FEDERAL REGISTER

VOLUME 36 • NUMBER 71

Tuesday, April 13, 1971 • Washington, D.C.

Pages 6939–7042

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FEDERAL REGISTER

Area Code 202 Phone 962–8626

Published daily, Tuesday through Saturday (no publication on Sundays, Mondays, or on the day after an official Federal holiday), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., Ch. 15), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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List of CFR Parts Affected

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

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

Rules and Regulations

Title 20—EMPLOYEES' BENEFITS

Chapter III—Social Security Administration, Department of Health, Education, and Welfare

[Regs. No. 5, further amended]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED (1965-___)

Subpart C—Exclusions, Recovery of Overpayment, and Liability of Certifying Officer

MEDICARE PAYMENT FOR ITEMS AND SERVICES FURNISHED TO MEDICARE BENEFICIARIES BY FACILITIES RECEIVING U.S. GOVERNMENT FUNDS UNDER FEDERAL PROGRAM SUPPORTING HEALTH CARE SERVICES

On November 11, 1970, there was published in the FEDERAL REGISTER (35 F.R. 17343) a notice of proposed rule making with a proposed amendment to Subpart C of Regulations No. 5 which would permit payment under title XVIII of the Social Security Act for covered items and services furnished Medicare beneficiaries by public or private facilities receiving funds under a U.S. Government program which provides support to facilities furnishing health care services provided that the facilities receiving such Federal support seek reimbursement from all sources available for the health care of their patients, e.g., private insurance, patients' cash resources, etc. Comments have been received in response to the notice of proposed rule making which indicate that the amendment as proposed might be construed as requiring hospitals and other facilities receiving Federal funds to bill non-Medicare sources for Medicare covered services before billing Medicare. This interpretation would be contrary to the intent of the proposed amendment and, with respect to participating providers of services, would contradict one of the provisions of the agreement which all such providers must file with the Secretary of Health, Education, and Welfare under section 1866 of the Social Security Act, i.e., not to charge any individual for services covered under title XVIII. In order to avoid such a misinterpretation, the language of the amendment has been modified to specify that the requirement that federally-funded facilities seek reimbursement from non-Medicare sources applies only with respect to items and services not covered under title XVIII. With such modification, the amendment is hereby adopted.

(Secs. 1102, 1862, 1871, 49 Stat. 647, as amended, 79 Stat. 325, 79 Stat. 331; 42 U.S.C. 1302, 1395 et seq.)

Effective date. The amendment as set forth below shall become effective upon publication in the FEDERAL REGISTER (4–13–71).

Dated: March 17, 1971.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: April 6, 1971.

ELLIOT L. RICHARDSON,
Secretary of Health, Education, and Welfare.

Subpart C of Part 405 is amended as follows:

Paragraph (f) of § 405.312 is redesignated as paragraph (g) and a new paragraph (f) is added to read as follows:

§ 405.312 Nonreimbursable expenses; items or services paid for by Government entity.

* * * * *

(f) Payment may be made for items and services furnished by a public or private health facility which receives United States Government funds under a Federal program which provides support to facilities which furnish health care services (other than a Federal provider of services) provided the facility receiving such Federal support customarily seeks reimbursement for items and services not covered under title XVIII of the Social Security Act, from all resources available for the health care of its patients, e.g., private insurance, patients' cash resources, etc. Payments that are made for such items and services covered under supplementary medical insurance shall be subject to the individual's deductible and shall not exceed 80 percent of charges related to reasonable costs that the facility incurs in providing the items and services. The facility's charges to the individual must not exceed 20 percent of such charges plus any unsatisfied deductible amounts and charges for noncovered services.

* * * * *

[FR Doc.71-5081 Filed 4-12-71;8:46 am]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 5A—Federal Supply Service, General Services Administration

APPEALING CONTRACTING OFFICER'S DECISION UNDER DISPUTES CLAUSE, AND TIMELINESS, AND TRANSMITTAL OF APPEALS

Chapter 5A of Title 41 is amended as follows:

PART 5A–1—GENERAL

The table of contents of Part 5A–1 is amended as follows:

Sec.
5A–1.318 Disputes clause.
5A–1.318–1 Contracting officer's decision under the Disputes clause.

Subpart 5A–1.3—General Policies

Subpart 5A–1.3 is amended as follows:

§ 5A–1.318 Disputes clause.

§ 5A–1.318–1 Contracting officer's decision under the Disputes clause.

(a) The adequacy of the contracting officer's decision under the Disputes clause, as required by § 1–1.318–1, and of the contents of any subsequent notice of appeal, as provided for by § 5–60.201, shall be properly insured. Accordingly, the following paragraphs shall be set forth in all contracting officers decisions subject to the Disputes clause:

This decision is made in accordance with the Disputes clause and shall be final and conclusive as provided therein, unless a written Notice of Appeal addressed to the Administrator of General Services is mailed or otherwise furnished to the contracting officer. The Notice of Appeal, which is to be signed by you as the contractor or by an attorney acting on your behalf, and which may be in letter form, should indicate that an appeal is intended, should refer to this decision, and should identify the contract by number. The Notice of Appeal should include a statement of the reasons why the decision is considered to be erroneous. In the event you desire to file an appeal from this decision, there is enclosed for your convenience GSA Form 2465, Notice of Appeal, in triplicate, for completion and signature. All the items of information requested must be supplied. If sufficient space is not available on this form for each item, please attach a supplemental sheet or sheets. Also attached is an additional copy of the form which should be completed and retained for your files. The Notice of Appeal is to be signed by the appellant personally, if an individual, or, if not, by an authorized officer or duly authorized representative of the appellant organization and submitted in triplicate to the contracting officer. The Notice of Appeal must be mailed or otherwise furnished to the contracting officer within 30 calendar days from receipt of this decision or your appeal shall be considered untimely.

If you do not wish to challenge the validity of the termination of the (footnote 1), but do wish to protect yourself against the

[1] Specify "purchase order(s)" or "contract," as applicable.

assessment of excess costs, you may do so later by appealing the contracting officer's subsequent determination of excess costs, in the event that any assessment is made. At that time, you may challenge not only the specific assessment and the reprocurement procedures, but also the validity of the Government's action in terminating your (footnote 1) for default.

(b) Notice of appeal action under the above circumstances may be effected by use of GSA Form 2465, Notice of Appeal, as illustrated by § 5A-16.950-2465.

PART 5A-60—CONTRACT APPEALS

Subpart 5A-60.2—Rules of the Federal Supply Service on Contract Appeals

Section 5A-60.203 is revised as follows:

§ 5A-60.203 Forwarding of appeals.

(a) Notice of Appeal received by a contracting officer pursuant to this § 5A-60.203 shall be transmitted promptly to the Chairman, GSA Board of Contract Appeals (see § 5A-60.203(c)), by letter signed by the Chief, regional Procurement Division; Director, Procurement Operations Division (POD); Director, ADP Procurement Division; or Director, Special Programs Division, as appropriate.

(b) A Notice of Appeal received by an official other than the contracting officer, such as the Commissioner, FSS, or a Regional Administrator, shall be referred (with the envelope in which it was mailed) to the contracting officer of the procurement activity involved for transmittal to the GSA Board of Contract Appeals, as provided in (a), above.

(c) In transmitting the Notice of Appeal, the contracting officer shall forward a copy of his final decision from which the appeal was taken and a copy of the certified mail receipt (front and back) indicating the date on which the final decision was received by the appellant, together with the Notice of Appeal and the envelope in which it was mailed.

(d) A copy of each Notice of Appeal and letter transmitting it to the GSA Board of Contract Appeals shall be sent to the Assistant Commissioner for Automated Data Management Services or Director, Special Programs Division, or Chief, Contract Terminations Staff (FPNC), as appropriate, and, in the case of a notice being transmitted by a regional procurement activity, copies shall be distributed as above and as required by regional procedures.

(e) An appropriate format for the letter to transmit a notice of appeal to the GSA Board of Contract Appeals is exhibited in § 5A-76.308.

Section 5A-60.205 is revised as follows:

§ 5A-60.205 Appeal files.

(a) Appeal files shall be prepared and forwarded to the Assistant General Counsel (LC) within 20 calendar days after receipt of the Notice of Appeal or advice that an appeal has been filed. Assigned counsel shall concur in the submission of the appeal files.

(b) A log and followup procedures shall be established in POD, the ADP Procurement Division, the Special Programs Division, and in each regional procurement activity to assure the timely preparation and submission of appeal files. The log record shall show, as a minimum, the name of the appellant, the date the appeal was filed, the contract number, the docket number, if available, and the name of the contracting officer.

Section 5A-60.205-1 is revised as follows:

§ 5A-60.205-1 Preparation and submission.

(a) Promptly upon receipt of the Notice of Appeal, the contracting officer shall prepare the appeal file in triplicate, unless otherwise directed or agreed to by the GSA Board of Contract Appeals. Each such file shall be identified by the name of the appellant, the contract number, and the docket number, if available. The requirements concerning the documents to be included in the file are stated in § 5-60.205. The top document therein shall bear the title "Index" and be separate and apart from any other document. In a case where a contractor has appealed both from a determination of default and from an assessment of excess costs, the file for each appeal will contain a number of the same documents, for example, the contract. In order to reduce the cost of preparation of appeal files in such cases, contracting officers are authorized to cross-reference documents which were previously submitted to the Board. The cross-reference in the appeal file to a copy of a contract previously submitted to the Board should, for example, include the statement "See contract number _____, docket number _____, exhibit number _____." Assigned counsel will assist the contracting officer in determining which documents are relevant and which are irrelevant to the actual issue but might be useful to the trial attorney as general background information. Documents in the latter category will be forwarded separately to the trial attorney.

(b) After examining the appeal file, the contracting officer shall prepare a memorandum of position (utilizing the sample memorandum set forth in § 5A-76.309 as a guide) and obtain the written concurrence of assigned counsel. The memorandum of position shall also be approved by the Chief, regional Procurement Division, or the Director, ADP Procurement Division, or the Director, Special Programs Division, or POD branch chief, as appropriate. The contracting officer's memorandum of position required by this paragraph (b) is a chronological summary of the procurement and a rationale of the contracting officer's actions for information of the trial counsel. This memorandum of position shall be submitted promptly upon preparation, as a separate document, directly to the Assistant General Counsel (LC) and shall not be included in the appeal file or noted in the index.

(c) When the Government's position is doubtful concerning an appeal, or if practical considerations so dictate after considering policy and precedent grounds, the appeal file may be forwarded with a notice in the transmittal letter (see § 5A-60.205-1(d)) to the Assistant General Counsel (LC) that settlement is being considered. In such event, the contracting officer, with advice of assigned counsel, shall enter into negotigations with the appellant toward possible settlement.

(d) The original and one copy of the appeal file shall be forwarded to the Assistant General Counsel (LC) by letter prepared for the signature of the Chief, regional Procurement Division; or the Director, ADP Procurement Division; or the Director, Special Programs Division; or the Director, POD, as appropriate.

(e) A copy of each letter transmitting the appeal file to the Assistant General Counsel (LC) shall be sent to the Assistant Commissioner for Automated Data Management Services or Director, Special Programs Division, or Chief, Contract Terminations Staff (FPNC), as appropriate, and, in the case of an appeal file being transmitted by a regional procurement activity, copies shall be distributed as above and as may be required by regional procedures. The copy forwarded to FPNC shall also be accompanied by a copy of the contracting officer's memorandum of position.

(f) One copy of the appeal file shall be retained at the office of the contracting officer for examination by the appellant. The memorandum of position or documents not part of the appeal file, furnished separately as background information, are not for examination by the appellant.

PART 5A-76—EXHIBITS

The table of contents for Part 5A-76 is amended as follows:

Sec.
5A-76.308 Format of letter to transmit a notice of appeal to the GSA Board of Contract Appeals.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 41 CFR 5-1.101(c))

Effective date. These regulations are effective 30 days after the date shown below.

Dated: April 5, 1971.

H. A. ABERSFELLER,
Commissioner,
Federal Supply Service.

[FR Doc.71-5105 Filed 4-12-71;8:48 am]

Chapter 18—National Aeronautics and Space Administration

REVISION OF REGULATIONS

Parts 18–12, 18–13, and 18–14 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 Regulations were effective July 27, 1970, except for interim changes made by Procurement Regulation Directives.

PART 18–12—LABOR

AUTHORITY: The provisions of this Part 18–12 issued under 42 U.S.C. 2473(b)(1).

§ 18–12.000 Scope of part.

This Part 18–12: (a) deals with general policies regarding labor, insofar as they relate to procurement, (b) sets forth certain pertinent labor laws and requirements, indicating in connection with

each its applicability and any procedures thereunder, and (c) prescribes contract clauses. (This part does not apply to any matter or agreement arising under Executive Order 10988 or to any related authority governing Employee-Management Cooperation in the Federal Service.)

Subpart 18–12.1—Basic Labor Policies

§ 18–12.101 Labor relations.

It is NASA policy to maintain and encourage the best possible relations with industry and labor in order that the Government may procure needed supplies and services without delay. All problems arising out of labor relations of private contractors and all communications with labor organizations or Federal agencies relative thereto will be handled in accordance with procedures which are consistent with the following general policy.

(a) NASA contracting officers, in taking any of the actions prescribed or authorized in this Part 18–12, will consult with and secure advice from the labor relations advisor or other NASA official assigned such function at the installation concerned.

(b) NASA officials will remain impartial in, and will refrain from taking a position on the merits of, a dispute between labor and private management and will not undertake the conciliation, mediation, or arbitration of a labor dispute. NASA must, however, take any action that may be open to it under the circumstances to protect the Government's interest and to prevent, where possible, interruptions in NASA schedules.

(c) NASA will, insofar as is practicable, exchange information concerning labor matters with other affected Government agencies in order to maintain a uniform Government labor policy in a particular plant or labor-management dispute.

(d) NASA officials will not take any independent action with respect to labor matters which involve major policy determinations which have a substantial impact on the activities of NASA or other Government agencies without the prior approval of the Director, NASA Labor Relations Office (Code KL). A full report concerning any labor relations problem, particularly where a labor dispute significantly threatens to affect important NASA procurement, should be furnished to the Director, NASA Labor Relations Office, in accordance with § 18–12.101–2.

(e) The Director, NASA Labor Relations Office will take action in connection with labor relations problems consistent with his responsibilities, for example:

(1) Giving notice of the existence of a labor dispute, which affects or threatens to affect procurement of supplies or services, to the Government agency which has responsibility for conciliation, mediation, arbitration, or other action with respect thereto;

(2) Advising the Government agency responsible for action with respect to labor disputes, or the parties to a labor dispute, of factual information pertaining to procurement of the supplies or services involved to the extent consistent with security regulations; or

(3) Seeking to obtain such voluntary agreement between management and labor as will permit, notwithstanding the general continuance of the dispute, uninterrupted procurement of supplies and services, provided such activity does not involve NASA in the merits of a labor difference or dispute.

§ 18–12.101–1 Communications regarding labor matters.

Direct communication is not authorized with the national headquarters or national offices of any labor organization or Federal agency except with the specific prior approval of the Director, NASA Labor Relations Office. Contracting officers are authorized to communicate directly with local labor organizations and local offices of Federal agencies as required to carry out their responsibilities set forth in § 18–12.101–2.

§ 18–12.101–2 Labor-management disputes.

(a) *Reports.* Report of actual or incipient labor-management disputes affecting NASA procurement, operations, or services shall be submitted as specified by the Director, NASA Labor Relations Office. These reports shall describe, but need not be limited to:

(1) The nature of the actual or incipient dispute, including whether a strike, lockout, slow-down, shut-down, or picketing is involved, and the degree of emergency presented;

(2) The character, quantity, and importance of the supplies, operations, or services involved, including scheduled performance and delivery dates and the relation of the production involved to the total procurement program;

(3) The identity and location of the parties to the dispute and their representatives, including the approximate number of employees involved;

(4) The need for and availability of alternative facilities to furnish the items involved within the time required;

(5) The critical items, if any, which should be removed from the plant or work site or should be continued to be processed there with the consent of the parties to the dispute; and

(6) Recommended action to be taken by NASA.

Reports shall be made as early as possible and shall include immediately available information. Supplemental reports shall be made, as appropriate, to provide ful information and cover new developments. Reports shall be sent by the most expeditious means required in view of the seriousness of the situation. When an immediate critical effect on NASA procurement is probable, the initial report shall be made by telephone and followed by an electrically transmitted message or a confirming letter.

(b) *Other action by the contracting officer.* When a strike which may have an adverse effect on NASA programs is imminent or in progress at a prime or subcontractor's plant, contracting officers shall:

(1) Advise both the prime contractor and the head of the union local in writing of the expected impact of the strike on NASA programs and, where appropriate, of the actions which NASA is considering to protect the Government's interest and prevent delay in the accomplishment of NASA's mission; however, if the strike is in a subcontractor's plant, the subcontractor will only be approached through the prime contractor;

(2) Explore the possibility of locating other sources for the supplies and services to have been provided by the struck or strike-threatened plant;

(3) Consider removing finished items from the plant and seeking resumption of work by the contractor on those items to be furnished which are critical to NASA programs; and

(4) Where it appears likely that the work stoppage cannot be prevented, consider removing from the plant work in process, components, and materials which are critical to the NASA program, with a view to continuing the work elsewhere.

(c) *NASA Headquarters approval required for removal of items from affected plants or facilities.* When the contracting officer determines that it would be in the best interest of the Government to remove items or to press for resumption of work as provided in paragraph (b) of this section, he shall first request approval from the Director, NASA Labor Relations Office and then take such action as shall be approved.

(d) *Inspection of material during labor disputes.* Despite the existence of a labor dispute, inspection functions at contract plants or sites shall be performed as normally required during contract performance except where the safety of the inspector may be endangered.

§ 18–12.101–3 Admission of labor representatives to contract sites.

NASA activities shall not prevent the access of labor union representatives to contract sites for the conduct of union business if their activities are compatible with performance of the contract work involved and applicable safety and security regulations.

§ 18–12.102 Overtime.

§ 18–12.102–1 Definitions.

As used throughout this § 18–12.102:

(a) "Normal workweek and normal workday" mean, generally, a workweek of 40 hours and a workday of 8 hours, respectively: *Provided*, That in any area outside the United States, its possessions, and Puerto Rico, a workweek longer than 40 hours, or a workday longer than 8 hours, will be considered normal (1) if such workweek or workday does not exceed that which is normal for such area, as determined by local custom, tradition, or law and (2) if hours worked in excess of 40 in such workweek, or eight in such workday, are not compensated at a premium rate of pay.

(b) "Overtime" means time worked by a contractor's employee in excess of the

employee's normal workweek or normal workday.

(c) "Overtime premium" means the difference between the contractor's regular rate of pay to an employee for the shift involved and the higher rate paid for overtime. It does not include shift premium which is the difference between the compensation paid to an employee at the contractor's regular rate of pay for the base shift and that paid at the regular rate of pay for extra-pay shift work.

§ 18–12.102–2 Policy.

It is the policy of NASA that all contracts will be performed, so far as practicible, without the use of overtime, particularly as a regular employment practice, except where lower overall costs to the Government will result. Contractors should utilize what ever work schedule results in the lowest overall cost to the Government consistent with contract delivery and performance requirements. Extra-pay shifts and multishift work should be scheduled, as required, to achieve these objectives. In the negotiation of contracts, overtime premiums will be recognized in establishing a fixed price or estimated cost only to the extent consistent with the needs of the Government for the supplies or services being procurred.

§ 18–12.102–3 Approval of overtime premiums.

(a) Approval of overtime premiums is required:

(1) By the contracting officer under time and material and labor-hour contracts (see paragraph (a)(3) of the clause set forth in § 18–7.901–6); and

(2) By the approving official (see § 18–12.102–4(e)), (i) prior to execution of cost reimbursement type contracts containing the clause set forth in § 18–12.102–6, for any overtime to be included in paragraph (d) of the clause, and (ii) prior to modification of such a contract for any increase in the overtime included in paragraph (d) of the clause.

(b) Approval of overtime premiums under contracts other than those referenced in paragraph (a) of this section shall not be required.

§ 18–12.102–4 Approval of overtime premiums in certain cost-reimbursement type contracts.

(a) To prevent uneconomic use of overtime, at Government expense, the clause set forth in § 18–12.102–6 shall be included in all cost-reimbursement type contracts in excess of $100,000, except cost-reimbursement type contracts for the operation of vessels and cost-plus-incentive-fee contracts having a cost incentive which provides for a swing from target fee of at least ±3 percent and a contractor's share of cost of at least 10 percent. Whenever this clause is used, the procedural requirements of this § 18–12.102–4 shall be followed.

(b) An amount for overtime premiums at Government expense may be included in paragraph (d) of the clause set forth in § 18–12.102–6 when the use of overtime has been approved by an official designated as provided in paragraph (e) of this section. Only overtime premiums for work in those departments, sections, etc., of the contractor's plant which have been individually evaluated and the necessity for overtime confirmed, will be considered for approval, and then only for overtime premiums not reimbursable under the exceptions contained in paragraph (a)(ii) of the clause. Approval may be granted when such official determines in writing that overtime is necessary:

(1) To meet delivery or performance schedules, and such schedules are determined to be consistent with essential program objectives;

(2) To make up for delays beyond the control and without the fault or negligence of the contractor; or

(3) To eliminate foreseeable production bottlenecks of an extended nature which cannot be eliminated in any other way.

(c) When, during negotiation, it becomes apparent that overtime will be required during the performance of the contract and the contract will contain the clause in § 18–12.102–6, the contracting officer shall secure from the contractor a request substantially in accordance with the request procedures in paragraph (c) of such provision for all overtime to be used during the life of the contract, to the extent that it can be estimated with reasonable certainty. If the contemplated overtime premium could affect the costing of other work performed by the contractor or is significant in amount, the contracting officer may avail himself of the advisory services of the cognizant audit agency office to determine the proper accounting treatment of such premium. The contracting officer shall request from the appropriate official designated, as provided in paragraph (e) of this section, approval for overtime premiums at Government expense. Upon receipt of such approval, the contracting officer shall complete paragraph (d) of the clause.

(d) During contract performance, requests for overtime, submitted pursuant to the clause in § 18–12.102–6, will be submitted to the contracting officer who shall evaluate the need for such overtime and if he desires that the requested overtime be approved in whole or in part, shall, unless a prior authorization is sufficient to cover the overtime requested, request the approval of the appropriate official designated as provided in paragraph (e) of this section and, as expeditiously as possible, modify paragraph (d) of the clause to reflect the approval.

(e) The procurement officer or his designees are authorized to approve overtime premiums at Government expense. Such approval may be for an individual contract, project, or program, or for a plant, division, or company, as most practicable, and shall ordinarily be prospective, but may be retroactive when justified by the circumstances. Where two or more procurement offices have current contracts at a single facility, and the approval of overtime by one procurement office will affect the performance or cost of contracts of another, the approving officials will obtain the concurrence of other appropriate approving officials and seek agreement as to the contracts under which overtime premiums will be approved. If the approving officials do not agree within a reasonable time as to the action to be taken, a decision shall be obtained through normal channels. Ordinarily, in the absence of evidence to the contrary, a procurement office may rely on the contractor's statement that such approval will not affect the performance, or payments in connection with any contract of another procurement office. (For the purpose of this requirement, the term "or his designees" shall mean the individuals authorized by the procurement officer to approve overtime. Such authorization shall be in writing and shall not be delegated beyond the first level of supervision below the procurement officer.)

§ 18–12.102–5 Contract administration.

(a) The cost of overtime premiums under the clause set forth in § 18–12.102–6, and all overtime premiums under cost-reimbursement type contracts which do not contain the clause set forth in § 18–12.102–6, shall be allowed only to the extent the amount thereof is reasonable and properly allocable to the work under the contract, in accordance with § 18–15.201.

(b) In administration of contracts under which overtime has been approved pursuant to § 18–12.102–4, the contracting officer and the cognizant audit activity shall review periodically the use of such overtime to assure that it is reasonable and properly allocable to work under the contract.

§ 18–12.102–6 Payment of overtime premiums clause.

The following clause shall be used when required by § 18–12.102–4(a).

PAYMENT FOR OVERTIME PREMIUMS
(AUGUST 1969)

(a) Allocable cost shall not include any amount on account of overtime premiums except when (i) specified in (d) below or (ii) paid for work—

(A) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(B) By indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(C) In the performance of tests, industrial processes, laboratory procedures, loading or unloading of transportation media, and operations in flight or afloat, which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or

(D) Which will result in lower overall cost to the Government.

(b) The cost of overtime premiums otherwise allowable under (a) above shall be allowed only to the extent the amount thereof is reasonable and properly allocable to the work under this contract.

(c) Any request for overtime, in addition to any amount specified in (d) below, will be for all overtime which can be estimated with reasonable certainty shall be used for the remainder of the contract, and shall contain the following:

(i) Identification of the work unit, such as the department or section in which the requested overtime will be used, together with present workload, manning and other data of the affected unit, sufficient to permit an evaluation by the Contracting Officer of the necessity for the overtime;

(ii) The effect that denial of the request will have on the delivery or performance schedule of the contract;

(iii) Reasons why the required work cannot be performed on the basis of utilizing multishift operations or by the employment of additional personnel; and

(iv) The extent to which approval of overtime would affect the performance or payments in connection with any other Government contracts, together with any identification of such affected contracts.

(d) The Contractor is authorized to perform overtime, in addition to that performed under (a)(ii), to the extent that the overtime premium does not exceed _____.[1]

§ 18–12.103 Federal and State labor requirements.

§ 18–12.103–1 Policy.

It is the policy of NASA to cooperate with and to require contractors to cooperate to the fullest extent possible with Federal and State agencies responsible for enforcing labor requirements with respect to such matters as safety, health, and sanitation, maximum hours and minimum wages, equal pay for women, and child and convict labor.

§ 18–12.103–2 Administration.

(a) NASA will not initiate applications to State agencies or officials for the suspension or relaxation of State labor standards.

(b) Contracting officers may support applications of contractors or suppliers when relaxation of State labor standards does not conflict with applicable Federal Labor Laws, such as the Fair Labor Standards Act of 1938 (29 U.S.C. 201–219), the Walsh-Healey Public Contracts Act (41 U.S.C. 35–45), the Davis-Bacon Act (40 U.S.C. 276a), the Work Hours Act of 1962 (40 U.S.C. 327–330), and when all of the following circumstances are present:

(1) The required products or services are in short supply and failure to meet production schedules for critically needed end items will result unless the suspension or relaxation of State labor standards is approved;

(2) There are no alternative sources of supply for such products or services available within the required delivery schedule;

(3) Remedial action (such as recruitment, training, and more effective utilization of manpower) is not practicable; and

(4) The granting of the application will not result in impairment of working conditions to the extent that productivity at the facility will be adversely affected.

(c) NASA letters of support will be addressed to the appropriate State agency and will indicate:

(1) The facilities and services affected; and

(2) The extent of relaxation of the particular State labor standard required to complete the specific work in conformity with the procurement schedule.

§ 18–12.104 Meeting manpower requirements.

It is the policy of NASA to cooperate with and to encourage contractors to utilize, to the fullest extent practicable, the U.S. Employment Services (USES) and its affiliated Local State Employment Service Offices in matters pertaining to meeting contractors' manpower (labor supply) requirements, including the recruitment of workers in all occupations and skills, both from local labor market areas and through the Federal-State manpower clearance system, to staff new or expanding plant facilities. Local State Employment Service Offices are operated in every State and in the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. In addition to providing recruitment assistance to contractors who need and desire it, cooperation with the Local State Employment Service Offices will further the national program of maintaining continuous assessment of manpower requirements and resources on a national and local basis.

Subpart 18–12.2—Convict Labor

§ 18–12.201 Basic requirement.

Pursuant to the policy set forth in the Act of February 23, 1887 (18 U.S.C. 436), and in accordance with the requirements of Executive Order No. 325A of May 18, 1905, all contracts entered into by NASA involving the employment of labor within the United States, shall, unless otherwise provided by law, contain a clause prohibiting the employment of persons undergoing sentences of imprisonment at hard labor imposed by State or municipal criminal courts.

§ 18–12.202 Applicability.

The requirement set forth in § 18–12.201 applies, except as stated below, to all contracts involving the employment of labor within the United States. The requirement does not prohibit the employment of (a) persons on parole or probation, (b) Federal prisoners authorized by the Attorney General under 18 U.S.C. 4082(c)(2) to work at paid employment during the term of their imprisonment, or (c) persons who have been pardoned or who have served their terms. Furthermore, the requirement does not apply to the following kinds of contracts:

(1) Any contract subject to the provisions of the Walsh-Healey Public Contracts Act (see Subpart 18–12.6), which contains its own requirement that "no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract"; or

(2) Any contract (i) for the purchase of supplies or services from Federal Prison Industries, Inc., or (ii) for the purchase from any State prison of finished supplies which may be secured in the open market or from existing stocks as distinguished from supplies requiring special fabrication.

§ 18–12.203 Contract clause.

The contract clause required by this Subpart 18–12.2 shall be as follows:

CONVICT LABOR (SEPTEMBER 1962)

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

Subpart 18–12.3—Contract Work Hours Standards Act

§ 18–12.300 Scope of subpart.

This Subpart 18–12.3 deals with the requirements of the "Contract Work Hours Standards Act," which is title I of the Work Hours Act of 1962 (40 U.S.C. 327–332).

§ 18–12.301 General.

The Work Hours Act of 1962 repealed the Eight Hour Law of 1912, as amended (40 U.S.C. 324–326), and the Eight Hour Law applicable to construction contracts (40 U.S.C. 321–322). Title I, Contract Work Hours Standards Act, among other things, establishes a standard workday of 8 hours and a standard workweek of 40 hours for laborers and mechanics employed on Government contracts and requires payment for all hours worked in excess of the standard workday or workweek at 1½ times the basic rate of pay. "Laborers and mechanics" include watchmen, guards, and workmen, other than seamen, performing services in connection with dredging or rock excavation in rivers or harbors.

§ 18–12.302 Applicability.

§ 18–12.302–1 Statutory exemptions.

Title I of the Contract Work Hours Standards Act is applicable to construction contracts and to other contracts involving the employment of laborers and mechanics either by a contractor or any subcontractor in the United States, and in other areas under the jurisdiction of the United States not exempted by the Secretary of Labor (see § 18–12.302–2), except:

(a) Contracts for transportation by land, air, or water;

(b) Contracts for the transmission of intelligence;

(c) Contracts for purchase of supplies or materials or articles ordinarily available in the open market; or

(d) Contracts to which the Walsh-Healey Public Contracts Act (41 U.S.C. 35–45) is applicable.

§ 18–12.302–2 Exemptions by the Secretary of Labor.

The Secretary of Labor has exempted (29 CFR 5.14) from all provisions of title I of the Contract Work Hours Standards Act, the following classes of contracts:

[1] Insert the amount, in dollars, agreed to during negotiations as representing the overtime premiums applicable to overtime not reimbursable under the exceptions contained in (a)(ii) of the clause. If it was agreed that the contract could be performed without the use of additional overtime, insert "Zero."

(a) Construction contracts of $2,000 or less; and

(b) Purchases and contracts other than construction contracts in the aggregate amount of $2,500 or less. In arriving at the aggregate amount involved there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising; and

(c) Contracts (or portions thereof) to be performed in a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf Lands defined in the Outer Continental Shelf Lands Act; American Samoa; Guam; Wake Island; and the Canal Zone, to the extent that such contracts (or portions thereof) may require or involve the employment of laborers or mechanics there.

§ 18–12.303 Contract clause.

§ 18–12.303–1 Clause for general use.

The clause set forth below shall be included in all contracts to which the Act applies, except construction contracts. The applicable clause for construction contracts is set forth in § 18–12.403–1(b).

CONTRACT WORK HOURS STANDARD ACT—OVERTIME COMPENSATION (NOVEMBER 1964)

This contract, to the extent that it is of a character specified in the Contract Work Hours Standards Act (40 U.S.C. 327–330), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime Requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, whichever is the greater number of overtime hours.

(b) *Violation; Liability for Unpaid Wages; Liquidated Damages.* In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by paragraph (a).

(c) *Withholding for Unpaid Wages and Liquidated Damages.* The Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).

(d) *Subcontracts.* The Contractor shall insert paragraphs (a) through (d) of this clause, and the preamble preceding paragraph (a), in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) *Records.* The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for 3 years from the completion of the contract.

§ 18–12.303–2 Clause for contracts with a State or political subdivision.

In the case of contracts with a State or political subdivision thereof, the clause required by § 18–12.303–1 shall be the clause set forth therein, except that it shall be prefaced by the following provision:

The Contractor agrees to insert the following clause in all subcontracts hereunder with private persons or firms. (September 1962)

Subpart 18–12.4—Labor Standards in Construction Contracts

§ 18–12.400 Scope of subpart.

This Subpart 18–12.4 deals with labor standards for construction contracts as prescribed by the statutes and regulations set forth below.

§ 18–12.401 Statutes and regulations.

(a) *Davis-Bacon Act.* The Davis-Bacon Act (Act of March 3, 1931, as amended, 40 U.S.C. 276a) provides that certain contracts over $2,000 entered into by any Department for the construction, alteration, or repair (including painting and decorating) of public buildings or public works shall contain a provision to the effect that no laborer or mechanic employed directly upon the site of the work contemplated by the contract shall receive less than the prevailing wages as determined by the Secretary of Labor.

(b) *Copeland Act.* The Copeland ("Anti-Kickback") Act (18 U.S.C. 874 and 40 U.S.C. 276c) makes it unlawful to induce, by force or otherwise, any person employed in the construction or repair of public buildings or public works (including those financed in whole or in part by loans or grants from the United States) to give up any part of the compensation to which he is entitled under his contract of employment. In accordance with regulations of the Secretary of Labor issued pursuant to the Copeland Act, certain contracts entered into by any Department shall contain a provision to the effect that the contractor and any subcontractor shall comply with the regulations of the Secretary of Labor under the Act.

(c) *Contract Work Hours Standards Act.* (See Subpart 18–12.3.)

(d) *Department of Labor regulations.* Pursuant to the foregoing statutes and Reorganization Plan No. 14 of 1950 (15 F.R. 3176), the Secretary of Labor has issued regulations Title 29, Subtitle A, Code of Federal Regulations (29 F.R. 95–104, as amended), providing for the administration and enforcement of these statutes in construction contracts. The requirements under the Davis-Bacon Act and the Copeland Act apply only to the United States, while the Contract Work Hours Standards Act applies also to other areas over which the United States has direct legislative control.

§ 18–12.401–1 Definitions.

For purposes of the acts cited in § 18–12.401, the following definitions apply.

(a) The terms "building" and "work" refer to construction activity, including, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, streets, tunnels, sewers, mains, power lines, pumping stations, railways, airports, terminals, docks, piers, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping.

(b) The terms "public building" or "public work" include building or work of which the construction, alteration, or repair is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public, regardless of whether title thereto is in the United States.

(c) The terms "construction," "alteration," or "repair" include all types of work done on a particular building or work at the site thereof, including without limitation, altering, remodeling, painting, and decorating; transporting materials and supplies to or from the building or work by the employees of the construction contractor, or construction subcontractor; and manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work by persons employed by the contractor or subcontractor. Demolition of existing structures not related to new construction is not included.

(d) A construction contract for purposes of this Subpart 18–12.4 is in excess of $2,000 if the contract is in an actual amount (not merely an estimated amount) in excess of $2,000. A contract initially $2,000 or less which is later increased over that amount by supplemental agreement or change order is in excess of $2,000 from the effective date of such a change in the contract amount, and the requirements of the Davis-Bacon Act, if otherwise applicable, are applicable to that part of the contract which has not been performed on such date.

§ 18–12.402 Applicability.

The statutory requirements referred to in § 18–12.401 apply to construction contracts. They do not apply to the following kinds of contracts:

(a) Contracts for supplies (including installations or maintenance work which is only incidental to the furnishing of such supplies); however, the requirement does apply—

(1) Where installation involves a substantial amount of construction at the site, such as for heavy generators and large refrigerators;

(2) To the transportation of supplies to or from the site of the work by employees of the construction contractor or of a construction subcontractor; and

(3) To the manufacturing or furnishing of supplies, such as window frames and other millwork, on the site of the work by the contractor or subcontractor on a construction, alteration, or repair contract otherwise subject to the Act, and to the manufacturing or furnishing of supplies under a contract based upon the specifications, and at the site of work of a construction, alteration, or repair contract otherwise subject to the Act;

(b) Contracts for servicing or maintenance work (including installation or movement of machinery or other equipment and incidental plant rearrangement) which involve only an incidental amount of construction, alteration, or repair; however, the requirement does apply to—

(1) Installation, movement, or rearrangement of machinery or other equipment involving a substantial amount of construction or repair; and

(2) Servicing or maintenance work based upon the specifications of a construction contract otherwise subject to the Act and which is performed at the site of the construction work involved;

(c) Contracts for the construction or repair of vessels, aircraft, or other kinds of personal property;

(d) Contracts to be performed at a place not known or not reasonably ascertainable at the time the contract is entered into.

§ 18–12.403 Contract clauses.

§ 18–12.403–1 Clauses for general use.

