used in contracts for experimental, developmental or research work implements this policy.

(ii) It is NASA's policy normally to preclude the contractor from securing a copyright on data first produced under a contract where the data is:

(*a*) Produced as the primary object of the contract (and is not merely a report of the work performed under the contractual effort);

(*b*) Intended primarily for use by the Government alone; or

(*c*) Intended primarily for general use by the public.

This policy is carried out through the inclusion of the "Rights in Data—Special Situations" clause (§ 18-9.204-1), in applicable contracts. It is recognized that in certain instances NASA may determine that it is in the public interest to permit the contractor to seek copyright protection on data in the above categories for purposes of achieving the widest possible range of publication and dissemination. The contracting officer shall consult with counsel on the determination of whether special copyright provisions are in order and, if so, to draft the pertinent clauses subject to deviation approval requirements.

(2) *Special situations*—(i) *Computer programs, computer data bases, and documentation thereof.* It is NASA's policy normally to preclude the contractor from asserting any rights at common law or equity or to establish any claim

to statutory copyright where the primary object of the contract is to first produce a computer program, a computer data base, or documentation thereof. The "Rights in Data—Special Situations" clause set forth in § 18–9.204–1 shall be included in the contract to carry out this policy. In instances where such data item, although not the primary object, nevertheless do comprise a substantial effort under the contract, the above cited clause may be used in addition to either the "Rights in Data" clause of § 18–9.203–1 or § 18.9203–2. In this event, it should be indicated in the Schedule of the contract that the rights to such data items are determined by the above cited clause.

(ii) *Production of motion pictures.* NASA normally precludes the contractor from copyrighting in contracts calling for the production of motion pictures, with or without accompanying sound, and in contracts for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations and the like which are intended for general release to the public (as opposed to using motion pictures to record scientific and technical data). In these instances, this policy is implemented by the inclusion in the contract of the "Rights in Data—Motion Pictures" clause set forth in § 18–9.204–2.

§ 18–9.202–6 Data furnished on a restricted basis in support of a proposal.

When an offeror has submitted data on a restricted basis in a proposal in accordance with § 18–1.304–2(b) or § 18–3.109, and it is proposed to award the contract to such offeror, the contracting officer shall ascertain whether it is desired to acquire rights to use all or part of the data furnished with the proposal. If it is desired to acquire such rights, the contracting officer shall determine in accordance with §18–9.201 whether such data is proprietary in nature, and shall negotiate with the offeror in accordance with the policy prescribed in §18–9.202 for the acquisition and use of such data. If the offeror agrees to furnish such data under the contract, the appropriate clause of § 18–9.203 shall be inserted in the contract, and the Schedule shall identify the data to be covered by such clause.

§ 18–9.203 Rights in data clauses.

(a) If data is to be delivered under the contract, the appropriate "Rights in Data" clause set forth below shall be added to the "General Provisions." However, a "Rights in Data" clause does not in itself specifiy the data with respect to which the Government will obtain the rights set forth in that clause. Therefore, Schedule provisions are necessary to specify the specific data which the Government wants to have furnished. (See § 18–9.202–1 for instructions concerning suitable Schedule provisions.) The rights prescribed in the "Rights in Data" clause apply only to the data specified to be, or which are in fact delivered pursuant to the contract. Except as stated in paragraphs (b) and (c) of this section, when data is to be delivered, the "Rights in Data" clause set forth in § 18–9.203–1 shall be included in the contract if it involves experimental, developmental, or research work; and if the contract is for supplies the clause defined and prescribed in § 18–9.203–2, together with paragraph (g) set forth in § 18–9.203–3, if applicable, shall be included in the contract. The special "Rights in Data" clauses prescribed in paragraph (b) below should also be included in a contract with either of the clauses of § 18–9.203–1 or § 18–9.203–2 if the specific type of work for which these clauses are required is to be performed under the contract and can be separately identified and applied to the provisions of the special clause.

(b) In contracts for the development or preparation of computer programs, computer program data bases, histories, or works pertaining to recruiting, training and guidance of government employees, the provisions of § 18–9.204–1 are applicable. Contracts for the production of motion pictures, preparation of scripts, musical compositions, sound tracks, translations, adaptations and the like intended for general release to the public (as opposed to using motion pictures to record scientific and technical data), require the application of the provisions of § 18–9.204–2.

(c) In contracts for the acquisition of existing "off-the-shell" works such as books, computer programs and motion pictures, the provisions of § 18–9.205 are applicable. Section 18–9.206 is applicable in contracts for performance outside the United States, its possessions and Puerto Rico. In short form fixed-price contracts for research with an educational or other nonprofit institution, the provisions of § 18–9.204–50 are applicable. In short form cost-reimbursement contracts for research with an educational or other nonprofit institution, the provisions of § 18–9.204–51, are applicable.

§ 18–9.203–1 Rights in data clause for use in contracts for experimental, developmental, or research work.

RIGHTS IN DATA (JUNE 1969)

(a) *Definitions.* (1) "Subject Data" as used herein means writings, recordings, pictorial representations, and works of any similar nature which are specified to be, or which are in fact, delivered pursuant to this contract. The term does not include financial reports, cost analyses and other information incidental to contract administration.

(2) "Unlimited Rights" as used herein means the right to use, duplicate or disclose in whole or in part, in any manner and for any purpose whatsoever, and have others so do.

(b) *General.* The Government shall have:

(1) Unlimited rights in all subjects data unless otherwise limited below; and

(2) The right at any time to modify, remove, or ignore any marking on subject data not authorized by this contract.

(c) *Copyright.* (1) *Subject data not first produced under this contract.* To the extent that the Contractor has or may acquire the right, without cost reimbursement from the Government, the Contractor grants to the Government (and others acting on its behalf), a royalty-free, nonexclusive, irrevocable, worldwide license for governmental purposes, to publish, translate, copy, and perform copyrighted subject data not first produced in the performance of this contract. Unless the permission of the Contracting Officer is obtained, the Contractor shall not incorporate in subject data copyrighted material other than that to which the foregoing governmental license has been acquired without cost reimbursement from the Government.

(2) *Subject data first produced under this contract.* The Contractor may copyright subject data first produced under this contract subject to the reservation by the Government for itself and others acting on its behalf a royalty-free, nonexclusive, irrevocable, worldwide license for governmental purposes to publish, translate, copy, and perform such copyrighted subject data; except the Contractor agrees not to assert any rights at common law or equity, or establish any claim to statutory copyright in any computer program, computer data base, or documentation thereof first produced in the performance of this contract.

(d) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other rights otherwise granted to the Government under any patent.

(e) *Mutual security program.* The Contractor recognizes that the Government, or a foreign government with funds derived through the Mutual Security Program or otherwise through the U.S. Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of Subject Data on account of such a contract. The Contractor further recogniezs that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Mutual Security Program or otherwise through the U.S. Government, charges for data which the Government has a right to use and disclose to others, or which is in the public domain, or with respect to which the Government has been placed in possession without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(f) *Standard commercial and proprietary data.* Data need not be furnished for standard commercial items or services which are normally or have been sold or offered to the public commercially by any supplier and which are incorporated as component parts in or to be used with the product or process being developed if in lieu thereof identification of source and characteristics (including performance specifications, when necessary) sufficient to enable the Government to procure the part or an adequate substitute, are furnished; and further, proprietary data need not be furnished for other items which were developed at private expense and previously sold or offered for sale, including minor modifications thereof, which are incorporated as component parts in or to be used with the product or process being developed, if in lieu thereof the Contractor shall identify such other items and that "proprietary data" pertaining thereto which is necessary to enable reproduction or manufacture of the item or performance of the process. For the purpose of this clause, "proprietary data" means data providing information concerning the details of a Contractor's secrets of manufacture, such as may be contained in but not limited to his manufacturing meth-

ods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not readily disclosed by inspection or analysis of the product itself and to the extent that the Contractor has protected such information from unrestricted use by others.

§ 18–9.203–2 Rights in data clause for use in supply contracts.

In all supply contracts where data is to be delivered, paragraph (f) of the "Rights in Data" clause in § 18–9.203–1 shall be omitted and the following paragraph (f) shall be substituted therefor.

(f) Notwithstanding any Tables or Specifications included or incorporated in the contract by reference, "proprietary data" need not be furnished unless suitably identified in the Schedule of the Contract as being required. For the purpose of this clause, "proprietary data" means data providing information concerning the details of a Contractor's secrets of manufacture, such as may be contained in but not limited to his manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not readily disclosed by inspection or analysis of the product itself and to the extent that the Contractor has protected such information from unrestricted use by others. (July 1962)

In negotiated supply procurements, when "proprietary data" as defined in § 18–9.201 is to be obtained, the Schedule of the contract shall specify the extent of the "proprietary data" to be furnished.

§ 18–9.203–3 Limited rights in data provision for use in supply contracts.

In negotiated supply contracts where "proprietary data" is to be acquired and such data is needed only for a limited purpose, such as maintenance, the clause set forth in § 18–9.203–2 should be supplemented by the additional paragraph (g) set forth below. The Schedule of the contract must state the extent of the "proprietary data" to be furnished subject to such limitations. Paragraph (g) below is not authorized for use in a contract having as one of its principal purposes experimental, research, or developmental work.

(g) That portion of the Subject Data delivered under this contract which is identified in the Schedule as being subject to limitations shall not be related outside the Government, nor be duplicated, used, or disclosed in whole or in part for procurement or manufacturing purposes (other than for manufacture required in connection with repair or overhaul where an item is not procurable commercially so as to enable the timely performance of the overhaul or repair work: *Provided*, When Data is released by the Government to a Contractor for such purposes, the release shall be made subject to the limitation of this clause: *Provided further*, Such Data shall not be used for manufacture or procurement of spare parts for stocks), without permission of the Contractor, if the following legend is marked on each piece of Data so limited either in its entirety or only partially as to its content:

Furnished under U.S. Government Contract No. ------ and only those portions hereof which are marked (for example, by circling, underscoring, or otherwise) and indicated as being subject to this legend shall not be released outside the Government (except to foreign governments, subject to these same limitations), nor be disclosed, used, or duplicated, for procurement or manufacturing purposes, except as otherwise authorized by contract, without the permission of ----------. This legend shall be marked on any reproduction hereof in whole or in part.

Provided, That such Data may be delivered to foreign governments as the national interest of the United States may require, subject to the limitations specified in this paragraph. The Contractor shall not impose limitations on the use of any piece of Data, or any portion thereof, which the Contractor has previously delivered to the Government without limitations. (July 1962)

§ 18–9.204 Contract clauses—Special.

§ 18–9.204–1 Rights in data—Special situations.

(a) The clause set forth in paragraph (b) of this section should be included in contracts which have as a significant requirement the first production of data (new data), and such data is:

(1) The primary object of the contract (and is not merely a report of the work performed under the contractual effort);

(2) Intended primarily for use by the Government alone; or

(3) Intended primarily for general use by the public.

Some examples of the above categories which would require the inclusion of the clause would be contracts for the development or preparation of a computer program, computer data base, or documentation thereof; histories of NASA activities or compilation of NASA scientific papers; works pertaining to recruiting, morale, training, instruction, or guidance for employees; and brochures illustrating and explaining NASA objectives, missions of procedures.

(b) The clause set forth below may also be used in addition to either the "Rights in Data" clause of § 18–9.203 or § 18–9.203–2 where data of the type described in paragraph (a) of this section is required to be developed and can be separately identified. In such case, the Schedule of the contract should indicate that the rights to the data item are determined by the "Rights In Data—Special Situations" clause set forth below.

RIGHTS IN DATA—SPECIAL SITUATIONS (JUNE 1969)

(a) *Definitions.* (1) "Subject Data" as used herein means writings, recordings, pictorial representations and works of any similar nature which are specified to be, or which are in fact, delivered pursuant to this contract. The term does not include financial reports, cost analyses and other information incidental to contract administration.

(2) "Unlimited Rights" as used herein means the right to use, duplicate, and disclose in whole or in part, in any manner and for any purpose whatsoever, and have others so do.

(b) *General.* (1) The Government shall have:

(A) Unlimited rights in subject data first produced in the performance of this contract; and

(B) The right at any time to modify, remove or ignore any marking on subject data not authorized by this contract.

(2) The Contractor:

(A) Agrees not to assert any rights at common law or equity or establish any claim to statutory copyright in subject data first produced in the performance of this contract.

(B) Grants to the Government unlimited rights in non-copyrighted subject data not first produced in the performance of this contract.

(c) *Copyrights.* To the extent that the Contractor has or may acquire the right, without cost reimbursement from the Government, the contractor grants to the Government (and others acting on its behalf), a royalty-free, nonexclusive, irrevocable, worldwide license for governmental purposes, to publish, translate, copy and perform copyrighted subject data not first produced in the performance of this contract. Unless the permission of the Contracting Officer is obtained, the Contractor shall not incorporate in subject data copyrighted material other than that to which the foregoing governmental license has been acquired without cost reimbursement from the Government.

(d) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other rights otherwise granted to the Government under any patent.

§ 18–9.204–2 Production of motion pictures.

The "Rights in Data—Motion Pictures" clause set forth below (a) shall be used in contracts for the production of motion pictures, preparation of scripts, musical compositions, sound tracks, translations, adaptations, and the like intended for general release to the public (as opposed to using motion pictures to record scientific and technical data), and (b) should be used in addition to the clauses in § 18–9.203–1 or § 18.9.203–2 where works of the types set forth in paragraph (a) of this section have been specified in the Schedule of the contract, in which case it should be indicated in the Schedule that the rights to the works are determined by the following clause:

RIGHTS IN DATA—MOTION PICTURES (JUNE 1969)

(a) *Definitions.* (1) "Subject Data" as used herein means writings, recordings, pictorial representations and works of any similar nature which are specified to be, or which are in fact, delivered pursuant to this contract. The term does not include financial reports, cost analyses and other information incidental to contract administration.

(2) "Unlimited Rights" as used herein means the right to use, duplicate, and disclose in whole or in part, in any manner and for any purpose whatsoever, and have others so do.

(b) *General.* (1) The Government shall have:

(A) Unlimited rights in subject data first produced in the performance of this contract, and

(B) The right at any time to modify, remove or ignore any marking on subject data not authorized by this contract.

(2) The Contractor:

(A) Agrees not to assert any rights at common law or equity or establish any claim to statutory copyright in subject data first produced in the performance of this contract.

(B) Grants to the Government unlimited rights in non-copyrighted subject data not first produced in the performance of this contract.

(c) *Copyrights.* To the extent that the Contractor has or may acquire the right, the Contractor grants to the Government, and others acting on its behalf, a royalty-free, nonexclusive, irrevocable, worldwide license in copyrighted subject data not first produced in the performance of this contract for the purpose of distributing, using, exhibiting and performing subject data. Copyrighted material not subject to a license of this scope shall not be incorporated in subject data without the permission of the Contracting Officer.

(d) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other rights otherwise granted to the Government under any patent.

(e) *Release Requirements.* Unless otherwise specifically provided for by this contract, the Contractor shall not copy, publish, or release any subject data first produced in the performance of this contract nor authorize others so to do without the permission of the Contracting Officer.

(f) *Indemnity.* The Contractor shall indemnify, and save and hold harmless, the Government, its officers and employees, acting within the scope of their official duties, and on behalf of the Government, against any liability, including costs and expenses for (i) the violation of proprietary rights, copyright, or right of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract; and (ii) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply to material furnished to the Contractor by the Government and incorporated in subject data.

§ 18–9.204–50 Short form clause, fixed-price research contract with educational and other nonprofit institutions.

The following clause shall be used in short form fixed-price research contracts with educational and other nonprofit institutions. (See § 18–7.350)

TECHNICAL REPORTS AND DATA (JULY 1962)

(a) Upon completion of the work under this contract, the Contractor shall submit the number of copies required in the Schedule of a complete and final technical report of his findings and conclusions together with any original illustrations and photographic negatives. With the prior approval of the Contracting Officer, the Contractor may submit interim technical reports in lieu of the final report at such intervals as may be agreed upon.

(b) The Government may publish, reproduce or use, and have others so do, for any purpose, without limitation, drawings, studies, research notes, technical information and other scientific data resulting from this contract.

§ 18–9.204–51 Short form clause, cost-reimbursement research contract with educational and other nonprofit institutions.

The following clause shall be used in short form cost-reimbursement research contracts with educational and other nonprofit institutions. (See § 18–7.460.)

DATA AND INSPECTION (SEPTEMBER 1962)

The Government may publish, reproduce, and use, and have others so do, for any purpose, without limitation, drawings, studies, research notes, technical information, and other scientific data resulting from this contract. The Government has the right, at all reasonable times, to inspect or otherwise evaluate the work being performed under this contract.

§ 18–9.204–52 Potentially hazardous items.

(a) When procuring items, designated in procurement requests, in accordance with § 18–3.850, as potentially hazardous, the policies and instructions set forth in this paragraph shall prevail over all other policies and instructions contained in this Subpart 18–9.2. The term "items" as used herein includes components of items.

(b) If such items result from experimental, developmental or research work performed under a contract so that the clause set forth in § 18–9.203–1 would be applicable to the data pertaining to such items, or in any other case where the Government, as a part of the contract, buys unlimited rights to use such data, the "Rights in Data" clause set forth in § 18–9.203–1 shall be included in the contract, but paragraph (f) thereof shall be altered by adding to the end thereof the following:

"This paragraph (f) shall not apply to data identified in the Schedule of the contracts as being required to be delivered for items or components of items which are designated in the Schedule as being potentially hazardous."

(c) If such items are to be furnished in the performance of a contract containing the Rights in Data clause set forth in § 18–9.203–1, but do not result from the performance of experimental, developmental or research work under such contract, so that the delivery of data for such items would be excused under paragraph (f) of such clause, or are to be furnished in the performance of any other kind of contract, and if the Government does not, as a part of the contract, buy the unlimited rights to use such data, the following clause shall be included in the contract:

RIGHTS IN DATA FOR POTENTIALLY HAZARDOUS ITEMS (SEPTEMBER 1964)

(a) The rights of the Government to use the drawings and any other data required to be furnished by the Schedule of this contract for items or components designated therein as potentially hazardous shall be as provided by this clause, and in this respect, this clause takes precedence over any other clause of this contract providing for rights in data. Such other Rights in Data clause shall apply however, to all oth data specified to be delivered under this contract.

(b) The Government shall have the right to duplicate, and use the drawings and other data to which this clause is applicable for inspection, study and evaluation of the items or components disclosed by such drawings or data, and to have others duplicate and use such data for the Government for such purposes. Such data shall not otherwise be released outside the Government nor be duplicated, used, or disclosed in whole or in part for procurement or manufacturing purposes, if the following legend is marked on each piece of data to which this clause is applicable:

"Furnished under U.S. Government Contract No. ------ and shall not be disclosed, used, or duplicated for procurement or manufacturing purposes without the permission of ---------- This legend shall be marked on any reproduction hereof in whole or in part."

(c) The Contractor shall not impress the legend set forth in paragraph (b) above on any piece of data which the Contractor or any subcontractor has previously delivered to the Government without limitations.

(d) Whenever any piece of data marked with the legend set forth in paragraph (b) above is reproduced in whole or in part by the Government, or for the Government at its request, the legend shall be included on the reproduction.

(e) The Government shall not disclose the data marked with the legend set forth in paragraph (b) above to any firm or person not having a need to inspect, study, evaluate or handle the items or components represented by the data, and shall not disclose the data to any firm or person outside the Government without obtaining an agreement from such firm or person that he shall not use the data for manufacture or procurement, and that he shall comply with conditions of the legend.

§ 18–9.205 Contracts for acquisition of existing works.

§ 18–9.205–1 Off-the-shelf purchase of books and similar items.

Notwithstanding the instructions of any other paragraph of this subpart, no contract clause contained in this subpart need be included in contracts for the separate, sole procurement of data, other than motion pictures, computer programs or computer program data bases, in the exact form in which such material exists prior to the initiation of a request for purchase (such as the off-the-shelf purchases of existing products) unless the right to reproduce such data is an objective of the contract.

§ 18–9.205–2 Purchase of existing motion pictures or television recordings.

(a) The following clause shall be used in contracts exclusively for the procurement of existing motion pictures or television recordings. The Schedule of the contract may set forth limitations consistent with the purposes for which the material covered by the contract is being procured. Examples of these limitations are (1) means of exhibition or transmission, (2) time, (3) type of audience, and (4) geographical location. Paragraph (b) of the clause should be modified to make the indemnity coextensive with the rights acquired under paragraph (a) of the clause as limited by the Schedule of the contract.

RIGHTS IN DATA—EXISTING WORKS (JUNE 1969)

(a) Except as otherwise provided in the Schedule of this contract, the Contractor hereby grants to the Government a royalty-free, nonexclusive, irrevocable license to distribute, perform, use, and exhibit the material called for under this contract for governmental purposes throughout the world, and to authorize others to do so.

(b) The Contractor shall indemnify, and save and hold harmless, the Government, its officers and employees, acting within the scope of their official duties, and on behalf of the Government, against any liability, including costs and expenses for (i) the violation of proprietary rights, copyright, or right of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished

under this contract; (ii) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply to material furnished to the Contractor by the Government and incorporated in subject data.

(b) In contracts which call for the modification of existing motion pictures or television recordings through editing, translation, or addition of subject matter, the clause in § 18–9.204–2 should be used to specify the rights of the modification or additional subject matter.

§ 18–9.205–3 Purchases of existing computer programs or computer program data bases.

When purchasing an existing computer program or computer program data base directly, rather than from a Federal Supply Schedule contract, it is important that the contract adequately describe the computer program or the computer program data base, the form (tape, punchcards, disk packs) of the program to be delivered and all the necessary documentation pertaining thereto. The contract should also specify any limitations on the right of the Government to use or copy the computer program, data base, or documentation, such as the physical location, number of uses, and other conditions under which the purchased material may be utilized. The contracting officer should consult with counsel in drafting such rights provisions for these contracts.

§ 18–9.206 Contracts to be performed outside the United States.

(a) Except as otherwise provided in §§18–9.204 and 18–9.205, the clause set forth below shall be included in all contracts under which (1) technical information including reports, drawings, blueprints, or other data is specified to be delivered to the Government, and (2) the work is to be performed outside the United States, its possessions, or Puerto Rico, regardless of the place of delivery.

TECHNICAL INFORMATION (JULY 1962)

The Government may duplicate, use and disclose, in any manner for its Government purposes, including delivery to other governments for the furtherance of mutual defense of the U.S. Government and such other governments, all or any part of the technical information including reports, drawings, blueprints, and other data specified to be delivered by the Contractor to the Government under this contract.

(b) The above clause may be modified by substituting "the United States Government" for "Government"; however, when the contractor is a foreign government, the above clause shall be modified by substituting "the United States Government" for "Government" and by substituting the name of the foreign government for "Contractor."

PART 18–10—BONDS AND INSURANCE

AUTHORITY: The provisions of this Part 18–10 issued under 42 U.S.C. 2473(b)(1).

§ 18–10.000 Scope of part.

This Part 18–10 sets forth policies and procedures with respect to bonds and insurance in connection with NASA contracts.

Subpart 18–10.1—Bonds

§ 18–10.100 Scope of subpart.

This Subpart 18–10.1 deals, primarily, with the use of bonds. It deals also with the use of bid guarantees which while most frequently in bond form, may take other forms of security.

§ 18–10.101 Definitions.

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

§ 18–10.101–1 Advance payment bond.

"Advance payment bond" means a bond which secures the performance and the fulfillment of a contractual provision for the making of advance payments.

§ 18–10.101–2 Annual bid bond.

"Annual bid bond" means a single bond (in lieu of separate bid bonds for each contract), without limitation as to penal amount, which secures all bids (on other than construction contracts) requiring bonds submitted by a contractor during a specific fiscal year of the Government in response to formal advertising.

§ 18–10.101–3 Annual performance bond.

"Annual performance bond" means a single bond (in lieu of separate performance bonds for each contract) which secures the performance of contracts (other than construction contracts) which require bonds and are entered into by a contractor during a specific fiscal year of the Government.

§ 18–10.101–4 Bid guarantee.

"Bid guarantee" means a form of security accompanying a bid or proposal as assurance that the bidder (a) will not withdraw his bid within the period specified therein for acceptance, and (b) will execute a written contract and furnish such bonds as may be required within

the period specified in the bid (unless a longer period is allowed) after receipt of the specified forms.

§ 18–10.101–5 Consent of surety.

"Consent of surety" means an acknowledgment by a surety that its bond given in connection with a contract continues to apply to the contract as modified.

§ 18–10.101–6 Construction contract or subcontract.

"Construction contract or subcontract" means any contract or subcontract for the construction, alteration or repair of buildings, bridges, roads, or other kinds of real property. It does not include any contract or subcontract for the manufacturing, producing, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property, regardless of the terms of any such contract or subcontract as to payment or title.

§ 18–10.101–7 Patent infringement bond.

"Patent infringement bond" means a bond which secures the performance and fulfillment of the undertakings contained in a patent clause.

§ 18–10.101–8 Payment bond.

"Payment bond" means a bond which is executed in connection with a contract and which secures the payment of all persons supplying labor and material in the prosecution of the work provided for in the contract.

§ 18–10.101–9 Penal sum or amount.

"Penal sum or amount" means the dollar amount shown in a bond and represents the maximum payment for which the surety is obligated.

§ 18–10.101–10 Performance bond.

"Performance bond" means a bond which is executed in connection with a contract and which secures the performance and fulfillment of all the undertakings, covenants, terms, conditions, and agreements contained in the contract.

§ 18–10.102 Bid guarantees.

§ 18–10.102–1 Applicability.

This § 18–10.102 applies to both negotiated and formally advertised procurements. Where appropriate, the term "bid" includes "proposal".

§ 18–10.102–2 Limitations.

Bid guarantees shall not be required unless the solicitation specifies that the contract must be supported by a performance bond or by performance and payment bonds. In no event shall a bid not in excess of $2,000 be required to be supported by a bid guarantee (see § 18–10.102–4(a)(1)). Only individual bid bonds (Standard Forms 24) will be used for construction contracts.

§ 18–10.102–3 Amount required.

(a) Whenever a bid guarantee is deemed necessary, the contracting officer shall determine the percentage (or amount) which in his best judgment, when applied to the bid price, will produce a bid guarantee amount adequate to protect the Government from loss should the successful bidder fail to execute such further contractual documents and bonds as may be required. The percentage determined shall be not less than 20 percent of the bid price except that the maximum amount required shall be $3 million.

(b) The penal sum of a bid bond may be expressed as a specified percentage of the bid price. In this fashion, the bid bond may be written by the surety before the bidder's final determination of his bid price.

§ 18–10.102–4 Solicitation provisions.

(a) Where a bid guarantee is determined to be necessary, the solicitation shall contain (1) a statement requiring that a bid guarantee be submitted with any bid in excess of $2,000 and containing such details as are necessary to enable bidders to determine the proper amount of bid guarantee to be submitted; and (2) the following provision:

BID GUARANTEE (JANUARY 1964)

Failure to furnish a required bid guarantee in the proper amount, by the time set for opening of bids, may be cause for rejection of the bid.

A bid guarantee may be in the form of a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit or, in accordance with Treasury Department regulations, bonds or notes of the United States. Bid guarantees, other than bid bonds, will be returned (1) to unsuccessful bidders as soon as practicable after the opening of bids, and (2) to the successful bidder upon execution of such further contractual documents and bonds as may be required by the bid as accepted.

If the successful bidder withdraws his bid within the period specified therein for acceptance (60 days if no period is specified) or, upon acceptance thereof by the Government, fails to enter into the contract and give bonds within the time specified (10 days if no period is specified) after the forms are presented to him, he shall be liable for any difference by which the cost of procuring the work exceeds the amount of his bid and the bid guarantee shall be available toward offsetting such difference.

(b) The requirement for the provision in paragraph (a)(2) of this section is met where Standard Form 22 (Instructions to Bidders (Construction Contracts)) is used in accordance with §§ 18–16.401–1(f) and 18–16.401–3.

(c) The provision required by paragraph (a)(2) of this section may be appropriately modified in negotiated contracts.

§ 18–10.102–5 Failure to submit proper bid guarantee.

Where a solicitation requires that bids be supported by a bid guarantee, noncompliance with such requirement will require rejection of the bid, except that rejection of the bid is not required in these situations:

(a) Where only a single bid is received (in such cases the procurement office may or may not require the furnishing of the bid guarantee before award);

(b) Where the amount of the bid guarantee submitted, though less than the amount required by the invitation for bids, is equal to or greater than the difference between the price stated in the bid and the price stated in the next higher acceptable bid;

(c) Where the bid guarantee is received late and the late receipt may be waived under the rules established in § 18–2.303 for consideration of late bids; and

(d) Where an otherwise adequate bid guarantee becomes inadequate as a result of the correction of a mistake in bid under § 18–2.406 if the bidder will increase the amount of the bid guarantee in proportion to the authorized bid correction.

§ 18–10.103 Performance and payment bonds for construction contracts.

§ 18–10.103–1 Performance bonds.

(a) Pursuant to the Miller Act, as amended (40 U.S.C. 270a–270e), in connection with any construction contract exceeding $2,000 in amount except as provided in § 18–10.103–3, a performance bond shall be required in a penal amount deemed adequate by the contracting officer for the protection of the Government. Generally, the penal amount of each performance bond shall be 100 percent of the contract price at the time of award. But where the contracting officer finds that to require a 100 percent performance bond would be disadvantageous to the Government, he may prescribe a lesser penal amount, which should normally be not less than 50 percent of the original contract price, and in all cases no less than the amount of the payment bond.

(b) Additional performance bond protection shall be required in connection with any modification effecting an increase in price under any contract for which a bond is required pursuant to paragraph (a) of this section if—

(1) The modification is for new or additional work which is beyond the scope of the existing contract; or

(2) The modification is pursuant to an existing provision of the contract and is expected to increase the contract price by $50,000 or 25 percent of the basic contract price, whichever is less.

The penal amount of the bond protection should generally be increased so that the total performance bond protection is 100 percent of the contract price as revised by (i) the modification requiring such additional protection, and (ii) the aggregate of any previous modifications: *Provided*, That lesser penal amounts may be authorized by the contracting officer as indicated in paragraph (a) of this section. The increased penal amount may be secured either by increasing the bond protection provided by the

existing surety or sureties (the format set forth in § 18–10.111–1 may be used when an additional bond is obtained from the original surety), or by obtaining an additional performance bond from a new surety; but see § 18–10.111–2 with respect to requiring consent of surety.

(c) An annual performance bond will not be used for construction contracts.

§ 18–10.103–2 Payment bonds.

(a) Pursuant to the Miller Act, as amended (40 U.S.C. 270a–270e), in connection with any construction contract exceeding $2,000 in amount, except as provided in § 18–10.103–3, a payment bond shall be required in a penal amount as follows:

(1) When the contract price is not more than $1 million, the penal sum shall be 50 percent of the contract price;

(2) When the contract price is more than $1 million but not more than $5 million, the penal sum shall be 40 percent of the contract price; and

(3) When the contract price is more than $5 million, the penal sum shall be $2,500,000.

(b) Additional payment bond protection shall be required in connection with any modification effecting an increase in price under any contract for which a bond is required pursuant to paragraph (a) of this section if—

(1) The modification is for new or additional work which is beyond the scope of the existing contract; or

(2) The modification is pursuant to an existing provision of the contract and is expected to increase the contract price by $50,000 or 25 percent of the basic contract price, whichever is less.

The penal amount of the additional bond protection should generally be such that the total payment bond protection is 50 percent of the contract price as revised by the modification requiring such additional protection, and the aggregate of any previous modifications: *Provided*, That when the contract price as so revised is more than $1 million but not more than $5 million the total payment bond protection shall be in a penal amount of 40 percent of the revised contract price: *Provided further*, That when the contract price as so revised is more than $5 million, the total payment bond protection shall be in the penal amount of $2,500,000. The additional protection may be secured either by increasing the bond protection provided by the existing surety or sureties or by obtaining an additional payment bond from a new surety; but see § 18–10.111–2 with respect to requiring consent of surety.

§ 18–10.103–3 Waiver of performance and payment bonds.

The contracting officer may waive the requirement for a performance and payment bond for that work under the contract which is to be performed in a foreign country provided he finds it impracticable for the contractor to furnish such bonds. However, the authority available to the Military Departments pursuant to 40 U.S.C. 270e to waive performance and payment bonds under the Miller Act in cost-reimbursement type contracts is not available to NASA.

§ 18–10.103–4 Furnishing information to subcontractors and suppliers.

It is NASA policy to furnish subcontractors or suppliers only general information with respect to the status of work and of payments made to prime contractors. Where a payment bond has been used as a substitute for determinations of required, a subcontractor or supplier, after satisfying the contracting officer that he is a bona fide subcontractor or supplier and stating that he has not been paid for work performed or supplies delivered, may be furnished the name and address of the surety furnishing the required bonds on the contract in question. In addition, subcontractors and suppliers may be furnished general information on such matters as the progress of the work, the accomplishment of payments as of certain dates, and the estimated percentage of completion. In accordance with 40 U.S.C. 270c, the General Accounting Office is required under specified conditions to furnish a certified copy of a payment bond and the contract for which it was given.

§ 18–10.104 Performance and payment bonds for contracts other than construction contracts.

§ 18–10.104–1 General.

(a) Generally, performance and payment bonds shall not be required in connection with contracts other than construction contracts, other than as provided in §§ 18–10.104–2 and 18–10.104–3. If, under such a contract, it is contemplated that a subcontract exceeding $2,000 will be made for construction work, advice of legal counsel will be requested as to whether to obtain bonds and the type of bonds to be obtained.

(b) Performance and payment bonds shall not be required unless the solicitation requires such bonds, or the requirement of such bonds is in the interest of the Government, and not prejudicial to other bidders or offerors. Where the solicitation requires such bonds, they shall not be waived except in the case of an otherwise acceptable bidder or offeror where such waiver will be favorable to the Government and the contract price will be reduced.

(c) When the requirement for performance and payment bonds is made by the terms of a contract, but the bonds are not furnished by the contractor within the time specified, the contracting officer shall notify the contractor that the contract will be terminated for default if the bonds are not furnished within the time specified in the contract clause providing for such termination (e.g., § 18–8.707, paragraph (a)(ii)).

(d) Where a bid guarantee is not required and a performance or payment bond is required as a condition precedent to the formation of the contract, but is not furnished within the time specified, the contracting officer shall if the making of the award can be delayed without prejudice to other bidders notify the bidder that if the bond is not furnished within 10 days (or such other period as the contracting officer may specify) after receipt of the notice, his bid will not be considered for award.

(e) Requirements for additional bond or consent of surety in connection with contract modifications are prescribed in § 18–10.111.

§ 18–10.104–2 Performance bonds.

(a) Performance bonds shall not be contractor responsibility as required by Subpart 18–1.9. Subject to this general policy, performance bonds may be required in indivdual procurements when, consistent with the following criteria, the contracting officer determines the need therefor. Justification for any such requirement must be fully documented.

(1) Where the terms of the contract provide for the contractor to have the use of Government material, property or funds and further provide for the handling thereof by the contractor in a specified manner, a performance bond shall be required if needed to protect the Government's interests therein.

(2) Where the circumstances applicable to a particular procurement are such that for financial reasons a performance bond is necessary to protect the interests of the Government a performance bond shall be required. (See for example § 18–26.402(c)(3).

Where such bonds are authorized, the penal sum will usually be no less than 20 percent and only rarely will it exceed 40 percent of the total amount of the contract.

(b) Subject to the general policy stated in paragraph (a) of this section, determinations that performance bonds will be required in specified classes of cases (e.g., for particular types of supplies or services) may be made by the head of the installation. A copy of each such determination covering a class of cases shall be forwarded to the Director of Procurement (Code KDP–1).

(c) When an annual performance bond is used and has been completely obligated in an amount equal to the penal sum thereof, an additional bond shall be obtained to cover additional contracts.

§ 18–10.104–3 Payment bonds.

Generally, payment bonds for contracts other than construction contracts may be required only if a performance bond is also required, in which case the penal sum of the payment bond should ordinarily be equal to or less than that of the performance bond. Ordinarily if a performance bond is required, a payment bond of equal penal amount can be obtained at no additional cost.

§ 18–10.105 Other types of bonds.

§ 18–10.105–1 Advance payment bonds.

Generally, the security provisions of an advance payment agreement should

make it unnecessary to require a bond to protect the interests of the Government. Advance payment bonds shall not be used without the approval of the Director of Procurement who shall prescribe the penal sum thereof.

§ 18–10.105–2 Patent infringement bonds.

Patent infringement bonds shall be required only in connection with contracts containing provision for patent indemnity, and then only if a performance bond has not been executed and if the financial responsibility of the contractor is unknown or doubtful. Whenever such a bond is required, the penal sum thereof shall be in an amount deemed adequate by the contracting officer for the protection of the Government.

§ 18–10.105–3 Other bonds.

Other types of bonds may be used only when, in the opinion of the head of the installation, such bonds are necessary or desirable in connection with the procurement of particular supplies or services.

§ 18–10.110 Execution of bonds.

Several prescribed forms for bonds and related documents are listed in § 18–16.805. Bonds and related documents executed on such forms shall comply with the instructions accompanying each form, except that minor deviations may be approved by appropriate legal counsel.

§ 18–10.111 Additional bond and consent of surety.

§ 18–10.111–1 Additional bond.

Requirements for additional bond resulting from changes or modifications to construction contracts are prescribed by §§ 18–10.103–1(b) and 18–10.103–2(b). If a contract other than a construction contract for which a performance or payment bond has been executed is increased in price or modified to cover new or additional work, the contracting officer shall decide whether additional bond should be required in order to adequately protect the interest of the Government (the criteria of §§ 18–10.104–1 and 18–10.104–2 may be used as a general guide for this purpose). The following form of consent of surety is authorized for contract modifications (to both construction and other than construction contracts) which provide for an increase in the penal sums of bonds previously given by the original surety.

CONSENT OF SURETY

Date _____
Supplemental Agreement No. _____
Contract No. _____
Change Order No. _____

Consent of Surety is hereby given to the foregoing contract modification, and the surety agrees that its bond or bonds shall apply and extend to the contract as modified or amended thereby. The principal and surety further agree that on and after the execution of this consent, the penalty of the aforementioned performance bond or bonds is hereby increased by _____ dollars, and the penalty of the aforementioned payment bond or bonds is hereby increased by _____ dollars.

In presence of—

_____
_____
(Address)

Attest:

_____
_____

[SEAL]

_____
(Individual principal)[1]
_____
(Business address)
_____
(Corporate principal)[1]
_____
(Business address)

By _____
(Affix corporate seal)
_____
_____
(Corporate surety)
_____
(Business address)

By _____
(Affix corporate seal)
_____

[1] This consent shall be executed concurrently with the execution of the attached modification by the same person who executes the modification. If the individual who signs the consent on behalf of a corporation does not execute the modification, a Certificate of Corporate Principal shall be submitted with the consent.

§ 18–10.111–2 Consent of surety.

The following consent of surety shall be obtained from the surety or sureties on existing bonds in connection with any amendment, modification or supplemental agreement if:

(a) Additional bond is obtained from other than the original surety;

(b) No additional bond is required and (1) the modification is for new or additional work beyond the scope of the contract, or (2) the modification does not enlarge or diminish the scope of the contract, but changes the contract price (upward or downward) by more than $25,000 or 10 percent of the contract price; or

(c) Consent of surety is required in connection with a novation agreement (see § 18–1.1601(b)(10)).

CONSENT OF SURETY

Date _____
Supplemental Agreement No. _____
Contract No. _____
Change Order No. _____

Consent of Surety is hereby given to the foregoing contract modification and the surety agrees that its bond or bonds shall apply and extend to the contract as modified or amended thereby.

CORPORATE SURETY

_____
(Business Address)
Attest: _____
By _____

[AFFIX CORPORATE SEAL]

_____
(Title)

§ 18–10.112 Administration of bonds.

It is the responsibility of the contracting officer to obtain all bonds required by law and regulation. The Treasury Department list of corporate sureties certified by the Secretary of the Treasury as being acceptable as sureties on Federal bonds, and provision for the distribution of up-to-date copies of the list, are discussed in § 18–10.201–1. Upon receipt of the bonds required in connection with a NASA contract, the contracting officer shall determine whether the corporate surety which executed the bonds appears on the latest Treasury Department list of acceptable sureties. If the name of the surety does not appear on the list, the Director of Procurement, NASA Headquarters (Code KDP–1) will be advised by the most expeditious means in order to determine from the Surety Bond Section, Treasury Department, whether the corporate surety has been approved subsequent to the issuance of the latest list. When the surety on a bond is not acceptable, the contracting officer shall return the bond to the bidder by letter, advising that the surety on the bond is not acceptable because of lack of Treasury Department approval. When time permits and when it would be to the best interest of the Government, the bidder may be permitted a specific period of time in which to submit an acceptable bond.

Subpart 18–10.2—Sureties

§ 18–10.201 General requirements of sureties.

Every bond required or used in connection with a contract for supplies, services, or construction shall be supported by good and sufficient surety (corporate or individual) except as provided in § 18–10.202.

§ 18–10.201–1 Corporate sureties.

(a) In connection with contracts for supplies, services, or construction to be delivered or performed in the United States, its possessions (other than the Canal Zone), or Puerto Rico, solicitations shall not require that only corporate sureties may be furnished or that a particular corporate surety be furnished, except as may be otherwise specifically provided (e.g., position schedule bonds may be obtained only from corporate sureties).

(b) In order to be acceptable, the corporate surety must have obtained from the Secretary of the Treasury authority to do business under the Act of August 13, 1894 (28 Stat. 279), as amended by the Acts of March 23, 1910 (36 Stat. 241), July 30, 1947 (61 Stat. 646), and the Act of August 9, 1955 (69 Stat. 620) (6 U.S.C. 6–13). A list of the corporations approved by the Secretary of the Treasury is published annually by the Treasury Department (T.D. Circular 570). This list indicates the maximum penal sum

in which any corporate surety may underwrite any one obligation. Any corporation whose name is on this list is acceptable within the limits specified. The Director of Procurement will secure and distribute up-to-date copies of this list. When the bond is to be executed by two or more corporate sureties, Standard Form 25 should be used in the case of a performance bond, and Standard Form 25A in the case of a payment bond. Each corporate surety may limit its liability in the bond to a specified sum. The sureties must bind themselves "jointly and severally" for the purpose of allowing a joint action or actions against any or all of them.

(c) For contracts to be performed in a foreign country, sureties not appearing on Treasury Department Circular 570 are acceptable if it is determined by the contracting officer that it is impracticable for the contractor to use Treasury listed sureties.

§ 18–10.201–2 Individual sureties.

(a) *Acceptability.* Individual sureties are acceptable for all types of bonds other than position schedule bonds. Individual sureties shall be citizens of the United States, except that sureties on bonds executed in foreign countries, in possessions of the United States, or in Puerto Rico, to secure the performance of contracts entered into in those places need not be citizens of the United States, but if not citizens of the United States shall be domiciled in the place where the contract is to be performed.

(b) *Number.* If individual sureties are used, there shall be at least two responsible individuals on each bond.

(c) *Extent of liability.* The liability of each individual surety shall extend to the entire penal amount of the bond.

(d) *Justification.* The contracting officer, in evaluating bonds and consents of surety underwritten by individual sureties, must first ascertain that all documents, including the Affidavits of Individual Surety required by Instruction No. 2 on the reverse of Standard Form 24, "Bid Bond," Standard Form 25, "Performance Bond," and Standard Form 25A, "Payment Bond," have been completely filled out and are properly executed. The contracting officer must next ascertain that each individual surety, underwriting a bond or consenting to an increase in the penal amount of a bond previously furnished, justifies his net worth "in a sum not less than the penalty of the bond" as required by Instruction No. 3 on the reverse of Standard Form 28, "Affidavit of Individual Surety." Since individual sureties are jointly and severally liable in the event of default by the principal, each individual surety must list on Standard Form 28 a net worth at least equal to the total penal amount of the bond or consent of surety. Example: If performance and payment bonds on a construction contract have penal amounts of $4,000 and $2,000, respectively, each individual surety must show a net worth of at least $6,000 to have the contracting officer accept his underwriting of such bonds. Normally, net worth is the difference between the block on Standard Form 28 titled "Amount I Am Worth in Real Estate and Personal Property, etc." and the total of the blocks titled "All Mortgages or Other Encumbrances, etc." and "All Other Bonds, etc." Example: If an individual surety designates in the appropriate blocks on Standard Form 28 that he is worth $50,000 in real estate and personal property, that he has mortgages and other encumbrances totalling $17,000 and that he is presently a surety of other bonds with total penal amounts of $8,000, his net worth would be $25,000. In determining the net worth of an individual surety, however, the contracting officer is expected to exercise judgment in considering all relevant information furnished by the individual surety on Standard Form 28. Example: The contracting officer should normally consider the "fair value" of real estate rather than the "assessed value" for taxation purposes. However, there may be situations where the assessed value is a more realistic figure for determining net worth and in those cases, the figure in the "Assessed Value" block on Standard Form 28 should be used. If the contracting officer cannot make a determination of net worth on the basis of information furnished on Standard Form 28, he should require the individual surety to furnish additional information. As a general rule, the contracting officer should not require extrinsic evidence of an individual surety's net worth (other than Standard Form 28) unless Standard Form 28 is not filled out completely or properly, or unless the contracting officer has reason to believe that the individual surety's statements on Standard Form 28 do not reflect his true net worth.

(e) *Stockholders as sureties.* On any bond of which a corporation is the principal obligor, a stockholder of that corporation is acceptable as cosurety on the bond: *Provided,* That his net worth exclusive of his stock holdings or other interests, such as loans, in the corporation is equal to the amount for which he justified: *And provided further,* That such fact is expressly stated in his affidavit of justification.

§ 18–10.201–3 Partnerships as sureties.

A partnership or other unincorporated association, as such, shall not be accepted as surety. The individual members of the partnership or association may, if they meet the requirements of § 18–10.201–2, qualify as sureties. Individual members of a partnership or association shall not be acceptable as sureties on bonds under which the partnership or association, or any copartner or member thereof, is the principal obligor.

§ 18–10.201–4 Substitution or replacement of surety.

In case of financial embarrassment, failure, or other disqualifying cause on the part of a surety substitution of a new surety is required. In other cases, substitute sureties may be accepted, when consistent with the Government's interest.

§ 18–10.202 Options in lieu of sureties.

Any one or more of the types of security listed below may be deposited by the contractor in lieu of furnishing corporate or individual sureties on bonds. Any such security accepted by the contracting officer shall be promptly turned over to the fiscal officer concerned except that when U.S. bonds or notes are involved, they shall be deposited as provided in § 18–10.202–1. Any such security or its equivalent shall be returned to the contractor when the obligation of the bond has by its terms ceased.

§ 18–10.202–1 U.S. bonds or notes.

In accordance with the provisions of the Act of February 24, 1919, as amended (6 U.S.C. 15) and Treasury Department Circular No. 154 (February 6, 1935), any person required to furnish a bond has the option, in lieu of furnishing surety or sureties thereon, of depositing U.S. bonds or notes in an amount equal at their par value to the penal sum of the bond, together with an agreement authorizing the collection or sale of such U.S. bonds or notes in the event of default on the penal bond. The contracting officer may turn these securities over to the fiscal officer as provided in § 18–10.202, or deposit them with the Treasurer of the United States, a Federal Reserve Bank, branch Federal Reserve Bank having the requisite facilities, or other depository duly designated for that purpose by the Secretary of the Treasury, under procedures prescribed by Treasury Department Circular No. 154. However, the contracting officer shall deposit with the Treasurer of the United States all such bonds and notes received by him in the District of Columbia.

§ 18–10.202–2 Certified or cashier's checks, bank drafts, money orders, or currency.

Any person required to furnish a bond has the option, in lieu of furnishing surety or sureties thereon, of depositing a certified or cashier's check, a bank draft, a Post Office money order, or currency, in an amount equal to the penal sum of the bond. Certified or cashier's checks, bank drafts, or Post Office money orders shall be drawn to the order of the Treasurer of the United States.

Subpart 18–10.3—Insurance—General

§ 18–10.300 Scope of subpart.

This Subpart 18–10.3 sets forth the general principles and policy applicable to insurance under NASA contracts.

§ 18–10.301 General.

Insurance will be required where (a) it is mandatory by law, (b) it is considered desirable to utilize the facilities and services of the insurance industry, or (c), in special instances, it is considered necessary or desirable in connection with the performance of a contract. The Director of Procurement may authorize or require the purchase of insurance where commingling of property, circumstances of ownership, or degree of responsibility imposed by the contract makes the purchase of insurance reasonably necessary for the protection of the several interests concerned.

§ 18–10.301–1 Definition.

The term "insurance" includes, but is not limited to, the following forms of coverage, whether provided under an insurance policy issued by privately operated insurance companies or underwriters, or under a State-operated insurance fund, or under an approved self-insurance plan.

(a) Workmen's Compensation and Employers' Liability;
(b) General Liability;
(c) Automobile Liability;
(d) Aircraft Liability;
(e) Physical Damage (Property);
(f) Employees' Group Insurance (Life, Hospitalization, Accident and Health, Surgical, etc.); and
(g) Extrahazardous Accident.

§ 18–10.302 Notice of cancellation or change.

Where insurance is required by the contract, or required or approved under a contract by the Director of Procurement or his designee, the policies evidencing such insurance shall contain an endorsement to the effect that cancellation of, or any material change in, the policies which adversely affect the interests of the Government in such insurance shall not be effective unless a 30-day written notice of cancellation or change is given to the Director of Procurement.

§ 18–10.303 Responsibility for loss of or damage to Government property.

NASA's policy with respect to Government assumption of risk for loss of or damage to Government property in the possession of contractors is set forth in § 18–13.102. This policy is implemented by the Government property clauses set forth in Subpart 18–13.7, and the facilities contract clauses set forth in Subpart 18–7.7. Except for contracts using the clause set forth in § 18–13.710 where contractor responsibility for risk of loss or damage would not result in the inclusion of contingency charges in the contract, it is NASA's policy to assume the risk of loss or damage. This policy is based on the principle that it is less costly for the Government to act as a self-insurer than to permit the contractor to take out property damage insurance. However, when, due to the commingling of the Government's and the contractor's property, or for other reasons, relief of the contractor from liability will not result in a reduction of the contract price or contract cost to the Government, this policy may be waived, and the contractor held fully responsible. Such a waiver constitutes a deviation to be processed in accordance with § 18–1.109–3.

§ 18–10.304 Insurance against loss of or damage to Government property.

When insurance is required or approved to cover loss of or damage to Government property, such insurance may be provided either by specific insurance policies or by inclusion of such risks in the contractor's existing insurance policies. In either event, the insurance policies shall make formal disclosure of the Government's interest in the property.

§ 18–10.305 Procedures to be followed in the event of loss of or damage to Government property.

Upon the happening of loss of or damage to any Government property for which the contractor is relieved of responsibility by contract provision, the procedures set forth in the applicable Government Property clause of the contract involved shall be followed.

§ 18–10.350 Indemnification.

(a) The indemnification authority available to the Department of Defense under 10 U.S.C. 2354, which applies to contracts for research or development, is not applicable to contracts of NASA. Furthermore, it is NASA's firm policy not to use the authority contained in Public Law 85–804 (50 U.S.C. 1431–1435). It is also NASA's policy not to include in its contracts a special clause agreeing to indemnify contractors and subcontractors at some time in the future, if and when NASA should be authorized by subsequently enacted legislation to grant such indemnification, or if and when NASA might promulgate for general use an indemnification clause within the limits of existing legal authority. However, if indemnification authority is subsequently provided to NASA by legislation, NASA will do whatever is permitted by the statute and other available authority to apply its provisions so that all elements of industry similarly situated are treated in the same fashion and that a proper assumption of risks is undertaken by the Government, whether such risks arise under contracts in effect or are contemplated in any new contract.

(b) An exception to the foregoing exists in connection with contracts employing nuclear material where, pursuant to a license obtained from the Atomic Energy Commission, indemnification authorized under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq., as amended) may be extended to contractors engaged in work under the license.

Subpart 18–10.4—Insurance Under Fixed-Price Contracts

§ 18–10.400 Scope of subpart.

This Subpart 18–10.4 sets forth the policy of NASA with respect to insurance under fixed-price contracts of NASA.

§ 18–10.401 Policy.

Ordinarily, NASA is not concerned with the insurance programs of fixed-price contractors. However, NASA may be concerned with a contractor's insurance program where special circumstances exist. Examples of special circumstances are:

(a) Where the contractor is engaged principally in Government work;
(b) Where the contractor has segregated operation which is engaged principally in Government work;
(c) Where Government-furnished property is involved;
(d) Where the work is performed within a Government establishment; and
(e) Where, the Government may desire to assume risks for which the contractor ordinarily obtains commercial insurance.

§ 18–10.402 Government-furnished property.

The contractor's responsibilities for loss of or damage to Government-furnished property under fixed-price contracts are set forth in the applicable Government Property clause (see § 18–13.702).

§ 18–10.403 Workmen's compensation-insurance overseas.