Except as provided in § 18–12.403–4, every construction contract in excess of $2,000 for work within the United States shall include the following clauses:

(a) *Davis-Bacon Act (40 U.S.C. 276a–a(7)).*

DAVIS-BACON ACT (40 U.S.C. 276a–a(7)) (NOVEMBER 1964)

(a) All mechanics and laborers employed or working directly upon the site of the work shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Copeland Regulations (29 CFR Part 3)), the full amounts due at a time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics. A copy of such wage determination decision shall be kept posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers.

(b) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination decision and which is to be employed under the contract shall be classified or reclassified conformably to the wage determination decision, and shall report the action taken to the Secretary of Labor. If the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers or mechanics to be used, the Contracting Officer shall submit the question, together with his recommendation, to the Secretary of Labor for final determination.

(c) In the event it is found by the Contracting Officer that any laborer or mechanic employed by the Contractor or any subcontractor directly on the site of the work covered by this contract has been or is being paid at a rate of wages less than the rate of wages required by paragraph (a) of this clause, the Contracting Officer may (1) by written notice to the Government Prime Contractor terminate his right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, and (2) prosecute the work to completion by contract or otherwise, whereupon such Contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

(d) Paragraphs (a), (b), and (c) of the clause shall apply to this contract to the extent that it is (1) a prime contract with the Government subject to the Davis-Bacon Act or (2) a subcontract also subject to the Davis-Bacon Act under such prime contract.

(b) *Contract Work Hours Standards Act—overtime compensation.*

CONTRACT WORK HOURS STANDARDS ACT—OVERTIME COMPENSATION (40 U.S.C. 327–330) (NOVEMBER 1964)

(a) The Contractor shall not require or permit any laborer or mechanic in any workweek in which he is employed on any work under this contract to work in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, whichever is the greater number of overtime hours.

(b) In the event of any violation of the provisions of paragraph (a), the Contractor shall be liable to any affected employee for any amounts due, and to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by paragraph (a).

(c) *Apprentices.*

APPRENTICES (NOVEMBER 1964)

(a) Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or, if no such agency exists in a State, under a program registered with the aforesaid Bureau of Apprenticeship and Training. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed.

(b) The Contractor shall furnish written evidence of the registration of his program and apprentices as well as of the appropriate ratio and wage rates, prior to using any apprentices in the contract work.

(d) *Payrolls and payroll records.*

PAYROLLS AND PAYROLL RECORDS (NOVEMBER 1964)

(a) The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name and address of each such employee, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid.

(b) The Contractor shall submit weekly a copy of all payrolls to the Contracting Officer. The Government Prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The copy shall be accompanied by a statement signed by the contractor indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic conform with the work he performed. Submission of the "Weekly Statement of Compliance" required under this contract and the Copeland Regulations of the Secretary of Labor (29 CFR Part 3) shall satisfy the requirement for submission of the above statement.

(c) The Contractor shall make his employment records available for inspection by authorized representatives of the Contracting Officer and the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

(e) *Compliance with Copeland Regulations.*

COMPLIANCE WITH COPELAND REGULATIONS (NOVEMBER 1964)

The Contractor shall comply with the Copeland Regulations of the Secretary of Labor (29 CFR Part 3) which are incorporated herein by reference.

(f) *Withholding of funds.*

WITHHOLDING OF FUNDS (NOVEMBER 1964)

(a) The Contracting Officer may withhold or cause to be withheld from the Government Prime Contractor so much of the accrued payments or advances as may be considered necessary (1) to pay laborers and mechancis employed by the Contractor or any subcontractor on the work the full amount of wages required by the contract, and (2) to satisfy any liability of any Contractor for liquidated damages under paragraph (b) of the clause entitled "Contract Work Hours Standards Act—Overtime Compensation."

(b) If any Contractor fails to pay any laborer or mechanic employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Government Prime Contractor, take such

action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

(g) *Subcontracts.*

SUBCONTRACTS (NOVEMBER 1964)

The Contractor agrees to insert the clauses hereof entitled "Davis-Bacon Act," "Contract Work Hours Standards Act—Overtime Compensation," "Apprentices," "Payrolls and Payroll Records," "Compliance with Copeland Regulations," "Withholding of Funds," "Subcontracts," and "Contract Termination—Debarment" in all subcontracts. The term "Contractor" as used in such clauses in any subcontract shall be deemed to refer to the subcontractor except in the phrase "Government Prime Contractor."

(h) *Contract termination — debarment.*

CONTRACT TERMINATION—DEBARMENT (NOVEMBER 1964)

A breach of the clauses hereof entitled "Davis-Bacon Act," "Contract Work Hours Standards Act—Overtime Compensation," "Apprentices," "Payrolls and Payroll Records," "Compliance with Copeland Regulations," "Withholding of Funds," and "Subcontracts" may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.

When Standard Form 19A (April 1965 Edition) is used, the clauses entitled, "Withholding of Funds," "Subcontracts," and "Contract Termination—Debarment" therein shall be used in lieu of the clauses in paragraphs (f), (g), and (h) of this section.

§ 18–12.403–3 Overseas contracts.

Every construction contract in excess of $2,000 for work outside the United States but within the jurisdiction of the United States as stated in § 18–12.302–2 (c) shall include the following clauses:

(a) The Contract Work Hours Standards Act—Overtime Compensation clause set forth in § 18–12.403–1(b);

(b) Subcontracts:

SUBCONTRACTS (NOVEMBER 1964)

The Contractor agrees to insert this "Subcontracts" clause and the "Contract Work Hours Standards Act—Overtime Compensation" and "Contract Termination—Debarment" clauses of this contract in all subcontracts.

When Standard Form 19–A is used, the "Subcontracts" clause therein shall be used in lieu of the above clause.

(c) Contract termination—debarment:

CONTRACT TERMINATION—DEBARMENT (NOVEMBER 1954)

A breach of the "Contract Work Hours Standards Act—Overtime Compensation" and the "Subcontracts' 'clauses of this contract may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.

§ 18–12.403–4 Contracts with a State or political subdivision.

In the case of construction contracts in excess of $2,000 with a State or political subdivision thereof, the contract clauses required by § 18–12.403–1 shall be inserted and each clause shall be prefaced by the following provision:

The Contractor agrees to insert the following in all subcontracts hereunder with private persons or firms. (September 1962)

§ 18–12.404 Administration and enforcement.

§ 18–12.404–1 General.

(a) *Preconstruction conference or letter.* The contracting officer administering the contract shall ascertain that the contractor is fully aware of and understands an employer's responsibilities imposed by the contract labor standards provisions by conducting a preconstruction conference or, as an alternate method, by submitting a preconstruction letter to the contractor. When a preconstruction conference is held, a memorandum containing a summary of the information and guidance given to the contractor shall be placed in the contract file.

(b) *Examination of records.* The contracting officer administering the contract shall initiate such examinations into the records and activities of the contractor and his subcontractor(s) as are necessary to ensure full compliance with the applicable labor statutes and labor standards provisions in this Subpart 18–12.404–1.

§ 18–12.404–2 Wage determinations.

(a) *General.* The wage determination, issued by the Department of Labor pursuant to the Davis-Bacon Act, is a schedule of the minimum hourly rates of wages to be paid laborers and mechanics employed by the contractor and his subcontractors performing work called for by the contract. It normally includes all the classifications of laborers and mechanics expected to be employed on the work. There are three types of determination: area determinations, limited area determinations, and individual determinations.

(1) *Area (54A) determinations.* Area (54A) determinations provide wage rates for all kinds of construction contracts which may be awarded at an installation or within a given geographical area (usually a county) during the 120-day life of the determination. This type of determination is issued only for installations where continuing construction activity is anticipated. Area determinations must be renewed on a continuous basis by submission of Department of Labor Form DB–11, "Request for Determination," to the Department of Labor approximately 30 days prior to the expiration of each current area determination (see paragraph (c)(2) of this section).

(2) *Limited area (54A) determinations.* In some States, the Department of Labor does not include in the area type determination wage rates applicable to heavy or highway construction. In these States, the wage rates issued are for all classifications for either "Building Construction" only, or "Building, Utilities, and Incidental Paving." This type of determination is known as a limited area determination; where the Department of Labor issues this type of determination, the requesting office must submit requests for individual determinations for heavy and highway construction projects as described in subparagraph (3) of this paragraph. This type of determination is applicable in the following States:

Alabama.	Nebraska.
Arkansas.	New Mexico.
Florida.	North Carolina.
Georgia.	North Dakota.
Iowa.	Oklahoma.
Kansas.	South Carolina.
Louisiana.	South Dakota.
Maryland.	Texas.
Mississippi.	Virginia.
Maine.	

(3) *Individual determinations.* Individual determinations are provided by the Department of Labor for a single contract. Such a determination must be obtained for each contract subject to the Davis-Bacon Act unless an Area (54A) determination is applicable. The classifications of laborers and mechanics in individual wage determinations are limited to those classes employed in the type of work required by the contract, as indicated in the request.

(b) *Limitations.* Wage determinations initially issued shall be effective for 120 calendar days from the date of such determinations. If such a wage determination is not used in the period of its effectiveness, it is void. If it appears that a wage determination may expire between bid opening and award, a new wage determination should be requested sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award and after bid opening, the Solicitor of Labor upon a written finding to that effect by the Administrator or his representative in individual cases, may extend the expiration date of a determination whenever he finds it necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. Whenever it is considered necessary to extend the expiration date of a wage determination, a proposed finding shall be prepared for the signature of the Director of Procurement and sent with supporting documentation to the Procurement Office, NASA Headquarters (Code KDP–1).

(c) *Processing requests*—(1) *Responsibility for obtaining determinations.* The Office of Procurement is responsible for obtaining from the Secretary of Labor and for furnishing to the particular installation concerned all determinations of prevailing wage rates under the Davis-Bacon Act required in the awarding of construction contracts of NASA.

(2) *Preparation of requests.* For those installations covered by area determinations, requests for wage rates on Department of Labor Form DB–11 will be prepared by the Office of Procurement and submitted to the Department of Labor thus providing, in effect, continuous wage rate coverage. Requests for individual wage determinations will be submitted by

the installation concerned on Department of Labor Form DB–11 (in original and two copies) to the Procurement Office, NASA Headquarters (Code KDP–1) at least 30 calendar days before required for the advertisement or negotiation of the contract for which the determination is sought. In preparing the request, only the original copy of the Department of Labor Form DB–11 will be typed with a reversed carbon which will make an impression on the back of the form. The original will be submitted to the Department of Labor by NASA Headquarters. For area determinations, the description of the work will be: Area (54A) Determination—Building, Heavy and Highway Construction. Do not check any classifications as all classifications are contained in the area type determinations. In those States where the Department of Labor issues a limited 54A area determination, the description will be: Area (54A) Determination—For Building Construction Only or Building, Utilities, and Incidental Paving. In these cases, a Department of Labor Form DB–11 must be submitted on an individual basis for determinations for heavy and highway construction projects, with the work to be accomplished in detail. For individual determinations, the description of the work shall be sufficiently detailed to enable the Department of Labor to determine that the work is one of the three categories; namely, building, heavy, or highway construction. In the block entitled "Location," the name of the municipality nearest to the site of the work will be inserted. The State and county in which the work is to take place will be inserted in the spaces provided. Classifications of laborers and mechanics needed to perform the work will be checked by typed X. Needed classifications which are generally used in the area but which do not appear on the Department of Labor Form DB–11 will be typed in the blank spaces. The Apprentice Schedule is to be left blank as the Department of Labor will furnish these rates.

(d) *Use of wage rate determinations.* (1) The specifications of every contract subject to the Davis-Bacon Act shall include a copy of a current wage rate determination. If the wage rate determination is not available when invitations for bids are issued, the specifications shall contain a statement that wage rates will be supplied by addenda to the specifications. Contracting officers shall not open bids on procurements subject to the Davis-Bacon Act until the requested determination of wage rates has been incorporated in the specifications.

(2) Wage rates properly included in the contract at the time of award are applicable to the contract for its duration, except as specified in subparagraph (ii) below. These same rates may be used for additional or new work not included in the specifications if an area determination was used in the invitations for bids or requests for proposals and that determination is still in effect at the time of change. If the area determination has expired or if an individual determination was used, a new wage determination must be used for such new or additional work unless it is clear that the new or additional work is so much a part of the work originally contracted for that it is reasonably impossible of performance by other than the original contractor. (An apparent probability that the new work may be done more conveniently or even at less expense by the original contractor does not in itself justify use of the original determination for such work. The original determination should be used for new work only if the new work does not reflect a change or modification which materially alters the scope or character of the original contract requirements and is so closely related to the original work, both in nature and in timing, that it cannot reasonably be regarded as a separate and distinct undertaking.)

(i) *Fixed price contracts (formally advertised or negotiated).* Once a contract is awarded, the wage rates contained in the specifications are the minimum rates that can be paid by the contractor or his subcontractors during the life of the contract.

(ii) *Cost-reimbursement type, time and material, and labor-hour contracts and subcontracts.* The wage rates established for and included in cost-reimbursement type prime or subcontracts (including time and material contracts and labor-hour contracts), according to the Davis-Bacon Act, are the minimum rates that can be paid during the life of the contract. Reimbursement to contractors and subcontractors holding the foregoing types of contracts for wages paid to laborers and mechanics are based on this wage schedule; all applications of prime and subcontractors to use higher wage rates require specific approval by the contracting officer. The contracting officer's approval shall be based upon substantiating data in support of the contractor's request, such as: Proposed wage rates were established as a result of bona fide collective bargaining in which the contractor participated or to which he adheres as a general practice or as a result of membership in contractors' organizations; proposed wage rates have approval of any existing wage-stabilizing body established pursuant to Federal law; or payment of wages at higher rates is required to man the job. Subcontracts awarded pursuant to a cost-reimbursement type, time and material, or labor-hour contract shall include wage rates prevailing at the time of the subcontract award, except where the subcontracted work is included in the specifications of the prime contract and is a part of the particular work for which the wage rate determination atached to the prime contract was obtained.

(e) *Modification and superseding determinations.* During the 120-day life of a determination, the Department of Labor may issue a modification thereto, changing the wage rate for one or more classifications or adding or deleting a classification; or the Department of Labor may issue a new determination which entirely supersedes the original determination for the duration of the 120-day period. The word "modification" as used in this § 18–12.404 includes new or superseding wage determinations. Modifications do not change the expiration date of the original determination. Modifications by the Secretary of Labor of an original wage determination shall be made part of the proposed contract if received prior to the award of the contract: *Provided,* That, in a formally advertised procurement, any modification received less than 10 calendar days before the opening of bids may be disregarded.

(f) *Posting.* The contracting officer shall ascertain that a copy of the wage determination is kept posted at the site of the work in a prominent place where it can be easily seen by the workers.

§ 18–12.404–3 Additional classifications.

If any laborers or mechanics not listed in the wage determination attached to the contract are to be employed, their classifications and minimum wage rates shall be established by the contractor or subcontractor, with the approval of the contracting officer, conformably to the attached wage determination. A report of any such determination shall be transmitted to the Secretary of Labor. If the interested parties cannot agree upon any such additional classification and wage rate, the matter accompanied by the recommendation of the contracting officer shall be referred via the Director of Procurement to the Secretary of Labor for final determination.

§ 18–12.404–4 Apprentices.

(a) In accordance with § 5.5(a)(4) of the Department of Labor Regulations (29 CFR Part 5) as implemented by Memorandum No. 59 issued on June 24, 1964, from the Office of the Solicitor, the Labor Department will no longer list apprentice rates on wage determinations under the Davis-Bacon Act and related acts. Future determinations will contain the following notation:

Before using apprentices on the job, the contractor shall present to the Contracting Officer written evidence of registration of such employees in a program of a State apprenticeship and training agency approved and recognized by the U.S. Bureau of Apprenticeship and Training. In the absence of such a State agency, the contractor shall submit evidence of approval and registration by the U.S. Bureau of Apprenticeship and training.

The contractor shall submit to the Contracting Officer written evidence of the established apprentice-journeyman ratios and wage rates in the project area, which will be the basis for establishing such ratios and rates for the project under the applicable contract provisions. (November 1964)

(b) Any employee of a contractor listed on a payroll at an apprentice wage rate, who is not registered as an apprentice and within an established apprentice-journeyman ratio, as provided in paragraph (a) of this section, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed.

§ 18–12.404–5 Subcontracts.

The contracting officer shall obtain a list of all subcontracts, together with a description of the work to be performed thereunder, and such list shall be kept current during the performance of the contract.

§ 18–12.404–6 Payrolls and statements.

(a) *Submission.* Within 7 calendar days after the regular payment date of the payroll week covered, the prime contractor will submit and cause all his subcontractors to submit through him to the contracting officer, copies of certified weekly payrolls showing all laborers and mechanics engaged on the contract at the site of the work, including the name and address of each employee, his correct classification, daily and weekly number of hours worked, rate of pay, deductions made, and actual wages paid. Each payroll shall contain or be accompanied by a statement of the contractor (or subcontractor) that he has complied with the labor standards provisions of the contract. The receipt of these payrolls and statements is a condition precedent to final payment under the contract. Contracting officers should encourage contractors to make use of optional payroll Forms SOL–184 and 185, developed by the Department of Labor for voluntary use on Federal construction contracts subject to the Davis-Bacon Act and related Acts.

(b) *Payroll deductions.* (1) No payroll deductions are authorized except as follows:

(i) Where required by Federal, State, or local statute or ordinance to be made by the employer from the wages earned by the employee;

(ii) Bona fide prepayment of wages without discount or interest;

(iii) Deductions required by court process: *Provided,* That the contractor or subcontractor will not be permitted to make such a deduction in favor of the contractor, subcontractor, or any affiliated person, or where collusion or collaboration exists; and

(iv) As permitted by subparagraphs (2), (3), and (4) of this paragraph.

(2) Deductions which meet the standards set forth in (i) through (iv) below are permissible provided the contractor or subcontractor has made written application by registered mail to the Secretary of Labor (copies must be furnished the contracting officer) indicating that:

(i) The deduction is not prohibited by law;

(ii) The employee has consented voluntarily to the deduction in writing, prior to the payroll period, and the consent is neither a condition for obtaining employment nor for continuation of employment or that the deduction is provided for in a bona fide collective bargaining agreement and is for the benefit of the employee or the labor organization which represents the employee;

(iii) No profit, benefit, or payment is obtained directly or indirectly by the contractor, subcontractor, or any affiliated person from the deduction and that no portion of the funds, whether in the form of a commission or otherwise, will be returned to the contractor, subcontractor, or any affiliated person; and

(iv) The deduction is for the convenience and in the interests of the employee and that the deductions are customary in this or comparable situations.

However, if the Secretary of Labor decides on his own motion or on the motion of an affected person or agency that the deduction does not meet these standards, he will give written notice to the contractor or subcontractor and request additional supporting evidence for the deduction. If, on the basis of such additional evidence, the deduction still does not meet these standards, the deduction will cease to be permissible 7 days after the contractor or subcontractor and NASA have been notified of the Secretary's decision.

(3) Upon application to and receipt of written permission from the Secretary of Labor and subject to the standards set forth in subparagraph (2) (i), (ii), and (iii) of this paragraph, deductions may be made by a contractor or subcontractor or any affiliated person for membership fees in group benefit or retirement associations, for board and lodging, or for other purposes where the Secretary of Labor concludes the deduction is required by compelling circumstances: *Provided, however,* That the contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction. A copy of the Secretary's decision will be sent to the applicant and NASA.

(4) According to and subject to the standards set forth in subparagraph (2) of this paragraph, general permission is hereby granted to make payroll deductions for:

(i) The payment of the purchase price of U.S. Savings Stamps and Bonds and U.S. Tax Savings Notes;

(ii) The repayment of loans to or the purchase of shares in credit unions organized and operated according to District of Columbia, Federal, or State credit union statutes;

(iii) Contributions to a Federal Government or quasi-governmental agency;

(iv) The payment of dues or premiums to unaffiliated insurance companies or associations for medical or hospitalization insurance where the employer is not required by Federal, State, or local laws to supply such insurance or benefits;

(v) Contribution to bona fide charities, such as the Red Cross or United Givers Fund; and

(vi) Regular union initiation fees and membership dues where a collective bargaining agreement provides for such deductions. This does not include work permits or special assignments.

(5) When the employee does not have full and actual freedom of disposition of his wage payment, whether made in cash or by check, any restricted payment made to the employee is considered a deduction under this subpart.

(6) Nothing herein will be construed to permit any deduction which the contractor or subcontractor knew or, in exercise of good faith, should have known did not meet the standards in subparagraph (2) (i) through (iv) of this paragraph. The Secretary of Labor may notify the contractor or subcontractor that a deduction will be permitted only if certain conditions with respect thereto are observed. The contractor or subcontractor or any affiliated persons will comply with such general rules and regulations concerning the deductions as the Secretary of Labor will make from time to time, notice of which will have been given to the contractor or subcontractor or any affiliated person making the deduction and to NASA either directly or through publication in the FEDERAL REGISTER.

(c) *Preservation.* Certified payrolls and statements shall be preserved by the installation concerned for a period of 3 years from completion of the contract and shall be produced at the request of the Secretary of Labor at any time during such period.

§ 18–12.404–7 Investigations.

(a) Investigations necessary to assure compliance with contract, statutory, and regulatory requirements shall be made. If feasible, contracts of 6 months or less duration shall be investigated before final payment is made. Contracts of longer duration shall be investigated as frequently as may be necessary. Such investigations shall include interviews of employees on a sampling basis.

(b) Special investigations in detail shall be made when required by complaints or other evidence or violations. Complaints of violations shall be given priority.

(c) Statements, written or oral, made by an employee shall be treated as confidential and shall not be disclosed to the employer without the consent of the employee.

§ 18–12.404–8 Enforcement reports.

(a) Where underpayments total $500 or more, or are willful, the contracting officer concerned shall furnish to the Department of Labor, through the NASA Labor Relations Office (Code KL), as soon as practicable, a detailed enforcement report. Such reports shall include a statement of the findings as to the violations and information as to restitution made, payment deductions, contract terminations, and the names and addresses of the workers, contractors and subcontractors concerned. (For willful violations of a criminal statute, see § 18–12.404–8(c)).

(b) Where underpayments total less than $500 and are nonwillful, and where restitution has been effected and future compliance assured, no report need be furnished the Department of Labor, unless the Department of Labor has expressly requested that the investigation be made. In the latter case, the contracting officer shall submit through the NASA Labor Relations Office (Code KL), a factual summary report in accordance with 29 CFR 5.7(a) (1).

(c) Where there is substantial evidence that violations are willful and in breach of the False Affidavits Act (18 U.S.C. 1001) or other criminal statute,

the matter shall be forwarded to the Attorney General for prosecution, and the Secretary of Labor shall be informed of such action.

(d) (1) The Department of Labor Regulation (Part 5 of Title 29, Code of Federal Regulations) as implemented by Memorandum No. 60 issued on June 25, 1964, by the Solicitor of Labor, requires that semiannual enforcement reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and related acts be submitted covering the periods of January 1 through June 30 and July 1 through December 31, respectively. These reports shall cover contracts awarded directly by NASA and shall be submitted, in duplicate, by January 10 and July 10 of each year to the Procurement Office, NASA Headquarters (Code KDP–3), for consolidation and submission to the Department of Labor. Negative reports are required.

(2) The reports shall be prepared in accordance with the following format:

SEMIANNUAL LABOR COMPLIANCE REPORT TO THE DEPARTMENT OF LABOR PURSUANT TO SECTION 5:7(b) OF REGULATIONS, PART 5

Date_____

This report covers period from _____ to _____, 19__.

I. a. Number of contracts awarded subject to labor standards statutes _____.

(Include contracts awarded during the period, all or part of which were subject to the coverage of any of the statutes listed in 29 CFR 5.1, except for contracts awarded for NASA by other Government agencies, e.g., the Corps of Engineers.)

b. Number of contracts on which preconstruction letters were sent _____.

c. Number of contracts on which preconstruction conferences were held _____.

d. Number of contracts on which letters of notice were sent to contractors emphasizing importance of future compliance _____.

II. a. Total gross payroll amount $_____. (Total gross payroll amount is the sum of all gross payments made to laborers and mechanics during the reporting period. Contractor's Weekly Payroll Statement forms used by most agencies require that the gross payroll amount be shown on the Payroll Statement. This item requires merely the totalling of those gross amounts.)

b. Number of employee interviews conducted _____:

1. Written _____.
2. Oral _____.

(Written interviews, which can be facilitated by use of employee interview forms, should be supported by interview statements on file.)

c. Amount of wage restitution made under Davis-Bacon and related acts $_____; under Contract Work Hours Standards Act $_____. ("Davis-Bacon and related acts" refers to all prevailing wage statutes listed in 29 CFR 5.1, whereas the Contract Work Hours Standards Act has reference to daily and weekly overtime).

d. Total number of workers who received restitution payments _____.

e. Amount of liquidated damages assessed for violations of Contract Work Hours Standards Act $_____.

f. Number of complaints received alleging violations of the contract labor standards requirements _____. (This item refers to complaints and inquiries from all sources, including employees, unions, the agency's Washington headquarters, the Department of Labor, or members of Congress).

III. a. Number of visits to field officers by the contracting agency's Washington headquarters personnel to review labor standards compliance program _____.

b. Number of visits to contract sites by Division, District, or Regional Offices of agency to review labor standards compliance program _____. ("Visit" as referred to in Items III a and b above means a visit to an activity by one or more persons for an in-depth review of labor standards compliance procedures).

IV. Remarks:

(Signed) _____
(Name)
_____
(Title)
_____
(Installation)

§ 18–12.404–9 Suspensions and deductions of contract payments.

In the event of failure or refusal to pay all or any part of the wages due workers, the contracting officer may suspend further contract payments to the contractor in amounts equal to such unpaid wages and liquidated damages which may be due until either restitution has been made directly by the contractor or subcontractor concerned or deductions against payment vouchers are made as provided below. If such failure or refusal appears continuing or willful, or in the event of any other failure and refusal to comply with contract, statutory, and regulatory requirements, the contracting officer may suspend all future contract payments to the contractor until such violations have ceased. If restitution is not made directly by the contractor or subcontractor within a reasonable time or, in any event, prior to final payment under the contract, the contracting officer shall submit with the contractor's payment voucher or vouchers a "Schedule of Withholdings Under the Davis-Bacon Act" (40 U.S.C. 276a) (Standard Form 1093), and a statement of the amount to be withheld as liquidated damages. These amounts shall be deducted from the payments made to the contractor, and the amounts shown to be due the workers shall be deposited in the Treasury.

§ 18–12.404–10 Restitution.

Restitution of amounts due workers may be permitted at any time at the volition of the contractor or subcontractor and may be ordered by NASA whenever wage underpayments are found to be nonwillful.

§ 18–12.404–11 Contract terminations.

Whenever a contract is terminated for violation of the labor standards provisions, a report shall be made by the NASA contracting officer to the Director of Procurement for submission to the Secretary of Labor and the Comptroller General. The report shall include the name and address of the terminated contractor or subcontractor, the name and address of the contractor or subcontractor who is to complete the work, the amount and number of the latter's contract, and a description of the work thereunder.

§ 18–12.404–12 Cooperation with Department of Labor.

NASA will cooperate with representatives of the Department of Labor in the inspection of records, interviews with workers, and all other aspects of investigations undertaken by the Department of Labor. When requested, NASA contracting officers shall furnish to the Secretary of Labor any available information with respect to contractors, subcontractors, their contracts, and the nature of the contract work.

§ 18–12.404–13 Reporting construction contract awards.

The contracting officer shall promptly report all construction contract awards of $25,000 and over subject to the Davis-Bacon Act to the Bureau of the Census, Department of Commerce, on Census Bureau Form 16–19 (Construction Contract Award Notification).

Subpart 18–12.6—Walsh-Healey Public Contracts Act

§ 18–12.601 Statutory requirement.

In accordance with the requirements of the Walsh-Healy Public Contracts Act (41 U.S.C. 35–45), all contracts subject to said Act entered into by NASA for the manufacture or furnishing of supplies in any amount exceeding $10,000 (a) will be with manufacturers or regular dealers, and (b) shall incorporate by reference the representations and stipulations required by said Act pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

§ 18–12.602 Applicability.

§ 18–12.602–1 General.

The requirement set forth in § 18–12.601 applies to contracts (including, for this purpose, basic ordering agreements and blanket purchase agreements (see § 18–3.410–2 and § 18–3.605)) for the manufacture or furnishing of "materials, supplies, articles, and equipment" which are to be performed within the United States, Puerto Rico, or the Virgin Islands, and which exceed or may exceed $10,000 in amount unless exempt pursuant to § 18–12.602–2 or exempted by the Secretary of Labor (see § 18–12.602–3).

§ 18–12.602–2 Statutory exemptions.

The following transactions are exempt from the Walsh-Healey Public Contracts Act:

(a) Purchases of generally available commercial items, negotiated pursuant to the authority set forth in § 18–3.202;

(b) Purchases of perishables including dairy, livestock, and nursery products; and

(c) Purchases of agricultural or farm products processed for first sale by the original producers.

§ 18–12.602–3 Department of Labor regulations and interpretations.

Pursuant to the Walsh-Healey Public Contracts Act, the Secretary of Labor has issued detailed regulations and in-

terpretations as to the coverage of said Act, and exemptions and procedures thereunder. These regulations and interpretations are compiled in a document entitled "Walsh-Healey Public Contracts Act, Rulings and Interpretations," which may be obtained from the Department of Labor Regional Offices listed in § 18–12.607. In addition to the interpretations stated in that document, attention is directed to an opinion of the Department of Labor that contracts which are originally $10,000 or less, but are subsequently modified to increase the price to an amount in excess of $10,000, are subject to the Walsh-Healey Public Contracts Act after date of such modifications; and the contracts in an amount exceeding $10,000 which are subsequently modified to a figure of $10,000 or less, are not subject to said Act with respect to work performed after such modification if modification is effected by mutual agreement. Also, in the case of a basic ordering agreement or blanket purchase agreement, such amount shall be the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement. If a basic ordering agreement continues or is extended, such estimate shall be made annually for each year after the first and the agreement modified accordingly.

§ 18–12.603 Determinations of eligibility as manufacturer or regular dealer.

§ 18–12.603–1 Manufacturer.

As used in § 18–12.601, a manufacturer is a person who owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. In order to qualify as a manufacturer, a bidder must be able to show before the award that he is (a) an established manufacturer of the particular goods or goods of the general character sought by the Government, and (b) if he is newly entering into such manufacturing activity, that he has made all necessary prior arrangements for space, equipment and personnel to perform the manufacturing operations required for the fulfillment of the contract. A new firm which, prior to the award of the contract, has made such definite commitments in order to enter a manufacturing business which will later qualify it, shall not be barred from receiving the award because it has not yet done any manufacturing; however, this interpretation is not intended to qualify a firm whose arrangements to use space, equipment or personnel are contingent upon the award of a Government contract.

§ 18–12.603–2 Regular dealer.

(a) Except as set forth in paragraph (b) of this section, as used in § 18–12.601 a regular dealer is a person who owns, operates, or maintains a store, warehouse, or other establishment in which materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business. In order to qualify as a regular dealer, a bidder must be able to show before the award:

(1) That he has an establishment or leased or assigned space in which he regularly maintains a stock of goods in which he claims to be a dealer; if the space is in a public warehouse, it must be maintained on a continuing, and not on a demand basis;

(2) That the stock maintained is a true inventory from which sales are made; the requirement is not satisfied by a stock of sample or display goods, or by a stock consisting of surplus goods remaining from prior orders, or by a stock unrelated to the supplies which are the subject of the bid, or by a stock maintained primarily for the purpose of token compliance with the Act from which few, if any, sales are made;

(3) That the goods stocked are of the same general character as the goods to be supplied under the contract; to be of the same general character, the items to be supplied must be either identical with those in stock or be goods for which dealers in the same line of business would be an obvious source;

(4) That sales are made regularly from stock on a recurring basis; they cannot be only occasional and constitute an exception to the usual operations of the business; the proportion of sales from stock that will satisfy the requirements will depend upon the character of the business;

(5) That sales are made regularly in the usual course of business to the public, i.e., to purchasers other than Federal, State, or local government agencies; this requirement is not satisfied if the contractor merely seeks to sell to the public but has not yet made such sales; if government agencies are the sole purchasers, the bidder will not qualify as a regular dealer; the number and amount of sales which must be made to the public will necessarily vary with the amount of total sales and the nature of the business; and

(6) That his business is an established and going concern; it is not sufficient to show that arrangements have been made to set up such a business.

(b) For certain specific products (lumber and lumber products, machine tools, hay, grain, feed or straw, raw cotton, green coffee, petroleum, agricultural liming materials, tea, and raw or unmanufactured cotton linters), there are alternative definitions of regular dealers. The qualifications required under the alternative definitions are listed in the regulations of the Secretary of Labor (41 CFR 50–201.101(b)).

§ 18–12.603–3 Coal dealers.

Coal dealers are exempted from the regular dealer requirements if they meet the terms and conditions set forth by the Secretary of Labor in his regulation (41 CFR 50–201.604(a)). If these terms and conditions are not met, coal dealers must meet the requirements set forth in § 18–12.603–2 in order to be considered regular dealers.

§ 18–12.603–4 Agents.

A manufacturer or regular dealer may bid, negotiate, and contract through an authorized agent if the agency is disclosed, and the agent acts and contracts in the name of his principal. In this connection, see the clause entitled "Covenant Against Contingent Fees" set forth in § 18–1.503 and the procedures prescribed for obtaining information concerning contingent or other fees, as set forth in Subpart 18–1.5.

§ 18–12.604 Responsibilities of contracting officers.

(a) The responsibility for applying the eligibility requirements set forth in § 18–12.601 and § 18–12.603 rests, in the first instance, with the contracting officer. The Department of Labor does not conduct preaward investigations, nor render final determinations of eligibility until the contracting officer has initially determined whether the eligibility requirements have been met. When the eligibility of a bidder or offeror is challenged before award, it should be treated in a manner similar to a protest before award (see § 18–2.407–8 and § 18–3.111). The contracting officer should make an initial determination and should process the protest in accordance with applicable procedures for submission to the Department of Labor for a final determination.

(b) Whenever the Walsh-Healey Public Contracts Act is applicable, the contracting officer, pursuant to regulations or instructions issued by the Secretary of Labor, shall:

(1) Inform prospective contractors of the applicability of minimum wage determinations;

(2) Furnish to the contractor Labor Department Form PC–13, a combination Letter and Poster, explaining the application of the Walsh-Healey Public Contracts Act and giving instructions for display of the Poster;

(3) Furnish to the contractor Labor Department Form PC–16, "Minimum Wage Determinations under the Walsh-Healey Public Contracts Act", for ascertaining the minimum wage determinations applicable to his contract;

(4) Prepare and transmit to the Department of Labor the original and one copy of revised Standard Form 99, "Notice of Award of Contract" immediately upon award of the contract (For detailed instructions on completing and submitting the Form, see U.S. Department of Labor Circular Letter No. 2–65, dated Dec. 10, 1965), and

(5) Report to the Department of Labor any violations of the representations or stipulations required by the Walsh-Healey Public Contracts Act.

§ 18–12.605 Contract clause.

The contract clause required by this Subpart 18–12.6 is as follows:

WALSH-HEALEY PUBLIC CONTRACTS ACT
(SEPTEMBER 1962)

If this contract is for the manufacture of furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject

to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35–45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

§ 18–12.606 Procedure for obtaining exemptions with respect to stipulations required by the Act.

Section 6 of the Walsh-Healey Public Contracts Act permits the Secretary of Labor to make exceptions to the requirement that the representations and stipulations of section 1 of the Act be included in contracts which are subject to the Act. Applications for such exceptions shall be submitted in writing through the contracting officer with pertinent data and recommendation to the Director, NASA Labor Relations, NASA Headquarters (Code KL).

§ 18–12.607 Wage and hour and public contracts divisions of the U.S. Department of Labor regional offices—Geographical jurisdictions and addresses of regional directors.

Atlanta region. (Florida, Georgia, North Carolina, South Carolina): Room 331, 1371 Peachtree Street NE., Atlanta, Ga. 30309.

Birmingham region. (Alabama, Arkansas, Louisiana, Mississippi): 1931 Ninth Avenue South, Birmingham, AL 35205.

Boston region. (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont): John Fitzgerald Kennedy Federal Building, Government Center, Boston, MA 02203.

Chicago region. (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin): U.S. Courthouse and Federal Office Building, Seventh Floor, 219 South Dearborn Street, Chicago, IL 60604.

Dallas region. (New Mexico, Oklahoma, Texas): 340 Mayflower Building, 411 North Akard Street, Dallas, TX 75201.

Kansas City region. (Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming): 2000 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106.

Nashville region. (Kentucky, Tennessee, Virginia, West Virginia): U.S. Court House Building, 801 Broad Street, Nashville, TN 37203.

New York region. (New Jersey, New York): 907 U.S. Parcel Post Building, 341 Ninth Avenue, New York, NY 10001.

Philadelphia region. (Delaware, District of Columbia, Maryland, Pennsylvania): Room 1524, Jefferson Building, 1015 Chestnut Street, Philadelphia, PA 19107.

San Francisco region. (Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Washington): Room 10431, 450 Golden Gate Avenue, Box 36018, San Francisco, CA 94102.

Puerto Rico. Seventh Floor, Condominio San Albert Building, 1200 Ponce de Leon Avenue, Stop 17, Santurce, PR 00907.

Subpart 18–12.7—Fair Labor Standards Act of 1938

§ 18–12.701 Basic statute.

The Fair Labor Standards Act of 1938 (Act of June 30, 1938; 29 U.S.C. 201–219), as amended, provides for the establishment of minimum wage and maximum hour standards, creates a Wage and Hour Division in the Department of Labor for purposes of interpretation and enforcement (including investigations and inspections of Government contractors), prohibits oppressive child labor, and under an amendment contained in the Equal Pay Act of 1963 (77 Stat. 56, 29 U.S.C. 206), prohibits discrimination on the basis of sex. The Fair Labor Standards Act applies to all employees, unless otherwise exempted, who are engaged in (a) interstate commerce or foreign commerce, (b) the production of goods for such commerce, or (c) any closely related process or occupation essential to such production.

§ 18–12.703 Rulings on applicability or interpretation.

Contractors or contractor employees who inquire concerning applicability or interpretation of the Fair Labor Standards Act of 1938 shall be advised that rulings concerning such matters fall within the jurisdiction of the Department of Labor and shall be given the address of the appropriate Regional Director of the Wage and Hour and Public Contracts Divisions of the Department of Labor.

Subpart 18–12.8—Equal Employment Opportunity

§ 18–12.800 Scope of subpart.

This subpart sets forth the policies, procedures and clauses for use in contracts and grants to carry out the rules and regulations of the Secretary of Labor. (Nondiscrimination provisions applicable to Government leases are set forth in § 18–1.350.)

§ 18–12.801 Policy.

Parts II and III of Executive Order 11246, dated September 24, 1965, state that discrimination because of race, creed, color, or national origin is contrary to the constitutional principles and policies of the United States, and that it is the plain and positive obligation of the U.S. Government to promote and insure equal opportunity for all qualified persons, without regard to race, creed, color, or national origin, employed by, or seeking employment with, Government contractors. To carry out this policy, the Secretary of Labor was made responsible by Part II of Executive Order 11246 to provide regulations, guidelines, and instructions to Government agencies. The head of each contracting agency was made primarily responsible for obtaining compliance by any contractor or subcontractor with the provisions of the Executive order and the rules, regulations, and orders of the Secretary of Labor. Although initial emphasis for obtaining compliance should be placed upon the methods of conference conciliation, mediation and persuasion, if such measures do not succeed in obtaining the necessary degree of progress, consideration will be given to invoking the appropriate sanctions as set forth in § 18–12.806–7.

§ 18–12.801–1 Definitions.

For the purpose of this Subpart 18–12.8 each of the following terms has the meaning set forth below:

(a) "Order" means Executive Order 11246 of September 24, 1965 (30 F.R. 12319).

(b) "Contract" means any Government contract or any federally assisted construction contract.

(c) "Government contract" means any binding legal agreement or modification thereof between the Government and a contractor for supplies or services, including construction, or for the use of Government property, in which the parties, respectively, do not stand in the relationship of employer and employee.

(d) "Federally assisted construction contract" means any binding legal agreement or modification thereof between an applicant and a contractor for construction work which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to any Federal program involving a grant, loan, insurance or guarantee, or undertaken pursuant to any Federal program involving such grant, loan, insurance, or guarantee; or any approved application or modification thereof for a grant, loan, insurance or guarantee under which the applicant itself performs construction work other than through the permanent work force directly employed by an agency of Government.

(e) "Modification" means any written alteration in the terms and conditions of a contract accomplished by bilateral action of the parties to the contract.

(f) "Subcontract" means any agreement made or purchase order executed by a prime contractor where a material part of the supplies or services covered by such agreement or purchase order is being obtained for use in the performance of a contract.

(g) "Prime contractor" means any person holding a contract.

(h) "Subcontractor" means any person holding a subcontract. "First-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor. "Second-tier subcontractor" refers to a subcontractor holding a subcontract with a first-tier subcontractor.

(i) "Agency" means any contracting or any administering agency.

(j) "Contracting agency" means any department (including the Departments of the Army, Navy, and Air Force), agency and establishment in the Executive Branch of the Government, including any wholly owned Government corporation, which enters into contracts.

(k) "Administering agency" means any department (including the Departments of the Army, Navy, and Air Force), agency and establishment in the Executive Branch of the Government, including any wholly owned Government corporation, which administers a program involving federally assisted construction contracts.

(l) "Applicant" means an applicant for Federal assistance or, as determined by regulation of an administering agency, other program participant, with respect to whom an application for any grant, loan, insurance or guarantee, or change therein, is not finally acted upon

prior to July 22, 1963, and it includes such an applicant after becoming a recipient of such Federal assistance.

(m) "Equal Opportunity clause" means the contract provisions set forth in § 18–12.802–1 or § 18–12.802–2.

(n) "Rules, regulations, and relevant orders" of the Committee as used herein mean rules, regulations and relevant orders issued pursuant to the orders and in effect at the time the particular contract subject to the orders was entered into.

(o) "United States" as used herein shall include Puerto Rico, the Panama Canal Zone and the possessions of the United States.

(p) "Standard commercial supplies" means an article:

(1) Which in the normal course of business is customarily maintained in stock by the manufacturer or any dealer, distributor, or other commercial dealer for the marketing of such article; or

(2) Which is manufactured and sold by two or more persons for general commercial or industrial use or which is identical in every material respect with an article so manufactured and sold.

(q) "Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services.

(r) "Site of construction" means the physical location of any building, highway or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair and any temporary location or facility established by a contractor or subcontractor specifically to meet the demands of his contract or subcontract.

(s) The term "contracting officer" includes the official signing a grant, or any modification thereof, for the Government.

(t) "Grantee" is the institution, State, agency, industrial firm, individual or organization receiving a grant from the Federal Government.

(u) "Contracts equal employment opportunity program" means the program required by the rules and regulations of the Secretary of Labor involving Government contractors and their subcontractors, as implemented by these regulations for accomplishing the objectives of Executive Order 11246.

§ 18–12.801–2 References to terms.

(a) All references in this Subpart 18–12.8 to the "Clause" shall be deemed to refer to the Equal Opportunity clause set forth in § 18–12.802–1, and shall be deemed to include the "Equal Opportunity in Federally Assisted Construction Contracts" clause set forth in § 18–12.–802–2, unless not appropriate to the context.

(b) All references in this Subpart 18–12.8 to contracts and subcontracts, or to contractors, and subcontractors, shall be deemed to include grants and grantees respectively, when appropriate to the context.

(c) All references to a NASA installation shall be deemed to include any establishment of NASA having a procurement office, regardless of whether the establishment is designated as a laboratory, center, office, or by any other name; and all reference to the head of an installation shall be deemed to include the head of such establishment. (Also see § 18–1.214.)

§ 18–12.802 Clauses for contracts, grants, or other arrangements.

§ 18–12.802–1 NASA contracts.

Except as otherwise provided in § 18–12.802–3, all NASA contracts, including bilateral modifications thereof, shall include the Equal Opportunity clause set forth below unless exempt under the provisions of § 18–12.803, or exempted pursuant to § 18–12.804.

EQUAL OPPORTUNITY (NOVEMBER 1967)

(The following clause is applicable unless this contract is exempt under the rules and regulations of the Secretary of Labor issued pursuant to Executive Order 11246 of September 24, 1965.)

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant or employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or repesentative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor created thereby.

(e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with this Equal Opportunity clause or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in the said Executive order or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.[1] The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

§ 18–12.802–2 Federally assisted construction under grants and arrangements.

Unless exempt under the provisions of § 18–12.803 or exempted pursuant to § 18–12.804, each NASA grant or arrangement other than a contract, and bilateral modifications thereof, involving a federally assisted construction contract shall include the Equal Opportunity in Federally Assisted Construction Contracts clause set forth below.

EQUAL OPPORTUNITY IN FEDERALLY ASSISTED CONSTRUCTION CONTRACTS (NOVEMBER 1967)

(The following clause is applicable unless this contract is exempt under the rules and regulations of the Secretary of Labor issued pursuant to Executive Order 11246 of September 24, 1965.)

(a) As used in this clause, the following terms have the meanings set forth below:

(1) Applicant means an applicant for Federal assistance or, as determined by regulation of an administering agency, other program participant, with respect to whom an application for any grant, loan, insurance or guarantee, or change therein, is not finally acted upon prior to July 22, 1963, and it includes such an applicant after becoming a recipient of such Federal assistance.

(2) Construction work means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services.

(3) Modification means any written alteration in the terms and conditions of a contract accomplished by bilateral action of the parties to the contract, including supplemental agreements and amendments.

(4) Federally assisted construction contract means any binding legal agreement or modification thereof between an applicant

[1] Unless otherwise provided, the Equal Opportunity clause is not required to be inserted in subcontracts below the second tier, except for subcontracts involving the performance of "construction work" at the "site of construction" (as those terms are defined in the Secretary of Labor's rules and regulations) in which case the clause must be inserted in all such subcontratcs. Subcontracts may incorporate by reference the Equal Opportunity clause.

and a contractor for construction work which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to any Federal program involving a grant, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, loan, insurance, or guarantee; or any approved application or modification thereof for a grant, loan, insurance, or guarantee under which the applicant itself performs construction work other than through the permanent work force directly employed by an agency of Government.

(5) Administering agency means the Government agency administering this federally assisted construction contract.

(6) Subcontract means any agreement made or purchase order executed by a prime contractor where a material part of the supplies or services covered by such agreement or purchase order is being obtained for use in the performance of a contract.

(7) Prime contractor means any persons holding a contract.

(8) Subcontractor means any person holding a subcontract. First-tier subcontractor refers to a subcontractor holding a subcontract with a prime contractor. Second-tier subcontractor refers to a subcontractor holding a subcontract with a first-tier subcontractor.

(9) Site of construction means the physical location of any building, highway or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition or repair, and any temporary location or facility established by a contractor or subcontractor specifically to meet the demands of his contract or subcontract.

(b) The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, loan, insurance or guarantee, the Equal Opportunity clause set forth in paragraph (c) below.

(c) The Equal Opportunity clause is as follows:

EQUAL OPPORTUNITY (NOVEMBER 1967)

(The following clause is applicable unless this contract is exempt under the rules and regulations of the Secretary of Labor issued pursuant to Executive Order 11246 of September 24, 1965.) During the performance of this contract the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor created thereby.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with this Equal Opportunity clause or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965 and such other sanctions may be imposed and remedies invoked as provided in the said Executive order or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(d) The applicant further agrees that it will be bound by the above Equal Opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of Government.

(e) The applicant agrees that it will cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for government contracts and federally assisted construction contracts pursuant to Executive Order 11246 and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Executive Order 11246.

(f) In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may cancel, terminate or suspend in whole or in part this grant loan, insurance, guarantee, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from such applicant, or may refer the case to the Department of Justice for appropriate legal proceedings.

§ 18–12.802–3 Other contractual requirements.

(a) All indefinite quantity contracts, which are not exempted pursuant to § 18–12.803(a)(5) shall contain the Equal Opportunity clause prefaced by the following sentence:

The following clause shall be applicable upon written notice by the Contracting Officer. (August 1964)

(b) Prime contractors and subcontractors may make necessary modifications in language in the Equal Opportunity clause as shall be appropriate to identify properly the parties and their undertakings. Subcontractors may incorporate by reference the Equal Opportunity clause.

§ 18–12.802–4 Requirements for invitations for bids, requests for proposals and agreements.

(a) Unless otherwise provided, each invitation for bids, requests for proposals or agreement not exempt from the provisions of the Equal Opportunity clause (§ 18–12.803 or § 18–12.804) shall include the following representation to be accomplished by the bidder, offeror or applicant:

The bidder (offeror or applicant) represents that he [ ] has, [ ] has not, participated in a previous contract or subcontract subject to either the Equal Opportunity clause herein or the clause originally contained in section 301 of Executive Order 10925; that he [ ] has, [ ] has not, filed all required compliance reports; and that representations indicating submission of required compliance reports, signed by proposed subcontractors will be obtained prior to subcontract awards. (The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the clause.) (July 1968)

In any case in which a bidder or prospective contractor or proposed subcontractor which has participated in a previous contract or subcontract subject to the Equal Opportunity clause has not filed a required compliance report, the contracting officer shall require submission thereof (Standard Form 100) prior to the award of the proposed contract or subcontract. In all other cases, the contracting officer shall require the submission of a compliance report (Standard Form 100) by any bidder or prospective contractor or subcontractor prior to the award of the proposed contract or subcontract. Where the circumstances of a particular procurement will not permit

the award to be withheld, the contract file shall be documented to show the basis upon which it was determined to make the award to the bidder or offeror without submission by him of the compliance reports or representations. This should not be interpreted to permit award to concerns known to be in established violation.

(b) The face page or cover sheet of each invitation for bids, request for proposals, and agreement not exempt from the provisions of the Equal Opportunity clause under § 18–12.803 or § 18–12.804 shall contain the following notice:

NOTE THE CERTIFICATION OF NONSEGREGATED FACILITIES IN THIS SOLICITATION (MAY 1968)

Bidders, offerors and applicants are cautioned to note the "Certification of Nonsegregated Facilities" in the solicitation. The certification provides that if the amount of the bid or proposal exceeds $10,000, the bidder, offeror or applicant, by signing this bid or offer certifies that he does not and will not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. Failure of a bidder or offeror to agree to the certification will render his bid or offer nonresponsive to the terms of solicitations involving awards of contracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause.

(c) Each invitation for bids, request for proposals and agreement not exempt from the provisions of the Equal Opportunity clause under § 18–12.803 or § 18–12.804 shall include the following certification to be submitted by bidders offerors, subcontractors and applicants:

CERTIFICATION OF NONSEGREGATED FACILITIES (MAY 1968)

(Applicable to contracts, subcontracts, and agreements with applicants who are themselves performing federally assisted construction contracts, exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause.)

By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms, and wash rooms, restaurants, and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities, as required by the May 9, 1967, order on Elimination of Segregated Facilities, by the Secretary of Labor (32 F.R. 7439, May 19, 1967), must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). (May 1968)

(NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.)

(d) Each Invitation for Bids expected to result in a supply contract of $1 million or more and not otherwise exempt from the provisions of the Equal Opportunity clause pursuant to § 18–12.803 and § 18–12.804 shall include the following:

PREAWARD EQUAL OPPORTUNITY COMPLIANCE REVIEWS (MAY 1968)

Where the bid of the apparent low responsible bidder is in the amount of $1 million or more, the bidder and his known first-tier subcontractors which will be awarded subcontracts of $1 million or more will be subject to full, preaward equal opoprtunity compliance reviews before the award of the contract for the purpose of determining whether the bidder and his subcontractors are able to comply with the provisions of the Equal Opportunity clause.

§ 18–12.803 Applicability and exemptions.

(a) Subject to the rules, regulations, and relevant orders of the Secretary of Labor, or such further rules, regulations, and relevant orders as he may hereafter issue, the Equal Opportunity clause will not be included in the following:

(1) Contracts and subcontracts not exceeding $10,000, other than Government bills of lading which are required to contain the clause regardless of amount. In determining the applicability of this exemption to any federally assisted construction contract, or subcontract thereunder, the amount of such contract or subcontract rather than the amount of the Federal financial assistance shall govern;

(2) Contracts and subcontracts not exceeding $100,000 for standard commercial supplies or raw materials; except that the Director, Office of Federal Contract Compliance may, whenever he finds it necessary or appropriate to achieve the purposes of the order, withdraw such exemption in whole or in part with regard to any specified articles or raw materials. (Supplies or materials shall not be procured in less than usual quantities to avoid applicability of the Equal Opportunity clause.);

(3) Contracts and subcontracts under which work is to be performed outside the United States and where no recruitment of workers within the United States is involved. (Where a contract involves performance of work or recruitment of workers both within and outside the United States, the Equal Opportunity clause will be included in the contract but will be applicable only to work and recruitment within the United States.);

(4) Contracts for the sale of Government property, where no appreciable amount of work is involved;

(5) Contracts and subcontracts for an indefinite quantity (including, without limitation, open-end contracts, requirement-type contracts, call-type contracts, and blanket purchase agreements), under the following circumstances:

(i) When such contract or subcontract is not to extend for more than 1 year and the contracting officer (or in the case of subcontractors, the prime contractor issuing the subcontract) determines that the amounts to be ordered are not reasonably expected to exceed $100,000 in the case of contracts or subcontracts for standard commercial supplies and raw materials, or $10,000 in the case of all other contracts and subcontracts; or

(ii) When such contract or subcontract is to extend for more than 1 year or continue indefinitely and the contracting officer (or in the case of subcontractors, the prime contractor issuing the subcontract) knows in advance that the amounts to be ordered in any year under such contract or subcontract will not exceed the appropriate dollar limitation set forth in subdivision (i) of this subparagraph.

When it has been determined pursuant to subparagraph (5) (i) or (ii) of this paragraph that a contract or subcontract for an indefinite quantity is exempt from the requirements of the Equal Opportunity clause, or that such requirements are not to be applicable in any 1 year, such determination shall be controlling even though the amounts actually ordered exceed the appropriate dollar limitation, unless the scope of the contract or subcontract is increased to exceed the dollar limitations set forth in subparagraph (5) (i) of this paragraph, in which case an appropriate determination shall be made for the remaining life of the contract or subcontract, if not otherwise exempt; and

(6) Contracts or subcontracts exempted pursuant to § 18–12.804.

(b) When the Equal Opportunity clause is included in an indefinite quantity contract or subcontract which is not to extend for more than 1 year, the clause shall apply even through the amounts actually ordered do not exceed the appropriate dollar limitation.

(c) When the Equal Opportunity clause is included in an indefinite quantity contract or subcontract which is to extend for more than 1 year, or continue indefinitely, the applicability of the

clause shall be determined by the contracting officer (or in the case of subcontractors, the prime contractor issuing the subcontract) at the time of award for the first year, based upon the amounts that are reasonably expected to be ordered during such year. In the event that the clause has been determined not applicable, at the time of award and the contract continues for more than 1 year, the contracting officer (or in the case of subcontractors, the prime contractor issuing the subcontract), shall determine whether the clause applies at the end of each year, based upon the amounts that are reasonably expected to be ordered during the succeeding year. Once the clause is determined to be applicable, the contract or subcontract shall continue for its duration to be subject to such clause, regardless of the amounts ordered, or reasonably expected to be ordered, in any succeeding year. When the clause is determined to be applicable, the contracting officer shall give written notice of such determination to the contractor. In the case of subcontracts, the appropriate determination and notification shall be made by the prime contractor or subcontractor issuing the subcontract.

§ 18–12.804 Request for exemptions.

(a) Section 60–1.4(b) of the rules and regulations of the Secretary of Labor (28 F.R. 5671) provides that the Director, Office of Federal Contract Compliance may, with the approval of the Secretary of Labor, exempt an agency from requiring the inclusion of any or all of the Equal Opportunity clause in any specific contract, or subcontract, when he deems that special circumstances in the national interest so require. The Director, Office of Federal Contract Compliance may also, with the approval of the Secretary of Labor, exempt groups or categories of contracts of the same type where he finds it impracticable to act upon each request individually or where group exemptions will contribute to convenience in the administration of the order.

(b) Where special circumstances indicate that the inclusion of the Equal Opportunity clause in any specific contract or subcontract would not be in the national interest, the contracting officer should submit a request through the NASA Contracts Compliance Officer to the Administrator for authority to omit or modify the clause. The Administrator may request an exemption from any or all of the requirements of the clause. Such requests will be directed to the Director of the Office of Federal Contract Compliance, who will rule upon the request. Prior to the submission of such requests, the Director of the NASA installation concerned, or his designee for the purpose, will, in appropriate cases, personally discuss with the head of the company concerned, the inclusion of the clause in the procurement under consideration.

(c) Whenever a bidder or prospective contractor, and any contractor or subcontractor holding a contract or subcontract containing the clause, believes that one or more plants or facilities which he owns, operates, or controls are in all respects separate and distinct from the plants, facilities, or other activities which will be utilized in the performance of the contract or subcontract, such bidder, prospective contractor, contractor or subcontractor may request an exemption from the requirements of the clause as to such separate and distinct plants, facilities, or other activities: *Provided* That such an exemption will not interfere with or impede the effectuation of the orders: *And provided further*, That in the absence of such an exemption, such separate and distinct plants, facilities, and other activities would be subject to the clause. The request for exemption shall be submitted to the Administrator through the contracting officer and the NASA Contracts Compliance Officer, in turn, for transmittal to the Director of the Office of Federal Contract Compliance. All such requests shall be forwarded to the Director of the Office of Federal Contract Compliance, but either the contracting officer, the NASA Contracts Compliance Officer, or the Administrator, may recommend against approval of the request.

§ 18–12.805 Interpretations.

In the application and enforcement of the provisions of Executive Order 11246, and of the rules and regulations of the Secretary of Labor, the following interpretations are applicable:

(a) If the Secretary of Labor should withdraw any exemption, such withdrawal shall not apply to any contracts or subcontracts entered into prior to the effective date of the withdrawal.

(b) Notwithstanding the inclusion in any contract or subcontract of the Equal Opportunity clause, the contractor or subcontractor shall be exempt from compliance therewith if the contract or subcontract containing such clause is exempt.

(c) The requirement to include the Equal Opportunity clause in federally assisted construction contracts set forth in § 18–12.802–2 is applicable even though the applicant is a State or a subdivision or agency thereof.

§ 18–12.806 Administration.

§ 18–12.806–1 General responsibilities and functions.

(a) *Administrator of NASA.* The Administrator of NASA is responsible for assuring NASA-wide execution of the NASA Contracts Equal Employment Opportunity Program.

(b) *NASA contracts compliance officer.* The Director of Procurement has been appointed the NASA Contracts Compliance Officer by the Administrator of NASA. The NASA Contracts Compliance Officer is responsible for overall policy coordination and general direction of the NASA Contracts Equal Employment Opportunity Program. In carrying out his responsibilities, the NASA Contracts Compliance Officer will:

(1) Maintain liaison with the Secretary of Labor;

(2) Represent NASA in relations with the Secretary of Labor and other Government agencies on Contracts Equal Employment Opportunity Program matters;

(3) Implement the rules, regulations, and orders of the Secretary of Labor pertaining to parts II and III of Executive Order 11246;

(4) Designate the Deputy Contracts Compliance Officers at NASA Headquarters and the field installations, and

(5) Administer and coordinate the Contracts Equal Employment Opportunity Program within NASA.

(c) *NASA deputy contracts compliance officer.* The NASA Deputy Contracts Compliance Officer is the principal Headquarters staff officer for Contracts Equal Employment Opportunity Program matters, assisting the NASA Contracts Compliance Officer in the administration and coordination of the Contracts Equal Employment Opportunity Program.

(d) *Head of NASA installation.* Each head of a NASA installation is responsible for maintaining the installation Contracts Equal Employment Opportunity Program, and carrying out the requirements of this Subpart 18–12.8.

(e) *Procurement officers.* Each procurement officer is responsible for supervising the operations of the Contracts Equal Employment Opportunity Program at the installation, and for nominating the installation deputy contracts compliance officer for approval by the NASA Contracts Compliance Officer.

(f) *Installation deputy contracts compliance officer.* Each installation deputy contracts compliance officer is responsible for implementation and coordination of the Contracts Equal Employment Opportunity Program at that installation. Other responsibilities include: reviewing the administration of contracts with respect to the Contracts Equal Employment Opportunity Program, developing statistical data and providing advice and assistance to contracting officers and to the procurement officer on Contracts Equal Employment Opportunity Program matters.

(g) *Predominant Interest Agency (PIA).* To avoid duplication of effort by Government contracting agencies and contractors, the Office of Federal Contract Compliance (OFCC) utilizes the predominant Interest Agency (PIA) method of assigning responsibility for assuring compliance with the Equal Opportunity clause by Government contractors. The agency holding the largest aggregate dollar value of contracts for a contractor or subcontractor at the time of filing the most recent Employer Information Report EEO–1 (Standard Form 100) is normally appointed PIA for that contractor or subcontractor. The PIA represents the Government in administration of the Equal Opportunity clause in all Government contracts with a particular contractor, even though that contractor may hold contracts with other Government agencies. Normally, the PIA

for a multidivision cooperation is PIA for the entire corporation. However, because of security reasons, contractor operations within a Government-owned facility, or other unusual circumstances, an agency may be assigned predominant interest responsibility for a single division or branch, a specific contractor location, or for the performance of a specific project or task in connection with the enforcement of the clause. The Department of Labor publishes an annual "PIA Assignment Listing" of all affected contractors. Copies of the listing may be obtained from the NASA Contracts Compliance Officer.

(h) *Predominant Interest Installation (PII).* When NASA is designated the PIA for a contractor or subcontractor facility, the NASA Contracts Compliance Officer will normally assign the predominant interest responsibility to a NASA installation according to the following criteria: (1) Proximity to the contractor's place of performance; (2) largest dollar volume of NASA contracts; and (3) other reasons of expediency. The installation assigned the predominant interest responsibility shall be designated as the Predominant Interest Installation (PII). The PII represents NASA in the execution of its PIA responsibilities. The NASA Contracts Compliance Officer will notify NASA installations of the contractor's or subcontractor's facilities over which they have been assigned PII responsibilities.

§ 18–12.806–2 Educational responsibility.

(a) The NASA Contracts Compliance Officer is responsible for assuring that installation deputy contracts compliance officers receive comprehensive orientation and continuing education relating to the Contracts Equal Employment Opportunity Program, as required by the order, rules, regulations, and relevant orders of the Secretary of Labor.

(b) The installation deputy contracts compliance officer will keep the installation director, the procurement officer, the contracting officers and other personnel concerned with procurement at the installation informed on all matters pertaining to equal employment opportunity.

(c) Contracting officers and other personnel concerned with procurement will publicize the equal opportunity policy and requirements to prospective contractors, and shall make available to contractors and subcontractors information concerning their contractual responsibilities under the Equal Opportunity clause. Installation deputy contracts compliance officers will assist contracting officers in these responsibilities when requested.

§ 18–12.806–3 Posting of nondiscrimination notices.

In the case of each contract containing the Equal Opportunity clause, the contracting officer will furnish to the contractor copies of the notice entitled "Equal Employment Opportunity is the Law," and Standard Form 38, October 1964, entitled "Notice of Nondiscrimination in Employment" for notification to labor unions or other organizations of workers. Procurement offices shall obtain these documents from Federal Supply Service Regional Stores Stock Depots. The GSA Stores Stock Catalog lists two "Equal Employment Opportunity is the Law" posters. One poster, GSA Stock Catalog Item No. 7690–926–8988, is printed in English. The other poster, GSA Stock Catalog Item No. 7690–926–9118, is printed in Spanish. Contracting officers will furnish contractors sufficient copies of the above documents for their subcontractors.

§ 18–12.806–4 Employer information report.

(a) *Employer information report EEO–1 (Standard Form 100).* The Joint Reporting Committee represents the OFCC, the Equal Employment Opportunity Commission and the Plans for Progress Program in administering the Employer Information Report EEO–1 reporting system. Employer Information Reports EEO–1 are required to be submitted by March 31 each year by all Government contractors, first-tier subcontractors and federally assisted construction contractors and subcontractors (at any tier) that perform construction work at the construction site; who are subject to Executive Order 11246, and in the payroll period used for reporting have 50 or more employees and hold a contract, subcontract or purchase order amounting to $50,000 or more. In addition, the contracting officer, the NASA Contracts Compliance Officer or the Secretary of Labor may require the submission of the Employer Information Report EEO–1 when necessary to determine a contractor's compliance status.

(b) *Furnishing employer information report forms to contractors.* Upon request, the contracting officer will furnish the prime contractor a sufficient number of the Employer Information Report EEO–1 (Standard Form 100) to satisfy his requirements and the requirements of his subcontractors in accordance with paragraph (a) of this section.

(c) *Submission of preaward information.* If a prospective contractor or subcontractor has previously participated in contracts or subcontracts subject to the Equal Opportunity clause, but did not file all required compliance reports, the contracting officer (or in the case of subcontractors, the prime contractor) shall require him to submit a Standard Form 100 as a condition of meeting the preaward qualifications (see § 18–12.802–4).

(d) *Reporting new or expanded contractor facilities.* The establishment of new facilities or major expansions of old facilities by a contractor may afford him an opportunity to bring about new personnel practices within the new environment. Information regarding a contractor's proposed facilities expansion normally is discussed during contract negotiations, contract administration or prenegotiation planning or programing. Program planners, contracting officers, and other NASA employees whose duties enable them to know of contractor plans for expansion of existing facilities or establishment of new facilities which will result in the addition of 25 or more permanent personnel to the contractor's payroll shall assure that the information is reported to the NASA Contracts Compliance Officer as soon as such information is known. The information shall be reported whether or not the expanded facilities are to be supported by Government funds, and for facilities of the contractor at locations not performing under Government contracts. When NASA is the PIA for the contractor planning the expansion, the NASA Contracts Compliance Officer shall advise the PII of such plans. The Deputy Contracts Compliance Officer at the PII shall set up a conference with the contractor for the purpose of discussing his plans for recruitment of personnel. The contractor shall be given advice and assistance in his plans which will result in personnel policies and procedures which espouse the principles of equal employment opportunities as contained in the orders. He will work with the contractor in establishing patterns of recruitment and personnel placement, based upon merit, which foster a vigorous and continuing application of the clause. He shall offer his assistance on a continuing basis in the implementation of such merit plans. An agreement should be worked out with the contractor whereby he makes progress reports to the Installation Deputy Contracts Compliance Officer. In turn, the Installation Deputy Contracts Compliance Officer shall furnish periodic reports to the NASA Contracts Compliance Officer. In those instances where NASA is not the PIA for the contractor planning the facility expansion, the NASA Contracts Compliance Officer shall assure that the information is reported to the Office of Federal Contract Compliance.

(e) *Plans for progress program.* The Secretary of Labor has established a procedure, known as Plans for Progress Program, which is designed to assist Government contractors in implementing the equal opportunity policy expressed in the order. Government contractors who volunteer to participate in the program enter into a written agreement with the Secretary of Labor to take certain specific steps which may be even more positive than required by the order. The program is also designed to assist companies confronted with practical problems in achieving the objectives of the order. NASA is responsible for furnishing advice and guidance to contractors for which it has been designated PIA. It is the responsibility of the NASA Contracts Compliance Officer to furnish each installation a listing of Plans for Progress Program companies for which NASA is PIA.

(f) *Statement by labor unions.* The contracting officer, at his discretion, or whenever directed by the Director of Procurement or by the Secretary of Labor, will, as a part of the bid or negotiation of a contract, direct a bidder, proposed contractor, or any proposed subcontractor to file a statement in writing (signed by an authorized officer or agent

of any labor union or other worker's representative with whom the bidder or prospective contractor or subcontractor deals or has reason to believe he will deal with in connection with performance of the proposed contract), together with supporting information, to the effect that the said labor union's or other workers' representative's practices and policies do not discriminate on the grounds of race, color, creed or national origin, and that the labor union or other worker's representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of the orders, or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract will be in accordance with the purposes and provisions of the orders. If the union or other worker's representative fails or refuses to execute such a statement, the bidder or proposed contractor or subcontratcor will so certify, and state what efforts have been made to obtain such a statement. Upon receipt of such certification, the contracting officer will notify the Director of the Office of Federal Contract Compliance of its receipt through the NASA Contracts Compliance Officer.

(g) *Matters not related to compliance reviews.* When the contracting officer is aware of an apparent violation of the order which does not result in or is not related to a compliance review or complaint investigation, the matter will be processed in the form of a report through the Installation Deputy Contracts Compliance Officer to the NASA Contracts Compliance Officer. The report will be submitted in duplicate and will contain a brief summary of the findings, including a statement of conclusions or recommendations regarding the contractor's or subcontractor's compliance with the order, and a statement of the disposition of the case, including any corrective action taken and any sanctions recommended or penalties imposed. Whenever corrective actions are not taken and it is not within the authority of the NASA installation to impose appropriate sanctions or penalties, the recommended sanctions or penalties will be included in the report.

(h) *Holding information in confidence.* Information submitted by contractors or subcontractors under the Contracts Equal Employment Opportunity Program will be held in confidence and shall not be used in connection with purposes not related to administration of the order or the furtherance of their purpose.

§ 18–12.806–5 Compliance reviews and investigations.

(a) *Policy.* It is NASA's policy that routine and special on-site compliance reviews and investigations of alleged violations of the Equal Opportunity clause will be conducted as necessary to ascertain the extent to which contractors and subcontractors are complying with the provisions of the clause and to furnish educational data in connection with the Contracts Equal Employment Opportunity Program. Under an agreement between the Department of Defense and NASA, the Department of Defense will conduct compliance reviews and investigations for NASA at contractor facilities for which NASA has been designated the PIA and at NASA prime and subcontractor construction sites.

(b) *Compliance reviews.* (1) A compliance review is a comprehensive on-site review of a contractor's employment and personnel practices and procedures in relation to his compliance with requirements of the Equal Opportunity clause of his Government contracts as imposed by Executive Order 11246.

(2) Compliance reviews are of the following types:

(i) Corporate review—A review of a contractor's total operations, including the corporate (partnership, company, organization) headquarters, and each separate office, plant operation, or facility location.

(ii) Facility review—A review of a contractor's operation at one plant, office, or location, whether or not the contractor has single or multiple facility locations.

(3) Each type of review is categorized as follows:

(i) Routine review—A review conducted as a part of routine contract administration, or according to a planned schedule.

(ii) Special review—A review conducted when special circumstances warrant an immediate or urgent review. Such special circumstances include requests by the OFCC, NASA, or other Government agencies in need of a preaward compliance review, or other review which cannot be satisfied by the planned schedule for routine reviews of a contractor's facility.

(c) *Complaint investigations.* A complaint investigation is a comprehensive investigation of a formal allegation that a contractor has discriminated in his employment practices, based on race, creed, color, or national origin.

(d) *Followup.* A followup is a revisit to a contractor's facility, generally within a period not less than 90 days, following a compliance review or a complaint investigation, to determine progress in corrective actions, such as elliminating deficiencies observed during the review and accomplishing planned affirmative actions.

(e) *Frequency of reviews and investigations*—(1) *Routine reviews.* Under the NASA–DOD agreement, the DOD is expected to conduct routine compliance reviews of NASA–PIA facilities at intervals which satisfy the standards established by the OFCC.

(2) *Special reviews.* The DOD is expected to conduct special compliance reviews of NASA–PIA contractor facilities, NASA contractor facilities not on the PIA Assignment Listing, and construction site facilities of NASA construction contractors and subcontractors when requested by NASA.

(3) *Complaint investigations.* The DOD is expected to conduct investigations of complaints of discrimination or other violations of the Equal Opportunity clause by NASA–PIA contractors when requested by NASA.

(4) *Followup of investigations or compliance reviews.* The DOD is expected to conduct a followup of compliance reviews and investigations as necessary to assure that corrective and planned constructive measures are taken, or whenever requested by NASA to obtain the latest compliance posture of a contractor's facility.

(f) *NASA Headquarters file of reports of reviews and investigations.* The NASA Contracts Compliance Officer shall maintain a file of the reports of DOD compliance reviews, followup visits and complaint investigations for reference and to satisfy requests for information from NASA installations and other Government agencies. Copies of these reports will be furnished by NASA installations only upon request, except where it is considered that the contracting officers should be made aware of the lack of compliance effort by a particular contractor.

(g) *Requests for compliance reviews and investigations.* NASA Installations may request compliance reviews for use in pre-award determinations, contract administration considerations, or for other reasons related to compliance or noncompliance with the Equal Opportunity clause. Requests for compliance reviews of contractors not on the "PIA Assignment Listing," NASA–PIA contractors, and NASA construction contractors or subcontractors will be forwarded to the Procurement Office, NASA Headquarters, Attention: NASA Contracts Compliance Officer (Code KD). Such requests will include the contractor's name and location (or locations), the type and category of compliance review desired, a brief description of the basis for the request, the date by which the review is needed, and the period to be covered by the review. Upon receipt of the request, the NASA Contracts Compliance Officer will furnish a copy of the compliance review report, if a recent report is on record in NASA Headquarters. If a recent report is not available, the DOD will be requested to conduct a compliance review pursuant to the NASA–DOD agreement, and the requesting installation notified accordingly.

(h) *NASA construction contractor and subcontractor facilities report.* To assist DOD in conducting routine compliance reviews of contractor and subcontractor construction sites under the NASA–DOD agreement, DOD must be furnished a list of all NASA prime contractors holding a construction contract of $100,000 or more and first-tier subcontractors holding subcontracts of $50,000 or more. Accordingly, all NASA field installations will submit the following information to the NASA Contracts Compliance Officer within 10 days after award of any NASA contsruction contract of $100,000 or more and within 20 days after award of any first-tier subcontract for construction work of $50,000 or more:

(1) Name and home office address of prime (or sub) contractor;

(2) Prime contract (or subcontract) number;

(3) Dollar amount of contract (or subcontract);

(4) Location and description of project, including a brief explanation of the work involved (provide prime contractor's name and contract number, where a subcontract is being reported);

(5) Estimated or actual starting date; and

(6) Estimated or scheduled completion date.