(a) The Defense Base Act, as amended (42 U.S.C. 1651 et seq.), extends the application of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901) to any employee engaged in public work outside the United States. As used in this paragraph, a public work contract includes any contract for a fixed improvement or any project, whether or not fixed, involving construction, alteration, removal, or repair for the public use of the United States or its allies, including projects or operations under service contracts and projects in connection with the National Defense or with war activities, dredging, harbor improvements, dams, roadways, and housing, as well as preparatory and ancillary work in connection therewith at the site or on the project. The following clause shall be included in all construction contracts to be performed outside the United States.

WORKMAN'S COMPENSATION INSURANCE (DEFENSE BASE ACT) (APRIL 1960)

The Contractor before commencing performance under this contract shall provide and thereafter maintain such Workmen's Compensation Insurance or security as is required by the Defense Base Act, as amended (42 U.S.C. 1651). The Contractor further agrees to insert in all subcontracts hereunder to which the Defense Base Act is applicable a clause similar to this clause, including this sentence, imposing on all such subcontractors a like requirement to comply with the Defense Base Act.

(b) Upon the recommendation of the Administrator, the Secretary of Labor may waive the applicability of the Act with respect to any contract, subcontract, or subordinate contract, work location under such contract, or classification of employees. Applications for waivers shall be submitted to the Administrator, through the Director of Procurement, together with an adequate statement justifying the need for such waiver.

§ 18–10.404 Aircraft—Ground and flight risk.

(a) Negotiated fixed-price type contracts for the production, modification, maintenance, or overhaul of aircraft shall, except as provided in paragraph (b) of this section, include the following clause:

GROUND AND FLIGHT RISK (NOVEMBER 1965)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft "in the open," during "operation", and in "flight", as these terms are defined below, and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction, the risk of which is so assumed by the Government.

(b) For the purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "Aircraft" means—

(A) Aircraft (including (I) complete aircraft, and (II) aircraft in the course of being manufactured, disassembled, or reassembled: *Provided,* That an engine or a portion of a wing or a wing is attached to a fuselage of such aircraft) to be furnished to the Government under this contract (whether before or after acceptance by the Government); and

(B) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract;

including all property installed therein, or in the process of installation, or temporarily removed from such aircraft: *Provided, however,* That such aircraft and property are not covered by a separate bailment agreement.

(ii) The term "in the open" means located wholly outside of buildings on the Contractor's premises or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government shall be deemed to be in the open at all times while in Contractor's possession, care, custody, or control.

(iii) The term "flight means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer. With respect to land based aircraft, "flight" shall commence with the taxi roll from a flight line on the Contractor's premises, and continue until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises; with respect to seaplanes, "flight" shall commence with the launching from a ramp on the Contractor's premises and continue until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises; with respect to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of takeoff from the Contractor's premises and continue until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged; and with respect to vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device on the Contractor's premises and continue until the aircraft has been reengaged to any launching platform or device on the Contractor's premises: *Provided, however,* That aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contract, or landings approved by the Contracting Officer in writing.

(iv) The term "Contractor's premises" means those premises designated as such in the Schedule or in writing by the Contracting Officer, and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(v) The term "operation" means operations and tests, other than on any production line, of aircraft, when not in flight, whether or not the aircraft is in the open or in motion during the making of any such oprations or tests, and includes operations and tests of equipment, accessories, and power plants, only when installed in aircraft.

(vi) The term "flight crew members" means the pilot, the co-pilot and, unless otherwise specifically provided in the Schedule, the flight engineer, and navigator, when required, or assigned to their respective crew positions, to conduct any flight on behalf of the Contractor.

(c) (1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to subparagraph (3) below. Where the Contracting Officer finds that any of such aircraft is in the open under unreasonable conditions, he shall notify the Contractor in writing of the conditions he finds to be unreasonable and require the Contractor to correct such conditions within a reasonable time.

(2) Upon receipt of such notice, the Contractor shall act promptly to correct such conditions, regardless of whether he agrees that such conditions are in fact unreasonable. To the extent that the Contracting Officer may later determine that such conditions were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs he incurred in correcting such conditions and the contract shall be modified in writing accordingly. Any dispute as to the unreasonableness of such conditions or the equitable adjustment shall be deemed to be a dispute concerning a question of the fact within the meaning of the clause of this contract entitled "Disputes."

(3) If the Contracting Officer finds that the Contractor has failed to act promptly to correct such conditions or has failed to correct such conditions within a reasonable time, he may terminate the Government's assumption of risk under this clause, as to any of the aircraft which is in the open under such conditions, such termination to be effective at 12:01 a.m. on the 15th day following the day of receipt by the Contractor of written notice thereof. If the Contracting Officer later determines that the Contractor acted promptly to correct such conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (f) of this clause, be made in the contract price to compensate the Contractor for any additional costs he incurred as a result of termination of the Government's assumption of risk under this clause and the contract shall be modified in writing accordingly. Any dispute as to whether the Contractor failed to act promptly to correct such conditions, or as to the reasonableness of the time for correction of such conditions, or as to such equitable adjustment, shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(4) In the event the Government's assumption of risk under this clause is terminated in accordance with (3) above, the risk of loss with respect to Government-furnished property shall be determined in accordance with the clause of this contract, if any, entitled "Government Property" until the Government's assumption of risk is reinstated in accordance with (5) below.

(5) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government thereof. The Government may elect to again assume the risks and relieve the Contractor of liabilities as provided in this clause, or not, and the Contracting Officer shall notify the Contractor of the Government's election. If, after correction of the unreasonable conditions the Government elects to again assume such risks and relieve the Contractor of such liabilities, the Contractor shall be entitled to an equitable adjustment in the contract price for costs of insurance, if any, extending from the end of the third working day after the Contractor notifies the Government of such correction until the Government notifies the Contractor of such election. If the Government elects not to again assume such risks, and such conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for costs of insurance, if any, extending after such third working day.

(d) The Government's assumption of risk shall not extend to damage to, or loss or destruction of, such aircraft:

(i) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open, and during operation, in accordance with sound industrial practice (the term "Contractor's managerial personnel" means the Contractor's directors, officers, and any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant or separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract);

(ii) Sustained during flight if the flight crew members conducting such flight have not been approved in writing by the Contracting Officer;

(iii) While in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(iv) To the extent that such damage, loss or destruction is in fact covered by insurance;

(v) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless such damage is the result of other loss, damage, or destruction covered by this clause: *Provided, however,* In the case of Government-furnished property, if such damage consists of reasonable wear and tear or deterioration, or results from inherent vice in such property, this exclusion shall not apply;

(vi) Sustained while the aircraft is being worked upon and directly resulting therefrom, including but not limited to any repairing, adjusting, servicing or maintenance operation, unless such damage, loss or destruction is of a type which would be covered by insurance which would customarily have been maintained by the Contractor at the time of such damage, loss, or destruction, but for the Government's assumption of risk under this clause; or

(vii) Under this clause, where the total loss resulting from each event separately occurring is less than $500.

(e) A subcontractor shall not be relieved from liability for damage to, or loss or destruction of, aircraft while in his possession or control, except to the extent that the subcontract, with the prior written approval of the Contracting Officer, provides for relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of such aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. Where a subcontractor has not been relieved from liability for any damage, loss, or destruction of aircraft and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for such damage to, or loss or destruction of, the aircraft for the benefit of the Government.

(f) The Contractor warrants that the contract price does not and will not include, except as may be otherwise authorized in this clause, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to, or loss or destruction of, aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under the provisions of this clause, whether or not such assumption may be terminated as to aircraft in the open.

(g) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect such aircraft from further damage, separate damaged and undamaged aircraft, put all aircraft in the best possible order and, further, except in cases covered by (d)(vii) above, the Contractor should furnish to the Contracting Officer a statement of:

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) The insurance, if any, covering any part of the interest in such commingled property.

Except in cases covered by (d)(vii) above, and equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing his obligations under this paragraph (g) and this contract shall be modified in writing accordingly.

(h) If prior to delivery and acceptance by the Government any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of such damage, loss or destruction, the Government shall either (1) require that such aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to such damage, or (2) shall terminate this contract with respect to such aircraft. In the event that the Government requires that the aircraft be replaced or restored an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and this contract shall be modified in writing accordingly. If, in the alternative, this contract is terminated under this paragraph with respect to such aircraft and under this clause the Government has assumed the risk of such damage, loss, or destruction, the Contractor shall be paid the contract price for said aircraft (or, if applicable, any work to be performed on said aircraft) less such amounts as the Contracting Officer determines (1) that it would have cost the Contractor to complete the aircraft (or any work to be performed on said aircraft) together with anticipated profit, if any, on any such uncompleted work, and (2) to be the value, if any, of the damaged aircraft or any remaining portion thereof retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any remaining parts thereof; and, if any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due to the Contractor. Failure of the parties to agree upon an equitable adjustment or upon the amount to be paid in the event of termination of the contract with respect to any aircraft, shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(i) In the event the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under the provisions of this clause and for which the Contractor has been compensated by the Government, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

(b) (1) In paragraph (b) of the foregoing clause, certain of the defined terms may be modified by insertion of appropriate additional definitions in the Schedule in accordance with the following. The purpose of the clause is to have the Government assume risks which generally entail unusually high insurance premiums and which are not covered by the contractor's "contents," "work-in-process," or other similar insurance. It is recognized that all of the definitions prescribed in the foregoing clause may not cover all situations which should be covered if the above purpose is to be accomplished. Therefore, changes may be effected in the Schedule as set forth below.

(i) Since the standard definition of "aircraft" contemplates conventional types of winged aircraft, a modified definition is necessary if the contract covers helicopters, vertical takeoff aircraft, lighter-than-air airships or other nonconventional types of aircraft. The modified definition should take into consideration that the aircraft has reached a point of manufacture comparable to that required in the standard definition;

(ii) The definition of "in the open" may be modified to include "hush houses," test hangers, and comparable structures, and other designated areas;

(iii) "Contractor's premises" shall be expressly defined in the Schedule and shall be limited to those locations where aircraft, as defined in the above clause, may be located during and for the performance of the contract. "Contractor's premises" may include, but are not limited to, premises owned or leased by the contractor or premises as to which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

(2) The Government need not assume the risk of damage to, or loss or destruction of, aircraft, as provided by the foregoing clause, if the best estimate of premium costs which would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than $500. If it is determined not to assume such risk, the foregoing clause shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover such risk shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the "Flight Risks" clause in § 18–10.504, suitably adapted for use in a fixed-price type contract, shall be used.

(3) Subparagraph (d)(iii) of the clause in paragraph (a) of this section may be varied to provide for Government assumption of risk of transportation by conveyance on streets or highways where the contracting officer determines that such transportation is limited to the vicinity of the contractor's premises and is merely an incident to work being performed under the contract.

§ 18–10.405 Work at Government installation.

(a) Any contract requiring performance of construction, repair, or utilities work on Government installation shall require that any contractor or subcontractor doing such work furnish a statement in writing to the contracting officer attesting to the existence, in addition to legally required insurance, of Comprehensive General Liability and Automobile Insurance, in each instance for both bodily injury and property damage in such limits as contracting officer deems reasonable under the circumstances. The solicitation shall state the minimum insurance coverage required.

(b) Contractors and subcontractors may submit annual statements in compliance with the foregoing requirements, which statements shall be accepted in satisfaction thereof to the extent of the insurance coverage so reported.

(c) The foregoing requirements are not applicable to contracts of less than $2,500, or for work to be performed outside the United States, its possessions, and Puerto Rico.

Subpart 18–10.5—Insurance Under Cost-Reimbursement Type Contracts

§ 18–10.500 Scope of subpart.

This Subpart 18–10.5 sets forth the policy of NASA with respect to insurance under NASA cost-reimbursement type contracts.

§ 18–10.501 Policy.

The kinds of insurance listed in this § 18–10.501 shall ordinarily be required under cost-reimbursement type contracts and under those subcontracts where the provisions of the prime contract are extended to the subcontract. A program of self-insurance approved by the Director of Procurement or his designee, as provided in § 18–10.502, may be substituted for any of the kinds of insurance ordinarily required.

§ 18–10.501–1 Workmen's compensation and employers' liability insurance.

(a) Compliance with applicable workmen's compensation and occupational disease statutes shall be required. Related to workmen's compensation, and included in the same insurance policy, are (1) Employers' Liability; (2) Workmen's Compensation for Occupational Disease; and (3) Employers' Liability for Occupational Disease.

(b) Workmen's compensation is an obligation imposed upon an employer by

the workmen's compensation law of a State or by the United States Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901). An employer subject to a workmen's compensation law can provide for his obligation by insuring either with a commercial insurance company or a State fund, or by self-insuring. In a few States, commercial insurance is not permitted and the State fund is the exclusive carrier. If the employer desires to self-insure, he must qualify himself as a self-insurer with the appropriate State authority. However, such approval is only one of the elements considered by NASA in its approval of a self-insurance plan. Information may be required as to the procedures followed in operating the self-insurance plan and the method of accruing the operating costs thereof prior to granting NASA approval of the self-insurance plan.

(c) Occupational disease insurance is related to workmen's compensation insurance, and is usually required under applicable law. In jurisdictions where all occupational diseases are not compensable under applicable law, insurance for occupational diseases shall be required under the employers' liability section of the insurance policy. However, such additional insurance will not be required where contract operations are commingled with the contractor's commercial operations so that it would be impracticable to require such coverage.

(d) Employers' liability is the liability imposed upon the employer by law for damages on account of personal injuries, including death resulting therefrom, sustained by his employees by reason of accidents.

(e) The insurance coverage with respect to employers' liability and occupational disease shall be required with a minimum limit of $100,000 per incident.

(f) With respect to workmen's compensation insurance overseas, pursuant to the Defense Base Act, as amended (42 U.S.C. 1651), the clause set forth in § 18–10.403(a) shall be included in all construction contracts, as defined in § 18–10.101–6, to be performed outside the United States.

§ 18–10.501–2 General liability insurance.

(a) Liability insurance, commonly referred to as third-party liability insurance, protects the insured against his liability to members of the public for bodily injury or death or for damage to or destruction of the property of others. An insurance policy may be obtained to insure the several general liability hazards separately or in various combinations. The advantage of a comprehensive general liability policy is that the insurance afforded protects the insured from loss arising from any cause other than those causes specifically excluded. This contrasts with the ordinary policy, which names the hazards insured against. In this manner the danger of "uninsured gaps" in the insured's insurance program is minimized. Comprehensive general (bodily injury) liability insurance shall be required with minimum limits of $50,000 per person and $100,000 per accident.

(b) Property damage liability insurance will be required only in special circumstances. Examples of such special circumstances are:

(1) Where a commingling of operations permits property damage coverage at a nominal cost to NASA under insurance carried by a contractor in the course of his commercial operations; and

(2) Where the contractors are engaged in the handling of high explosives or in extrahazardous research and development activities undertaken in populated areas.

Otherwise, prior approval for purchase of property damage liability insurance must be obtained from the Director of Procurement.

(c) The Government normally will assume the risk of a contractor's uninsured third-party liability to the extent provided for by the clause entitled "Insurance—Liability to Third Persons," contained in § 18–7.203–22.

§ 18–10.501–3 Automobile liability insurance.

(a) Automobile liability insurance shall be required on the comprehensive form of policy and shall provide for bodily injury liability and property damage liability covering the operation of all automobiles used in connection with the performance of a contract. Such insurance will protect the contractor against (1) his liability to members of the public because of bodily injury or property damage arising out of the operations, maintenance, or use of the insured vehicles; and (2) financial loss resulting from damage to and loss or destruction of insured vehicles.

(b) An insurance policy for automobiles can be written to apply to specific vehicles, classes of vehicles, or to all vehicles in which the insured may have an insurable interest. The comprehensive automobile liability policy is generally chosen by a contractor, since it can minimize the possibility of an uninsured loss. A comprehensive automobile liability insurance policy may or may not include coverage (comprehensive physical damage and collision) for damage to and loss or destruction of insured vehicles.

(c) Automobile bodily injury liability and property damage liability insurance shall be required with minimum limits of $50,000 per person and $100,000 per accident for bodily injury liability and $5,000 for property damage liability on the comprehensive policy form covering all owned, nonowned, hired, and Government-furnished motor vehicles which will be used in the contract operations where use will not be limited exclusively to the premises on which the work under such contract is performed. Where such insurance relates to contracts to be performed outside the United States, its possessions, and Puerto Rico, the contracting office may revise downward the monetary limits prescribed herein. The Government shall normally assume the risk of a contractor's uninsured third-party liability to the extent provided for by the clause entitled "Insurance—Liability to Third Persons" contained in § 18–7.203–22.

§ 18–10.501–4 Aircraft public and passenger liability insurance.

(a) This type of insurance covers the liability imposed by law upon the aircraft owner and operator. The basic coverages are bodily injury liability, property damage liability, and passenger liability. Where aircraft are used in connection with the performance of a contract, aircraft liability insurance shall be carried by the contractor to cover bodily injury, including passenger liability (if the exposure exists), and property damage coverage. The minimum limits of liability shall be $50,000 per person and $100,000 per accident for bodily injury and $50,000 per accident for property damage. The Government will normally assume the risk of contractor's uninsured third-party liability to the extent provided for by the clause entitled "Insurance—Liability to Third Persons," contained in § 18–7.203–22.

(b) Aircraft hull insurance covers the insured for damage to or loss of the insured aircraft when loss or damage results from an insured peril. This type of insurance will not be purchased at Government expense to cover aircraft manufactured, modified, or serviced, under a cost-reimbursement type contract, against risks which are assumed by the Government under the Government-Furnished Property clause or other clauses in a contract. Such insurance is appropriate and will be required for aircraft not owned by the Government and used in connection with operations under a cost-reimbursement type contract.

§ 18–10.501–50 Group insurance.

(a) General: (1) Group insurance plans provide various types of benefits for employees and their dependents. Usually, these benefits are provided through one or more group insurance policies with life or casualty insurance companies. Also, these benefits may be provided through individual insurance policies or through hospital association plans.

(2) Group insurance plans are either contributory, where the employees, and the contractor jointly pay the costs of the benefits, or noncontributory, where the total costs of the benefits are paid by the contractor. Some group insurance plans provide for hospital and surgical benefits for the dependents of employees, and under these plans the employee usually pays all or a portion of the cost. Employees are usually eligible to participate in group insurance plans after 1 to 3 months of service.

(3) It is recognized that group insurance plans providing life insurance, surgical, hospitalization, major medical, and nonoccupational accident insurance coverages are important to industrial relations programs. Considerations which influence the benefits and the costs for benefits under a particular group insurance plan are (i) the geographical locality of the operations of the con-

tractor, (ii) wage levels, (ii) amount of other fringe benefits, (iv) benefits available under applicable workmen's compensation laws, (v) union negotiations, (vi) the costs of the group insurance benefits, and (vii) the effects of such costs in competitive prices.

(b) Approval of group insurance plans. The contracting officer will determine whether the group insurance benefits are reasonable in amount and necessary in connection with the performance of NASA contracts. Such plans will generally be approved where they are comparable to those of competing employers or industries in the contractor's operational areas. Where a contractor is working primarily on Government contracts, the restraints imposed by competition may be lacking, and a careful review will be made, including a determination that the contractor does not furnish his employees greater benefits under cost-reimbursement type contracts than are granted his employes engaged in regular commercial operations of the contractor. In addition, the experience of the Military Departments or other Government agencies with the particular contractor shall be investigated. Changes in previously approved group insurance plans (including changes in premium rates) must be submitted for approval by the contracting officer.

(c) The contractor is required to credit to the NASA account a share of all premium refunds or other credits paid or otherwise allowed to the contractor by the insurance company. This share shall be proportionate to the premium costs reimbursed under NASA contracts which gave rise to such refunds or other credits.

(d) The contractor is required to furnish full information concerning his group insurance program, and NASA reserves the right to examine the program at any time.

§ 18–10.501–51 Use and occupancy insurance.

(a) Use and Occupancy or Business Interruption Insurance is a form of insurance which indemnifies the contractor for certain losses incurred during a period of interruption of suspension of business operations resulting from physical damage to property essential to the conduct of business. Under such insurance, the contractor is protected against loss on account of fixed charges and other expenses which accrue during such period and for loss of net profit which the contractor is prevented from earning. The amount of coverage purchased under this form of insurance is based on the probable loss the contractor would sustain luring the period of interruption or suspension of business operations. The premium charge is based on the aggregate indemnity under the policy.

(b) (1) When costs in connection with use and occupancy insurance are presented for allowance, the aggregate coverage available will be analyzed. Only that percentage of total insurance cost which is identifiable with insurance benefits determined to be acceptable within the intent of paragraph (b)(2) of this section will be allowed.

(2) Costs of insuring those items of fixed charges and other expenses which are allowable items of costs in NASA contracts will be considered allowable. Such fixed charges and other expenses include but are not limited to salaries of employees under contract and other key employees, rents, most insurance premiums, and charges for noncancellable contracts for light, heat, or power.

(3) The cost of insuring the net profit a contractor is prevented from earning during a period of business interruption or suspension is unallowable. Similarly, the costs of insuring certain items of fixed charges such as interest, Federal income taxes, donations, and certain advertising expenses are unallowable.

§ 18–10.502 Self-insurance.

Self-insurance may be approved by the contracting officer in lieu of the insurance requirement for one or more of the mandatory coverages required by §§ 18–10.501–1, 18–10.501–2, 18–10.501–3, and 18–10.501–4, *Provided*, That:

(a) The contractor has maintained the practice of self-insurance in respect to such coverage or risk for a period of not less than 3 years;

(b) Adequate safety inspection and engineering programs are carried on by the contractor;

(c) The contractor has an effective and established policy for claims investigation;

(d) The contractor has established a plan of funding so that the annual cost of "loss payments" remains reasonably constant;

(e) The charges to be made against the contract for the cost of the self-insurance program may reasonably be expected to be less than the charge for an equivalent program of insurance; and

(f) The Government contracts will share equitably in any release of reserve funds.

Self-insurance programs which do not meet the foregoing conditions shall be submitted for approval to the Director of Procurement.

§ 18–10.503 Government property.

The contractor's responsibility for loss of or damage to Government property under cost-reimbursement type contracts is set forth in the applicable Government property clause.

§ 18–10.504 Aircraft-flight risk.

(a) Cost-reimbursement-type contracts for the development, production, modification, maintenance, or overhaul of aricraft, or otherwise involving the furnishing of aircraft to the contractor by the Government, shall, except as provided in paragraph (b) of this section, include the following clause.

FLIGHT RISKS (NOVEMBER 1965)

(a) Notwithstanding any other provision of this contract, and particularly subparagraph (f)(1) of the Government Property clause and paragraph (c) of the Insurance—Liability to Third Persons clause, the Contractor shall not (i) be relieved of liability for, damage to, or loss or destruction of, aircraft sustained during flight, or (ii) be reimbursed for liabilities to third persons for loss of or damage to property, or for death or bodily injury, which are caused by aircraft during flight, unless the flight crew members have previously been approved in writing by the Contracting Officer.

(b) For the purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "aircraft" means any aircraft, whether furnished by the Contractor under this contract (either before or after acceptance by the Government) or furnished by the Government to the Contractor under this contract, including all Government Property placed or installed therein or attached thereto: *Provided, however*, That such aircraft and property are not covered by a separate bailment agreement.

(ii) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer. As to land based aircraft, "flight" shall commence with the taxi roll from a flight line and continue until the aircraft has completed the taxi roll to a flight line; as to sea planes, "flight" shall commence with the launching from a ramp and continue until the aircraft has completed its landing run and is beached at a ramp; as to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off and continue until the aircraft has returned to the ground and rotors are disengaged; and for vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device and continue until the aircraft has been reengaged to any launching platform or device.

(iii) The term "flight crew members" means the pilot, the co-pilot and, unless otherwise specifically provided in the Schedule, the flight engineer, and navigator, when required, or assigned to their respective crew positions, to conduct any flight on behalf of the Contractor.

(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 estimated cost (exclusive of any fee) 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 (i) in estimated cost, delivery schedule, or both, and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly; *provided*, in determining the amount of adjustment in the fee that is equitable, any fault 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.

(b) In the foregoing clause, the definition of "aircraft" may be appropriately modified in the Schedule if the Schedule in the contract covers helicopters, vertical takeoff aircraft, lighter-than-air airships, or other nonconventional types of aircraft.

§ 18–10.550 Administration.

(a) In approving a contractor's insurance program under a cost-reimbursement contract, it is desirable to determine whether this program is identical with a program already approved in connection with similar contracts with the Military Departments or other Government agencies. The possibility of combining insurance coverage under the NASA contract with insurance pertaining to contracts with such other agencies, thereby effecting savings in reimbursable insurance premium costs, should be explored.

(b) Where minimum limits are prescribed in this Subpart, higher limits may be approved by the contracting officer where the circumstances so justify. Interference with a contractor's established commercial insurance program should be avoided to the maximum extent possible. Where NASA contract operations are commingled with a contractor's commercial operations, all operations should normally be insured together.

Subpart 18–10.6—Insurance of Industrial Facilities Under Leases or Facilities Contracts

§ 18–10.600 Scope of subpart.

This Subpart 18–10.6 sets forth NASA policy with respect to insurance of industrial facilities held by a contractor.

§ 18–10.601 Responsibility for liabilities to third persons.

When industrial facilities are provided by the Government under a facilities contract or a lease, the contract or lease shall require that during the period of construction, installation, alteration, repaid, or use, and at any other time as directed by the installation concerned, the contractor or lessee shall insure or otherwise provide approved security for liabilities to third persons (including employees of the contractor or lessee) in the same manner and to the same extent as required in § 18–10.501.

§ 18–10.602 Responsibility for loss or damage to facilities.

§ 18–10.602–1 Facilities contracts.

Facilities contracts shall provide that the contractor shall not include the cost of insurance in any contract except to the extent of insurance required or approved by NASA. If a facilities contract does not restrict the use of the facilities to work performed for the Government, provision shall be made that the contractor shall procure and maintain insurance as NASA may require against loss or damage to the industrial facilities (see § 18–13.602).

PART 18–11—TAXES

Sec.

AUTHORITY: The provisions of this Part 18–11 issued under 42 U.S.C. 2473(b)(1).

§ 18–11.000 Scope of part.

This Part 18–11 deals with Federal taxes imposed by the Internal Revenue Code upon certain supplies and services procured by NASA, exemptions from such Federal taxes, and policy for obtaining exemptions from State and local taxes. Except as otherwise indicated, references are to the Internal Revenue Code of 1954 (26 U.S.C.). (References to the Internal Revenue Code of 1939 are for convenience in disposing of cases to which the Internal Revenue Code of 1954 is not applicable.)

§ 18–11.001 Resolution of tax problems.

(a) The problems presented in connection with the administration of the tax aspects of a contract or transaction are widely varied. The right to immunity, exemption, refund, credit, or drawback depends upon the nature of the tax, the particular tax law, the party sought to be taxed, the items being procured, and the provisions of the contract. These problems are essentially legal; therefore, when questions arise, contracting officers shall request the assistance of counsel.

(b) It is essential that uniform and consistent tax policies and procedures be maintained throughout NASA and that NASA effectively cooperate with other Government agencies on tax matters of mutual interest. Except as provided in § 18–11.502–3(b), the General Counsel, NASA Headquarters, will represent NASA in all negotiations with Federal, State, or local authorities, for the purpose of determining the applicability of, or for obtaining exemption from, or refund of, any tax. Where the constitutional immunity of the United States from State or local taxation may reasonably be in issue, contracting officers should discourage contractors having cost-reimbursement type contracts or fixed-price type contracts containing a tax escalation clause from undertaking independent negotiations with taxing authorities pending approval as indicated above. The General Counsel shall keep the Director of Procurement fully informed of the status of any such negotiations.

(c) Communications with the Department of Justice for representation or intervention in proceedings concerning taxes shall be made only by the General Counsel.

(d) Matters involving foreign taxes requiring the assistance of other executive departments shall be forwarded to the General Counsel for appropriate action.

(e) Tax problems which cannot be solved readily by reference to this Part shall be forwarded to the General Counsel through the field installation Office of General Counsel. The forwarding of tax problems to the General Counsel is particularly important where:

(1) The amount of tax actually or potentially involved is substantial;

(2) The legal incidence of a tax appears to be upon the United States or its property, a specific exemption pertinent to the transaction appears to exist, or a State or local tax appears to have a direct effect upon a transaction in interstate commerce;

(3) Judicial or administrative action against a contractor is threatened;

(4) The imposition, or potential imposition, of a tax is the result of an amendment of a tax law or a change of position by the tax authorities; or

(5) The possibility exists of obtaining refunds of taxes previously paid.

(f) Tax problems forwarded to the General Counsel shall be accompanied by the following material, which shall be furnished by the initiating office or by intervening offices:

(1) A comprehensive statement of pertinent facts, including documents and correspondence;

(2) A Copy of the contract;

(3) A thorough review of the legal issues involved and recommended action to be taken; and

(4) If appropriate, a statement of the problem's effect(s) on procurement policies and procedures, with recommendations.

(g) The initiating office shall furnish an information copy of any submission (and the General Counsel shall furnish a copy of his reply) to the Director of Procurement.

Subpart 18–11.1—Federal Excise Taxes

§ 18–11.100 Scope of subpart.

This subpart deals with Federal taxes involved in the procurement of certain supplies and services. It is for the general information of Government personnel and does not purport to present the full scope of the applicable provisions of law and implementing regulations as they may be amended from time to time.

§ 18–11.101 Retailers excise taxes, special fuels.

§ 18–11.101–1 Diesel fuel.

A tax at the indicated rates is imposed upon any liquid, other than that taxable as gasoline under section 4081 of the Internal Revenue Code (see § 18–11.102–4), which is (a) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle, for use as a fuel in such vehicle, or (b) used by any person as a fuel in a diesel-powered highway vehicle unless there was a taxable sale of such liquid pursuant to paragraph (a) of this section, as follows:

(1) At 4 cents per gallon, if sold for use or if used as fuel in a diesel-powered highway vehicle—

(i) Which, at the time of such sale or use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is used on the highway; or

(2) At 2 cents per gallon, if sold for use or if used as fuel in a diesel-powered highway vehicle—

(i) Which, at the time of such sale or use, is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is not used on the highway; and

(3) At an additional 2 cents per gallon, if fuel on which a tax of 2 cents was paid pursuant to subparagraph (2) of this paragraph, is used as fuel in a diesel-powered highway vehicle—

(i) Which, at the time of such use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(ii) which, if owned by the United States, is used on the highway.

No tax is imposed on diesel fuel sold for use or used as fuel in a nonhighway vehicle, such as certain military vehicles, construction equipment, and equipment designed for use at mines, factories, railroad stations, and farms.

§ 18–11.101–2 Special motor fuels.

A tax at the rates indicated below is imposed upon benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline or any other liquid (other than kerosene, gas oil, fuel oil, or a product taxable as diesel fuel under or as gasoline under section 4081 of the Internal Revenue Code), which is (a) sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or airplane for use as a fuel for the propulsion thereof, or (b) used by any person as a fuel for the propulsion of a motor vehicle, motorboat, or airplane, unless there was a taxable sale of such liquid pursuant to paragraph (a) of this section, as follows:

(1) At 4 cents per gallon, if such liquid is sold for use or is used as a fuel for a highway vehicle—

(i) Which, at the time of such sale or use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is used on the highway; or

(2) At 2 cents per gallon, if such liquid is sold for use or is used as a fuel for the propulsion of a motorboat or airplane, or a motor vehicle—

(i) Which, at the time of such sale or use, is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is not used on the highway; and

(3) At an additional 2 cents per gallon, if a liquid on which a tax of 2 cents was paid pursuant to subparagraph (2) of this paragraph, is used as fuel in a highway vehicle—

(i) Which, at the time of such use, is registered, or required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States is used on the highway.

§ 18–11.101–3 Procedures.

(a) *General.* The sale of diesel fuel to an owner, lessee, or other operator of a diesel-powered highway vehicle, or of special motor fuel to an owner, lessee, or other operator of a motor vehicle, motor boat, or airplane is considered as a taxable sale by the Internal Revenue Service only (1) if the liquid is delivered by the seller into the fuel supply tank of the vehicle, motor boat, or airplane, or (2) where not so delivered, the purchaser indicates in writing to the seller prior to or at the time of the sale that the entire quantity of the liquid covered by the sale is for use by him for a taxable purpose as a fuel in such a vehicle, motor boat or airplane. If such a written statement is not furnished by the purchaser, he is liable for the tax at the applicable rate on that quantity of the liquid which is used by him as fuel in such a vehicle, motor boat or airplane, or which is sold by him in a taxable transaction.

(b) *Diesel fuel.* Diesel fuel shall be procured at a price exclusive of the tax on diesel fuel unless the contract under which such fuel is to be furnished requires the contractor to deliver it into the fuel supply tank of a diesel-powered highway vehicle. Any NASA installation using diesel fuel in a diesel-powered highway vehicle, where the fuel had not been delivered by the contractor into the fuel supply tank of the vehicle and had therefore been procured tax free, shall be responsible for making payment of the tax, at the applicable rate, directly to the Internal Revenue Service. Such payment shall be made quarterly on TD Form 720 "Quarterly Federal Excise Tax Return." A Certificate of Export is not required to support a tax-free sale of diesel fuel exported to a foreign country or shipped to a possession of the United States or to Puerto Rico.

§ 18–11.102 Manufacturers excise taxes.

§ 18–11.102–1 Motor vehicles.

(a) A tax at the rates indicated below is imposed upon the following articles (including parts and accessories sold therewith) sold by a manufacturer, producer, or importer:

(1) Chassis and bodies of trucks, buses, truck and bus trailers and semitrailers, and tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer—10 percent; except that this tax does not apply to equipment designed for off-the-road use, such as certain military vehicles (including oxygen or bomb dollies), construction equipment, and equipment designed for use at mines, factories, railroad stations, and farms;

(2) Chassis and bodies of automobiles, and of trailers and semitrailers (other than house trailers) suitable for use with passenger automobiles—10 percent prior to June 22, 1965; 7 percent from June 22, 1965, through December 31, 1965; 6 percent from January 1, 1966, through March 15, 1966; 7 percent from March 16, 1966, through March 31, 1968; 2 percent from April 1, 1968, through December 31, 1968; 1 percent after December 31, 1968; and

(3) Parts or accessories for trucks and buses—when sold separately from a truck, bus, or other item taxable as indicated in subparagraph (1) of this paragraph—8 percent. Parts or accessories are defined to include any article—

(i) The primary use of which is to improve, repair, replace or serve as a component part of a truck or bus;

(ii) Designed to be attached to or used in connection with a truck or bus or to add to its utility or ornamentation; or

(iii) The primary use of which is in connection with a truck or bus whether or not essential to its operation or use.

Spark plugs, storage batteries, leaf springs, coils, timers, and tire chains, which are suitable for use on or in connection with, or as component parts of, a taxable vehicle are treated as parts or accessories whether or not primarily adapted for such use. However, the term "parts or accessories" does not include tires or inner tubes. The tax on parts or accessories does not apply to any article sold for use (or for a single resale for use) as material in the manufacture of, or as a component part of any article whether or not such article is subject to a manufactures excise tax. The contract price of supplies purchased by NASA shall not include an amount for the manufacturers excise tax on parts or accessories purchased for use in the manufacture of any article.

(b) Bodies are exempt from tax when sold by the manufacturer to a manufacturer of motor vehicles to be sold by the purchaser; however, a chassis manufacturer who purchases a body tax free is required to pay a tax on his sale of the completed vehicle as the manufacturer of both the chassis and the body. A manufacturer of motor vehicle chassis cannot sell such chassis tax free to manufacturers of motor vehicle bodies.

§ 18–11.102–2 Tires and tubes.

(a) A tax at the rates indicated below is imposed on the following supplies, made wholly or in part of rubber, including synthetic and substitute rubber, sold by a manufacturer, producer, or importer:

(1) Tires of the type used on highway vehicles, which includes motor vehicles which are highway vehicles, and vehicles of the type used with motor vehicles which are highway vehicles—10 cents per pound;

(2) Other tires, which are designed to fit the wheel of any type of vehicle capable of transporting a person or burden (other than laminated tires which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent)—5 cents per pound;

(3) Inner tubes, which include any type of air container for pneumatic tires—10 cents per pound on total weight, including air valves and stems;

(4) Laminated tires (not of the type used on highway vehicles) which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent—1 cent per pound; and

(5) Tread rubber, which includes any material commonly or commercially known as tread rubber or camelback of a type used in retreading or recapping tires—5 cents per pound. An exemption exists for the sale of tread rubber or camelback by a manufacturer to a purchaser for use by that purchaser other than for recapping or retreading tires of the type used on highway vehicles. In addition, if tread rubber, upon which the tax has been paid, is sold for use or is used other than for recapping or retreading tires of the type used on highway vehicles, the manufacturer is entitled to a refund or credit of the tax: *Provided,* That the credit under paragraph (b) of this section is not available. The contract price for supplies purchased by NASA will not include an amount for the manufacturers excise tax on tread rubber to the extent that this exemption or refund or credit is available to the manufacturer. In determining weight of taxable tires under subparagraphs (1) and (2) of this paragraph, metal rims or rim bases are excluded, but any other material or fastening device that forms a part of the tire is included. The tax imposed under paragraphs (1) and (2) above, does not apply to tires which are not more than 20 inches in diameter and not more than 1¾ inches in cross section, if such tires are of all-rubber construction without fabric or metal reinforcement, nor does it apply to tires of extruded tiring with an internal wire fastening agent.

(b) The exemption for sales for further manufacture does not apply to taxable tires and tubes (see § 18–11.202). However, if tax-paid tires and tubes normally sold in connection with the sale by a manufacturer of a taxable motor vehicle are sold therewith, a credit against the tax on the motor vehicle is allowed to the extent of the motor vehicle tax rate applied to the manufacturers purchase price on the tires and tubes. The contract price for supplies purchased by NASA shall not include an amount for manufacturers excise tax on tires and tubes to the extent that this credit is available to the manufacturer.

§ 18–11.102–3 Gasoline.

(a) *General.* A tax of 4 cents per gallon is imposed on gasoline sold by a producer or importer. Gasoline means all products commercially known as gasoline which are suitable for use as a motor fuel. The tax does not apply to the sale of gasoline to a producer, which is defined to include a refiner, compounder, blender, or dealer who sells gasoline exclusively to producers of gasoline.

(b) *Procedure.* Products procured by NASA which are subject to the tax under (a) above include motor gasoline, clear unleaded gasoline, and aviation gasoline for reciprocating engines. The procurement of motor gasoline and clear unleaded gasoline shall be at a price inclusive of the tax unless the product is to be exported to a foreign country or shipped to a possession of the United States or to Puerto Rico, in which event the procedure in § 18–11.202(ii) shall be followed. The procurement of aviation gasoline which is not to be used for the propulsion of military aircraft or which is made on AF Form 15 shall be at a price inclusive of the tax on gasoline.

(c) *Refunds.* The ultimate purchaser of gasoline is entitled to a refund of 2 cents per gallon for gasoline used otherwise than as fuel in a highway vehicle, and in certain circumstances to fuel used in such a vehicle. However, NASA installations will not apply for such refunds.

§ 18–11.102–4 Lubricating oils.

(a) *General.* A tax of 6 cents per gallon is imposed on lubricating oil (other than cutting oils) sold by the manufacturer or producer unless sold to another manufacturer or producer of lubricating oils for resale. Lubricating oil means all oils which are either sold for use as a lubricant or are suitable for use as a lubricant. The tax applies unless—

(1) The sale is exempt from tax under § 18–11.202; or

(2) The oil has been determined by the Commissioner of Internal Revenue to be "seldom used as a lubricant" and is sold for a nonlubricating use; or

(3) The oil is sold as cutting oil under the procedure described in paragraph (c) of this section.

(b) *"Seldom used as a lubricant."* The following oils have been determined by the Commissioner of Internal Revenue to be "seldom used as a lubricant" and, thus, may be sold tax free: castor oil, petroleum white oil of certain specifications, crude neatsfoot oil, transformer or insulating oil, and a certain product used as an additive to the fuel used in internal combustion engines.

(c) *Cutting oils.* Oil sold as cutting oil is not subject to the tax if the manufacturer or producer follows one of three procedures. "First," lubricating oils may be sold tax free by the manufacturer or producer as cutting oil in any case where:

(1) The manufacturer or producer packages the oil in containers of 5 gallons or less furnished by it and labeled by it to indicate use of the oil only in cutting and machining operations on metals;

(2) Any advertising of the oil so packaged and labeled indicates that the oil is for use only in cutting and machining operations on metals; and

(3) The oil so packaged and labeled is sold by the manufacturer or producer to a purchaser for such use by him or for resale by him for such use.

"Second", where the Commissioner of Internal Revenue has determined oil to be suitable for use as a lubricant only in cutting and machining operations on metals, the oil may be sold tax free by the manufacturer or producer as cutting oils, unless the manufacturer has definite knowledge, prior to or at the time of the sale, that the oil is not being purchased for use, or resale for use, in cutting and machining operations on metals. Oils as to which the Commissioner has made such a determination may be sold tax free whether in bulk or otherwise. However, the Commissioner may require that the oil be specifically represented to the purchaser, whether by labeling or otherwise, as being suitable for use only in cutting and machining operations on metals. "Third", lubricating oils which are sold for use, or for resale for use in cutting and machining operations on metals, but which may not be sold tax free under one of the procedures described above, may be sold tax free, provided the manufacturer obtains from the purchaser a properly executed cutting oil certificate. The form set forth in § 18–11.501–4 shall be utilized for this purpose.

(d) *Refunds.* The ultimate purchaser of lubricating oil (other than cutting oils, imported lubricating oils, or rerefined oil) is entitled to a refund of 6 cents per gallon on oil purchased tax paid which is used otherwise than as a lubricant in a highway motor vehicle. However, activities of NASA will not apply for such refunds.

§ 18–11.103 Excise taxes on facilities and services.

Chapter 33 of the Internal Revenue Code imposes excise taxes on communications and certain transportation of persons by air. In general, the tax is based upon the amount paid for the service and is imposed upon the person paying for the service.

§ 18–11.104 Use tax on highway motor vehicles.

(a) A tax of $3 a year for each 1,000 pounds of taxable gross weight, or frac-

tion thereof, is imposed upon the use of any highway motor vehicle which, together with semitrailers and trailers customarily used in connection with a vehicle of this type, has a taxable gross weight in excess of 26,000 pounds. The full tax is due for any vehicle which is used on the public highways of the United States at any time during the month of July, irrespective whether the vehicle is later removed from highway use. If the first use of a taxable vehicle occurs after the end of July, the tax is computed proportionately from the first day of the month in which the vehicle is first used, through the end of the following June. For example, if a vehicle is placed in use during August, 11/12 of the total tax is payable. No tax applies to vehicles, even though of a highway type, which are never used on the public highways during the taxable year.

(b) Taxable gross weight is the sum of—

(1) The actual unloaded weight of the vehicle and any semitrailers and trailers customarily used with such a vehicle, all units fully equipped for service; and

(2) The weight of the maximum load customarily carried by all units of a vehicle of this type.

(c) The tax is payable by the person in whose name the vehicle is, or is required to be, registered under the law of any State, or if owned by the United States, by the agency or instrumentality of the United States operating such vehicle. If a tax has been paid for a particular vehicle, no further liability can be incurred in the same taxable year, even though there is a change of ownership of the vehicle.

(d) The Secretary of the Treasury, however, has authorized an exemption for vehicles used by the United States whether or not they are Government owned.

Subpart 18–11.2—Exemptions From Federal Excise Taxes

§ 18–11.200 Policy.

It is the policy of NASA to take maximum advantage of all exemptions from Federal excise taxes available to the United States and its contractors and to claim all refunds and credits which may be available to the United States and its contractors, except as otherwise provided in Subparts 18–11.1 and 18–11.2.

§ 18–11.201 Retailers excise taxes.

No retailers excise tax is imposed:

(a) On the sale of special fuels for the exclusive use of any State, any political subdivision thereof, or the District of Columbia, or with respect to the use thereof by any of the foregoing;

(b) On the sale of special fuels for export or for shipment to a possession of the United States (which for the purpose of this exemption includes Puerto Rico), and in due course so exported or shipped—

(1) This exemption shall be utilized by purchasing on a tax-exclusive basis and furnishing the required proof of exportation or shipment to a possession if:

(i) The purchase is substantial, and

(ii) Exportation or shipment to a possession is intended to follow not more than 6 months after title passes to the Government.

(2) To qualify for the exemption of sales for export or for shipment to a possession:

(i) The supplies must be identified as having been sold by the manufacturer (if the tax is a manufacturers excise tax) or the retailer (if the tax is a retailers excise tax) for export or shipment to a possession. The words "for export or shipment to a possession" incorporated into or stamped on a contract or purchase order are acceptable to the Internal Service as evidence that the sale is for export or for shipment to a possession. In solicitations and contracts, the terms of which imply that the supplies will be either exported or shipped to a possession (e.g., delivery to a port of embarkation or special packing requirements for overseas shipment) where the purchase is not substantial and it is therefore desired to purchase on a Federal excise tax-inclusive basis, the solicitations and the contract should clearly state that proof of export certificates will not be issued.

(ii) The supplies must be exported or shipped to a possession in due course. Proof of export or shipment will be furnished to the contractor in the form set forth in § 18–11.501.

(c) On the sale of special fuels to retailers for resale (Sales by the United States, or any agency or instrumentality thereof, are not exempt unless specifically made exempt by statute.);

(d) On the sale of special fuels to a nonprofit educational organization for its exclusive use, or, with respect to the use thereof by a nonprofit educational organization.

§ 18–11.202 Manufacturers excise taxes.

No manufacturers excise tax is imposed:

(a) On the sale of any article for use by the purchaser for further manufacture or for resale to a second purchaser for use by such second purchaser in further manufacture (an article shall be treated as sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another taxable article to be manufactured or produced. In the case of truck or bus parts and accessories, it is not necessary that the produced article be a taxable article. This exemption does not apply to tires or inner tubes); or

(b) On the sale of any article for export, or for shipment to a possession of the United States (which for the purpose of this exemption includes Puerto Rico). This exemption shall be obtained only when the purchase is substantial and exportation or shipment to a possession is intended to follow not more than 6 months after title passes. For proper utilization of this exemption, see § 18–11.201(b).

(c) On the sale of any article for resale to a second purchaser for export. If articles upon which a manufacturers excise tax has been paid are resold by a dealer for export, or for shipment to a possession, the manufacturer is entitled to a credit or refund of the tax paid. If it is economically advantageous to do so, this credit or refund shall be utilized by purchase from a dealer on a tax exclusive basis and execution of the required exemption certificate set forth in § 18–11.501–1.

(d) On the sale of any article for the exclusive use of a State or local government; and

(e) On the sale of any article to a nonprofit educational organization for its exclusive use.

§ 18–11.203 Supplies and services for the exclusive use of the United States.

By virtue of action taken by the Secretary of the Treasury, pursuant to section 4293 of the Internal Revenue Code, exemption is available, and shall be obtained, to the extent indicated, from the following Federal excise taxes:

(a) Tax on communication services and facilities furnished directly to the United States (as distinguished from being furnished to a Government contractor) and paid for directly by the Government (such exemption is obtained without any exemption certificate); and

(b) Tax on transportation of persons for transportation furnished the United States upon a Government transportation request (such exemption is obtainable by use of such transportation request).

§ 18–11.250 Exemptions from other Federal taxes.

Distilled spirits of 160° or more proof alcohol, and specially denatured alcohol, may be withdrawn tax-free by the United States or any Government agency thereof.

(a) The authority to sign applications to the Treasury Department, Commissioner of Internal Revenue, for permits to procure, tax-free, spirits and specially denatured alcohol (TD Form 1444, "Alcohol for Use of United States," and TD Form 1486, "Specially Denatured Alcohol for Use of United States") has been delegated by the Administrator to certain officers of NASA installations.

(b) TD Forms 1444 and 1486 shall be submitted to the Treasury Department in accordance with the instructions printed thereon. The letter of transmittal shall contain the following information:

(1) That the appropriate form is submitted in triplicate according to Internal Revenue Regulations for permit to procure tax-free or specially denatured alcohol;

(2) Name and location of supplier;

(3) Name and location of consignee;

(4) Purpose for which alcohol will be used; and

(5) Address to which permit is to be sent (requesting installation).

Subpart 18–11.3—State and Local Taxes

§ 18–11.300 General.

As used in this Subpart 18–11.3, the term "State and local taxes" includes taxes of the several States, the District

of Columbia, the possessions of the United States, Puerto Rico, and political subdivisions thereof.

§ 18–11.301 Applicability.

(a) As a general rule, purchases made by the Government itself are exempt from State and local sales and use taxes; similarly, personal and real property is exempt from State and local property taxes when the property is both owned and possessed by the Government. These exemptions shall be made use of to the fullest extent available when Government property is located in a State or local tax jurisdiction, or when purchases are made directly by the Government, by asserting the Government's immunity from taxation of its property by States and localities, and in case of purchases, by executing an approved tax exemption certification. (See § 18–11.502.)

(b) However, when purchases are not made by the Government itself, but by a prime contractor of the Government or by a subcontractor under a prime contract, the right to an exemption of the transaction from a sales or use tax may not rest on the Government's immunity from direct taxation by States and localities. It may rest instead on provisions of the particular State or local law involved, or in some cases, the transaction may not in fact be expressly exempt from the tax. Similarly, when property is owned by the Government, but the property is in the possession of a contractor or subcontractor on tax day, situations may arise where States or localities believe they may have the right to tax the property directly or to tax the contractor's or subcontractor's possession of, interest in, or use of that property.

(c) Wherever there is any doubt as to the availability of the Government's immunity or exemption from any State or local tax, the matter shall be handled in accordance with § 18–11.001.

Subpart 18–11.4—Contract Clauses

§ 18–11.400 Scope of subpart.

This Subpart 18–11.4 sets forth uniform clauses pertaining to taxes involved in the procurement of supplies and services.

§ 18–11.401 Fixed-price type contracts.

The clauses prescribed herein are for use in fixed-price type contracts except those to be performed entirely outside the United States, its possessions, and Puerto Rico.

§ 18–11.401–1 Advertised and certain negotiated contracts.

(a) *Use of clause.* Except as provided in § 18.11.401–4, the clause set forth in paragraph (c) of this section shall be used in:

(1) All formally advertised contracts except construction contracts;

(2) All formally advertised construction contracts when the contract price may reasonably be expected to exceed $10,000;

(3) Negotiated fixed price type contracts in excess of $10,000 where the contracting officer is satisfied, because of competition or otherwise, that the contract price does not include any contingency for State and local taxes; and

(4) At the discretion of the contracting officer in negotiated fixed price type contracts in excess of $2,500 but not in excess of $10,000.

(b) *Description.* The clause provides that the contract price includes all applicable taxes. It provides for an increase or decrease in the contract price to compensate for changes in applicable Federal excise taxes or duties. It does not provide for any adjustment in the contract price to compensate for changes in State or local taxes.

(c) *Contract clause.*

FEDERAL, STATE, AND LOCAL TAXES (NOVEMBER 1964)

(a) Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties.

(b) Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this contract, if a statute, court decision, written ruling, or regulation takes effect after the contract date, and—

(1) Results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the contract price shall be increased by the amount of such tax or duty or rate increase: *Provided*, That the Contractor, if requested by the Contracting Officer, warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price as a contingency reserve or otherwise; or

(2) Results in the Contractor not being required to pay or bear the burden of, or in his obtaining a refund or drawback of, any such Federal excise tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the contract price, the contract price shall be decreased by the amount of the relief, refund, or drawback, or that amount shall be paid to the Government, as directed by the Contracting Officer. The contract price shall be similarly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such Federal excise tax or duty.

(c) No adjustment pursuant to paragraph (b) above will be made under this contract unless the aggregate amount thereof is or may reasonably be expected to be over $100.

(d) As used in paragraph (b) above, the term "contract date" means the date set for the bid opening, or if this is a negotiated contract, the date of this contract. As to additional supplies or services procured by modification to this contract, the term "contract date" means the date of such modification.

(e) Unless there does not exist any reasonable basis to sustain an exemption, the Government, upon request of the Contractor, without further liability, agrees, except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from any tax which the Contractor warrants in writing was excluded from the contract price. In addition, the Contracting Officer may furnish evidence to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price. Except as otherwise provided in this contract, evidence appropriate to establish exemption from duties will be furnished only at the direction of the Contracting Officer.

(f) The Contractor shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the contract price, and shall take action with respect thereto as directed by the Contracting Officer.

§ 18–11.401–2 Certain other negotiated contracts.

(a) *Use of clause.* Except as provided in § 18–11.401–4, the clause set forth in paragraph (d) of this section shall be used in all negotiated fixed-price contracts in excess of $10,000 when the contracting officer is not satisfied that the contract price excludes contingencies for State and local taxes.

(b) *Description.* The clause provides that the contract price includes all applicable Federal, State, and local taxes. It provides for an increase or decrease in the contract price to compensate for changes in Federal excise taxes or duties, and, with some exceptions, for changes in State and local taxes.

(c) *Documentation of contract file.* If the clause set forth in paragraph (d) of this section includes an estimated amount for anticipated taxes on completed supplies covered by the contract or on the contractor's possession of, interest in, or use of property, title to which is in the Government, the contracting officer shall (1) include in the contract file detailed information with regard thereto, and (2) insure that the contract price does not include taxes not allowable under § 18–15.205–41(a).

(d) *Contract clause.*

FEDERAL, STATE, AND LOCAL TAXES (MAY 1965)

(a) As used throughout this clause, the term "contract date" means the date of this contract. As to additional supplies or services procured by modification to this contract, the term "contract date" means the date of such modification.

(b) Except as may be otherwise provided in this contract, the contract price includes, to the extent allocable to this contract, all Federal, State, and local taxes which, on the contract date:

(i) By Constitution, statute, or ordinance, are applicable to this contract, or to the transactions covered by this contract, or to property or interests in property; or

(ii) Pursuant to written ruling or regulation, the authority charged with administering any such tax is assessing or applying to, and is not granting or honoring an exemption for, a contractor under this kind of contract, or the transactions covered by this contract, or property or interests in property.

(c) Except as may be otherwise provided in this contract, duties in effect on the contract date are included in the contract price, to the extent allocable to this contract.

(d) (1) If the Contractor is required to pay or bear the burden:

(i) Of any tax or duty which either was not to be included in the contract price pursuant to the requirements of paragraphs (b) and (c), or of a tax or duty specifically excluded from the contract price by a provision of this contract; or

(ii) Of an increase in rate of any tax or duty, whether or not such tax or duty was excluded from the contract price; or

(iii) Of any interest or penalty on any tax or duty referred to in (i) or (ii) above; the contract price shall be increased by the amount of such tax, duty, interest, or penalty allocable to this contract: *Provided*,

That the Contractor, if requested by the Contracting Officer, warrants in writing that no amount of such tax, duty, or rate increase was included in the contract price as a contingency reserve or otherwise: *And provided further,* That liability for such tax, duty, rate increase, interest, or penalty was not incurred through the fault or negligence of the Contractor or his failure to follow instructions of the Contracting Officer.

(2) If the Contractor is not required to pay or bear the burden, or obtains a refund or drawback, in whole or in part, of any tax, duty, interest, or penalty which:

(i) Was to be included in the contract price pursuant to the requirements of paragraphs (b) and (c);

(ii) Was included in the contract price; or

(iii) Was the basis of an increase in the contract price; the contract price shall be decreased by the amount of such relief, refund, or drawback allocable to this contract, or the allocable amount of such relief, refund, or drawback shall be paid to the Government as directed by the Contracting Officer. The contract price also shall be similarly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer, is required to pay or bear the burden, or does not obtain a refund or drawback of, any such tax, duty, interest, or penalty. Interest paid or credited to the Contractor incident to a refund of taxes shall inure to the benefit of the Government to the extent that such interest was earned after the Contractor was paid or reimbursed by the Government for such taxes.

(3) Invoices or vouchers covering any adjustment of the contract price pursuant to this paragraph (d) shall set forth the amount thereof as a separate item and shall identify the particular tax or duty involved.

(4) This paragraph (d) shall not be applicable to social security taxes; income and franchise taxes, other than those levied on or measured by (i) sales or receipts from sales, or (ii) the Contractor's possession of, interest in, or use of property, title to which is in the Government; excess profits taxes; capital stock taxes; unemployment compensation taxes; or property taxes, other than such property taxes, allocable to this contract, as are assessed either on completed supplies covered by this contract, or on the Contractor's possession of, interest in, or use of property, title to which is in the Government.

(5) No adjustment pursuant to this paragraph (d) will be made under this contract unless the aggregate amount thereof is or may reasonably be expected to be over $100.

(e) Unless there does not exist any reasonable basis to sustain an exemption, the Government, upon request of the Contractor, without further liability, agrees, except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from any tax which the Contractor warrants in writing was excluded from the contract price. In addition, the Contracting Officer may furnish evidence appropriate to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price. Except as otherwise provided in this contract, evidence appropriate to establish exemption from duties will be furnished only at the discretion of the Contracting Officer.

(f) (1) The Contractor shall promptly notify the Contracting Officer of all matters pertaining to Federal, State, and local taxes, and duties, that reasonably may be expected to result in either an increase or decrease in the contract price.

(2) Whenever an increase or decrease in the contract price may be required under this clause, the Contractor, shall take action as directed by the Contracting Officer, and the contract price shall be equitably adjusted to cover the costs of such action, including any interest, penalty, and reasonable attorneys' fees.

§ 18–11.401–3 Supplementary clause for possessions of the United States and Puerto Rico.

When a contract will be performed in whole or in part in a possession of the United States or in Puerto Rico, and either the clause set forth in § 18–11.401–1 or that in § 18–11.401–2 is used, the contract shall contain the following supplementary clause:

TAXES (MAY 1965)

The term "local taxes" as used in the clause of this contract entitled "Federal, State, and Local Taxes" includes taxes imposed by a possession of the United States, and the Commonwealth of Puerto Rico.

§ 18–11.401–4 Matters requiring special consideration.

(a) A contract may, in accordance with paragraph (c) of this section, provide that the contract price include or exclude a specific tax, or require that the contractor take certain actions with regard to nonpayment, payment, protest or other treatment of a specific tax. Such special treatment may be required, for example, where the State or local tax law has been recently changed, where there is doubt as to the applicability or allocability of the tax, or where the applicability of the tax is being litigated.

(b) Special consideration should be accorded taxes assessed on the contractor's possession of, interest in, or use of Government-owned real or personal property. The following provision may be inserted in any fixed-price type contract under which the contractor has possession of property to which the Government has title on tax assessment date, pursuant to progress payment clauses or otherwise:

All property taxes assessed on the contractor's possession of, interest in, or use of property, title to which is in the Government, are excluded from the contract price. (September 1962)

(c) (1) Whether State or local taxes are applicable to a purchase of supplies by the Government may depend upon the place and terms of delivery. For example, if the legal incidence of a State tax is on the vendor, and performance of the contract and delivery to the Government are in that State, the tax may apply. If, however, the contract requires delivery to the Government outside that State, the tax may not apply because the transaction is in interstate commerce. The form of bill of lading used (i.e., Government bill, commercial bill, commercial bill convertible to Government bill at destination) may also affect the taxability of the transaction.

(2) Where a contract will be in a substantial amount, available alternative places and terms of delivery should be considered in the light of possible tax consequences.

(d) When Government property is furnished under a facilities contract, the contracting officer shall review the facilities contract when negotiating a subsequent supply contract to assure that the contractor is not reimbursed twice for the same taxes.

§ 18–11.402 Cost-reimbursement type contracts.

No specific tax clause is required in cost-reimbursement type contracts. In all such contracts the problem of Federal, State, and local taxes (which presents solely a question of allowability of costs in connection with the performance of cost-reimbursement type contracts) is covered in the contract clause set forth in § 18–7.203–4 and is treated in Part 18–15.

§ 18–11.403 Foreign tax exemption clauses.

Foreign tax problems should be referred to legal counsel.

Subpart 18–11.5—Tax Exemption Forms

§ 18–11.500 General.

(a) This Subpart 18–11.5 prescribes forms and procedures to provide evidence appropriate to establish exemption from Federal, State, and local taxes, and the form required to purchase cutting oil at the tax rate of 3 cents per gallon rather than 6 cents per gallon.

(b) Unless the contract otherwise requires, evidence of exemption shall not be issued if the amount of taxes on any one invoice or purchase is $1 or less.

(c) With respect to the form set out in § 18–11.501–4, the Internal Revenue Service will accept one certificate covering all orders under a single contract for a specified period not exceeding four calendar quarters.

§ 18–11.501 Federal excise taxes.

The forms of certificates set forth in §§ 18–11.501–1 and 18–11.501–4 may be reproduced locally.

§ 18–11.501–1 Certificate of export to a possession or to Puerto Rico.

The following form of exemption certificate shall be used as proof of exportation or shipment to a possession or Puerto Rico, in accordance with §§ 18–11.201(b) and 18–11.202(b).

CERTIFICATE OF EXPORT

(For use by purchasers of articles for export or shipment to a possession under sections 4056 and 4221(a)(2), Internal Revenue Code of 1954)

---------- 19--

(Name of Contractor)

The undersigned does hereby certify that --

(Quantity and description of supplies)

which were purchased for export, or for shipment to a possession of the United States or to Puerto Rico, under Contract No. ------, were in fact exported to a foreign country, or shipped to a possession of the United States or to Puerto Rico, and a copy of the export bill of lading No. ------ or loading manifest No. ------ pursuant to which the

supplies were shipped, is being retained in the files of _____

_____
(Official address of office)

_____
(Signature)

_____
(Title)

_____
(Address)

This certificate is not intended for use as proof in claiming drawback of import taxes.

§ 18–11.501–4 Cutting oil certificate.

The following form of certificate shall be used by the purchaser of cutting oil, in accordance with § 18–11.102–4(c).

CUTTING OIL CERTIFICATE

(For use by purchaser of lubricating oil subject to tax under section 4091 of the Internal Revenue Code of 1954, for use by purchaser in cutting and machining operations on metals)

Certificate Serial No. _____

_____
(Date)

Contract No. _____
Contractor _____
Product _____
End Use _____

The undersigned hereby certifies that he is officially authorized to issue tax-exemption certificates for the National Aeronautics and Space Administration under the above-described contract, and that the product indicated above, being purchased under said contract, is purchased for the following use as a lubricant in cutting and machining operations on metals:

_____
_____
_____

The undersigned understands that he and National Aeronautics and Space Administration must be prepared to establish by satisfactory evidence the actual use or disposition made of such oil, and that upon his use of the oil for a lubricating purpose other than in cutting and machining operations on metals, or upon his sale or other disposition of oil, he is required to notify the manufacturer.

The undersigned understands that the all guilty parties will, for fraudulent use of this certificate for the purpose of purchasing oils tax free rather than at the rate of 6 cents a gallon, be subject to a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, together with the costs of prosecution.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Contract Period _____
By _____
(Name) _____
(Title) _____
(Address) _____
(Identification Card No.) _____

§ 18–11.502 State and local taxes.

§ 18–11.502–1 Types of evidence of exemption.

Evidence appropriate to establish exemption or immunity from State or local taxes will vary depending upon the grounds of exemption or immunity claimed, the parties to the transaction, and the requirements of the taxing jurisdiction. Such evidence includes but is not limited to the following:

(a) U.S. Government Tax Exemption Certificate (Standard Form 1094);

(b) A copy of the contract or a portion thereof;

(c) Shipping documents indicating that shipments are in interstate or foreign commerce;

(d) A State or local form indicating that supplies or services are for the exclusive use of the United States; or

(e) Any other State or locally required form, certificate, or document to establish general or specific exemption.

§ 18–11.502–2 When evidence of exemption is to be furnished.

(a) Unless there does not exist any reasonable basis to sustain a claimed exemption, a contractor or vendor will be furnished evidence of exemption under a:

(1) Contract which contains the clause prescribed in either § 18–11.401–1 or § 18–11.401–2 in accordance with the terms of those clauses;

(2) Cost-reimbursement type contract at the request of the contractor or at the discretion of the contracting officer; or

(3) Contract or purchase order which contains no provision regarding taxes, at the request of the contractor or at the discretion of the contracting officer, if the contractor warrants that the contract price does not include the tax, or if he consents to a reduction in the contract price if the evidence of exemption is accepted by the taxing jurisdiction.

(b) In case of disagreement as to whether there exists a reasonable basis upon which to sustain exemption of any transaction, the matter should be resolved in accordance with § 18–11.001.

§ 18–11.502–3 Procedure.

(a) When a State or local sales tax attaches at the time of a sale to the United States and the vendor sells to the United States at a price which is exclusive of the tax, Standard Form 1094 shall be furnished to the vendor where the vendor or dealer requires evidence of the tax-exempt sale for use in claiming exemption from payment of the tax to the taxing authority.

(b) When a State or local tax attaches at the time of sale to the consumer but the vendor refuses to sell at a price exclusive of the tax, Standard Form 1094 shall be used to obtain a record of the transaction for use by the U.S. Government in billing the taxing authority for refund of the taxes paid. In case of vendor refusal to sell on a tax-exclusive basis, the relevant payment voucher and Standard Form 1094 shall contain mutual cross-references of serial numbers so that the transaction may be identified for refund purposes. The installation shall bill the relevant local or State taxing authority for refund in case of vendor refusal to sell on tax-exclusive basis. Uncollectible claims shall be referred to the Office of General Counsel, NASA Headquarters.

(c) NASA Headquarters will issue tax exemption forms only to contracting officers or their designees. Each NASA office receiving the forms shall maintain an adequate accounting record of the forms to show at all times (1) the number of U.S. tax exemption certificate books received, (2) the number of each book issued and to whom issued, (3) the numbers of those returned for reissue, or cancellation, or as completely used book covers, and (4) the balances on hand and available for distribution to persons authorized to use them.

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

[FR Doc.71–4616 Filed 4–2–71;8:47 am]

Title 7—AGRICULTURE

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

[Lemon Reg. 474]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.774 Lemon Regulation 474.

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

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department

after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on March 30, 1971.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period April 4, 1971, through April 10, 1971, are hereby fixed as follows:

(i) District 1: 8,000 cartons;

(ii) District 2: 192,000 cartons;

(iii) District 3: Unlimited.

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

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

Dated: April 1, 1971.

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

[FR Doc.71–4731 Filed 4–2–71;8:53 am]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER D—EXPORTATION AND IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Administrative Instructions Prescribing Commuted Travel Time Allowances

Pursuant to the authority conferred upon the Director of the Animal Health Division by § 97.1 of the regulations concerning overtime services relating to imports and exports (9 CFR 97.1), administrative instructions 9 CFR 97.2 (1971 ed.), as amended January 22, 1971 (36 F.R. 1038), prescribing the commuted travel time that shall be included in each period of overtime or holiday duty, are hereby amended by adding to or deleting from the respective "lists" therein as follows:

OUTSIDE METROPOLITAN AREA

FOUR HOURS

Add: Portal, N. Dak. (when served from Minot, N. Dak. (64 Stat. 561, 7 U.S.C. 2260)

This commuted travel time period has been established as nearly as may be practicable to cover the time necessarily spent in reporting to and returning from the place at which the employee performs such overtime or holiday duty when such travel is performed solely on account of such overtime or holiday duty. Such establishment depends upon facts within the knowledge of the Animal Health Division.

It is to the benefit of the public that this instruction be made effective at the earliest practicable date. Accordingly, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and public procedure on this instruction are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Effective date. The foregoing amendment shall become effective upon publication in the FEDERAL REGISTER (4–3–71).

Done at Hyattsville, Md., this 29th day of March 1971.

R. S. SHARMAN,
Director, Animal Health Division, Agricultural Research Service.

[FR Doc.71–4606 Filed 4–2–71;8:46 am]

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Y]

PART 222—BANK HOLDING COMPANIES

Nonbanking Acquisitions by Certain One-Bank Holding Companies

Correction

In F.R. Doc. 71–4205 appearing at page 5581 in the issue for Thursday, March 25, 1971, the word "before" should be inserted in the last line of § 222.4(d) so that it reads "entered into before March 23, 1971."

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 71–CE–4–AD; Amdt. 39–1185]

PART 39—AIRWORTHINESS DIRECTIVES

Cessna Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A Airplanes

It has been determined that there have been instances where P/N 5011130–14 retainer clips on the emergency exit window of Cessna Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes were bent to assist in sealing the exit, resulting in excessive force being required to open the exit. To correct this condition the manufacturer has issued Cessna Service Letter No. ME70–30 and Cessna Service Kit SK402–23 which recommend the installation of an emergency exit release lever which when activated forces the exit open. In order to make the requirements of the Service Letter and Kit installation mandatory, and in the interest of Safety, an Airworthiness Directive is being issued requiring within 50 hours' time in service after the effective date of this AD, modification of the emergency exit window on Cessna Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes, as provided in said Service Letter and Kit.

Since immediate action is required in the interest of safety, compliance with the notice and public procedure provisions of the Administrative Procedure Act is impractical and good cause exists for making this amendment effective in less than thirty (30) days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new AD.

CESSNA. Applies to Models 401 (Serial Nos. 401–0041 and up), 401A (all Serial numbers), 401B (Serial Nos. 401B0001 through 401B0052), 402 (Serial Nos. 401–0041 and up), 402A (all Serial numbers), 402B (Serial Nos. 402B0001 through 402B0030), 411 (Serial Nos. 411–0235 and up), and 411A (Serial Nos. 411A0001 and up) airplanes.

Compliance: Required as indicated, unless already accomplished.

To assure safe operation of the emergency exit window, accomplish the following:

Within 50 hours' time in service after the effective date of this AD, modify the emergency exit window in accordance with Cessna Service Letter No. ME70–30 dated August 21, 1970, and Cessna Service Kit SK402–23 dated June 15, 1970, or by any equivalent method approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region.

NOTE: The installation of Cessna Service Kit SK402–23 does not require pulling the emergency release handle. If handle is inadvertently pulled, assure that existing emergency exit window retention pins are properly installed.

This amendment becomes effective April 6, 1971.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423, sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on March 26, 1971.

JOHN A. HARGRAVE,
Acting Director, Central Region.

[FR Doc.71–4656 Filed 4–2–71;8:51 am]

[Airspace Docket No. 71–SO–6]

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

Designation of Transition Area

On February 10, 1971, a notice of proposed rule making was published in the

FEDERAL REGISTER (36 F.R. 2791), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Bay St. Louis, Miss., transition area.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., May 27, 1971, as hereinafter set forth.

In § 71.181 (36 F.R. 2140), the following transition area is added:

BAY ST. LOUIS, MISS.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Gulf Central-Stennis Field (lat. 30°22'15" N., long. 89°27'16" W.). This transition area is effective from sunrise to sunset daily.

(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 East Point, Ga., on March 24, 1971.

GORDON A. WILLIAMS, Jr.,
Acting Director, Southern Region.

[FR Doc.71-4664 Filed 4-2-71;8:52 am]

[Airspace Docket No. 71-SO-7]

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

Designation of Transition Area

On February 10, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 2791), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Fayetteville, Tenn., transition area.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., June 24, 1971, as hereinafter set forth.

In § 71.181 (36 F.R. 2140), the following transition area is added:

FAYETTEVILLE, TENN.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Fayetteville Municipal Airport (lat. 35°03'28" N., long. 86°33'53" W.); within 3 miles each side of the 188° bearing from Highland RBN (lat. 35°03'32" N., long. 86°33'58" W.), extending from the 6.5-mile-radius area to 8.5 miles south of the RBN.

(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 East Point, Ga., on March 24, 1971.

GORDON A. WILLIAMS, Jr.,
Acting Director, Southern Region.

[FR Doc.71-4665 Filed 4-2-71;8:52 am]

[Airspace Docket No. 71-SO-8]

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

Designation of Transition Area

On February 11, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 2871), stating that the Federal Aviation Administration was an amendment to Part 71 of the Federal Aviation Regulations that would designate the Glasgow, Ky., transition area.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., May 27, 1971, as hereinafter set forth.

In § 71.181 (36 F.R. 2140), the following transition area is added:

GLASGOW, KY.

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Glasgow Municipal Airport (lat. 37°01'54" N., long. 85°57'10" W.); within 3 miles each side of the 252° bearing from Glasgow RBN (lat. 37°01'03" N., long. 86°00'33" W.), extending from the 9-mile radius area to 8.5 miles west of the RBN.

(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 East Point, Ga., on March 24, 1971.

GORDON A. WILLIAMS, Jr.,
Acting Director, Southern Region.

[FR Doc.71-4666 Filed 4-2-71;8:52 am]

[Airspace Docket No. 71-SO-12]

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

Alteration of Control Zone and Transition Area

On February 20, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 3268), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Meridian, Miss. (NAS Meridian), control zone and transition area.

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

Subsequent to publication of the notice, it was determined that that the latitude for NAS Meridian was cited as 32°23'27" in lieu of 32°33'27" and the direction of the control zone extension predicated on Runway 27 extended centerline was cited as west in lieu of east. Additionally, the NAS Meridian LF RBN was decomissioned on December 31, 1970, and the collocated UHF RBN will be relocated to a site on the airport on May 27, 1971. This deletes the requirement for the transition area extension predicated on the 012° bearing from NAS Meridian LF RBN, but requires a control zone extension 7 miles wide, extending to 10.5 miles north of the RBN, and a transition area extension 7 miles wide, extending to 11.5 miles north of the RBN, predicated on the 021° bearing from NAS Meridian UHF RBN. This results in a moderate increase in controlled airspace designation. Since these amendments are editorial and/or minor in nature, notice and public procedure hereon are unnecessary and action is taken herein to alter the descriptions accordingly.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., May 27, 1971, as hereinafter set forth.

In § 71.171 (36 F.R. 2055), the Meridian, Miss. (NAS Meridian), control zone is amended to read:

MERIDIAN, MISS. (NAS MERIDIAN)

Within a 5-mile radius of NAS Meridian (lat. 32°33'27" N., long. 88°33'33" W.); within 3.5 miles each side of the 021° bearing from NAS Meridian UHF RBN, extending from the 5-mile-radius zone to 10.5 miles north of the RBN; within 1.5 miles each side of NAS Meridian TACAN 069° and 359° radials, extending from the 5-mile-radius zone to 6 miles east and north of the TACAN; within 2 miles each side of NAS Meridian TACAN 194° radial, extending from the 5-mile-radius zone to 9.5 miles south of the TACAN; within 2 miles each side of Runways 18L and 27 extended centerline, extending from the 5-mile-radius zone to 4 miles north and east of the runway ends; within 2 miles each side of Runway 36L extended centerline, extending from the 5-mile-radius zone to 5 miles south of the runway end.

In § 71.181 (36 F.R. 2140), the Meridian, Miss. (NAS Meridian) transition area is amended to read:

MERIDIAN, MISS. (NAS MERIDIAN)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of NAS Meridian (lat. 32°33'27" N., long. 88°33'33" W.); within 3.5 miles each side of the 021° bearing from NAS Meridian UHF RBN, extending from the 10-mile-radius area to 11.5 miles north of the RBN; excluding the portion within Meridian, Miss. (Key Field) transition area.

(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 East Point, Ga., on March 25, 1971.

JAMES G. ROGERS,
Director, Southern Region.

[FR Doc.71-4667 Filed 4-2-71;8:52 am]

[Airspace Docket No. 71-WE-2]

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

Alteration of Transition Area

On March 12, 1971, F.R. Doc. 71-3476 (36 F.R. 4754) was published in the FEDERAL REGISTER which altered the description of the Arcata, Calif., transition area.

It was noted that a set of geographical coordinates were inadvertently omitted. Action is taken herein to correct this discrepancy.

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

In consideration of the foregoing, F.R. Doc. 71-3476 (36 F.R. 4754), Arcata, Calif., transition area is amended as follows: Beginning in line 22, after the geographical coordinate "* * * latitude 40°34'00" N. * * *" insert "* * * latitude 40°22'00" N., longitude 124°12'00" W. * * *"

Effective date. The effective date as originally established may be retained.

(Sec. 307(a), Federal Aviation Act of 1958, as amended, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Los Angeles, Calif., on March 24, 1971.

LEE E. WARREN,
Acting Director, Western Region.

In § 71.181 (36 F.R. 2140) the description of the Arcata, Calif., transition area is amended to read as follows:

ARCATA, CALIF.

That airspace extending upward from 700 feet above the surface within 2 miles each side of the 323° bearing from the Arcata, Calif., RBN, extending from the RBN to 7.5 miles northwest of the RBN; that airspace bounded on the north by latitude 40°57'00" N., on the northeast by a line 2 miles northeast of and parallel to the ILS localizer southeast course, on the south by latitude 40°45'00" N., on the southwest by a line 2 miles southwest of and parallel to the 129° and 309° bearings from the Murray Airport latitude 40°48'18" N., longitude 124°06'52" W., on the west by a line 1 mile west of and parallel to the 219° bearing from the Arcata, Calif., RBN; that airspace extending upward from 1,200 feet above the surface, bounded on the north by latitude 41°16'00" N., on the east and south by a line 9 miles northeast of and parallel to the 333° and 153° bearings from the Arcata, Calif., RBN to latitude 40°34'00" N., latitude 40°22'00" N., longitude 124°12'00" W., thence to latitude 40°22'00" N., longitude 124°30'00" W., on the west by longitude 124°30'00" W., within 9 miles each side of the Fortuna, Calif. VORTAC 110° radial, extending from the VORTAC to 61 miles east of the VORTAC, and that airspace within an arc of a 28-mile radius circle centered on the Fortuna, Calif., VORTAC extending counterclockwise from the northeast edge of V27 to the south edge of V195.

[FR Doc.71-4668 Filed 4-2-71;8:52 am]

[Airspace Docket No. 71-WE-8]

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

Alteration of Control Zones

On February 20, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 3267) stating that the Federal Aviation Administration was considering amendments to Part 71 of the Federal Aviation Regulations that would alter the description of the Imperial Beach, Calif., control zone and designate a 3-mile control zone at Brown Field, Calif.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections. No objections were received to the proposed amendments.

Numerous comments were received regarding the airport traffic area and an area to the north of Brown Field that is currently used extensively by general aviation pilots as a practice area. The Federal Aviation Administration intends to make provisions for the continued use of the practice area for flight training through air traffic control authorization.

It has been determined that in the interest of flying safety these amendments may be made effective less than 30 days after publication in the FEDERAL REGISTER.

Effective date. These amendments shall be effective 0901 G.m.t., April 19, 1971.

(Sec. 307(a), Federal Aviation Act of 1958, as amended, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Los Angeles, Calif., on March 24, 1971.

LEE E. WARREN,
Acting Director, Western Region.

In § 71.171 (36 F.R. 2055) the following control zone is added:

SAN DIEGO, CALIF. (BROWN FIELD)

Within a 3-mile radius of Brown Field Municipal Airport (latitude 32°34'22" N., longitude 116°58'47" W.) excluding that airspace west of longitude 117°01'00" W., and south of the United States/Mexican Border. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

In § 71.171 (36 F.R. 2055) the description of the Imperial Beach, Calif., control zone is amended by adding "* * * excluding the portion east of longitude 117°01'00" W., when the San Diego, Calif. (Brown Field) control zone is effective."

[FR Doc.71-4669 Filed 4-2-71;8:52 am]

[Airspace Docket No. 71-CE-38]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Alteration of Jet Route Segment

The purpose of this amendment to Part 75 of the Federal Aviation Regulations is to realign the segment of Jet Route No. 548 from Pullman, Mich., via Traverse City, Mich., to Sault Ste Marie, Mich.

This segment of J-548 is presently aligned via the intersection of Pullman 010° T (010° M) and Sault Ste. Marie 207° T (211° M) radials. This alignment places the point of intersection over the Traverse City VOR.

Accordingly, action is taken herein to alter J-548 segment to include the Traverse City VOR in its description. The utilization of the Traverse City VOR will provide better navigational guidance along this route segment.

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, Part 75 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., May 27, 1971, as hereinafter set forth.

In § 75.100 (36 F.R. 2371) Jet Route No. 548 text is amended by deleting "the INT Sault Ste Marie, Mich.; 207° and Pullman 010° radials; Sault Ste Marie;" and substituting "Traverse City, Mich.; Sault Ste Marie;" 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 March 29, 1971.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.71-4663 Filed 4-2-71;8:51 am]

Chapter II—Civil Aeronautics Board

SUBCHAPTER D—SPECIAL REGULATIONS

[Reg. SPR-44, Amdt. 4]

PART 378a—BULK INCLUSIVE TOURS BY TOUR OPERATORS

Miscellaneous Amendments

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 30th day of March 1971.

Part 378a establishes the terms and conditions governing the furnishing of contract bulk inclusive tours (CBIT's) in foreign air transportation and exempts tour operators from various provisions of the Act and the Board's regulations to enable them to provide bulk inclusive tours to members of the general public. The part expires by its terms on March 31, 1971, and this is also the termination date for Resolutions 079a and 079c of the International Air Transport Association (IATA) which establish the terms and conditions under which tour operators may obtain contract bulk inclusive tour fares over the North and Mid-Atlantic.

Pursuant to IATA agreements, which we have recently approved,[1] the contract bulk inclusive tour fares applicable to the North Atlantic and covered by IATA Resolution 079a have been canceled. However, the carriers have not reached agreement on IATA Resolution 079c which governs fares over the Mid-Atlantic. Accordingly, it is possible that certain CBIT fares will continue in effect in the Mid-Atlantic after the present expiration date of Part 378a. Under these circumstances we will amend Part 378a by extending the effective date 1 year so as to authorize whatever CBIT's may be offered in the Mid-Atlantic.[2]

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[1] Order 71-3-87, Mar. 16, 1971.

[2] We are also making appropriate editorial amendments to § 378a.2(a)(2) to update the tariff references contained therein.

As the amendment extends the exemptions contained in the existing regulation, the Board finds that notice and public procedure hereon are unnecessary and the amendment may be made effective on less than 30 days' notice.

Accordingly, the Civil Aeronautics Board hereby amends Part 378a of the Special Regulations (14 CFR Part 378a) effective April 1, 1971 as follows:

1. Amend paragraph (a)(2) of § 378a.2 to read as follows:

§ 378a.2 Definitions.

As used in this part, unless the context otherwise requires,

(a) "Bulk inclusive tour" means round, circle or single open jaw tour trip transportation, including land services, performed either

* * * * *

(2) Pursuant to CAB 28, Rule 34, issued by Air Tariffs Corporation, Agent; CAB 388, Rule 56, issued by International Air Traffic Tariffs Corp., Agent.

* * * * *

2. Amend § 378a.4 to read as follows:

§ 378a.4 Duration of exemption.

The relief granted by § 378a.3 shall continue in effect until April 1, 1972.

(Secs. 101(3), 204(a), 416, Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 771; 49 U.S.C. 1301, 1324, 1386)

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-4640 Filed 4-2-71;8:49 am]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. 8776o]

PART 13—PROHIBITED TRADE PRACTICES

Arthur Murray Studio of Washington, Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.75 *Free goods or services;* § 13.105 *Individual's special selection or situation;* § 13.155 *Prices:* 13.155–10 Bait; § 13.160 *Promotional sales plans;* § 13.260 *Terms and conditions.* Subpart—Enforcing dealings or payments wrongfully: § 13.1045 *Enforcing dealings or payments wrongfully.* Subpart—Misrepresenting oneself and goods—Goods: § 13.1760 *Terms and conditions:* 13.1760–50 Sales contract. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1892 *Sales contract, right-to-cancel provision;* § 13.1905 *Terms and conditions:* 13.1905–50 Sales contract. Subpart—Securing signatures wrongfully: § 13.2175 *Securing signatures wrongfully.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Arthur Murray Studio of Washington, Inc., et al., Washington, D.C., Docket No. 8776, Feb. 23, 1971]

In the Matter of Arthur Murray Studio of Washington, Inc., Arthur Murray Studio of Baltimore, Inc., Arthur Murray Studio of Bethesda, Inc., and Arthur Murray Studio of Silver Spring, Inc., Corporations, and Victor F. Horst and Edward Marandola, also known as Edward Mara, Individually and as Officers of Said Corporations

Order requiring four Arthur Murray dance studios located in the Washington-Baltimore area to cease conducting contests purportedly based on the skills or abilities of contestants, inducing persons to come to studios without disclosing that the purpose of the visit is to sell dance lessons, falsely representing that lessons will be furnished free or at reduced prices, offering membership in party clubs without disclosing that a substantial number of dance lessons is also required, misrepresenting a student's progress through "dance analysis" tests, subjecting students to additional sales pressure before completion of a current series of lessons, using "relay salesmanship" in a single day, entering into dance contracts at one time in excess of $1,500, entering into such contracts which do not contain a 7-day cancellation provision, and subjecting current students to pressures for additional contracts unless the new contract is expressly cancellable.

The order to cease and desist, is as follows:

It is ordered, That respondents Arthur Murray Studio of Washington, Inc.; Arthur Murray Studio of Baltimore, Inc.; Arthur Murray Studio of Bethesda, Inc.; and Arthur Murray Studio of Silver Spring, Inc.; corporations, and their officers, and respondents Victor F. Horst and Edward Marandola, also known as Edward Mara, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, solicitation, offering for sale, or sale of dancing instructions, or other services, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising or otherwise offering or conducting any quiz, contest, or other device which purports to base the selection of the winner upon skills or abilities of the contestants or upon chance, unless such are the facts.

2. Using any promotion for the purpose of obtaining leads to prospective purchasers of dancing instruction or to induce people to come to respondents' studios unless respondents disclose fully and conspicuously in each and every announcement or description of such promotion (a) that the purpose of such promotion is to induce prospective purchasers of dancing lessons to come to respondents' studios, and (b) that, once at respondents' studios, the prospective purchaser will be subjected to attempts by respondents, through their employees or representatives, to sell said prospective purchasers a course of dancing instruction.

3. Representing, directly or by implication, by means of social security number contests, "special selection offers", "Can You Spell" contests, or any other promotion offer or contest or any certificates relating thereto, or by any other method or means, that a course of dancing instruction or a specified number of dancing lessons, or any other service or thing of value will be furnished free of charge, at a reduced price, or for any price, unless the entire period or periods of bona fide dancing instruction or other service or thing of value is in fact furnished in every instance as represented.

4. Representing on any postal cards sent through the U.S. mail or in any other manner, that the recipient has been selected to receive a gift unless in every instance the gift is in fact given without the imposition of any condition or limitation, and there is clear and conspicuous disclosure at the outset in immediate conjunction with any such representation of:

(a) The nature of the gift the recipient is to receive, and

(b) The full name and address of the offeror of the gift, and

(c) The manner in which such recipient has been selected.

5. Representing, directly or by implication, that the Party Time Club or the Holiday Club, or any other club, group or organization offers members a program of activities such as daily or weekly social events or gala night club parties, or any other activities, unless there is clear and conspicuous disclosure in connection with each offer that such activities are available only upon the purchase of a substantial amount of dancing lessons and the total cost of such lessons is disclosed.

6. Using "dance analysis" tests or any other device purportedly designed to evaluate dancing ability, progress, or proficiency when such test or device is not so designed and so used; or misrepresenting in any manner a student's or prospective student's dancing ability, or the progress made or proficiency achieved by a student during the course of or as a result of taking respondents' courses of instruction.

7. Representing, directly or by implication, that upon completion of a given course of instruction in one specific dance, a specified standard of proficiency will be achieved when, before the specified course is completed or the given standard has been achieved, the student is or will be subjected to sales efforts to induce the purchase of additional dance instruction.

8. Using in any single day "relay salesmanship", that is, consecutive sales talks or efforts of more than one representative to induce the purchase of dancing instruction.

9. Entering into one or more contracts or written agreements for dance instruction or any other service provided by respondents' dance studios when such contracts or written agreements obligate any party to pay a total amount which at any one time exceeds $1,500.

10. Entering into any contract or written agreement for dance instruction or any other service provided by respondents' dance studio unless such contracts or written agreements, regardless of the obligation incurred, shall bear the following notation in at least 10-point bold type:

NOTICE: You may rescind (cancel) this contract, for any reason whatever, by submitting notice in writing of your intention to do so within seven (7) days from the date of making this agreement.

If you rescind (cancel) this contract, the only cost to you will be a fair charge for any lessons or services actually furnished during the period prior to rescission, and all moneys due will be promptly refunded.

11. Contracting with a student or prospective student for a specific course of dancing instruction and thereafter, prior to the completion of the given course, subjecting such student or prospective student to sales effort toward the purchase of additional dance lessons, unless:

(a) Any additional contract for lessons shall expressly state therein that such contract is subject to cancellation by such student or prospective student, with or without cause, at any time up to and including 1 week after the completion of the units of dancing instruction previously contracted for, without cost or obligation, except that a charge may be made for not in excess of two additional lessons furnished during such week; and

(b) Any additional contract for lessons shall expressly state that any moneys or other consideration, except as exempted in subparagraph (a) hereof, tendered to the respondents for additional dance lessons will be promptly returned when such contract is canceled within the time period specified in subparagraph (a) hereof; and

(c) Any additional contract for lessons shall expressly state that all such units of dance lessons previously contracted for shall be used or completed prior to the commencement of the additional lessons; and

(d) Any additional contract for lessons shall expressly state the number of lesson hours remaining under the existing contract.

12. Failing to deliver to each party a copy of every contract entered into by such party providing for dancing instruction or other services.

13. Failing to deliver a copy of this order to cease and desist to all present and future employees, instructors, or other persons engaged in the sale of respondents' services, and failing to secure from each employee or other person a signed statement acknowledging receipt of said order.

14. Failing to post in a prominent place in each studio a copy of this cease and desist order, with the notice that any student or prospective student may receive a copy on demand.

15. Failing, after the acceptance of the initial report of compliance, to submit a report to the Commission once every year during the next 3 years describing all complaints of which respondents have notice respecting unauthorized representations, all complaints of which respondents have notice respecting representations by salesmen which are claimed to have been deceptive, the facts uncovered by respondents in their investigation thereof and the action taken by such respondents with respect to each such complaint.

By "Final Order" order requiring report of compliance, is as follows:

It is ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: February 23, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-4593 Filed 4-2-71;8:45 am]

[Docket No. C-1874]

PART 13—PROHIBITED TRADE PRACTICES

Dandy Weiss, Inc., et al.

Subpart—Furnishing false guaranties: § 13.1053 *Furnishing false guaranties:* 13.1053-35 Fur Products Labeling Act. Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* 13.1108-45 Fur Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185-30 Fur Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212-30 Fur Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-35 Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Dandy Weiss, Inc., et al., Philadelphia, Pa., Docket No. C-1874, Feb. 22, 1971]

In the Matter of Dandy Weiss, Inc., a Corporation, and Reuben Weiss and Milton Dandy, Individually and as Officers of Said Corporation

Consent order requiring a Philadelphia, Pa., manufacturer and wholesaler of fur products to cease misbranding, falsely invoicing and deceptively guaranteeing its fur products.

The order to case and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Dandy Weiss, Inc., a corporation, and its officers, and Reuben Weiss and Milton Dandy, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or manufacture for introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce; or in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur, as the terms "commence", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Representing directly or by implication on a label that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

2. Failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act.

B. Falsely or deceptively invoicing any fur or fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

2. Representing, directly or by implication, on an invoice that the fur contained in such fur or fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

It is further ordered, That Dandy Weiss, Inc., a corporation, and its officers, and Reuben Weiss and Milton Dandy, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported or distributed in commerce.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute

a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: February 22, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-4594 Filed 4-2-71;8:45 am]

[Docket No. C-1876]

PART 13—PROHIBITED TRADE PRACTICES

Jazel, Inc., et al.

Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* 13.1108-45 Fur Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1212 *Formal regulatory and statutory requirements:* 13.1212-30 Fur Products Labeling Act. Subpart—neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-35 Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Jazel, Inc., et al., New York, N.Y., Docket No. C-1876, Feb. 22, 1971]

In the Matter of Jazel, Inc., a Corporation, and Harry Miller, Hyman Zelner, and Sol Ellix, Individually and as Officers of Said Corporation

Consent order requiring a New York City manufacturing furrier to cease and desist from misbranding and falsely invoicing its fur products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Jazel, Inc., a corporation, and its officers, and Harry Miller, Hyman Zelner, and Sol Ellix, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding any fur product by failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act.

2. Falsely or deceptively invoicing any fur product by failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: February 22, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-4596 Filed 4-2-71;8:46 am]

[Docket No. C-1875]

PART 13—PROHIBITED TRADE PRACTICES

Fred Luciano and Lucienne Furs

Subpart—Furnishing false guaranties: § 13.1053 *Furnishing false guaranties:* 13.1053-35 Fur Products Labeling Act. Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* 13.1108-45 Fur Products Labeling Act. Subpart—Misbranding and mislabeling: § 13.1212 *Formal regulatory and statutory requirements:* 13.1212-30 Fur products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852-35 Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Fred Luciano et al., New York, N.Y., Docket No. C-1875, Feb. 22, 1971]

In the Matter of Fred Luciano, an Individual Trading as Lucienne Furs

Consent order requiring a New York City manufacturer of fur products to cease misbranding, deceptively invoicing, and falsely guaranteeing his fur products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondent Fred Luciano, individually and trading as Lucienne Furs or under any other trade name, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding any fur product by failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act.

2. Falsely or deceptively invoicing any fur product by failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

It is further ordered, That respondent Fred Luciano, individually and trading as Lucienne Furs or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondent has reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Issued: February 22, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-4597 Filed 4-2-71;8:46 am]

[Docket No. 8691o]

PART 13—PROHIBITED TRADE PRACTICES

National Association of Women's and Children's Apparel Salesmen, Inc., et al.

Subpart—Aiding, assisting and abetting unfair or unlawful act or practice: § 13.290 *Aiding, assisting and abetting unfair or unlawful act or practice.* Subpart—Coercing and intimidating: § 13.370 *Suppliers and sellers.* Subpart—Combining or conspiring: § 13.385

To boycott seller-suppliers; § 13.395 *To control marketing practices and conditions.* Subpart—Cutting off access to customers or market: § 13.560 *Interfering with distributive outlets;* § 13.565 *Interfering with advertising mediums.*

(Sec. 6, 38 Stat. 721: 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, National Association of Women's and Children's Apparel Salesmen, Inc., et al., Atlanta, Ga., Docket No. 8691, Feb. 25, 1971]

In the Matter of National Association of Women's and Children's Apparel Salesmen, Inc., a Corporation, et al.

Order requiring a trade association of organizations and groups of salesmen engaged in the wholesale selling of women's and children's wearing apparel with headquarters in Atlanta, Ga., to cease refusing to display at any trade show the goods supplied by any manufacturer who is represented by a member of NAWCAS or to hinder, interfere with or restrict any company or person eligible to display goods at such a trade show; using any "uncooperative manufacturers list" to discourage, prohibit or forbid the display of merchandise at such show; refusing to accept into NAWCAS membership any individual otherwise eligible; withdraw from files all lists of uncooperative firms previously barred and report to the FTC the destruction of such lists; and no later than the next annual convention, revise the bylaws, articles of incorporation and rules and regulations of NAWCAS to incorporate each prohibition contained in subparagraphs 1 through 17 of Part I of this order.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

I. *It is ordered,* That respondents National Association of Women's and Children's Apparel Salesmen, Inc. (also known as NAWCAS Guild, and hereinafter referred to as NAWCAS), a corporation, its officers, representatives, agents, and members of its Board of Governors and Executive Advisory Council; Marshall J. Mantler, individually and as executive director of NAWCAS; and Style Exhibitors, Inc. (hereinafter referred to as Exhibitors), a corporation, individually and as representative of all the affiliated members of NAWCAS that operate trade shows, directly or indirectly, or through any corporate or other device, in connection with the promotion, offering for sale, sale or distribution of women's and children's apparel or accessories in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from engaging in any of the following acts, practices or things:

(1) Refusing or threatening to refuse to promote, display, offer to sell, distribute, or sell at any trade show women's and children's apparel or accessories supplied by any manufacturer who is represented by a member of NAWCAS, a member of any affiliate, or any person who is otherwise eligible for trade show participation.

(2) Entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, or agreement with any other party for the purpose or with the effect of preventing, hindering, or interfering with a manufacturer from having his merchandise displayed, exhibited, offered for sale or sold in or from any location not actually contracted for and used as space by respondent NAWCAS or by a representative who is a member of NAWCAS, a member of any affiliate, or any person as a part of a NAWCAS trade show participation for the conduct of a trade show sponsored by NAWCAS, its members or affiliates.

(3) Entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, or agreement with any other party for the purpose or with the effect of preventing, hindering, or interfering with a manufacturer's efforts to have his merchandise displayed, exhibited, sold or offered for sale in any space not actually contracted for and used by a representative who is a member of NAWCAS, a member of any affiliate, or any person as a part of a NAWCAS trade show participation.

(4) Restricting, regulating, or limiting any member of NAWCAS, any member of any affiliate, or any person who is otherwise eligible for trade show participation, in the selection of any merchandise that he may wish to display, offer for sale or sell at any trade show or exhibition.

(5) Requiring, whether directly or indirectly any manufacturer of women's and children's apparel or accessories to comply with any demand, term or condition made by NAWCAS or any of its affiliated members as a condition of having the manufacturer's goods exhibited in a NAWCAS affiliated trade show.

(6) Preparing, printing, publishing or otherwise communicating by any method or means any "uncooperative manufacturers list" or similar device with the purpose or effect of discouraging or preventing the merchandise of any particular manufacturer from being exhibited at any affiliate trade show.

(7) Prohibiting or forbidding any member of NAWCAS or of any of its affiliates, from soliciting the representation of any line of merchandise produced by any manufacturer.

(8) Prohibiting or forbidding any member of NAWCAS or of any of its affiliates, from representing any line of merchandise produced by any manufacturer because said member replaced another member as a representative of said manufacturer.

(9) Prohibiting or forbidding the merchandise of any manufacturer from being promoted or displayed, or offered for sale, distribution or sale by any member of NAWCAS or of any of its affiliates, because said member replaced another member as a representative of said manufacturer.

(10) Conditioning the showing by any member of NAWCAS of any merchandise of any manufacturer at any trade show organized by any affiliate or other NAWCAS group on the execution by said member of a contract with the manufacturer he represents containing terms or conditions established by and acceptable to respondents.

(11) Restricting or limiting any affiliate or NAWCAS group from accepting as a member any person who transfers from another affiliate or otherwise is eligible or qualified to sell merchandise of any manufacturer.

(12) Requiring any affiliate or other NAWCAS group to agree with any other affiliate on dates when or places where merchandise may be displayed or exhibited, offered for sale, or sold, except that nothing shall prevent any affiliate from continuing to utilize the dates at which such affiliate customarily held its shows, or voluntarily agree to show dates.

(13) Denying or granting courtesy or provisional showing of merchandise to any manufacturer unless said manufacturer is first approved by NAWCAS or a NAWCAS affiliate other than the one to which application is being made.

(14) Prohibiting or forbidding any merchandise of any manufacturer represented by a member of NAWCAS or any of its affiliates from being promoted, displayed, exhibited, offered for sale, or sold at any place or any time by said manufacturer, representative, or other representative designated by said manufacturer.

(15) Prohibiting, restricting, or limiting any person or firm engaged in the offering for sale, distribution or sale of women's and children's apparel or accessories from obtaining any room, rooms, or office space at any time in any facility.

(16) Refusing to accept for membership in NAWCAS any individual who is otherwise eligible for membership and is actively and regularly engaged as a salesman or manufacturer who does not have salesmen and who travels a territory or territories himself, of women's and children's wholesale apparel and accessories irrespective of whether such individual was previously denied or excluded from membership.

(17) Refusing to accept as an exhibitor at any trade show any salesman who may also be a manufacturer, importer, wholesaler, or jobber, or officers or employees thereof, whose line or lines of women's and children's apparel are not exhibited at that trade show by a member of NAWCAS or a member of any of its affiliates.

(18) Continuing to retain any provision in its constitution, bylaws, code of ethics, or rules and regulations which contravenes or conflicts in any way with any of the above prohibitions.

II. *It is further ordered,* That respondent NAWCAS shall:

(1) Within thirty (30) days from the effective date of this order mail to or otherwise cause to be served on each of its members a conformed copy of this order.

(2) Provide each applicant for membership in NAWCAS with a conformed copy of this order.

(3) Within ninety (90) days from the effective date of this order:

(a) Withdraw from the files of NAWCAS or any of its officers and directors, and attempt to recover from all members, all lists of names of all manufacturers who have been deemed at any time to be uncooperative, and file with the Secretary of the Federal Trade Commission an affidavit within thirty (30) days thereafter reporting its attempts to recover such lists and the destruction of all such lists recovered.

(b) Notify all manufacturers whose merchandise has been prohibited from trade shows that their merchandise is no longer prohibited from being shown.

(4) No later than the next annual convention of NAWCAS cause the adoption and revision of all bylaws, articles of incorporation or rules and regulations to incorporate each of the prohibitions contained in subparagraphs 1–17 of Part I hereof, and inaugurate a program for the effective enforcement of such amended provisions.

III. *It is further ordered*, That respondent Exhibitors and the other affiliate members of respondent NAWCAS shall, within sixty (60) days from the effective date of this order:

(1) Notify each manufacturer whose merchandise has been prohibited from its trade show, except those so notified by respondent NAWCAS, that its merchandise is no longer prohibited from being shown.

(2) Withdraw from and cancel in any agreement, lease or contract with any merchandise mart or other facility all provisions or restrictions that prevent or limit the time, place or method by which any other lessee determines to offer for sale and sell his merchandise.

(3) No later than the next meeting of the membership of respondent Exhibitors and the other affiliate members of NAWCAS, cause the adoption and revision of all bylaws, articles of incorporation and rules and regulations to incorporate each of the prohibitions contained in subparagraphs 1–17 of Part I hereof, and inaugurate a program for the effective enforcement of such amended provisions.

IV. *It is further ordered*, That Marshall J. Mantler shall cease and desist, directly or indirectly, from organizing or participating in any activities of, knowingly supporting, being a member of, or contributing anything of value to any group or association involved in the promotion, offering for sale, sale or distribution of women's and children's apparel or accessories in commerce, the purposes or activities of which are, in any manner, inconsistent with any of the provisions of this order.

V. *It is further ordered*, That nothing contained herein shall prevent affiliate members of NAWCAS from retaining, adopting, and enforcing reasonable rules or regulations for the registration and conduct of all persons in attendance at trade shows, so long as such rules or regulations are not prohibited by any of the provisions of this order or are not used as devices to unreasonably restrain trade.

VI. *It is further ordered*, That the respondents herein shall within sixty (60) days of the effective date of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order, plus such additional reports thereafter as may be required to show compliance with all terms and conditions herein.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the structure or status of respondents such as dissolution, assignment or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries, the creation or dissolution of affiliate members, or any other change which may affect compliance obligations arising out of this order.

Issued: February 25, 1971.

By the Commission.[1]

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-4598 Filed 4-2-71;8:46 am]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 71-94]

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

Special Tonnage Tax and Light Money; Senegal

MARCH 22, 1971.

The Department of State advised the Department of the Treasury on January 28, 1971, that the Department of State has obtained from the Government of Senegal satisfactory evidence that no discriminating duties of tonnage or imposts have been imposed or levied in ports of Senegal upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise imported into Senegal in such vessels from the United States or from any foreign country.

Therefore, by virtue of the authority vested in the President by section 4228 of the Revised Statutes, as amended (46 U.S.C. 141), which was delegated to the Secretary of the Treasury by the President by Executive Order No. 10289, September 17, 1951, as amended by Executive Order No. 10882, July 18, 1960 (3 CFR Ch. II), and pursuant to the authorization provided by Treasury Department Order No. 190, Rev. 7, September 4, 1969 (34 F.R. 15846), I declare that the foreign discriminating duties of tonnage and impost within the United States are suspended and discontinued, so far as respects vessels of Senegal, and the produce, manufactures, or merchandise imported into the United States in such vessels from Senegal or from any other foreign country. This suspension and discontinuance shall take effect from January 28, 1971, and shall continue for so long as the reciprocal exemption of vessels wholly belonging to citizens of the United States and their cargoes shall be continued and no longer.

In accordance with this declaration, § 4.22, Customs regulations, is amended by the insertion of "Senegal" in the appropriate alphabetical sequence in the list of nations whose vessels are exempted from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

(80 Stat. 379, R.S. 4219, as amended, 4225, as amended, 4228, as amended, sec. 3, 23 Stat. 119, as amended; 5 U.S.C. 301, 46 U.S.C. 3, 121, 128, 141)

[SEAL] EUGENE T. ROSSIDES, *Assistant Secretary of the Treasury.*

[FR Doc.71-4609 Filed 4-2-71;8:47 am]

[1] Chairman Kirkpatrick not participating.

Title 20—EMPLOYEES' BENEFITS

Chapter III—Social Security Administration, Department of Health, Education, and Welfare

[Reg. No. 4, further amended]

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950-)

Felonious Homicide

On January 15, 1971, there was published in the FEDERAL REGISTER (36 F.R. 612) a notice of proposed rule making with proposed amendments to Subparts D and J of Regulations No. 4. The proposed amendments provide that: (1) A conviction of homicide of the wage earner will bar entitlement to benefits only if the homicide is felonious and intentional; and (2) where a claimant has been determined entitled to benefits, but subsequently is finally convicted of the felonious and intentional homicide of the wage earner, the initial determination may be reopened at any time. Interested parties were given the opportunity to submit within 30 days, data, views, or arguments with regard to the proposed amendments. No comments were received and the proposed regulations are hereby adopted without change and are set forth below.

(Secs. 205 and 1102, 53 Stat. 1368, as amended, 49 Stat. 647, as amended; section 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18, 631; 42 U.S.C. 405, and 1302)

Effective date. These amendments shall be effective upon publication in the FEDERAL REGISTER (4–3–71).

Dated: March 24, 1971.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: March 31, 1971.

JOHN G. VENEMAN,
Acting Secretary of Health, Education, and Welfare.

1. Section 404.364 is revised to read as follows:

§ 404.364 Effect of conviction of felonious and intentional homicide on entitlement to benefits or lump sum based on the deceased's earnings.

A person who has been finally convicted by a court of competent jurisdiction of the felonious and intentional homicide of an insured individual shall not be entitled to monthly benefits or to the lump-sum death payment based on the earnings of such deceased individual and such felon shall be considered nonexistent in determining the entitlement of other persons to monthly benefits or the lump-sum death payment based on the deceased individual's earnings.

2. In § 404.957, paragraph (c)(9) is added to read as follows:

§ 404.957 Reopening initial, revised, or reconsidered determinations of the Administration and decisions or revised decisions of a hearing examiner or the Appeals Council; finality of determination and decisions.