(i) *Complaints and alleged violations.* (1) Any applicant for employment or any employee who believes himself aggrieved by virtue of a violation of the order by a contractor or subcontractor, may file a complaint of the alleged discrimination. Under rules of the OFCC this complaint may be filed with the Government contracting agency or with the OFCC. When such complaint is filed with a NASA installation, the following actions will be taken within 4 working days after receipt of the complaint:

(i) If NASA is PIA for the contractor, the complaint will be forwarded to the NASA Contracts Compliance Officer, or

(ii) If NASA is not the PIA for the contractor, the complaint will be transferred to the PIA for appropriate action.

(2) The NASA Contracts Compliance Officer will take the following actions with regard to complaints against NASA PIA contractors which are forwarded to him by NASA installations or filed directly with him by the complainants:

(i) A copy of the report will be furnished to the OFCC; and

(ii) The DOD will be requested to investigate the allegation under the NASA–DOD agreement.

(j) *Written reports of reviews, investigations and follow-ups.* (1) Under the NASA/DOD agreement, the DOD will furnish a written report of each compliance review, complaint investigation, or followup review to the NASA Contracts Compliance Officer. If he concurs with the findings and recommendations of the report, the NASA Contracts Compliance Officer will forward a copy of the report, when required by rules and regulations of the Secretary of Labor, to the OFCC, indicating his concurrence.

(2) When a DOD report is considered deficient the deficiencies will be identified and the report will be returned to DOD, requesting (i) correction of the deficiencies, or (ii) if necessary, that a revisit be made to the contractor's facility to verify or obtain additional information pertinent to the review or investigation.

§ 18–12.806–6 Preaward procedures to insure compliance with equal employment opportunity requirements.

(a) *General.* In furtherance of the policy expressed in § 18–12.801, contracts and subcontracts shall be awarded only to those contractors and subcontractors complying with equal employment opportunity provisions of Executive Order 11246 and the rules and regulations of the Department of Labor as implemented by this Subpart 18–12.8.

(b) *Formally advertised supply contracts.* Before the award of a formally advertised supply contract of $1 million or more which is not exempt pursuant to § 18–12.803 or § 18–12.804, the contracting officer shall determine, in accordance with paragraph (c) of this section, that the prospective contractor and each of his known first-tier subcontractors where the amount of the subcontract is $1 million or more, are able to comply with the Equal Opportunity clause.

(c) *Preaward reviews.* (1) Where NASA is the designated PIA, or a PIA assignment has not been made, the Contracting officer shall request a special compliance review from the NASA Contracts Compliance Officer pursuant to § 18–12.805–5(g), specifying that the request is made in accordance with the OFCC Order of May 3, 1966, entitled "Pre-Award Procedure to Insure Compliance by Government Contractors with Equal Employment Opportunity Requirements." The request shall include the anticipated date of contract award. In the absence of a compliance review conducted within 6 months prior to the anticipated date of contract award, the NASA Contracts Compliance Officer shall initiate action to obtain a compliance review as specified in § 18–12.806–5(g).

(2) Where another Government agency is PIA for the proposed contractor or subcontractor, the contracting officer shall advise the PIA of the anticipated date of contract award and request a copy of the report of any compliance review of that contractor or subcontractor, conducted within 6 months prior to the anticipated date of contract award. In the absence of such a report, the PIA will be requested to conduct a special compliance review and forward a copy of the report of its findings within thirty (30) days of the request, in accordance with the OFCC Order of May 3, 1966.

(3) The preaward compliance review should include a comprehensive examination of the employer's employment policies and practices, with special attention given to those relating to recruitment, placement, promotion and other areas of potential discrimination.

(4) Where the prospective contractor or subcontractor is found to be able to comply with the Equal Opportunity clause pursuant to paragraph (b) of this section, two copies of the report of the review, the contracting officer's findings, his determination and any other pertinent material shall be forwarded to the NASA Contracts Compliance Officer within fifteen (15) days after the award of the contract.

(5) If a prospective contractor or subcontractor is found to be unable to comply with the Equal Opportunity clause pursuant to paragraph (b) of this section, the contracting officer shall give immediate written notice to the prospective contractor or subcontractor of his findings, allowing the prospective contractor or subcontractor a reasonable time in which to submit a written statement of the reasons he considers that he is eligible for award of the contract, notwithstanding the initial determination. If such statement is submitted within the reasonable time specified, two copies of the statement, the contracting officer's response and the documents referred to in subparagraph (4) of this paragraph, shall be forwarded to the NASA Contracts Compliance Officer for decision prior to award of the contract. The contracting officer shall be given a written notice of the NASA Contracts Compliance Officer's decision.

(d) *Exemptions from pre-award review requirements*—(1) *General.* The Administrator of NASA may exempt any contract award from the notice requirement of § 18–12.802–4(c) and the preaward review and determination requirements of paragraphs (b) and (c) of this section, upon his written determination that award of a contract is essential to the national security and that its award without following such procedures is necessary to the national security.

(2) *Requests for exemptions.* Requests for exemptions shall be accompanied by complete details of the impact upon the national security if the award is delayed or is not made to the proposed contractor. Such requests shall be submitted to the Administrator through the NASA Contracts Compliance Officer by the head of the installation.

§ 18–12.806–7 Sanctions.

(a) *General.* When a compliance review or complaint investigation indicates an apparent violation of the clause, the installation concerned will make every effort to resolve the matter by informal means. This will include, where appropriate, establishing a program for future compliance and/or action to correct any apparent violations of the clause. If subsequent to such effort at conciliation, solutions to the problem cannot be found, the report of compliance review or investigation containing recommendations for sanctions, if appropriate, will be submitted to the NASA Contracts Compliance Officer. The report shall identify the highest ranking official of the company with whom conciliation has been undertaken. If the NASA Contracts Compliance Officer concurs, he shall advise the official of the company that NASA proposes to impose or recommend the imposition of sanctions because of the violations. If a contractor or subcontractor, without a hearing, has complied with the recommendations or orders of the PIA, a NASA installation, or the Administrator, but believes such recommendations or orders to be erroneous, he shall, upon filing a request therefor within 10 days after such compliance, be afforded an opportunity for a hearing and review of the alleged erroneous action under § 18–12.808.

(b) *Termination.* (1) NASA contracts or subcontracts will not be terminated in whole or in part for failure to comply with the provisions of the clause without the prior approval of the Administrator. Whenever it is proposed to terminate a

NASA contract or subcontract, the contractor or subcontractor will be notified in writing of such proposed action and will be given 10 days (or such longer period as the Administrator, with the approval of the Secretary of Labor, may consider appropriate) from the date of receipt of the notice either to comply with the provisions of the contract or to submit a request for a hearing under § 18–12.808.

(2) If the contract or subcontract recommended for termination is not a NASA contract, the recommendation will, upon concurrences of the NASA Contracts Compliance Officer, be referred to the contracting agency, together with a copy of the compliance review, investigation, or other summary of findings upon which the case is based. The contracting agency will be requested to advise NASA within 5 workdays after receipt of the recommendations of the action it plans to take. The NASA Contracts Compliance Officer will advise the Secretary of Labor of the action contemplated by the contracting agency, furnishing him with a copy of the findings and recommendations in the case.

(c) *Debarment and suspension.* (1) NASA will not debar or suspend a contractor or subcontractor for failure to comply with the Equal Opportunity clause, except upon approval of the Administrator and the Secretary of Labor. In every case where debarment or suspension is being proposed, the contractor or subcontractor will be notified in writing of the proposal and given 10 days from the date of receipt of such notice in which to mail a request for hearing under § 18–12.808, or for a hearing before the Secretary of Labor. (See §§ 18–1.604–2(c) and 18–1.605–3(b).)

(2) If the NASA Contracts Compliance Officer concurs with the recommendations of the installation for debarment or suspension of a non-NASA contractor or subcontractor, the procedure in paragraph (b) of this section will be followed.

(d) *Criminal prosecution.* An installation may recommend action by the Department of Justice where the compliance review or investigation reveals substantial or material violation or threat of contractual violations or if there is evidence that false information has been furnished during the compliance reviews, investigations or contract management relationships with contractors or subcontractors. Any recommendations for criminal prosecution will be made to the NASA Contracts Compliance Officer. No recommendation for prosecution will be made to the Department of Justice except by the NASA Contracts Compliance Officer, and only after having obtained the advice of the Office General Counsel or his authorized representative. Also, no recommendation for prosecution will be made to the Department of Justice until the expiration of 10 days (unless a longer period is fixed by the NASA Contracts Compliance Officer with the approval of the Secretary of Labor) from the date of mailing of the notice of such proposed referral to the contractor or subcontractor involved, affording him an opportunity to comply with the provisions of the order. If a recommendation for referral to the Department of Justice involves a contract or subcontract of an agency other than NASA, the procedures in paragraph (b) of this section will be followed.

§ 18–12.807 Construction contracts in designated geographic areas.

(a) The OFCC has established a program which designates certain geographic areas that require specific actions by Government contracting agencies and construction contractors and subcontractors in the field of equal employment opportunity. The specific actions required within each designated area are set forth in memoranda from the OFCC. Although the details may vary, such memoranda generally prescribe the following special actions concerning construction contracts within the area concerned:

(1) That preaward compliance examinations be performed for all proposed construction contracts exceeding a stated amount (usually $500,000);

(2) That each proposed contractor be required to submit, on behalf of himself and his prospective major subcontractors, written affirmative action programs which will assure that there is minority group representation in all phases of the work, and furnish the Labor Department Area Coordinator a copy of each program;

(3) That the Labor Department Area Coordinator be provided a copy of each solicitation for construction work where the contract amount is anticipated to exceed a stated amount;

(4) That a preaward conference be held with each construction contractor and principal subcontractor where the construction cost exceeds a stated amount, and the Labor Department Area Coordinator and OFCC be furnished an advance notice of each scheduled preaward conference; and

(5) That the above requirements, as applicable, be applied when making reviews of existing construction projects in the area concerned.

(b) San Francisco, Calif.; Cleveland, Ohio; and St. Louis, Mo., have been designated as areas requiring the special actions as outlined above. Instructions and memoranda governing areas which subsequently may be designated by OFCC will be furnished NASA installations by the NASA Contracts Compliance Officer. NASA installations awarding or administering construction contracts, in OFCC designated areas will comply with the provisions of the applicable OFCC memoranda and implementing instructions. Contracting officers will insure that solicitations contain provisons relating to the required preaward conferences and affirmative action programs. NASA installations requesting preaward compliance reviews will follow the procedures set forth in § 18–12.806–5.

§ 18–12.808 Hearings.

§ 18–12.808–1 General.

NASA hearings may be held when approved by the NASA Contracts Compliance Officer if an apparent act of discrimination, in violation of the contractual provisions as shown by compliance reviews or investigations, is not resolved informally by conference, conciliation, mediation, persuasion or other means. Hearings will be held when:

(a) A contractor or subcontractor who has complied with the recommendations or orders of the installation, but believes such recommendations or orders to be erroneous, and requests a hearing thereon; or

(b) The NASA Contracts Compliance Officer proposes to debar or suspend a contractor or subcontractor, or to terminate a contract or subcontract and the contractor or subcontractor requests a hearing.

§ 18–12.808–2 Delegation of hearing authority and place of hearing.

(a) The NASA Contracts Compliance Officer may delegate in writing to any individual, individuals or board (hereinafter referred to as the hearing authority) all the authority delegated to him by the Administrator, to give notice of hearings, to conduct hearings, and to make findings of fact and recommendations with respect to determining whether a contractor or subcontractor is or has been in violation of the contract clause. A separate hearing authority will be established for each hearing and will remain established until completion of the hearing and a report of findings and recommendations has been made to the Administrator. Each hearing authority may adopt its own rules of procedure provided they are not inconsistent with this Subpart 18–12.8. The place of the hearing will be established in the letter or document designating the hearing authority. The place of hearing will be one which is considered convenient to the parties involved. Normally, it will be established as an installation meeting the convenience criteria.

(b) If the hearing authority is delegated to a board, the board will be composed normally of not more than five members and one nonvoting recorder. The members will include (1) one member experienced in contract management; (2) one member trained in law, and (3) such other members as may be deemed necessary for the particular hearing. The letter or document establishing the board will designate a chairman, and will set forth his responsibilities and the responsibilities of other members of the board.

§ 18–12.808–3 Notices and contents.

(a) Whenever a hearing is to be held, the hearing authority shall cause a written notice to be served upon the contractor or subcontractor in the manner hereinafter provided. The notice shall include the following items:

(1) A statement of the time, place, and purpose of the hearing, and the authority and jurisdiction under which it will be held. The statement as to purpose need only identify the contract clause, the contracts or subcontracts involved, and the ultimate facts to be determined. The time of the hearing shall not be less than 10 calendar days after service of the notice.

(2) Brief allegations in reasonable detail setting forth the circumstances surrounding the act or acts of discrimination, the name(s) of the complainant(s), and the approximate date and place of each alleged discriminatory act. Such allegations need be only sufficient to apprise the contractor or subcontractor reasonably of the issues involved in the hearing.

(3) A request that the contractor or subcontractor answer in writing, the allegations of the notice, including in his answer such facts or arguments as he may wish, and that he attend the hearings to adduce such evidence with respect to the alleged discrimination as he may desire.

(b) Service shall be made by mailing by registered or certified mail, return receipt requested, a copy of the notice to the contractor or subcontractor.

§ 18–12.808–4 Continuances and delays.

The authority to grant continuances or to adjourn the hearing shall rest with the person presiding at the hearing. Continuances will only be allowed for the most compelling reasons.

§ 18–12.808–5 Parties.

The parties to the hearing will be the contractor or subcontractor concerned with the Government.

§ 18–12.808–6 Representation and hearing assistants.

The parties may be represented at the hearing and proceedings incident thereto by legal counsel. Upon the appearance of record of legal counsel of the contractor and subcontractor in the proceedings, service of papers as may thereafter be required may be made upon such legal counsel. The NASA Contracts Compliance Officer will make the necessary physical arrangements for the hearing and provide such administrative services, including a reporter, secretary or notary, as may be required. NASA Headquarters offices and field installations shall detail such personnel and furnish such other assistance for the conduct of the hearing as is requested by the NASA Contracts Compliance Officer.

§ 18–12.808–7 Transcript.

Testimony and arguments shall be reported verbatim. The reporter or secretary shall make available to the contractor or subcontractor and to the Government transcripts of the proceedings, including all testimony and copies of all documentary exhibits upon the payment of the reasonable costs thereof.

§ 18–12.808–8 Conduct of hearings.

Hearings will be as informal as may be reasonably appropriate under the circumstances. Evidence and testimony not ordinarily admissible under legal rules of evidence may be received subject to the discretion of the person presiding at the hearing. Immaterial, irrelevant, or unduly repetitious evidence shall be excluded. The parties may stipulate as to any facts or testimony. The testimony of witnesses shall be under oath and witnesses shall be subject to cross-examination. The individual presiding at the hearing shall make such rulings with respect to the conduct of hearings as circumstances may require to insure the orderly and expeditious presentation of evidence in a manner fair to the parties and consistent with this Subpart 18–12.8 and requirements of due process of law.

§ 18–12.808–9 Depositions.

Following service of the notice of hearing, depositions may be taken as herein provided, and placed in evidence whenever the ends of justice will be served thereby.

(a) *Notice to take.* When either party desires to take a deposition, unless the parties stipulate as to the time when, and place where, the deposition is to be taken, the name of the officer before whom it is to be taken, and the names and addresses of the witnesses, the moving party shall give to the opposite party at least 10 days notice of the time when and the place where such deposition will be taken; the name and address and official title of the officer before whom it is proposed to take the deposition, and the names of the witnesses. A deposition may be taken either upon written interrogatories or upon oral examination, as may be specified in the notice. If the deposition is to be taken upon written interrogatories, copies thereof must accompany the notice to take depositions; if the opposite party desires to submit cross-interrogatories, written cross-interrogatories should be served upon the party giving the notice within 5 workdays from the receipt of the notice to take deposition. Notices may be served upon the contractor or subcontractor as provided in § 18–12.808–3 or upon his legal counsel of record. Service upon the Government may be made upon the person signing the notice of hearing or the Government representative of record. If service is made by mail, the mail shall be registered or certified and service will be complete upon mailing.

(b) *Taking depositions.* Depositions may be taken before and authenticated by any officer, authorized by the laws of the United States or by the laws of the place where the deposition is taken, to administer oaths. Witnesses shall be under oath and shall be subject to cross-examination as at the hearing. Any objections to questions shall be noted in the deposition and reserved for determination at the hearing. Each deposition shall show the caption of the proceeding, the place and date of taking, the names of the witnesses, and the party by whom called. The officer taking a deposition shall enclose the original deposition and exhibits, in a sealed packet, with postage or other transportation prepaid, and forward the same to the hearing authority.

(c) *Use of deposition.* Testimony taken by deposition will not be considered until offered in whole or in part and received in evidence. A deposition taken by one party may be offered by the opposite party.

§ 18–12.808–10 Absence of parties.

If the contractor or subcontractor fails or refuses to appear, the hearing shall proceed upon such evidence as the Government may offer. The unexcused absence of any party shall not be occasion for delay of the hearing.

§ 18–12.808–11 Argument.

Within the discretion of the individual presiding at the hearing, limited oral argument may be presented by the parties upon the completion of the hearing.

§ 18–12.808–12 Findings and recommendations.

As soon as practicable after completion of the hearing, the hearing authority shall make written findings and recommendations with respect to all material issues, and shall submit such findings and recommendations to the Administrator, through the NASA Contracts Compliance Officer, for such action as the Administrator deems appropriate. Reasons for the findings will be included at such length as may be appropriate.

§ 18–12.809 Certificates of merit.

(a) A U.S. Government Certificate of Merit may be awarded by the Secretary of Labor:

(1) On his own initiative, to employers or employee organizations which are or may hereafter be engaged in work under Government contracts, if he is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the employee organization conform to the purpose and provisions of the order; or

(2) Upon the recommendation of the Administrator. The recommendation should include a statement in sufficient detail to inform the Secretary of Labor of the basis for the recommended award. Whenever an employer or employee organization has practiced policies and procedures conforming to the purposes and provisions of the order, NASA installations may make recommendations through the NASA Contracts Compliance Officer that such employer or employee organizations be awarded a Government Certificate of Merit.

(b) The Secretary of Labor may at any time review the continued entitlement of any employer or employee organization to a Certificate of Merit, and may suspend or revoke the certificate.

§ 18–12.810 Elimination of segregated facilities.

(a) *Policy.* It is the Government's policy (as set forth in Executive Order 11246, dated September 24, 1965) that no person shall be discriminated against because of his race, creed, color, or national origin in any of the conditions of his employment with a Government contractor

or subcontractor. To ensure that this policy is followed, the Secretary of Labor, by Order No. 169, dated May 9, 1967 (32 F.R. 7439; 41 CFR Part 60–2), placed upon Government contractors an obligation not only to eliminate any written or oral policies and practices they may have which require segregation on a basis of race, creed, color, or national origin; but also to ensure that facilities are provided for their employees in a manner that such segregation cannot result. This obligation also extends to ensuring that their employees are not assigned to perform duties at any location under the employer's control where the facilities are segregated. Each bidder, offeror, and applicant not exempt under § 18–12.803 and § 18–12.804, shall be required to submit, as part of his bid or offer, the certification set forth in § 18–12.802–4(c).

(b) *Certification.* The following clause shall be included in all contracts and agreements with applicants for federally assisted construction contracts, which include the Equal Opportunity clause in § 18–12.802:

CERTIFICATION OF NONSEGREGATED FACILITIES BY SUBCONTRACTORS AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTORS (MAY 1968)

Prior to the award of any subcontract, or federally assisted construction contract or subcontract, required to contain the Equal Opportunity clause contained in this contract, the Contractor shall obtain a "Certification of Nonsegregated Facilities" in the same form and content as he was required to submit to the Government. This certification may be required by the Contractor, either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

(c) *Sanctions and hearings.* The application of sanctions and the conduct of hearings with respect to maintenance of segregated facilities shall be in accordance with § 18–12.806–7 and § 18–12.808 respectively, except that the OFCC must be notified before notice of proposed termination or cancellation is given to a contractor or subcontractor under § 18–12.806–7(b), and the approval of the OFCC must be obtained before convening a hearing under § 18–12.808. The application of sanctions and conduct of hearings will be administered by the NASA Contracts Compliance Officer.

§ 18–12.811 Advising NASA contracts compliance officer of potential program delays arising out of contracts equal employment opportunity program actions.

(a) It is NASA policy to enforce the provisions of Executive Order 11246 and orders of the Secretary of Labor issued pursuant thereto as they apply to Government contracts, and to cooperate with the OFCC in such enforcement, including, where appropriate, the withholding of an award or imposition of sanctions set forth in § 18–12.806–7 resulting from noncompliance with those orders. However, should such action seriously and adversely affect the NASA mission, e.g., when there is evidence that OFCC action would result in unacceptable program delays or major additional costs, the NASA Contracts Compliance Officer should be notified immediately so that he may assist in resolving the matter. The notification to the NASA Contracts Compliance Officer should include the following:

(1) Contract Summary.

(i) Contract number, or RFP/IFB identfiication, as applicable;

(ii) Contractor(s) involved;

(iii) Dollar value of contract or proposed award;

(iv) If a preaward action, the dollar spread between low bidders;

(v) Date bid or offer expires;

(vi) Time constraints imposed by program schedule;

(vii) The space system, equipment, or construction project involved; and

(viii) Impact that delay in contract placement or imposition of sanctions would have on the program, including facts bearing upon the seriousness of impact.

(2) The exact nature of the Equal Employment Opportunity problem including information as to:

(i) Those portions of the contractor's affirmative action program which are considered inadequate by NASA and/or the OFCC field personnel;

(ii) Difficulties involved in hiring minority people;

(iii) Specific actions taken, or to be taken, by the OFCC in withholding an award or imposing sanction; and

(iv) Action taken to date by installation management to resolve the matter.

Subpart 18–12.9—Nondiscrimination Because of Age

§ 18–12.901 Policy regarding nondiscrimination because of age.

It is the policy of the Executive Branch of the Government that: (a) Contractors and subcontractors engaged in the performance of Federal contracts shall not, in connection with the employment, advancement, or discharge of employees or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement; and (b) Contractors and subcontractors, or persons acting on their behalf, shall not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for such employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement. This policy is stated in Executive Order No. 11141 dated February 12, 1964. Any complaint regarding a concern's compliance with the foregoing policy should be brought to the attention of the concern by a communication (in writing, if appropriate) which states the policy, indicates that the concern's compliance with the policy has been questioned, and requests that the concern take any appropriate steps which may be necessary to comply with the policy.

Subpart 18–12.10—Service Contract Act of 1965

§ 18–12.1000 Scope of subpart.

This subpart sets forth policies and procedures for carrying out the provisions of the Service Contract Act of 1965 (Public Law 89–286, 79 Stat. 1034, 41 U.S.C. 351); the provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.), as they pertain to service contracts; the implementing regulations prescribed in 29 CFR Parts 4 and 1516; and instructions issued by the Secretary of Labor.

§ 18–12.1001 Statutory requirements.

The Service Contract Act of 1965, referred to in this subpart as the "Act", embraces two general requirements with respect to service contracts entered into by Federal agencies:

(a) Regardless of the contract amount, no contractor or subcontractor holding a Federal service contract shall pay any of his employees engaged in such work less than the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.); and

(b) Federal service contracts in excess of $2,500 shall contain the provisions required by the Act with respect to such matters as minimum wages, including fringe benefits, to be paid the various classes of service employees engaged in the performance of the contract, safe and sanitary working conditions, and notification to employees of the compensation required under the Act.

§ 18–12.1002 Applicability.

§ 18–12.1002–1 General.

Subject to statutory exemptions or administrative exemptions by the Secretary of Labor under section 4(b) of the Act;

(a) The requirement set forth in § 18–12.1001(a) applies to any contract with the Federal Government, the principal purpose of which is to furnish services through the use of service employees (as defined in § 18–12.1002–3); and

(b) The requirement set forth in § 18–12.1001(b) applies to every contract (and any bid specification therefor) entered into by the Federal Government in excess of $2,500 whether negotiated or advertised, the principal purpose of which is to furnish services through the use of service employees (as defined in § 18–12.1002–3).

§ 18–12.1002–2 Geographical coverage of the Act.

(a) Inside the United States, the Act is applicable to all service contracts irrespective of amount.

(b) Outside the United States, the Act is applicable to service contracts under $2,500. However, the regulations of the Secretary of Labor (see 29 CFR 4.6(m) and 4.7) have exempted such contracts from the provisions of the Act.

(c) When used in a geographical sense, the term "United States" is defined in the Act to include any State

of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, Johnston Island, but shall not include any other territory under the jurisdiction of the United States or any U.S. base or possession within a foreign country.

§ 18–12.1002–3 Service employee.

(a) *Definition of service employees.* As defined in the Act, the term "service employee" means guards, watchmen, and any person engaged in a recognized trade or craft, or other skilled mechanical craft, or in unskilled, semiskilled, or skilled manual labor occupations; and any other employee including a foreman or supervisor in a position having trade, craft, or laboring experience as the paramount requirement; and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(b) *Types of covered service contracts illustrated.* Types of contracts, the principal purpose of which is to furnish services through the use of service employees, are too numerous and varied to permit an exhaustive listing. The following list is illustrative, however, of the types of services called for by such contracts that have been found to come within the coverage of the Act.

(1) Aerial spraying.
(2) Aerial reconnaissance for fire detection.
(3) Ambulance service.
(4) Cafeteria and food service.
(5) Chemical testing and analysis.
(6) Clothing alteration and repair.
(7) Custodial and janitorial services.
(8) Drafting and illustrating.
(9) Electronic equipment maintenance and operation.
(10) Flight training.
(11) Forest firefighting.
(12) Geological field surveys.
(13) Grounds maintenance.
(14) Guard or watchman service.
(15) Landscaping (other than part of construction).
(16) Laundry and dry cleaning.
(17) Linen supply service.
(18) Lodging and meals.
(19) Mail hauling.
(20) Maintenance and repair of motor equipment.
(21) Maintenance and repair of office equipment.
(22) Miscellaneous housekeeping.
(23) Mortuary services.
(24) Motor pool operation.
(25) Packing and crating.
(26) Parking services.
(27) Snow removal.
(28) Stenographic reporting.
(29) Support services at installations.
(30) Taxicab services.
(31) Tire and tube repairs.
(32) Transporting property or personnel.
(33) Trash and garbage removal.
(34) Warehousing or storage.

§ 18–12.1002–50 Statutory exemptions.

Each of the following transactions is exempted from the Service Contract Act of 1965 by the terms thereof:

(a) *Contracts for construction or repair.* Any contract of the United States for construction, alteration, and/or repair, including painting and decorating of public buildings or public works;

(b) *Work under the Walsh-Healey Public Contracts Act.* Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036);

(c) *Contracts for the carriage of freight or personnel.* Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect;

(d) *Contracts for communication services.* Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;

(e) *Contracts for public utility services.* Any contract for public utility services, including electric light and power, water, steam, and gas;

(f) *Employment contracts.* Any employment contract providing for direct services to a Federal agency by an individual or individuals; and

(g) *Operation of postal contract stations.* Any contract with the Post Office Department, the principal purpose of which is the operation of postal contract stations.

§ 18–12.1002–51 Administrative limitations, variations, tolerances, and exemptions.

The Secretary of Labor may, under the Act, provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of the Act as he may find necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.

§ 18–12.1003 Department of Labor regulations.

Pursuant to the Service Contract Act of 1965, the Department of Labor has issued Parts 4 and 1516, and Part 6, Title 29, Code of Federal Regulations, providing for the administration and enforcement of the Act. The regulations include coverage of the following matters relating to the requirements of the Act:

(a) Service contract labor standards provisions and procedures (Subpart A, Part 4 (29 CFR));

(b) Equivalents of determined fringe benefits (Subpart B, Part 4 (29 CFR));

(c) Application of the Service Contract Act of 1965 (rulings and interpretations) (Subpart C, Part 4 (29 CFR));

(d) Safe and sanitary working conditions (Part 1515 of Title 29, CFR); and

(e) Rules of practice for administrative proceedings enforcing service contract labor standards (Part 6 of Title 29, CFR).

§ 18–12.1004 Contract clauses.

(a) *Clause for Federal service contracts in excess of $2,500.* Procurement offices (except as provided in § 18–12.1002–50 and § 18–12.1002–51) shall include the following clause in all invitations for bids and requests for proposals which may result in contracts in excess of $2,500 and in contracts in excess of $2,500 (including any transaction for an indefinite amount unless the procurement office has knowledge that it will not exceed $2,500) where the principal purpose of the contract is to furnish services in the United States through the use of service employees:

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This contract, to the extent that it is of the character to which the Service Contract Act of 1965 (Public Law 89-286, 41 U.S.C. 351–357) applies, is subject to the following provisions and to all other applicable provisions of the Act and the regulations of the Secretary of Labor thereunder (29 CFR Parts 4 and 1516).

(a) *Compensation.* Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wage and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or his authorized representative, as specified in any attachment to this contract. If there is such an attachment, any class of service employees which is not listed therein, but which is to be employed under this contract, shall be classified by the Contractor so as to provide a reasonable relationship between such classifications and those listed in the attachment, and shall be paid such monetary wages and furnished such fringe benefits as are determined by agreement of the interested parties, who shall be deemed to be the contracting agency, the Contractor, and the employees who will perform on the contract or their representatives. If the interested parties do not agree on a classification or reclassification which is, in fact, conformable, the Contracting Officer shall submit the question, together with his recommendation, to the Administrator of the Wage and Hour and Public Contracts Divisions, Department of Labor, or his authorized representative for final determination. Failure to pay such employees the compensation agreed upon by the interested parties or finally determined by the Administrator or his authorized representative shall be violation of this contract. No employee engaged in performing work on this contract shall in any event be paid less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended ($1.60 per hour).

(b) *Obligation to furnish fringe benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformable thereto by furnishing any equivalent combinations of fringe benefits, or by making equivalent or differential payments in cash, pursuant to applicable rules of the Administrator of the Wage and Hour and Public Contracts Division, Department of Labor (Subpart B of Part 4 (29 CFR)).

(c) *Minimum wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any of his employees performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938 ($1.60 per hour). However, in cases where section 6(e)(2) of the Fair Labor Standards Act of 1938 is applicable, the rates specified therein will apply. Nothing in this provision shall relieve the Contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(d) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post a notice of such wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

(e) *Safe and sanitary working conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services. Except insofar as a noncompliance can be justified as provided in section 1516.1(c) of Title 29 CFR, this will require compliance with the applicable standards, specifications, and codes developed and published by the U.S. Department of Labor, any other agency of the United States, and any nationally recognized professional organization such as, without limitation, the following:

National Bureau of Standards, U.S. Department of Commerce.
Public Health Service, U.S. Department of Health, Education, and Welfare.
Bureau of Mines, U.S. Department of the Interior.
American National Standards Institute, Inc. (United States of America Standards Institute).
National Fire Protection Association.
American Society of Mechanical Engineers.
American Society for Testing and Materials.
American Conference of Governmental Industrial Hygienists.

Information as to the latest standards, specifications, and codes applicable to the contract is available at the office of the Director of the Bureau of Labor Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Washington, DC 20212, or at any of the regional offices of the Bureau of Labor Standards as follows:

(1) North Atlantic Region, 341 Ninth Avenue, Room 920, New York, NY 10001 (Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont, New Jersey, and Puerto Rico).

(2) Middle Atlantic Region, Room 410, Penn Square Building, Juniper and Filbert Streets, Philadelphia, PA 19107 (Delaware, District of Columbia, Maryland, North Carolina, Pennsylvania, Virginia, and West Virginia).

(3) South Atlantic Region, 1371 Peachtree Street NE., Suite 723, Atlanta, GA 30309 (Alabama, Florida, Georgia, Mississippi, South Carolina, and Tennessee).

(4) Great Lakes Region, 848 Federal Office Building, 219 South Dearborn Street, Chicago, IL 60604 (Illinois, Indiana, Kentucky, Michigan, Minnesota, Ohio, and Wisconsin).

(5) Mid-Western Region, 1906 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106 (Colorado, Idaho, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming).

(6) Western Gulf Region, 411 North Akard Street, Room 601, Dallas, TX 75201 (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas).

(7) Pacific Region, 10353 Federal Building, 450 Golden Gate Avenue, Box 36017, San Francisco, CA 94102 (Alaska, Arizona, California, Hawaii, Nevada, Oregon, Washington, and Guam).

(f) *Records.* The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, the records containing the information specified below for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Administrator of the Wage and Hour and Public Contracts Divisions, U.S. Department of Labor.

(1) His name and address.

(2) His work classification or classifications, rate or rates of monetary wages and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation.

(3) His daily and weekly hours so worked.

(4) Any deductions, rebates, or refunds from his total daily or weekly compensation.

(5) A list of monetary wages and fringe benefits for those classes of service employees not included in the minimum wage attachment to this contract, but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator of the Wage and Hour and Public Contracts Divisions, Department of Labor, or his authorized representative pursuant to the labor standards in paragraph (a) of this clause. A copy of the report required by paragraph (j) of this clause shall be deemed to be such a list.

(g) *Withholding of payments and termination of contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as he, or an appropriate officer of the Labor Department, decides may be necessary to pay underpaid employees. Additionally, any failure to comply with the requirements of this clause relating to the Service Contract Act of 1965 may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(h) *Subcontractors.* The Contractor agrees to insert the paragraphs of this clause relating to the Service Contract Act of 1965 in all subcontracts. The term "Contractor" as used in these paragraphs in any subcontracts, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

(i) *Service employee.* As used in this clause relating to the Service Contract Act of 1965, the term "service employee" means guards, watchmen, and any person engaged in a recognized trade or craft, or other skilled mechanical craft, or in unskilled, semiskilled, or skilled manual labor occupations; and any other employee including a foreman or supervisor in a position having trade, craft, or laboring experience as the paramount requirement; and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(j) *Contractor's report.* If there is a wage determination attachment to this contract and one or more classes of service employees which are not listed thereon are to be employed under the contract, the Contractor shall report to the Contracting Officer the monetary wages to be paid and the fringe benefits to be provided each such class of service employee. Such report shall be made promptly as soon as such compensation has been determined as provided in paragraph (a) of this clause.

(k) *Regulations incorporated by reference.* All interpretations of the Service Contract Act of 1965 expressed in Subpart C of Part 4 (29 CFR) are hereby incorporated by reference in this contract.

(l) *Exemptions.* This clause shall not apply to the following:

(1) Any contract of the United States or District of Columbia for construction, alteration and/or repair, including painting and decorating of public buildings or public works;

(2) Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036; 41 U.S.C. 35–45);

(3) Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect, or where such carriage is subject to rates covered by section 22 of the Interstate Commerce Act;

(4) Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;

(5) Any contract for public utility services, including electric light and power, water, steam, and gas;

(6) Any employment contract providing for direct services to a Federal agency by an individual or individuals;

(7) Any contract with the Post Office Department, the principal purpose of which is the operation of postal contract stations;

(8) Any services to be furnished outside the United States. For geographic purposes, the "United States" is defined in section 8(d) of the Service Contract Act to include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands, as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwejalein Atoll, Johnston Island. It does not include any other territory under the jurisdiction of the United States or any U.S. base or possession within a foreign country.

(9) Any of the following contracts exempted from all provisions of the Service Contract Act of 1965, pursuant to section 4(b) of the Act, which exemptions the Secretary of Labor hereby finds necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business: Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom.

(m) *Special employees.* Nothwithstanding any of the provisions in paragraphs (a) through (k) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor hereby finds pursuant to section 4(b) of the Act to be necessary and proper in the

public interest or to avoid serious impairment of the conduct of Government business:

(1) (i) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act of 1965, without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator of the Wage and Hour and Public Contracts Division of the Department of Labor (Parts 520, 521, 524, and 525 of 29 CFR).

(ii) The Administrator will issue certificates under the Service Contract Act of 1965 for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (Parts 520, 521, 524, and 525 of 29 CFR).

(iii) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(2) An employee engaged in an occupation in which he customarily and regularly receives more than $20 a month in tips may have the amount of his tips credited by his employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with the regulations in Part 531 of 29 CFR: *Provided, however,* That the amount of such credit may not exceed 80 cents per hour.

(b) *Clause for Federal service contracts not in excess of $2,500.* Procurement offices (except as provided in §§ 18–12.1002–2, 18–12.1002–50 and 18–12.1002–51) shall include the following clause in every contract not in excess of $2,500, which has as its principle purpose the furnishing of services through the use of service employees:

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Except to the extent that an exemption, variation, or tolerance would apply pursuant to 29 CFR 4.6 if this were a contract in excess of $2,500, the Contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended ($1.60 per hour). However, in cases where section 6(e)(2) of the Fair Labor Standards Act of 1938 is applicable, the rates specified therein will apply. All regulations and interpretations of the Service Contract Act of 1965 expressed in 29 CFR Part 4 are hereby incorporated by reference in this contract.

(c) *Basic ordering agreements and blanket purchase agreements.* In the case of the basic ordering agreement or blanket purchase agreement, the amount thereof for purposes of paragraphs (a) and (b) of this section, shall be the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement. If a basic ordering agreement continues or is extended, such estimate shall be made annually for each year after the first and the agreement modified accordingly.

(d) *Linen supply service clauses.* (1) In contracts for linen supply services containing the clause in paragraph (a) of this section, (i.e., contracts in excess of $2,500) insert the following clause:

LINEN SUPPLY SERVICE CONTRACTS (JULY 1970)

In the absence of a wage determination issue under the Service Contract Act specifying a higher rate, the special minimum wage provisions of section 6(e)(2) of the Fair Labor Standards Act for linen supply service contracts entered into with the United States Government on or after February 1, 1967, shall apply to all employees (except those qualifying for the minimum wage and overtime exemption under section 13(a)(1) of the Fair Labor Standards Act in an establishment providing such linen supply services. Such employees must be paid not less than $1.15 per hour as of February 1, 1968, with annual increments of 15 cents per hour, as of February 1 each year, increasing to a minimum rate of $1.60 per hour as of Febuary 1, 1971. However, if more than 50 per centum of the gross annual dollar volume of sales made or business done by an establishment is derived from providing linen supply services under contracts or subcontracts with the United States, all employees in the establishment (other than employees qualifying for the minimum wage and overtime exemption under section 13(a)(1) of the Fair Labor Standards Act) must be paid at least $1.60 per hour as of February 1, 1968.

(2) In contracts for linen supply services containing the clause in paragraph (b) of this section (i.e., contracts for $2,500 or less), insert the following clause:

LINEN SUPPLY SERVICE CONTRACTS (JULY 1970)

The special minimum wage provisions of section 6(e)(2) of the Fair Labor Standards Act for linen supply service contracts entered into with the U.S. Government on or after February 1, 1967, shall apply to all employees (except those qualifying for the minimum wage and overtime exemption under section 13(a)(1) of the Fair Labor Standards Act) in an establishment providing such linen supply services. Such employees must be paid not less than $1.15 per hour as of February 1, 1968, with annual increments of 15 cents per hour, as of February 1 of each year, increasing to a minimum rate of $1.60 per hour as of February 1, 1971. However, if more than 50 per centum of the gross annual dollar volume of sales made or business done by an establishment is derived from providing linen supply services under contracts or subcontracts with the United States, all employees in the establishment (other than employees qualifying for the minimum wage and overtime exemption under section 13(a)(2) of the Fair Labor Standards Act) must be paid at least $1.60 per hour as of February 1, 1968.

(e) *Price adjustment clause.* In a service contract with an option to renew which contains the clause in paragraph (a) of this section, insert the "Fair Labor Standards Act and Service Contract Act—Price Adjustment" clause set forth in § 18–12.1050–2(b).

§ 18–12.1005 Administration and enforcement.

§ 18–12.1005–1 Responsibilities of Department of Labor.

The Secretary of Labor is authorized and directed to administer and enforce the provisions of the Act, to make rules and regulations, issue orders, make decisions, and take other appropriate action under the Act.

§ 18–12.1005–2 Notice of intention to make a service contract.

(a) Prior to the issuance of any invitation for bids or request for proposals, or the commencement of negotiations for any contract exceeding $2,500 which may be subject to the Act (or for any contract for an indefinite amount, unless the contracting officer has definite knowledge that it will not exceed $2,500 in any event), the contracting officer shall file Standard Form 98, "Notice of Intention To Make a Service Contract and Response to Notice," together with all available payroll data, with the Administrator, Wage and Hour and Public Contracts Division, Department of Labor, through the Labor Relations Office, NASA Headquarters (Code KL). Such notice shall be filed in time to reach the Labor Relations Office (Code KL) not less than 33 days prior to the issuance of any invitation for bids, request for proposals, or the commencement of negotiations. The back of Standard Form 98 contains instructions for its completion. Whenever the detailed information requested is not readily available, such pertinent general information as is available should be provided. For example, if meaningful estimates of the number of service employees in various classes to be used in the contract cannot be made, estimates of the total number of employees or of the number falling within the categories enumerated in § 18–12.1002–3(a) should be supplied, if practical. The original and four copies of the completed form together with any attachments shall be forwarded as indicated above. The "Response" portion of the original of the form will be completed by the Wage and Hour and Public Contracts Division and returned directly to the procurement office, advising that office of any determination of minimum monetary wage and fringe benefits applicable to the contract. Supplies of Standard Form 98 are available in all GSA supply depots under stock No. 7540–926–8972.

(b) If exceptional circumstances prevent the filing of the notice of intention by the time required in paragraph (a) above, the notice shall be submitted to the Administrator, Wage and Hour and Public Contracts Division, Department of Labor through the Labor Relations Office, NASA Headquarters (Code KL), as soon as practicable with a detailed explanation of the special circumstances which prevented timely submission.

§ 18–12.1005–3 Contract minimum wage determinations and fringe benefit specification.

(a) *Prior to award.* The invitation for bids or request for proposals actually

issued, as well as any contract entered into, in excess of $2,500, shall contain an attachment setting forth the minimum wages and fringe benefits specified in any applicable currently effective determination, including any expressed in any document referred to in subparagraphs (1) and (2) of this paragraph:

(1) Any written communication from the Administrator, Wage and Hour and Public Contracts Division, Department of Labor, responsive to the notice required by § 18–12.1005–2(a); however, such communications received by the Federal agency later than 10 days before the opening of bids or the date established for the initial receipt of proposals shall not be effective except where the agency finds that there is a reasonable time to notify bidders or offerors thereof;

(2) Any revision of the wage determination prior to the award of the contract or contracts; however, revisions received by the Federal agency later than 10 days before the opening of bids or the date established for the initial receipt of proposals shall not be effective except where the agency finds that there is a reasonable time to notify bidders or offerors of the revision.

(See § 18–12.1005–51 regarding the absence of wage and fringe benefit determinations.)

(b) *Subsequent to award.* If a required wage determination is not included in the solicitation or contract (either because the notice required by § 18–12.1005–2 is not filed or is not filed in the time provided by § 18–12.1005–2(a)), and if the contracting officer receives a wage determination from the Department of Labor within 30 days of the late filing of the notice or the discovery by the Department of Labor of the failure to include a wage determination required by this Part 18–12—

(1) The contracting officer shall attempt to negotiate a bilateral modification to:

(i) Incorporate the Service Contract Act Clause in § 18–12.1004(a), if not previously included;

(ii) Incorporate the wage determination which shall be effective as of the date of issuance unless otherwise specified; and

(iii) Equitably adjust the contract price to compensate for any increased cost of performance under the contract caused by the wage determination.

(2) If the contracting officer is unable to negotiate a contract modification incorporating the wage determination, he shall document the contract file to show the efforts made.

(3) In the event the contracting officer questions the applicability of the Service Contract Act to the contract, he shall forward the matter for resolution to the Labor Relations Office, NASA Headquarters (Code KL). If that office determines that the Service Contract Act is not applicable to the contract, it shall advise the Department of Labor of the basis for the determination of inapplicability. No further action need be taken on the wage determination by the contracting officer in the absence of a determination by the Secretary of Labor that the contract is subject to the Act.

§ 18–12.1005–4 Additional classifications (conformable rates).

Where any classes of service employees which are to be engaged in the performance of the contract are not listed in the wage and fringe benefit determination attached to the contract (see paragraph (a) of the clause in § 18–12.1004(a)), such employees shall be classified by the contractor so as to bear a reasonable relationship to the classification listed in the determination. The wages paid and the fringe benefits provided to employees so classified shall be determined by agreement between the interested parties. Such parties shall be deemed to be the contracting agency, the contractor, and the employees (or their representatives) who will perform under the contract. If the interested parties do not agree on a classification or reclassification which is, in fact, conformable with the wage and fringe benefit determination, the contracting officer shall submit the question, together with his recommendation, to the Administrator, Wage and Hour and Public Contracts Division, Department of Labor, or his authorized representative, through the Labor Relations Office, NASA Headquarters (Code KL), for final determination.

§ 18–12.1005–5 Notice of award.

Standard Form 99, "Notice of Award of Contract," shall be used to report the award of any contract in excess of $2,500 subject to the Act to the Department of Labor. The completed original and one copy with the interleaved carbon shall be forwarded to the Administrator, Wage and Hour and Public Contracts Division, Department of Labor, Washington, DC 20210. The form shall be completed as follows:

(a) Items 1 through 7 and 12 and 13: Self-explanatory;

(b) Item 8: Enter the notation "Service Contract Act of 1965";

(c) Item 9: Leave blank;

(d) Item 10: (1) Enter the notation "Major Category," and indicate beside this entry the general service area into which the contract falls (e.g., food services, custodial-janitorial service, garbage collection, insect and rodent control, laundry and dry cleaning services), and

(2) Enter the heading "Detailed Description," and following this entry set forth a detailed description of the services to be performed;

(e) Item 11: Enter the dollar amount of the contract, or the estimated dollar value with the notation "estimated" (if the exact amount is not known). If neither the exact nor the estimated dollar value is known, enter "Indefinite," or "Not to exceed $_____"; and

(f) Item 14: Leave blank.

Supplies of Standard Form 99 are available in all GSA supply depots under stock No. 7540–634–4049.

§ 18–12.1005–6 Department of Labor Form SC–1.

The contracting officer shall furnish the contractor with Department of Labor Form SC–1 (combination letter and poster) at the time of contract award and shall insure that the form is in the possession of the contractor for appropriate posting prior to performance of the contract. The form advises employees of their benefits under the Act and satisfies the notice requirements in paragraph (d) of the contract clause prescribed in § 18–12.1004(a). Contractors are required to post the form at a prominent and accessible place at the worksite. Supplies of the form may be obtained from the Wage and Hour and Public Contracts Divisions, Department of Labor, Washington, D.C. 20210.

§ 18–12.1005–7 Inquiries concerning the Act.

Contractors or contractor employees who inquire concerning the Act shall be advised that rulings regarding such matters fall within the jurisdiction of the Department of Labor and shall be given the address of the appropriate Regional Director of the Wage and Hour and Public Contracts Divisions of the Department of Labor (see § 18–12.607).

§ 18–12.1005–8 Contract modifications.

(a) *Bilateral contract modifications.* Generally, a bilateral contract modification affecting the scope of the work is regarded as a new contract for purposes of the Act and the regulations thereunder. Therefore, prior to entering into such modification, the contracting officer shall forward Standard Form 98 to the Administrator, Wage and Hour and Public Contracts Division, Department of Labor, in accordance with the procedure set forth in § 18–12.1005–2(a), except that:

(1) In the "Estimated Solicitation Date" block, enter the date the information is needed; and

(2) In Block 4, enter "Modification of Existing Contract for _____ (*Describe type of services*) _____ Services."

Bilateral contract modifications that are unrelated to the labor requirements of a contract shall not be deemed to create a new contract for purposes of the Act, nor shall insignificant changes related to labor requirements.

(b) *Extension of contract through exercise of option or otherwise.* A new contract shall be deemed entered into for purposes of the Act when the term of an existing contract is extended, pursuant to an option clause or otherwise, so that the contractor furnishes services over an extended period of time rather than being granted extra time to fulfill his original commitment. Prior to extending the term of the contract, the Contracting Officer shall forward Standard Form 98 as provided in § 18–12.1005–2(a) and in paragraph (a) of this section, inserting appropriate wording in Block 4. (See § 18–12.1050.)

§ 18–12.1005–9 Withholding of contract payments and contract termination.

(a) *Withholding.* (1) As provided by the Act, any violation of the contract

stipulations required under paragraphs (a) and (c) of the contract clause set forth in § 18–12.1004(a) or under the contract clause set forth in § 18–12.1004(b) renders the party responsible therefor liable for a sum equal to the amount of any deductions, rebates, refunds, or underpayment of compensation due to any employee engaged in the performance of such contract. Upon the written request of the Department of Labor at a level no lower than a District Director, so much of the accrued payment due on the contract or any other contract between the Government prime contractor and the Federal Government, provided such other contract is not assigned pursuant to 31 U.S.C. 203 or 41 U.S.C. 15, may be withheld as is necessary to pay such employees. Such withheld sums shall be held in a deposit fund. On order of the Administrator, Wage and Hour and Public Contracts Division, Department of Labor, any compensation which the head of a Federal agency or the Administrator of the Wage and Hour and Public Contracts Divisions has found to be due pursuant to the Act shall be paid directly from any accrued payments withheld under the Act.

(2) If the accrued payments withheld are insufficient to reimburse all underpaid service employees, the Government may bring an action against the contractor, subcontractor, or any contract sureties to recover the remaining amount of underpayments. Any sums thus recovered shall be held in the deposit fund and shall be paid, on order of the Secretary of Labor, directly to such underpaid employees. Instances of insufficient funds withheld shall be reported to: the General Accounting Office for possible setoff as may be appropriate; to the Administrator of the Wage and Hour and Public Contracts Divisions of the Department of Labor for any of his purposes; and to the Department of Justice for any other necessary action.

(b) *Termination.* In addition, as provided by the Act, any failure to comply with the requirements of any of the provisions of the contract clauses set forth under § 18–12.1004 may be grounds for termination, by written notice, of the contractor's right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor with any additional cost.

§ 18–12.1005–10 Cooperation with the Department of Labor.

The contracting officer shall cooperate with representatives of the Department of Labor in the examination of records, interviews with service employees, and all other aspects of investigations undertaken by the Department of Labor. When requested, agencies shall furnish to the Administrator, Wage and Hour and Public Contracts Division, Department of Labor, any available information with respect to contractors, subcontractors, their contracts and the nature of the contract services. Violations apparent to the contracting agency and complaints received shall be promptly referred to the Department of Labor. In no event, however, shall complaints by employees be disclosed to the employer.

§ 18–12.1005–11 Role of the Comptroller General.

The Act provides that the Comptroller General shall distribute a list to all Federal agencies giving the names of persons or firms which have been found to be in violation of the Act. Unless the Secretary of Labor otherwise recommends, no Government contract shall be awarded to any violator so listed or to any firm, corporation, partnership, or association in which such violator has a substantial interest until 3 years have elapsed from the date of publication of the list containing the name of the violator.

§ 18–12.1005–50 Register of wage determinations and fringe benefits.

The regulations of the Department of Labor provide that the Administrator of the Wage and Hour and Public Contracts Divisions, Department of Labor, shall determine the minimum monetary wages and specify the fringe benefits to be furnished the various classes of service employees for the several localities in which they are to be employed under contracts subject to such determinations under the Act (see 29 CFR 4.3). The regulations further provide that these determinations and specifications will be issued as an orderly series constituting a register of such minimum wages and fringe benefits. The register will be available for public inspection during business hours at the national, regional, and district offices of the Wage and Hour and Public Contracts Divisions, U.S. Department of Labor. In addition, the regulations authorize the Department, when practicable, to maintain such a register at other locations where the needs of procurement agencies for the information contained therein may be better served by such action.

§ 18–12.1005–51 Absence of minimum wage determinations and fringe benefit specifications.

(a) *Authority.* The Secretary of Labor, pursuant to his authority under the Act to allow reasonable variations, tolerances, and exemptions (see § 18–12.1002–51), has made the finding set forth in paragraph (b) of this section, with respect to service contracts in excess of $2,500 for which minimum monetary wages and fringe benefits have not been determined as provided in § 18–12.1005–3.

(b) *Finding.* To avoid serious impairment of the conduct of Government business, it is hereby found necessary and proper to provide exemption (1) from the determined wage and fringe benefits section of the Act (section 2(a) (1) and (2)), but not the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (section 2(b) of this Act), of all contracts for which no such wage or fringe benefit has been determined for any class of service employees to be employed thereunder, and (2) from the fringe benefits section (section 2(a)(2)) of all contracts and of all classes of service employees employed thereunder if no such benefits have been determined for any such class of service employees. Accordingly, such exemptions are hereby provided.

(c) *Application of finding.* The exemptions covered by the finding do not extend to undetermined wages or fringe benefits in contracts for which one or more, but not all, classes of service employees are the subject of an applicable wage and fringe benefit determination (see § 18–12.1005–4).

§ 18–12.1006 Labor standards enforcement report.

See § 18–12.404–8(d).

§ 18–12.1050 Extensions of contract performance period.

§ 18–12.1050–1 General.

A number of NASA service contracts are written for a period of 1 year with an option on the part of the Government to renew the contract for additional 1-year periods at the same or other price or rates. Since the exercise of an option results in the performance of services for a new or different period not included in the term for which the contractor is obligated to furnish services or for which the Government is obligated to pay under the original contract in the absence of such action to extend it, the contract for the option (additional) period is within the contemplation of the Service Contract Act in the same position as a wholly new contract with respect to application of the act's provisions and the regulations thereunder. (See 29 CFR 4.145.)

§ 18–12.1050–2 Contract price adjustment.

(a) The following requirements shall apply to firm fixed-price contracts, time and material contracts, and labor-hour contracts which contain the clause in § 18–12.1004(a) (i.e., contracts in excess of $2,500), and which provide for Government option renewal.

(1) *For firm fixed-price contracts.* (i) When the scope of work called for in the solicitation for the original contract period and any renewal option period is the same, the offeror shall be required by such solicitation to submit with his offer, and the schedule of any resulting contract shall contain, a single listing of the classes of service employees subject to the Service Contract Act, and the number of labor hours to be supplied by each such class applicable both to the original contract period and to any renewal option period.

(ii) When the scope of work called for in the solicitation for the original contract period and any renewal option period differs, the offeror shall be required by such solicitation to submit with his offer, and any resulting contract shall contain in the Schelule thereof, for the original contract period and any renewal option period, respectively, a separate listing of both the Service Contracts Act classes of service employees and the number of labor hours to be supplied by each such class.

(2) *For time and material contracts, and labor-hour contracts.* The offeror shall be required by the solicitation to submit with his offer, and the schedule of any resulting contract shall contain, a listing of the classes of Service Contract Act service employees for the initial contract and any renewal period, and the contract unit price labor rates, in the same format as set forth in the Service Contract Act determination for each such class.

(b) The following clause shall be inserted in service contracts with options to renew which contain the clause in § 18–12.1004(a) (i.e., contracts in excess of $2,500):

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (JULY 1970)

(a) The Contractor warrants that the prices set forth in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The minimum prevailing wage determination, including fringe benefits, issued pursuant to the Service Contract Act of 1965 (Public Law 89–286; 79 Stat. 1034), by the Administrator, Wage and Hour and Public Contract Divisions, U.S. Department of Labor, current at the beginning of each renewal option period shall apply to any renewal of this contract. Where no such determination has been made as applied to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. § 201–219) and amendments thereto current at the beginning of each renewal option period, shall apply to any renewal of this contract.

(c) Where, as a result of the Department of Labor determination of minimum prevailing wages and fringe benefits applicable at the beginning of the renewal option period, or where as a result of any amendment to the Fair Labor Standards Act enacted subsequent to award of this contract, affecting minimum wage, and whenever such shall become applicable to this contract under law, the Contractor increases or decreases wages or fringe benefits of employees working on this contract to comply with such legislation, the contract price or contract unit price labor rates will be adjusted to reflect such increases or decreases. Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described above, and the concomitant increases or decreases in social security and unemployment taxes and workmen's compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profits. In firm fixed-price contracts, such adjustment will be based on labor hours specified in the Schedule for the particular option period. In time and material contracts and labor-hour contracts, the contract unit price set forth in the Schedule will be so adjusted.

(d) The Contractor shall notify the Contracting Officer of any increases claimed under this clause within sixty (60) days after the exercise of the contract renewal option, unless this period is extended by the Contracting Officer in writing. In the case of any decrease under this clause, the Contractor shall promptly notify the Contracting Officer of such decrease but nothing herein shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any other relevant data in support thereof, which may reasonably be required by the Contracting Officer. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. Pending agreement on or determination of, any such adjustment and its effective date, the contractor shall continue performance.

(e) The Contracting Officer or his authorized representative shall, until the expiration of three (3) years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

PART 18–13—GOVERNMENT PROPERTY

Sec.

AUTHORITY: The provisions of this Part 18-13 issued under 42 U.S.C. 2473(b)(1).

§ 18-13.000 Scope of part.

This Part 18-13 sets forth:

(a) The NASA policies with respect to providing property for use by contractors in connection with procurement by NASA.

(b) Applicable contract clauses for contracts other than facilities contracts. (For facilities contract clauses, see Subpart 18-7.7).

This part does not apply to the lease of property to contractors under the provisions of NASA Policy Directive 8813.2, "Determination and Delegation of Authority Concerning the Granting of Leaseholds, Permits and Licenses in Real Property" or other leasing authorities, except as to non-Government use of industrial plant equipment under § 18-13.405, or to property to which the Government has acquired a lien for title solely as a result of partial, advance or progress payments.

Subpart 18-13.1—General

§ 18-13.101 Definitions.

As used in this part the following terms have the meaning stated below. Additional definitions applicable to property administration are set forth in Appendices B and C.

§ 18-13.101-1 Property.

"Property" includes all property, both real and personal. For the purpose of this part it consists of five separate categories—material, special tooling, special test equipment, space property, and facilities.

§ 18-13.101-2 Government property.

"Government property" means all property owned by or leased to the Government or acquired by the Government under the terms of a contract. Government property includes both Government-furnished property an contractor-acquired property as defined below:

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

(b) "Contractor-acquired property" is property procured or otherwise provided by the contractor for the performance of a contract, title to which is vested in the Government.

§ 18-13.101-3 Provide.

"Provide," as used in the context of such phrases as "Government property provided to the contractor" and "Government-provided property", means either to furnish, as in "Government-furnished property", or to acquire, as in "contractor-acquired property."

§ 18-13.101-4 Material.

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

§ 18-13.101-5 Special tooling.

"Special tooling" means all jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and replacements thereof, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production of particular supplies or parts thereof, or the performance or particular services. The term includes all components of such items, but does not include:

(a) Consumable property;

(b) Special test equipment; or

(c) Buildings, nonserverable structures (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items.

§ 18-13.101-6 Special test equipment.

"Special test equipment" means electrical, electronic, hydraulic, pneumatic, mechanical or other items or assemblies of equipment, which are of such a specialized nature that, without modification or alteration, the use of such items (if they are to be used separately) or assemblies is limited to testing in the development or production of particular supplies or parts thereof, or in the performance of particular services. The term "special test equipment" includes all components of any assemblies of such equipment, but does not include:

(a) Consumable property;

(b) Special tooling; or

(c) Buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special test equipment), general or special machine tools, or similar capital items.

§ 18-13.101-7 Space property.

"Space property" means personal property which is peculiar to aeronautical and space programs of NASA, and is not otherwise included in the categories of property set forth in §§ 18-13.101-4, 18-13.101-5, 18-13.101-6 and 18-13.101-8. It includes such items as aircraft, engines, space vehicles, and other similar components and related support equipment furnished for use as a standard or model, to establish equipment compatibility, or for such other similar reasons as may be determined by the contracting officer.

§ 18-13.101-8 Facilities.

"Facilities" means industrial property (other than material, special tooling, space property, and special test equipment) for production, maintenance, research, development, or test, including real property and rights therein, buildings, structures, improvements, and plant equipment.

§ 18-13.101-9 Government production and research property.

"Government production and research property" means:

(a) Government-owned facilities;

(b) Government-owned special test equipment; and

(c) Special tooling to which the Government has title or the right to acquire title.

§ 18-13.101-10 Nonseverable.

"Nonseverable," when related to Government production and research property, means that such property cannot

be removed after erection or installation without substantial loss of value or damage thereto, or to the premises where installed.

§ 18–101–11 Facilities contract.

"Facilities contract" means a contract under which Government facilities, and occasionally special tooling and special test equipment, are provided to a contractor or a subcontractor by the Government for use in connection with the performance of a separate contract or contracts for supplies or services. The term includes facilities acquisition contracts, facilities use contracts, and consolidated facilities contracts.

§ 18–13.101–12 Facilities project.

"Facilities project" means an undertaking by the Government to provide facilities to a contractor for the performance of a Government contract or subcontract or to modernize or replace facilities for the same purpose.

§ 18–13.101–13 Nonprofit organization.

"Nonprofit organization" means any corporation, foundation, trust or institution operated for scientific, educational, or medical purposes, not organized for profit, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

§ 18–13.101–50 Related procurement contract.

Related procurement contract means a Government contract or subcontract services of any description, for the performance of which the use of the facilities is or may be authorized.

§ 18–13.101–51 Approval or authorization.

Approval or authorization as used in this part means written approval and written authorization unless the context is clearly to the contrary.

§ 18–13.102 Responsibility and liability for Government property.

§ 18–13.102–1 Prime contractors.

It is NASA policy not to hold a contractor responsible for loss or damage to Government property caused by certain perils when such Government property is provided under:

(a) A facilities contract;

(b) A negotiated, fixed-price type procurement contract for which the price is not based on (1) adequate price competition, (2) established catalog or market prices of commercial items sold in substantial quantities to the general public (see § 18–3.807–1(b)) or (3) prices set by law or regulation; or

(c) A cost-type procurement contract.

§ 18–13.102–2 Subcontractors.

(a) If Government property is provided to a subcontractor directly by the Government, § 18–13.102–1 shall apply.

(b) If Government property is provided to a subcontractor by a prime contractor, the latter shall be required to hold the subcontractor liable for any loss of or damage to such property: *Provided, however,* That if the prime contract falls under either § 18–13.102–1 (b) or (c), the prime contractor may, with the prior approval of the contracting officer:

(1) Include in any cost-reimbursement type subcontract thereunder provisions similar to those contained in paragraph (g) of the clause in § 18–13.703; and

(2) Include in any fixed-price subcontract meeting the criteria set forth in § 18–3.102–1(b) a provision similar to that contained in § 18–13.702(b).

Contracting officers shall, prior to approving the inclusion of the provisions referred to above in any subcontract, balance the need for the protection and care of Government property against the cost thereof. A prime contractor who provides Government property to a subcontractor shall not be relieved of any responsibility to the Government that he may have under the terms of his contract.

§ 18–13.103 Furnishing space property.

(a) Space property may be furnished to contractors when necessary for use as a standard or model, for testing the contractors' end item where suitable commercial equipment is not available, to establish equipment compatibility, or for such other similar reasons as the Procurement Officer or his designee determines to be in the best interest of the Government.

(b) Space property may be furnished to contractors under a facilities contract or under a supplies or services contract. Each contract under which such property is furnished shall provide that:

(1) Each item of the property be identified by its NASA Identification Number and Government nomenclature;

(2) The property be accounted for under that contract; and

(3) Upon its completion or termination, the contractor shall request and comply with disposition instructions from the contracting officer.

§ 18–13.104 Profits and fees.

No fee is to be provided or allowed a facilities contractor under a facilities contract.

§ 18–13.105 Use for or by contractors of test facilities owned and operated by the Government.

The on-site use for or by contractors of existing Government-owned test facilities located at installations owned and operated by the Government may be authorized in connection with the performance of Government contracts only when:

(a) There is no commercial test capability adequate for the testing needs, or

(b) Substantial cost savings will result from use of the Government-owned test facilities.

Whenever any such use is authorized, adequate consideration comparable to commercial charges, if any, shall be obtained under any affected contract.

§ 18–13.107 Control of Government property.

The control of Government property shall be in accordance with the provisions of Appendix B to this chapter except, in contracts with educational or other nonprofit organizations Appendix C to this chapter is applicable; unless otherwise authorized in this Part 18–13.

§ 18–13.150 Disposition of excess property and residual inventories.

Excess property and residual inventories shall be disposed of in accordance with the procedures contained in Part 18–24 of this chapter.

Subpart 18–13.2—Material

§ 18–13.201 Policy on furnishing material.

It is the general policy of NASA that contractors will furnish all material required for the performance of Government contracts. However, the Government should furnish material to a contractor when it is determined to be in the best interest of the Government by reason of economy, standardization, the expediting of production, or other appropriate circumstances.

§ 18–13.202 Procedure.

(a) Material to be furnished by the Government shall be set forth in the solicitation in sufficient detail to permit evaluation by prospective contractors.

(b) The contract schedule or specification shall identify specifically, by name and estimated quantities, all materials to be furnished by the Government of the types listed in § 18–52.508.

§ 18–13.203 Changing the amount of material to be furnished by the Government.

(a) At any time after a contract has been entered into, whether as a result of formal advertising or negotiation, the contract may be bilaterally modified to provide for the furnishing of Government material, or to increase the amount to be furnished, provided there is adequate consideration for such modification.

(b) When it is anticipated that substantial quantities of Government material will become available for the contract by transfer from another contract or otherwise, the contract may provide that a unilateral increase in the amount of material to be furnished by the Government may be ordered by the contracting officer, and that the contract shall be equitably adjusted therefor.

(c) Unilateral decreases in or substitutions for the material specified under a contract to be provided by the Government may be ordered by the contracting officer, subject to the equitable adjustment of the contract, in accordance with paragraph (b) of the appropriate Government Property clause in Subpart 18–13.7.

Subpart 18–13.3—Providing Government Production and Research Property to Contractors

§ 18–13.301 Providing facilities.

(a) It is the policy of the National Aeronautics and Space Administration that contractors will furnish all facilities required for the performance of Government contracts. Facilities will not be provided to contractors for expansion, replacement, modernization or other purpose except as follows:

(1) For use in a Government-owned contractor operated plant operated on a fee basis; or

(2) When retained in a standby reserve posture resulting from an approved program in accordance with NASA Management Instruction 5400.2, "Retention of Inactive Government-Owned Industrial Capacity"; or

(3) When—

(i) The head of the installation or his deputy, in the case of new facilities, or in the case of existing Government owned facilities, determines that: (*a*) The NASA contract cannot be fulfilled by any other practical means, or (*b*) it is in the public interest; and

(ii) The contractor, represented by an executive corporate official, or his equivalent in noncorporate entities, either expresses in writing his unwillingness or financial inability to acquire the necessary facilities with his resources, or explains in writing that time will not permit him to make the necessary arrangements to obtain timely delivery of such facilities to meet NASA requirements even though he is willing and financially able to acquire the facilities. In this latter case, existing Government-owned facilities (not new purchases) may be provided until the contractor purchased facilities are delivered and installed.

New facilities shall not be furnished unless existing Government-owned facilities are either inadequate or cannot be economically furnished. A copy of the contractor's written statement, with a brief statement of the circumstances justifying the provision of facilities, shall be furnished to the Office of Facilities, NASA Headquarters (Code BXE). A copy must also accompany the request for facilities approval pursuant to §18–13.302.

(b) In any case, competitive solicitations shall not include an offer by the Government to provide new facilities, nor shall solicitations offer to furnish existing Government facilities that must be moved into plants of contractors unless the contracting officer determines that adequate price competition cannot be obtained otherwise. In the latter case, the contractor statement under paragraph (a) (3) (ii) of this section shall not be required, but contractors shall be required to identify the Government-owned facilities desired to be moved into their plants.

(c) New facilities shall not be provided by the Government where an economical practical and appropriate alternative exists. Examples include:

(1) Procuring from sources not requiring Government-owned facilities;

(2) Requiring the contractor to make full utilization of subcontractors possessing adequate and available capacity;

(3) Having the contractor rent facilities from commercial sources; and

(4) Using existing Government-owned facilities.

(d) Items having an acquisition cost of $1,000 or less will not be provided under the terms of any contract. The above limitation does not apply to:

(1) Educational institutions and not-for-profit organizations when purchases are consistent with § 18–15.303–4 and § 18–15.309–13,

(2) Contractor operating a Government-owned plant on a fee basis, and

(3) Contractors performing on-site at a NASA installation.

(e) Facilities shall not be provided by the Government to contractors under this part solely for non-Government use.

(f) Prior to acquiring new facilities listed in § 18–13.312 and having an item acquisition cost of $1,000 or more, DOD Industrial Plant Equipment Requisition (DD Form 1419) shall be submitted to the Procurement Office, NASA Headquarters (Code KDP–3) for screening in accordance with Subpart 18–13.50.

(g) The proposed acquisition of automatic data processing equipment as defined in § 18–1.235 shall be:

(1) Submitted on DD Form 1419 through the contracting officer to the installation ADPE staff, for screening availability; and

(2) Approved in accordance with the provisions of NASA Handbook 2410.1, "Management Procedures for Automatic Data Processing Equipment."

§ 18–13.302 Securing approval for facilities projects.

(a) When Government-owned facilities, other than those presently in the contractor's possession, are to be provided to a contractor under a facilities contract pursuant to § 18–13.301(b), the written determination by the head of the installation, or his deputy, setting forth the necessity of the Government's obligation and the estimated cost of the facilities authorized will be included in the file of the related procurement contract. When the facilities contract covering those facilities included within the scope of the determination made in connection with the related procurement contract is submitted to the Director of Procurement for approval, a copy of such determination will be included in the submission. When additional facilities are to be provided, which exceed the scope authorized by the original determination, a new determination shall be made.

(b) The original and five copies (three executed and two confirmed) of each proposed facilities contract or modification thereto which provides facilities having a total acquisition value exceeding $250,000 or provides real property regardless of amount, shall be forwarded to the Procurement Office, NASA Headquarters (Code KDR) for review and approval prior to award. Such contract or modification shall contain the approval provision set forth in § 18–7.104–51. One copy of all other contracts or modifications thereto which provide facilities to a contractor shall be forwarded promptly upon execution to the Procurement Office, NASA Headquarters (Code KDR).

(c) If a facilities project involves construction work, approval of the Deputy Administrator, NASA Headquarters, or other designated officials, shall be obtained in accordance with the policies and procedures set forth in NASA Handbook 7330.1, "Approval of Facility Projects." The approval document shall be placed in the supporting file prior to the initiation of the procurement action relating to the facilities project.

§ 18–13.303 Use of facilities contracts.

§ 18–13.303–1 General requirements for separate facilities contracts.

(a) Except as provided in paragraph (b) of this section, facilities shall be provided by the Government to a contractor or subcontractor only under a facilities contract.

(b) Facilities may be provided to a contractor under a contract other than a facilities contract when:

(1) The cumulative total acquisition cost (actual or estimated) of the facilities provided to the contractor at one plant or general location does not exceed $50,000;

(2) The contract is for construction;

(3) The contract is for the performance of work within an establishment or installation operated by the Government; or

(4) The contract is for the performance of services involving the operation of a Government-owned plant or installation for a period of 6 months or less, and the facilities provided are to be used only in connection with such contract, which shall, to the extent practicable, contain the clauses in Subpart 18–7.7.

When facilities are provided under a contract other than a facilities contract, the contract shall contain the appropriate Government Property clause, except where, pursuant to paragraph (b) (4) of this section, adequate contractual coverage is obtained through the use of clauses set forth in Subpart 18–7.7.

(c) Except as otherwise provided in paragraph (b) of this section, all facilities provided by NASA to a contractor or subcontractor at any one plant or general location shall be accountable under a single NASA facilities contract governing use, modified from time to time as necessary, and covering only the facilities at that plant, or general location, except that: (1) The contracting officer may authorize the temporary use of the facilities at a location other than that covered in the facilities contract for a period of 6 months or less, and (2) the Director of Procurement may authorize other exceptions where he determines it to be impracticable to require a single facilities contract.

(d) Special tooling and special test equipment will normally be provided to a contractor under a supply contract, but

may be provided under a facilities contract when to do so is administratively desirable.

§ 18–13.303–50 Acquisition, use, and consolidated facilities contracts.

(a) A facilities acquisition contract is a facilities contract which contains terms and conditions covering Government provision of facilities to a contractor. It covers (1) contractor acquisition, construction, and installation of the facilities described in the contract schedule and (2) NASA furnishing of facilities when work, such as installation work, will be performed by the contractor at direct expense to the Government under the contract. A facilities acquisition contract does not contain authority for contractor use of facilities. When the facilities under the acquisition contract are acquired, installed, and accepted by the Government, accountability is tranferred to a facilities contract governing use.

(b) A facilities use contract is a facilities contract which contains terms and conditions covering the contractor's use of Government-owned facilities for which he is accountable. Facilities, in addition, are furnished to a contractor by the Government under a facilities use contract in the circumstances set forth in § 18–13.303–51.

(c) A consolidated facilities contract is a facilities contract which provides for both acquisition and use of facilities.

§ 18–13.303–51 Application of acquisition, use, and consolidated facilities contracts.

(a) When a facilities contract is required to provide facilities under § 18–13.303–1(a) and there is no existing facilities contract covering the use of facilities by the contractor, the acquisition type of facilities contract shall be used in conjunction with a facilities use contract, except that:

(1) A consolidated facilities contract may be used if it is anticipated that all foreseeable work with the contractor will continue to remain under the cognizance of the NASA installation entering into the facilities contract; and

(2) A facilities use contract shall be used, without a facilities acquisition contract, to cover Government furnishing of facilities to a contractor when the contract does not require direct reimbursement thereunder in connection with the furnishing of such facilities.

(b) If there is an existing facilities use contract, additional facilities may be provided by:

(1) A new facilities acquisition contract which provides for the transfer of the additional facilities to the existing use contract;

(2) If administratively convenient, by amendment of any existing uncompleted facilities acquisition contract; or

(3) In the circumstances described in paragraph (a)(2) of this section, by amendment of the existing use contract.