An initial, revised, or reconsidered determination of the Administration or a decision or revised decision of a hearing examiner or of the Appeals Council which is otherwise final under § 404.908, § 404.916, § 404.940, or § 404.951 may be reopened:

* * * * *

(c) At any time when:

* * * * *

(9) Such initial, revised, or reconsidered determination or decision or revised decision is that a claimant is entitled to monthly benefits or to a lump-sum death payment based on the earnings of a deceased individual and thereafter it is established that such claimant was finally convicted by a court of competent jurisdiction of the felonious and intentional homicide of such deceased individual.

[FR Doc.71-4671 Filed 4-2-71;8:52 am]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7107]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Unrelated Trade or Business

On December 30, 1970, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under section 513 of the Internal Revenue Code of 1954 to conform the regulations to changes made by section 121(b)(4) of the Tax Reform Act of 1969 (83 Stat. 536) was published in the FEDERAL REGISTER (35 F.R. 19755). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments of the regulations as proposed are hereby adopted.

(Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

Approved: March 29, 1971.

JOHN S. NOLAN,
Acting Assistant Secretary of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) under section 513 of the Internal Revenue Code of 1954 to the portion of section 121 of the Tax Reform Act of 1969 (83 Stat. 536) relating to unrelated trade or business of tax exempt organizations, such regulations are amended to read as follows:

PARAGRAPH 1. Section 1.513 is amended by revising paragraph (a)(2) and amending the historical note to read as follows:

§ 1.513 Statutory provisions; unrelated trade or business.

SEC. 513. *Unrelated trade or business*—(a) *General rule.* * * *

(2) Which is carried on, in the case of an organization described in section 501(c)(3) or in the case of a college or university described in section 511(a)(2)(B), by the organization primarily for the convenience of its members, students, patients, officers, or employees; or, in the case of a local association of employees described in section 501(c)(4) organized before May 27, 1969, which is the selling by the organization of items of work-related clothes and equipment and items normally sold through vending machines, through food dispensing facilities, or by snack bars, for the convenience of its members at their usual places of employment; or

* * * * *

[Sec. 513 as amended by sec. 4, Act of July 14, 1960 (Public Law 86-667, 74 Stat. 536); Sec. 121(b)(4) Tax Reform Act 1969 (83 Stat. 536)]

PAR. 2. Paragraph (e) of § 1.513–1 is amended to read as follows:

§ 1.513–1 Definition of unrelated trade or business.

* * * * *

(e) *Exceptions.* Section 513(a) specifically states that the term "unrelated trade or business" does not include—

(1) Any trade or business in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) Any trade or business carried on by an organization described in section 501(c)(3) or by a governmental college or university described in section 511(a)(2)(B), primarily for the convenience of its members, students, patients, officers, or employees; or, any trade or business carried on by a local association of employees described in section 501(c)(4) organized before May 27, 1969, which consists of the selling by the organization of items of work-related clothes and equipment and items normally sold through vending machines, through food dispensing facilities, or by snack bars, for the convenience of its members at their usual places of employment; or

(3) Any trade or business which consists of selling merchandise, substantially all of which has been received by the organization as gifts or contributions.

An example of the operation of the first of the exceptions mentioned above would be an exempt orphanage operating a retail store and selling to the general public, where substantially all the work in carrying on such business is performed for the organization by volunteers without compensation. An example of the first part of the second exception, relating to an organization described in section 501(c)(3) or a governmental college or university described in section 511(a)(2)(B), would be a laundry operated by a college for the purpose of laundering dormitory linens and the clothing of students. The latter part of the second exception, dealing with certain sales by local employee associations, will not apply to sales of these items at locations other than the usual place of employment of the employees; therefore sales at such other locations will continue to be treated as unrelated trade or business. The third exception applies to so-called "thrift shops" operated by a tax-exempt organization where those desiring to benefit such organization contribute old clothes, books, furniture, et cetera, to be sold to the general public with the proceeds going to the exempt organization.

[FR Doc.71-4587 Filed 4-2-71;8:45 am]

[T.D. 7106]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Information Reporting by Health Care Carriers

On November 20, 1970, a notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under Section 6041 of the Internal Revenue Code of 1954, relating to information reporting by health care carriers, was published in the FEDERAL REGISTER (35 F.R. 17858). After consideration of all the relevant matter presented by interested persons regarding the rules proposed, the amendments of the regulations as proposed are hereby adopted.

(Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

Approved: March 29, 1971.

JOHN S. NOLAN,
Acting Assistant Secretary of the Treasury.

In order to revise the rules under the Income Tax Regulations (26 CFR Part 1) under section 6041 of the Internal Revenue Code of 1954, such regulations are amended as follows:

Section 1.6041–7 is amended to read as follows:

§ 1.6041–7 Permission to submit information required by Form 1099 or W–2 on magnetic tape.

(a) *General.* For rules relating to permission to submit the information required by Form 1099 or W–2 on magnetic tape or other media, see § 1.9101–1. See also paragraph (b)(2) of § 31.6011(a)–7 of this chapter (Employment Tax Regulations) for additional rules relating to Form W–2.

(b) *Returns on magnetic tape by departments of health care carriers.* (1) For calendar years beginning on or after January 1, 1971, a health care carrier, or an agent thereof, making payment of fees or other compensation to providers of medical and health care services, may make a separate return on magnetic tape for each separate department within a specific line of such carrier's business, so long as all of such returns taken together contain all of the information required by section 6041 with respect to each provider of medical and health care services to whom such health care carrier makes payments aggregating $600 or more during the calendar year. Examples of separate departments within a specific line of such carrier's business (such as health and accident insurance) include, but are not limited to, separate departments to process claims of individual and group policyholders; and separate departments established along geographic lines.

(2) For purposes of this paragraph, the term "health care carrier" means any person making health care payments: (i) In exchange for the payment of a premium, (ii) in accordance with an employee benefit program, or (iii) in connection with a government-sponsored health care program.

[FR Doc.71–4586 Filed 4–2–71;8:45 am]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

[CGFR 70–83a]

PART 82—BOUNDARY LINES OF INLAND WATERS

Grays Harbor, Wash.

The purpose of this amendment is to change the location of the line of demarcation that separates the high seas from rivers, harbors, and inland waters at Grays Harbor, State of Washington. This line indicates to mariners the point at which either the inland or international nautical rules of the road become applicable. The amendment was proposed in a notice of proposed rule making (CGFR 70–83) issued on July 1, 1970 (35 F.R. 10696).

That notice fully described the present requirements and the reasons for the amendment. Interested persons were given an opportunity to participate in the rule making procedure. No comments were received on the proposal. The amendment is adopted as proposed.

In consideration of the foregoing, Part 82 is amended by revising § 82.122 to read as follows:

§ 82.122 Grays Harbor, Wash.

A line drawn from Grays Harbor Bar Range Rear Light to Grays Harbor Entrance Lighted Whistle Buoy 3; thence to Grays Harbor Entrance Lighted Whistle Buoy 2; thence to Grays Harbor Light.

(Sec. 2, 28 Stat. 672; sec. 6(b)(1), 80 Stat. 937; 33 U.S.C. 151, 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

Effective date. This amendment shall become effective on April 2, 1971.

Dated: March 31, 1971.

C. R. BENDER,
Admiral, U.S. Coast Guard, Commandant.

[FR Doc.71–4630 Filed 4–2–71;8:49 am]

Chapter II—Corps of Engineers, Department of the Army

PART 204—DANGER ZONE REGULATIONS

Bristol Bay, Alaska; Correction

F.R. Doc. 71–2107, appearing at 36 F.R. 3047, February 17, 1971, is corrected by revoking paragraph 1 thereof and inserting a new paragraph, as follows:

1. Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), and Chapter XIX of the Army Appropriation Act of July 9, 1918 (40 Stat. 892; 33 U.S.C. 3), § 204.222a establishing and governing the use of a danger zone in Bristol Bay, Alaska, is hereby amended with respect to paragraph (a) redesignating the boundaries of the area, effective immediately upon publication in the FEDERAL REGISTER (4–3–71), as follows:

§ 204.222a Bristol Bay, Alaska; air-to-air weapon range, Alaskan Air Command, U.S. Air Force.

(a) *The danger zone.* An area in Bristol Bay beginning at latitude 58°24′ N., longitude 159°10′ W.; thence to latitude 57°58′ N., longitude 158°30′ W.; thence to latitude 57°07′ N., longitude 160°20′ W.; thence to latitude 58°02′ N., longitude 161°40′ W.; and thence to the point of beginning.

* * * * *

[Regs., Jan. 21, 1971, 1522–01 (Bristol Bay, Alaska)—ENGCW–ON] (Sec. 7, 40 Stat. 266, 33 U.S.C. 1)

For the Adjutant General.

R. B. BELNAP,
Special Advisor to TAG.

[FR Doc.71–4570 Filed 4–2–71;8:45 am]

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

[Circular No. 2281]

PART 1720—PROGRAMS AND OBJECTIVES

Subpart 1725—Program Policy

ENVIRONMENTAL CONSIDERATIONS

On page 14220 of the FEDERAL REGISTER of September 9, 1970, there was published a notice and text of a proposed amendment to Subpart 1725 of Title 43, Code of Federal Regulations. The purpose of the amendment is to revise the management policy for public lands administered by the Bureau of Land Management to include specifically the considerations required by the National Environmental Policy Act of 1969 (83 Stat. 852) and Executive Order No. 11514.

Interested persons were given 30 days within which to submit comments, suggestions, or objections to the proposed amendment. Four comments were received. All endorsed the proposal and suggested editorial changes.

One suggested a change to make it clear that the regulation was not intended to prohibit oil and gas leasing. Resource development is considered to be a beneficial use of the environment, and the regulation has been revised to make this clear.

Two suggested a change to specify that the reference in § 1725.3–2(a) to "existing or future demand" included "human as well as economic values." Under the principles of multiple use and environmental protection both noneconomic and economic needs and values are considered. The regulation has been revised to make it clear that values of all kinds are considered.

Another suggested that it be made clear that lands will be manged under multiple use without damage to the natural resources. The regulation has been revised to make it clear that all resources will be equally considered in land management.

The revised regulation as set forth below shall become effective upon publication in the FEDERAL REGISTER (4–3–71).

Section 1725.3–2 is amended to read as follows:

§ 1725.3–2 Intensity of use and management of lands retained for multiple use management.

Consistent with the provisions of applicable law, the land will be managed:

(a) To attain the widest range of beneficial uses of the environment (including the land, water, flora, fauna, and other environmental elements), without undue environmental degradation, risk

to health or safety, or other undesirable consequences.

(b) To attain optimum production of its various products and for those other beneficial uses for which the lands are physically and economically suited, consistent with acceptable environmental quality.

(c) To preserve important historic, cultural, and natural aspects of our national heritage.

The following matters will be considered:

(1) Existing or future economic and social needs for the resource, use, value, or commodity.

(2) The effect of any proposed use on all other resource values.

(3) Coordination and cooperation with the resource use and management programs of States, local governments, public organizations and private landowners.

(4) Consistency with national programs.

(5) Compatibility of the possible uses.

(6) Compatibility with the maintenance and enhancement of long-term productivity of the lands and the integrity of the environment.

ROGERS C. B. MORTON,
Secretary of the Interior.

MARCH 29, 1971.

[FR Doc.71-4615 Filed 4-2-71;8:47 am]

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5035]

[Arizona 1092]

ARIZONA

Withdrawal for Reclamation Project

By virtue of the authority contained in section 3 of the Act of June 17, 1902, as amended and supplemented, 43 U.S.C. section 416 (1964), it is ordered as follows:

Subject to valid existing rights, the following described public lands, which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C., Ch. 2), and from filing of applications and offers under the mineral leasing laws, and reserved for the Peacock Substation Site of the Central Arizona Project:

GILA AND SALT RIVER MERIDIAN

T. 24 N., R. 14 W.,
Sec. 6, SW¼.

The area described contains 160 acres in Mohave County.

HARRISON LOESCH,
Assistant Secretary of the Interior.

MARCH 29, 1971.

[FR Doc.71-4619 Filed 4-2-71;8:48 am]

Title 45—PUBLIC WELFARE

Chapter II—Social and Rehabilitation Service (Assistance Programs), Department of Health, Education, and Welfare

PART 250—ADMINISTRATION OF MEDICAL ASSISTANCE PROGRAMS

Information Reporting Requirements, Internal Revenue Code; Fraud in the Medical Assistance Program

Correction

In F.R. Doc. 71-4094 (§ 250.71) and F.R. Doc. 71-4093 (§ 250.80) appearing at page 5789 in the issue of Saturday, March 27, 1971, the effective date in the last paragraph reading "(3-25-71)" should read "(3-27-71)".

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 71-184]

PART 2—FREQUENCY ALLOCATION AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

PART 97—AMATEUR RADIO SERVICE

Availability of Frequencies for Use by Amateur Service on Shared Basis With Loran Stations; Correction

In the matter of amendment of Parts 2 and 97 of the Commission's rules to modify the availability of frequencies in the band 1800-2000kc/s for use by the Amateur Service on a shared basis with Loran stations.

In the above-entitled matter, FCC 71-184, released February 24, 1971, 36 F.R. 4264, § 2.106, NG Footnote NG15(a)(4) and § 97.61(b)(2), in the first column "(Day/Night) 1800-1825kc/s" for South Dakota should read: "1000/200."

Released: March 30, 1971.

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

[FR Doc.71-4631 Filed 4-2-71;8:49 am]

[Docket No. 18854; FCC 71-296]

PART 83—STATIONS ON SHIPBOARD IN MARITIME SERVICES

Auxiliary Source of Electrical Energy on Certain U.S. Vessels

Report and order. In the matter of amendment of Part 83 to provide for an auxiliary source of electrical energy on certain U.S. vessels subject to the Great Lakes Agreement; Docket No. 18854.

1. A notice of proposed rule making (NPRM) in the above-entitled matter was released by the Commission on May 15, 1970, FCC 70-497, 35 F.R. 7743. In brief, the Commission proposed in the NPRM that Part 83 of its rules be amended to require an auxiliary source of electrical energy for radiotelephone installations on Great Lakes cargo vessels of 1,000 gross tons or more. Timely comments, all of which have been extremely helpful to the Commission in resolving the matters involved in this proceeding, were filed by three parties: Lake Carriers' Association (LCA), American Institute of Merchant Shipping (AIMS), and Lorain Electronics Corporation (LEC). With provision for alternative means of compliance and related rule modifications suggested by the parties, the basic proposal is adopted by the Commission.

2. In arguments preliminary to its substantive comments, LCA observes that the Great Lakes Agreement is the sole source of Commission jurisdiction over radio equipment on Great Lakes vessels; and suggests that since the Agreement prescribes no requirement for auxiliary sources of radiotelephone power on cargo vessels, "the Commission's authority to promulgate a regulation such as that proposed would appear to be doubtful." In paragraph 2 of its NPRM, the Commission acknowledged that "[t]he basic authority governing the use of radio for safety purposes by watercraft plying the Great Lakes is the * * * Great Lakes Agreement." However, Article 8 of the Agreement contains the general requirement that vessels subject to the Agreement "be fitted with a radiotelephone installation in effective operating condition," and Article 1 thereof commands each Government "to take all steps which may be necessary to give this Agreement full and complete effect." In these connections, section 303(r) of the Communications Act (47 U.S.C. sec. 303(r)) requires the Commission to adopt "such rules and regulations * * * as may be necessary to carry out the provisions of this Act, or any * * * treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party." Additionally, under section 1 of the Act (47 U.S.C. sec. 151), the Commission is charged with the general responsibility of "promoting safety and property through the use of wire and radio communications." Accordingly, as stated in paragraph 7 of the NPRM:

> Given the safety purposes stated in the Agreement, and the commitments of the parties to take all steps necessary to achieve those objectives, the Commission believes it

would be remiss in its responsibilities under the Agreement and the Communications Act, if it did not prescribe additional requirements for vessels of U.S. registry in those instances where it is determined that they are necessary safety measures.

Although—as stated by LCA and acknowledged in the NPRM—the Great Lakes Agreement is open to amendment, the Commission believes that its proposal is a valid means of accomplishing the desired safety objective; namely, that a lack of emergency communication capability not contribute to loss of life in situations like the "Daniel J. Morrell" sinking discussed in the NPRM.

3. From the LCA comments, the following appears: (a) Some 420 cargo vessels presently ply the Great Lakes; (b) of these 420 vessels, some 200 are of U.S. registry; (c) of the 200 U.S. vessels, 196 are owned by a total of 18 vessels companies comprising the membership of LCA; (d) following the "Morrell" tragedy, 143 of the 196 vessels were voluntarily equipped by their owners with an auxiliary radiotelephone installation having an independent power supply, at a cost of $1,500 per vessel; and (e) of the 143 auxiliary radiotelephone installations, 124 are single channel sets capable of operating only on the distress frequency 2182 kHz, the balance having other channel capability in addition to 2182 kHz.[1] LCA recommends that "[i]f the Commission is still of the opinion that it does have legal authority to promulgate a regulation such as that proposed," an auxiliary radiotelephone installation, capable of operating on at least 2182 kHz, be permitted as an alternative to the auxiliary source of energy proposed by the Commission. An LEC "grandfather" recommendation is to the same effect, LEC citing the substantial investments already made by vessel owners on a voluntary basis, and "uncertainties in the future" relating to possible changes in the Great Lakes Agreement and/or the Commission's rules.

4. While the Commission is of the view that its proposal for an auxiliary source of energy for the principal radiotelephone installation is the preferable means of accomplishing the underlying safety objective, the LCA and LEC comments have persuaded the Commission that an auxiliary radiotelephone installation having an independent power supply—provided it complies with the illumination, power and speaker requirements of paragraphs 2, 5, and 6 of Regulation 1 of the Great Lakes Agreement—is an acceptable alternative thereto. Additionally, because the American vessels presently without an auxiliary aspect to their radiotelephone installations are only on the order of 50 or less of the 200 such vessels presently plying the Great Lakes,[2] the "grandfather" system suggested by LEC will not be resorted to, and the LCA recommendation that auxiliary radiotelephone installations be permitted unrestrictedly will be followed.

5. AIMS calls attention to the fact that certain American-flag ocean-going vessels sometimes operate in the Great Lakes as well. In this connection, AIMS points out that the affected vessels are required by the Great Lakes Agreement to be fitted with a radiotelephone installation, and by the Safety of Life at Sea Convention of 1960 (SOLAS Convention) to be fitted with a radiotelegraph installation and an auxiliary source of energy for such radiotelegraph installation. Stressing that use with radiotelephone equipment is not among the SOLAS Convention's specified purposes for which the latter auxiliary source of energy may be utilized, AIMS requests that either (a) affected vessels complying with the radiotelegraph requirements of the SOLAS Convention be exempt from the requirement for an auxiliary source of energy for the radiotelephone installation contemplated by the Great Lakes Agreement, or (b) such vessels be permitted to utilize for Great Lakes purposes the auxiliary source of energy required for ocean purposes. While the Commission sees no valid basis for AIMS' first alternative (complete exemption), its second alternative has sufficient merit to warrant its acceptance, inasmuch as the SOLAS Convention's requirement for a radiotelegraph installation becomes technically inoperative while the affected vessels are on the Great Lakes. However, to preclude any conflict with the SOLAS Convention's requirements involved, the provisions being adopted by the Commission will preclude the use of a switching arrangement whereby the auxiliary source of energy may be instantaneously connected to either the radiotelegraph installation, or the radiotelephone installation, and require the use of plug-in adaptor cables for the radiotelephone purposes, the cables to be removed at such times as the affected vessel is beyond the Great Lakes.

6. Both LCA and LEC make the point that many radio-telephone units presently installed (or to be installed) on Great Lakes vessels are transceiver types with electronic components common to the transmiter and receiver portions of the transceivers. In this situation, it is urged, it is difficult to separate the current drain of the transmitter from that of the receiver, and an account of this should be taken in the formula in § 83.545(d)(3) for determining the electrical load in connection with the testing of the adequacy of the source of auxiliary electrical power. Additionally, each of these parties propose acceptance, under § 83.545(d)(4), of a reduction to 90 percent of the required transmitter power output at the conclusion of the capability tests specified in § 83.545(d) for sources of auxiliary electrical power. Although these recommendations go somewhat beyond the contemplation of the NPRM, each concerns a significant aspect of the basic rule proposed to be amended by the Commission. Accordingly, and because the recommended relaxations of present requirements are technically sound and would not result in significant degradation of emergency communication capability, the suggested changes are accepted by the Commission. Appropriate revisions of § 83.545(d) (3) and (4) are reflected below.

7. Finally, LCA and LEC suggest that the Commission allow approximately 6 months from the release date of these amendments for compliance with the requirement for an auxiliary installation. Although the Commission hopes that all of the vessels affected by the new requirement complete their installations well before that time, a compliance date of October 1, 1971, is fixed by the new rule.

8. The Commission concludes that the rules changes discussed above would serve the public interest, convenience and necessity. *Accordingly, it is ordered*, That, pursuant to the authority contained in sections 1 and 303(r) of the Communications Act of 1934, as amended, Part 83 of the Commission's rules is amended effective May 7, 1971, as set forth below. This proceeding is hereby terminated.

(Secs. 1, 303, 48 Stat., as amended, 1064, 1082; 47 U.S.C. 303)

Adopted: March 24, 1971.

Released: March 30, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[3]

[SEAL] BEN F. WAPLE, *Secretary.*

Part 83, Stations on Shipboard in the Maritime Services, is amended as follows:

In § 83.545, paragraphs (a) and (d) are amended as follows:

§ 83.545 Auxiliary source of energy.

(a) An auxiliary source of energy shall be provided as follows:

(1) Passenger carrying vessels which are of 1,000 gross tons and over shall be provided with an auxiliary source of energy, independent of the vessel's normal electrical system and capable of properly energizing the radiotelephone installation and the electric light prescribed by § 83.547, in addition to any other electrical loads to which it may supply energy in times of emergency or distress, for at least 4 continuous hours under normal operating conditions. When meeting this 4-hour requirement, such auxiliary source of energy shall be located on the level of the main pilothouse or at least one deck above the vessel's main deck;

[1] LEC states that it equipped 126 Great Lakes vessels with the single channel set, which it describes as an F.C.C. Type Accepted Konel Type KR-1020, with a power output of 55 watts, and a 12-volt, 50-ampere hour nickel cadmium battery supply. Its data is otherwise consistent with LCA's.

[2] As pointed out in the NPRM, some American vessels have already been equipped by their owners with auxiliary power sources of the type contemplated by the Commission's proposal.

[3] Commissioner Robert E. Lee absent.

(2) (i) No later than October 1, 1971, vessels of 1,000 gross tons or more, other than passenger carrying vessels, shall be provided with an auxiliary source of energy, independent of the vessel's normal electrical system and capable of properly energizing the radio-telephone installation and the electric light prescribed by § 83.547, in addition to any other electrical loads to which it may supply energy in times of emergency or distress, for at least 2 continuous hours under normal operating conditions. When meeting this 2-hour requirement, such auxiliary source of energy shall be located on the level of the main pilothouse or at least one deck above the vessel's main deck;

(ii) In lieu of the independent auxiliary source of energy specified in subdivision (i) of this subparagraph, an affected vessel may be provided with an auxiliary radiotelephone installation having a power supply independent of the vessel's normal electrical system. Any such installation must comply with paragraphs 2, 5, and 6 of Regulation 1 of the Great Lakes Radio Agreement, and with §§ 83.539, 83.542, 83.547, 83.548, and 83.549 (except for any requirement therein for transmission capability on the frequency 2003 kHz). Additionally, the power supply of any such auxiliary radiotelephone installation shall be regarded as an "auxiliary source of energy" for purposes of paragraphs (b), (c), and (d) of this section.

(iii) Affected vessels required by the Safety of Life at Sea Convention of 1960 to be fitted with a radiotelegraph installation and an auxiliary source of energy for such radiotelegraph installation may utilize that auxiliary source of energy, while subject to the Great Lakes Radio Agreement, as the auxiliary source of energy required by subdivision (i) of this subparagraph: *Provided, however,* That the use of a switching arrangement, whereby the auxiliary source of energy may be instantaneously connected to either the radiotelegraph installation or the radiotelephone installation, is precluded; and there is required, for purposes of connecting this auxiliary source of energy to the radiotelephone system, the use of plug-in adaptor cables, which must be removed from the radiotelephone system and the auxiliary source of energy at such times as the vessel is not subject to the Great Lakes Radio Agreement.

* * * * *

(d) The shipowner, operating company, or station licensee, when directed by the Commission or its authorized representatives, shall prove by demonstration as prescribed in subparagraphs (1), (2), (3), and (4) of this paragraph, or by such other means as may be deemed necessary, that the auxiliary source of energy is capable of meeting the requirements of paragraph (a) of this section.

(1) When the auxiliary source of energy consists of or includes a storage battery, proof of the ability of such battery to operate continuously and effectively over the required period of time is authorized to be established by a discharge test over the required period of time, when supplying power at the voltage required for normal and effective operation to an electrical load as prescribed by subparagraph (3) of this paragraph.

(2) When the auxiliary source of energy consists of or includes an engine-driven generator, proof of the adequacy of the engine fuel supply to operate the unit continuously and effectively over the required period of time may be established by using as a basis the fuel consumption during a continuous period of 1 hour when supplying power, at the voltage required for normal and effective operation, to an electrical load as prescribed by subparagraph (3) of this paragraph.

(3) For the purpose of determining the electrical load to be supplied, the following formula shall be used:

(i) One-half the current consumption of the radiotelephone while transmitting at its rated power output, less one-half the current consumption while not transmitting; plus

(ii) Current consumption of the required receiver; plus

(iii) Current consumption of the electric light prescribed by § 83.547; plus

(iv) The sum of the current consumption of all other loads to which the auxiliary source of energy may supply power in time of emergency or distress;

(4) At the conclusion of the test specified in subparagraphs (1) and (2) of this paragraph;

(i) No part of the auxiliary source of energy shall have excessive temperature rise, nor shall the specific gravity or voltage of any storage battery be below the 90 percent discharge point as determined from information (such as voltage curves or specific gravity tables) supplied by the manufacturer of the type of battery involved, and

(ii) The power output of the transmitter involved shall be at least 90 percent of the power required by § 83.542(c).

[FR Doc.71-4635 Filed 4-2-71;8:49 am]

Title 49—TRANSPORTATION

Chapter X—Interstate Commerce Commission

[Ex Parte No. 276]

SUBCHAPTER B—PRACTICE AND PROCEDURE

PART 1100—GENERAL RULES OF PRACTICE

SUBCHAPTER D—TARIFFS AND SCHEDULES

PART 1332—FILING CONTRACTS FOR SURFACE MAIL TRANSPORTATION

Filing of Surface Mail Transportation Service Orders or Determinations and Contracts

Order. At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 23d day of March 1971.

Upon consideration of Public Law 91-375, Postal Reorganization Act, enacted August 12, 1970, 84 Stat. 719, revising and reenacting title 39 of the United States Code by reorganizing the postal service and transferring the functions of the Post Office Department to a new independent executive agency designated as the U.S. Postal Service, hereinafter called the Postal Service, and broadening the functions and responsibilities of the Interstate Commerce Commission under title 39, United States Code, with respect to the surface transportation of mail by carriers and others, pursuant to Chapter 50, 84 Stat. 766, and Chapter 52, 84 Stat. 768, 39 U.S.C. 5001 and 5201, which are to take effect within 1 year after the date of enactment on a date to be established by the Board of Governors of the Postal Service and published by it in the FEDERAL REGISTER; and

It appearing, that pursuant to the newly enacted section 5203, 39 U.S.C. 5203, subsection (f) thereof provides that an order or determination of the Postal Service requiring that a motor carrier shall perform mail transportation service shall be filed with this Commission, and that the order or determination shall be terminated if the Commission finds, within 90 days after the filing, that the order or determination will be detrimental to the motor carrier or its other customers, or that the carrier does not operate equipment suitable for the transportation of mail;

It further appearing, that under the newly enacted section 5005, 39 U.S.C. 5005, subsection (b)(3) thereof provides that any contract between the Postal Service and any carrier or person (as defined in sections 5201 and 5214, 39 U.S.C. 5201 and 5214), for the surface transportation of mail shall be available for inspection in the office of this Commission at least 15 days prior to the effective date of the contract;

It further appearing, that the Commission, to fulfill effectively and efficiently its statutory responsibilities under the revised postal statute on the effective date to be established by the Board of Governors, should promulgate regulations governing the filing with the Commission of motor carrier mail transportation orders or determinations of the Postal Service under the aforesaid section 5203(f); and of surface mail transportation contracts or agreements pursuant to the aforesaid section 5005 (b)(3);

And it further appearing, that general notice and public procedures on the subject matters of this proceeding are unnecessary under section 553(b)(A) of the Administrative Procedure Act, 5 U.S.C. 553, because, due to the exigencies of time, the public interest requires that these regulations become effective immediately.

Wherefore, and good cause appearing therefor:

It is ordered, That Part 1100 of Subchapter B of Chapter X of Title 49 of the Code of Federal Regulations be, and it is hereby, amended by adding a new § 1100.249, reading as follows:

§ 1100.249 Special rules governing the filing of motor carrier mail transportation service orders or determinations under subsection (f) of section 5203 of title 39, United States Code, 84 Stat. 768, 39 U.S.C. 5208 (Rule 249).

(a) *Definitions.* For the purposes of this section the following words and terms, except as otherwise indicated in the context of this section, are to be construed as follows:

(1) "Postal Service" means the U.S. Postal Service, 39 U.S.C. 201.

(2) Whenever a "section" is cited, it refers to a provision of title 39, United States Code, as revised and reenacted.

(3) "Commission" means the Interstate Commerce Commission.

(4) "Motor carrier" or "carrier" means a common carrier by motor vehicle as defined in subsection (5) of section 5201 of title 39, United States Code, 39 U.S.C. 5201.

(b) *Applicability.* The provisions of this section shall apply to all orders or determinations of the Postal Service under section 5203 (39 U.S.C. 5203) directing a motor carrier to transport mail.

(c) *Filing and content of orders or determinations*—(1) *General.* All orders or determinations shall be filed by the Postal Service with the Commission at its office in Washington, D.C., and shall conform to the provisions of subparagraphs (2) and (3) of this paragraph.

(2) *Content.* Each order or determination of the Postal Service shall include: (i) The full and correct name and business address of the motor carrier, (ii) a description of the mail transportation service required, (iii) a specification of the operating authority held by the carrier which corresponds to the mail transportation service required, and (iv) a showing that the order or determination is consistent with orders of the Commission under sections 5207 and 5208 (39 U.S.C. 5207 and 5208), if any, or that the Postal Service and the carrier have agreed that the compensation for the transportation and service connected therewith is fair and reasonable. Further, each order or determination issued shall set forth in a conspicuous place on the face thereof, in bold face type, a clear statement that the order or determination is concurrently filed with the Interstate Commerce Commission at Washington, D.C., that it is being simultaneously deposited with the Director, Office of the Federal Register, and that any protest seeking termination thereof under subsection (f) of section 5203 (39 U.S.C. 5203) must be filed with the Commission in accordance with this § 1100.249 within 15 days of the date of publication in the FEDERAL REGISTER. This statement may also include reference to the penalty provisions of section 5206 (39 U.S.C. 5206), and such other information as the Postal Service deems appropriate.

(3) *Copies; service.* The original and seven copies of each order or determination issued under this section shall be filed with the Commission, and one copy of the order or determination simultaneously shall be served upon the motor carrier specified therein and upon any other person known to be interested, in such a manner so as to be received on the date the original is filed with the Commission, and a copy also shall be simultaneously deposited with the Director, Office of the Federal Register, for publication therein as notice to all other interested persons. A certificate shall be executed by an authorized official of the Postal Service, showing upon whom simultaneous service has been made. The order or determination filed with the Commission and the envelope of transmittal to the Commission should be clearly marked: "Mail Transportation Service Order (or Determination)."

(d) *Protests seeking termination of Postal Service orders or determinations, and replies thereto*—(1) *General.* A motor carrier subject to an order or determination of the Postal Service, or any of the carrier's other customers, may protest to the Commission and request termination of the order or determination. Such protests shall be restricted to the matter of showing that performance by the carrier of the required mail transportation service would be detrimental to the carrier or to its other customers, or that the carrier does not operate equipment suitable for the transportation of mail, and shall conform to the provisions of subparagraphs (2), (3), and (4) of this paragraph.

(2) *Content.* The protest for termination of an order or determination filed under this section must identify the issued order or determination (i) by reference to the name and address of the motor carrier shown in the order or determination, (ii) the order number or other identification assigned thereto by the Postal Service, and (iii) specific citation to the volume, page, and date of publication in the FEDERAL REGISTER, i.e., "_____ F.R. _____, _____ 197__." Facts relied upon in support of the protest must be verified as provided in Rule 50 of the Commission's general rules of practice (§ 1100.50).

(3) *When filed.* Protests requesting termination of an order or determination filed under this section will not be considered unless made in writing and filed with the Commission at Washington, D.C., within 15 days of the date of publication of the order or determination in the FEDERAL REGISTER.

(4) *Replies.* Replies confined to rebuttal of such protests may be filed within 10 days of the date on which the protest was filed with the Commission.

(5) *Copies; service.* The original and seven copies of each protest or reply shall be filed with the Commission, and one copy simultaneously shall be served on the opposing party(ies). A certificate shall be executed stating that simultaneous service has been made. The protest or reply and the envelope of transmittal to the Commission should be clearly marked: "Protest (Reply)—Mail Transportation Service Order (or Determination)," and be delivered free of all charges. (Copies for service on the Postal Service shall be addressed to the Assistant General Counsel, Transportation, U.S. Postal Service, Washington, D.C. 20260, as agent for the Postmaster General.)

(e) *Petitions for reconsideration.* Petitions for reconsideration (1) of an order terminating an order or determination of the Postal Service, or (2) of a notice declining to order termination of such an order or determination, may be filed by any interested person within 20 days after service of the order or notice of the Commission. As no replies to the petitions for reconsideration under this rule are contemplated in view of the statutory time limitation, petitioners will be expected, except in unusual circumstances, to rely wholly on the information previously filed with the Commission. Such petitions for reconsideration must be clearly marked: "Petition for Reconsideration—Mail Transportation Service Order (or Determination)." Petitioners shall file an original and seven copies of the petition with the Commission and one copy thereof shall be served simultaneously on the opposing party (ies), and a certificate of service shall be executed to that effect.

(f) *Withdrawal of Postal Service orders or determinations.* If, within 90 days after the filing of an order or determination by the Postal Service, the motor carrier cited in the order or determination voluntarily agrees and undertakes to perform the required mail transportation service, the Postal Service shall promptly notify the Commission of such action and shall withdraw the Postal Service order forthwith.

(Sec. 5203, 84 Stat. 769, 39 U.S.C. 5203; sec. 17, 40 Stat. 270, 49 U.S.C. 17)

It is further ordered, That Subchapter D of Chapter X of Title 49 of the Code of Federal Regulations be, and it is hereby, amended by adding a new Part 1332, reading as follows:

Sec.
1332.1 Applicability.
1332.3 Manner of submitting contracts.

AUTHORITY: The provisions of this Part 1332 issued under revised sec. 5005(b)(3) of title 39, United States Code, 84 Stat. 767, 39 U.S.C. 5005.

§ 1332.1 Applicability.

The provisions of this part shall apply to copies of all contracts or agreements entered into by the U.S. Postal Service with any common carrier by rail or motor vehicle (including passenger-carrying vehicle), or freight forwarder, express company, or other person, for the surface transportation of mail as authorized by Chapters 50 and 52 of title 39, United States Code, as revised and reenacted by the Postal Reorganization Act, 84 Stat. 719, 39 U.S.C. 5001 and 5201.

§ 1332.3 Manner of submitting contracts.

(a) *General.* Copies of all contracts or agreements executed between the U.S. Postal Service and any carrier or other person to which this part applies, concerning the rates or compensation and conditions for performance of surface

transportation of mail, shall conform to the provisions of paragraphs (b), (c), (d), and (e) of this section.

(b) *Duplicate filing required.* Exact copies of all contracts or agreements shall be filed in duplicate. One copy will be maintained at the Washington office of this Commission for public inspection. One of such copies shall be signed by each of the contracting parties thereunder and both shall clearly indicate the names and official titles of the officers or officials executing the document on behalf of the respective contracting parties.

(c) *Filing procedure.* The U.S. Postal Service shall file both copies of the mail transportation service contract or agreement with this Commission at least 15 days prior to the effective date of the contract (except as to agreements of an emergency temporary nature, pursuant to section 5001, title 39 U.S.C. 5001, which may be filed retroactively as promptly as possible), together with a letter of transmittal identifying the accompanying contract or agreement. The letters and envelopes shall clearly indicate that the enclosures are "Mail Transportation Contracts." If receipt for the accompanying documents is desired, the letter of transmittal must be sent in duplicate, and one copy showing the date of receipt at the Commission will be returned to the sender.

(d) *Numbering.* The copies of contracts or agreements which are filed with this Commission shall be separately filed for each carrier or person and shall be numbered consecutively in a series maintained for each carrier or person by the full and correct name and business address (and MC number, if a motor carrier certificated by the Commission), beginning with the number "1."

(e) *Superseding contract or agreement.* A superseding contract or agreement shall, by statement shown immediately under the number of the new document, cancel the prior document by number.

It is further ordered, That a copy of this order shall be served upon the U.S. Postal Service, Washington, D.C., and that further notice of this order be given to the public by depositing a copy thereof in the office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register, Washington, D.C., for publication in the FEDERAL REGISTER.

And it is further ordered, That these regulations shall become effective on the date specified by the Board of Governors of the U.S. Postal Service and published in the FEDERAL REGISTER, as the date when it will commence postal operations pursuant to Public Law 91-375, or on the date of publication of this order in the FEDERAL REGISTER, whichever occurs later, but in no event shall this order become effective later than August 12, 1971.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-4704 Filed 4-2-71;8:53 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 CONTRACT WORK HOURS STANDARDS ACT)

Effectuation of Presidential Proclamation Revoking Suspension of 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, orders and rules 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, were amended to effectuate that proclamation (36 F.R. 4045).

By Proclamation No. 4040 dated March 29, 1971, the President revoked Proclamation No. 4031 of February 23, 1971, as to all construction contracts whether for direct Federal construction or for federally assisted construction, for which solicitation for bids or proposals are issued after the date of this proclamation (March 29, 1971).

As Proclamation No. 4040 was effective March 29, 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 March 29, 1971, the date of Proclamation No. 4040 which it implements.

Title 29 of the Code of Federal Regulations is hereby amended as follows:

1. The title of § 1.0 in the Table of Contents of Part 1 is revised to read as follows:

Sec.
1.0 Suspension of procedures in this part and revocation of the suspension.

2. Section 1.0 is revised to read as follows:

§ 1.0 Suspension of procedures in this part and revocation of the suspension.

(a) The procedures for predetermination of wage rates contained in this part were 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 suspended 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.

(c) The suspension of the procedures in this part is now revoked pursuant to Proclamation No. 4040 of the President dated March 29, 1971, which revoked Proclamation No. 4031 of February 23, 1971, as to all construction contracts, whether for direct Federal construction or federally assisted construction for which solicitations for bids or proposals are issued after March 29, 1971, the date of Proclamation No. 4040.

3. The title of § 5.0 in the Table of Contents of Part 5 is revised to read as follows:

Sec.
5.0 Suspension of certain provisions of this part and revocation of the suspension.

4. Section 5.0 of Part 5 is revised to read as follows:

§ 5.0 Suspension of certain provisions of this part and revocation of the suspension.

(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, were 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 suspended, 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.

(c) Except with respect to contracts entered into prior to February 23, 1971, the following provisions of this part were 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 did not apply to:

(1) The provisions of § 5.5(c); 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.R. 304–308) remain in effect.

(e) The suspension of the provisions of this part referred to in paragraphs (a) and (c) of this section is now revoked pursuant to Proclamation No. 4040 of the President dated March 29, 1971, which revoked Proclamation No. 4031 of February 23, 1971, as to all construction contracts, whether for direct Federal construction or federally assisted construction, for which solicitations for bids or proposals are issued after March 29, 1971, the date of Proclamation No. 4040. Attention is directed to the fact that this revocation does not affect the validity of contracts entered into after February 23, 1971, without Davis-Bacon rates pursuant to authority of Proclamation No. 4031, including contracts let after March 29, 1971, pursuant to solicitations for bids or proposals issued on or before March 29, 1971.

(Proclamation No. 4040, 40 U.S.C. 276a-5)

Signed at Washington, D.C., this first day of April 1971.

ROBERT D. MORAN,
Administrator of Workplace Standards.

[FR Doc.71-4751 Filed 4-2-71;8:58 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Parts 1, 53, 143]

DEFINITIONS AND SPECIAL RULES

Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, preferably in quintuplicate, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Comissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

In order to provide Income Tax Regulations (26 CFR Part 1) and Foundation Excise Tax Regulations (26 CFR Part 53) under sections 507(d)(2) and 4946 of the Internal Revenue Code of 1954 as added by the Tax Reform Act of 1969 (83 Stat. 515), there are added the following regulations. In addition, temporary Treasury regulations §§ 143.4 (35 F.R. 4703 (1970)) and 143.3 (35 F.R. 5468 (1970)) are superseded.

PARAGRAPH 1. There is inserted where appropriate in Part 1 of the regulations the following new section:

§ 1.507-6 Substantial contributor defined.

(a) *Definition*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, the term "substantial contributor" means, with respect to a private foundation, any person (within the meaning of section 7701(a)(1)), whether or not exempt from taxation under section 501(a), who contributed or bequeathed an aggregate amount of more than $5,000 to the private foundation, if such amount is more than 2 percent of the total contributions and bequests received by the private foundation before the close of the taxable year of the private foundation in which a contribution or bequest is received by the foundation from such person. In the case of a trust, the term "substantial contributor" also means the creator of the trust. Such term does not include a governmental unit described in section 170(c)(1).

(2) *Special rules.* For purposes of sections 170(b)(1)(E)(iii), 507(d)(1), 508(d), 509(a)(1) and (3), and chapter 42, the term "substantial contributor" shall not include an organization which is described in section 509(a)(1), (2), or (3) or any other organization which is wholly owned by such section 509(a)(1), (2), or (3) organization. Furthermore, taking section 4941 (relating to taxes on self-dealing) in context, it would unduly restrict the activities of private foundations if the term "substantial contributor" were to include any section 501(c)(3) organizations. It was not intended, for example, that a large grant for charitable purposes from one private foundation to another would forever preclude the latter from making any grants to, or otherwise dealing with, the former. Accordingly, for purposes of section 4941 only, the term "substantial contributor" shall not only include any organization which is described in section 501(c)(3). Any organization referred to in this subparagraph may still be a disqualified person if it is described in section 4946(a)(1)(B), (C), (E), (F), (G), or (H) for particular purposes even if it is not included within the term "substantial contributor" for such purposes.

(b) *Determination of substantial contributor*—(1) *In general.* In determining under paragraph (a) of this section whether the aggregate of contributions and bequests from a person exceeds 2 percent of the total contributions and bequests received by a private foundation, both the total of such amounts received by the private foundation, and the aggregate of such amounts contributed and bequeathed by such person, shall be determined as of the last day of each taxable year commencing with the first taxable year ending after October 9, 1969. Generally, under section 507(d)(2) and this section, except for purposes of valuation under section 507(d)(2)(B)(i), all contributions and bequests made before October 9, 1969, are deemed to have been made on October 9, 1969. For purposes of section 509(a)(2) and the support test described in § 1.509(a)-3(c), contributions and bequests before October 9, 1969, will be taken into account in the year when actually made. For example, in the case of a contribution or bequest of $6,000 in 1967, such contribution or bequest shall be treated as made by a substantial contributor in 1967 for purposes of section 509(a)(2) and § 1.509(a)-3(c) if such person met the $5,000—2 percent test as of December 31, 1967, and December 31, 1969 (in the case of a calendar year accounting period). Although the determination of the percentage of total contributions and bequests represented by a given donor's contributions and bequests is not made until the end of the foundation's taxable year, a donor is a substantial contributor as of the first date when the foundation received from him an amount sufficient to make him a substantial contributor. Except as otherwise provided in this subparagraph, such amount is treated for all purposes as made by a substantial contributor. Thus, the total contributions and bequests received by the private foundation from all persons, and the aggregate contributions and bequests made by a particular person, are to be determined as of December 31, 1969 (in the case of a calendar year organization which was in existence on that date), and the amounts included in each respective total would be all contributions and bequests received by the organization on or before that date, and all contributions and bequests made by the person on or before that date. Thereafter, a similar determination is to be made with respect to such private foundation as of the end of each of its succeeding taxable years. Status as a substantial contributor, however, will date from the time when the donor first met the $5,000 and 2 percent test. Once a person is a substantial contributor with respect to a private foundation, he remains a substantial contributor even though he might not be so classified if a determination were first made at some later date. For instance, even though the aggregate contributions and bequests of a person become less than 2 percent of the total received by a private foundation (for example, because of subsequent contributions and bequests by other persons), such person remains a substantial contributor with respect to the foundation.

(2) *Examples.* The provisions of paragraph (a) of this section and this paragraph (b) may be illustrated by the following examples:

Example (1). On January 1, 1968, A, an individual, gave $4,500 to M, a private foundation on a calendar year basis. On June 1, 1969, A gave M the further sum of $1,500. Throughout its existence, through December 31, 1969, M has received $250,000 in contributions and bequests from all sources. As of June 1, 1969, A is a substantial contributor to M for purposes of section 509(a)(2).

Example (2). On September 9, 1966, B, an individual, gave $3,500 to N, a private

foundation on a calendar year basis. On March 15, 1970, B gave N the further sum of $3,500. Throughout its existence, through December 31, 1970, N has received $200,000 in contributions and bequests from all sources. B is a substantial contributor to N as of March 15, 1970, since that is the first date on which his contributions met the 2 percent-$5,000 test.

Example (3). On July 21, 1964, X, a corporation, gave $2,000 to O, a private foundation on a calendar year basis. As of December 31, 1969, O had received $150,000 from all sources. On September 17, 1970, X gave O the further sum of $3,100. Through September 17, 1970, O had received $245,000 from all sources as total contributions and bequests. Between September 17, 1970, and December 31, 1970, however, O received $50,000 in contributions and bequests from others. X is not a substantial contributor to O, since X's contributions to O were not more than 2 percent of the total contributions and bequests received by O by December 31, 1970, the end of O's taxable year, even though X's contributions met that test at one point during the year.

Example (4). On September 16, 1970, C, an individual, gave $10,000 to P, a private foundation on a calendar year basis. Throughout its existence, and through December 31, 1970, the close of its taxable year, P had received a total of $100,000 in contributions and bequests. On January 3, 1971, P received a bequest of $1 million. C is a substantial contributor to P since he was a substantial contributor as of September 16, 1970, and therefore remains one even though he no longer meets the 2-percent test on a later date after the end of the taxable year of the foundation in which he first became a substantial contributor.

(c) *Special rules*—(1) *Contributions defined.* The term "contribution" shall, for purposes of section 507(d)(2), have the same meaning as such term has under section 170(c) and also include bequests, legacies, devises, and transfers within the meaning of section 2055 or 2106(a)(2). Thus, for purposes of section 507(d)(2), any payment of money or transfer of property without adequate consideration shall be considered a "contribution". Where payment is made or property transferred as consideration for admissions, sales of merchandise, performance of services, or furnishing of facilities to the donor, the qualification of all or any part of such payment or transfer as a contribution under section 170(c) shall determine whether and to what extent such payment or transfer constitutes a "contribution" under section 507(d)(2).

(2) *Valuation of contributions and bequests.* Each contribution or bequest to a private foundation shall be valued at fair market value when actually received by the private foundation.

(3) *Contributions and bequests by a spouse.* An individual shall be considered, for purposes of this section, to have made all contributions and bequests made by his spouse during the period of their marriage.

PAR. 2. There are inserted where appropriate in Part 53 of the regulations the following new sections:

§ 53.4946 Statutory provisions; Definitions and special rules.

SEC. 4946. *Definitions and special rules*—(a) *Disqualified person*—(1) *In general.* For purposes of this chapter, the term "disqualified person" means, with respect to a private foundation, a person who is—

(A) A substantial contributor to the foundation,

(B) A foundation manager (within the meaning of subsection (b)(1)),

(C) An owner of more than 20 percent of—

(i) The total combined voting power of a corporation,

(ii) The profits interest of a partnership, or

(iii) The beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor to the foundation,

(D) A member of the family (as defined in subsection (d)) of any individual described in subparagraph (A), (B), or (C),

(E) A corporation of which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the total combined voting power,

(F) A partnership in which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the profits interest,

(G) A trust or estate in which persons described in subparagraph (A), (B), (C), or (D) hold more than 35 percent of the beneficial interest,

(H) Only for purposes of section 4943, a private foundation—

(i) Which is effectively controlled (directly or indirectly) by the same person or persons who control the private foundation in question, or

(ii) Substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in subparagraph (A), (B), or (C), or members of their families (within the meaning of subsection (d)), who made (directly or indirectly) substantially all of the contributions to the private foundation in question, and

(I) Only for purposes of section 4941, a government official (as defined in subsection (c)).

(2) *Substantial contributors.* For purposes of paragraph (1), the term "substantial contributor" means a person who is described in section 507(d)(2).

(3) *Stockholdings.* For purposes of paragraphs (1)(C)(i) and (1)(E), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

(4) *Partnerships; trusts.* For purposes of paragraphs (1)(C)(ii) and (iii), (1)(F), and (1)(G), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

(b) *Foundation manager.* For purposes of this chapter, the term "foundation manager" means, with respect to any private foundation—

(1) An officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation), and

(2) With respect to any act (or failure to act), the employees of the foundation having authority or responsibility with respect to such act (or failure to act).

(c) *Government official.* For purposes of subsection (a)(1)(I) and section 4941, the term "government official" means, with respect to an act of self-dealing described in section 4941, an individual who, at the time of such act, holds any of the following offices or positions (other than as a "special Government employee", as defined in section 202(a) of title 18, United States Code):

(1) An elective public office in the executive or legislative branch of the Government of the United States,

(2) An office in the executive or judicial branch of the Government of the United States, appointment to which was made by the President,

(3) A position in the executive, legislative, or judicial branch of the Government of the United States—

(A) which is listed in schedule C of rule VI of the Civil Service Rules, or

(B) the compensation for which is equal to or greater than the lowest rate of compensation prescribed for GS–16 of the General Schedule under section 5332 of title 5, United States Code,

(4) a position under the House of Representatives or the Senate of the United States held by an individual receiving gross compensation at an annual rate of $15,000 or more,

(5) an elective or appointive public office in the executive, legislative, or judicial branch of the government of a State, possession of the United States, or political subdivision or other area of any of the foregoing, or of the District of Columbia, held by an individual receiving gross compensation at an annual rate of $15,000 or more, or

(6) a position as personal or executive assistant or secretary to any of the foregoing.

(d) *Members of family.* For purposes of subsection (a)(1), the family of any individual shall include only his spouse, ancestors, lineal descendants, and spouses of lineal descendant.

[Sec. 4946 as added by Tax Reform Act 1969 (83 Stat. 515)]

§ 53.4946–1 Definitions and special rules.

(a) *Disqualified person.* (1) For purposes of chapter 42 and the regulations thereunder, the following are disqualified persons with respect to a private foundation—

(i) All substantial contributors to the foundation, as defined in section 507(d)(2) and the regulations thereunder,

(ii) All foundation managers of the foundation as defined in section 4946(b)(1) and paragraph (f)(1) of this section,

(iii) An owner of more than 20 percent of—

(*a*) The total combined voting power of a corporation,

(*b*) The profits interest of a partnership,

(*c*) The beneficial interest of a trust or unincorporated enterprise,

which is (during such ownership) a substantial contributor to the foundation, as defined in section 507(d)(2) and the regulations thereunder,

(iv) A member of the family, as defined in section 4946(d) and paragraph (h) of this section, of any of the individuals described in subdivision (i), (ii), or (iii) of this subparagraph,

(v) A corporation of which more than 35 percent of the total combined voting power is owned by persons described in subdivision (i), (ii), (iii), or (iv) of this subparagraph,

(vi) A partnership of which more than 35 percent of the profits interest is owned by persons described in subdivision (i) (ii), (iii), or (iv) of this subparagraph, and

(vii) A trust, estate, or unincorporated enterprise of which more than 35 percent of the beneficial interest is owned by persons described in subdivision (i), (ii), (iii), or (iv) of this subparagraph.

(2) For purposes of subparagraphs (1) (iii) (*b*) and (vi) of this paragraph, the profits interest of a partner shall be equal to his distributive share of income of the partnership, as determined under section 707(b)(3) and the regulations thereunder as modified by section 4946 (a)(4).

(3) For purposes of subparagraph (1) (iii)(c) and (vii) of this paragraph, the beneficial interest in an unincorporated enterprise (other than a trust or estate) includes any right to receive a portion of distributions from profits of such enterprise, and, if the portion of distributions is not fixed by an agreement among the participants, any right to receive a portion of the assets (if any) upon liquidation of the enterprise, except as a creditor or employee. For purposes of this subparagraph, a right to receive distributions of profits includes a right to receive any amount from such profits other than as a creditor or employee, whether as a sum certain or as a portion of profits realized by the enterprise. Where there is no agreement fixing the rights of the participants in such enterprise, the fraction of the respective interests of each participant in such enterprise shall be determined by dividing the amount of all investments or contributions to the capital of the enterprise made or obligated to be made by such participant by the amount of all investments or contributions to capital made or obligated to be made by all of them.