If there is a existing consolidated facilities contract, additional facilities may be provided by its amendment, or by a facilities acquisition contract which provides for the transfer of the additional facilities to the use provisions of the consolidated facilities contract, whichever is more administratively convenient.

(c) Prior written advice regarding a proposed increased in facilities assistance shall be furnished the contracting officer of an existing facilities use contract or consolidated facilities contract.

§ 18–13.304 Furnishing existing Government-owned special tooling.

(a) *General.* It is the policy of NASA that existing special tooling to which the Government has title, or the right to acquire title pursuant to the Special Tooling clause in § 18–13.704, be offered to prospective contractors for use in performing Government contracts and subcontracts, if:

(1) To do so will not interfere with production or program schedules having a greater priority;

(2) To do so is otherwise advantageous to the Government; and

(3) Its use would be authorized pursuant to § 18–13.402 or § 18–13.403 were it furnished.

(b) *Contract provisions.* Special tooling shall be furnished pursuant to either the appropriate clause in Subpart 18–13.7 or a facilities contract. In any case, the contract under which the special tooling is furnished shall contain a description thereof, and the terms and conditions applicable to its shipment to the plant of the contractor and to the cost of adapting and installing it.

§ 18–13.305 Acquisition of special tooling.

§ 18–13.305–1 General.

(a) *Policy.* It is the policy of NASA that contractors provide and retain title to special tooling required for the performance of contracts to the maximum extent consistent with sound procurement objectives. Government acquisition of title or the right to title in special tooling creates substantial administrative burden, encumbers the competitive procurement process and frequently results in the retention of special tooling without advantage commensurate with such burden. In certain instances however, the acquisition of special tooling or rights thereto may help the Government obtain fair prices, recover the residual value of special tooling paid for by the Government, and increase competition in subsequent procurements by increasing the number of sources, where the tooling is susceptible of use by more than one contractor, considering its adaptability and all costs of movement. Additionally, the Government may require all or a substantial part of the tooling for subsequent in-house use. The particular circumstances of each procurement must be considered in determining whether the advantages of acquiring special tooling or rights thereto outweigh the disadvantages.

(b) *Application of policy in competitive and noncompetitive procurements.* In procurements where there is adequate price competition, the Government usually relies on the competition to obtain a fair charge for the amortization of special tooling provided by the contractor. Furthermore, in a competitive area, ownership of special tooling by one contractor is not likely to prevent others from competing in follow-on procurements. Thus, it is not generally appropriate for the Government to acquire special tooling or rights thereto in competitive procurements. However, where there is not adequate price competition, the Government typically pays the full cost of the special tooling regardless of who owns or has rights to it, and therefore it is usually appropriate for the Government to acquire special tooling or rights thereto. Moreover, Government ownership may make it easier to create competition in follow-on procurements. Where a decision is made not to take title to special tooling in a procurement without price competition, consideration shall be given to the need for special contract provisions covering contractor plans for future recovery of any initial special tooling costs in follow-on competitive procurements (see § 18–3.813).

§ 18–13.305–2 Fixed-price contracts.

(a) *General.* In fixed-price contracts where a certificate of current cost or pricing data is not required, special tooling or rights thereto shall not be acquired unless the contracting officer determines such acquisition to be advantageous to the Government, considering the factors set forth in paragraph (b) below.

(b) *Criteria for acquisition.* In deciding whether to acquire special tooling or rights thereto, or to exercise the Government's acquisition rights under contracts or subcontracts pursuant to the Special Tooling clause set forth in § 18–13.704, the following factors shall be considered:

(1) The current or probable future need of the Government for the items involved and the estimated cost of reproducing them if not acquired;

(2) Their estimated residual value;

(3) The administrative and other expense incident to reporting, record keeping, preparation, handling, transportation, and storage;

(4) The effect on pricing future contracts;

(5) The feasibility and probable cost of making the items available to other bidders or offerors in the event of future procurement;

(6) The amount offered by the contractor for the right to retain the items; and

(7) The contribution Government acquisition makes to future competition.

(c) *Criteria for waiving special tooling provisions in subcontracts.* In determining whether rights to acquire special tooling from subcontractors are not of substantial interest to the Government so as to permit the omission of special tooling provisions from the affected subcontractors pursuant to paragraph (j) of the Special Tooling clause set forth in § 18–13.704, the contracting officer shall consider the factors listed in paragraph (b) of this section. It is desirable that

such determination be made before execution of the contract, to the extent practicable, in which case the price shall reflect the authorized omission of special tooling provisions in any affected subcontract. If this question is presented to the contracting officer after execution of the contract, he shall condition his determination upon securing the contractor's consent to an equitable reduction in the contract price to reflect any reduction in the price of the affected subcontracts resulting from the omission of such provisions.

(d) *Procedures.* (1) If the contracting officer has decided not to acquire special tooling or rights thereto, he may include in the solicitation such information as he may have of current planning for future procurements of the item involved, consistent with security requirements. Offerors shall be advised in the solicitation that such statements are estimates and there is no assurance that any quantity will be procured.

(2) In formally advertised procurements, each item of special tooling to be acquired by the Government under the standards set forth above shall be clearly identified in the invitation for bids as a separate item, or by category if individual items are low in value, and the Special Tooling clause in § 18–13.704 shall not be used.

(3) In negotiated procurements, each item of special tooling to be acquired under the standards set forth above shall be identified as a separate item in the solicitation and contract to the maximum extent practicable, or by category if individual items are low in value. If such identification is impracticable, title to special tooling may be obtained through use of the Special Tooling clause in § 18–13.704. If the use of this clause will result in an undesirable acquisition of rights to some special tooling, the schedule shall specify the special tooling not covered by the clause.

(e) *Protecting Government interest in contractor-owned special tooling.* Where the Government does not acquire special tooling or the rights thereto pursuant to paragraph (d) of this section, but will pay for a substantial portion of the special tooling in the price paid for supplies or services, special provisions may be included in the schedule of a contract to give recognition to the equitable interest of the Government in the special tooling, if such interest is significant. For example:

(1) Where there is a distinct possibility that the Government eventually may decide to acquire title to the special tooling, the contract may provide for an option in the Government to acquire the special tooling at a specified price or for an amount to be determined in accordance with specified standards (the criteria set forth in paragraph (b) of this section shall be considered in exercising such options); or

(2) If the Government does not acquire or reserve the right to acquire title to the special tooling, the contract may provide for the contractor's future amortization of the special tooling under Government contracts.

§ 18–13.305–3 Cost-reimbursement type contracts.

Title to special tooling under cost-reimbursement type contracts shall be acquired pursuant to the clauses set forth in §§ 18–13.703 and 18–13.707.

§ 18–13.306 Providing special test equipment.

§ 18–13.306–1 Furnishing existing special test equipment.

It is the policy of NASA to offer existing Government-owned special test equipment to contractors when advantageous to the Government in the light of the factors set forth in § 18–13.304. Government-owned components to be incorporated into special test equipment may also be offered in accordance with this policy. These components may be facilities, special test equipment, or cannibalized components of other special test equipment for which there is no further need.

§ 18–13.306–2 Acquisition of new special test equipment.

New special test equipment may be acquired by a contractor for the Government when:

(a) Advantageous to the Government in the light of the criteria set forth in § 18–13.305–2(b) for special tooling in fixed-price contract, and

(b) Existing Government-owned special test equipment or components thereof cannot be made available.

§ 18–13.306–3 Contract provisions for acquiring special test equipment.

(a) In formally advertised procurements, each item of special test equipment to be acquired by the Government shall be clearly identified in the invitation for bids as a separate item, or by category if individual items are low in value.

(b) In negotiated procurements, with respect to special test equipment the exact nature of which is known when the contract is signed, the contract shall identify each item of special test equipment to be acquired by the Government as a separated item or by category if individual items are low in value.

(c) In negotiated procurements, with respect to special test equipment the exact nature of which is not known when the contract is signed, the contract shall define the extent to which the contractor will be responsible for acquiring special test equipment for the Government. In such cases, the clause set forth in § 18–13.705 shall be used to permit the Government to furnish special test equipment in kind and thereby obtain an equitable adjustment.

§ 18–13.306–4 Screening existing Government-owned special test equipment costing $1,000 or more.

In order to minimize the acquisition of new special test equipment or components thereof, the contracting officer shall consider the utilization of the Department of Defense Industrial Plant Equipment Center resources, and if the time limitations and other considerations permit screening existing NASA owned production and research property, to ascertain whether any Government-owned property can be furnished in accordance with the policy set forth in § 18–13.306–1. To accomplish such screening, Department of Defense Industrial Plant Equipment Requisition (DD Form 1419) shall be submitted to the Procurement Office, NASA Headquarters (Code KDP–3) in accordance with Subpart 18–13.50. Where special test equipment is to be acquired in the manner described in § 18–13.306–3(b), the screening shall be accomplished before contract award. Where special test equipment is to be acquired in the manner described in § 18–13.306–3(c), the contracting officer shall normally accomplish the screening and notify the contractor of the Government's election within the notice period provided in the Special Test Equipment clause in § 18–13.705. Thereafter, the Government-owned items to be furnished shall be promptly shipped to the contractor and the contract shall be equitably adjusted pursuant to the Special Test Equipment clause. However, if the contracting officer determines that the savings anticipated from furnishing Government-owned items would be exceeded by costs that might be incurred as a result of delays or administrative actions, he may, except as to items listed in § 18–13.312, waive the screening and shall immediately advise the contractor that the Government will not furnish the equipment.

§ 18–13.307 Providing Government production and research property when disposal is limited.

(a) *Nonseverable property.* Nonseverable Government production and research property, other than foundations and similar improvements necessary for the installation of special tooling, special test equipment, and plant equipment, shall not be installed or constructed on land not owned by the Government, in such fashion as to be nonseverable, unless the Director (or other head) of the installation determines that such location is necessary. The determination to locate such nonseverable production and research property on land not owned by the Government shall be made only when all of the conditions in subparagraphs (1) through (4) of this paragraph (a) have been met:

(1) Consideration has been given to any nonrecoverable costs involved, including transportation and installation;

(2) Consideration has been given to locating the Government property on a portion of the land where it can be segregated from existing contractor-owned and Government-owned facilities and where the new Government production and research property is readily accessible to public thoroughfares, where it is practical to do so, and in such cases

consideration has been given to obtaining a written agreement by the contractor on whose land the property is to be placed that either the Government or another Government contractor will have a right to operate the production and research property upon termination or completion of the work for which it was provided; and in cases where such an agreement is not obtained, the negotiation effort shall be documented to justify the alternate proposal;

(3) The contractor agrees that the Government will have the right to abandon in place all nonseverable Government production and research property provided and that the Government, in such event, will not have any obligation to restore or rehabilitate the premises on which the property is located, unless otherwise provided in the contract with the prior approval of the head of the installation (this approval authority shall not be delegated); and

(4) One of the circumstances in subdivisions (i) through (iv) of this subparagraph has been met—

(i) The Government obtains an option to acquire the underlaying land;

(ii) The production and research property is disposable, after the Government's need therefor has ceased, to parties other than the contractor for commercial or industrial operations and the Government acquires from the owner a right to retain title and to dispose of all facilities it has constructed, without regard to the laws of real property in the jurisdiction in which the facility is located. Such right of disposition must be unencumbered, and will be evidenced by written agreement or other legal instrument signed by the contractor or other owner of the real property;

(iii) The contractor agrees in writing that he will purchase the property upon the termination or completion of the contract under which the property is provided, or within a specified reasonable time thereafter, at a price to be determined by appraisal, or at a price equal to the acquisition cost of the property less depreciation at the rate or rates specified in the contract (which rate or rates shall take into account the estimated useful life of the property) or for the scrap and salvage value of the property if the head of the installation determines that the estimated useful life of the property will not extend beyond the expiration of the facilities contract or the completion of the work for which the property was provided. Any such purchase agreement must permit the Government to credit any amounts due the contractor under the contract against the purchase price; or

(iv) The Administrator, NASA, specifically approves other provisions which he considers adequate to protect the interests of the Government in regard to the production and research property.

(b) *Property subject to patent or other proprietary rights.* If patent or other proprietary rights of a contractor may restrict the disposal of Government production and research property, the condition in either paragraph (a)(4) (ii) or (iii) of this section shall be satisfied before such property is provided.

§ 18–13.308 Offer to furnish Government production and research property "As Is".

(a) Government production and research property may be offered on an "as is" basis in any solicitation for fixed-price type contracts, whether such property is in storage or in the possession of a contractor. In the latter event, the offer will be subject to the policy stated in § 18–13.304(a)(1) regading the relative priorities of the work involved.

(b) Government production and research property may be offered on an "as is" basis for the performance of fixed-price type contracts only if it can be inspected by bidders or proposers prior to the submission of their offers. In such cases, the solicitation shall state:

(1) The availability and location of the property, and the conditions under which it may be inspected;

(2) That the property will be offered in its current condition, f.o.b. present location;

(3) That bidders or proposers must satisfy themselves that the property is suitable for their use;

(4) That any costs of transporting, installing, modifying, repairing, or otherwise making the property suitable for use shall be borne by the successful bidder or proposer;

(5) That evaluations will be made to eliminate any competitive advantage from the use of the property (see Subpart § 18–13.5); and

(6) The bidders or proposers to whom the property is offered, if it is not to be offered to all.

(c) If, in accordance with the policy stated in §§ 18–13.402 and 18–13.403, the successful bidder or proposer is authorized to use property furnished on an "as is" basis, the Government shall furnish the property in its current condition, f.o.b. present location. If a facilities contract is used to furnish Government production and research property offered on an "as is" basis, the schedule shall state that the contractor shall not be reimbursed thereunder for transporting, installing, modifying, repairing, or otherwise making the property ready for use.

§ 18–13.309 Changing Government production and research property to be provided.

The amount of Government production and research property specified under a contract to be provided may be increased by a bilateral modification of the contract. Such increases shall be made only when approved in accordance with the policies prescribed in this Subpart 18–13.3 and when the Government receives adequate consideration therefor. Unilateral decreases in or substitutions for the Government production and research property specified under a contract to be provided by the Government may be ordered by the contracting officer, subject to the equitable adjustment of the contract, in accordance with paragraph (b) of the appropriate Government Property clause in Subpart 18–13.7.

§ 18–13.310 Limited offers.

If it is not feasible to make Government production and research property available to all bidders or proposers, solicitations offering to furnish such property under this subpart may limit the offer accordingly.

§ 18–13.312 Items to be screened.

The items to be screened (see Subpart 18–13.50) in accordance with §§ 18–13.301(f) and 18–13.306–4 are listed in the following Defense Supply Agency Handbooks:

INDEX OF INDUSTRIAL PLANT EQUIPMENT HANDBOOKS

(NOTE—Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402)

FSC	*Title*	*DSA*
6625	Electrical and Electronic Properties Measuring and Testing Instruments.	DSAH 4215.1
3220	Woodworking Machines	DSAH 4215.2
3411-3419, 3441-3449	Production Equipment Directory, D1 Metalworking Machinery 1960, Revision Volumes 1 and 2.[1]	
3411-3419, 3441-3449	Supplement to Production Equipment, Directory D1 Metalworking Machinery 1960 Revision.[1]	DSAH 4215.3
3424, 4430	Industrial Furnaces and Ovens Volume 1 and 2	DSAH 4215.4
6635	Physical Properties Testing Equipment	DSAH 4215.6
3530, 3625	Textile Industries Machinery and Industrial Sewing Machines	DSAH 4215.8
6636	Environmental Chambers	DSAH 4215.10
3422, 3426	Rolling Mills, Drawing Machines and Metal Finishing Equipment	DSAH 4215.12
3450, 3460, 5220	Portable Machine Tools and Toolroom Layout Plates and Tables	DSAH 4215.13
6680, 6685	Liquid and Gas, Pressure, Temperature, Humidity, and Mechanical Motion Measuring and Controlling Instruments.	DSAH 4215.15
3635	Crystal and Glass Industries Machinery	DSAH 4215.16
4440	Driers, Dehydrators, and Anhydrators	DSAH 4215.17
6650, 6670	Scales, Balances and Optical Instruments	DSAH 4215.18
3680	Foundry Equipment	DSAH 4215.19

See footnote at end of table.

INDEX OF INDUSTRIAL EQUIPMENT HANDBOOKS—Continued

FSC	Title	DSA
6695	Combination and Miscellaneous Instruments Including Dynamometers.	DSAH 4215.21
4920	Aircraft Maintenance and Repair Shop Specialized Equipment	DSAH 4215.23
4330	Centrifugals, Separators and Filters	DSAH 4215.24
6630, 6640	Chemical Analysis and Laboratory Instruments	DSAH 4215.30
3015, 3660	Pulp and Paper Industries and Size Reduction Machinery	DSAH 4215.33
3620	Rubber and Plastics Working Machinery	DSAH 4215.35
3611, 3685, 3693, 3694, 3695.	Marking, Metal Container, Assembly, Clean Work Stations, and Miscellaneous Industry Machinery.	DSAH 4215.36
3650	Chemical and Pharmaceutical Products Manufacturing Machinery	DSAH 4215.37
4940	Miscellaneous Maintenance and Repair Shop Specialized Equipment	DSAH 4215.38
3690, 4925	Specialized Ammunition and Ordnance Machinery	DSAH 4215.39
3405	Metalworking Saws and Filing Machines	DSAH 4215.40
3418	Planers and Shapers (Includes Shapers, formerly Part of FSC 3419)	DSAH 4215.41
3431, 3432, 3433, 3436, 3438.	Welding, Heat Cutting and Metalizing Equipment	DSAH 4215.42
3408, 3410	Machining Centers, Way Type Machines, Electrical and Ultrasonic Erosion Machines.	DSAH 4215.43
3419	Miscellaneous Machine Tools	DSAH 4215.44

[1] Production Equipment Directory D1 for sale by Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. For FSC 3418 and 3419, see Handbooks DSAH 4215.41 and 4215.44 respectively.

Subpart 18–13.4—Use and Rental of Government Production and Research Property

§ 18–13.401 Policy.

It is the policy of NASA to put Government production and research property which is in the possession of a contractor or subcontractor to the greatest possible use in the performance of Government contracts or subcontracts, so long as such use does not confer a competitive advantage on the contractor or subcontractor contrary to the policies set forth in Subpart 18–13.5.

(a) Industrial Plant Equipment (IPE) is acquired by NASA for use by a contractor in performing NASA work only when the contractor is unable or unwilling to furnish the IPE, and it is deemed in the best interest of the Government to provide such equipment to meet required delivery schedules for NASA materials and services. Existing Government-owned IPE may be provided contractors when substantial savings to the Government will accrue, and no competitive advantage is conferred.

(b) There are instances where Government-owned IPE is required to remain in a contractor's plant to perform NASA work, but where the full capacity of the equipment is not required for this work. In such instances, contractors may be authorized to make use of the equipment for commercial work under three conditions where such authorization may be in the interest of the Government:

(1) To keep the equipment in a high state of operational readiness through regular usage;

(2) Where substantial savings to the Government would accrue through overhead cost sharing and receipt of rentals, or

(3) To avoid an inequity to the contractor who is required, at the Government's request, to retain the equipment in place, often intermingled with contractor-owned plant equipment required for the production of commercial orders.

§ 18–13.402 Authorizing a contractor to use Government production and research property without charge.

(a) A contractor may use Government production and research property without charge:

(1) In the performance of—

(i) Prime contracts which specifically authorize use without charge;

(ii) Subcontracts of any tier if the contracting officer having cognizance over the prime contract concerned has authorized use without charge by:

(*a*) Approving a subcontract specifically authorizing such use;

(*b*) Including such authorization in the prime contract; or

(*c*) By otherwise approving such use in writing;

(iii) Contracts of foreign government if use without charge has been authorized in writing pursuant to § 18–13.406; or

(iv) Research, development, or educational work by nonprofit organizations if the contracting officer having cognizance of such property approves such use in writing.

(2) *Provided*, as to subparagraph (1) (i) and (ii) of this paragraph—

(i) The procedures set forth in Subpart 18–13.5 are complied with;

(ii) The contracting officer having cognizance of the prime contract determines that the Government will receive adequate consideration for the use of the property through reduced costs for the supplies or services or otherwise; and

(iii) A concurrence in the proposed use of the property in accordance with paragraphs (b) and (c) of this section is obtained.

(b) (1) A contracting officer desiring to authorize use of Government production and research property under the cognizance of another contracting officer may request the latter to give his concurrence in such use. If concurrence is denied, the resolution procedures set forth in paragraph (c) of this section shall be employed.

(2) Unless its use is authorized by the solicitation, each solicitation shall require that any contractor or subcontractor desiring to use Government production and research property in his possession in the performance of the proposed Government contract or subcontract shall request the contracting officer having cognizance of such property to give his written concurrence in such use. Such concurrence shall be given whenver possible and shall contain any information required by § 18–13.502 or § 18–13.503.

(c) If the contracting officer having cognizance of Government production and research property refuses to give the concurrence called for by paragraph (b) (2) of this section, the contractor may report the matter to the contracting officer, who may then request permission of the contracting officer having cognizance over such property to authorize its use. The latter shall respond promptly to this request. In the event of a disagreement between the two contracting officers, they shall refer the matter to the head of their respective installation as promptly as may be practicable. If the latter are unable to reach agreement, they shall refer the matter to their respective higher echelons of procurement authority for resolution. Any intergovernmental issue shall be referred to the Director of Procurement, NASA Headquarters for resolution.

(d) Notwithstanding paragraph (a) of this section, a contract may be modified to provide for the use of Government production and research property on a rent-free basis, if the contract is equitably adjusted to reflect the elimination of rent and any other amount attributable thereto.

§ 18–13.402–50 Authorizations.

For purposes of documentation and administration, a copy of any authorization to use Government provided production and research porperty shall be furnished by the contracting officer granting the authorization to the contracting officer requesting the authority to use the property. A record of contracts and subcontracts on which the property is authorized to be used shall be included in the file of the contract under which the property is accountable. Documentation of any authorization to use Government property in the performance of a supply or service contract shall accompany each supply or service contract submitted to NASA Headquarters for review.

§ 18–13.402–51 Provisions of related procurement contracts requiring the use of Government facilities in the possession of a contractor.

When a related rocurement contract, or modification thereto is negotiated on the basis of the use of facilitise which have been previously provided (or are currently being provided under an existing contract) by NASA or another Government agency to the prime contractor or his subcontractors, the following procedures shall apply:

(a) Facilities which are authorized for use by a prime contractor shall be identified by the facilities contract number. If use of the facilities is authorized on a no-charge basis, the contract shall contain the following clause:

USE OF GOVERNMENT FACILITIES ON A NO-CHARGE BASIS (OCTOBER 1967)

The Contractor is authorized to use on a no-charge basis, in the performance of this contract, the Government-owned facilities provided to him under the facilities contract identified below:

(b) Where no-charge use of facilities is authorized for subcontract work which

will support the related prime procurement contract, the names of subcontractors, with the respective facilities contract numbers and items to be produced, shall be inserted in the related procurement contract, or modification thereof, pursuant to § 18–13.402–53.

§ 18–13.402–52 Related procurement contracts requiring the provision of additional facilities.

(a) Prior to executing a related procurement contract in which it is agreed that additional Government facilities shall be provided, the contracting officer shall determine whether the proposed contractor has in existence a facilities contract with NASA. If so, the contracting officer shall arrange with the contracting officer administering the facilities contract to have the proposed additional facilities included under the facilities contract and the related procurement contract shall specify such arrangement. If the proposed contractor does not have a facilities contract with NASA, the contracting officer shall either enter into a separate facilities contract or provide the required facilities under the related procurement contract, subject to the limitations set forth in § 18–13.303–1.

(b) If a related procurement contract, or a modification thereof, is negotiated on the basis that additional facilities will be provided to the contractor under a separate facilities contract (either directly by the Government or by contractor acquisition at Government expense), the following Facilities clause shall be inserted in the schedule of such related procurement contract:

FACILITIES (JULY 1968)

(a) The terms and conditions of the contract are based on the providing to the Contractor, under separate facilities contract, of certain facilities which are described in ------. Such facilities, as determined by the Contracting Officer shall be either furnished to the Contractor directly by the Government, or the Contractor shall be authorized to acquire them at Government expense. The parties hereby agree to enter into such a separate facilities contract, or to supplement an existing facilities contract to cover such additional facilities, as the case may be, at the earliest practicable date. Any separate facilities contract shall be made using such applicable contract form, if any, as is prescribed by the NASA Procurement Regulation in effect on the date such facilities contract is executed and shall provide that such facilities may be used rent-free in the performance of this contract.

(b) It is agreed that if such facilities are not provided at the time and to the extent as indicated in paragraph (a) above, an equitable adjustment shall, upon timely written request of the Contractor, be made in the terms and conditions of this contract to the extent required by reason of the Government's failure to provide such facilities.

(c) In the blank in paragraph (a) of the foregoing clause, specifically identify the facilities to be provided, either (1) by referencing the contractor's proposal or that portion thereof which describes the additional facilities to be provided, or (2) by referencing any other document which identifies and describes the facilities, or (3) by identifying and describing in the clause itself the facilities which have been agreed upon as those to be provided. Where rent-free use will not be authorized, the clause shall be modified to delete the reference to such use.

§ 18–13.402–53 Facilities for subcontractors on a no-charge basis.

If it is desired to permit a contractor to let certain of his subcontractors have the benefit of the use of Government facilities in the possession of such subcontractors on a no-charge basis, whether or not the prime contractor is to have the use of facilities on a no-charge basis, the Use of Government Facilities by Subcontractors clause set forth below shall be included in the related procurement contract: *Provided*, That (a) the price or the fee of the prime contract is negotiated on the specific understanding that the use of the facilities on a no-charge basis will be permitted in the performance of the specified subcontract items by the specified subcontractors to be set forth in paragraph (a) of the Use of Government Facilities by Subcontractors clause and (b) the subcontractor is not placed in a favored competitive position.

USE OF GOVERNMENT FACILITIES BY SUBCONTRACTORS (APRIL 1962)

(a) The following subcontractors having Government-owned facilities provided under the Facilities contracts set forth below, in effect on the date of this contract, are authorized to use such facilities on a no-charge basis for the subcontract items listed below, and the subcontract shall so provide:

Subcontractor	*Facilities Contract Number*	*Subcontract Item*
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(b) If the Contractor enters into other subcontracts with subcontractors who have Government-owned facilities provided to them under Facilities contracts which provide that no-charge use may be authorized, the Contracting Officer may authorize the use of such facilities on a no-charge basis: *Provided:*

(i) He determines that such use will not give the subcontractor a favored competitive position; and

(ii) This contract is amended to reflect adequate consideration to the Government for the use of such facilities on a no-charge basis.

Such subcontracts shall specifically authorize the no-charge use, and require the written approval of the Contracting Officer. No modification to this contract will be required, as provided in (ii) above, if the Contracting Officer determines that an elimination of charge for use of such facilities will, of itself, result in an adequate decreased cost to the Government under this contract.

(c) If the Government-owned facilities provided to the Contractor or any subcontractor hereunder on a no-charge basis are increased or decreased or do not remain available during the performance of this contract, or if any change is made in the terms and conditions under which they are made available, such equitable adjustments as may be appropriate will be made in the terms of this contract, unless such increase or decrease was contemplated in the establishment of the price of this contract or a subcontract.

(d) The Contractor agrees that he will not directly or indirectly, through overhead charges or otherwise, include in the price of this contract, or seek reimbursement under this contract for, any rental charge paid by the Contractor for the use on other contracts of the facilities referred to herein. Any subcontract hereunder which authorizes the subcontractor to use Government facilities on a no-charge basis shall contain a provision to the same effect as this paragraph (d).

§ 18–13.402–54 Contract provisions where facilities are provided under a contract other than a facilities contract.

(a) Where Government-owned facilities are to be acquired or fabricated by a contractor under a contract other than a facilities contract, the following clause, with the schedule terms called for therein, shall be included in the contract, in addition to the appropriate Government Property clause:

FACILITIES ACQUIRED OR FABRICATED (MAY 1965)

Subject to the approval of the contracting officer, the contractor may acquire or fabricate the facilities listed in the schedule of the contract. Costs incurred therefor will be allowable costs, provided that the contractor shall have no obligation to acquire or fabricate facilities and the Government shall have no obligation to reimburse any amount for such facilities in excess of the total estimated facilities costs set forth in the Schedule, unless this contract is amended to increase such amount. The facilities acquired or fabricated shall be considered Government property and subject to the provisions of the Government Property clause of this contract.

(b) Where existing facilities are to be furnished under a contract containing the appropriate Government Property clause of Subpart 18–13.7, no separate clause covering such facilities generally is necessary. The items of facilities will be listed or specified in the schedule as Government-furnished property. However, if installation of such existing facilities to be furnished by the Government is to be performed by the contractor at Government expense, the contract schedule shall so state and set forth the total estimated cost therefor.

§ 18–13.403 Rental of Government production and research property.

(a) When use of Government production and research property is authorized by the contracting officer having cognizance of the property, rent computed in accordance with § 18–13.404 shall be charged for such use except where use without charge is authorized under §18–13.402. If this contracting officer refuses to grant such authorization with respect to work for the Government, the contracting officer having cognizance of the procurement may refer the matter to the higher echelons of authority referred to in § 18–13.402(c).

(b) When Government production and research property is no longer required for the performance of Government contracts or subcontracts, it shall not continue to be made available to a contractor solely for commercial use pursuant to this subpart, (see § 18–13.301 (e)).

(c) Each contracting officer having cognizance of Government production and research property shall be responsible for the collection of rent thereon.

§ 18–13.404 Rental rates and policies applicable to the use of Government production and research property.

(a) Except as provided in paragraph (b) of this section, the rent for all Government production and research property shall be computed in accordance with the "Use and Charges" clause set forth in § 18–7.702–12 for facilities. Rent for machine tools (Production Equipment Codes 3411–3419) and secondary metalforming and cutting machines (Production Equipment Codes 3441–3449) shall be based on the time such property is available for use. Rent for other classes of Government production and research property is normally charged on the same basis; however, if the Director of Procurement determines it to be in the best interest of the Government, rent may be charged on an actual use or other basis. In such cases, the Use and Charges clause should be appropriately modified.

(b) The rental charge required by paragraph (a) of this section shall not be applicable to:

(1) Wholly Government-owned plants operated by private contractors on a fee basis;

(2) Items of equipment which are of such size or complexity, or have such performance characteristics, that they present unusual problems in relation to the time required for their preparation for shipment, installation, and preparation for operation: *Provided*, That the Office of Emergency Preparedness has approved the general program involving such equipment;

(3) Government production and research property left in place or installed on contractor-owned property for mobilization or future production purposes of NASA: *Provided*, That a rental charge computed in accordance with paragraph (a) of this section shall apply to so much of such property or its capacity as may be used or authorized for use; or

(4) Such other Government production and research property as may be otherwise excepted by the Office of Emergency Preparedness.

§ 18–13.405 Non-Government use of industrial plant equipment (IPE).

(a) The prior written approval of the contracting officer is required for any non-Government use of active Government-owned industrial plant equipment (see B.102–11). Each such approval shall contain limitations on the contractor's right to use the equipment consistent with the requirements of this paragraph. Before non-Government use exceeding 25 percent may be authorized, prior approval of the Director of Procurement shall be obtained: *Provided*, That as to Government-owned machinery and tools (Production Equipment Codes Nos. 3411–3419 and 3441–3449) having a unit acquisition cost of $1,000 or more the prior approval of the Office of Emergency Preparedness shall be obtained through the Director of Procurement with the concurrence of the Director of Facilities. Requests requiring the approval of the Director of Procurement or the Office of Emergency Preparedness shall be submitted at least 6 weeks in advance of the projected use and shall include:

(1) The total number of active IPE items involved and total acquisition cost thereof; and

(2) An itemized listing of active equipment having an acquisition cost of $25,000 or more, showing for each such item the nomenclature, production equipment code, year of manufacture, and the acquisition cost.

(b) The percentage of Government and non-Government use shall be computed on the basis of time available for use. For this purpose the contractor's normal work schedule, as represented by scheduled production shift hours, shall be used. All active industrial plant equipment located at any single plant having a unit acquisition cost of less than $25,000 may be averaged over a quarterly period. Equipment having a unit acquisition cost of $25,000 or more shall be considered on an item by item basis.

(c) The approvals under paragraph (a) of this section may be granted only when it is in the interest of the Government (1) to keep the equipment in a high state of operational readiness through regular usage; (2) because substantial savings to the Government would accrue through overhead cost sharing and receipt of rental; or (3) to avoid an inequity to the contractor who is required, at the Government's request, to retain the equipment in place, often intermingled with contractor-owned equipment required for commercial production. Approval for non-Government use shall be for a period of not more than 1 year. Approval for non-Government use in excess of 25 percent shall be for a period of not less than 3 months.

(d) Rent-free use of Government property for independent research and development generally will be discouraged except in unusual circumstances where it is determined that:

(1) Such use is clearly in the best interests of the Government (for example, the project can reasonably be expected to be of value in specific Government programs), and

(2) The policy set forth in § 18–13.501 is adhered to in that no competitive advantage will accrue to the contractor through such authorized use of Government property.

§ 18–13.406 Rent-free use of Government production and research property on work for foreign governments.

Upon the request of a foreign government, or a contractor certifying that he is acting on behalf of a foreign government, Government production and research property located in the United States, its possessions, or Puerto Rico, may be authorized for use without charge on contracts of foreign government or subcontracts thereunder if:

(a) Such use is approved by the Director of Procurement with the concurrence of the Director, Office of Facilities, NASA Headquarters;

(b) Such use is legally authorized;

(c) The foreign government's placement of the contract directly with the contractor is consistent with the best interest of the United States;

(d) It appears that the foreign government will place the contract with the contractor whether or not such use is authorized, or that no competitive pricing advantage will accrue to the contractor by virtue of such use;

(e) The contractor agrees that no charge for the use of such property will be included in the price charged the foreign government under the contract; and

(f) Such use will not interfere with foreseeable requirements of the United States.

§ 18–13.407 Use of Government production and research property without charge by nonprofit organizations.

The contracting officer cognizant of Government production and research property in the possession of a nonprofit organization may approve the use of such property by such organization without charge, for research, development or educational work, if:

(a) Such use is directly or indirectly in the national interest;

(b) Such use is not for the direct benefit of a profit-making organization; and

(c) The Government receives some direct benefit from such use (such benefit shall, at a minimum, include the furnishing of a report by the contractor on the work for which the property was provided and may include rights to use the results of the work without charge, or any other benefit that may be appropriate).

§ 18–13.408 Use of Government production and research property on independent research and development programs.

The contracting officer having cognizance of the property may authorize use of Government production and research property on a contractor's independent research and development (IR&D) (see § 18–15.205–35): *Provided*, That:

(a) Use does not conflict with the primary use of the property;

(b) Use does not result in retention by the contractor of property which could otherwise be released;

(c) The contractor agrees not to include as a charge against any Government contract the rental value of such property used on his IR&D program; and

(d) A rental charge for the portion of the contractor's IR&D program cost allocated to commercial work, computed in accordance with § 18–13.404, is deducted from any agreed upon Government share of the contractor's IR&D costs.

§ 18–13.450 Procurement by other Government agencies requiring the use of NASA facilities in possession of the contractor.

Use of NASA production and research property in the possession of the contractor on contracts of other agencies of the Government shall be authorized to the extent that such use will not:

(a) Interfere with the primary NASA purpose of the facilities; and

(b) Require the use of the facilities beyond the anticipated date of completion of the primary purpose;

In such cases, approval, on a noninterference basis, for use may be given by the NASA contracting officer having cognizance of the property.

Subpart 18–13.5—Competitive Advantage

§ 18–13.501 Policy.

It is the policy of NASA to eliminate the competitive advantage that might otherwise arise from the acquisition or use of Government production and research property. This is accomplished by charging rental or by use of rental equivalents in evaluating bids and proposals as provided in § 18–13.502 and § 18–13.503 The only exception to this general policy is stated in § 18–13.505, which provides that certain costs or savings to the Government related to providing such property to contractors shall be considered in such evaluation, regardless of any competitive advantage that may result from this excepiton.

§ 18–13.502 Advertised procurements—Use of existing Government production and research property.

§ 18–13.502–1 General.

In formally advertised procurements, the competitive advantage that might otherwise accrue to a contractor from the use of existing Government production and research property shall be eliminated by adding an evaluation factor to each bid for which such use is requested, or where the use of an evaluation factor is not practical, by charging rent for such use.

§ 18–13.502–2 Procedures for use of evaluation factors.

Where an evaluation factor is used, it shall be equal to the rent, allocable to the contract, which would otherwise have been charged for such use. The invitation for bids shall set forth a description of the evaluation procedure to be followed, as required by § 18–13.506, and it shall require all bidders to submit with their bids:

(a) A list or description of all Government production and research property which the bidder or his anticipated subcontractors propose to use on a rent-free basis, including property offered for use in the invitation for bids, as well as property already in possession of the bidder and his subcontractors under other contracts;

(b) With respect to such property already in possession of the bidder and his proposed subcontractors, identification of the facilities contract or other instrument under which the property is held, and the written permission of the contracting officer having cognizance of the property for use of that property;

(c) The months during which such property will be available for use, which shall include the first, last, and all intervening months, and with respect to any such property which will be used concurrently in performance of two or more contracts, the amounts of the respective uses in sufficient detail to support the proration required by § 18–13.502–3(b); and

(d) The amount of rent which would otherwise be charged for such use, computed in accordance with § 18–13.404.

§ 18–13.502–3 Limitations.

(a) The invitation for bids shall provide that no use of Government production and research property other than as described and permitted pursuant to § 18–13.502–2 shall be authorized unless such use is approved in writing by the contracting officer cognizant of the property, and either rent calculated in accordance with § 18–13.404 is charged, or the contract price is reduced by an equivalent amount.

(b) If Government production and research property will be used on other work under one or more existing contracts for which use has been authorized (see § 18–13.402 and § 18–13.403), the evaluation factor shall be determined by prorating the rent between the proposed contract and such other work. The pro rata share applicable to a proposed contract shall be determined by multiplying the full rental charge for the use of Government production and research property for the period for which rent-free use is requested (i.e., the full charge for the requisite number of rental periods computed in accordance with paragraph (b)(2) of the Use and Charges clause in § 18–7.702–12, before application of the credit for rent-free use) by a fraction the numerator of which is the amount of use of such property requested by the contractor under that contract determined in accordance with paragraph (b)(1)(iv) of the Use and Charges clause and the denominator of which is the sum of the previously authorized use of the property by the contractor for the period and the use requested under the proposed contract.

§ 18–13.502–4 Rent.

If competitive advantage is to be eliminated by charging rent, any bidder or subcontractor may use Government production and research property after obtaining the written approval of each contracting officer having cognizance of such property. Rent shall be charged for such use in accordance with § 18–13.404.

§ 18–13.503 Negotiated procurement—Use of existing Government production and research property.

In negotiated procurements, competitive advantage arising from the use of Government production and research property shall be eliminated by the use of an evaluation factor established in accordance with § 18–13.502, except when the contracting officer determines that the use of an evaluation factor would not affect the choice of contractors.

§ 18–13.504 Residual value to the Government of special tooling and special test equipment to be acquired in competitively negotiated procurements.

(a) In competitively negotiated procurements that permit the acquisition of special tooling or special test equipment, an evaluation of the residual value of such property to the Government may be made where practicable in accordance with paragraphs (b) and (c) of this section. Such an evaluation is appropriate in cases where the contracting officer has determined that such property will have a reasonably foreseeable future usefulness and related residual value beyond the period of use on the award under consideration, and it is anticipated that the cost of such property as proposed by the several offerors may be a factor in making the award. Such an evaluation is not appropriate in cases where the resulting contract is to provide for the acquisition of the special tooling or special test equipment as an end item.

(b) The purpose of evaluating the residual value of special tooling or special test equipment is to apportion to each proposal under consideration only that part of the total cost of such property which represents the amount of useful life to be consumed during performance of the resulting contract. Accordingly, the proposed price or cost of such property may be reduced for evaluation purposes by an amount representing the residual value to the Government of such property. In estimating such residual value, the following factors shall be considered:

(1) The useful life of the special tooling and special test equipment to be acquired,

(2) Its adaptability for use by other contractors or by the Government,

(3) The reasonably foreseeable requirements for its future use, and

(4) Its scrap or salvage value.

(c) If the contracting officer decides to consider the residual value of special tooling or special test equipment in a competitively negotiated procurement, the solicitation shall give notice thereof and a statement of the reasonably foreseeable future requirements of the Government for the supplies in question, in order to afford offerors the opportunity to consider such residual value as a factor in making their proposals. If the solicitation does not contain such notice and statement but the contracting officer decides to consider the residual value of special tooling or special test equipment after receipt of the proposals, he shall during the negotiations give all offerors within a competitive range a notice and statement as above, and shall permit them to make such changes in their proposals as they may consider necessary as a result of the addition of the residual value factor.

§ 18–13.505 Additional evaluation factors.

(a) If the furnishing of Government production and research property will result in direct and measurable costs and under the terms contained in the solicitation such costs are to be borne by the Government, additional factors, set forth in the solicitation either in the form of a dollar amount or a formula, shall be employed in the evaluation of bids or proposals. Such factors shall be limited to:

(1) The cost of reactivation from base package or storage;

(2) The cost of rehabilitation and conversion; and

(3) The costs of making such property available on a f.o.b. basis.

(b) If, under the terms contained in the solicitation, the costs of furnishing Government production and research property or making it suitable for use are to be borne by the contractor, as, for example, when such property is offered on an "as is" basis (see § 18–13.308), no additional evaluation factors related to such costs shall be used.

(c) If measurable savings to the Government will result directly from the use of Government production and research property on the contract for which the solicitation is made, a dollar amount representing such savings shall be set forth in the solicitation and employed in the evaluation of bids or proposals. Examples of such savings include:

(1) Savings occurring as a direct result of activation of idle tools being maintained in idle status at known cost to the Government; and

(2) Avoidance of the cost of deactivation and placing active tools in layaway or storage, or of maintaining them in an idle state where the prospective costs are known and firm decisions have been made that such tools will be laid away or stored if not used on the contract for which solicitation is made.

Avoidance of the costs of initial layaway or storage shall not be evaluated when such costs will merely be deferred by the proposed use.

§ 18–13.506 Solicitations—Description of evaluation procedure.

Generally, where Government production and research property is offered for use in a competitive procurement, the solicitation should provide that the user will assume all costs related to making the property available (such as transportation or rehabilitation costs), to avoid the need for separate evaluation of such costs. Where this is not feasible, or it is otherwise in the Government's interest, the Government may assume certain of such costs provided they are included in the evaluation of bids or proposals. The rental charges or equivalent factors to be used to eliminate competitive advantage, as well as all costs or savings to be evaluated, shall be clearly shown in the solicitation to insure that all prospective bidders or offerors understand the basis to be used for selection of the lowest bid or proposal and take these factors into account in preparing their bids or proposals.

Subpart 18–13.6—Administration of Government Production and Research Property

§ 18–13.601 Maintenance.

§ 18–13.601–1 Facilities contracts.

(a) To the extent practicable, the schedule of each facilities contract containing the Maintenance clause set forth in § 18–7.702–14 shall specify or incorporate by reference a normal maintenance program.

(b) Where no provisions are made pursuant to paragraph (a) of this section, the contractor shall be required to submit a normal maintenance program to the contracting officer as promptly as practicable after the execution of the facilities contract. The contracting officer shall examine such program and shall negotiate with the contractor for an agreement thereon.

(c) Any normal maintenance program that is agreed to pursuant to either paragraph (a) or (b) of this section shall provide specific details which will insure protection, preservation, maintenance, and repair of the Government production and research property in accordance with sound industrial practice. In addition, such program shall include general language covering any aspects of maintenance which are not specifically provided for. With the prior written agreement of the contracting officer, such program may also provide for:

(1) A specified degree of inspection procedures, maintenance, and repairs that is less than sound industrial practice as to any part of the Government production and research property which is determined by NASA to be nonessential to future utilization of the property as a whole; and

(2) Reimbursement by the Government for the cost of protecting, preserving, maintaining, and repairing Government production and research property not authorized for use by the contractor.

(d) The contracting officer shall order a decrease in maintenance when the current maintenance is not necessary to assure the standards set forth in paragraph (c) of this section, and when such an order will result in savings to the Government.

(e) The contracting officer may order more than the normal maintenance when necessary and in the best interest of the Government, but only if adequate funds are available therefor. The Government shall reimburse the contractor for the costs incurred.

§ 18–13.601–2 Contracts other than facilities contracts.

Government production and research property provided under a contract other than a facilities contract shall be maintained in accordance with sound industrial practice pursuant to the appropriate clause of the contract under which it is—provided. However, the schedule of any contract under which such Government production and research property is provided may contain specific maintenance requirements for such property when appropriate.

§ 18–13.602 Risk of loss or damage and liability.

When justified by the circumstances of any particular contract, the contract may require the contractor to assume greater risks than those enumerated in the clause set forth in § 18–7.702–18, or the applicable contract clause set forth in Subpart 18–13.7, as appropriate.

§ 18–13.603 Termination of facilities contracts.

A facilities contract shall be terminated when the Government production and research property covered thereby is no longer required for the performance of Government contracts or subcontracts, unless such termination is detrimental to the Government's interests. The contractor shall not be granted the unilateral right, at his election, to extend the time during which he is entitled to use the property provided under the facilities contract.

§ 18–13.604 Standby or layaway provision.

(a) A facilities contract may include appropriate provisions for maintenance and storage of Government production and research property in standby or layaway status. Such provisions shall include specifications for the care and maintenance of the property appropriate for its intended future use. These provisions may be the same as or different from the Maintenance clause set forth in § 18–7.702–14, depending upon the purpose and scope of the standby or layaway provisions, the expected duration of the standby or layawy status and other pertinent considerations.

(b) If the Government is required to pay the contractor for maintenance and storage of Government production and research property in standby or layaway, the facilities contract shall define with particularity what constitutes standby or layaway, and when and under what circumstances such payments will commence and terminate with respect to all or any part of the property.

(c) The facilities contract shall provide that, if the contractor is required to pay any State or local property tax measured by his possession of or interest in Government production and research property in standby or layaway, he shall be reimbursed therefor to the extent provided under § 18–15.205–41.

§ 18–13.605 Retention of special tooling and special test equipment.

Upon termination or completion of a contract under which the Government has obtained title to or the right to acquire title to special tooling or special test equipment, the NASA installation which issued the contract shall review the Government's need for its continued retention. In addition, the installation shall periodically review the Government's need for retaining all special tooling and special test equipment, not currently in use, to which it has title or the right to acquire title. In either case, consideration shall be given to the factors set forth in § 18–13.305–2(b) in determining the Government's need for retention of the special tooling and special test equipment.

§ 18–13.606 Disposition.

(a) Except for nonseverable production and research property for which specific provision is made by § 18–13.307, the disposition of Government production and research property shall be in accordance with Part 18–24 of this

chapter and NASA Management Instruction 4310.1, "Screening and Utilization of Excess Contractor Inventory" provided, that all Government production and research property listed in § 18–13.312 awaiting disposition, shall be reported to the Procurement Office, NASA Headquarters (Code KDP–3).

(b) Contracts under which Government production and research property is provided to a contractor shall reserve to the Government the right to abandon such property in place, without any obligation to restore or rehabilitate the premises of the contractor. However, this right may be waived if the prior approval of the head of the installation is obtained. The authority to grant such approval shall not be delegated.

§ 18–13.607 Insurance.

When less than 75 percent of the total use of facilities is for Government work, consideration shall be given to requiring that the contractor procure and maintain insurance against loss of or damage to the facilities. If necessary, facilities contracts may be modified to require such insurance.

Subpart 18–13.7—Contract Clauses

§ 18–13.701 Applicability.

(a) As used throughout this Subpart 18–13.7, the term "fixed-price contract" shall include any advertised or negotiated fixed-price type contract (see § 18–3.404) and any letter contract which will be converted into a fixed-price type definitive contract, but shall exclude small purchases made under Subpart 18–3.6.

(b) As used throughout this subpart, the term "cost-reimbursement contract" shall include any cost-reimbursement type contract (see § 18–3.405) and any letter contract which will be converted to a cost-reimbursement type definitive contract, but shall exclude facilities contracts (see § 18–13.101–11).

§ 18–13.702 Government property clauses for fixed-price contracts.

The appropriate clause of those set forth in paragraphs (a) and (c) of this section and in § 18–13.710 shall be used, in accordance with the instructions therein, in fixed-price contracts (except for experimental, developmental, or research work with educational or nonprofit institutions, where no profit to the contractor is contemplated).

(a) *Government property clause for fixed-price contracts.* Except as provided in paragraphs (b) and (c) of this section, the following clause shall be used in all fixed-price contracts under which the Government is to furnish to the contractor, or the contractor is to acquire, Government property;

GOVERNMENT PROPERTY (FIXED-PRICE) (JULY 1970)

(a) *Government-Furnished Property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use (except for such property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." Except for Government-furnished property furnished "as is", in the event the Government-furnished property is received by the Contractor in a condition not suitable for the intended use the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon the completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the rejection or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Changes in Government-Furnished Property.* (1) By notice in writing, the Contracting Officer may (i) decrease the property provided or to be provided by the Government under this contract, or (ii) substitute other Government-owned property for property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to subparagraph (1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution, or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

(c) *Title.* Title to all property furnished by the Government shall remain in the Government. In order to define the obligations of the parties under this clause, title to each item of facilities, special test equipment, and special tooling (other than that subject to a "Special Tooling" clause) acquired by the Contractor for the Government pursuant to this contract shall pass to and vest in the Government when its use in the performance of this contract commences, or upon payment therefor by the Government, whichever is earlier, whether or not title previously vested. All Government-furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government property". Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(d) *Property Administration.* The Contractor shall comply with the provisions of the "Control of Government Property in Possession of Contractors" (Appendix B, NASA Procurement Regulation) as in effect on the date of the contract, which is hereby incorporated by reference and made a part of this contract.

(e) *Use of Government Property.* The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) *Utilization, Maintenance, and Repair of Government Property.* The Contractor shall maintain and administer, in accordance with sound industrial practice, and in accordance with applicable provisions of Appendix B of the NASA Procurement Regulation, a program for the utilization, maintenance, protection and preservation of Government property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs: *Provided, however,* That if the Contractor cannot effect such repair within the time required, the Contractor shall dispose of such property in the manner directed by the Contracting Officer. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in any contractual provisions affected by such repair or replacement of Government property made at the direction of the Government, in accordance with the procedures provided for in the "Changes" clause of this contact. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at his own expense.

(g) *Risk of Loss.* Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss of or damage to Government property provided under this contract upon its delivery to him or upon passage of title thereto to the Government as provided in paragraph (c) hereof, except for reasonable wear and tear and except to the extent that such property is consumed in the performance of this contract.

(h) *Access.* The Government, and any persons designated by it, shall at all reasonable times have access to the premises wherein any Government property is located, for the purpose of inspecting the Government property.

(i) *Final Accounting and Disposition of Government Property.* Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the

Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in the performance of this contract (including any resulting scrap) or not theretofore delivered to the Government, and shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as the Contracting Officer may direct.

(j) *Restoration of Contractor's Premises.* Unless otherwise provided herein the Government:

(i) May abandon any Government property in place, and thereupon all obligations of the Government regarding such abandoned property shall cease; and

(ii) Has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment (paragraph (j)(i) above), disposition on completion of need or of the contract (paragraph (i) above), nor otherwise, except for restoration or rehabilitation costs which are properly included in an equitable adjustment under paragraph (b) above.

(k) *Communications.* All communications issued pursuant to this clause shall be in writing.

(b) *Contracts requiring the furnishing of cost and pricing data.* In negotiated fixed-price contracts for which the price is not based on (1) adequate price competition, (2) established catalog or market prices of commercial items sold in substantial quantities to the general public (see § 18-3.807-1(b)), or (3) prices set by law or regulation, substitute the following for paragraph (g) of the clause in paragraph (a) of this section:

(g) *Risk of Loss.* (1) Except for loss, destruction or damage resulting from a failure of the Contractor due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel as defined herein, to maintain and administer the program for the utilization, maintenance, repair, protection, and preservation of the Government property as required by paragraph (f) hereof, and except as specifically provided in the clause or clauses of this contract designated in the Schedule, the Contractor shall not be liable for loss or destruction of or damage to the Government property provided under this contract:

(i) Caused by any peril while the property is in transit off the Contractor's premises; or

(ii) Caused by any of the following perils while the property is on the Contractor's or subcontractor's premises, or on any other premises where such property may properly be located, or by removal therefrom because of any of the following perils—

(A) Fire; lightning, windstorm, cyclone, tornado, hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; sabotage; aircraft or objects falling therefrom; vehicles running on land or tracks; excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; nuclear reaction, nuclear radiation or radioactive contamination; hostile or warlike action, including action in hindering, combating, or defending against an actual, impeding or expected attack by any government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces; or by an agent of any such government, power, authority, or forces; or

(B) Other peril, of a type not listed above, if such other peril is customarily covered by insurance (or by a reserve for self-insurance) in accordance with the normal practice of the Contractor, or the prevailing practice in the industry in which the Contractor is engaged with respect to similar property in the same general locale.

The perils as set forth in (i) and (ii) above are hereinafter called "expected perils."

If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the contractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in acordance with the provisions of prime contract.

The term "Contractor's managerial personnel" as used herein means the Contractor's directors, officers and any of his managers, superintendents, or other equivalent representatives who have supervision or direction of:

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(2) The Contractor represents that he is not including in the price hereunder, and agrees that he will not hereafter include in any prcie to the Government, any charge or reserve for insurance (including any self-insurance funds or reserve) covering loss or destruction of or damage to the Government property caused by any excepted peril.

(3) Upon the happening of loss or destruction of or damage to any Government property caused by an excepted peril, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed, and damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made by him in performing his obligations under this subparagraph (3) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly), in acocrdance with the procedures provided for in the "Changes" clause of this contract.

(4) With the approval of the Contracting Officer after loss or destruction of or damage to Government property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(5) Except to the extent of any loss or destruction of or damage to Government property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government property in accordance with the provisions of this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of or damage to the Government property, and such property (other than that which is permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (f) above.

(6) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government property, caused by an excepted peril, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to the Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

[1] (7) If this contract is for the development, production, modification, maintenance or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the "Ground and Flight Risk" clause of this contract shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft.

(c) *Liability for Government property furnished for repair or other services.* The clause set forth below shall be included in contracts for repair (modification, rehabilitation) or other servicing of Government property, when such property is furnished to a contractor for that purpose. If a substantial quantity of parts or material will be furnished to the contractor, or a significant amount of scrap will result from the work to be

[1] This subparagraph may be omitted where it is clearly inapplicable and shall be deleted when the Ground and Flight Risk clause is omitted.

performed, or if other Government property will be furnished to or acquired by the contractor, the contract will also contain the appropriate "Government-furnished Property" or "Government Property" clause and the schedule of the contract shall provide that such property shall be governed by the terms of that clause. When minor repairs are obtained under small purchases procedures, the procedures of this paragraph will not apply. Contracting officers shall not require additional insurance under the clause unless the circumstances clearly indicate advantages to the Government.

LIABILITY FOR GOVERNMENT PROPERTY FURNISHED FOR REPAIR OR OTHER SERVICES (OCTOBER 1967)

(a) The provisions of this clause shall govern with respect to any Government property furnished to the Contractor for repair or other services, and which is to be returned to the Government. Such property is hereinafter referred to as "Government property furnished for servicing" and shall not be subject to the provisions of any clause of this contract entitled "Government Furnished Property" or "Government Property."

(b) The Contractor shall maintain adequate records and procedures to assure that the Government property furnished for repair or servicing may be readily accounted for and identified at all times while in his custody or possession or in the custody or possession of any subcontractor.

(c) The Contractor shall be liable for any loss or destruction of or damage to the Government property furnished for repair or servicing (i) caused by the Contractor's failure to exercise such care and diligence as a reasonable prudent owner of similar property would exercise under similar circumstances; or (ii) sustained while the property is being worked upon and directly resulting therefrom, including but not limited to, any repairing, adjusting, inspecting, servicing or maintenance operation. The Contractor shall not be liable for loss or destruction of or damage to Government property furnished for repair or servicing resulting from any other cause except to the extent that such loss, destruction, or damage is covered by insurance (including self-insurance funds or reserves).

(d) In addition to any insurance (including self-insurance funds or reserves) carried by the Contractor and in effect on the date of this contract affording protection in whole or in part against loss or destruction of or damage to such Government property furnished for repair or servicing, the amount and coverage of which the Contractor agrees to maintain, the Contractor agrees to obtain such additional insurance covering loss or destruction of or damage to Government property furnished to the Contractor for repair or servicing as may, from time to time, be required by the Contracting Officer. The requirements for such additional insurance shall be effected under the procedures established by the "Changes" clause of this contract.

(e) The Contractor shall hold the Government harmless and shall indemnify the Government against all claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the Government property furnished for repair or servicing or arising from the presence of said property on the premises or property of the Contractor.

§ 18–13.703 Government property clause for cost-reimbursement contracts.

The following clause shall be used in cost-reimbursement contracts for supplies and services (except contracts for experimental, developmental, or research work with educational or nonprofit institutions, where no profit to the contractor is contemplated) under which NASA is to furnish to the contractor, or the contractor is to acquire, Government property.

GOVERNMENT PROPERTY (COST-REIMBURSEMENT) (JULY 1970)

(a) *Government-Furnished Property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provision affected by the return or disposition, or the repair or modification in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Changes in Government-Furnished Property.* (1) By notice in writing, the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contract, or (ii) substitute other Government-owned property for property to be furnished by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to paragraph (1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

(c) *Title.* Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under the contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government in whole or in part, whichever first occurs. All Government-furnished property, together will all property acquired by the Contractor title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government property". Title to the Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(d) *Property Administration.* The Contractor shall comply with the provisions of the "Control of Government Property in Possession of Contractors" (Appendix B, NASA Procurement Regulation), as in effect on the date of the contract, which is hereby incorporated by reference and made a part of this contract.

(e) *Use of Government Property.* The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) *Utilization, Maintenance, and Repair of Government Property.* The Contractor shall maintain and administer, in accordance with sound industrial practice, and in accordance with applicable provisions of Appendix B of the NASA Procurement Regulation, a program for the utilization, maintenance, repair, protection and preservation of Government property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of Government property.

(g) *Risk of Loss.* (1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any one of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of—

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed; or a separate and complete major industrial operation in connection with the performance of this contract;

(ii) Which results from a failure on the part of the Contractor, due to the willful

misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (i) above—

(A) To maintain and administer, in accordance with sound industrial practice, the program for maintenance, repair, protection and preservation of Government property as required by paragraph (f) hereof, or

(B) To take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (f) hereof;

(iii) For which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule;

(iv) Which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

Provided, That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception. If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(2) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provisions of this contract.

(3) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed and damaged Government property;

(ii) The time and origin of the loss, destruction or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovations of the damaged Government property or take such other action, as the Contracting Officer directs.

(4) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, he shall use the proceeds to repair, renovate or replace the Government proprety involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to the Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

[1](5) If this contract is for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the clause of this contract entitled "Flight Risks" shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft.

(h) *Access.* The Government, and any persons designated by it, shall at all reasonable times have access to the premises where any of the Government property is located, for the purpose of inspecting the Government property.

(i) *Final Accounting and Disposition of Government Property.* Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government Property not consumed in the performance of this contract, or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government Property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct. The foregoing provisions shall apply to scrap from Government Property: *Provided however*, That the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings, or cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account therefor as a part of general overhead or other reimbursable cost in accordance with the Contractor's established accounting procedures.

[1] This subparagraph may be omitted where it is clearly inapplicable.

(j) *Restoration of Contractor's Premises and Abandonment.* Unless otherwise provided herein, the Government:

(i) May abandon any Government property in place, and thereupon all obligations of the Government regarding such abandoned property shall cease; and

(ii) Has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment (paragraph (j)(1) above), disposition on completion of need or of the contract (paragraph (i) above), nor otherwise, except for restoration or rehabilitation costs caused by removal of Government property pursuant to paragraph (b) above.

(k) *Communications.* All communications issued pursuant to this clause shall be in writing.

As provided in paragraph (i) of the above clause, the contracting officer may authorize or approve use of the contractor's established scrap disposal and accounting procedures whenever the amount and recoverable value of scrap from Government property are relatively minor and the contractor's established procedures for accumulating and disposing of scrap and crediting the proceeds thereof to general overhead or other general cost will permit the Government to share equitably in such scrap recovery through a reduction of overhead or other cost factor affecting reimbursement under the contract.

§ 18–13.704 Special tooling clause for fixed-price contracts.

The following clause shall be used in negotiated fixed-price contracts for supplies or services under which the Government is to acquire full rights in special tooling other than as a line item (see § 18–13.305).

SPECIAL TOOLING (JULY 1968)

(a) *Definition.* (1) The term "special tooling" means all jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and replacements thereof, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production of particular supplies or parts thereof, or the performance of particular services. The term includes all components of such items, but does not include:

(i) Consumable property;

(ii) Special test equipment; or

(iii) Buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items.

(2) For the purposes of this clause, the term "special tooling" does not include:

(i) Items acquired by the Contractor prior to the effective date of this contract, or replacements of such items, whether or not altered or adapted for use in the performance of this contract; or

(ii) Items specifically excluded by the Schedule.

(b) *Use of Special Tooling.* The Contractor agrees not to use any items of special tooling except in the performance of this contract, or as approved by the Contracting Officer.

(c) *List of Special Tooling.* Within sixty (60) days after delivery of the first end items

under this contract, or such later date as may be prescribed by the Contracting Officer, the Contractor shall if the Contracting Officer so requests, furnish the Contracting Officer a list of all special tooling acquired or manufactured by the Contractor for use in the performance of this contract. The list shall specify the nomenclature, tool number and related product part number or service, and unit or group cost of the special tooling. Upon completion or termination of all or a substantial part of the work under this contract the Contractor shall furnish a final list in the same form covering all items not previously reported under this paragraph: *Provided, however,* That the Contracting Officer may by written notice wave this requirement or extend it until the completion of this contract and other contracts and subcontracts as to which approval has been obtained under paragraph (b) above. Special tooling which has become obsolete as a result of changes in design or specification need not be reported, except as provided for in paragraph (d).

(d) *Changes in Design.* In the event of any changes in design or specifications which affect interchangeability of parts, the Contractor shall, unless otherwise agreed to by the Contracting Officer, give the Contracting Officer notice of any part which is not interchangeable with the new or superseding part and the usable special tooling for each part covered in such notice shall be retained by the Contractor subject to the provisions of paragraph (i) pending disposition under paragraph (f).

(e) *Contractor's Offer To Retain Special Tooling.* At the time he furnishes any list or notice under (c) or (d) above, the Contractor may designate those items of special tooling (either specifically or by listing the particular products, parts, or services for which such items were used or designed) which he desires to retain, together with a written offer:

(i) To retain any or all of such items, free and clear of any Government interest, for an amount designated therein, which should ordinarily not be less than the then fair value of such items which fair value takes into account, among other things, the value of such items to the Contractor for use in further work by him; or

(ii) To retain any or all such items for such period of time and subject to such terms and conditions as may be agreed to by the parties hereto, subject to ultimate retention or disposition of such items in accordance with paragraph (f) hereof.

(f) *Disposition of Special Tooling.* Within ninety (90) days after receipt of any list or notice under paragraph (c) or (d) hereof, or such further period as may be agreed upon by the parties, the Contracting Officer shall furnish to the Contractor:

(i) A list specifying the particular products, parts, or serevices for which the Government may require special tooling, together with a request that the Contractor transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Government all usable items of special tooling which were used or designed for the manufacture or performance of any designated portion of such products, parts, or services, and which were on hand when production of such products or parts, or performance of such services, ceased;

(ii) An acceptance or rejection of any offer made by the Contractor under paragraph (e) above, or a request for further negotiation with respect thereto;

(iii) A direction to the Contractor to sell, or to dispose of as scrap, for the account of the Government, any or all of the special tooling covered by such list;

(iv) A statement with respect to any or all of the special tooling covered by such list that the Government has no further interest therein and waives its rights therein; or

(v) Any combination of the foregoing, as the circumstances warrant.

The Contractor shall promptly comply with any request by the Contracting Officer under this paragraph to transfer title to any items of special tooling, and shall: (1) immediately prepare such items for shipment by proper packaging, packing, and marking, in accordance with any instructions which may be issued by the Contracting Officer, and shall promptly deliver such items to the Government as directed by the Contracting Officer; or (2) if a storage agreement has been entered into, prepare such items for storage in accordance therewith, as directed by the Contracting Officer. To the extent that compliance with such directions under (iii), (1) or (2) above occasions any cost to the Contractor for which he will not otherwise be compensated, the contract price shall be equitably adjusted in accordance with the procedures of the "Changes" clause hereof. Any items of special tooling so delivered or stored shall be accompanied by such operation sheets or other appropriate data as are necessary to show the manufacturing operations processes for which such items were used or designed. If the Contracting Officer has requested further negotiations under (ii) of this paragraph, the Contractor agrees that he will enter into such negotiations in good faith with the Contracting Officer. Any items of special tooling which are not disposed of by transfer of title and delivery to the Government, or by acceptance of an offer of the Contractor made under paragraph (e), or of such offer as modified in the course of negotiations, shall be disposed of in the manner set forth in (iii) or (iv) of this paragraph. Any failure of the Contracting Officer to give the directions required under (i)–(v) above within the the specified period shall be construed as a direction pursuant to (iii) above.

(g) *Proceeds of Retention or Disposition of Special Tooling.* If the Contracting Officer accepts an offer of the Contractor to retain any items of special tooling, or if any such items are sold to third parties or disposed of as scrap, the net proceeds shall: (i) Be deducted from the amounts due to the Contractor under this contract and the contract amended accordingly; or (ii) be otherwise paid as the Contracting Officer may direct.

(h) *Property Control.* The Contractor agrees that he will follow his normal industrial practice in maintaining property control records on all the special tooling, and that he will make such records available for inspection by the Government at all reasonable times. The Contractor further agrees that, to the extent practicable he will identify by appropriate stamp, tag, or other mark all special tooling subject to this clause.

(i) *Maintenance Pending Disposition.* The Contractor agrees that between the date any usable items of special tooling are no longer needed by him, within the meaning of this clause, and the date of final disposition of such items under this clause, he will take all reasonable steps necessary to maintain the identity and existing conditions of such items, unless the Contracting Officer has directed that such items be disposed of as scrap or has given notice under (f)(iv). The Contractor shall not be required to keep any such items in place.

(j) *Special Tooling Provisions for Subcontracts.* The Contractor agrees that, in placing any subcontracts or purchase orders under this contract which involve the use of special tooling, the full cost of which is charged to such subcontract or purchase order, he will include therein appropriate provisions to obtain rights comparable to those granted to the Government by this clause, unless the Contracting Officer determines, upon the Contractor's request, that, with respect to any subcontract, purchase order, or class thereof, such rights are not of substantial interest to the Government. The Contractor further agrees that he will exercise any such rights for the benefit of the Government, as the Contracting Officer may direct.

§ 18–13.705 Special test equipment clause for negotiated contracts.

The following clause shall be used in negotiated contracts which provide that the contractor will acquire special test equipment for the Government but do not specify the items to be acquired (see § 18–13.306–3(c)).

SPECIAL TEST EQUIPMENT (OCTOBER 1967)

(a) *Definition.* Special test equipment means electrical, electronic, hydraulic, pneumatic, mechanical or other items or assemblies of equipment, which are of such a specialized nature that, without modification or alteration, the use of such items (if they are to be used separately) or assemblies is limited to testing in the development or production of particular supplies or parts thereof, or in the performance of particular services. The term "special test equipment" includes all components of any assemblies of such equipment, but does not include:

(i) Consumable property;

(ii) Special tooling; or

(iii) Buildings, nonserverable structures (except foundations and similar improvements necessary for the installation of special test equipment), general or special machine tools, or similar capital items.

(b) *Contractor Notice of Intent To Acquire Special Test Equipment.* This contract provides that the Contract will acquire special test equipment for the Government, but does not specify its exact nature. Before acquiring any such special test equipment or components thereof having an item acquisition cost of $1,000 or more, the Contractor shall give the Contracting Officer thirty (30) day's notice of his intention to do so including a full description of all such items and a list of alternate items that could be used. The Government may elect to furnish the special test equipment or any components thereof to the Contractor by giving written notice of its election to the Contractor within the thirty (30) day period. In the event the Contractor has not received such written notice within the period prescribed, he may proceed to acquire such equipment or components, subject to any other applicable provisions of this contract.

(c) *Government-Furnished Special Test Equipment.* In the event the Government elects to furnish special test equipment or any components thereof pursuant to paragraph (b) above, such items shall be furnished subject to the Government Property clause hereof: *Provided, however,* That the Government shall not be obligated to deliver such items any sooner than the Contractor could have procured them after expiration of the thirty (30) day notice period prescribed in paragraph (b) above.

(d) *Equitable Adjustment.* If the Government furnishes any special test equipment or components thereof under paragraph (c) above, any affected provision of this contract shall be equitably adjusted in accordance with the procedures of the Changes clause hereof.

(e) *Subcontracts.* If special test equipment or components thereof having an item acquisition cost of $1,000 or more are to be acquired for the Government by a subcontractor under this contract, the Government's rights to receive thirty (30) days' advance notice thereof from the prime contractor, and to furnish such items to the prime contractor and obtain an equitable adjustment of the prime contract therefor, in accordance with paragraphs (b), (c), and (d) above, shall be preserved.

§ 18–13.706 Government property clause for fixed-price type contracts with nonprofit institutions.

(a) Except as provided in paragraph (b) of this section, the following clause shall be used in fixed-price research and development contracts with nonprofit institutions (provided such contracts are executed on a nonprofit basis) under which NASA is to furnish to the contractor or the contractor is to acquire, Government property.

GOVERNMENT PROPERTY (FIXED-PRICE, NONPROFIT) (JULY 1970)

(a) *Government-furnished Property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use (except for such property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule, or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by any such delay. Except for Government-furnished property furnished "as is", in the event that Government-furnished property is received by the Contractor in a condition not suitable for its intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of such property, or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision effected by the return, disposition, repair or modification. The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Changes in Government-furnished Property.* (1) By notice in writing, the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contract, or (ii) substitute other Government-owned property for property to be furnished by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to paragraph (1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substituion of propery causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided in the "Changes" clause of this contract.

(c) *Title.* (1) Title to all property furnished by the Government shall remain in the Government. In order to define the obligations of the parties under this clause, title to each item of facilities, special test equipment, and special tooling (other than that subject to a "Special Tooling" clause) acquired by the Contractor for the Government pursuant to this contract shall pass to and vest in the Government when its use in the performance of this contract commences, or upon payment therefor by the Government whichever is earlier, whether or not title previously vested. All Government-furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government property".

(2) Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(d) *Property Administration.* The Contractor shall comply with the provisions of the "Control of Property in Possession of Non-profit Research and Development Contractors" (Appendix C. NASA Procurement Regulation) as in effect on the date of the contract, which is hereby incorporated by reference and made part of this contract.

(e) *Use of Government Property.* The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) *Utilization, Maintenance, and Repair of Government Property.* The Contractor shall maintain and administer, in accordance with sound business practice, and in accordance with applicable provisions of Appendix C of the NASA Procurement Regulation, a program for the utilization, maintenance, repair, protection, and preservation of Government property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs: *Provided, however,* That if the Contractor cannot effect such repair within the time required, the Contractor may reject such property. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in any contractual provision affected by the repair or replacement of Government property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at his own expense.

(g) *Risk of Loss.* (1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage except that the Contractor shall be liable for any loss or damage to Government property provided under this contract upon its delivery to him or passage of title to the Government as provided in paragraph (c) above (including expenses incidental thereto).

(i) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of his managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant, laboratory, or separate location in which this contract is being performed;

(ii) Which results from a failure on the part of the Contractor, due to the willfull misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (i) above, to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection and preservation of Government property as required by paragraph (f) above;

(iii) For which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule;

(iv) Which results from a risk expressly required to be insured under some other provision of this contract, or of the schedules or task orders thereunder, but only to the extent of the insurance so required to be procured and maintained or to the extent of insurance actually procurred and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

Provided, That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(2) The Contractor represents that he is not including in the price hereunder, and agrees that he will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to the Government property, except to the extent that the risk of loss is imposed on the Contractor under (1)(iii) above, or insurance has been required under (1)(iv) above.

(3) Upon the happening of loss or destruction of or damage to any Government property, the Contractor shall notify the Contracting Officer thereof and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed) shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all

the Government property in the best possible order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed, and damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made by him in performing his obligations under this subparagraph (3) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly).

(4) With the approval of the Contracting Officer after loss or destruction of or damage to Government property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(5) Except to the extent of any loss or destruction of or damage to Government property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government property in accordance with the provisions of this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of or damage to the Government property, and such property (other than that which is permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (f) above.

(6) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government property, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecuting of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

[1] (7) If this contract is for the development, production, modification, maintenance or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the "Ground and Flight Risk" clause of this contract shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft.

(h) *Access.* The Government, and any persons designated by it, shall at all reasonable times have access to the premises wherein any Government property is located, for the purpose of inspecting the Government property.

(i) *Disposition of Government Property.* Upon completion or expiration of this contract, any Government property which has not been consumed in the performance of this contract, or which has not been disposed of pursuant to this clause, or for which the Contractor has not otherwise been relieved of responsibility, shall be disposed of in the same manner, and subject to the same procedures, as is provided in paragraph (g) of the clause of this contract entitled "Termination for the Convenience of the Government" with respect to termination inventory. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall otherwise be credited to the price or costs of the work covered by this contract, or shall be paid in such other manner as the Contracting Officer may direct. Pending final disposition of such property, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation thereof.

(j) *Removal of Government Property and Abandonment.* If the Contractor determines any Government property to be in excess of his needs under this contract, such Government property shall be disposed of in the same manner as provided by paragraph (i) above, except that the Government may abandon any Government property in place and thereupon all obligations of the Government regarding such abandoned property shall cease. The Government has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment, disposition pursuant to paragraph (i) above, nor otherwise, except for restoration or rehabilitation costs which are properly included in an equitable adjustment under paragraph (b) above.