(4) For purposes of subparagraph (1) (iii)(c) and (vii) of this paragraph, a person's beneficial interest in a trust shall be determined in proportion to the actuarial interest of such person in the trust.

(b) *Section 4943.* (1) For purposes of section 4943 only, the term "disqualified person" includes a private foundation—

(i) Which is effectively controlled (within the meaning of § 1.482–1(a)(3) of this chapter), directly or indirectly, by the same person or persons (other than a bank, trust company, or similar organization acting only as a foundation manager) who control the private foundation in question, or

(ii) Substantially all the contributions to which were made, directly or indirectly, by persons described in subdivision (i), (ii), (iii), or (iv) of paragraph (a)(1) of this section who made, directly or indirectly, substantially all of the contributions to the private foundation in question.

(2) For purposes of subparagraph (1) (ii) of this paragraph, one or more persons will be considered to have made substantially all of the contributions to a private foundation, if such persons have contributed or bequeathed at least 85 percent (and each such person has contributed or bequeathed at least 2 percent) of the total contributions and bequests (within the meaning of section 507(d)(2) and the regulations thereunder) which have been received by such private foundation during its entire existence.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). A, a private foundation, has a board of directors made up of X, Y, Z, M, N, and O. Foundation B's board of directors is made up of Y, M, N, and O. The board of directors in each case has plenary power to determine the manner in which the foundation is operated. For purposes of section 4943, foundation A is a disqualified person with respect to foundation B, and foundation B, is a disqualified person with respect to foundation A.

Example (2). Private foundation A has received contributions of $100,000 throughout its existence: $35,000 from X, $51,000 from Y (who is X's father), and $14,000 from Z (an unrelated person). Private foundation B has received $100,000 in contributions during its existence: $50,000 from X and $50,000 from W, X's wife.

For purposes of section 4943, private foundation A is a disqualified person with respect to private foundation B, and private foundation B is a disqualified person with respect to private foundation A.

(c) *Section 4941.* For purposes of section 4941, a government official, as defined in section 4946(c) and paragraph (g) of this section, is a disqualified person.

(d) *Attribution of stockholdings.* (1) For purposes of paragraph (a)(1)(iii) (*a*) and (v) of this section, indirect stockholdings shall be taken into account if such stockholdings would be taken into account under section 267(c) and the regulations thereunder. However, for purposes of this paragraph—

(i) Section 267(c)(4) shall be treated as though it provided that the members of the family of an individual are the members within the meaning of section 4946(d) and paragraph (h) of this section;

(ii) Any stockholdings which have been counted once (whether by reason of actual or constructive ownership) in applying section 4946(a)(1)(E) shall not be counted a second time; and

(iii) The term "combined voting power" includes voting power represented by holdings of voting stock, actual or constructive, but does not include voting rights as a director or trustee.

For purposes of paragraph (a)(1)(v) of this section, section 267(c) shall be applied without regard to section 267(c)(3), and stock constructively owned by an individual by reason of the application of section 267(c)(2) shall not be treated as owned by him if he is described in section 4946(a)(1)(D) but not in section 4946 (a)(1)(A), (B), or (C).

(2) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). D is a substantial contributor to private foundation Y. D owns 20 percent of the outstanding stock of corporation P. E, D's wife, owns none of the outstanding stock of P. F, E's father, owns 10 percent of the outstanding stock of P. E is treated under section 507(d)(2) as a substantial contributor to Y. E is also treated under section 267(c)(2) as owning both D's 20 percent and F's 10 percent of P, but E is treated as owning nothing for purposes of section 4946(a)(1)(E) because D's 20 percent and F's 10 percent have already been taken into account once (because of their actual ownership of the stock of P) for such purposes. Hence, corporation P is not a disqualified person under section 4946(a)(1)(E) with respect to private foundation Y because persons described in section 4946(a)(1) (A), (B), (C), and (D) own only 30 percent of the stock of P.

Example (2). I, a substantial contributor to private foundation X, is the son of J. I owns 100 percent of the stock of corporation R, which in turn owns 18 percent of the stock of corporation S. J owns 18 percent of the stock of S. I constructively owns 36 percent of the stock of S (J's 18 percent plus R's 18 percent). Both J's actual holdings and R's actual holdings are counted in determining I's constructive holdings because this does not result in counting either of the holdings more than once for purposes of section 4946 (a)(1)(E). Therefore, S is a disqualified person with respect to private foundation X, since I, a substantial contributor, constructively owns more than 35 percent of S's stock.

(e) *Attribution of profits or beneficial interests.* (1) For purposes of paragraph (a)(1)(iii)(*b*), (iii)(c), (vi), and (vii) of this section, ownership of profits or beneficial interests shall be taken into account as though such ownership related to stockholdings, if such stockholdings would be taken into account under section 267(c) and the regulations thereunder, except that section 267(c)(3) shall not apply to attribute the ownership of one partner to another solely by reason of such partner relationship. However, for purposes of this paragraph—

(i) Section 267(c)(4) shall be treated as though it provided that the members of the family of an individual are the members within the meaning of section 4946(d) and paragraph (h) of this section; and

(iii) Any profits interest or beneficial interest which has been counted once (whether by reason of actual or constructive ownership) in applying section 4946(a)(1) (F) or (G) shall not be counted a second time.

For purposes of paragraph (a)(1) (vi) and (vii) of this section, profits or beneficial interests constructively owned by an individual by reason of the application of section 267(c)(2) shall not be treated as owned by him if he is described in section 4946(a)(1)(D) but not in section 4946(a)(1) (A), (B) or (C).

(2) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. Partnership S is a substantial contributor to private foundation X. Trust T, of which G is sole beneficiary, owns 12 percent of the profits interest of S. G's husband, H, owns 10 percent of the profits interest of S. H is a disqualified person with respect to X (under section 4946(a)(1)(C)) because he is considered to own 22 percent of the profits interest of S (10 percent actual ownership, plus G's 12 percent constructively under section 267(c)(2)). G is a disqualified person with respect to X (under section 4946 (a)(1)(C) because she is considered to own 22 percent of the profits interest of S (12

percent constructively by reason of her beneficial interest in trust T, plus 10 percent constructively under section 267(c)(2) by reason of being a member of the family of H).

(f) *Foundation manager.* For purposes of chapter 42 and the regulations thereunder, the term "foundation manager" means—

(1) An officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation), and

(2) With respect to any act or failure to act, any employee of the foundation having authority or responsibility with respect to such act or failure to act.

(g) *Government official*—(1) *In general.* Except as provided in subparagraph (3) of this paragraph, for purposes of section 4941 and paragraph (c) of this section, the term "government official" means, with respect to an act of self-dealing described in section 4941, an individual who, at the time of such act, is described in subdivision (i), (ii), (iii), (iv), or (v) of this subparagraph (other than a "special Government employee" as defined in 18 U.S.C. 202(a)):

(i) (*a*) An individual who holds an elective public office in the executive or legislative branch of the Government of the United States.

(*b*) An individual who holds an office in the executive or judicial branch of the Government of the United States, appointment to which was made by the President.

(ii) An individual who holds a position in the executive, legislative or judicial branch of the Government of the United States—

(*a*) Which is listed in schedule C of rule VI of the Civil Service Rules, or

(*b*) The compensation for which is equal to or greater than the lowest rate prescribed for GS–16 of the General Schedule under 5 U.S.C. 5332.

(iii) An individual who holds a position under the House of Representatives or the Senate of the United States, as an employee of either of such bodies, who receives gross compensation therefrom at an annual rate of $15,000 or more.

(iv) The holder of an elective or appointive public office in the executive, legislative, or judicial branch of the government of a State, possession of the United States, or political subdivision or other area of any of the foregoing, or of the District of Columbia, for which the gross compensation is at an annual rate of $15,000 or more, who is described in subparagraph (2) of this paragraph.

(v) The holder of a position as personal or executive assistant or secretary to any individual described in subdivision (i), (ii), (iii), or (iv) of this subparagraph.

(2) *Public office*—(i) *Definition.* In defining the term "public office" for purposes of section 4946(c)(5) and subparagraph (1)(iv) of this paragraph, such term must be distinguished from mere public employment. Although holding a public office is one form of public employment, not every position in the employ of a State or other governmental subdivision (as described in section 4946(c)(5)) constitutes a "public office". Although a determination whether a public employee holds a public office depends on the facts and circumstances of the case, the essential element is whether a significant part of the activities of a public employee is the independent performance of policymaking functions. In applying this subparagraph, several factors may be considered as indications that a position in the executive, legislative, or judicial branch of the government of a State, possession of the United States, or political subdivision or other area of any of the foregoing, or of the District of Columbia, constitutes a "public office". Among such factors to be considered in addition to that set forth above, are that the office is created by the Congress, a State constitution, or the State legislature, or by a municipality or other governmental body pursuant to authority conferred by the Congress, State constitution, or State legislature, and the powers conferred on the office and the duties to be discharged by such office are defined either directly or indirectly by the Congress, State constitution, or State legislature, or through legislative authority.

(ii) *Illustrations.* The following are illustrations of positions of public employment which do not involve policymaking functions within the meaning of subdivision (i) of this subparagraph and which are thus not a "public office" for purposes of section 4946(c)(5) and subparagraph (1)(iv) of this paragraph:

(*a*) The chancellor, president, provost, dean, and other officers of a State university who are appointed, elected, or otherwise hired by a State Board of Regents or equivalent public body and who are subject to the direction and supervision of such body;

(*b*) Professors, instructors, and other members of the faculty of a State educational institution who are appointed, elected, or otherwise hired by the officers of the institution or by the State Board of Regents or equivalent public body;

(*c*) The superintendent of public schools and other public school officials who are appointed, elected, or otherwise hired by a Board of Education or equivalent public body and who are subject to the direction and supervision of such body;

(*d*) Public school teachers who are appointed, elected, or otherwise hired by the superintendent of public schools or by a Board of Education or equivalent public body;

(*e*) Physicians, nurses, and other professional persons associated with public hospitals and State boards of health who are appointed, elected, or otherwise hired by the governing board or officers of such hospitals or agencies; and

(*f*) Members of police and fire departments, except for those department heads who, under the facts and circumstances of the case, independently perform policymaking functions as a significant part of their activities.

(3) *Certain government officials on leave of absence.* For purposes of this paragraph, an individual who is otherwise described in section 4946(c) and this paragraph who was on leave of absence without pay on December 31, 1969, from his position or office pursuant to a commitment entered into on or before such date to engage in certain activities for which he is paid by one or more private foundations, is not to be treated as holding such position or office for any continuous period after December 31, 1969, and prior to January 1, 1971, during which such individual remains on leave of absence to engage in the same activities for which he is paid by such foundations. For purposes of this subparagraph, a commitment is considered entered into on or before December 31, 1969, if on or before such date, the amount and nature of the payments to be made and the name of the individual receiving such payments were entered on the records of the payor, or were otherwise adequately evidenced, or the notice of the payment to be received was communicated to the payee orally or in writing.

(h) *Members of the family.* For purposes of this section, the members of the family of an individual include only—

(1) His spouse,

(2) His ancestors,

(3) His lineal descendants, and

(4) Spouses of his lineal descendants.

For example, a brother or sister of an individual is not a member of his family for purposes of this section. However, for example, the wife of a grandchild of an individual is a member of his family for such purposes. For purposes of this paragraph, a legally adopted child of an individual shall be treated as a child of such individual by blood.

[FR Doc.71–4585 Filed 4–2–71;8:45 am]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 916]

[Docket No. AO–303–A2]

NECTARINES GROWN IN CALIFORNIA

Decision and Referendum Order With Respect to Proposed Further Amendment of Amended 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), a public hearing was held at Fresno, Calif., on January 13, 1971, after notice thereof published in the FEDERAL REGISTER (35 F.R. 19579) on proposals to amend the marketing agreement, as amended, and Order No. 916, as amended (7 CFR Part 916), regulating the handling of nectarines grown in the State

of California, to be made effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601–674).

On the basis of the evidence adduced at the hearing, and the record thereof, the recommended decision in this proceeding was filed on February 26, 1971, with the Hearing Clerk, U.S. Department of Agriculture. The notice of the filing of such recommended decision, affording opportunity to file written exceptions thereto, was published in the FEDERAL REGISTER (F.R. Doc. 71–2915; 36 F.R. 4055). None were filed.

The material issues, findings, and conclusions, and the general findings of the recommended decision set forth in the FEDERAL REGISTER (F.R. Doc. 71–2915; 35 F.R. 4055) are hereby approved and adopted as the material issues, findings, and conclusions, and the general findings of this decision as if set forth in full herein.

Amendment of the amended marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement, as Amended, Regulating the Handling of Nectarines Grown in California" and "Order Amending the Order, as Amended, Regulating the Handling of Nectarines Grown in California" which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the aforesaid rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Referendum order. Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), it is hereby directed that a referendum be conducted among the producers who, during the period March 1, 1970, through October 31, 1970 (which period is hereby determined to be a representative period for the purpose of such referendum), were engaged, in the State of California, in the production of nectarines for market, to ascertain whether such producers favor the issuance of the said annexed order amending the order, as amended, regulating the handling of nectarines grown in the aforesaid production area. W. B. Blackburn and G. P. Muck, Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture, are hereby designated agents of the Secretary of Agriculture to conduct said referendum severally or jointly.

The procedure applicable to this referendum shall be the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400 et seq.).

The ballots used in the referendum shall contain a summary describing the terms and conditions of the proposed amendatory order.

Copies of the aforesaid annexed order, of the aforesaid referendum procedure, and of this order may be examined in the Office of the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, DC 20250.

Ballots to be cast in the referendum, and other necessary forms and instructions, may be obtained from any referendum agent or appointee.

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

Dated: March 29, 1971.

RICHARD E. LYNG,
Assistant Secretary.

Order[1] Amending the Order, as Amended, Regulating the Handling of Nectarines Grown in the State of California

§ 916.0 Findings and determinations.

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

(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), and the applicable rules of practice and procedure effective thereunder (7 CFR Part 900), a public hearing was held at Fresno, Calif., on January 13, 1971, upon proposed amendments to the marketing agreement, as amended, and Order No. 916, as amended (7 CFR Part 916), regulating the handling of nectarines grown in the State of California. Upon the basis of the evidence introduced 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 nectarines grown in the designated production area in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in the marketing agreement and order upon which the hearing has 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 the production area would not effectively carry out 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; and

(5) All handling of nectarines grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

It is, therefore, ordered, That, on and after the effective date hereof, all handling of nectarines grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of the said order, as amended and as hereby further amended as follows:

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

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

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.

* * * * *

[FR Doc.71-3241 Filed 4-1-71;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 404]

[Reg. No. 4]

FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

Place for Hearing

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 552 et seq.) that the amendments to the regulations set forth in tentative form below are proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. The proposed amendments would make explicit a long-standing Administration practice that hearings by hearing examiners of the Bureau of Hearings and Appeals are not conducted outside the United States, Puerto Rico, or the Virgin Islands and woud provide, in general, that where a party residing outside these areas requests a hearing and does not indicate that he wishes to appear in person or through a representative before a hearing examiner, the hearing examiner may decide the case on the record.

Prior to the final adoption of the proposed amendments to the regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing in duplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare Building, Fourth and Independence Avenue SW., Washington, DC 20201, within a period of 30 days from the date of publication of this notice in the FEDERAL REGISTER.

The proposed amendments are to be issued under the authority contained in sections 205 (a), (b), 221(d), 1102, 1869, and 1871, 53 Stat. 1368, as amended, 49 Stat. 647, as amended, 79 Stat. 330, 79 Stat. 331; section 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18, 631; 42 U.S.C. 405, 421, 1302, 1395 et seq.

Dated: March 11, 1971.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: March 30, 1971.

ELLIOT L. RICHARDSON,
Secretary of Health, Education, and Welfare.

Regulations No. 4 are amended as set forth below:

1. Section 404.923 is revised to read as follows:

§ 404.923 Time and place of hearing.

The hearing examiner shall fix a time and a place within the United States for the hearing, written notice of which, unless waived by a party, shall be mailed to the parties at their last known addresses or given to them by personal service, not less than 10 days prior to such time. As used in this section and in § 404.934, the United States means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands. Written notice of the objections of any party to the time and place fixed for a hearing shall be filed by the objecting party with the hearing examiner at the earliest practicable opportunity (before the time set for such hearing). Such notice shall state the reasons for the party's objection and his choice as to the time and place within the United States for the hearing. The hearing examiner may, for good cause, fix a new time and/or place within the United States for the hearing.

2. Section 404.934 is revised to read as follows:

§ 404.934 Right to appear and present evidence.

(a) *General.* Any party to a hearing shall have the right to appear before the hearing examiner, personally or by representative, and present evidence and contentions. If all parties are unwilling, unable, or waive their right to appear before the hearing examiner, personally or by representative, it shall not be necessary for the hearing examiner to conduct an oral hearing as provided in §§ 404.923 to 404.933, inclusive. A waiver of the right to appear and present evidence and allegations as to facts and law shall be made in writing and filed with the hearing examiner. Such waiver may be withdrawn by a party at any time prior to the mailing of notice of the decision in the case. Even though all of the parties have filed a waiver of the right to appear and present evidence and contentions at a hearing before the hearing examiner, the hearing examiner may, nevertheless, give notice of a time and place and conduct a hearing as provided in §§ 404.923 to 404.933, inclusive, if he believes that the personal appearance and testimony of the party or parties would assist him to ascertain the facts in issue in the case.

(b) *Record as basis for decision.* Where all of the parties have waived their right to appear in person or through a representative and the hearing examiner does not schedule an oral hearing the decision shall be based on the record. Where a party residing outside the United States at a place not readily accessible to the United States does not indicate that he wishes to appear in person or through a representative before a hearing examiner, and there are no other parties to the hearing who wish to appear, the hearing examiner may decide the case on the record. In any case where the decision is to be based on the record, the hearing examiner shall make a record of the relevant written evidence, including applications, written statements, certificates, affidavits, reports, and other documents which were considered in connection with the initial determination and reconsideration, and whatever additional relevant and material evidence the party or parties may present in writing for consideration by the hearing examiner. Such documents shall be considered as all of the evidence in the case.

[FR Doc.71-4603 Filed 4-2-71;8:46 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 71-SO-31]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering an amendment to Part 71

of the Federal Aviation Regulations that would designate the Corinth, Miss., transition area.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, Post Office Box 20636, Atlanta, GA 30320. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 724, 3400 Whipple Street, East Point, GA.

The Corinth transition area would be designated as:

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Roscoe Turner Airport (lat. 34°54'30" N., long. 88°36'00" W.); within 3 miles each side of the 185° and 346° bearings from Corinth RBN (lat. 34°59'39" N., long. 88°36'04" W.), extending from the 7-mile radius area to 8.5 miles south and north of the RBN.

The proposed designation is required to provide controlled airspace protection for IFR operations at Roscoe Turner Airport. Two prescribed instrument approach procedures, utilizing Corinth (Private) Nondirectional Radio Beacon, are proposed in conjunction with the designation of this transition area.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on March 26, 1971.

JAMES G. ROGERS,
Director, Southern Region.

[FR Doc.71-4657 Filed 4-2-71;8:51 am]

[14 CFR Part 71]

[Airspace Docket No. 71-SO-38]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Macon, Ga., transition area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, Post Office Box 20636, Atlanta, GA 30320. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 724, 3400 Whipple Street, East Point, GA.

The Macon transition area described in § 71.181 (36 F.R. 2140) would be amended as follows: "* * * extending from the 14-mile-radius area to 8.5 miles southwest of the LOM * * *" would be deleted and "* * * extending from the 14-mile-radius area to 8.5 miles southwest of the LOM; within a 5.5-mile radius of Perry-Fort Valley Airport (lat. 32°30'33" N., long. 83°45'50" W.); within 5 miles each side of Vienna VORTAC 323° radial, extending from the 5.5-mile-radius area to 16 miles northwest of the VORTAC * * *" would be substituted therefor.

The proposed alteration is required to provide controlled airspace protection for IFR operations at Perry-Fort Valley Airport, Perry, Ga. A prescribed instrument approach procedure to this airport, utilizing the Vienna, Ga., VORTAC, is proposed in conjunction with the alteration of this transition area.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on March 23, 1971.

GORDON A. WILLIAMS, Jr.,
Acting Director, Southern Region.

[FR Doc.71-4658 Filed 4-2-71;8:51 am]

[14 CFR Part 71]

[Airspace Docket No. 71-SO-39]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Rockwood, Tenn., transition area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, Post Office Box 20636, Atlanta, GA 30320. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 724, 3400 Whipple Street, East Point, GA.

The Rockwood transition area would be designated as:

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of Rockwood Municipal Airport (lat. 35°55'20" N., long. 84°41'23" W.); excluding the portion within Crossville, Tenn., transition area.

The proposed designation is required to provide controlled airspace protection for IFR operations at Rockwood Municipal Airport. A prescribed instrument approach procedure to this airport, utilizing the Hinch Mountain VORTAC, is proposed in conjunction with the designation of this transition area.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on March 26, 1971.

JAMES G. ROGERS,
Director, Southern Region.

[FR Doc.71-4659 Filed 4-2-71;8:51 am]

[14 CFR Part 71]

[Airspace Docket No. 71-WA-12]

POSITIVE CONTROL AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to expand the positive control area from flight level 240 to 18,000 feet MSL in the central and southwestern United States.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20590. All communications received

within 60 days after publication of this notice will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington DC 20590. An informal docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

Area Positive Control (APC) is presently designated throughout most of the United States as that part of the Continental Control Area between flight level 240 and flight level 600. In a rule adopted November 9, 1967 (32 F.R. 13270), the vertical limits of APC were lowered to 18,000 feet MSL in the northeast and part of the north central United States. It was stated in the notice of proposed rule making (32 F.R. 7219) that separate actions to lower the floor of positive control area in other sections of the country may be proposed as the Federal Aviation Administration attains the capability to provide positive control service therein. The FAA has determined that it now has the capability to provide positive control services in the central and southwestern United States.

The action proposed herein would designate as positive control area that airspace within the continental control area from 18,000 feet MSL to flight level 240 bounded by a line beginning at:

Latitude 36°43'30'' N., longitude 95°53'00'' W. to latitude 38°04'00'' N., longitude 96°00'00'' W. to latitude 38°22'00'' N., longitude 96°22'00'' W. to 38°22'00'' N., longitude 98°24'00'' W. to latitude 38°47'00'' N., longitude 99°04'00'' W. to latitude 39°23'00'' N., longitude 99°04'00'' W. to 38°56'00'' N., longitude 99°42'00'' W. to latitude 38°49'00'' N., longitude 100°50'00'' W. to latitude 38°46'00'' N., longitude 101°28'00'' W. to 38°28'00'' N., longitude 101°50'00'' W. to latitude 37°30'00'' N., longitude 102°33'00'' W. to latitude 36°43'00'' N., longitude 105°00'00'' W. to latitude 36°43'00'' N., longitude 160°05'00'' W. to latitude 35°26'00'' N., longitude 110°00'00'' W. to latitude 35°26'00'' N., longitude 112°00'00'' W. to latitude 35°23'00'' N., longitude 112°40'00'' to latitude 34°58'00'' N., longitude 113°30'00'' W. to 34°11'00'' N., longitude 113°30'00'' W. to latitude 34°02'00'' N., longitude 114°00'00'' W. to latitude 32°15'00'' N., longitude 114°00'00'' W. then via the U.S./Mexico boundary to latitude 25°58'30'' N., longitude 97°05'30'' W. thence via a line 3 NM from the coastline to latitude 30°09'30'' N., longitude 88°01'30'' W. to latitude 30°14'00'' N., longitude 88°01'30'' W. to latitude 30°15'00'' N., longitude 87°41'30'' W. to latitude 30°28'00'' N., longitude 87°46'00'' W. to latitude 30°58'00'' N., longitude 87°39'00'' W. to latitude 31°16'50'' N., longitude 87°24'00' W. to latitude 31°25'00'' N., longitude 87°26'00'' W. to latitude 31°31'15'' N., longitude 87°49'00'' W. to latitude 31°31'00'' N., longitude 88°20'15'' W. to latitude 31°34'00'' N., longitude 89°18'00'' W. to latitude 31°42'00'' N., longitude 89°24'00'' W. to latitude 31°37'00'' N., longitude 89°35'00'' W. to latitude 31°39'00'' N., longitude 90°20'00'' W. to latitude 31°57'00'' N., longitude 91°30'00'' W. to latitude 32°42'00'' N., longitude 91°30'00'' W. to latitude 33°31'00'' N., longitude 92°32'00'' W. to latitude 33°43'00'' N., longitude 93°00'00'' W. to latitude 34°00'00'' N., longitude 93°20'00'' W. to latitude 34°30'00'' N., longitude 93°44'00'' W. to latitude 34°47'30'' N., longitude 93°48'00'' W. to latitude 34°51'00'' N., longitude 94°12'00'' W. to latitude 34°53'45'' N., longitude 94°56'00'' W. to latitude 35°00'00'' N., longitude 95°00'00'' W. to latitude 36°08'00'' N., longitude 95°00'00'' W. to latitude 36°26'00'' N., longitude 94°41'00'' W. to latitude 36°56'00'' N., longitude 95°06'00'' W. to latitude 36°45'00'' N., longitude 95°48'00'' W. to point of beginning.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on March 29, 1971.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.71-4660 Filed 4-2-71;8:51 am]

[14 CFR Part 71]

[Airspace Docket No. 71-WE-10]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amendments to Part 71 of the Federal Aviation Regulations that would alter the descriptions of the Douglas, Ariz., control zone and transition area.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Airspace and Procedures Branch, Federal Aviation Administration, 5651 West Manchester Avenue, Post Office Box 92007, Worldway Postal Center, Los Angeles, CA 90009. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposals contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 5651 West Manchester Avenue, Los Angeles, CA 90045.

The current VOR Radial 319 instrument approach procedure has been revised and a new VOR/DME Rwy 17 approach procedure is proposed to Bisbee-Douglas International Airport. The new approach procedure also incorporates a transition routing from the Cochise VORTAC to the Douglas VORTAC 320/15 DME fix. Both approach procedures will utilize 333° T (320° M) radial for the final approach and procedure turn radial.

The airspace requirements have been reviewed in accordance with the criteria contained in U.S. Standard for Terminal Instrument Procedures (TERPs). As a result of the review, it has been determined that the transition area and control zone must be amended. The proposed 1,200-foot transition area is required to provide controlled airspace protection for aircraft executing the transition route. The 700-foot portion of the transition area is necessary for the procedure turn area. The additional control zone is necessary to provide controlled airspace protection for aircraft executing the prescribed instrument procedures while operating below 1,000 feet above the surface.

In consideration of the foregoing, the FAA proposes the following airspace actions.

In § 71.171 (36 F.R. 2055) the description of the Douglas, Ariz., control zone is amended to read as follows:

DOUGLAS, ARIZ.

Within a 5-mile radius of Bisbee-Douglas International Airport (latitude 31°28'00'' N., longitude 109°36'10'' W.) and within 2 miles each side of the Douglas VORTAC 333° radial, extending from the 5-mile-radius zone to 11.5 miles northwest of the VORTAC.

In § 71.181 (36 F.R. 2140) the description of the Douglas, Ariz., transition area is amended to read as follows:

DOUGLAS, ARIZ.

That airspace extending upward from 700 feet above the surface within 4.5 miles southwest and 9.5 miles northeast of the Douglas VORTAC 333° radial extending from the VOR to 18.5 miles northwest of the VORTAC; that airspace extending upward from 1,200 feet above the surface within a 9-mile radius of the Douglas VORTAC, within a 23-mile radius of the Douglas VORTAC extending clockwise from the southwest edge of V-66 to the southeast edge of V-66, and within 5 miles east and 8.5 miles west of the Douglas VORTAC 347° radial extending from the 23-mile-radius area to the Cochise VORTAC, excluding the portion within the Cochise, Ariz., transition area.

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Los Angeles, Calif., on March 24, 1971.

LEE E. WARREN,
Acting Director, Western Region.

[FR Doc.71-4661 Filed 4-2-71;8:51 am]

[14 CFR Part 71]

[Airspace Docket No. 71-WE-21]

CONTROL ZONE

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of the Denver, Colo., control zone.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Airspace and Procedures Branch, Federal Aviation Administration 5651 West Manchester Avenue, Post Office Box 92007, Worldway Postal Center, Los Angeles, CA 90009. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 5651 West Manchester Avenue, Los Angeles, CA 90045.

The airspace requirements have been reviewed in accordance with the criteria contained in U.S. Standard for Terminal Instrument Procedures (TERPs). As a result of the review it has been determined that additional control zone is required to provide controlled airspace protection for aircraft executing instrument approach procedures to Buckley ANGB while operating below 1,000 feet above the surface.

In consideration of the foregoing, the FAA proposes the following airspace action.

In § 71.171 (36 F.R. 2055) the description of the Denver, Colo., control zone is amended to read as follows:

DENVER, COLO.

Within a 9-mile radius of Stapleton International Airport (latitude 39°46'30" N., longitude 104°52'40" W.), within a 9-mile radius of Buckley ANGB Airport (latitude 39°42'05" N., longitude 104°45'10" W.), and within 4 miles each side of the Buckley ANGB VOR 152° radial extending from the 9-mile radius zone to 14 miles SE of the VOR, excluding the portion within a 1-mile radius of Skyline Airport (latitude 39°46'37" N., longitude 104°36'57" W.).

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Los Angeles, Calif., on March 24, 1971.

LEE E. WARREN,
Acting Director, Western Region.

[FR Doc.71-4662 Filed 4-2-71;8:51 am]

Hazardous Materials Regulations Board

[49 CFR Part 173]

[Docket No. HM-83; Notice 71-10]

TRANSPORTATION OF HAZARDOUS MATERIALS

Hydrogen Chloride in Manifolded Cylinders

The Hazardous Materials Regulations Board is considering amending § 173.301, paragraph (d)(3), by adding anhydrous hydrogen chloride to authorize its transportation in manifolded cylinders.

This proposal is based on several special permits authorizing manifolded cylinders for the shipment of anhydrous hydrogen chloride. Holders of permits have reported that shipments have been made without any difficulties or failures whatsoever in transportation. This experience covers a span of over 14 years. In consideration of the foregoing, it is proposed to amend 49 CFR Part 173 as follows:

In § 173.301, paragraph (d)(3) would be amended to read as folows:

§ 173.301 General requirements for shipment of compressed gases in cylinders.[1]

* * * * * *

(d) * * *

(3) Manifolding is authorized for cylinders of the following gases: Ethane, ethylene, liquefied hydrocarbon gas, hydrogen chloride (anhydrous), liquefied petroleum gas and propylene provided each cylinder is equipped with approved safety relief devices as required by § 173.34(d) or § 173.315(i), and provided further that each cylinder is equipped with an individual shutoff valve, or valves, that must be tightly closed while in transit. Each cylinder must be separately charged and means must be provided to insure that no interchange of container contents can occur during transportation. Manifold branch lines to these individual shutoff valves must be sufficiently flexible to prevent injury to the valves which otherwise might result from the use of rigid branch lines.

* * * * *

Interested persons are invited to give their views on this proposal. Communications should identify the docket number and be submitted in duplicate to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, DC 20590. Communications received on or before May 18, 1971, will be considered before final action is taken on the proposal. All comments received will be available for examination by interested persons at the Office of the Sectary, Hazardous Materials Regulations Board, both before and after the closing date for comments.

This proposal is made under the authority of sections 831-835 of title 18, United States Code, section 9 of the Department of Transportation Act (49 U.S.C. 1657).

Issued in Washington, D.C., on March 30, 1971.

W. F. REA, III,
Rear Admiral, U.S. Coast Guard, By direction of Commandant, U.S. Coast Guard.

CARL V. LYON,
Acting Administrator, Federal Railroad Administration.

ROBERT A. KAYE,
Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

[FR Doc.71-4600 Filed 4-2-71;8:46 am]

[1] Requirements covering cylinders are also applicable to spherical pressure vessels.

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 13]

[Docket No. 19182; FCC 71-295]

ISSUANCE OF RADIO TELEPHONE LICENSES TO BLIND PERSONS

Notice of Inquiry and Proposed Rule Making

1. Although no formal petition for rule making has been filed, the Commission is of the view that it would be appropriate at this time to examine its rules applicable to the issuance of licenses to persons who are sightless. Prompting this action is the overall concern of extending employment opportunities to the handicapped person, the advancement in technologies in the field of radio electronics, experiences gained over the past several years through the actual employment of blind operators performing functions in accordance with an appropriately endorsed Radiotelephone Third-Class Operator Permit, as well as the basic contentions urged in support of requests for waiver of the existing rules.

2. The question of blind persons holding radiotelephone operator licenses is not new. Eyesight is and has been generally considered essential for the performance of most operator duties at a broadcast station as it is normally constructed. By order released June 23, 1967 (FCC 67-749, 8 FCC 2d 696), the Commission amended § 13.5(c)(2) of the rules to permit an applicant afflicted with blindness to be issued a Radiotelephone Third-Class Permit with an appropriate endorsement in those instances where the written examination requirements had been waived to permit oral examination and the applicant qualified for the license. It was believed at that time that

sufficient adaptations could be made to the equipment to permit a blind person to perform, with reasonable accuracy, the required duties. However, based on the differences in privileges and responsibilities imposed under the first- or second-class licenses, and because of the hazards involved in the higher class operator permit, it was determined at that time that it was not feasible to find the sightless person to be eligible for first- or second-class licenses.

3. At the present time there are usually two types of operators at a radio station. One is the "duty" operator who is employed for a certain number of hours each day. His responsibilities are the routine operation of the transmitter which includes turning it on or off, reading the meters, making periodic adjustments to maintain operation within authorized limits, and maintaining required operating and program logs. Adjustments are made by manipulating the external panel controls only, and the operator is not exposed to high voltages or other hazards. The second type is the "maintenance" operator who is more technically oriented. He makes internal transmitter adjustments and repairs to the transmitter, and in doing his work is exposed to high voltage circuits. Eyesight is considered mandatory as some adjustments must be made while the transmitter is operating. The maintenance operator is required to hold a first-class license but the present rules provide that a third-class operator may be employed as the "duty" operator at certain stations. Actually he may be employed on a full-time or part-time basis at 81 percent of the AM and 99 percent of the FM broadcast stations. The "duty" operator is usually the announcer as well, and in those cases in which a blind person is the duty operator, special equipment must be installed by the station licensee to permit accurate reading of the meters and corresponding adjustments as needed.

4. The instant proceeding is intended to offer interested persons the opportunity to comment upon the feasibility of extending to the blind person the opportunity to qualify for a higher type of license. It seeks essentially to inquire into the sightless person's ability to maintain as well as operate the radio station as required of a higher class operator and the available technologies which would permit the sightless person's ability to best be utilized. If possible, comments should be addressed with some specificity to the following points:

(a) Should the matter of personal safety from shock hazards from lethal voltages used in broadcast transmitters be a matter of consideration between the holder of an operator license and the station licensee and not a matter of licensing consideration by the Federal Communications Commission?

(b) Are safety devices available for transmitter maintenance by a sightless operator which would assure the safety of life of the licensed operator considering the high lethal voltages commonly used in broadcast transmitters?

(c) What restrictions if any, would be appropriate to place on a first or second class license if the same were found to be appropriate for issuance to the blind person?

(d) Should the maintenance function included as part of the higher classification be deleted from any blind operator classification?

(e) Subject to the necessary restrictions, what factors, other than operating or maintaining radio transmitters, would render the first- or second-class license desirable or advantageous, such as the fact that certain electronic equipment manufacturers or users require the employee to hold a particular operator license either for hiring or promotion?

(f) Should the blind operator be classified in an "ungraded" type of classification identified only by the highest number element examination passed, and thus be permitted the opportunity to seek employment in the broadcast field commensurate with his own physical and mental abilities?

In this connection, it must be recognized that the effectiveness of the sightless person as operators and maintainers of radio broadcast transmitters will in all probability vary with either the degree of sightlessness and/or the time in his life when the affliction occurred—whether at birth or later on. The Commission, apart from the examining function, lacks both the competence and staff to make a selective determination concerning the radio operating or radio technician capabilities of the sightless persons.

(g) Should Radiotelephone First- or Second-Class Operator Licenses be issued to blind persons with appropriate restrictions? If so, what should the restrictions be?

If a First- or Second-Class License, with restrictions, is to be issued to sightless persons, what are the advantages gained over the Third-Class License which allows either full- or part-time operation of approximately 80 percent of the broadcast transmitters in existence?

5. In view of the general nature of the inquiry of this proceeding, no specific rule modifications are proposed at this time. However, we have dually labeled this a notice of proposed rule making as well as a notice of inquiry, so that all persons will be aware of the possibility of appropriate rule changes, and have a full opportunity to comment accordingly. If the comments herein warrant, and the public interest would best be served thereby, the rules will be amended or modified as appears appropriate without the issuance of a further notice. If on the other hand, the changes are not deemed reasonably simple matters, they may be made the subject of further proceedings.

6. Authority for the proposed amendments is contained in sections 4(i) and 303(1) of the Communications Act of 1934, as amended.

7. All interested persons are invited to file written comments on or before May 24, 1971, and reply comments on or before June 8, 1971. In reaching its determination on this matter, the Commission may also take into account any other relevant information before it, in addition to the comments invited by this notice.

8. Persons wishing to submit views for consideration are directed to furnish an original and fourteen (14) copies of all comments, replies, pleadings, briefs or other documents filed in this proceeding with the Commission.

Adopted: March 24, 1971.

Released: March 30, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-4636 Filed 4-2-71;8:49 am]

[47 CFR Part 15]

[Docket No. 19185; FCC 71-315]

LICENSING OF AUDITORY TRAINING DEVICES FOR THE PARTIALLY DEAF

Notice of Proposed Rule Making and Memorandum and Order

In the matter amendment of the Commission's rules and regulations to provide for the licensing of auditory training devices for the partially deaf in the bands 72–73 and 75.4–76 MHz; Docket No. 19185, RM–1752:

1. Notice is hereby given of proposed rule making in the above entitled matter.

2. The Commission has before it the following documents which were filed by HC Electronics, Inc., of Tiburon, Calif.:

(a) Petition for special relief, filed February 18, 1971,

(b) Petition for rule making, filed February 18, 1971,

(c) Supplement to petition for special relief, filed March 10, 1971.[1a]

(d) Supplement to petition for rule making, filed March 22, 1971.

HC Electronics (HC) manufactures a radiofrequency device "Phonic Ear" which is used as an auditory training aid for persons with severely impaired hearing. One model of this device, Model 221–T, has been type approved by the Commission (Type Approval No. WM-118), and has been used in an unspecified number of educational institutions for the deaf. It operates in the 88–108 MHz frequency band.

3. In its petition for special relief, HC requests the Commission to grant a temporary waiver of § 15.212 of its rules to permit it to continue to market its

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[1] Commissioners Bartley and Wells dissenting; Commissioner Robert E. Lee absent.

[1a] In response to the HC petitions, the Commission also has received from Electronic Futures, Inc., (a competitor of HC), the following pleadings:

(a) Reply to Supplement to Petition for Special Relief, filed Mar. 22, 1971,

(b) Petition for an Extension of Time (until Mar. 31, 1971) in which to prepare a response to the HC Petition for Special Relief. In view of the action taken herein, this pleading is moot.

"Phonic Ear," pending the outcome of a rule making for which HC petitions simultaneously (Item 2(b) above). In its supplement to petition for special relief, HC provides additional information regarding its contractual relationships, its immediate economic positions, and the interference potential of the "Phonic Ear" device. HC contends that its device is a revolutionary improvement over existing auditory training aids and that it has proven to be the most effective tool in rehabilitating the deaf.

4. On December 20, 1970, the Commission received information that devices being marketed by HC bearing FCC Type Approval No. WM–118 did not comply with the Commission's radiation limits. The Commission secured from several sources "Phonic Ear" devices and, upon testing, determined that these latter devices did in fact radiate excessively high signals. Several were opened and found to have been modified substantially compared to the equipment which had been type approved.

5. Soon after the Commission's reexamination of the "Phonic Ear" devices was begun, HC's president, Scott Holden, telephoned the Commission and in this and subsequent informal conversations with staff personnel of the Office of General Counsel and Office of the Chief Engineer, freely admitted that it had altered its device without Commission approval. HC states that, after receiving type approval for the "Phonic Ear," they found that the model approved by the Commission was unsuitable for the purpose HC intended. However, HC claims that it was persuaded that the device was of substantial utility as a therapeutic tool for the deaf, and that it felt compelled to provide equipment which it believes provides an infinite benefit to deaf children. HC also indicates that it had retained Washington, D.C., legal and engineering counsel to cooperate with the Commission to find a way "towards the best possible solution of the problem of training deaf children."

6. We have carefully reviewed the information available concerning this matter and are impressed by HC's concern for the needs of children with hearing impairment. In our view HC has established that usage of the radio frequency spectrum for this activity may be justified, and that systems using low power frequency modulated transmitters providing short distance communication to small, light weight binaural receivers which can be safely carried by children should be provided for in our rules. We are mindful, however, that HC with full knowledge of our rules chose to attempt circumvention of those rules rather than enlist our cooperation in effecting a proper and expeditious solution to their problems. We note also their own need for immediate action on their petition for special relief as well as their offer of full cooperation and their suggestion that special new rules and, possibly, licensed operation should be provided for.

7. Accordingly, we are herewith issuing a notice of proposed rule making looking toward the establishment of a band of frequencies to accommodate devices for the use of educational institutions for teaching the hard-of-hearing. This action is considered to grant in substantial measure the request of HC for such rule making to comply with HC's request for expedited action.

8. Because of the need for immediate action we have no time to prepare for this notice detailed and specific standards and rules for such devices, but in a forthcoming order which will be issued after evaluation of the responses to this notice, we shall issue appropriate rules along the following lines:

a. Units of transmitting equipment will be required to be individually licensed.

b. Operation will be permitted on the frequency bands 72–73 and 75.4–76 MHz.

c. Transmitters must be crystal controlled, use FM emission, have a maximum emission bandwidth of 200 kHz (a modulation limiter to be required), must be limited to a maximum power input of 100 milliwatts, and radiate from a permanently affixed short antenna.

d. Transmitters must be type accepted; receiving units must be certificated.

e. Receivers must be crystal controlled and employ tone-encoded squelch.

9. Comments are invited on the above proposals and upon the following possible additional requirements:

a. A requirement for a specified signal-to-noise ratio at the receiver output for all desired ambient fields exceeding 50 microvolts per meter. (HC suggests that a 60 db signal-to-noise ratio is appropriate.)

b. A requirement for an essentially flat system audio response. (HC suggests the need for a flat response between 100 and 5,000 Hz.)

c. A restriction limiting use of the device only for communication with a receiver used by persons with at least 20 decibels of hearing loss.

10. As a result of the circumstances in which present users of HC's "Phonic Ear" now find themselves, it seems proper to grant to those users a waiver of such rules presently in effect which would prohibit operation of the "Phonic Ear" devices they bought in good faith. We note that complaints of interference from present operations have not come to light and therefore consider it reasonable to permit continued operation of those devices now in the field. In the future, should such devices cause interference to an authorized radio service, such operation must be terminated, as provided at present by § 15.212(b) of our rules.

11. Additionally, it seems appropriate to consider taking steps to withdraw Type Approval of the HC Model 221–T Wireless Microphone, Type Approval Number WM–118 as provided by § 2.565 (a) of our rules. Subsequent to such action, interstate shipment, sale or advertising for sale of the HC 221–T would be illegal.

12. In this connection, we recognize that some number of children with hearing handicaps will not in the future be able to enjoy the benefits offered by the "Phonic Ear" device. We view this with somewhat less alarm than does HC. The restriction on auditory hearing devices is, at the most, very temporary. There are competing devices which are now or should be soon available. In addition, since the requirements for and rules governing the new category of audio aids which we are proposing in this proceeding are essentially those claimed for the modified "Phonic Ear" which HC produces, we expect that HC should have little difficulty in producing and supplying the market in the very near future. For our part, we promise expedited treatment of this matter, and trust that HC and its legal and engineering consultants will cooperate to the ultimate benefit of the hard-of-hearing. We are convinced that the course we have outlined above, although it may entail some small delay for potential users of auditory devices (and certainly some considerable inconvenience to HC), will, as HC suggests, develop rules which "will meet the needs of deaf children and sound spectrum management at the same time."

13. This proposal for amending the Commission's rules responds to and grants in major detail the petition for rule making submitted by HC. It is issued under authority of sections 4(i), 302, 303 (g), and 303(r) of the Communications Act of 1934, as amended. If adopted as proposed, operation of auditory training devices would be limited to the 72–73 and 75.4–76 MHz bands, rather than to the 88–108 MHz band as suggested by HC.

14. Comments in support of or in opposition to the proposed amendment may be filed on or before April 28, 1971. Reply comments may be filed on or before May 10, 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, the Commission also may take into account other relevant information before it, in addition to the specific comments invited by this notice.

15. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Federal Communications Commission.

16. The proposal outlined herein also is in response to HC's petition for special relief and the supplement thereto. In that petition, HC requested, on an expedited basis, temporary waiver of the technical requirements of § 15.212 of the Commission's rules to permit the marketing and use of the HC "Phonic Ear" wireless auditory training device. He have considered the plea for special consideration which HC has made and have carefully studied the history of this matter. We find that HC failed to advise us of the several substantial changes they made in production units of the type approved model of the "Phonic Ear" until after they became aware of our investigation. HC has not advised us of the number of systems which they have marketed, nor where they are located, nor have they supplied adequate technical information or detailed description about the specific model

of "Phonic Ear" for which they request a waiver. We presume HC has information regarding the number and location of units presently in the field, inasmuch as it promises to bring within 60 days' time all such systems into compliance with the technical standards they ask us to adopt. We have analyzed HC's statements regarding the technical specifications necessary for auditory training devices and are not convinced that any of the units which we have tested will meet those requirements in full. We note further that, in large measure, the required performance is a function of the receiver used by HC, not the transmitting portion of the device. (Only the transmitting portion of the system is tested for type approval.) Nor are we convinced that the HC transmitting device, as presently designed, makes efficient use of the spectrum.

17. Additionally, we have considered carefully the impact of our decision on the hard-of-hearing who need auditory training. As stated above, we are moved to permit the continued operation of auditory training equipment by those institutions who have purchased them in good faith from HC providing continued operation does not cause harmful interference to other services. We consider that the impact upon a small number of institutions who have ordered HC equipment will be to enforce a short delay until HC can obtain type acceptance under the rules we propose soon to adopt. Or they may prefer to turn to other auditory training devices presently marketed which do meet our existing standards. This latter course may be unwelcome to HC, but on the other hand, HC's practice of ignoring our rules in order to secure some competitive advantage is similarly unwelcome to competitors who strove to work within our constraints.

18. *Accordingly, it is ordered,* That the petition for special relief filed by HC Electronics on February 18, 1971, is denied.

Adopted: March 24, 1971.

Released: March 30, 1971.

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

[FR Doc. 71-4637 Filed 4-2-71; 8:49 am]

[47 CFR Part 73]

[Docket No. 19045]

TELEVISION BROADCAST STATIONS

Table of Assignments, Clarksville, Tenn.; Order Extending Time for Filing Reply Comments

In the matter of amendment of § 73.606, table of assignments, television broadcast stations (Clarksville, Tenn.); Docket No. 19045, RM-1637.

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 March 26, 1971.

2. On March 22, 1971, Tennessee Televentures filed a request to extend the time for filing reply comments to April 16, 1971. Tennessee Televentures states that on March 11, 1971, Music City Video Corp., licensee of WMCV-TV, Channel 17, Nashville, Tenn., informed the Commission that it was going dark. It further states that on March 16, 1971, the Commission reported that WKTO-TV, Nashville, Tenn., was surrendering its CP. In view of these developments Tennessee Televentures needs the additional time in which to gather more material before filing its reply. Counsel for the rule making proponent has consented to the extension requested.

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 April 16, 1971, for the filing of 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: March 29, 1971.

Released: March 30, 1971.

[SEAL] FRANCIS R. WALSH,
Chief, Broadcast Bureau.

[FR Doc.71-4638 Filed 4-2-71;8:49 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 249]

[Release No. 34-9131]

ANNUAL ASSESSMENT AND INFORMATION FORM FOR REGISTERED BROKERS AND DEALERS NOT MEMBERS OF REGISTERED NATIONAL SECURITIES ASSOCIATION

Notice of Proposed Rule Making

The Commission has announced a proposal to adopt Form SECO-4-71 pursuant to Rule 15b9-2 (17 CFR 240.15b9-2) under the Securities Exchange Act of 1934 (The Act) to set 1971 annual assessments for registered broker-dealers who are not members of the National Association of Securities Dealers, Inc. (nonmember broker-dealers).

Section 15(b)(9) under the Securities Exchange Act of 1934 authorizes the Commission to collect such reasonable fees and charges as may be necessary to defray the costs of regulatory duties required to be performed with respect to nonmember broker-dealers. Rule 15b9-2 (17 CFR 240.15b9-2) provides that the annual assessment of nonmember broker-dealers shall be prescribed by the applicable form required to be filed. The proposal announced in this Release provides for the adoption of Form SECO-4-71 (17 CFR 249.504e) under Rule 15b9-2(d) (17 CFR 240.15b9-2(d)) to increase the annual assessment ceiling from $25,000 to $50,000. The actual charges, which would remain unchanged, are: a base fee of $100 plus $30 for each office and $5 for each associated person.

The full text of Rules 15b9-1 (17 CFR 240.15b9-1) and 15b9-2, which together contain all of the fee requirements for nonmember broker-dealers, may be obtained by sending a written request to the Branch of Non-NASD Regulation, Division of Trading and Markets, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, DC 20549.

The Commission proposes to adopt the foregoing Form to be effective June 1, 1971. All interested persons may submit comments with respect to the foregoing amendment to the Commission at its offices in Washington, D.C. 20549 no later than April 16, 1971. Copies of the Form SECO-4-71 as proposed to be amended have been filed with the Office of the Federal Register, and additional copies are available on request from the Commission at the above address.

Proposed Commission action: Part 249 of Chapter II of Title 17 of the Code of Federal Regulations would be amended by adding thereunder a new § 249.504e to read as follows:

§ 249.504e Form SECO-4-71; 1971 assessment and information form for registered brokers and dealers not members of a registered national securities association.

This form shall be filed pursuant to Rule 15b9-2 (§ 240.15b9-2 of this chapter), accompanied by the annual assessment fee required thereunder, for the fiscal year ended June 30, 1971, on or before June 1, 1971, by every registered broker and dealer not a member of a registered national securities association.

(Secs. 15(b), 23(a), 48 Stat. 895, 901; secs. 3, 8, 49 Stat. 1377, 1379; sec. 6, 78 Stat. 570, 15 U.S.C. 78o(b)(9))

By the Commission, April 2, 1971.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71-4709 Filed 4-2-71;8:53 am]

Notices

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1970 Rev., Supp. No. 12]

DEPENDABLE INSURANCE COMPANY, INC.

Surety Company Acceptable on Federal Bonds

A certificate of authority as an acceptable surety on Federal bonds has been issued by the Secretary of the Treasury to the following company under sections 6 to 13 of title 6 of the United States Code. An underwriting limitation of $132,000 has been established for the company.

Name of company, location of principal executive office, and State in which incorporated

Dependable Insurance Company, Inc.
Jacksonville, Florida
Florida

Certificates of authority expire on June 30 each year, unless sooner revoked, and new certificates are issued on July 1 so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact fidelity and surety business and other information. Copies of the Circular, when issued, may be obtained from the Treasury Department, Bureau of Accounts, Audit Staff, Washington, D.C. 20226.

Dated: March 31, 1971.

[SEAL] JOHN K. CARLOCK,
Fiscal Assistant Secretary.

[FR Doc.71-4670 Filed 4-2-71;8:52 am]

DEPARTMENT OF JUSTICE

Office of Alien Property

ELSA CARLOTA BABETA KROCH DE WEINBERG ET AL.

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading with the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property:

Claimant, claims numbers and property and location

Elsa Carlota Barbeta Kroch de Weinberg, 51 David Hamelech Boulevard, Tel Aviv, Israel, 705 shares of 7 percent $100 par value cumulative preferred stock of International Mortgage and Investment Corp.

Claimant, claims numbers and property and location

Edith Irene Kroch de Lamm, Donado 1687, Buenos Aires, Argentina, 705 shares of 7 percent $100 par value cumulative preferred stock of International Mortgage and Investment Corp.

Eda Herminia Marion Kroch de Milman Baron, Holyland Hotel, Jerusalem, Israel, 705 shares of 7 percent $100 par value cumulative preferred stock of International Mortgage and Investment Corp.

Fritz Kroch, 89 Avenue de Neuilly, Neuilly sur Seine, France, 495 shares of 7 percent $100 par value cumulative preferred stock of International Mortgage and Investment Corp.

Luise Kroch, Dante Str. 3, Frankfurt, Germany, 495 shares of 7 percent $100 par value cumulative preferred stock of International Mortgage and Investment Corp.

Margaret Frishman, 17 Gerald Road, London S.W.1, England, 450 shares of 7 percent $100 par value cumulative preferred stock of International Mortgage and Investment Corp.

Marianne Kaufmann, 17 Ellesmere Road, Windsor S.1, Melbourne, Australia 3181, 450 shares of 7 percent $100 par value cumulative preferred stock of International Mortgage and Investment Corp.

Lilly Kroch, Dante Str. 3, Frankfurt, Germany, 495 shares of 7 percent $100 par value cumulative preferred stock of International Mortgage and Investment Corp.

Claims Nos. 10642, 20583, and 64367, Certificates evidencing all of the shares of International Mortgage and Investment Corp. listed above are held by the Office of Alien Property, Department of Justice, Washington, D.C.

Vesting Order No. 352

Executed at Washington, D.C., on March 31, 1971.

For the Attorney General.

L. PATRICK GRAY, III,
Assistant Attorney General, Civil Division, Director, Office of Alien Property.

[FR Doc.71-4617 Filed 4-2-71;8:47 am]

DEPARTMENT OF THE INTERIOR

Geological Survey

GEOTHERMAL STEAM ACT OF 1970

Known Geothermal Resources Areas; Partial List

Publication pursuant to section 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566) of a partial list of lands determined to be included within known geothermal resources areas on December 24, 1970, the effective date of the Act. In accordance with this statutory direction and pursuant to the authority under the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by the Reorganization Plan No. 3 of 1950 (5 U.S.C. 481, note) and Order No. 2563 of the Secretary of the Interior (15 F.R. 3193), the following described lands are hereby defined as known geothermal resources areas:

(2) ALASKA

GEYSER SPRING BASIN KNOWN GEOTHERMAL RESOURCES AREA

Lands within latitude 53°13′ N. to 53°16′ N., and longitude 168°17′ W., to 168°26′ W., and within latitude 53°11′ N. to 53°15′ N., and longitude 168°26′ W. to 168°31′ W.

The area described aggregates 20,960 acres, more or less.

OKMOK CALDERA KNOWN GEOTHERMAL RESOURCES AREA

Lands within the boundary of latitude 53°22′ N. and 53°30′ N., longitude 168°02′ W., and 168°13′ W.

The area described aggregates 44,800 acres, more or less.

PILGRIM SPRINGS KNOWN GEOTHERMAL RESOURCES AREA

T. 4 S., R. 30 W., KRM unsurveyed,
Secs. 29 through 32.
T. 4 S., R. 31 W., unsurveyed,
Secs. 25 through 29 and 32 through 36.
T. 5 S., R. 31 W., unsurveyed,
Secs. 1 through 18.
T. 5 S., R. 32 W., unsurveyed,
Secs. 1, 12, and 13.

The area described aggregates 22,400 acres, more or less.

(5) CALIFORNIA

CALISTOGA KNOWN GEOTHERMAL RESOURCES AREA

T. 8 N., R. 6 W., MDM,
Secs. 5 and 6.
T. 9 N., R. 6 W.,
Secs. 31 and 32.
T. 8 N., R. 7 W.,
Sec. 1.
T. 9 N., R. 7 W.,
Secs. 25 and 36.

The area described aggregates 4,128 acres, more or less.

COSO HOT SPRINGS KNOWN GEOTHERMAL RESOURCES AREA

T. 20 S., R. 38 E., MDM,
Secs. 27 through 29 and 31 through 36.
T. 21 S., R. 38 E.,
Secs. 1 through 5 and 7 through 36.
T. 22 S., R. 38 E.,
Secs. 1 through 5, 9 through 12, and 14.
T. 21 S., R. 39 E.,
Secs. 5 through 9, 16 through 21, and 27 through 34.
T. 22 S., R. 39 E.,
Secs. 3 through 10.

The area described aggregates 51,760 acres, more or less.

GLASS MOUNTAIN KNOWN GEOTHERMAL RESOURCES AREA

T. 43 N., R. 3 E., MDM,
Secs. 1 through 3 and 10 through 15.
T. 44 N., R. 3 E.,
Sec. 36.
T. 43 N., R. 4 E.,
Secs. 4 through 7.
T. 44 N., R. 4 E.,
Secs. 20, 21, and 27 through 34.

The area described aggregates 15,371 acres, more or less.

LAKE CITY KNOWN GEOTHERMAL RESOURCES AREA

T. 43 N., R. 15 E., MDM,
Secs. 1 and 12.

T. 44 N., R. 15 E.,
Secs. 11 through 14, 23 through 26, 35, and 36.
T. 43 N., R. 16 E.,
Secs. 1 through 24.
T. 44 N., R. 16 E.,
Secs. 7, 8, 15 through 22, and 26 through 35.
T. 43 N., R. 17 E.,
Secs. 7 and 18.
The area described aggregates 37,160 acres, more or less.

LASSEN KNOWN GEOTHERMAL RESOURCES AREA

T. 29 N., R. 4 E., MDM,
Secs. 1 through 36.
T. 30 N., R. 4 E.,
Secs. 31 through 36.
T. 29 N., R. 5 E.,
Secs. 1 through 36.
T. 30 N., R. 5 E.,
Secs. 31 and 32.
T. 29 N., R. 6 E.,
Secs. 1 through 36.
T. 30 N., R. 6 E.,
Secs. 29, 30, and 31 through 36 (exclusive of those lands in Lassen Volcanic National Park).
The area described aggregates 78,642 acres, more or less.

MONO-LONG VALLEY KNOWN GEOTHERMAL RESORCES AREA

T. 1 N., R. 26 E., MDM,
Secs. 1 through 18, 20 through 29, and 32 through 36.
T. 2 N., R. 26 E.,
Secs. 1 through 4 and 8 through 36.
T. 3 N., R. 26 E.,
Secs. 25, 35, and 36.
T. 1 N., R. 27 E.,
Secs. 1 through 36.
T. 2 N., R. 27 E.,
Secs. 1 through 36.
T. 3 N., R. 27 E.,
Secs. 13 through 15 and 19 through 36.
T. 1 N., R. 28 E.,
Secs. 1 through 36.
T. 2 N., R. 28 E.,
Secs. 3 through 10 and 14 through 36.
T. 3 N., R. 28 E.,
Secs. 19 and 29 through 33.
T. 1 N., R. 29 E.,
Secs. 6, 7, 17 through 20, and 29 through 33.
T. 2 N., R. 29 E.,
Sec. 31.
T. 1 S., R. 26 E.,
Secs. 1 through 5, 8 through 16, 21 through 28, and 33 through 36.
T. 2 S., R. 26 E.,
Secs. 1 through 4, 9 through 16, 22 through 27, and 34 through 36.
T. 3 S., R. 26 E.,
Secs. 1 through 3, 10 through 15, 23 through 26, 35, and 36.
T. 4 S., R. 26 E.,
Secs. 1 and 12.
T. 1 S., R. 27 E.,
Secs. 1 through 36.
T. 2 S., R. 27 E.,
Secs. 1 through 36.
T. 3 S., R. 27 E.,
Secs. 1 through 36.
T. 4 S., R. 27 E.,
Secs. 1 through 18.
T. 1 S., R. 28 E.,
Secs. 1 through 36.
T. 2 S., R. 28 E.,
Secs. 1 through 36.
T. 3 S., R. 28 E.,
Secs. 1 through 36.
T. 4 S., R. 28 E.,
Secs. 1 through 18, 23, and 24.
T. 1 S., R. 29 E.,
Secs. 4 through 9, 15 through 22, and 26 through 35.
T. 2 S., R. 29 E.,
Secs. 1 through 36.
T. 3 S., R. 29 E.,
Secs. 1 through 36.
T. 4 S., R. 29 E.,
Secs. 1 through 29, 33, and 34.
T. 2 S., R. 30 E.,
Secs. 18, 19, and 30 through 32.
T. 3 S., R. 30 E.,
Secs. 5 through 9, 16 through 21, and 28 through 33.
T. 4 S., R. 30 E.,
Secs. 5 through 8 and 17 through 19.
The area described aggregates 460,256 acres, more or less.

SESPE HOT SPRINGS KNOWN GEOTHERMAL RESOURCES AREA

T. 6 N., R. 20 W., SBM,
Secs. 16 through 22 and 27 through 30.
The area described aggregates 7,034 acres, more or less.

WENDELL-AMEDEE KNOWN GEOTHERMAL RESOURCES AREA

T. 28 N., R. 15 E., MDM,
Sec. 1.
T. 29 N., R. 15 E.,
Secs. 13, 14, 22 through 27, 35, and 36.
T. 28 N., R. 16 E.,
Secs. 4 through 9, 17, and 18.
T. 29 N., R. 16 E.,
Secs. 18 through 20, and 29 through 33.
The area described aggregates 17,292 acres, more or less.

(12) IDAHO

FRAZIER KNOWN GEOTHERMAL RESOURCES AREA

T. 15 S., R. 26 E., BM,
Secs. 13 through 15, 22 through 27, and 34 through 36.
The area described aggregates 7,680 acres, more or less.

YELLOWSTONE KNOWN GEOTHERMAL RESOURCES AREA

T. 12 N., R. 45 E., BM,
Secs. 2, 3, 10, 11, 14, 15, 22, 23, 26, 27, 34, and 35.
T. 13 N., R. 45 E.,
Secs. 2, 3, 10, 11, 14, 15, 22, 23, 26, 27, 34, and 35.
T. 14 N., R. 45 E.,
Sec. 34.
The area described aggregates 14,164 acres, more or less.

(31) NEW MEXICO

BACA LOCATION NO. 1 KNOWN GEOTHERMAL RESOURCES AREA

T. 18 N., R. 3 E. (partly unsurveyed), NMPM,
Secs. 1 through 18 (excluding lands within the Canyon De San Diego Land Grant).
T. 19 N., R. 3 E. (partly unsurveyed),
Secs. 1 through 36.
T. 20 N., R. 3 E. (partly unsurveyed),
Secs. 1 through 4, 8 through 17, and 19 through 36.
T. 21 N., R. 3 E. (partly unsurveyed),
Secs. 33 through 36.
T. 18 N., R. 4 E.,
Secs. 2 through 10, 17, and 18.
T. 19 N., R. 4 E. (unsurveyed),
Secs. 1 through 36.
T. 20 N., R. 4 E. (unsurveyed),
Secs. 1 through 36.
T. 21 N., R. 4 E. (partly unsurveyed),
Secs. 25 through 36.
T. 19 N., R. 5 E. (unsurveyed),
Secs. 3 through 10, 15 through 22, and 27 through 34.
T. 20 N., R. 5 E. (unsurveyed),
Secs. 1 through 36.
T. 21 N., R. 5 E. (partly unsurveyed),
Secs. 29 through 33.
The area described aggregates 152,863 acres, more or less.

(44) UTAH

CRATER SPRINGS KNOWN GEOTHERMAL RESOURCES AREA

T. 14 S., R. 8 W., SLM,
Secs. 10, 11, 14 through 16, 21 through 23, 27 through 29, 32, and 33.
The area described aggregates 8,320 acres, more or less.

ROOSEVELT KNOWN GEOTHERMAL RESOURCES AREA

T. 26 S., R. 9 W., SLM,
Secs. 33 and 34.
T. 27 S., R. 9 W.,
Secs. 3, 4, 9, 10, 15, and 16.
The area described aggregates 5,201 acres, more or less.

W. A. RADLINSKI,
Acting Director.

MARCH 29, 1971.

[FR Doc.71-4618 Filed 4-2-71;8:48 am]

Office of the Secretary

[Order No. 2508, Amdt. 92]

COMMISSIONER OF INDIAN AFFAIRS

Delegation of Authority With Respect to Specific Legislation

Section 30 of Order 2508, as amended, is further amended by the addition under paragraph (a) of a new subparagraph to read as follows:

SEC. 30 *Authority under specific acts.* (a) In addition to any authority delegated elsewhere in this order, the Commissioner of Indian Affairs, except as provided in paragraph (b) of this section, is authorized to perform the functions and exercise the authority vested in the Secretary of the Interior by the following acts or portions of acts or any acts amendatory thereof:

* * * * *

(51) The approval of procedures established by the officially recognized tribal spokesman and/or governing entity for the popular selection by the respective tribes of a principal chief of the Cherokee, Choctaw, Creek, and Seminole Tribes of Oklahoma and a governor of the Chicakasaw Tribe of Oklahoma, pursuant to the Act of October 22, 1970, Public Law 91-495.

ROGERS C. B. MORTON,
Secretary of the Interior.

MARCH 31, 1971.

[FR Doc.71-4708 Filed 4-2-71;8:53 am]

DEPARTMENT OF AGRICULTURE

Office of Plant and Operations

FEE SCHEDULE

Pursuant to the authority delegated to the Director, Office of Plant and Operations, in Title 7, Code of Federal Regulations, § 1.2b, there is published the following:

FEE SCHEDULE

SECTION 1. *General.* This notice sets forth the policy on providing copies of records, including photographic repro-

ductions, mincrofilm, maps and mosaics, related services, and the fees therefor. The agencies of the Department will be guided by these procedures in making copies available to the public, and in the collection of appropriate fees.

SEC. 2. *Facilities.* Records and related services are available at the locations specified by the agencies in their statements of organization and services. Each agency establishes procedures to facilitate public inspection and copying of records. Any materials offered for sale by the Government Printing Office should be purchased from that source. Departmental agencies will not stock such materials for public sale.

Agencies do not stock copies of forms and publications or maintain records at any facility which does not of itself require these materials in its operations.

SEC. 3. *Fees for materials and services.* All agencies of the Department shall be guided by the fees set forth herein. Any changes or additions to this fee schedule shall be made by amendment to or revision of this schedule. Agencies may set their own fees on specialized materials, such as printouts, directives, handbooks, building plans, etc. However, where applicable, single printed sheets or forms shall conform to the rate set for forms. Where a fee has not been established in this schedule, an appropriate fee will be set by the individual agency.

SEC. 4. *Circumstances governing charging of fees for records and related services.* (For photographic reproductions, see section 12.)

A. *Waiver of fees for records and related services.* Fees may be waived under the following conditions:

1. Individual collections of less than $1.

2. For individual collections of more than $1 where the total cost of collecting the fees would be an unduly large part of the receipts.

3. Where the furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization; or comparable fees are set on a reciprocal basis with a foreign country.

4. Where the recipient is engaged in a nonprofit activity designed for the public safety, health or welfare.

5. All or part of the fee may be waived where payment of the full fee by a State, local government, or nonprofit group would not be in the interest of the program.

B. *Fees not to be charged for records and related services.* (For photographic reproductions, see section 12.)

1. For services when the service can be primarily considered as benefiting the general public.

2. When filling requests from other Departments or Government agencies for official use, provided quantities requested are reasonable in number.

3. When members of the public provide their own copying equipment, in which case no copying fee will be charged.

4. No charge will be made by any agency of the Department for any notices, decisions, orders or other material required by law to be served on a party in any proceedings or matter before any Department agency.

SEC. 5. *Limitations of copies.* Agencies may restrict numbers of photocopies and directives furnished the public to one copy of each page. Copies of forms provided the public shall also be held to the minimum practical. Persons requiring any large quantities should be encouraged to take single copies to commercial sources for further appropriate reproduction.

When transcripts are requested which have been provided the Department under a reporting service contract which requires that copies of transcripts be sold only by the contractor, the public may be shown a copy of the transcript. However, the agency shall refer the public to the contractor for purchase of copies.

SEC. 6. *Searches and deletions.* Because of the nature of the Department's business and records, the normal location of a document in a file or other facility will not be considered a search. This would be the same as quickly locating a piece of material for purposes of answering a letter or telephone inquiry, and is based on the Department's obligation to respond to requests furnishing reasonably specific description of the record.

Where a requested record is not discovered by normal location efforts, or where deletion of part of a record is necessary, the office will notify the requester of that fact and require payment of the estimated search or deletion charge as prescribed in the fee schedule in advance before further efforts are undertaken to locate the requested record. Such searches shall be limited by availability of time and staff to perform them and to locations where the record would reasonably be expected to be found.

SEC. 7. *Payments of fees and charges.* Payments will be made to the fullest extent possible in advance or at the time of the transaction. Except as otherwise stipulated by agency procedures, payment shall be made by check, draft, or money order made payable to Treasurer of the United States, but small amounts may be paid in cash, particularly where services are performed in response to a visit to a Department office.

SEC. 8. *Fees for records and related services.*

Class of Service	Unit	Price	Minimum
(a) Photocopies 8½ x 14" or less (excluding aerial photographs).	Each	$0.25	(1)
(b) Forms and related material 8½ x 14" or less.	do	.05	(1)
(c) Certifications	do	[2] $1.00	$1.00
(d) Authentications under Department Seal (excluding aerial photographs).	do	[2] 2.00	2.00
(e) Searches and deletions	do	[3] 1.00	4.00
(f) An additional handling charge of $0.50 for each order may be imposed when a request must be sent to another office for filling, or request is handled by mail.			

[1] No minimum.
[2] Addition to any other charge.
[3] Each 15 minutes or fraction thereof.

SEC. 9. *Photographic reproduction, microfilm, mosaic and maps.* Reproduction of such aerial or other photographic microfilm, mosaic and maps as have been obtained in connection with the authorized work of the Department may be sold at the estimated cost of furnishing such reproductions as prescribed herein.

SEC. 10. *Agencies which furnish photographic reproductions*—a. *Aerial photographic reproductions.* The following agencies of the Department furnish aerial photographic reproductions:

Agricultural Stabilization and Conservation Service (ASCS).
Forest Service (FS).
Soil Conservation Service (SCS).

b. *Other photographic reproductions.* Other types of photographic reproductions may be obtained from the following agencies of the Department:

Agriculture Stabilization that Conservation Service.
Forest Service.
Office of Information.
Soil Conservation Service.
National Agricultural Library.

SEC. 11. *Photographic sales committee.* The photographic sales committee consists of representatives designated by Department agencies principally concerned with the sale of photographic reproductions. The committee recommends prices at which photographic and mosaic reproductions, except library material, shall be sold, and other matters related to photographic reproductions.

SEC. 12. *Circumstances under which photographic reproductions may be provided free.* No charge need be made for services which can be primarily considered as benefiting the public generally. Accordingly, reproductions may be furnished free at the discretion of the agencies of the Department to:

a. Press, radio, television, and newsreel representatives for dissemination to the general public.

b. Agencies of State and local Governments which are carrying on a function related to that of the Department when furnishing the service will help to accomplish an objective of the Department.

c. Cooperators and others in furthering agricultural programs. As a general rule, only one print of each photograph should be provided free. Care should be exercised in approving requests for free prints to determine that such action is in the public interest.

SEC. 13. *Loans.* Aerial photographic film negatives or reproductions may not be loaned to the general public.

SEC. 14. *Sales of positive prints under government contracts.* The annual contract for furnishing single and double frame slide film negatives and positive prints to agencies of the Department, County Extension Agents, and other agencies cooperating with the Department, carries a stipulation that the successful bidder must agree to furnish slide film positive prints to such persons, organizations, and associations as may be authorized by the Department to purchase them.

SEC. 15. *Procedure for handling orders.* In order to expedite handling, all orders

shall contain adequate identifying information. Agencies furnishing aerial photographic reproductions require that all such orders identify the photographs. Each agency has its own procedure and order forms.

SEC. 16. *Photographic reproduction prices.* The prices for photographic reproduction listed here are for the most generally requested items.

a. *National Agricultural Library.* The following prices are applicable to National Agricultural Library items only:

Microfilm—$1 for each 30 pages or fraction thereof.
Photoprint—$1 for each 4 pages or fraction thereof.

b. *General photographic reproductions.* Minimum charge $1 per order. All sizes are approximate. An extra charge may be necessary for excessive laboratory time caused by any special instructions from the purchaser.

Class of work	Unit	Price
1. Copy negatives and film positives:		
4 x 5	Each	$2.30
5 x 7	do	2.55
8 x 10	do	3.40
11 x 14	do	5.70
2. Contact and projection prints (Quotations will be furnished on quantities of six or more reproductions from the same negative.):		
4 x 5	do	1.05
5 x 7	do	1.40
8 x 10, 8 x 10½	do	1.75
11 x 14	do	2.90
Larger sizes	Sq. ft	2.65
Sepia tone—add 50%. Double weight paper—add 20% for air drying, spotting, and finishing matte paper.		
3. Mounting:		
Cardboard and wall board	do	1.75
4. Projection slides (black and white) made from flat copy. (Quotations will be furnished on quantities of six or more reproductions from the same negative.):		
2 x 2 (bound in cardboard)	Each	.95
5. Projection slides (color) made from flat copy:		
2 x 2 (mounts) cardboard	do	1.45
6. Duplicate projection 2 x 2 slides (color):		
Number—	*Cardboard mounts*	
1–5	Each	.55
6–30	do	.50
31–50	do	.45
51 or more	do	.35
7. Duplicate transparencies:		
4 x 5	do	6.80
Prints, same copy	do	2.90

c. *Aerial photographic reproductions.* No minimum charge on aerial photographic reproductions.

Single or double weight paper not ferrotyped (doubled weight, semimatte furnished, unless otherwise specified). All contact prints and enlargements unmounted and untrimmed. Contact prints trimmed for 5 cents each when requested.

1. *Contact prints.* The prices for contact prints are set forth below. The size refers to the approximate size of the contact print.

Quantity	*Price each*
9" x 9" on commercial grade paper:	
Approximate scales:	
ASCS and SCS—1667'=1".	
FS—1320'=1".	
1–25	$1.75
Excess over 25	1.25

For polyester base paper, add $0.75 for contact print.

(Available from ASCS only.)

2. *Enlargements (projection prints).* The prices for enlargements of various sizes, made from 9 x 9 inch negatives, are set forth below. The size in each case refers to the approximate size of paper required to produce the enlargement ordered. For "scale accuracy", add $0.50 per print.

Quantity	*Price each*
Size 13 x 13 inches:	
Approximate scales:	
ASCS and SCS—1320'=1".	
FS—880'=1."	
1–25	$3.00
Excess over 25	2.50
Size 17 x 17 inches:	
Approximate scales:	
ASCS and SCS—1000'=1".	
FS—880'=1	
1–25	3.50
Excess over 25	3.00
Size 24 x 24 inches:	
Approximate scales:	
ASCS and SCS—660'=1".	
FS—528'=1".	
1–25	4.50
Excess over 25	3.50
ASCS also can furnish 330'=1" (quadrant) scale in this size.	
Size 38 x 38 inches:	
Approximate scales:	
ASCS and SCS—400'=1".	
FS—330'=1".	
1–25	9.00
Excess over 25	8.00

For larger size reproductions, add $2 for each additional 12" or fraction thereof, linear measurement.

Quantity	*Price each*
Size 24 x 45 inches (ASCS only):	
Approximate scale: 330'=1".	
1–25	$9.00
Excess over 25	7.00

3. *Aerial photo-index sheets.*

	Price each
Size 20 x 24 inches:	
Approximate scale: 1"=1 mile.	
Any quantity	$3.00

4. *Film positives.* Contact printed from aerial negatives, size 9 x 9 inches:

	Price each
1–25	$3.00
Excess over 25	(Laboratory will quote on request.)

5. *Copy negatives.* On film, of aerial exposures, size 9 x 9 inches.

	Price each
One-step method (direct duplicating film):	
1–25	$2.50.
Excess over 25	(Laboratory will quote on request.)
Two-step method:	
Any quantity	6.00

6. *Diapositives.* Prints on glass, size 9 x 9 inches, thickness 0.06 inch.

	Price each
1–25	$6.50
Excess over 25	6.00

7. *Aperture cards and printouts.*

	1st unit	Each additional unit
Duplicate of an aperture card	$1.00	$0.10
Aperture card from photo-index sheet	1.00	.25
Printout from aperture card	1.00	.50

8. *Color photography.* Furnished only by the Regional Forest Service Aerial Photography laboratories at Ogden, Utah, and San Francisco, Calif.

Positive contract print made from negative:	*Price each*
Any quantity	$6.50
Enlargements (up to 20" x 20" stock):	
Quantity:	
1st print	15.00
2–25	10.00
Over 25	8.00

9. *Special needs.* For special needs not covered above, persons desiring aerial photographic reproductions should contact the agencies listed in section 10a, or the Coordinator, Aerial Photographic Work of the Department of Agriculture, ASCS, Washington, D.C. 20250.

SEC. 17. The fee schedule published in the FEDERAL REGISTER on September 22, 1970 (35 F.R. 14733), is superseded by this fee schedule.

SEC. 18. *Effective date.* This fee schedule and related procedures shall become effective upon publication in the FEDERAL REGISTER (4–3–71).

Dated: March 29, 1971.

ELMER MOSTOW,
Director,
Office of Plant and Operations.

[FR Doc.71–4550 Filed 4–2–71;8:45 am]

Office of the Secretary

MEAT IMPORT LIMITATIONS

Second Quarterly Estimates

Public Law 88–482, approved August 22, 1964 (hereinafter referred to as the Act), provides for limiting the quantity of fresh, chilled, or frozen cattle meat (TSUS 106.10) and fresh, chilled, or frozen meat of goats and sheep, except lamb (TSUS 106.20), which may be imported into the United States in any calendar year. Such limitations are to be imposed when it is estimated by the Secretary of Agriculture that imports of such articles, in the absence of limitations during such calendar year, would equal or exceed 110 percent of the estimated quantity of such articles, prescribed by section 2(a) of the Act.

In accordance with the requirements of the Act, the following second quarterly estimates are published:

1. The estimated aggregate quantity of such articles which would, in the absence of limitations under the Act, be imported during calendar year 1971 is 1,160.0 million pounds.

2. The estimated quantity of such articles prescribed by section 2(a) of the Act during the calendar year 1971 is 1,025.0 million pounds.

Since the estimated quantity of imports continues to exceed 110 percent of the estimated quantity prescribed by section 2(a) of the Act, under the Act limitations for the calendar year 1971 on the importation of fresh, chilled, or frozen cattle meat (TSUS 106.10) and fresh, chilled, or frozen meat of goats and sheep

(TSUS 106.20), are required to be imposed but may be suspended. Such limitations were imposed by Proclamation 4037 of March 11, 1971, and were suspended during the balance of the calendar year 1971 unless because of changed circumstances further action under the Act becomes necessary.

Done at Washington, D.C., this 30th day of March 1971.

CLIFFORD M. HARDIN,
Secretary of Agriculture.

[FR Doc.71-4607 Filed 4-2-71;8:47 am]

Packers and Stockyards Administration

[P. & S. Docket No. 1211]

SAINT PAUL UNION STOCKYARDS

Petition Regarding Increase of Certain Rates

Preamble. Saint Paul Union Stockyards has requested permission to increase certain stockyard rates. This notice informs the public of the request and also of the time and means for the public to be heard in this matter.

Notice of petition for modification of rate order. Pursuant to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), an order was issued on April 28, 1970 (29 A.D. 460), authorizing the respondent, Saint Paul Union Stockyards, Saint Paul, Minn., a division of United Stockyards Corp., to assess the current temporary schedule of rates and charges to and including December 31, 1971, unless modified or extended by further order before that date.

On March 5, 1971, a petition was filed on behalf of the respondent requesting authority to modify, at the earliest possible date, the current temporary schedule of rates and charges as indicated below.

A. Amend Item 1 in the present tariff to provide an increase in the basic yardage charges per head as follows:

	Present	Proposed
Calves (400 lbs. or under)	$0.85	$1.10
B. Amend Item 6(a) as follows:	*Per cwt.*	
Hay	.60	.80
Alfalfa	.60	.80
C. Amend Item 7(a) as follows:		
Bedding	.60	.80

The modifications, if authorized, will produce additional revenue for the respondent and increase the cost of marketing livestock. Accordingly, it appears that this public notice of the filing of the petition and its contents should be given in order that all interested persons may have an opportunity to indicate a desire to be heard in the matter.

All interested persons who desire to be heard in the matter shall notify the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, within 15 days after the publication of this notice in the FEDERAL REGISTER.

Done at Washington, D.C. this 31st day of March 1971.

ODIN LANGEN,
Administrator, Packers and Stockyards Administration.

[FR Doc.71-4651 Filed 4-2-71;8:50 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGFR 71-24]

SEABOARD COAST LINE RAILROAD BRIDGE ACROSS OKEECHOBEE WATERWAY

Notice of Public Hearing of Proposed Bridge Alteration

Notice is hereby given that a public hearing will be held on May 4, 1971, regarding the Seaboard Coast Line Railroad drawbridge across the Okeechobee Waterway (Caloosahatchee River) at Tice, Fla., by the authority of section 3 of the Act of June 21, 1940 (Truman-Hobbs Act), 54 Stat. 498, 33 U.S.C. 513; section 6(g)(3), 80 Stat. 937, 49 U.S.C. 1655 (g)(3); 33 CFR 116.20 and 49 CFR 1.46(c)(6). The hearing will be held in the court room, Federal Building, First and Lee Streets, Fort Myers, Fla., beginning at 10 a.m. on May 4, 1971. A number of complaints have been received alleging that the bridge is obstructive. The purpose of the hearing is to determine whether alterations are needed and if so what alterations are needed, having due regard for the necessity of reasonably free and unobstructed water navigation and that of rail traffic.

The existing bridge which has a swing span provides minimum horizontal clearances of 50 feet through both the north and south openings. The public hearing is to obtain information so the Commander, Seventh Coast Guard District, may submit to the Commandant of the Coast Guard a full report as to whether this bridge unreasonably obstructs navigation; whether watercraft have unreasonable difficulty in passing the draw openings; the changes necessary to render navigation through or under the bridge reasonably free, easy and unobstructed; the character and the approximate amount of commerce affected by the obstructive features of the bridge; and whether the commerce affected is sufficient to justify changes in the bridge.

A chart section showing the location of each drawbridge is on file in the office of the Commander, Seventh Coast Guard District, 1018 Federal Building, 51 Southwest First Avenue, Miami, FL 33130. All interested parties are invited to be present or to be represented at the hearing. They will be given an opportunity to express their views concerning the alteration of the bridge and to suggest any changes that may be considered desirable.

Each person who wishes to make an oral statement should notify the Commander, Seventh Coast Guard District, 1018 Federal Building, 51 Southwest First Avenue, Miami, FL 33130 not later than April 27, 1971, indicating the amount of time required for initial statement. Depending on the number of scheduled statements, it may be necessary to limit the amount of time allocated to each speaker. Persons requesting time to present oral statements will be notified if such allocation is necessary. Written statements and exhibits are encouraged in place of or in addition to oral statements and will be made a part of the record of hearing. Such statements and exhibits may be delivered at the hearing on May 4, 1971, or mailed prior to that date to the Commander (oan), Seventh Coast Guard District, 1018 Federal Building, 51 Southwest First Avenue, Miami, FL 33130.

Dated: March 31, 1971.

C. R. BENDER,
Admiral, U.S. Coast Guard, Commandant.

[FR Doc.71-4629 Filed 4-2-71;8:48 am]

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

MONTEREY COAL CO.

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./m.^{3}) has been received for consideration as follows:

(1) ICP Docket No. 11329, Monterey Coal Co., Monterey No. 1 Mine, USBM ID NO. 11 00726 0, Carlinville, Macoupin County, Ill., Section ID No. 001 (No. 1 Shaft Bottom layout—North Entries).

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, D.C. 20006.

GEORGE A. HORNBECK,
Chairman, Interim Compliance Panel.

MARCH 30, 1971.

[FR Doc.71-4602 Filed 4-2-71;8:46 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. FDC-D-249; NDA No. 9-183, etc.]

CERTAIN STEROID COMBINATION PREPARATIONS FOR ORAL USE

Notice of Withdrawal of Approval of New-Drug Applications

In an announcement (DESI 9984) published in the FEDERAL REGISTER of March 28, 1970 (35 F.R. 5277), holders of new-drug applications for certain steroid combination drugs for systemic use in man, as well as other interested persons, were invited by the Commissioner of Food and Drugs to submit data bearing on his intention to initiate proceedings to withdraw approval of these new-drug applications.

The following firms specifically included in the announcement have requested withdrawal of approval of their new-drug applications by letter, thus waiving their opportunity for a hearing:

NDA	Drug name	NDA holder
10-387	Buffered Pabirin AC Tablets (hydrocortisone, aspirin, aminobenzoic acid, ascorbic acid, and dried aluminum hydroxide gel).	Dorsey Laboratories, Division of The Wander Co., Northeast U.S. 6 and Interstate 80, Lincoln, NE 68501.
10-387	Pabirin AC Capsules (hydrocortisone, aspirin, aminobenzoic acid, and ascorbic acid).	Dorsey Laboratories, Division of The Wander Co.
10-510	Artamide-HC Capsules (salicylamide aminobenzoic acid, ascorbic acid, and hydrocortisone).	Wampole Laboratories, 35 Commerce Road, Stamford, CT 06902.
11-023	Salcort-Delta Tablets (prednisone potassium salicylate, calcium pantothenate, calcium ascorbate, calcium carbonate, and dried aluminum hydroxide gel).	The S. E. Massengill Co., 527 5th St., Bristol, TN 37620.
11-027	Mephosal with Hydrocortisone Tablets (mephenesin, sodium salicylate, homatropine methylbromide, and hydrocortisone acetate).	Crookes-Barnes Laboratories, Inc., Fairfield Road, Wayne, NJ 07470.

In addition, the following firms have requested withdrawal of approval of their new-drug applications. Although the drugs were not specifically mentioned in the above announcement, they are similarly affected by the published conclusions.

NDA	Drug name	NDA holder
9-183	Neocylate with Cortisone Tablets (cortisone, ammonium salicylate, potassium aminobenzoate, and ascorbic acid).	The Central Pharmacal Co., 116-128 East 3d St., Seymour, IN 47274.
9-814	Vistabolic Tablets (hydrocortisone, methandriol, and vitamin B12 with intrinsic factor concentrate).	Organon, Inc., West Orange, N.J. 07052.
9-887	Armyl F. Tablets (hydrocortisone, potassium salicylate, potassium aminobenzoate, and ascorbic acid).	Armour Pharmaceutical Co., Kankakee, Ill. 60901.
9-890	Actylate with Cortisone Tablets (cortisone, ammonium salicylate, potassium salicylate, strontium salicylate, potassium aminobenzoate, and ascorbic acid).	The Central Pharmacal Co.
9-907	Pabalate with Cortisone Tablets (cortisone, potassium salicylate, potassium aminobenzoic acid, and ascorbic acid).	A. H. Robins Co., 1407 Cummings Dr., Richmond, VA 23220.
10-386	Cortigesic Tablets (cortisone, aspirin, and ascorbic acid)	KV Pharmacal Co., 2503 South Hanley Rd., St. Louis, MO 63144.
10-517	Tacosal Tablets (hydrocortisone, potassium salicylate, aminobenzoic acid, aluminum hydroxide gel, and ascorbic acid).	Table Rock Laboratories, Inc., Greenville, SC 29602.
10-802	Neocylate-HC Tablets (hydrocortisone, potassium salicylate, potassium aminobenzoate, and ascorbic acid).	The Central Pharmacal Co.
11-312	Salimeph Prednisolone Tablets (prednisolone, salicylamide, mephenesin, and ascorbic acid).	Kremers-Urban Co., Milwaukee, Wis. 53201.

On October 27, 1970, there was published in the FEDERAL REGISTER (35 F.R. 16645) a notice of opportunity for hearing in which the Commissioner of Food and Drugs proposed to issue an order under section 505(e) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 355(e)) withdrawing approval of the new drug applications listed therein on the grounds that new information before the Commissioner with respect to said drugs, evaluated together with the evidence available to him when the applications were approved, shows there is a lack of substantial evidence that these drugs will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling. Holders of the following applications named in that notice have waived opportunity for hearing on the proposed withdrawal of said new-drug applications in that no requests for hearings have been received.

NDA	Drug name	NDA holder
10-497	Articon Tablets (hydrocortisone acetate, salicylamide, and mephenesin).	Walker Laboratories, Division Richardson-Merrell, Inc., 1 Bradford Rd., Mount Vernon, NY.
11-475	Enescorb Tablets (pregnenolone acetate and ascorbic acid).	U.S. Vitamin & Pharmaceutical Corp., 800 2d Ave., New York, NY 10017.
11-274	Neocylone Tablets (prednisolone, potassium salicylate, potassium aminobenzoate, and ascorbic acid).	The Central Pharmacal Co., 116-128 East 3d St., Seymour, IN 47274.
10-342	Pabicortal Tablets (hydrocortisone, potassium salicylate, potassium aminobenzoate, and ascorbic acid).	Nysco Laboratories, 34-24 Vernon Blvd., Long Island City, NY 11100.
11-550	Prednicorb Tablets (prednisolone, aluminum hydroxide, ascorbic acid, and salicylamide).	Nysco Laboratories.

Lederle Laboratories, Division of American Cyanamid Co., Post Office Box 500, Pearl River, NY 10965, holder of NDA 11-684 for Aristogesic Steroid-Analgesic Compound, containing triamcinolone, salicylamide, and ascorbic acid, with or without dried aluminum hydroxide, filed a letter stating that it had no new scientific investigational data to submit but requested the Commissioner to conclude that withdrawal of approval of NDA 11-684 would not be in the best interests of the public. The Commissioner of Food and Drugs concludes that there is no genuine and substantial issue of fact to justify a hearing (35 F.R. 7250, May 8, 1970).

A. H. Robins Co., Inc., 1407 Cummings Drive, Richmond, VA 23220, holder of NDA 9-984, filed a letter requesting a hearing pursuant to the October 27, 1970, publication but did not file any data to support said request other than a claim that Pabalate—H.C. Tablets, containing potassium salicylate, potassium aminobenzoate, ascorbic acid, and hydrocortisone, is not a new drug as defined in the 1962 Drug Amendments. The Commissioner of Food and Drugs concludes that Pabalate—H.C. Tablets is a new drug as defined by the 1962 Drug Amendments and that A. H. Robins has failed to establish any genuine and substantial issue of fact to justify a hearing (35 F.R. 7250, May 8, 1970).

The Commissioner of Food and Drugs, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (section 505(e), 52 Stat. 1053, as amended; 21 U.S.C. 355(e)) and under authority delegated to him (21 CFR 2.120), finds that on the basis of new information before him with respect to each of said drugs, evaluated together with the evidence available to him when each application was approved, there is a lack of substantial evidence that each of the drugs will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof.

Therefore, pursuant to the foregoing findings, approval of all of the above-listed new-drug applications, and all amendments and supplements thereto, is withdrawn effective on the date of the signature of this document.

Dated: March 19, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-4591 Filed 4-2-71;8:45 am]

[Docket No. FDC-D-304; NADA No. 11-081V]

CHAS. PFIZER & CO. INC.

Embryostat; Notice of Opportunity for Hearing

In the FEDERAL REGISTER of April 15, 1969 (34 F.R. 6494), the Commissioner of Food and Drugs announced the conclusions of the Food and Drug Administration and the National Academy

of Sciences-National Research Council, Drug Efficacy Study Group, following evaluation by the Administration of a report received from the Academy on Embryostat, NADA (new animal drug application) No. 11-081V, Chas. Pfizer & Co., Inc., 235 East 42d Street, New York, NY 10017, a product containing oxytetracycline (terramycin) hydrochloride.

The announcement invited the holders of said new animal drug application, and any other interested persons, to submit pertinent data on the drug's effectiveness.

Data received in response to the announcement and available information fails to provide substantial evidence of effectiveness of the drug for its recommended use in cows at the recommended dosage for chronic metritis, cervicitis, and vaginitis.

Therefore, notice is given to the above-named firm, and to any interested person who may be adversely affected, that the Commissioner proposes to issue an order under section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)) withdrawing approval of the new animal drug application listed above and all amendments and supplements thereto held by said firm for the listed drug product on the grounds that:

New information before the Commissioner with respect to the drug was evaluated together with the evidence available to him when the application was approved. These data do not provide substantial evidence that the drug has the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

In accordance with the provisions of section 512 of the act (21 U.S.C. 360b), the Commissioner will give the applicant, and any interested person who would be adversely affected by an order withdrawing such approval, an opportunity for a hearing at which time such person may produce evidence and arguments to show why approval of the above-named new animal drug application should not be withdrawn. Promulgation of the order will cause any drug similar in composition to the above-listed drug product and recommended for similar conditions to be a new animal drug for which an approved new animal drug application is not in effect. Any drug then on the market would be subject to regulatory proceedings.

Within 30 days after publication hereof in the FEDERAL REGISTER, such persons are required to file with the Hearing Clerk, Department of Health, Education, and Welfare, Office of the General Counsel, Room 6-62, 5600 Fishers Lane, Rockville, Md. 20852, a written appearance electing whether:

1. To avail themselves of the opportunity for a hearing; or

2. Not to avail themselves of the opportunity for a hearing.

If such persons elect not to avail themselves of the opportunity for a hearing, the Commissioner without further notice will enter a final order withdrawing the approval of the new animal drug application.

Failure of such persons to file a written appearance of election within said 30 days will be construed as an election by such persons not to avail themselves of the opportunity for a hearing.

The hearing contemplated by this notice will be open to the public except that any portion of the hearing that concerns a method or process the Commissioner finds entitled to protection as a trade secret will not be open to the public, unless the respondent specifies otherwise in his appearance.

If such persons elect to avail themselves of the opportunity for a hearing, they must file a written appearance requesting the hearing and giving the reasons why approval of the new animal drug application should not be withdrawn together with a well-organized and full-factual analysis of the clinical and other investigational data they are prepared to prove in support of their opposition to the ground for this notice. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing. When it clearly appears from the data in the application and from the reasons and factual analysis in the request for the hearing that no genuine and substantial issue of fact precludes the withdrawal of approval of the application, the Commissioner will enter an order stating his findings and conclusions on such data. If a hearing is requested and justified by the response to his notice, the issues will be defined, a hearing examiner will be named, and he shall issue a written notice of the time and place at which the hearing will commence. The time shall be not more than 90 days after the expiration of said 30 days, unless the hearing examiner and the applicant otherwise agree.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-51; 21 U.S.C. 360b) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: March 17, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-4592 Filed 4-2-71;8:45 am]

[DESI 9149; Docket No. FDC-D-334; NDA 9-149 etc.]

CERTAIN PREPARATIONS CONTAINING CHLORPROMAZINE; PERPHENAZINE; PROCHLORPERAZINE; PROMAZINE; THIORIDAZINE; TRIFLUOPERAZINE; OR TRIFLUPROMAZINE

Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following antipsychotic drugs for oral, injectable, or suppository use:

1. Thorazine Tablets (NDA 9-149), Thorazine Concentrate (NDA 9-149), Thorazine Injection (NDA 9-149), Thorazine Syrup (NDA 9-149), and Thorazine Spansules (NDA 11-120), all containing chlorpromazine hydrochloride; marketed by Smith Kline and French Laboratories, 1500 Spring Garden Street, Philadelphia, Pa. 19101.

2. Trilafon Injection (NDA 11-213), Trilafon Tablets (NDA 10-775), Trilafon Repetabs (NDA 11-361), Trilafon Concentrate (NDA 11-557), Trilafon Syrup (NDA 11-294), and Trilafon Suppositories (NDA 11-495), all containing perphenazine; marketed by Schering Corp., 60 Orange Street, Bloomfield, N.J. 07003.

3. a. Compazine Injection (NDA 10-742), Compazine Syrup (NDA 11-188), and Compazine Concentrate (NDA 11-276), all containing prochlorperazine edisylate; marketed by Smith Kline and French Laboratories, and

b. Compazine Tablets (NDA 10-571) and Compazine Spansules (NDA 11-000), both containing prochlorperazine maleate; marketed by Smith Kline and French Laboratories.

4. Sparine Injection (NDA 10-349), Sparine Concentrate (NDA 10-942), Sparine Syrup (NDA 10-942), and Sparine Tablets (NDA 10-348), all containing promazine hydrochloride; marketed by Wyeth Laboratories, Inc., Post Office Box 8299, Philadelphia, Pa. 19101.

5. Mellaril Tablets and Concentrate, both containing thioridazine hydrochloride; marketed by Sandoz Pharmaceuticals Division, Sandoz-Wander, Inc., Route 10, Hanover, N.J. 07936 (NDA 11-808).

6. Stelazine Tablets, Concentrate, and Injection, all containing trifluoperazine hydrochloride; marketed by Smith Kline and French Laboratories (NDA 11-552).

7. Vesprin Injection (NDA 11-325) and Vesprin Tablets (NDA 11-123), both containing triflupromazine hydrochloride; marketed by E. R. Squibb and Sons, Inc., Georges Road, New Brunswick, N.J. 08903.

8. Vesprine High Potency Suspension, containing triflupromazine; marketed by E. R. Squibb and Sons, Inc. (NDA 11-491).

These drugs are regarded as new drugs (21 U.S.C. 321(p)) and require approved new-drug applications for marketing. Supplemental new-drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. Any such drug on the market which is not now the subject of an approved or effective new-drug application may be regarded to be in violation of the Federal Food, Drug, and Cosmetic Act and subject to regulatory proceedings until such time as all

requirements of this implementation notice are met. The effectiveness classification and marketing status are described below.

The Food and Drug Administration is prepared to approve new-drug applications and supplements to previously approved new-drug applications under conditions described in this announcement.

I. *Effectiveness classifications.* The Food and Drug Administration has considered the Academy's reports, as well as other available evidence, and concludes as follows:

A. CHLORPROMAZINE (ORAL AND PARENTERAL FORMS)

1. Chlorpromazine is effective for the control of moderate to severe anxiety, tension, and agitation when such symptoms are manifestations of psychotic conditions, e.g., schizophrenia; control of nausea and vomiting; the relief of restlessness and apprehension prior to surgery; acute intermittent porphyria; and as an adjunct in the treatment of tetanus.

2. This drug is probably effective for reducing agitation and tension associated with mild alcoholic withdrawal in patients under close supervision; for the control of moderate to severe agitation, tension, or anxiety when such symptoms are manifestations of the manic type of manic depressive illness or of involuntional melancholia; for the relief of intractable hiccups; and for the control of moderate to severe agitation, hyperactivity, or aggressiveness in disturbed children.

3. This drug lacks substantial evidence of effectiveness for use in somatic conditions with emotional stress, e.g., arthritis, neurodermatitis, and severe asthma; acute and chronic alcoholism, and agitation; delirium tremens; severe personality disorders; and for control of degenerative states.

4. This drug is possibly effective for its other labeled indications.

B. PERPHENAZINE (ORAL AND PARENTERAL FORMS AND SUPPOSITORY FOR RECTAL ADMINISTRATION)

1. Perphenazine is effective for the control of moderate to severe anxiety, tension, and agitation when such symptoms are manifestations of psychotic conditions, e.g., schizophrenia; and for the control of severe nausea and vomiting in adults.

2. This drug is probably effective for reducing agitation and tension in mild alcoholic withdrawal in patients under close supervision.

3. This drug is possibly effective for its other labeled indications.

C. PROCHLORPERAZINE (ORAL AND PARENTERAL FORMS)

1. Prochlorperazine is effective for the control of moderate to serve agitation, anxiety, and tension when such symptoms are manifestations of psychotic conditions, e.g., schizophrenia; and the parenteral form is effective for the control of severe nausea and vomiting.

2. This drug lacks substantial evidence of effectiveness for the control of behavior disorders in children; and for chronic alcoholism.

3. This drug is possibly effective for its other labeled indications.

D. PROMAZINE (ORAL AND PARENTERAL FORMS)

1. Promazine is effective for the control of moderate to severe agitation, anxiety, and tension when such symptoms are manifestations of psychotic conditions, e.g., schizophrenia.

2. This drug is probably effective for the control of nausea and vomiting; for the relief of apprehension prior to surgery; and for reducing agitation and tension associated with mild alcoholic withdrawal in patients under close supervision.

3. This drug lacks substantial evidence of effectiveness for use in the control of central nervous system excitation; as an adjunct to the management of mental and emotional disturbances; and in inebriation.

4. This drug is possibly effective for its other labeled indications.

E. THIORIDAZINE (ORAL FORMS)

1. Thioridazine is effective for the control of moderate to severe agitation, anxiety, and tension when such symptoms are manifestations of psychotic conditions, e.g., schizophrenia.

2. This drug is probably effective for the relief of symptoms of neurotic depressive reaction; and control of moderate to sever agitation, hyperactivity, or aggressiveness in disturbed children.

3. This drug is possibly effective for its other labeled indications.

F. TRIFLUOPERAZINE (ORAL AND PARENTERAL FORMS)

1. Trifluoperazine is effective for the control of moderate to severe agitation, anxiety, and tension when such symptoms are manifestations of psychotic conditions, e.g., schizophrenia.

2. This drug is probably effective for the control of agitation, anxiety, and tension when such symptoms are manifestations of involutional melancholia.

3. This drug lacks substantial evidence of effectiveness for use in producing rapid response in chronic brain syndrome or mental deficiency.

4. This drug is possibly effective for its other labeled indications.

G. TRIFLUPROMAZINE (ORAL AND PARENTERAL FORMS)

1. Triflupromazine is effective for the control of moderate to severe agitation, tension, and anxiety when such symptoms are manifestations of psychotic conditions, e.g., schizophrenia; and for the control of severe nausea and vomiting.

2. This drug is probably effective as an adjunct, is preoprative and postoperative management; and for reducing agitation and tension associated with mild alcoholic withdrawal symptoms in patients under close supervision.

3. This drug lacks substantial evidence of effectiveness in the management of mental disorders, acute and chronic psychoses, or delirium.

4. This drug is possibly effective for its other labeled indications.

II. *Form of drug.* Thioridazine is in a form suitable for oral administration. The other drugs are in a form suitable for oral or parenteral administration. Perphenazine may also be in suppository form suitable for rectal administration.

III. *Labeling conditions.* The labels bear the statement "Caution: Federal law prohibits dispensing without prescription."

The drugs are labeled to comply with all requirements of the Act and regulations. Their labeling bears adequate information for safe and effective use of the drugs and is in accord with the effectiveness classifications, the guidelines for uniform labeling published in the FEDERAL REGISTER of February 6, 1970, and, where applicable, the Academy's comments. The "Indications" sections are as follows:

A. CHLORPROMAZINE

INDICATIONS

This drug is indicated for the control of moderate to severe anxiety, tension, and agitation when such symptoms are manifestations of psychotic conditions, e.g., schizophrenia; for the control of nausea and vomiting; for the relief of restlessness and apprehension prior to surgery; as an adjunct in the treatment of tetanus; and in the treatment of acute intermittent porphyria. It may also be useful for reducing agitation and tension associated with mild alcoholic withdrawal in patients under close supervision; for the control of moderate to severe agitation, tension, or anxiety when such symptoms are manifestations of the manic depressive illness or of involutional melancholia; for the relief of intractable hiccups; and for the control of moderate to severe agitation, hyperactivity or aggressiveness in disturbed children.

B. PERPHENAZINE

INDICATIONS

This drug is indicated for the control of moderate to severe anxiety, tension, and agitation when such symptoms are manifestations of psychotic conditions, e.g., schizophrenia; and for the control of severe nausea and vomiting in adults.

It may also be useful for reducing agitation and tension in mild alcoholic withdrawal in patients under close supervision.

C. PROCHLORPERAZINE

INDICATIONS

This drug is indicated for the control of moderate to severe agitation, anxiety, and tension when such symptoms are manifestations of psychotic conditions, e.g., schizophrenia. The injectable form of this drug is also indicated for the control of severe nausea and vomiting.

D. PROMAZINE

INDICATIONS

This drug is indicated for the control of moderate to severe agitation, anxiety, and tension when such symptoms are manifestations of psychotic conditions, e.g., schizophrenia.

This drug may also be useful for the control of nausea and vomiting; for the relief of apprehension prior to surgery; and for reducing agitation and tension associated with mild alcoholic withdrawal in patients under close supervision.

E. THIORIDAZINE

INDICATIONS

This drug is indicated for the control of moderate to severe agitation, anxiety, and tension when such symptoms are manifestations of psychotic conditions, e.g., schizophrenia.

This drug may also be useful for the relief of symptoms of neurotic depressive reaction; and for the control of moderate to severe agitation, hyperactivity, or aggressiveness in disturbed children.

F. TRIFLUOPERAZINE

INDICATIONS

This drug is indicated for the control of moderate to severe agitation, anxiety, and tension when such symptoms are manifestations of psychotic conditions, e.g., schizophrenia.

It may also be useful in controlling these same symptoms when they are manifestations of involutional melancholia.

G. TRIFLUPROMAZINE

INDICATIONS

This drug is indicated for the control of moderate to severe agitation, anxiety, and tension when such symptoms are manifestations of psychotic conditions, e.g., schizophrenia; and for the control of severe nausea and vomiting.

This drug may also be useful as an adjunct in preoperative and postoperative management; and for reducing agitation and tension associated with mild alcoholic withdrawal symptoms in patients under close supervision.

IV. *Indications permitted during extended period for obtaining substantial evidence (for drugs now the subject of approved or effective applications).* A. Those indications for which a drug is described in paragraphs I.A. through G. above as probably effective are included in the labeling conditions in paragraph III and may continue to be used for twelve months following the date of this publication to allow additional time within which holders of previously approved applications may obtain and submit to the Food and Drug Administration data to provide substantial evidence of effectiveness.

B. Those indications for which a drug is referenced in paragraphs I.A through G above as possibly effective (not included in the labeling conditions in paragraph III) may continue to be used for six months following the date of this publication to allow additional time within which holders of previously approved applications may obtain and submit to the Food and Drug Administration data to provide substantial evidence of effectiveness.

C. To be acceptable for consideration in support of the effectiveness of a drug, any such data must be previously unsubmitted, well-organized, and include data from adequate and well-controlled clinical investigations (identified for ready review) as described in section 130.12(a)(5) of the regulations published in the FEDERAL REGISTER of May 8, 1970 (35 F.R. 7250). Carefully conducted and documented clinical studies obtained under uncontrolled or partially controlled situations are not acceptable as a sole basis for the approval of claims of effectiveness, but such studies may be considered on their merits for corroborative support of efficacy and evidence of safety.

V. *Marketing status.* Marketing of the drugs which are now subjects of approved or effective new-drug applications may continue under the conditions described in paragraph VI of this announcement except that those indications referenced in paragraph IV may continue to be used as described therein.

VI. *Previously approved applications.* A. Each holder of a "deemed approved" new-drug application (i.e., an application which became effective on the basis of safety prior to October 10, 1962) for such drug is requested to seek approval of the claims of effectiveness and bring the application into conformance by submitting supplements containing:

1. Revised labeling as needed to conform with the labeling conditions described herein for the drug and complete current container labeling unless recently submitted.

2. If methodology exists, adequate data to assure the biologic availability of the drug in the formulation which is marketed. If such data are already included in the application, specific reference thereto may be made.

3. Updating information as needed to make the application current in regard to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of the new-drug application form FD–356H (21 CFR 130.4(c)). (One supplement may contain all the information described in this paragraph.)

B. Such supplements should be submitted within the following time periods after the date of publication of this announcement in the FEDERAL REGISTER:

1. 60 days for revised labeling—the supplement should be submitted under the provisions of § 130.9 (d) and (e) of the new-drug regulations (21 CFR 130.9) which permit certain changes to be put into effect at the earliest possible time.

2. 180 days for biologic availability data.

3. 60 days for updating information.

C. Marketing of the drug may continue until the supplemental applications submitted in accord with the preceding subparagraphs A. and B. are acted upon, provided that within 60 days after the date of this publication, the labeling of the preparation shipped within the jurisdiction of the Act is in accord with the labeling conditions described herein. (It may continue to include the indications referenced in paragraph IV for the period stated.)

VII. *New applications.* A. Any person not now the holder of an approved or effective new-drug application who intends to distribute such drug for the conditions of use for which it has been shown to be effective, as described under I above, should submit an abbreviated new-drug application meeting the conditions specified in § 130.4(f) (1), (2), and (3) published in the FEDERAL REGISTER of April 24, 1970 (35 F.R. 6574), except that full information with respect to items 7 and 8 of form FD–356H is required. Such applications should include proposed labeling which is in accord with the labeling conditions described herein and, if methodology exists, adequate data to assure the biologic availability of the drug in the formulation which is proposed for marketing. In the absence of adequate methodology for determining biological availability, certain clinical information will be required. The Food and Drug Administration should be contacted with respect to the nature and extent of clinical data necessary and the appropriate manufacturing specifications for the article.

B. Distribution of any such preparation currently on the market without an approved or effective new-drug application may be regarded to be in violation of the Federal Food, Drug, and Cosmetic Act and subject to regulatory proceedings.

VIII. *Opportunity for a hearing.* A. The Commissioner of Food and Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act withdrawing approval of all new-drug applications and all amendments and supplements thereto providing for the indications for which substantial evidence of effectiveness is lacking as described in paragraph I of this announcement. An order withdrawing approval of the applications will not issue if such applications are supplemented, in accord with this notice, to delete such indications.

B. In accordance with the provisions of section 505 of the Act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Part 130), the Commissioner will give the holders of any such applications, and any interested person who would be adversely affected by such an order, an opportunity for a hearing to show why such indications should not be deleted from labeling. A request for a hearing must be filed within 30 days after the date of publication of this notice in the FEDERAL REGISTER. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing, together with a well-organized and full-factual analysis of the clinical and other investigational data the objector is prepared to prove in a hearing.

C. Any data submitted in response to this notice must be previously unsubmitted and include data from adequate and well-controlled clinical investigations (identified for ready review) as described in § 130.12(a)(5) of the regulations published in the FEDERAL REGISTER of May 8, 1970 (35 F.R. 7250). Carefully conducted and documented clinical studies obtained under uncontrolled or

partially controlled situations are not acceptable as a sole basis for approval of claims of effectiveness, but such studies may be considered on their merits for corroborative support of efficacy and evidence of safety. If a hearing is requested and justified by the response to this notice, the issues will be defined, a hearing examiner will be named, and he shall issue a written notice of the time and place at which the hearing will commence.

IX. *Unapproved use or form of drug.* If the article is marketed in another form or is labeled or advertised for use in any condition other than those provided for in this announcement, it may be regarded as an unapproved new drug subject to regulatory proceedings until such form or use is approved in a new drug application or is otherwise in accord with this announcement.

A copy of the Academy's report has been furnished to each firm referred to above. Any other interested person may obtain a copy by request to the Press Relations Office (CE–200), Food and Drug Administration, 200 C Street SW., Washington, D.C. 20204.

Communications forwarded in response to this announcement should be identified with the reference number DESI 9149, directed to the attention of the following appropriate office, and addressed (unless otherwise specified) to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852:

Supplements (identify with NDA number): Office of Scientific Evaluation (BD–100), Bureau of Drugs.

Original abbreviated new-drug applications (identify as such): Drug Efficacy Study Implementation Project Office (BD–5), Bureau of Drugs.

Request for Hearing (identify with Docket number): Hearing Clerk, Office of General Counsel (GC–1), Room 6–62, Parklawn Building.

All other communications regarding this announcement: Drug Efficacy Study Implementation Project Office (BD–5), Bureau of Drugs.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–53, as amended; 21 U.S.C. 352, 355) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: March 19, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71–4608 Filed 4–2–71;8:47 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50–280, 50–281]

VIRGINIA ELECTRIC AND POWER CO.

Notice of Availability of Draft Detailed Statement and Request for Comments From State and Local Agencies

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that a document entitled "Draft Detailed Statement on the Environmental Considerations by the Division of Reactor Licensing, U.S. Atomic Energy Commission, Related to the Proposed Operation of the Surry Power Station by the Virginia Electric and Power Company" is being placed in the following locations where it will be available for inspection by members of the public: The Commission's Public Document Room, 1717 H Street NW., Washington, D.C.; and the Office of the Chairman of the Board of County Supervisors of Surry County, Surry Court House, Va. 23883.

The Commission hereby requests comments on the proposed action and the Draft Detailed Statement from State and local agencies of any affected State (with respect to matters within their jurisdiction), which are authorized to develop and enforce environmental standards. If the Commission is not provided with comments by any State or local agency within 60 days of the publication of this notice in the FEDERAL REGISTER, the Commission will presume that the agency has no comments to make.

A copy of the Draft Detailed Statement dated March 22, 1971, and available comments thereon of Federal agencies (whose comments are being separately requested by the Commission) will be supplied to any such State or local agency upon request addressed to the Director, Division of Reactor Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

Dated at Bethesda, Md., this 25th day of March 1971.

For the Atomic Energy Commission.

R. C. DEYOUNG,
Acting Director,
Division of Reactor Licensing.

[FR Doc.71–4690 Filed 4–2–71;8:53 am]

CIVIL AERONAUTICS BOARD

[Docket No. 23180; Order 71–3–173]

COMBS AIRWAYS, INC.

Order To Show Cause Regarding Establishment of Service Mail Rate

Issued under delegated authority March 29, 1971.

The Postmaster General filed a notice of intent March 11, 1971, pursuant to 14 CFR Part 298, petitioning the Board to establish for the above captioned air taxi operator, a final service mail rate of 51.97 cents per great circle aircraft mile for the transportation of mail by aircraft between Buffalo and New York (LGA), N.Y., based on five round trips per week.

No protest or objection was filed against the proposed services during the time for filing such objections. The Postmaster General states that the Department and the carrier agree that the above rate is a fair and reasonable rate of compensation for the proposed services. The Postmaster General believes these services will meet postal needs in the market. He states the air taxi plans to initiate mail service with Beechcraft 18 aircraft.

It is in the public interest to fix, determine, and establish the fair and reasonable rate of compensation to be paid by the Postmaster General for the proposed transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the aforesaid points. Upon consideration of the notice of intent and other matters officially noticed, it is proposed to issue an order [1] to include the following findings and conclusions:

The fair and reasonable final service mail rate to be paid on and after March 11, 1971, to Combs Airways, Inc., in its entirety by the Postmaster General pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 51.97 cents per great circle aircraft mile between Buffalo and New York (LGA), N.Y., based on five round trips per week.

Accordingly pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR Part 302, 14 CFR Part 298, and 14 CFR 385.16(f):

It is ordered, That:

1. Combs Airways, Inc., the Postmaster General, Allegheny Airlines, Inc., American Airlines, Inc., Eastern Air Lines, Inc., Mohawk Airlines, Inc., Northeast Airlines, Inc., United Air Lines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rate specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Combs Airways, Inc.;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and notice of any objection to the rate or to the other findings and conclusions proposed herein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

3. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rate specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate

[1] As this order to show cause is not a final action, it is not regarded as subject to the review provisions of 14 CFR Part 385. These provisions will apply to final action taken by the staff under authority delegated in § 385.16(g).

shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served upon Combs Airways, Inc., the Postmaster General, Allegheny Airlines, Inc., American Airlines, Inc., Eastern Air Lines, Inc., Mohawk Airlines, Inc., Northeast Airlines, Inc., and United Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-4641 Filed 4-2-71;8:50 am]

[Docket No. 23179; Order 71-3-179]

COMBS AIRWAYS, INC.

Order To Show Cause Regarding Establishment of Service Mail Rate

Issued under delegated authority March 30, 1971.

The Postmaster General filed a notice of intent March 11, 1971, pursuant to 14 CFR Part 298, petitioning the Board to establish for the above captioned air taxi operator, a final service mail rate of 58.74 cents per great circle aircraft mile for the transportation of mail by aircraft between Rochester and Albany, N.Y., based on five round trips per week.

No protest or objection was filed against the proposed services during the time for filing such objections. The Postmaster General states that the Department and the carrier agree that the above rate is a fair and reasonable rate of compensation for the proposed services. The Postmaster General believes these services will meet postal needs in the market. He states the air taxi plans to initiate mail service with Beechcraft 18 aircraft.

It is in the public interest to fix, determine, and establish the fair and reasonable rate of compensation to be paid by the Postmaster General for the proposed transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the aforesaid points. Upon consideration of the notice of intent and other matters officially noticed, it is proposed to issue an order[1] to include the following findings and conclusions;

The fair and reasonable final service mail rate to be paid to Combs Airways, Inc., in its entirety by the Postmaster General pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 58.74 cents per great circle aircraft mile between Rochester and Albany, N.Y., based on five round trips per week.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR Part 302, 14 CFR Part 298, and 14 CFR 385.16(f):

It is ordered, That:

1. Combs Airways, Inc., the Postmaster General, Allegheny Airlines, Inc., American Airlines, Inc., Eastern Air Lines, Inc., Mohawk Airlines, Inc., Northeast Airlines, Inc., United Air Lines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rate specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Combs Airways, Inc.;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and notice of any objection to the rate or to the other findings and conclusions proposed herein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

3. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rate specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served upon Combs Airways, Inc., the Postmaster General, Allegheny Airlines, Inc., American Airlines, Inc., Eastern Air Lines, Inc., Mohawk Airlines, Inc., Northeast Airlines, Inc., and United Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-4642 Filed 4-2-71;8:50 am]

[Docket No. 23188; Order 71-3-182]

COMBS AIRWAYS, INC.

Order To Show Cause Regarding Establishment of Service Mail Rate

Issued under delegated authority March 30, 1971.

The Postmaster General filed a notice of intent March 11, 1971, pursuant to 14 CFR Part 298, petitioning the Board to establish for the above captioned air taxi operator, a final service mail rate of 54.94 cents per great circle aircraft mile for the transportation of mail by aircraft between Lebanon, N.H., and New York (LGA), N.Y., via Burlington, Vt., and Albany, N.Y., based on five round trips per week.

No protest or objection was filed against the proposed services during the time for filing such objections. The Postmaster General states that the Department and the carrier agree that the above rate is a fair and reasonable rate of compensation for the proposed services. The Postmaster General believes these services will meet postal needs in the market. He states the air taxi plans to initiate mail service with Beechcraft 18 aircraft.

It is in the public interest to fix, determine, and establish the fair and reasonable rate of compensation to be paid by the Postmaster General for the proposed transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the aforesaid points. Upon consideration of the notice of intent and other matters officially noticed, it is proposed to issue an order[1] to include the following findings and conclusions:

The fair and reasonable final service mail rate to be paid to Combs Airways, Inc., in its entirety by the Postmaster General pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 54.94 cents per great circle aircraft mile between Lebanon, N.H., and New York (LGA), N.Y., via Burlington, Vt., and Albany, N.Y., based on five round trips per week.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR Part 302, 14 CFR Part 298, and 14 CFR 385.16(f):

It is ordered, That:

1. Combs Airways, Inc., the Postmaster General, Allegheny Airlines, Inc., American Airlines, Inc., Eastern Air Lines, Inc., Mohawk Airlines, Inc., Northeast Airlines, Inc., United Air Lines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rate specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Combs Airways, Inc.;

2. Further procedures herein shall be in accordance with 14 CFR Part 302,

[1] This order to show cause is not a final action and is not regarded as subject to the review provisions of 14 CFR Part 385. These provisions will be applicable to final action taken by the staff under authority delegated in § 385.16(g).

[1] As this order to show cause is not a final action, it is not regarded as subject to the review provisions of 14 CFR Part 385. These provisions will apply to final action taken by the staff under authority delegated in § 385.16(g).

and notice of any objection to the rate or to the other findings and conclusions proposed herein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

3. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rate specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served upon Combs Airways, Inc., the Postmaster General, Allegheny Airlines, Inc., American Airlines, Inc., Eastern Air Lines, Inc., Mohawk Airlines, Inc., Northeast Airlines, Inc., and United Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-4643 Filed 4-2-71;8:50 am]

[Docket No. 21417; Order 71-3-156]

COMMUTER AIRLINES, INC.

Order To Show Cause Regarding Establishment of Service Mail Rate

Issued under delegated authority March 26, 1971.

A final service mail rate for the transportation of mail by aircraft, established by Order 69-10-128, dated October 27, 1969, in this docket, is currently in effect for the above-captioned air taxi, operating under 14 CFR Part 298. This rate is based on six round trips per week between Binghamton, N.Y., and Newark, N.J., via Scranton, Pa.

The Postmaster General filed a petition on March 12, 1971, stating that the volume of mail involved does not justify weekend trips on this route and he has been authorized by the carrier to petition for a new rate of 63 cents per great circle aircraft mile, based on five round trips per week. The carrier and the Post Office Department have agreed that the proposed rate is a fair and reasonable rate for these services.

The Board finds it is in the public interest to fix and determine the fair and reasonable rate of compensation to be paid by the Postmaster General for the transportation of mail by aircraft between the aforesaid points. Upon consideration of the petition and other matters officially noticed, it is proposed to issue an order[1] to include the following findings and conclusions:

1. The fair and reasonable final service mail rate to be paid on and after March 12, 1971, to Commuter Airlines, Inc., pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 63 cents per great circle aircraft mile between Binghamton, N.Y., and Newark, N.J., via Scranton, Pa.

2. This final rate, to be paid entirely by the Postmaster General, is based on five round trips per week flown with Beechcraft D-18 aircraft.

Accordingly pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR Part 302, 14 CFR Part 298, and 14 CFR 385.16(f):

It is ordered, That:

1. Commuter Airlines, Inc., the Postmaster General, Allegheny Airlines, Inc., Eastern Air Lines, Inc., Mohawk Airlines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rate specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Commuter Airlines, Inc.;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and notice of any objection to the rate or to the other findings and conclusions proposed herein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

3. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rate specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served upon Commuter Airlines, Inc., the Postmaster General, Allegheny Airlines, Inc., Eastern Air Lines, Inc., and Mohawk Airlines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-4644 Filed 4-2-71;8:50 am]

[1] As this order to show cause is not a final action, it is not regarded as subject to the review provisions of 14 CFR Part 385. These provisions will apply to final action taken by the staff under authority delegated in § 385.16(g).

[Docket No. 23025; Order 71-3-185]

EASTERN AIR LINES, INC.

Order Regarding Application for Multicarrier Authority To Make Schedule Changes

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 30th day of March 1971.

By application filed January 2, 1971, Eastern Air Lines, Inc. (Eastern), seeks authority (1) to make schedule changes in accordance with a formula set forth below so as to reduce peak-period congestion at the Atlanta Airport, and (2) thereafter to engage in carrier discussions designed to further adjust schedules to conform to the instrument flight rule (IFR) capability of the airport.

Phase one of Eastern's proposal consists of a two-pronged formula which, if approved by the Board and adopted by the involved air carriers, would make a substantial and immediate impact on congestion problems at Atlanta Airport. First, each airline would develop its April 25, 1971, schedules to insure that no more than 4 percent of its total daily arrivals and departures fall within any moving 15-minute interval (the 4 percent rule). Secondly, movements would be further distributed so as to never exceed three arrivals or three departures in any moving 5-minute period (three per 5-minute rule). Prior approval of the formula is requested since if an agreement must be executed and submitted to the Board following discussions, and all scheduling activity held up pending Board approval, the formula could not be implemented to meet April 25, 1971 schedules. The application states that Board approval of Eastern's proposed formula would be analogous to the advance approval accorded schedule changes flowing from discussions regarding the International Arrivals Building at Kennedy Airport (Order 71-1-55).

Phase two of the proposal consists of discussions wherein the carriers, using the April 25th schedule as a base, would collectively complete the adjustment of arrival and departure times so that the IFR capability of Atlanta would never be exceeded. Eastern requests that any authority to hold discussions should be for a sufficient period to allow for preparation and filing of the 1971-72 winter schedules. It is stated that specific agreements resulting from the discussions would be submitted to the Board for approval.

In support of its request, Eastern states that although the Atlanta IFR capacity of approximately 80 movements per hour is rarely exceeded, there are several peak

periods during the day during which the acceptance rate of the airport is severely exceeded. As a result, Eastern states, Atlanta Airport is now one of the most congested airports in the country and the situation is likely to deteriorate even further as air traffic growth resumes. The delays are stated to be disruptive of subsequent operations, inconvenient to passengers, and costly in terms of unnecessary airline expenses, missed connections, and congestion at other airports. It is further noted that approximately half of the passengers using Atlanta do so to connect to or from another flight and that, because of this, ontime performance is imperative.

Eastern states that it is not necessary to constrain the total level of airline movements, but rather to make relatively modest schedule adjustments, and that there is thus nothing in the proposal which is antithetical to the competitive system.

Comments supporting Eastern's application were filed by Piedmont Aviation, Inc. (Piedmont), and the City of Atlanta (Atlanta). Piedmont addresses only Eastern's request to engage in discussions, stating that readjustments of schedules would reduce congestion and allow greater economy of operation without resort to anticompetitive agreement. Atlanta believes that the scheduling practices of the airlines at the Atlanta Airport are jeopardizing its role as the regional airport for the Southeast. While taking no position on the specific formula proposed by Eastern, Atlanta urges favorable consideration of the general principal represented in Eastern's application, which Atlanta believes will accommodate current demands at the airport and leave significant room for future growth.

United has filed a comment endorsing discussions among the carriers related to schedule coordination, but opposing Board approval of a proposed schedule formula prior to the reaching of an agreement thereon by the carriers. United believes the proposed formula would unduly restrict aircraft movements and destroy its effective connecting capabilities at Atlanta. United also states that endorsement of Eastern's formula would place the carriers under pressure to accept such schedule restrictions in the form proposed by Eastern, and urges that there is no agreement now in existence which might warrant section 412 approval.

Delta Air Lines, Inc. (Delta), the major Atlanta carrier, states that it would participate in properly formulated discussions, but points out that no emergency exists at the Atlanta Airport. In this regard, Delta states that the FAA has not cited the Atlanta Airport as an unduly congested one and that the Board has heretofore approved scheduling agreements related to congestion only for purposes of complying with preexisting FAA requirements. Delta notes that a third runway is under construction at Atlanta which should result in a one-third to one-half increase in the airport's handling capacity. It is further stated that introduction of larger aircraft, when combined with an increase in available gates and improvement of FAA control facilities, will hold down increased use of the airport as traffic growth resumes. Finally, Delta contends that if special action were required at Atlanta, other congested airports would come under schedule control, with adverse effects on service.

Delta states further that Eastern's proposed formula appears to be unworkable and that there is nothing upon which the Board can now act under section 412, since the formula has not been agreed to by other carriers. With regard to multicarrier schedule planning in terms of specified 5-minute increments, Delta states that the Airline Scheduling Committees (congested airports) rejected this concept as unworkable after consideration in 1968. Delta further notes that the formula is improperly based upon the worst possible conditions at Atlanta Airport and that the proposed type of formula would require market-by-market carrier agreement on schedules. It is also alleged that the proposed formula would inconvenience connecting traffic, significantly increase carrier costs, fail to accommodate carriers with limited operations and ignore air taxis, military, general aviation, charter and extra section operations.

Beyond this, Delta states that its April 25 schedules are firm as are its September schedules and that they cannot now be changed to a significant extent. It suggests changes could not realistically be implemented before October 1971, in time for the fall and winter season of 1971–72. Finally, Delta states that whatever problems Eastern is experiencing stem from a recent shift of many of Eastern's operations into previously existing Delta service complexes, and that any meaningful discussions should be based on schedules existing prior to this shift, namely the October 1970 schedules.

Upon consideration of the foregoing and all the relevant facts, we have determined to authorize whatever procedures can be undertaken by the carriers serving Atlanta jointly to reduce congestion there. Atlanta Airport ranks approximately fourth in the Nation in total itinerant aircraft operations, total air carrier operations, and total instrument operations; and it may have a similar ranking in terms of experienced air traffic delays. The situation at Atlanta, while not yet having reached proportions to warrant FAA inclusion of that airport within its high density rule, nevertheless is critical in terms of the human and financial costs associated with delays being encountered there, a situation which is inimical to the development of air transportation.

Because of Atlanta's role as the principal point of connection in the South, we recognize that attempts to confine flight movements to the realistic capabilities of the airport's facilities may be difficult because of the intricate pattern of connecting flights which would be affected in a domino-like fashion. Thus, while we encourage Eastern to implement as much of its formula on its own initiative as it can do (for which in our view no Board approval under section 412 is necessary), the Board is willing to encourage such joint action as is necessary to effect a distribution of aggregate flight schedules as may be required to reduce congestion and more evenly spread aircraft movement through any particular time frame.[1]

Accordingly, it is ordered, That:

1. The petition of Eastern Air Lines in Docket 23025 to hold discussions with regard to Atlanta Airport be and it is hereby is granted subject to the following conditions:

(a) Participation in the discussions shall be limited to direct air carriers currently serving Atlanta Airport;

(b) The discussions shall be limited to rescheduling of aircraft movements to accord with the capabilities of the air traffic control system at Atlanta, and the carriers shall not discuss a reduction in total movements or rescheduling in terms of market pairs;

(c) Representatives of the Civil Aeronautics Board, the FAA, the city of Atlanta, any other Government agency expressing an interest, and all carriers authorized to serve Atlanta shall be permitted to attend the discussions as observers;

(d) Discussions shall be held in Washington, D.C., and a notice of any discussion meetings shall be served on all carriers eligible to participate therein, the CAB, the FAA, the city of Atlanta, and any Government agency with a known interest at least 7 calendar days prior to such meetings;

(e) The carriers participating in the discussions shall file with the Board a report of each discussion meeting held including, inter alia, the date, place, attendance, and a summary of all discussions. Such report shall be filed within 14 days of the close of each discussion meeting and a copy thereof shall be served on the parties enumerated in (d) above;

(f) Any agreement reached as a result of the discussions authorized herein shall be filed with the Board for approval under section 412 of the Act within 5

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[1] Cf. Order 71–1–55, Jan. 12, 1971. The discussions authorized both in that order and herein contemplate joint action to solve a localized operations problem rather than the more fundamental systemwide excess capacity problem about which we also have recently authorized discussions (see Order 71–3–71, Mar. 11, 1971). Because we believe that the instant discussions can deal with their subject matter without individual market discussion, in contrast to the excess capacity problems, we shall continue in dealing with discussions of this type to impose a condition precluding specific market-pair discussions. Such condition of course, does not impinge upon the scope of the entirely distinct discussions authorized in Order 71–3–71, supra.

days of consummation thereof and a copy of such agreement shall be served on the parties enumerated in (d) above within the same 5-day period; and

(g) The relief granted herein shall expire within 120 days of the date of this order and may be earlier revoked or amended at any time in the discretion of the Board;

2. Copies of this order shall be served on all specific parties enumerated in 1(d) above; and

3. To the extent not granted herein all outstanding requests for relief be and they hereby are denied.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-4645 Filed 4-2-71;8:50 am]

[Docket No. 22930; Order 71-3-175]

GILLEY AIRWAYS CORP.

Order To Show Cause Regarding Establishment of Service Mail Rate

Issued under delegated authority March 29, 1971.

A final service mail rate for the transportation of mail by aircraft, established by Order 71-1-129, dated January 27, 1971, in this docket, is currently in effect for the above-captioned air taxi, operating under 14 CFR Part 298. This rate is based on five round trips per week between Utica and New York (LGA), N.Y., via Poughkeepsie, N.Y. Gilley Airways Corp. (Gilley), was an interim operator on this route.

The Postmaster General filed a petition on March 11, 1971, stating that following solicitation procedures Gilley has been selected as the regular operator on this route and he has been authorized by Gilley to petition for a new rate of 53.9 cents per great circle aircraft mile, based on five round trips per week. The carrier and the Post Office Department have agreed that the proposed rate is a fair and reasonable rate for these services.

The Board finds it in the public interest to fix and determine the fair and reasonable rate of compensation to be paid by the Postmaster General for the transportation of mail by aircraft between the aforesaid points. Upon consideration of the petition and other matters officially noticed, it is proposed to issue an order[1] to include the following findings and conclusions:

1. The fair and reasonable final service mail rate to be paid on and after March 11, 1971, to Gilley Airways Corp., pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 53.9 cents per great circle aircraft mile between Utica and New York (LGA), N.Y., via Poughkeepsie, N.Y.

2. This final rate, to be paid entirely by the Postmaster General, is based on five round trips per week flown with Beechcraft C-45H aircraft.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR Part 302, 14 CFR Part 298, and 14 CFR 385.16(f):

It is ordered, That:

1. Gilley Airways Corp., the Postmaster General, Mohawk Airlines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rate specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Gilley Airways Corp.;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and notice of any objection to the rate or to the other findings and conclusions proposed herein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

3. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rate specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served upon Gilley Airways Corp., the Postmaster General, and Mohawk Airlines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-4646 Filed 4-2-71;8:50 am]

[Docket No. 23178; Order 71-3-176]

GILLEY AIRWAYS CORP.

Order To Show Cause Regarding Establishment of Service Mail Rate

Issued under delegated authority March 29, 1971.

The Postmaster General filed a notice of intent March 11, 1971, pursuant to 14 CFR Part 298, petitioning the Board to establish for the above-captioned air taxi operator, a final service mail rate of 59.5 cents per great circle aircraft mile for the transportation of mail by aircraft between Binghamton, Syracuse, and Albany, N.Y., based on five round trips per week.

No protest or objection was filed against the proposed services during the time for filing such objections. The Postmaster General states that the Department and the carrier agree that the above rate is a fair and reasonable rate of compensation for the proposed services. The Postmaster General believes these services will meet postal needs in the market. He states the air taxi plans to initiate mail service with Beechcraft C-45H aircraft.

It is in the public interest to fix, determine, and establish the fair and reasonable rate of compensation to be paid by the Postmaster General for the proposed transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the aforesaid points. Upon consideration of the notice of intent and other matters officially noticed, it is proposed to issue an order[1] to include the following findings and conclusions:

The fair and reasonable final service mail rate to be paid to Gilley Airways Corp. in its entirety by the Postmaster General pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 59.5 cents per great circle aircraft mile between Binghamton, Syracuse, and Albany, N.Y., based on five round trips per week.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR Part 302, 14 CFR Part 298, and 14 CFR 385.16(f):

It is ordered, That:

1. Gilley Airways Corp., the Postmaster General, American Airlines, Inc., Eastern Air Lines, Inc., Mohawk Airlines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rate specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Gilley Airways Corp;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and notice of any objection to the rate or to the other findings and conclusions proposed herein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall

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[1] As this order to show cause is not a final action, it is not regarded as subject to the review provisions of 14 CFR Part 385. These provisions will apply to final action taken by the staff under authority delegated in § 385.16(g).

[1] As this order to show cause is not a final action, it is not regarded as subject to the review provisions of 14 CFR Part 385. These provisions will apply to final action taken by the staff under authority delegated in § 385.16(g).

be filed within 30 days after service of this order;

3. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rate specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served upon Gilley Airways Corp., the Postmaster General, American Airlines, Inc., Eastern Air Lines, Inc., and Mohawk Airlines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-4647 Filed 4-2-71;8:50 am]

[Docket No. 23177; Order 71-3-180]

GILLEY AIRWAYS CORP.

Order To Show Cause Regarding Establishment of Service Mail Rate

Issued under delegated authority March 30, 1971.

The Postmaster General filed a notice of intent March 11, 1971, pursuant to 14 CFR Part 298, petitioning the Board to establish for the above-captioned air taxi operator, a final service mail rate of 53.9 cents per great circle aircraft mile for the transportation of mail by aircraft between Watertown and New York (LGA), via Syracuse, N.Y., based on five round trips per week.

No protest or objection was filed against the proposed services during the time for filing such objections. The Postmaster General states that the Department and the carrier agree that the above rate is a fair and reasonable rate of compensation for the proposed services. The Postmaster General believes these services will meet postal needs in the market. He states the air taxi plans to initiate mail service with Beechcraft 18 aircraft.

It is in the public interest to fix, determine, and establish the fair and reasonable rate of compensation to be paid by the Postmaster General for the proposed transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the aforesaid points. Upon consideration of the notice of intent and other matters officially noticed, it is proposed to issue an order[1] to include the following findings and conclusions:

The fair and reasonable final service mail rate to be paid to Gilley Airways Corp., in its entirety by the Postmaster General pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 53.9 cents per great circle aircraft mile between Watertown and New York (LGA), via Syracuse, N.Y., based on five round trips per week flown with Beechcraft 18 aircraft.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR Part 302, 14 CFR Part 298, and 14 CFR 385.16(f):

It is ordered, That:

1. Gilley Airways Corp., the Postmaster General, American Airlines, Inc., Eastern Air Lines, Inc., Mohawk Airlines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rate specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Gilley Airways Corp.;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and notice of any objection to the rate or to the other findings and conclusions proposed herein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

3. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rate specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served upon Gilley Airways Corp., the Postmaster General, American Airlines, Inc., Eastern Air Lines, Inc., and Mohawk Airlines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-4648 Filed 4-2-71;8:50 am]

[1] As this order to show cause is not a final action, it is not regarded as subject to the review provisions of 14 CFR Part 385. These provisions will apply to final action taken by the staff under authority delegated in § 385.16(g).

[Docket No. 20472]

MOHAWK AIRLINES, INC.

Notice of Oral Argument

Mohawk segments 8 and 9 renewal case (Rochester/Syracuse-Philadelphia and Binghamton-Washington Markets).

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in the portion of the above-entitled matter on review under Order 70-11-108 of November 23, 1970, is assigned to be held on April 21, 1971, at 10 a.m., e.s.t., in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before the Board.

Dated at Washington, D.C., March 30, 1971.

[SEAL] RALPH L. WISER,
Associate Chief Examiner.

[FR Doc.71-4639 Filed 4-2-71;8:49 am]

[Docket No. 23182; Order 71-3-174]

PERSONAL AIR TRANSPORT

Order To Show Cause Regarding Establishment of Service Mail Rate

Issued under delegated authority March 29, 1971.

The Postmaster General filed a notice of intent March 11, 1971, pursuant to 14 CFR Part 298, petitioning the Board to establish for the above-captioned air taxi operator, a final service mail rate of 49.5 cents per great circle aircraft mile for the transportation of mail by aircraft between Providence, R.I., and Newark, N.J., via Hartford, Conn./Springfield, Mass., and Albany, N.Y., based on five round trips per week.

No protest or objection was filed against the proposed services during the time for filing such objections. The Postmaster General states that the Department and the carrier agree that the above rate is a fair and reasonable rate of compensation for the proposed services. The Postmaster General believes these services will meet postal needs in the market. He states the air taxi plans to initiate mail service with Beechcraft 18 aircraft.

It is in the public interest to fix, determine, and establish the fair and reasonable rate of compensation to be paid by the Postmaster General for the proposed transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the aforesaid points. Upon consideration of the notice of intent and other matters officially noticed, it is proposed to issue an order[1] to include the following findings and conclusions:

The fair and reasonable final service mail rate to be paid to Tobey, Inc., doing business as Personal Air Transport, in its entirety by the Postmaster General pursuant to section 406 of the Act for the

[1] As this order to show cause is not a final action, it is not regarded as subject to the review provisions of 14 CFR Part 385. These provisions will apply to final action taken by the staff under authority delegated in § 385.16(g).

transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 49.5 cents per great circle aircraft mile between Providence, R.I., and Newark, N.J., via Hartford, Conn./Springfield, Mass., and Albany, N.Y., based on five round trips per week.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR Part 302, 14 CFR Part 298, and 14 CFR 385.16(f):

It is ordered, That:

1. Tobey, Inc., doing business as Personal Air Transport, the Postmaster General, Allegheny Airlines, Inc., American Airlines, Inc., Eastern Air Lines, Inc., Mohawk Airlines, Inc., Northeast Airlines, Inc., United Airlines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and published the final rate specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Tobey, Inc., doing business as Personal Air Transport;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and notice of any objection to the rate or to the other findings and conclusions proposed herein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

3. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rate specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served upon Tobey, Inc., doing business as Personal Air Transport, the Postmaster General, Allegheny Airlines, Inc., American Airlines, Inc., Eastern Air Lines, Inc., Mohawk Airlines, Inc., Northeast Airlines, Inc., and United Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-4650 Filed 4-2-71;8:50 am]

[Docket No. 23181; Order 71-3-165]

SEDALIA, MARSHALL, BOONVILLE STAGE LINE, INC.

Order To Show Cause Regarding Establishment of Service Mail Rate

Issued under delegated authority March 26, 1971.

The Postmaster General filed a notice of intent March 11, 1971, pursuant to 14 CFR Part 298, petitioning the Board to establish for the above-captioned air taxi operator, a final service mail rate of 57.37 cents per great circle aircraft mile for the transportation of mail by aircraft between Topeka and Dodge City, Kans., via Kansas City, Mo., and Wichita and Hays, Kans., based on five round trips per week.

No protest or objection was filed against the proposed services during the time for filing such objections. The Postmaster General states that the Department and the carrier agree that the above rate is a fair and reasonable rate of compensation for the proposed services. The Postmaster General believes these services will meet postal needs in the market. He states the air taxi plans to initiate mail service with Beechcraft Super 18 aircraft.

It is in the public interest to fix, determine, and establish the fair and reasonable rate of compensation to be paid by the Postmaster General for the proposed transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the aforesaid points. Upon consideration of the notice of intent and other matters officially noticed, it is proposed to issue an order[1] to include the following findings and conclusions:

The fair and reasonable final service mail rate to be paid to Sedalia, Marshall, Boonville Stage Line, Inc., in its entirety by the Postmaster General pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 57.37 cents per great circle aircraft mile between Topeka and Dodge City, Kans., via Kansas City, Mo., and Wichita and Hays, Kans., based on five round trips per week flown with Beechcraft Super 18 aircraft.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR Part 302, 14 CFR Part 298, and 14 CFR 385.16(f):

It is ordered, that:

1. Sedalia, Marshall, Boonville Stage Line, Inc., the Postmaster General, Braniff Airways, Inc., Continental Air Lines, Inc., Frontier Airlines, Inc., Trans World Airlines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rate specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Sedalia, Marshall, Boonville Stage Line, Inc.;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and notice of any objection to the rate or to the other findings and conclusions proposed herein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

3. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rate specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served upon Sedalia, Marshall, Boonville Stage Line, Inc., the Postmaster General, Braniff Airways, Inc., Continental Air Lines, Inc., Frontier Airlines, Inc., and Trans World Airlines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-4649 Filed 4-2-71;8:50 am]

[1] This order to show cause is not a final action and is not regarded as subject to the review provisions of 14 CFR Part 385. These provisions will be applicable to final action taken by the staff under authority delegated in § 385.16(g).

FEDERAL COMMUNICATIONS COMMISSION

[Report 537]

COMMON CARRIER SERVICES INFORMATION[1]

Domestic Public Radio Services Applications Accepted for Filing[2]

MARCH 29, 1971.

Pursuant to §§ 1.227(b)(3) and 21.30(b) of the Commission's rules, an application, in order to be considered with any domestic public radio services application appearing on the list below, must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business 1 business day

preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cutoff dates are set forth in the alternative—applications will be entitled to consideration with those listed below if filed by the end of the 60-day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier filed conflicting applications.

The attention of any party in interest desiring to file pleadings pursuant to section 309 of the Communications Act of 1934, as amended, concerning any domestic public radio services application accepted for filing, is directed to § 21.27 of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

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

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[1] All applications listed below are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations, and other requirements.

[2] The above alternative cutoff rules apply to those applications listed below as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio, and Local Television Transmission Services (Part 21 of the rules).

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

File No., applicant, call sign and nature of application

4806–C2–MP–71—General Telephone Co. of the Southwest (KFL909), Modification of C.P. to change the antenna system operating on 152.60 and 152.72 MHz located at Highway No. 377 West, Hall Rock Quarry, Brownwood, TX.

5009–C2–P–71—Answering Unlimited (New), C.P. for a new 1-way station to be located at 6211 West Northwest Highway, Dallas, TX, to operate on frequency 43.22 MHz.

5010–C2–P–71—South Central Bell Telephone Co. (KKM580), C.P. for additional facilities to operate on 152.57 MHz and change the antenna system located at 248 East Capitol Street, Jackson, MS.

5011–C2–P–71—Radio Communications, Inc. (KGC583), C.P. for additional facilities to operate on 152.12 MHz at a new site described as location No. 2: EDCA–TC Tower, 5202 River Road, Bethesda, MD.

5029–C2–P–71—City Answering Service (New), C.P. for a new 2-way station to be located at Sky Line Drive and Sacramento Street, Placerville, CA, to operate on frequency 454.125 MHz.

5030–C2–P–(2)71—Airsignal International Inc. (KKG561), C.P. for additional facilities to operate on 43.22 and 43.58 MHz at a new site described as location No. 2: 1 Shell Plaza, Houston, TX.

5034–C2–P–71—The Diamond State Telephone Co. (KGH864), C.P. to change the antenna system operating on 152.69 MHz located on the east side of County Road No. 195, 2 miles southwest of Dover, DE.

5062–C2–P–(2)71—Houston Radiophone Service (New), C.P. for a new 1-way station to be located at 11918 Almeda Road, Houston, TX, to operate on frequencies 43.22 and 43.58 MHz.

5063–C2–P–(2)71—Michigan Bell Telephone Co. (KQD306), C.P. to relocate Air/Ground facilities operating on 454.675 signaling and 454.900 MHz base to 882 Oakman Boulevard, Detroit, MI; change the antenna system and add auxiliary test facilities to operate on 459.900 MHz to be located at 1365 Cass Avenue, Detroit, MI.

5064–C2–P–71—MRN Service, Inc. (KED367), C.P. for additional facilities to operate on 454.200 MHz to be located at a new site described as location No. 2: 0.5 mile south of Selden, N.Y.

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE—Continued

5074–C2–(2)71—Morrison Road Relay Corp. (New), C.P. for a new 1-way station to operate on frequency 43.220 MHz at location No. 1: 1 Shell Plaza, Houston, TX, and location No. 2: Jean Lafitte Hotel, 2105 Church Street, Galveston, TX.

5075–C2–P–71—Radio Communications, Inc. (KGC583), C.P. for additional facilities at a new site described as location No. 2: 10 Vernon Avenue, Glen Burnie, MD, to operate on 152.12 MHz.

5087–C2–P–71—Michigan Bell Telephone Co. (KQA808), C.P. to change the antenna system operating on 152.51 and 152.75 MHz and relocate facilities to 2525 Three Mile Road, Grand Rapids, MI.

RURAL RADIO SERVICE

5076–C1–MP/L–71—Pacific Northwest Bell Telephone Co. (KGF93), Modification of C.P. and license to change frequency to 152.81 MHz communicating with Stations WGF94, WGF95, and WGF96 at Cave Mountain, Medicine Mountain, and Brady Butte, Oreg.

5077–C1–MP/L–71—Pacific Northwest Bell Telephone Co. (WGF94), Same as above except change frequency to 158.07 MHz communicating with Haymaker, Oreg., Station WGF93.

5078–C1–MP/L–71—Pacific Northwest Bell Telephone Co. (WGF95), Same as above except change frequency to 158.07 MHz communicating with Haymaker, Oreg., Station WGF93.

5079–C1–MP/L–71—Pacific Northwest Bell Telephone Co. (WGF96), Same as above except change frequency to 158.07 MHz communicating with Haymaker, Oreg., Station WGF93.

Major Amendment

2013–C1–P/L–70—RCA Alaska Communications, Inc. (New), Change frequencies to 87.1 MHz and 169.3 MHz. All other particulars same as reported in public notice dated Oct. 27, 1969.

POINT-TO-POINT MICROWAVE RADIO SERVICE (TELEPHONE CARRIER)

5012–C1–P–71—American Telephone & Telegraph Co. (KRR77), C.P. to change coordinates from latitude 33°18′20″ N.; longitude 88°08′55″ W. to: latitude 33°18′12″ N., longitude 88°09′04″ W. and change antenna location. Station location: 4 miles northwest of Carrollton, Ala.

5013–C1–P–71—Cascade Utilities, Inc. (KGH29), C.P. to add frequencies 11,445 and 11,685 MHz toward Boring, Oreg., a new point of communication and change alarm center location to 303 Southwest Zobrist, Estacada, OR. Station location: 2,500 feet east of end of Oregon Highway No. 224 by Alder Flat Forest Camp, Oreg.

5014–C1–P–71—South Central Bell Telephone Co. (KJA25), C.P. to add frequency 6293.6 MHz toward Brundidge, Ala. Station location: 1 mile northeast of Troy, Ala.

5015–C1–P–71—The Mountain States Telephone & Telegraph Co. (KPR35), C.P. to change Motorola equipment from TA–147 to CC–433C. Frequencies: 454.60 and 454.65 MHz toward Soldier Summit, Utah, and change emission from 36F3 to 16F3. Station location: 107 East First North Street, Price, UT.

5016–C1–P–71—The Mountain States Telephone & Telegraph Co. (KPR36), C.P. to change Motorola equipment from TA–147 to CC–433C, and change emission designator from 36F3 to 16F3. Frequencies: 459.60 and 459.65 MHz toward Price, UT.

5017–C1–P–71—The Pacific Telephone & Telegraph Co. (KML54), C.P. to add frequencies 4010 and 4090 MHz toward Red Top, Calif. Station location: 1455 Van Ness Avenue, Fresno, CA.

5018–C1–P–71—The Pacific Telephone & Telegraph Co. (KMU56), C.P. to add frequencies 3970 and 4050 MHz toward Fresno, Calif. Station location: Red Top, 5 miles west of O'Neals, Calif.

American Telephone & Telegraph Co. Eight C.P. applications to construct one additional pair of Type TD–2 radio channels between Adams and Terrell, Tex., for telephone use and one additional Type TD–2 radio channel from Houston to Seguin, Tex.

5035–C1–P–71—American Telephone & Telegraph Co. (KKN23), C.P. to add frequency 3970 MHz toward Katy, Tex. Station location: 1407 Jefferson Street, Houston, TX.

5036–C1–P–71—American Telephone & Telegraph Co. (KLC43), C.P. add frequency 4090 MHz toward Cat Spring, Tex. Station location: 2 miles north-northeast of Katy, Tex.

POINT-TO-POINT MICROWAVE RADIO SERVICE (TELEPHONE CARRIER)—Continued

5037–C1–P–71—American Telephone & Telegraph Co. (KLC42), Add frequency 4050 MHz toward Weimar, Tex. Station location: 1.75 miles northwest of Cat Spring, Tex.

5038–C1–P–71—American Telephone & Telegraph Co. (KLC40), Add frequency 4090 MHz toward Shiner, Tex. Station location: 1 mile south of Weimar, Tex.

5039–C1–P–71—American Telephone & Telegraph Co. (KLC41), Add frequency 4050 MHz toward Seguin, Tex. Station location: 5 miles west-northwest of Shiner, Tex.

5040–C1–P–71—American Telephone & Telegraph Co. (KKH66), Add frequency 3890 MHz toward Nevada, Tex. Station location: Adams, 3.5 miles northeast of Frisco, Tex.

5041–C1–P–71—American Telephone & Telegraph Co. (KLW22), Add frequency 3930 MHz toward Adams and Terrell, Tex. Station location: 0.5 mile south of Nevada, Tex.

5042–C1–P–71—American Telephone & Telegraph Co. (KKP96), Add frequency 3890 MHz toward Nevada, Tex. Station location: 3.5 miles north of Terrell, Tex.

5066–C1–P–71—The Mountain States Telephone & Telegraph Co. (KPR35), C.P. frequencies 6308.4 and 10,955 MHz toward Huntington, Utah, via passive reflector. Station location: 107 East First North Street, Price, UT.

5067–C1–P–71—The Mountain States Telephone & Telegraph Co. (New), C.P. for a new station to be located at 150 North First West Street, Huntington, UT. Frequencies: 6056.7 and 11,405 MHz toward Price, Utah, via passive reflector.

5080–C1–P–71—The Pacific Telephone & Telegraph Co. (KMA38), C.P. to change frequencies 5945.2 and 6063.8 MHz to 10,775 and 11,015 MHz toward Arcadia, Calif. Station location: 434 South Grand Avenue, Los Angeles, CA.

5081–C1–P–71—The Pacific Telephone & Telegraph Co. (KVH95), C.P. to add frequencies 11,225 and 11,465 MHz toward El Monte, Calif., and change frequencies 6197.2 and 6315.9 MHz to 11,265 and 11,505 MHz toward Los Angeles, Calif. Station location: 2 miles north of Arcadia, Calif.

5082–C1–P–71—The Pacific Telephone & Telegraph Co. (KMW73), C.P. to add frequencies 10,815 and 11,055 MHz toward Arcadia, Calif. Station location: 3614 North Center Street, El Monte, CA.

5083–C1–P–71—New York Telephone Co. (KYN56), C.P. to add frequency 6286.2 MHz toward SUNY Buffalo, N.Y. Station location: Lafayette Hotel, Washington and Clinton Street, Buffalo, NY.

5084–C1–P–71—New York Telephone Co. (New), C.P. for a new station to be located at State University of New York at Buffalo Tower Hall, 3415 Main Street, Buffalo, NY. Frequency: 6034.2 MHz toward Buffalo, N.Y.

5085–C1–P–71—New York Telephone Co. (New), C.P. for a new station to be located at Lecture Hall Building, State University of New York at Binghamton, N.Y. Frequencies: 11,685 MHz toward Binghamton, N.Y., and 6404.8 MHz toward Windsor, N.Y.

5086–C1–P–71—New York Telephone Co. (KZI47), C.P. to change point of communication toward Binghamton, N.Y., to Binghamton (SUNY), N.Y., operating on frequency 6152.8 MHz. Station location: 6 miles west of Windsor, N.Y.

Major Amendment

2658–C1–P–71—American Telephone & Telegraph Co. (New), Major amendment: Change location of station to 3.7 miles northwest of Jamesburg, Calif.; latitude 36°24'07" N., longitude 121°38'48" W. Change location of Jamesburg Passive Reflector to latitude 36°23'22" N., longitude 121°40'58" W. Change azimuth to passive reflector to 246°49' for frequencies 11,385, 11,545 and 2128.0 MHz.

1431–C1–P–71—The Pacific Telephone & Telegraph Co. (KMA37), Change frequency directed toward Whitaker Peak Lookout, Calif., from 6315.9 to 6375.2 MHz.

1439–C1–P–71—The Pacific Telephone & Telegraph Co. (KMN64), Change frequency directed toward Oat Mountain, Calif., from 5974.8 to 6004.5 MHz.

(All other particulars same as reported in Public Notice dated Sept. 21, 1970.)

POINT-TO-POINT MICROWAVE RADIO SERVICE (NONTELEPHONE)

5020–C1–P–71—American Television Relay, Inc. (New), C.P. for a new fixed station at The Forum, Inglewood, Calif., latitude 33°57'22" N., longitude 118°20'26" W. Frequency 10,835 on azimuth 40°07'.

POINT-TO-POINT MICROWAVE RADIO SERVICE (NONTELEPHONE)—continued

5021–C1–P–71—American Television Relay, Inc. (New), C.P. for a new fixed station on Mount Wilson, Calif., at latitude 34°13'35" N., longitude 118°03'58" W. Frequency 3850 on azimuth 70°39'.

5022–C1–P–71—American Television Relay, Inc. (KNK38), C.P. to change the location of station to New Blue Ridge at latitude 34°20'35" N., longitude 117°39'48" W.; change frequency 5937.8 to 6019.3; add seven new frequencies; change equipment type on seven existing frequencies; and add one new point of communication Pickhandle Pass. Frequencies 6019.3, 6049.0, 6137.9, 6167.6, 6212.0, 6271.4, and 6390.0 on azimuth 57°06' and azimuth 42°51'. Frequencies 6137.9, 6167.6, 6271.4, 6390.0, 10,715, 10,835, 10,875, 10,915, 10,955, 11,035, and 11,115 on azimuth 43°00'.

5023–C1–P–71—American Television Relay, Inc. (New), C.P. for a new fixed station Pickhandle Pass at latitude 35°01'41" N., longitude 116°53'02" W. Frequencies 3850, 3930, 4010, 4090, 4170, 3750, 3830, 3910, 3990, 4070, and 4150 on azimuth 59°10'.

5024–C1–P–71—American Television Relay, Inc. (New), C.P. for a new fixed station Halloran at latitude 35°29'06" N., longitude 115°52'26" W. Frequencies 3810, 3890, 3970, 4050, 4130, 3710, 3790, 3870, 3950, 4030, and 4110 on azimuth 31°05'.

5025–C1–P–71—American Television Relay, Inc. (New), C.P. for a new fixed station Spring Mountain at latitude 36°04'49" N., longitude 115°29'53" W. Frequencies 3850, 3930, 4010, 4090, 4170, 3750, 3830, 3910, 3990, 4070, and 4150 on azimuth 72°53' and azimuth 99°06'.

(INFORMATIVE: Applicant proposes to provide the signals of 10 Los Angeles Television Stations and one closed circuit channel originating at The Forum to a CATV customer in Las Vegas and Boulder City, Nev.)

The following applicants propose to establish omnidirectional facilities for the provision of common carrier "Subscriber-Programed" television service.

5031–C1–P–71—World Ventures, Inc. (New), C.P. for a new station to be located at Empire State Building, 34th Street and Fifth Avenue, New York, NY. Frequencies: 2152.325 (Visual) and 2150.20 MHz (Aural) toward various receiving points of system and frequencies 2158.50 (Visual) and 2154.00 MHz (Aural) toward various receiving points of system.

5032–C1–P–71—World Ventures, Inc. (New), C.P. for a new station to be located at Universal North Building, Connecticut Avenue and T Street NW., Washington, DC. Frequencies: 2152.325 (Visual) and 2150.20 MHz (Aural) toward various receiving points of system and frequencies 2158.50 (Visual) and 2154.00 MHz (Aural) toward various receiving points of system.

5033–C1–TC–(11)–71—Minnesota Microwave, Inc., Consent to transfer of control of Minnesota Microwave, Inc., from: Dynasonics Corp., Transferor to: American Television & Communication Corp., Transferee. Stations: KAY61, Willmar, Minn.; KYC43, Brainard, Minn.; KYC44, Ben Draper, Minn.; KYC45, Beauty Lake, Minn.; KCM71, East Rockford, Minn.; KCM72, Cold Springs, Minn.; KCM74, Benson, Minn.; KCM73, Little Falls, Minn.; KCM75, Montevideo, Minn.; KZS97, Morris, Minn.; KOC70, Elbow Lake, Minn.

[FR Doc.71–4451 Filed 4–2–71;8:45 am]

[FCC 71–323]

STANDARDS PROGRAM FOR PBX INTERCONNECTION

Establishment of Advisory Committee

MARCH 26, 1971.

On March 2, 1971, Commission representatives met with representatives of the domestic communications common carriers, manufacturers and suppliers of Private Branch Exchange (PBX) telephone equipment, and Federal and State agencies interested in the interconnection of customer-provided PBX equipment with common carrier facilities. The purpose of the meeting was to explore the various problems involved in the developing of standards that might be made applicable to such customer-provided PBX devices. The objective of such standards, and enforcement thereof, would be to permit customers the option of obtaining PBX devices from suppliers other than the telephone companies and to use such PBXs in connection with the

carriers, manufacturers and suppliers of utilizing telephone company-provided network control signaling units or telephone company-provided protective "connecting arrangements" as is now required under presently effective tariffs.

At this meeting there appeared to be general agreement that such a standards and enforcement program could be developed by a task force appointed by the Commission. By memorandum opinion and order of December 24, 1968, In the Matter of AT&T "Foreign Attachment" Tariffs, 15 F.C.C. 2d 605, we instructed the Chief, Common Carrier Bureau to initiate a series of informal engineering and technical conferences to ascertain what further changes, if any, should be made in the interconnection tariff provisions of the telephone companies.

In furtherance of this objective, the Commission, pursuant to the provisions of Executive Order 11007, February 26, 1962, has determined that the formation of an Advisory Committee to function as a task force for the purposes noted above is in the public interest in connection with the performance of the Commission's duties under the Communications Act of 1934. Accordingly, the Commission is establishing such a task force to be composed of representatives from the Commission, the National Association of Regulatory Utility Commissioners, the Rural Electrification Administration, communications common carriers, domestic manufacturers, suppliers, distributors of PBX devices and consumer groups.

The Advisory Committee will be expected to: Develop recommended standards and a recommended program of enforcement thereof that would give to customers the aforementioned option of providing their own PBX network control signaling and protective connecting arrangements and, at the same time, protect the telephone company facilities from (a) excessive voltages, (b) improper network signaling, and (c) line imbalance; and to submit appropriate reports and recommendations to the Commission with respect thereto.

The names of the persons appointed to this Advisory Committee task force, the date and place of the first meeting, and the appointment of a Chairman will be announced shortly.

Action by the Commission March 26, 1971.[1]

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

[FR Doc.71-4633 Filed 4-2-71;8:49 am]

[1] Commissioners Burch (Chairman), Bartley, Johnson, H. Rex Lee, and Wells.

[Docket No. 19183; FCC 71-309]

TELEVISION BROADCAST RECEIVERS AND FM TRANSMITTERS

Notice of Inquiry Regarding Alleviation of Interference to Television Reception

1. The purpose of this inquiry is to develop data and recommendations as to television receiver improvements and revised FM broadcast assignment principles which can be used to alleviate various kinds of interference to television reception.

2. In March 1970 the Association of Maximum Service Telecasters (AMST) and the National Association of Educational Broadcasters (NAEB) began discussions with the Electronic Industries Association (EIA) concerning improvement of television receivers to obtain greater rejection of FM broadcast signals.

3. On September 10, 1970, a meeting was held between these parties on the Commission's premises and attended by members of the Commission's staff. The meeting also included representatives of the Corporation for Public Broadcasting (CPB). The discussion at this meeting indicated that remedial measures for the interference problem should include not only improved receiver performance, but that booster amplifiers, antennas and assignment principles are also involved.

4. The CPB and the NAEB were especially concerned about the number of applications for FM educational broadcast stations which are being held by the Commission because of potential interference to Channel 6 TV signals. At the same time, they were apprehensive of claims by WOW-TV, Omaha, Nebr., that operation of an educational FM station in Omaha has caused considerable loss of audience to WOW-TV.

5. The AMST, by letter of October 12, 1970, requested that the Commission form an advisory committee, under the provisions of Executive Order 11007, to study this interference problem and to assist the Commission in solving it.

6. We are also concerned about susceptibility of TV receivers to interference from signals other than FM broadcasting. Accordingly, this inquiry is broader in scope than the FM interference problem. It encompasses interference from any source to TV reception, either off the air or by cable.

7. After consideration of this matter, we are of the opinion that an advisory committee on this subject would entail considerable expenditure of time without necessarily producing significantly useful data not otherwise available. Further, any conclusions of the proposed advisory committee would then be subject to formal consideration in rule making proceedings before they could be implemented.

8. In view of these considerations it, therefore, appears that the most expeditious approach to resolution of the matter is to initiate formal proceedings immediately through a notice of inquiry.

9. Accordingly, we are issuing this notice of inquiry directed specifically, but not exclusively, to the following issues:

(a) What interference-rejection performance against FM broadcast and other signals can be expected of existing TV receiving installations?

(b) What TV receiving system performance improvements can be achieved to reduce interference from FM broadcast and other signals? For example, should all TV receivers have coaxial antenna input terminals and should manufacturers provide optional coaxial filters for specific interference situations?

(c) To what extent should TV receiving system characteristics be taken into account in establishing allocation and assignment standards to control interference from FM and other signals to TV broadcast reception? For example, should a "blanket contour" limitation be established for FM broadcast stations whereby they would be required to locate in less densely populated areas and thus reduce the magnitude of the problem?

(d) In consideration of the foregoing issues, the following TV receiving system parameters appear relevant:

(1) Adjacent channel selectivity (RF and IF).
(2) Intermodulation rejection.
(3) Cross modulation rejection.
(4) Dynamic range.
(5) Harmonic generation.
(6) Blanket signal level.
(7) Booster amplifier spurious responses.
(8) Direct signal pickup, other than through the antenna terminals.

What quantitative values should be assigned to or assumed for, the foregoing parameters?

10. Upon receipt and evaluation of the responses received to this notice of inquiry, it is expected that we may then be in a position to propose rules which could alleviate the interference problem under consideration.

11. Relevant comments in response to this notice of inquiry need not be limited to the specific issues set forth above. The Commission may also take into account relevant information available from other sources.

12. This action is taken pursuant to section 403 of the Communications Act of 1934, as amended. Interested parties responding to this inquiry shall furnish comments on or before July 1, 1971. An original and 14 copies of each response

shall be filed as required by § 1.419 of the Commission's rules.

Adopted: March 24, 1971.

Released: March 31, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-4632 Filed 4-2-71;8:49 am]

FEDERAL MARITIME COMMISSION

[Docket No. 71-31]

AUSTRALIA, NEW ZEALAND AND SOUTH SEA ISLANDS PACIFIC COAST CONFERENCE

Order of Investigation and Hearing

The Commission has before it the application of the Australia, New Zealand, and South Sea Islands Pacific Coast Conference for permission to institute a contract/noncontract rate system pursuant to section 14b of the Shipping Act, 1916.

Information before the Commission is insufficient for it to know what transportation circumstances necessitated the application, or what the impact of approval will be in the Australian/United States Pacific Coast trade.

It is ordered, That pursuant to sections 14(b) and 22 of the Shipping Act, 1916, as amended, an investigation and hearing be instituted to determine whether or not the proposed exclusive patronage (dual rate) system is justified in the circumstances; and

It is further ordered, That the lines listed in appendix A hereto, are hereby made respondents in this proceeding; and

It is further ordered, That this matter be assigned for public hearing before an examiner of the Commission's Office of Hearing Examiners and that the hearing be held at a date and place to be determined and announced by the presiding examiner; and

It is further ordered, That notice of this order be published in the FEDERAL REGISTER and that a copy thereof and notice of hearing be served upon respondents; and

It is further ordered, That any person, other than respondents, who desires to become a party to this proceeding and participate therein, shall file a petition to intervene promptly with the Secretary, Federal Maritime Commission, Washington, D.C. 20573, with copy to parties.

And it is further ordered, That all future notices issued by or on behalf of the Commission in this proceeding, including notice of time and place of hearing or prehearing conference, shall be mailed directly to all parties of record.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

[1] Commissioner Robert E. Lee absent.

APPENDIX A

Mr. W. C. Galloway, Chairman, Australia, New Zealand, and South Sea Islands Pacific Coast Conference, 635 Sacramento Street, Room 330, San Francisco, CA 94111.
Columbus Line, 26 Broadway, New York, NY 10004.
Karlander Kangaroo Line, Transpacific Transportation Co., 650 California Street, San Francisco, CA 94108.
Orient Overseas Line, Orient Maritime Agencies, 311 California Street, San Francisco, CA 94104.
Pacific Far East Line, Inc., 141 Battery Street, San Francisco, CA 94111.
Peninsular & Oriental Steam Navigation Co., P & O Lines (North America), Inc., 155 Post Street, San Francisco, CA 94108.
The Oceanic Steamship Co., 100 Mission Street, San Francisco, CA 94105.

[FR Doc.71-4627 Filed 4-2-71;8:48 am]

[Independent Ocean Freight Forwarder License 813]

HAYES & CUPITT, INC.

Order of Revocation

By letter dated March 1, 1971, Hayes & Cupitt, Inc., 17 Battery Place, New York, NY 10004, was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 813 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission on or before March 25, 1971.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

Hayes & Cupitt, Inc., has failed to furnish a surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (revised) section 7.04(g) (dated September 29, 1970):

It is ordered, That the Independent Ocean Freight Forwarder License of Hayes & Cupitt, Inc., be returned to the Commission for cancellation.

It is further ordered, That the Independent Ocean Freight Forwarder License of Hayes & Cupitt, Inc., is hereby revoked effective March 25, 1971.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served upon Hayes & Cupitt, Inc.

AARON W. REESE,
Managing Director.

[FR Doc.71-4628 Filed 4-2-71;8:48 am]

[Docket No. 71-30]

TRANSAMERICAN TRAILER TRANSPORT, INC.

Order of Investigation and Suspension

Transamerican Trailer Transport, Inc. (TTT), has filed with the Federal Maritime Commission Supplement No. 8 to its Freight Tariff No. 1 to become effective April 25, 1971, which generally increases rates and charges in the U.S. Atlantic/Puerto Rico trade 18 percent to 28 percent with certain exceptions.

Upon receipt of this supplement, the staff of the Commission informed TTT that an audit would be conducted of TTT's books and records to determine whether these increases were justified. TTT advised that it would deny access to its books and records for purposes of an audit, but would furnish an unspecified justification at some undetermined time prior to the effective date of the increase.

Upon consideration of the supplement and of the facts stated above, the Commission believes that the increased rates and charges should be made the subject of a public investigation and hearing to determine whether they are unjust, unreasonable or otherwise unlawful under section 18(a) of the Shipping Act, 1916, and/or sections 3 and 4 of the Intercoastal Shipping Act, 1933. This investigation and hearing shall be separate from the general investigation under way in Docket No. 70-6, Rates and Charges in the U.S. Atlantic/Puerto Rico Trade.

Therefore, it is ordered, That pursuant to the authority of sections 18(a) and 22 of the Shipping Act, 1916, and sections 3 and 4 of the Intercoastal Shipping Act, 1933, an investigation is hereby instituted into the lawfulness of said increased rates and charges in order to make such findings and orders as the facts and circumstances warrant;

It is fruther ordered, That pursuant to section 3, Intercoastal Shipping Act, 1933, Supplement No. 8 to Tariff No. 1 be suspended and the use thereof be deferred to and including August 24, 1971, unless otherwise ordered by this Commission;

It is further ordered, That copies of this order be filed with Supplement No. 8 to TTT Freight Tariff No. 1 in the Bureau of Compliance of the Federal Maritime Commission. The rates and charges heretofore in effect, and which were to be changed by the suspended matter shall remain in effect during the period of suspension, and neither the matter suspended, nor the matter which is continued in effect as a result of such suspension, may be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission. Any changes in the rates hereby suspended will also be included in this investigation;

It is further ordered, That Transamerican Trailer Transport, Inc., be named as respondent in this proceeding;

It is further ordered, That the provisions of Rule 12 of the Commission's rules of practice and procedure, which require leave of the Commission to take testimony by deposition or by written interrogatories, and to request admissions of fact and genuineness of documents, if notice thereof is served within 20 days and 10 days, respectively, of com-

mencement of the proceeding are hereby waived for this proceeding inasmuch as the expeditious conduct of business so requires;

It is further ordered, That this proceeding be assigned for public hearing before an examiner of the Commission's Office of Hearing Examiners and that the hearing be held at 10 a.m. on April 26, 1971, in Room 1211, 1405 I Street NW., Washington, DC 20573, at which time TTT shall present its direct case;

It is further ordered, That TTT furnish written direct testimony, exhibits and work papers in support of said increases to this Commission no later than April 14, 1971;

It is further ordered, That the presiding examiner allow a reasonable time subsequent to TTT's direct case to permit Hearing Counsel and any intervenors to seek discovery by deposition, interrogatories or other procedures available under Rule 12;

It is further ordered, That Hearing Counsel and intervenors (if any) present their direct cases at a hearing to be scheduled no less than 1 week from the date discovery has been completed;

It is further ordered, That a briefing schedule be arranged so that an Initial Decision can issue on a date which will afford sufficient time for the Commission to issue its decision prior to August 24, 1971;

It is further ordered, That a copy of this order shall forthwith be served on the respondent and be published in the FEDERAL REGISTER.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies) having an interest in this proceeding and desiring to intervene therein, should notify the Secretary of the Commission promptly and file petitions for leave to intervene in accordance with Rule 5(1) of the Commission's rules of practice and procedure (46 CFR 502.72) with a copy to all parties to this proceeding.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-4626 Filed 4-2-71;8:48 am]

FEDERAL POWER COMMISSION

[Dockets Nos. CP71-222, CP71-223]

GREAT LAKES GAS TRANSMISSION CO.

Notice of Application

MARCH 29, 1971.

Take notice that on March 19, 1971, Great Lakes Gas Transmission Co. (applicant), 1 Woodward Avenue, Detroit, MI 48226, filed in Docket No. CP71-222 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain compressor and related facilities to increase the firm volumes of natural gas transported for Trans-Canada Pipe Lines Ltd. (Trans-Canada) and in Docket No. CP71-223 an application pursuant to section 3 of the Natural Gas Act for authorization to import and export said volumes of natural gas and to import increased volumes of natural gas for fuel and other company uses, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Specifically, Applicant proposes to increase the firm volumes of natural gas transported for the account of Trans-Canada from the international boundary near Emerison, Manitoba, to the international boundary near Sault Ste. Marie and St. Clair, Mich., from 677,000 Mcf per day to 900,000 Mcf per day, plus such overrun volumes which may be transported from time to time in accordance with the terms of applicant's T-4 FPC Gas Rate Schedule.

Applicant also seeks authorization for the importation of 17,000,000 Mcf of natural gas per year, commencing November 1, 1971, to be used by applicant for fuel and other company purposes.

In order to render the additional transportation service proposed herein, to enable Trans-Canada to render additional service to its markets in Eastern Canada, and to purchase and receive the aforementioned volumes of natural gas for applicant's use, applicant states that it will be necessary to construct and operate the following additional facilities:

1971 CONSTRUCTION

12,500-hp. Turbine Driven Centrifugal Compressor Station Addition—Thief River Falls (Station No. 2).

20,000-hp. Turbine Driven Centrifugal Compressor Station Addition—Shevlin (Station No. 3).

12,500-hp. Turbine Driven Centrifugal Compressor Station Addition—Deer River (Station No. 4).

20,000-hp. Turbine Driven Centrifugal Compressor Station Addition—Cloquet (Station No. 5).

12,500-hp. Turbine Driven Centrifugal Compressor Station Addition—Iron River (Station No. 6).

20,000-hp. Turbine Driven Centrifugal Compressor Station Addition—Wakefield (Station No. 7).

12,500-hp. Turbine Driven Centrifugal Compressor Station Addition—Crystal Falls (Station No. 8).

12,500-hp. Turbine Driven Centrifugal Compressor Station Addition—Naubinway (Station No. 10).

25,000-hp. Turbine Driven Centrifugal Compressor New Station—Boyne Falls (Station No. 11).

12,500-hp. Turbine Driven Centrifugal Compressor Station Addition—Otisville (Station No. 13).

Addition to St. Clair Measuring Station.

1972 CONSTRUCTION

3,500-hp. Turbine Driven Centrifugal Compressor Station Addition by upgrading an existing unit—Thief River Falls Station No. 2).

3,500-hp. Turbine Driven Centrifugal Compressor Station Addition by upgrading an existing unit—Deer River (Station No. 4).

3,500-hp. Turbine Driven Centrifugal Compressor Station Addition by upgrading an existing unit—Iron River (Station No. 6).

3,500-hp. Turbine Driven Centrifugal Compressor Station Addition by upgrading an existing unit—Crystal Falls (Station No. 8).

Applicant states that the additional volumes of natural gas will be imported and exported through existing facilities at the international boundary.

The total estimated cost of the facilities proposed herein is $34,322,000 which cost applicant states will be financed by increased bank borrowings and by the issuance of common stock to American Natural Gas Co. and Trans-Canada Pipe Lines, Ltd., applicant's parent companies.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 19, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on the application in Docket No. CP71-222 if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-4610 Filed 4-2-71;8:47 am]

[Docket No. CP66-130]

MISSISSIPPI RIVER TRANSMISSION CORP.

Notice of Petition To Amend

MARCH 30, 1971.

Take notice that on March 23, 1970, Mississippi River Transmission Corp. (petitioner), 9900 Clayton Road, St. Louis, Mo. 63124, filed in Docket No. CP66-130 a petition to amend the Commission's order issued June 6, 1966 (35 FPC 892), as amended by order issued August 10, 1966 (36 FPC 416), as further amended by order issued September 4, 1969 (42 FPC 619), issuing a certificate

of public convenience and necessity, pursuant to section 7(c) of the Natural Gas Act, in said docket by authorizing an increase in the maximum storage inventory of natural gas in the St. Peter formation of the St. Jacob Storage Field, and to make certain other modifications in the Mount Simon formation of the same field, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Specifically, petitioner seeks authorization to increase the maximum storage inventory of natural gas in the St. Peter formation in the north area of the St. Jacob Storage Field, located in Madison and St. Clair Counties, Ill., from 5,300,000 Mcf to 5,600,000 Mcf. Applicant also proposes the drilling and completion of one new well, reworking an existing well, and the deepening and completion of another existing well in the Mount Simon formation of the same field, and the construction and operation of related field well lines and other miscellaneous facilities for the purpose of continuing exploratory and testing work in the St. Jacob Storage Field.

Petitioner states that its experience in operating the Field indicates that the reservoirs can accommodate a storage inventory greater than 5,300,000 Mcf but that the ultimate storage capacity will be determined only from continued operation and prudent expansion of the storage inventory. Petitioner proposes to reinforce system deliverability and does not propose additional new sales in connection with the aforementioned increase in the inventory limitation.

The estimated cost of the facilities proposed herein, including cushion gas is $395,000 which cost petitioner states will be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before April 20, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-4611 Filed 4-2-71;8:47 am]

[Docket No. G-8044, etc.]

RANCHO OIL CO. ET AL.

Findings and Order; Correction

MARCH 18, 1971.

Rancho Oil Co. and other applicants listed herein, Docket Nos. G-8044 et al.; Shenandoah Oil Corp., Docket No. CI62-289.

In the findings and order after statutory hearing issuing certificates of publice convenience and necessity, amending orders issuing certificates, permitting and approving abandonment of service, terminating certificates, severing proceedings, terminating proceedings, making successors co-respondents, redesignating proceedings, accepting agreements for filing, requiring filing of agreements and undertakings, and accepting related rate schedules and supplements for filing, issued March 2, 1971, and published in the FEDERAL REGISTER March 11, 1971 (36 F.R. 4721), columns 5 and 6: Add FPC Gas Rate Schedule "No. 16" and Supplement "No. 2" related to the assignment dated June 30, 1970, in Docket No. CI62-289.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-4613 Filed 4-2-71;8:47 am]

[Docket No. E-7618]

SOUTHERN CALIFORNIA EDISON CO.

Notice of Proposed Rate Schedule Changes

MARCH 30, 1971.

Take notice that on March 23, 1971, Southern California Edison Co. (Edison) filed rate schedule changes constituting amendments to its R-1 (Resale Service) and R-2 (Resale Service—Large) rates. Twelve resale customers would be affected. The changes are proposed to become effective 60 days after filing.

The applicant states that the proposed changes would increase the demand and energy charges under both the R-1 and R-2 rates and reduce the high-voltage discount offered in connection with the R-2 rate. Edison states that an increase is required to maintain its financial integrity, preserve its credit standing and attract necessary capital for plant additions, in view of increased new money, labor, and material costs.

Based on a 1969 test year, the proposed increase would result in an increase in R-1 revenues of $80,000, or 18.6 percent. R-2 revenues would be increased $3,203,000, or 12.5 percent. The total increase would be $3,283,000 or 12.6 percent. The overall rate of return claimed by Edison is 8.00 percent.

Copies of the filing have been served on customers and interested State regulatory agencies.

Any person desiring to be heard or make protest with reference to the above-described application should on or before April 19, 1971, file with the Federal Power Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing thereon, must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-4612 Filed 4-2-71;8:47 am]

SECURITIES AND EXCHANGE COMMISSION

[811-1980]

COMP-U-HEDGE FUND

Notice of Filing of Application for Order Declaring That Company Has Ceased To Be an Investment Company

MARCH 29, 1971.

Notice is hereby given that Comp-U-Hedge Fund (Applicant), 130 North Broadway, Camden, NJ 08102, a Delaware corporation, registered as a closed-end nondiversified investment company under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of representations contained therein which are summarized below.

On December 11, 1969, Applicant registered as an investment company under the Act. Applicant represents that it has never commenced its proposed activities of investing in securities, has no shareholders, and has no assets. Furthermore, Applicant does not intend to become an operating company in the future.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than April 15, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit

or in the case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing thereon shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71–4620 Filed 4–2–71;8:48 am]

[811–866]

EUROFUND INTERNATIONAL, INC., AND INTERNATIONAL TELEPHONE AND TELEGRAPH CORP.

Notice of Filing of Application for Order Declaring That Company Has Ceased To Be an Investment Company

MARCH 29, 1971.

Notice is hereby given that Eurofund International, Inc. (Eurofund), 113 Astor Street, Newark, NJ 07114, a Maryland corporation registered as a closed-end, nondiversified management investment company under the Investment Company Act of 1940 (Act), has filed an application, in which International Telephone and Telegraph Corp. (ITT), 320 Park Avenue, New York, NY 10022, a Delaware corporation, has joined, for an order pursuant to section 8(f) of the Act declaring that Eurofund has ceased to be an investment company as defined in the Act. All persons having an interest in this matter are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Eurofund proposes to enter into a Plan and Agreement of Merger (the "Agreement"), filed as an exhibit to the application, whereby ITT Eurofund, Inc., a Maryland corporation and a wholly owned subsidiary of ITT, will be merged into Eurofund, whereupon Eurofund will become a wholly owned subsidiary of ITT and Eurofund's stockholders will receive shares of ITT's common stock, $1 par value, subject to the terms and conditions of the Agreement. A special meeting of shareholders of Eurofund is being conducted on March 29, 1971, to vote on approval or disapproval of the Agreement.

The application states that, upon consummation of the proposed merger, Eurofund will, pursuant to the provisions of section 3(b)(3) of the Act, cease to be an investment company as defined in the Act, and requests that an order be issued pursuant to section 8(f) declaring that Eurofund has ceased to be an investment company upon consummation of the merger.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, which, if necessary for the protection of investors, may be made upon appropriate conditions, and upon the taking effect of such order the registration of such company shall cease to be in effect.

Section 3(b)(3) of the Act provides, in pertinent part, that, notwithstanding section 3(a)(3), any issuer all the outstanding securities of which (other than short-term paper and directors' qualifying shares) are directly or indirectly owned by a company excepted from the definition of an investment company by section 3(b)(1) is not an investment company within the meaning of the Act.

Section 3(b)(1) of the Act provides that notwithstanding section 3(a)(3), any issuer primarily engaged, directly or through a wholly owned subsidiary or subsidiaries, in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities is not an investment company within the meaning of the Act.

The application states that ITT is a corporation which is solely engaged, directly and through subsidiaries (substantially all of which are wholly owned), in the development, manufacture, sale, leasing and service of electronic and telecommunication equipment and in various other businesses and is, as such, engaged in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities within the meaning of section 3(b)(1) of the Act. The application further states that, upon conclusion of the merger, Eurofund will come within the exception provided in section 3(b)(3) of the Act from the definition of an investment company since all the outstanding securities of Eurofund (other than short-term paper) will be directly or indirectly owned by ITT.

Notice is further given that any interested person may, not later than April 8, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communications should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Eurofund and ITT at the addresses set forth above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation pursuant to delegated authority.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71–4621 Filed 4–2–71;8:48 am]

[812–2743]

FRANKLIN LIFE INSURANCE CO. AND FRANKLIN LIFE VARIABLE ANNUITY FUND A

Notice of Application for Exemptions

MARCH 29, 1971.

Notice is hereby given that The Franklin Life Insurance Co. (Franklin) and Franklin Life Variable Annuity Fund A (Fund), (collectively "Applicants"), Franklin Square, Springfield, IL 62705, have filed an application pursuant to section 6(c) of the Investment Company Act of 1940 (Act) for an order exempting Applicants from certain provisions of sections 17(f)(3), 22(d), and 27(c)(2) of the Act and Rule 17f–2 thereunder. Fund is an open-end diversified management company registered under the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below.

Franklin is an Illinois stock life insurance company and is subject to supervision and inspection by the Illinois Department of Insurance. Franklin established the Fund pursuant to Illinois law on November 5, 1969, as a separate account to offer variable annuity contracts in connection with qualified plans described in section 401(a) or section 403(a) of the Internal Revenue Code of 1954, as amended, or which meet the requirements of section 403(b).

Section 17(f)(3) provides, in pertinent part, that a registered management investment company may maintain its securities and similar investments in its own custody, but only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors. Rule 17f–2 provides, among other things, that such assets be placed in a bank subject to the requirements of the rule, one of which limits the persons who shall have access to such assets to only certain specified individuals. Applicants request an exemption from the provisions of section 17(f)(3) and Rule 17f–2 to the extent necessary to permit not more than

six officers or responsible employees of Franklin, designated by the Board of Managers of the Fund, to have access to the securities and similar investments of the Fund (subject to the provisions of Rule 17f–2 and 17g–1 which shall be applicable to such designated officers and responsible employees of Franklin to the same extent as if they were officers or responsible employees of the Fund designated as having access to the securities and similar investments of the Fund), and to permit duly authorized representatives of the Illinois Department of Insurance and of the zonal examination committee of the National Association of Insurance Commissioners to have access to the securities and similar investments of the Fund. Such assets will be deposited with The First National Bank of Springfield, Springfield, Ill. Franklin is subject to supervision and inspection by the Illinois Department of Insurance.

Section 22(d) provides, among other things, that no registered investment company shall issue and sell any redeemable security to the public except at a current offering price described in the prospectus. Applicants request an exemption from section 22(d) to permit variable annuity contracts of the Fund to be sold, without a deduction for sales expense, to the owner of any annuity contract issued by Franklin which is accorded special tax treatment under the Internal Revenue Code similar to that accorded the contracts offered by the Fund, to the extent that the proceeds payable under such contracts are applied by the person entitled to receive them to the purchase, by way of a settlement option, of a single stipulated payment contract offered by the Fund. Applicants state that such contract-holders have paid a sales charge in connection with the sale to them of the contract, the proceeds of which are to be so applied, and that it is appropriate that duplication of such charge be avoided since conversions of such other contracts for settlement as variable annuities are essentially a service to existing contract-holders and do not involve selling efforts comparable to those involved in selling new contracts to the public.

Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other than the sales load, are deposited with a bank having the qualifications prescribed in section 26(a)(1) and held by it as trustee or custodian under an indenture or agreement containing, in substance, the provisions required by section 26(a)(2) and (3) for a unit investment trust. Section 26(a)(2) requires that the trustee or custodian segregate and hold in trust all securities and cash of the trust, places certain restrictions on charges which may be made against the trust income and corpus and excludes from expenses which the trustee or custodian may charge against the trust any payments to the depositor or principal underwriter, other than a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services delegated to them by the trustee or custodian. Section 26(a)(3) governs the circumstances under which the trustee or custodian may resign.

Applicants request an exemption from the provisions of section 27(c)(2). Applicants state that Franklin is subject to extensive and detailed supervision and inspection by the Illinois Department of Insurance as well as by the insurance departments of all other jurisdictions in which Franklin is licensed to do business and that such control provides ample assurance against misfeasance and affords the essential protection which the trusteeship or custodianship under section (26(a)(2) is designed to provide. The contractual obligations of Franklin to the participants cannot be abandoned until such obligations have been discharged. The First National Bank of Springfield, with which the securities and similar investments of the Fund will be deposited, as set forth above, meets the qualifications prescribed in section 26(a)(1) of the Act. Applicants have consented that the requested exemption from section 27(c)(2) to be subject to the conditions that the deductions under the contracts for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe, that the Commission shall reserve jurisdiction for such purpose, and that the payment of sums and charges out of the assets of the Fund shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that the consent of Applicants to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets other than charges for administrative services. Applicants reserve the right in any proceeding before the Commission or in any suit or action in any court to assert that the Commission has no authority to regulate the payment of such other sums or charges.

Sections 6(c) authorizes the Commission, conditionally or unconditionally, to exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the Act and rules promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is hereby given that any interested person may, not later than April 15, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statment as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted; or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the address stated above. Proof of such service by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation pursuant to delegated authority.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71–4622 Filed 4–2–71;8:48 am]

[37–68; 70–4990]

GENERAL PUBLIC UTILITIES CORP. AND GPU SERVICE CORP.

Notice of Proposed Organization and Conduct of Subsidiary Service Company in Registered Holding Company System and Related Transactions

MARCH 29, 1971.

Notice is hereby given that General Public Utilities Corp. (GPU), and its wholly owned subsidiary company, GPU Service Corp. (Service Corp.), 80 Pine Street, New York, NY 10005, have filed with this Commission an application-declaration and an amendment thereto pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a), 7, 9(a), 10, 12, and 13 and Rules 86 to 91, inclusive, promulgated thereunder as being applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

GPU owns all of the outstanding common stocks of four electric utility companies, Metropolitan Edison Co. (Met-Ed), Pennsylvania Electric Co. (Penelec), Jersey Central Power & Light Co. (JCP&L) and New Jersey Power & Light Co. (NJP&L), which provide electric service in portions of the States of Pennsylvania and New Jersey. The GPU system as of December 31, 1970, had consolidated property, plant, and equipment, less accumulated reserves, of $1,946,222,081, and for the 12 months then ended had operating revenues of $416,788,676.

GPU proposes that Service Corp., a newly created Pennsylvania corporation, performs management, planning, engineering, coordinating, administrative

and operating services for its utility subsidiary companies. In order to enable Service Corp. to carry on its operations, it is proposed that GPU tranfer to Service Corp. all its 58 officers and employees and those 240 of its subsidiary companies who are performing systemwide functions. The aggregate annual salaries and fringe benefit costs for the 298 employees is estimated to be approximately $5 million. It is further proposed that officers and employees of Service Corp. may serve as officers and directors of associate companies and that the directors and officers of Service Corp. may be selected without regard to whether interlocking positions between Service Corp. and associate companies result; provided, however, that none of such officers or employees of Service Corp. receive compensation from any company other than Service Corp. A portion of the office furniture and other equipment required by Service Corp. for its operations will be purchased from JCP&L, NJP&L, and GPU at the depreciated cost thereof for $115,000.

It is proposed that Service Corp. will become the tenant of the rented quarters in New York City presently occupied by GPU. In addition, certain services will be performed in offices in Reading, Pa., and Parsippany, N.J., for which Service Corp. will pay to the respective system company from which it rents an amount sufficient to cover the associated costs of such property to the system company, plus, in the case of buildings owned by such companies, an amount equivalent to a return on the net investment in such rate of return of the owner.

GPU has recently acquired from the Reading, Pa., Municipal Airport Authority, at a cost of appoximately $300,000, a tract of approximately 20½ acres upon which it is proposed that there be constructed a building to house the personnel and equipment of Service Corp. who will perform a number of functions, including system data processing, dispatch, load and capacity planning, economic analysis, rate policies and river basin studies. It is anticipated that the building will be owned by Service Corp. and financed by it through a construction loan guaranteed by GPU, and permanently financed by debt financing of Service Corp. guaranteed by GPU. Such interims and permanent financing will be the subject of a separate application or applications. GPU expects to continue to pay the costs incurred in connection with this building until Service Corp. is in a position to begin operation, at which time GPU will transfer its investment in the above-mentioned land and related costs (such as architectural and design services) to the Service Corp. at GPU's cost and receive in payment therefor Service Corp. notes of the character and terms described below. While this building is under construction, some of the proposed Service Corp. personnel to be located in Reading, Pa., (principally those involved in data processing and information services), are occupying temporary quarters rented by Met-Ed, and Service Corp. will assume this lease when it commences operations.

Service Corp. has authorized capital stock of 5,000 shares of common stock of $10 par value per share, and in order to finance its requirements, it proposes to issue and sell to GPU during the 5-year period commencing with the effective data of the Commission's order herein, and GPU proposes to acquire, $5,000 shares of such stock for $50,000 cash and various amounts of its long-term unsecured notes for cash at the principal amount thereof. The notes, which will not exceed $5 million aggregate principal amount at any one time outstanding, will mature 40 years from the date the first of such notes are issued, and may be prepared by Service Corp. at any time at the principal amount thereof. The notes will bear interest at a rate equal to the prime rate for short-term commercial borrowings generally in effect, from time to time, in New York City (currently 5¼ percent) plus not more than 20 percent thereof, such interest rate to be adjusted to conform with any change in the prime rate as of the first business day following the date of announcement of any such change. It is stated that the proposed interest rate will represent less than the actual cost to GPU of supplying such funds, in view of the length of the proposed loans, which GPU must ultimately provide through equity financing, and the fact that if GPU were to obtain such funds from banks, it would be required to maintain compensating balances the higher of 10 percent of its line of credit or 20 percent of the amounts borrowed, this factor alone increasing the effective cost of money to 25 percent above the nominal prime rate.

Applicants-declarants represent that Service Corp. will at all times maintain its aggregate capital, including the principal amount of notes outstanding, at an amount approximately equal to the sum of 2 months' operating expenses plus the cost of its property, less applicable reserves, prepayments and petty cash working funds. During the first 12-month period of operation, it is anticipated that Service Corp. will sell to GPU approximately $2,500,000 principal amount of its notes in addition to its 5,000 shares of common stock.

It is estimated that the total operating expenses of Service Corp. in its first full year of operation will amount to approximately $12 million. All services performed by Service Corp. for associate companies will be rendered at the cost thereof to Service Corp., including reasonable compensation for necessary capital as permitted by the terms of Rule 91 under the Act. Such service costs will be allocated among the aforesaid companies on the basis of benefits conferred and in a fair and equitable manner and in accordance with the cost-allocation procedures set forth in the application-declaration.

The applicants-declarants represent that the 298 employees to be transferred to Service Corp. from GPU and its operating subsidiary companies, and such other employees who may in the future be transferred, will not be replaced in their functions by other personnel of such associate companies. It is stated that GPU will continue to bear all its own costs, principally relating to (1) maintenance of its own organization, directors' fees, shareholder and other records, (2) financing, (3) fees of transfer agents and registrars for its securities, and (4) other fiscal functions of GPU, including payment of interest and dividends. The actual general expenses of GPU for the calendar year 1970 were $16,522,000, of which on a pro forma basis only $1,506,000 (including $1,090,000 of payroll and related expenses of GPU's 58 employees) would have been expenses initially borne by Service Corp. and a portion thereof charged to GPU.

The applicants-declarants further represent that the proposed organization and conduct of business of Service Corp. will not of themseves be the cause of any application to any Federal or State regulatory body for an increase in the rates charged to consumers by any associate company. However, Service Corp.'s charges to associate operating companies for services rendered will be included in the cost of service or plant accounts of such companies, as appropriate, in any future rate proceedings.

It is stated that the execution and carrying out of the agreements between the Service Corp. and JCP&L and NJP&L will require the authorization of the Board of Public Utility Commissioners of the State of New Jersey. An Application seeking such authorization will be filed with said Board and a copy thereof filed by amendment to this application-declaration, and that the execution and carrying out of the agreement between Service Corp. and Met-Ed and Penelec will not require the authorization of the Pennsylvania Public Utility Commission but will require the filing of the agreements with that Commission, and said agreements will be so filed promptly after the execution and delivery thereof. It is further stated that no other State commission and no Federal commission, other than this Commission, has jurisdiction with respect to the subject transactions and that copies of the application-declaration, as amended, have been furnished to the staff of the Board of Public Utility Commissioners of the State of New Jersey, of the Pennsylvania Public Utility Commission, and of the Federal Power Commission. The estimated fees and expenses incurred in connection with the proposed transactions will be filed by amendment.

The applicants-declarants request that said application-declaration, as amended or as it may be further amended, be granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act and to the following additional terms and conditions to which the applicants-declarants have expressly consented:

1. No change in the organization of Service Corp. the type and character of the companies to be serviced, the method of allocating costs to associate companies, or in the scope or character of services to be rendered, shall be, made unless and until Service Corp. shall first have given the Commission written notice of such proposed change not less than 60 days prior to the proposed effectiveness of any such change. If, upon the receipt of any such notice, the Commission within the 60-day period shall notify Service Corp. that a question exists as to whether the aforesaid proposed change is consistent with the provisions of section 13 of the Act, or of any rule, regulation or order thereunder, the proposed change shall not become effective unless and until Service Corp. shall have filed with the Commission an appropriate declaration with respect to such proposed change, and the Commission shall have permitted such declaration to become effective.

2. In the event that the operation of Service Corp.'s cost allocation method does not result in a fair and equitable allocation of its cost among the serviced associate companies, the Commission reserves the right to require, after notice and opportunity for hearing, prospective adjustments, and, to the extent that it appears feasible and equitable, retroactive adjustments of such cost allocations.

3. Jurisdiction is reserved by the Commission to take such further action as may be necessary or appropriate to carry out the provisions of section 13 of the Act and the rules, regulations and orders thereunder.

Notice is further given that any interested person may, not later than April 27, 1971, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71-4623 Filed 4-2-71;8:48 am]

[812-2787]

PITTSBURGH COKE & CHEMICAL CO.

Notice of Filing of Application for Order Exempting Proposed Transaction

MARCH 29, 1971.

Notice is hereby given that Pittsburgh Coke & Chemical Co. (Applicant), Grant Building, Pittsburgh, Pa. 15219, a closed-end, nondiversified investment company registered under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 6(c) of the Act requesting that the Commission issue an order exempting from the provisions of section 17(d) of the Act and Rule 17d-1 thereunder a proposed transaction involving the sale by Applicant of indebtedness of, and the transfer by Applicant of all the outstanding stock of, Applicant's wholly owned subsidiary, American Flyers Airline Corporation (AFA). All interested persons are referred to the application, as amended, on file with the Commission for a statement of the representations therein, which are summarized below.

Applicant asserts that because of continuing losses sustained by AFA caused in substantial part by AFA's operation of two 727 jet aircraft leased from another wholly owned subsidiary of Applicant, Grant Aviation Leasing Corp. (Leasing), and because of the existence of guarantees by Applicant of certain major obligations of AFA and Leasing, Applicant has determined that it would be to the advantage of its stockholders to dispose of its ownership of AFA. Thus, Applicant, AFA and Leasing have entered into an agreement (the Agreement), as more fully set forth in the application, with Universal Airlines Co. (UVA Co.), Universal Airlines, Inc. (UVA Inc.) and Universal Consolidated Industries, Inc. (UCI). The Agreement provides for the sale to UVA Co. of indebtedness of AFA amounting to over $6 million, and incident thereto, but without consideration, for the transfer to UVA Co. of the stock of AFA owned by Applicant, and for UVA Co., UVA Inc. and UCI to protect Applicant against any liability on the guarantees of obligations of AFA. Applicant submits that neither UVA Co., UVA Inc., nor UCI have any affiliation with Applicant, AFA, Leasing or their affiliates.

As consideration for the sale of indebtedness of AFA to UVA Co. under the agreement, Applicant will receive a pro rata share of the 30,000 shares of nonvoting $7 Cumulative Preferred Stock of UVA Co. par value $1 per share, and a similar pro rata share of an option to acquire up to 500,000 shares of Common Stock of UVA Co. at $7 per share, which option may not be exercised prior to 3 years or subsequent to 12 years following the date of its issue.

Section 17(d) of the Act and Rule 17d-1 thereunder, taken together provide, as here pertinent, that it shall be unlawful for an affiliated person of a registered investment company or an affiliated person of such a person, acting as principal, to participate in, or effect any transaction in which such registered company or a company controlled by such registered company, is a joint or joint and several participant unless, prior thereto, an application regarding such arrangement has been filed with and granted by the Commission. Applicant has requested an order exempting it and its wholly owned subsidiaries AFA and Leasing from the provisions of section 17(d) of the Act to permit them to participate together in the transaction described above.

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction from any provision or provisions of the Act, or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant submits that because the only affiliates jointly participating in the transaction with Applicant are wholly owned subsidiaries of Applicant, it is as if Applicant alone were involved in the transaction. Applicant asserts that it cannot be disadvantaged in dealing with affiliates which are wholly owned subsidiaries since such affiliates are merely facets of the Applicant itself. Thus, it is contended that it is appropriate in the public interest and consistent with the protection and purposes of the Act to exempt this transaction from the provisions of section 17(d) and Rule 17d-1 thereunder.

Notice is further given that any interested person may, not later than April 14, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case

of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation pursuant to delegated authority.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71–4624 Filed 4–2–71;8:48 am]

SMALL BUSINESS ADMINISTRATION

WESTLAND CAPITAL CORP.

Notice of Filing of Application for Transfer of Control of Licensed Small Business Investment Company

Notice is hereby given that application has been filed with the Small Business Administration (SBA) pursuant to § 107.701 of the regulations governing Small Business Investment Companies (33 F.R. 326, 13 CFR Part 107) for transfer of control of Westland Capital Corp. (Westland), 11661 San Vicenti Boulevard, Los Angeles, CA 90049, a Federal Licensee under the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.) (Act), License No. 12/14–0039.

Westland was incorporated September 8, 1961, and as of September 30, 1970, had paid-in capital and paid-in surplus from private sources of $990,062. It has 200,000 shares of issued and outstanding common stock. The City National Bank, Los Angeles, Calif., present owner of 63,432 shares, proposes to sell 58,022 shares to Mr. Jay Phillips, a director of the company, and 5,410 shares to Mr. Frederick J. Warren, president of the company. In turn, Mr. Phillips will sell 157 and 2,783 shares respectively to Mr. Warren and Mr. B. K. Hagopian, vice president and treasurer of the company. Upon the completion of these transactions, Mr. Phillips and his associates will own approximately 91,001 shares representing a 45.5 percent equity interest.

The proposed officers and directors are as follows:

Frederick J. Warren, 11661 San Vicente Boulevard, Los Angeles, CA, President and Director.
B. K. Hagopian, 11661 San Vicente Boulevard, Los Angeles, CA, Vice President and Treasurer.
Anson I. Dreisen, 9229 Sunset Boulevard, Los Angeles, CA, Secretary.
Richard C. Kurtz, 9229 Sunset Boulevard, Los Angeles, CA, Assistant Secretary.
Julienne Jonas, 11661 San Vicente Boulevard, Los Angeles, CA, Assistant Treasurer.
Susan Kaplan, 11661 San Vicente Boulevard, Los Angeles, CA, Assistant Treasurer.
Jean Pratt, 11661 San Vicente Boulevard, Los Angeles, CA, Assistant Treasurer.
Sidney F. Brody, 9477 Brighton Way, Beverly Hills, CA, Director.
Armand S. Deutsch, 11661 San Vicente Boulevard, Los Angeles, CA Director.
Alfred Hart, 400 North Roxbury Drive, Beverly Hills, CA, Director.
Curtis H. Palmer, 400 North Roxbury Drive, Beverly Hills, CA, Director.
Jay Phillips, 2345 Kennedy Street NE., Minneapolis, MN, Director.
Morton B. Phillips, 2345 Kennedy Street NE., Minneapolis, MN, Director.
Theordore Wiesma, 9229 Sunset Boulevard, Los Angeles, CA, Director.

Westland is a publicly owned company and will operate out of its present facilities located at 11661 San Vicente Boulevard.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed new owner, and the possibility of successful operations of the company under their control and management (including adequate profitability and financial soundness) in accordance with the Act and regulations.

Notice is further given that any interested person may, not later than 10 days from the date of publication of this notice, submit to SBA, in writing, relevant comments on the proposed transfer of control. Any such communication should be addressed to: Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this notice shall be published by the proposed transferee in a newspaper of general circulation in Minneapolis, Minn., and Los Angeles, Calif.

Dated: March 26, 1971.

A. H. SINGER,
Associate Administrator for Investment.

[FR Doc.71–4599 Filed 4–2–71;8:46 am]

DEPARTMENT OF LABOR

Workplace Standards Administration

EXTENSION OF EXPIRATION DATES OF DAVIS-BACON AREA WAGE DETERMINATIONS

Notice of Variation From Certain Labor Standards

Whereas numerous wage determinations of the Secretary of Labor have expired or will soon expire as a result of Proclamation No. 4031 (36 F.R. 3457) of the President of the United States on February 23, 1971, suspending the Davis-Bacon Act and the provisions of other Federal statutes containing provisions for the payment of wages which are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act; and whereas the revocation of such suspension by Proclamation of the President on March 29, 1971, reinstates, for procurements proposed after such date, the statutory requirements that wage determinations of the Secretary be provided therefor, I find that the variation from the provisions of 29 CFR 5.4 set forth below is necessary in order to avoid serious impairment in the conduct of Government business. I also find that notice, public procedure, and delay in the effective date of this document extending the life of wage determinations would be contrary to the public interest within the meaning of 5 U.S.C. 553.

Accordingly, notice is hereby given that pursuant to the provisions of 29 CFR 5.13 the expiration date of each outstanding general or area wage determination of the Secretary of Labor issued under the Davis-Bacon Act and the related statutes which was effective until its suspension on February 23, 1971, is hereby extended until such determination is replaced by a new wage determination. Such determinations may be used with respect to solicitations for bids or proposals issued after March 29, 1971, and contracts entered into pursuant thereto, and, as appropriate, with respect to any other contracts to which the suspension effected by Proclamation 4031 did not apply.

Signed at Washington, D.C., this first day of April 1971.

ROBERT D. MORAN,
Administrator of Workplace Standards.

[FR Doc.71–4752 Filed 4–2–71;8:53 am]

INTERSTATE COMMERCE COMMISSION

[Rev. S.O. 994; ICC Order 39, Amdt. 5]

CHICAGO AND NORTH WESTERN RAILWAY CO.

Rerouting or Diversion of Traffic

Upon further consideration of ICC Order No. 39 (The Chicago and North Western Railway Co.) and good cause appearing therefor:

It is ordered, That:

ICC Order No. 39 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., September 30, 1971, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., March 31, 1971, and that this order 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 it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., March 30, 1971.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.71-4653 Filed 4-2-71;8:51 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

MARCH 31, 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. 42161—*Lime from Roberta, Ala.* Filed by O. W. South, Jr., agent (No. A6239), for interested rail carriers. Rates on lime, in bulk, in covered hopper cars, in carloads, as described in the application, from Roberta, Ala., to Canton, N.C.

Grounds for relief—Market competition.

Tariff—Supplement 11 to Southern Freight Association, agent, tariff ICC S-927.

FSA No. 42162—*Chlorine from Vicksburg, Miss.* Filed by O. W. South, Jr., agent (No. A6238), for and on behalf of the Illinois Central Railroad Co. Rates on chlorine, in tank car loads, as described in the application, from Vicksburg, Miss., to Westvaco, Ky.

Grounds for relief—Rate relationship.

Tariff—Supplement 176 to Southern Freight Association, agent, tariff ICC S-699.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-4654 Filed 4-2-71;8:51 am]

[Notice 675]

MOTOR CARRIER TRANSFER PROCEEDINGS

MARCH 31, 1971.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-72754. By order of March 29, 1971, the Motor Carrier Board approved the transfer to J. W. Brownett, Inc., Teaneck, N.J., of the operating rights in Permit No. MC-113302 issued May 14, 1969, to Paint Oil Delivery Co., Inc., Secaucas, N.J., authorizing the transportation of fish oils, alkyd resins and liquid gums from Long Island City, N.Y., and Edgewater, N.J., to Washington, D.C., Baltimore, Md., Philadelphia, Pa., and points in New Jersey. Robert B. Pepper, 174 Brower Avenue, Edison, N.J. 08817, practitioner for applicants.

No. MC-FC-72755. By order of March 29, 1971, the Motor Carrier Board approved the transfer to Mid-Coast Trucking, a corporation, Cherry Hill, N.J., of a portion of the operating rights in certificate No. MC-119207 issued May 9, 1960, to Mardas Motor Freight, Inc., Philadelphia, Pa., authorizing the transportation of various commodities between Philadelphia, Pa., on the one hand, and, on the other, Baltimore, Md., and points in the District of Columbia. Raymond A. Thistle, Jr., 4 Penn Center Plaza, Philadelphia, PA 19103, attorney for transferee. Richard B. Malis, 6 Penn Center Plaza, Philadelphia, PA 19103, attorney for transferor.

No. MC-FC-72767. By order of March 31, 1971, the Motor Carrier Board approved the transfer to James A. Ruberton, Elm, N.J., of certificate No. MC-116811 (Sub-No. 1) issued to Ruberton Express Service, Inc., Elm, N.J., authorizing the transportation of: Such general merchandise dealt in by wholesale and retail grocery and food business houses, etc., from Philadelphia, Pa., to Atlantic City, N.J. James A. Ruberton, attorney, Third Street, and White Horse Pike, Elm, NJ 08037.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-4655 Filed 4-2-71;8:51 am]

ORGANIZATION MINUTES

Assignment of Duties

Order. At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 23d day of March 1971.

Section 17 of the Interstate Commerce Act, as amended (49 U.S.C. 17), and other provisions of law being under consideration with a view to assigning the respective divisions of the Commission to perform the functions of the Commission under Public Law 91-375, the Postal Reorganization Act, 84 Stat. 719 (revising and reenacting title 39, United States Code):

It is ordered, That the "Organization Minutes of the Interstate Commerce Commission relating to the Organization of Divisions and Boards and Assignment of Work," issue of July 27, 1965, as amended (30 F.R. 11189, 12559, 13302; 31 F.R. 242, 4762, 9529, 12693, 13099, 14025; 32 F.R. 431, 7105, 8000, 8784, 10127, 14627; 33 F.R. 3205, 7795, 16543; 34 F.R. 488; 35 F.R. 4353, 10447), be further amended as follows:

Under the heading "Assignment of Duties to Division":

1. Paragraphs (w) and (x) of the present Item 4.2 are redesignated as paragraphs (x) and (y), respectively, and the following is added as Item 4.2 (w):

4.2 *Division One—Operating Rights Division.* * * *

(w) Section 5203(f) of title 39, United States Code, relating to the evaluation and termination of orders or determinations of the U.S. Postal Service, directing motor common carriers holding certificates of public convenience and necessity issued by the Commission (other than passenger carriers) to perform mail transportation service.

2. The present Item 4.3 is amended by adding paragraph (s), to read as follows:

4. *Division Two—Rates, Tariffs, and Valuation Division.* * * *

(s) All matters arising under the provisions of chapter 50 or chapter 52 of title 39, United States Code (39 U.S.C. 5001 and 5201), relating to the transportation of mail by surface carriers, including the determination of fair and reasonable compensation for mail transportation, but not including matters arising under section 5203(f) of title 39, assigned under Item 4.2(w).

3. Paragraph (aa) of Item 4.4 is amended to read as follows:

4.4 *Division Three—Finance and Service.* * * *

(aa) Matters arising under the Railroad Retirement Act of 1937, Railroad Retirement Tax Act, Railroad Unemployment Insurance Act, and the Railway Labor Act, as respectively amended, except matters assigned to and determined by the Railroad Service Board pursuant to Item 7.8(c).

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-4705 Filed 4-2-71;8:53 am]

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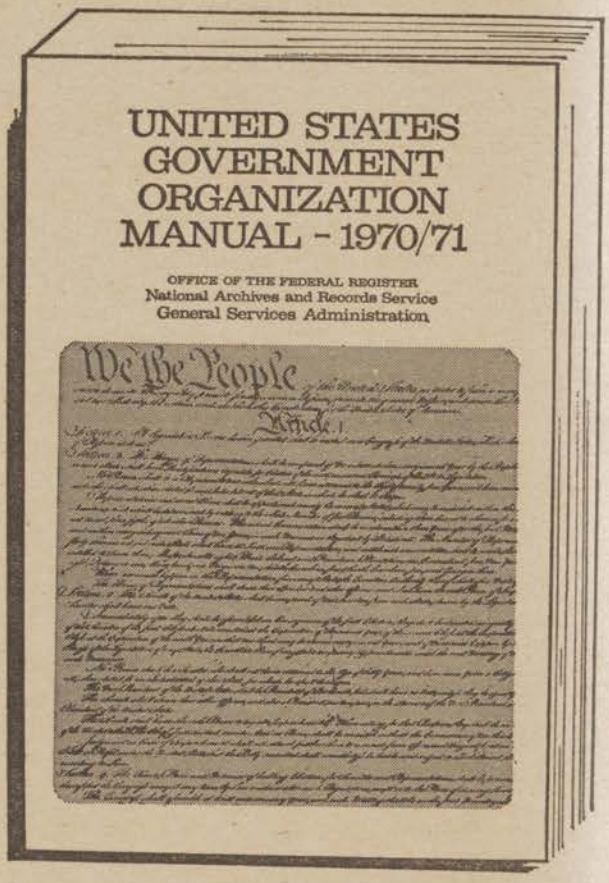

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