(k) *Communications.* All communications issued pursuant to this clause shall be in writing.

(b) When it is anticipated that title to equipment will be vested in the contractor, the following alternative subparagraph (2) may be substituted for (c) (2) of the clause in paragraph (a) of this section:

(2) Notwithstanding subparagraph (1) above, the Contracting Officer may, at any time during the term of this contract, or upon completion of termination, transfer title to equipment to the Contractor upon such terms, and conditions as may be agreed upon: *Provided,* That, the Contractor shall not under any Government contract, or subcontract thereunder, charge for any depreciation, amortization, or use of such equipment as is donated under this paragraph. Upon the transfer of title to equipment under this paragraph, such equipment shall cease to be Government property. Title to Government property, not otherwise transferred to the Contractor, shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

§ 18–13.707 Government property clauses for cost-reimbursement type research and development contracts with nonprofit institutions.

The appropriate clause set forth in paragraph (a) or (c) of this section shall be used, in accordance with the instructions therein, in cost-reimbursement type research and development contracts with nonprofit institutions (provided such contracts are executed on a no-fee basis) under which NASA is to furnish to the contractor, or the contractor is to acquire, Government property.

(a) Except as provided in paragraph (b) of this section, when the total cost of the contract is $25,000 or over, the following clause shall be included in the contract:

GOVERNMENT PROPERTY (COST-REIMBURSEMENT, NONPROFIT) (JULY 1970)

(a) *Government-Furnished Property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in this contract, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule of this contract or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor and shall equitably adjust the estimated cost, or delivery or performance dates, or both, and any other contractual provisions affected by any such delay. In the event that the Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property, or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the estimated cost, or delivery or performance dates, or both, and any other contractual provision affected by the return, disposition, repair or modification. The foregoing provisions for adjustment are exclusive and the Government shall not be liable for suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Changes in Government-Furnished Property.* (1) By notice in writing, the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contact, or (ii) substitute other Government-owned property for property to be furnished by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to subparagraph (1) above, or any withdrawal of authority to use property provided under

[1] This subparagraph may be omitted where it is clearly inapplicable and shall be deleted when the Ground and Flight Risk clause is omitted.

any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

(c) *Title.* (1) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is to be reimbursed to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement or processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs. All Government-furnished property, together with all property acquired by the Contractor, title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government property".

(2) Title to the Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(d) *Property Administration.* The Contractor shall comply with the provisions of the "Control of Property in Possession of Nonprofit Research and Development Contractors" (Appendix C, NASA Procurement Regulation) as in effect on the date of the contract, which is hereby incorporated by reference and made a part of this contract.

(e) *Use of Government Property.* The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) *Utilization, Maintenance and Repair of Government Property.* The Contractor shall maintain and administer, in accordance with sound business practice, and in accordance with applicable provisions of Appendix C of the NASA Procurement Regulation, a program for the utilization, maintenance, repair, protection and preservation of Government property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of the Government property.

(g) *Risk of Loss.* (1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant, laboratory, or separate location in which this contract is being performed;

(ii) Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in (i) above, (A) to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection and preservation of Government property as required by (f) above, or (B) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under (f) above;

(iii) For which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the schedule;

(iv) Which results from a risk expressly required to be insured under some other provision of this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement: *Provided,* That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(2) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.

(3) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organziation so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed, and damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall take repairs and renovations of the damaged Government property or take such other action as the Contracting Officer directs.

(4) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, he shall use the proceeds to repair, renovate or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction or damage, and upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistnace in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

[1](5) If this contract is for the development, production, modification, maintenance or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the clause of this contract entitled "Flight Risks" shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft.

(h) *Access.* The Government, and any persons designated by it, shall at all reasonable times have access to the premises wherein any of the Government property is located, for the purpose of inspecting the Government property.

(i) *Disposition of Government Property.* Upon completion or expiration of this contract, or at such earlier dates as may be fixed by the Contracting Officer, any Government property which has not been consumed in the performance of this contract, or which has not been disposed of as provided in paragraph (j) of this clause, or for which the Contractor has not otherwise been relieved of responsibility, shall be disposed of in the same manner, and subject to the same procedures, as is provided in paragraph (g) of the clause of this contract entitled "Termination for the Convenience of the Government" with respect to termination inventory. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall otherwise be credited to the cost of the work covered by this contract, or shall be paid in such other manner as the Contracting Officer may direct. Pending final disposition of such property, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation thereof.

(j) *Removal of Government Property and Abandonment.* If the Contractor determines any Government property to be in excess of his needs under this contract, such Government property shall be disposed of in the same manner as provided by paragraph (i) above, except that the Government may abandon any Government property in place and thereupon all obligations of the Government regarding such abandoned property shall cease. Unless otherwise provided herein, the Government has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment, disposition pursuant to paragraph (i) above, nor otherwise, except for restoration or rehabilitation costs caused by removal of Government property pursuant to paragraph (b) above.

(k) *Restoration of Contractor's Premises.* Unless otherwise provided herein, the Government:

(i) May abandon any Government property in place, and thereupon all obligations of the Government regarding such abandoned property shall cease; and

(ii) Shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of the Contractor's plant or any portion thereof which is affected by the removal of any Government property.

(l) *Communications.* All communications issued pursuant to this clause shall be in writing.

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[1] This subparagraph may be omitted where it is clearly inapplicable.

(b) When it is anticipated that title to equipment will be vested in the contractor, the following may be added to subparagraph (c)(1) of the clause in paragraph (a) of this section:

Notwithstanding the provisions of this subparagraph (c)(1) relative to title, the Contracting Officer may at any time during the term of this contract, or upon completion or termination, transfer title to equipment to the Contractor upon such terms and conditions as may be agreed upon: *Provided*, That the Contractor shall not under any Government contract, or subcontract thereunder, charge for any depreciation, amortization or use of such equipment as is donated under this paragraph. Upon the transfer of title to equipment under this paragraph, such equipment shall cease to be Government property.

(c) *Government property clause for contracts less than $25,000.* When the total cost of the contract is less than $25,000, the clause set forth below shall be included in the contract:

GOVERNMENT PROPERTY (SHORT FORM) (APRIL 1962)

All property furnished to or purchased by the Contractor in connection with work under this contract shall be and remain the property of the Contractor, except as provided below, even though the Contractor is entitled to be reimbursed for the cost of the property as a direct item of cost under this contract. If the Contractor acquires individual items of equipment exceeding $1,000 in value for any single item, the Contractor shall report such items to the Contracting Officer from time to time as they are procured and maintain a control system which will permit their ready identification and location. Upon final payment, the Contractor agrees to transfer to the Government, without charge, any items of equipment furnished to the Contractor or required to be reported hereunder, which the Contracting Officer may request to be transferred in accordance with instructions issued at that time. The packing, crating, and shipping charges incident to delivery to the Government will be borne by the Government.

§ 18–13.708 Government property clause for contracts with fixed-price and cost-reimbursement provisions.

The clause set forth in § 18–13.702(a) shall be inserted in all contracts which set forth a fixed-price for a portion of the contract but also provide for reimbursement of the cost of certain materials, except that paragraph (c) thereof shall be deleted and replaced by the following:

(c) *Title.* Title to all property furnished by the Government shall remain in the Government. In order to define the obligations of the parties under this clause, title to each item of facilities, special test equipment, and special tooling (other than that subject to a "Special Tooling" clause) acquired by the Contractor for the Government pursuant to this contract shall pass to and vest in the Government when its use in the performance of this contract commences, or upon payment therefor by the Government, whichever is earlier, whether or not title previously vested. Title to all material purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such material by the vendor. Title to other material, the cost of which is reimbursible to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such material in the performance of this contract, or (ii) commencement of processing or use of such material in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever occurs first. All Government-furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government property." Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

§ 18–13.709 Clause for Government property furnished "As Is".

The following clause shall be inserted in all contracts in which Government production and research property is furnished "as is" in accordance with § 18–13.308.

GOVERNMENT PROPERTY FURNISHED "AS IS" (OCTOBER 1967)

(a) The Government makes no warranty whatsoever with respect to Government property furnished "as is" except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when inspected by the Contractor pursuant to the solicitation, or, if not inspected by the Contractor, as when last available for inspection under the solicitation.

(b) The Contractor may repair any property made available to him "as is." Such repair will be at the Contractor's expense except as otherwise provided in this clause. Such property may be modified at the Contractor's expense, but only with the written permission of the Contracting Officer. Any repair or modification of property furnished "as is" shall not affect the title of the Government.

(c) If there is any change in the condition of Government property furnished "as is" from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation, and such change will adversely affect the Contractor, the Contractor shall, upon receipt of the property, notify the Contracting Officer of such fact, and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property, or (ii) effect repairs to return the property to its condition when inspected under the solicitation, or if not inspected, when last available for inspection under the solicitation. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust any contractual provisions affected by the return, disposition or repair, in accordance with the procedures provided for in the "Changes" clause of this contract. The foregoing provisions for adjustment are exclusive and the Government shall not be liable for any delivery of Government property furnished "as is" in a condition other than that in which it was originally offered.

(d) Except as otherwise provided in this clause, Government property furnished "as is" shall be governed by the "Government Property" clause of this contract.

§ 18–13.710 Government-furnished property clause for short form contracts.

(a) The following short form clause shall be used in contracts under which the Government is to furnish to the contractor Government property having an acquisition cost of $25,000 or less.

GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (OCTOBER 1967)

(a) The Government shall deliver to the Contractor, for use only in connection with this contract, the property described in the schedule or specifications (hereinafter referred to as "Government-furnished property"), at the times and locations stated therein. If the Government-furnished property, suitable for its intended use, is not so delivered to the Contractor, the Contracting Officer shall, upon timely written request made by the Contractor, and if the facts warrant such action, equitably adjust any affected provision of this contract pursuant to the procedures of the "Changes" clause hereof.

(b) Title to Government-furnished property shall remain in the Government. The Contractor shall maintain adequate property control records of Government-furnished property in accordance with sound industrial practice.

(c) Unless otherwise provided in this contract, the Contractor, upon delivery to him of any Government-furnished property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereto except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of the contract.

(d) The Contractor shall, upon completion of this contract, prepare for shipment, deliver f.o.b. origin, or dispose of all Government-furnished property not consumed in the performance of this contract or not theretofore delivered to the Government, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or paid in such other manner as the Contracting Officer may direct.

Subpart 18–13.8—Administrative Practices

§ 18–13.800 Scope of subpart.

This Subpart 18–13.8 establishes the policies and procedures for appointing and assigning NASA property administrators to administer the property provisions of NASA contracts. Normally, property administration on all contracts will be delegated to the cognizant DOD Contract Administration Office in accordance with the instruction contained in Subpart 18–51.3. This subpart applies only to those instances where NASA property administrators are to be assigned to contracts at installations or plants which are wholly controlled by NASA.

§ 18–13.801 Appointment of property administrators.

(a) The selection, appointment and termination of appointment of property administrators shall be made in writing by the Procurement Officer or his designee. In selecting qualified property administrators the appointing authority shall consider experience, training, education, business acumen, judgment, character, and ethics.

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

(1) Experience in accounting, material control, inventory control and allied functions;

(2) Formal education or specialization in such areas as evaluating, monitoring, administering or coordinating industrial property programs or implementing plans and policies in support of diversified property control system; and

(3) Knowledge of the provisions of this and other applicable regulations.

§ 18–13.802 Assignment of contracts for property administration.

(a) All NASA contracts performed at a single location by a contractor shall be assigned to a single property administrator.

(b) Each contract under which Government property will be provided to the contractor will be assigned in writing to a property administrator by the Procurement Officer or his designee. The assignment document shall contain the (1) name and address of the contractor, (2) contract number, and (3) type of contract. The contracting officer and the contractor shall be advised in writing of the assignment and any changes thereto.

(c) The assignment shall be terminated when:

(1) It has been determined that no Government property has been or will be furnished or acquired, or

(2) The contract is reassigned to another property administrator.

§ 18–13.803 Records of Government property.

Records of Government property established and maintained by the contractor pursuant to the terms of the contract shall be designated and utilized as the official contract property records. Duplicate records shall not be furnished to nor be maintained by Government personnel, except that where Government property is furnished to a contractor for repair or servicing and return to the shipping organization property accountability shall be retained by the shipping organization. In such cases the property will be accounted for as a suspense item within the field installation account from which shipped and the Government property clause shall be modified by insertion of the following clause:

PROPERTY RECORDS (OCTOBER 1967)

The Government shall maintain the official contract records in connection with Government property under this contract. The "Government Property" clause is hereby modified by deleting so much thereof as requires that the Contractor maintain such records.

Subpart 18–13.50—Acquisition of Idle Industrial Plant Equipment

§ 18–13.5000 Scope of subpart.

This Subpart 18–13.50 establishes procedures for the acquisition of the equipment listed in § 18–13.312 from the Department of Defense Industrial Plant Equipment Center (DIPEC) pursuant to the DOD–NASA Agreement for Utilization of Idle Industrial Plant Equipment set forth in NASA Management Instruction 1052.17.

§ 18–13.5001 General.

In accordance with the policy set forth in § 18–13.301, NASA will not provide contractors with new facilities unless fully justified and an economical, practical, and appropirate alternative does not exist. To implement this policy, contracting officers shall determine, prior to the use of the procedures of this subpart, that:

(a) Suitable equipment is not available at any other NASA installation for loan or transfer, and

(b) Current excess property listings promulgated by the Department of Defense and the General Services Administration have been screened, and that the requirement cannot be satisfied therefrom.

§ 18–13.5002 Procedure.

(a) *Requests for idle industrial plant equipment.* Requests for item(s) of equipment to be acquired by screening availability from DIPEC idle inventories shall be submitted on DD Form 1419 (DOD Industrial Plant Equipment Requisition) in an original and three (3) copies to the Procurement Office, NASA Headquarters (Code KDP–3) for processing.

(b) *Instructions for preparation of DD Form 1419.* (1) A separate DD Form 1419 will be completed for each item of equipment required, i.e. if sixteen (16) lathes of the same type and model are required, sixteen (16) DD Form 1419's will be completed as follows:

(2) Requisition number: A requisition number will be assigned to each DD Form 1419 request by the NASA installation. Each number assigned will be coded for Automatic Data Processing by DIPEC. It will also identify the requiring installation and provide a serial number and date of submission for subsequent reference. The requisition number will begin with the appropriate NASA Installation Symbol Identification set forth below:

Langley Research Center	XNAS01
Ames Research Center	XNAS02
Lewis Research Center	XNAS03
Flight Research Center	XNAS04
Goddard Space Flight Center	XNAS05
Wallops Station	XNAS06
NASA Pasadena Office	XNAS07
George C. Marshall Space Flight Center	XNAS08
Manned Spacecraft Center	XNAS09
John F. Kennedy Space Center	XNAS10
Headquarters Contracts Division	XNASOW
SNSO Germantown	XSNSOG
SNSO Cleveland Extension	XSNSOC
SNSO Nevade Extension	XSNSON

Next will be a four-digit entry comprised of the last digit of the current calendar year and the Julian date of the year, i.e. 9035 for February 4, 1969. The last entry will be a four-digit number from 0001 to 9999, to sequentially number requisition forms prepared on the same date. For example: The ninth requisition prepared on February 1, 1969, would be 9032–0009 preceded by the Field Installation Symbol Identification, an example being Langley—"XNAS01 3032–0009". When submitting subsequent DD Forms 1419 related to the item requested, the same requisition number is to be used and alpha code added to the end of the requisition number to indicate a second or third action on the basic request. Alpha "A" would indicate a second request, "B" a third, etc. In this manner, all actions, correspondence, etc., relative to a given request can be identified at all levels of processing, by the use of the requisition number.

(3) Section I of Form:

(i) *Item description.* It is necessary to provide a complete description of the item desired, to obtain maximum screening results. Requests for single purpose or general purpose equipment with special features must contain detailed descriptive data as to the size and capacities, setting forth special operating features or particular operations required to be performed by the item.

(ii) *Block 1.* Enter the complete 12-digit Production Equipment Code (PEC) (see NASA PR 13.312 or Defense Industrial Plant Equipment Center Operations Manual DSAM 4215.1, Appendix 1C, Index of Industrial Plant Equipment Handbooks). If not available, enter the applicable 11-digit Federal Stock Number (FSN).

(iii) *Block 2.* Enter the manufacturer's name and Federal supply code for manufacturer's (Cataloging Handbook H4–1) of the item requested.

(iv) *Block 2a.* Enter the manufacturer's model, style or catalog number assigned to the equipment being requisitioned. Always use the model number if available. The style number is the next preference. Insert "None" in this block if the model, type, or catalog number is not known.

(v) *Block 3.* Activities using Federal Stock Numbers (FSN) as the identifying number will enter that number. When the FSN is known, it will be included in all reports in addition to the commodity code.

(vi) *Block 4.* Enter the two-digit power code described in Appendix 1D of Defense Industrial Plan Equipment Center Operations Manual DSAM 4215.1. These codes designate the voltage, current, phase, and cycle by which the item requested will be operated.

(vii) *Block 5.* Self-explanatory.

(viii) *Block 6.* Place an "X" in the applicable block to indicate whether physical inspection is or is not desired, prior to acceptance.

(ix) *Block 7.* Self-explanatory.

(x) *Block 8.* Enter the complete description of the item, including the major group, class, subclass, type, subtype, size group, specifying size, etc., as selected from the appropriate directory or handbook. (See § 18–13.312, "Index of Industrial Plant Equipment Handbooks" for

descriptive information.) Continue the item description in Block 51 if additional space is required to describe the item desired.

(4) Section II of Form:

(i) *Block 9.* Enter the NASA installation, the facility or contractor's name, street address, city, State, and zip code from which the requisition is being initiated. The address should be the one to which inquiries of a technical nature are to be referred. Include the name and telephone number of the individual to be contacted concerning the item requested.

(ii) *Blocks 10 and 10a.* Enter the contract number or document number and the date of the document which authorizes the acquisition of the items shown in section I. Normally this will be a facility contract number, otherwise it should be a purchase order number or purchase request number.

(iii) *Block 11.* Not applicable.

(iv) *Block 12.* Indicate if the property is for NASA in-house use or a contractor facility. Disregard the "Military" block. Show NASA contract number and program for which item is to be used.

(v) *Block 13.* Enter the specific function to be performed by the equipment. When applicable, enter the tolerances, capacities, specifications, etc., which equipment must satisfy.

(vi) *Block 14.* Enter the date the item must be installed in place to meet production requirements. From this date deduct the estimated number of days required for installation. Enter the adjusted date in this block.

(vii) *Block 15.* Enter the date by which DIPEC must issue a Certificate of Nonavailability. The date will be developed by subtracting the procurement leadtime and 45 days administrative leadtime from the date shown in Block 14.

(viii) *Block 16.* Enter the Defense Material System Priority Rating that is assigned to the contract or anticipated purchase order.

(ix) *Block 17.* Place an "X" in the appropriate box. If for replacement, identify the item to be replaced and the reason for replacement.

(x) *Block 18.* Enter an "X" in the appropriate box. Show the appropriation symbol if answer is "yes".

(xi) *Block 19.* Not applicable.

(xii) *Blocks 20 and 21.* In addition to the official's title and signature, enter the signing official's typed name, office symbol or name, and telephone number and extension. For contractor's requirements, the signing official should be the company representative who prepares and submits the requirement to the cognizant NASA certifying office.

(xiii) *Block 22.* Self-explanatory.

(xiv) *Block 23.* Certification of need for the item requisitioned is the function of the contracting officer of the NASA installation having jurisdiction over the contract. For NASA in-house requirements certification can be made by the property and supply officer.

(xv) *Block 23a.* Not applicable.

(xvi) *Block 23b.* Name and address of the installation certifying the requirement.

(xvii) *Block 23c.* Signature of the property administrator or contracting officer at plant level.

(xviii) *Block 23d.* Self-explanatory.

(xix) *Block 23e.* Signature of NASA installation official certifying the requirement.

(xx) *Block 23f.* Self-explanatory.

(5) Section III, of form: This section is for the Procurement Office, NASA Headquarters (Code KDP-3) sponsorship of the requirement to DIPEC:

(i) *Block 24.* Must show NASA Hq., Procurement Office, Contract Administration Div., Code (Code KDP-3), Washington, D.C. 20546.

(ii) *Block 25.* Blank.

(iii) *Block 26.* Must show: Chief, Contract Administration Division, Code KDP-3, NASA Headquarters.

(iv) *Block 27.* Self-explanatory.

(6) Section IV of form: To be completed by DIPEC, copy is used for admittance to storage site for inspection of property offered.

(7) Section V of form: To be completed by DIPEC if equipment is not available.

(8) Section VI of form: Blocks 42, 43, 44, and 45: To be completed by the requesting official signing the requisition in section II. (See Block 20.) Reasons for nonacceptance are to be shown in section VIII—Remarks, or by separate document attached to the DD Form 1419.

(9) Section VII of form:

(i) *Block 46.* Enter complete name, street address, city, State, and Zip Code of the Contractor or installation to which the item is to be shipped. Indicate rail head and truck delivery points when other than the address named.

(ii) *Block 47.* Self-explanatory.

(iii) *Block 48.* Self-explanatory.

(iv) *Blocks 49 a and b.* Insure that NASA appropriation symbols are included with work order number.

(v) *Block 49c.* Enter NASA appropriation symbol chargeable for any special work ordered, i.e., rebuild, repair, accessory replacement.

(vi) *Block 49d.* Enter NASA installation and office symbol which will make payment for transportation and packing, crating and handling of item requisitioned.

(vii) *Block 50.* Self-explanatory.

(10) Section VIII of form: Block 51: This block can be used to expand or explain entries made in Blocks 1 through 50. When requisitioning equipment form excess listings, identify issuing office, list number, date, control number, and item number assigned to equipment.

(c) *Processing DD Form 1419.* (1) The essential information, outlined in the above instructions, covering sections I, II, and III is required to be completed prior to submission of DD Form 1419 to the Procurement Office, NASA Headquarters (Code KDP-3). The Procurement Office, NASA Headquarters (Code KDP-3) will review each submission for completeness and authenticity. Incomplete or invalid requests will be returned for correction. The original and two (2) copies of the approved DD Form 1419 will be forwarded to DIPEC for screening of inventories. Upon completion of the screening process, DIPEC will annotate the results of the screening in section IV or V. Certification of nonavailability when cited in section V is evidence that screening has been accomplished by DIPEC. The original and one (1) copy of the request will be returned by DIPEC to the approving official indicated in Block 23 of section II through the Procurement Office, NASA Headquarters (Code KDP-3).

(2) When a suitable item is allocated in section IV, inspection of the equipment is recommended. Notification of acceptance or rejection of the item offered must reach DIPEC within 30 days after allocation. A copy of the DD Form 1419 will serve as the clearance document to inspect the equipment at the storage site. Acceptance or rejection of item, without inspection or after inspection is to be noted in section VI. If it is determined that the item is acceptable, section VII is to be executed. The NASA appropriation symbol must be cited where applicable in section VII. In either instance, acceptance or rejection, the original of the DD Form 1419 is to be returned to DIPEC through the Procurement Office, NASA Headquarters (Code KDP-3).

§ 18–13.5003 Transfers from NASA to the military departments.

Requests for NASA idle industrial plant equipment received directly by NASA installations from the military departments shall be referred to the Procurement Office, NASA Headquarters (Code KDP-3) for appropriate action.

Subpart 18–13.51—Facilities Expansion, Application, and Approval

§ 18–13.5100 Scope of subpart.

This Subpart 18–13.51 sets forth additional procedures with regard to the provision of Government-owned facilities to contractors and subcontractors for the performance of NASA work, including procedures for the processing of facilities applications.

§ 18–13.5101 Consideration of facilities expansion applications.

Facilities expansion is subject to the policies of § 18–13.301 and to the approval requirements of § 18–13.302. It is the continuing obligation of NASA personnel who are: (a) sponsoring the development of NASA programs, (b) selecting sources, or (c) negotiating related procurement contracts, to give due consideration to the utilization of existing capacity. Where additional facilities are required, every effort will be made to select those sources that demonstrate a willingness and ability to provide their own facilities, subject to the policy of § 18–13.301(b)(2) that existing facilities may be furnished if substantial cost savings are likely to result. NASA contractors and subcontractors are expected to furnish all facilities unless it is otherwise determined to be in the best interests of the Government.

§ 18–13.5102 Procedure for determining facilities expansion.

The following procedures will be applied in determining the need for facilities expansion, to the extent applicable:

(a) When prime contractors are being selected or requested to submit proposals pursuant to § 18–3.802–3, for each procurement, the contracting officer will require all potential sources to state in writing whether additional facilities will be required, the estimated cost and nature of such facilities, and whether the contractor will furnish the facilities with contractor funds or will request the Government to provide the facilities.

(b) When the selected contractor has stated that additional Government facilities will be required, the contracting officer will advise the contractor to submit a formal application for facilities, furnishing the information indicated in § 18–13.5105 and § 18–13.5106. The contractor may request assistance in preparing his application for facilities. In order to expedite processing the application, it is important that full and complete justification be given for the required facilities. When the application for facilities is prepared in conjunction with contract proposal for an end-item, nine (9) copies of the facility application should be forwarded together with the proposal, or as soon as practicable thereafter. Any facilities requirements by subcontractors shall be prepared in accordance with the procedures and provisions of this Subpart 18–13.51 and submitted through the prime contractor to the contracting officer for comments and evaluations. All facilities approved for subcontractors will be provided under separate facilities contracts except as may be provided under § 18–13.303–1.

(c) If a facilities project involves construction work, approval of the Deputy Administrator, or other designated officials, must be obtained by the cognizant NASA Headquarters Program Director prior to the initiation of the procurement action, in accordance with the policies and procedures set forth in NASA Handbook 7330.1, "Approval of Facility Projects."

(d) Facilities provided under a related procurement contract will be controlled by a facilities action control number. Before providing facilities (not in excess of $50,000) under a related procurement contract, the contracting officer must obtain the facilities action control number from the Procurement Office, NASA Headquarters (Code KDP–3). The contracting officer will obtain the facilities action control number by letter or telegram as the urgency of each case demands. Such communications will include as a minimum:

(1) The proposed contract number;

(2) Name of contractor and plant location;

(3) A brief description of the facilities and purpose of expansion, and

(4) Total estimated cost of the additional Government facilities to be provided.

Application for and justification of facilities so provided will be in accordance with this Subpart 18–13.51. When the related procurement contract is awarded, the contracting officer will insure that an appropriate Government Property clause is included.

§ 18–13.5103 Processing the application.

(a) Upon receipt of a formal facilities application, the contracting officer will:

(1) Forward three (3) copies of the application to the appropriate installation technical office for review and request comments and recommendations as to the technical aspects and overall scope of application.

(2) Forward one (1) copy to the Office of Facilities, NASA Headquarters (Code BX).

(3) Forward one (1) copy to the appropriate small business specialist for review (see § 18–1.704–3).

(4) Initially appraise and obtain correction for any proposal deficiencies, including:

(i) Review facilities application for adequacy and completeness;

(ii) Delete items which duplicate contractor facilities having open time available;

(iii) Investigate the possibility of increasing subcontracting to reduce or eliminate the need for Government provided facilities;

(iv) Examine loading methods used by the contractor in developing facilities requirements;

(v) Analyze the validity of the justification;

(vi) Process nonseverable facilities in accordance with § 18–13.307 and eliminate where not justified, and

(vii) Appraise the contractor's statement of the availability of local service (utilities, labor housing, transportation, etc.) which may be necessary to support a proposed expansion.

(b) Based upon his evaluation of the application, and the comments and recommendations of the appropriate installation technical office, the contracting officer will forward his findings and recommendations together with one (1) copy of the application to the cognizant installation project manager for review and approval. In making the request, the contracting officer will include the dollar amount recommended for approval and a request that a purchase request in that monetary amount be furnished to him for supporting the facilities contract.

§ 18–13.5104 Administration of approved facilities application.

After negotiation of a facilities contract or amendment thereto providing for the furnishing of Government facilities, NASA Headquarters approval will be obtained pursuant to § 18–13.302 and the administrative phase of the procurement will be treated as follows:

(a) The contracting officer or his authorized representative assigned to administer the facilities contract will determine necessity for the individual items listed on the approved application. The determination of necessity will be made on the basis of the installation technical office confirmation of requirements.

(b) The contracting officer or his authorized representative will identify equipment which may be available from existing Government inventories and will request assistance of the Procurement Office, NASA Headquarters (Code KDP–3) in screening idle inventories. Allocation of idle equipment will be requested by the contractor through and with the concurrence of the NASA contracting officer pursuant to Subpart 18–13.50. If screening of any item of idle Government production and research property on an approved application cannot be completed prior to the required release for procurement date, the contracting officer or his representative may approve purchase of the item without further screening.

(c) Revisions to the approved application to conform to determination of necessity will be subject to the approval of the contracting officer. The determination of necessity will be made as expeditiously as possible and normally will be made on the basis of the contractor's statement that the justification as delineated in the approved application remains valid; the contracting officer may, however, request additional justification, if, in his judgment, such a request is justified.

(d) Substitution of items for similar items listed on an approved application may be considered when necessitated by engineering changes, technological changes, or nonavailability in reserve inventories, and may be approved by the contracting officer or his authorized representative when the substituted item either:

(1) Falls within the same schedule subcategory as the previously approved item;

(2) Is justified for the same intended function and remains within the estimated cost of the previously approved item; and

(3) In cases of justified necessity, exceeds such amount provided that the approved dollar amount of the Appendix A schedule category is not exceeded.

Proposed substitutions not meeting the foregoing standard will be processed as facilities expansions in accordance with this § 18–13.5104.

§ 18–13.5105 Format for industrial facilities application.

(Appendix A, Contract No. ------)

Date: ----------

Name and Address of Company:
Nature of Facilities: (Insert here the types of proposed facilities such as laboratories, warehouses, machine tools, etc.)
Location: (Address where facilities are to be located.)
For the Support of: (Give brief statement covering work to be performed.)

SUMMARY SHEET

	Estimated Cost
Schedule I—Land and Land Preparation:	
(a) Land	$----------
(b) Land Preparation	$----------
Schedule II—Buildings and Structures:	
(a) New Construction	$----------
(b) Rehabilitation Only	$----------
(c) Installations (not mechanical)	$----------
(d) Improvements on Government Property	$----------
(e) Improvements on non-Government Property	$----------
(f) Architect-Engineering Services	$----------
Schedule III—Machinery, Equipment and Instrumentation:	
(a) Machine Tools	$----------
(b) Related Production Equipment	$----------
(c) Rehabilitation of Machine Tools Only	$----------
(d) Building Installations (Mechanical)	$----------
(e) Laboratory and Testing Equipment	$----------
(f) Furniture and Equipment	$----------
Total	$----------
Schedule IV—Portable Tools and Materials Handling and Automotive Equipment:	
(a) Portable Tools	$----------
(b) Material Handling and Automotive Equipment	$----------
Total	$----------
Schedule V—Machinery and Equipment Installation Costs:	
Total	$----------
Grand total	$----------

DETAILED DESCRIPTIONS OF SCHEDULES

Schedule I—Land and Land Preparation:

Item No.: *Estimated Cost*

(a) Land: Give legal description acreage, location and estimated cost. A map, print, or drawing must be furnished as Exhibit I showing location of plant in relation to adjacent terrain features such as: airports, highways, railroads, power lines, etc., with appropriate identifying designation of each. Cost of land will include all estimated costs of sales which are payable by purchasers.
Total Schedule I(a) ---------- $----------

(b) Land Preparation: Include improvements such as clearing, leveling, grading and drainage, and any other items not subject to depreciation by item and estimated cost of each item.
Total Schedule I(b) ---------- $----------
Total Schedule I ---------- $----------

Schedule II—Buildings and Structures:

Item No.:

(a) New Construction: Include a full list of structures, with complete description and estimated cost of each unit. One or more prints or sketches must be furnished as an exhibit for each building (showing relation to complete plant), the proposed type of structure, floor plan and elevations, with brief memorandum specifications cross referencing appropriate exhibits. (Architect-Engineer Services $----------).
Total Schedule II(a) ---------- $----------

(b) Rehabilitation Only: Cover all rehabilitation of structure, electrical systems, plumbing, heating, water lines, etc., within structures with estimated cost of each item. (Architect-Engineer Services $----------).
Total Schedule II(b) ---------- $----------

(c) Installations (Not Mechanical): Cover all items and materials and cost therefore, including charges for installation, used in connection with installations of electrical power and illumination, plumbing, heating, airconditioning, sprinkler systems, etc., usually included in building costs with the exception of power lines, water lines, etc., outside of the building itself which are to be included in Schedule II (d) and (e). Items listed here should refer to the individual building as listed in Schedule II(a) above, and must be described in sufficient detail for cost evaluation. (Architect-Engineer Services $----------)
Total Schedule II(c) ---------- $----------

(d) Improvements on Government Property: This includes paving of yards, runways, parking areas, etc., fencing of property, utilities improvements, and spur tracks on areas outside of buildings but not on property owned or controlled by the Government and leased to the contractor. Give full details including costs and installation charges, of each item and the location of each on an appropriate plot plan. (Architect-Engineer Services $----------)
Total Schedule II(d) ---------- $----------

(e) Improvements on Non-Government Property: Same as (d) above.
Total Schedule II(e) ---------- $----------

(f) Architect-Engineer Services:
Total Schedule II(f) (a, b, c, d, and e) ---------- $----------
Total Schedule II ---------- $----------

SPECIAL INSTRUCTIONS PERTAINING TO SCHEDULES I AND II

Estimated Architect-Engineer Services Costs are to be established for each construction or rehabilitation project but excluded from Schedule II subtotals for other items of Schedule II. Total estimated cost of Architect-Engineer Services should be entered under Schedule II(f).

If there are costs for utilities, railroad extensions, etc., but not on property owned or controlled by the Government and leased to the contractor, such costs must be included in II(e).

Every effort should be made to pursuade utility companies, railroad companies, or other owners of the realty, to absorb all or part of the costs of such items. If no portion of the cost of such items will be paid by the utility, railroad company, or land owner, a statement to that effect, signed by an official of such company, must be included. Where the Government is requested to pay for all or part of such off site installation costs, a definite statement from the applicant justifying the necessity for such costs must be included. Cross reference from descriptions to Exhibits must be made in order that details may be made clear. In the event Government expenditure is authorized for any off site land installation, an agreement protecting the in-

terest of the Government must be negotiated. Sufficient information shall be provided so as to permit a reviewer to not only analyze and evaluate the requirements for each item but also to analyze and evaluate all items as a total requirement.

Schedule III—Machinery, Equipment, and Instrumentation:

Item No.	Quantity	Description	Estimated Cost	Date Required
		(a) Machine Tools (new and used) Include welders, presses, and hammers. Specify if item is used.	$	
		Costs of installation will be entered parenthetically under description but not added in group or Schedule III(a) subtotal. This charge will be included in Schedule V. (Example: Installation Cost $_____ each).		
		Total Schedule III(a)	$	
		(b) Related Production Equipment:	$	
		Sheet metal equipment, foundry equipment anodizing and plating equipment, and other production equipment of a permanent nature necessary for production. Show installation cost as indicated in Schedule III(a) instructions.		
		Total Schedule III(b)	$	
		(c) Rehabilitation of Machine Tools Only:	$	
		Rehabilitation of machine tools only are to be included in this item. Show installation costs as indicated in Schedule III(a) instructions.		
		Total Schedule III(c)	$	
		(d) Building Installations (Mechanical):	$	
		Stokers, motors, and their mechanical systems, installed in buildings, including cranes, hoists, conveyer systems, etc. Show installation costs as indicated in Schedule III(a) instructions.		
		Total Schedule III(d)	$	
		(e) Laboratory and Testing Equipment:	$	
		Show installation costs, if any, as indicated in Schedule III(a) instructions.		
		Total Schedule III(e)	$	
		(f) Furniture and Equipment:	$	
		Office furniture and equipment, cafeteria furniture and equipment, standard work benches, stock bins, lockers, fire protection devices not part of building, etc. Show installation cost, if any, as indicated in Schedule III(a) instruction.		
		Total Schedule III(f)	$	
		Total Schedule III	$	

SPECIAL INSTRUCTIONS PERTAINING TO SCHEDULE III ITEMS

1. These instructions are to establish a standard for listing all proposed items of machinery and equipment. In order to properly evaluate such a listing, it is absolutely necessary for items to be described so that they can be easily identified. Also, itemize and give sufficient description to justify cost. However, like items may be combined as a single entry, so long as purpose and justification remain the same.

2. A satisfactory description should include the following data:

a. Manufacturer's name.

b. Manufacturer's model number.

c. Complete nomenclature and description of size and capacity, type (plain universal, knee or bed, vertical, horizontal, etc.) number of spindles, working heads or units, etc. (where applicable), including any special features.

d. Electrical characteristics (110 v., 220 v., 440 v., 3-phase, 60-cycle, a.c. or d.c., etc.).

e. Any other information necessary to completely identify items desired.

f. Possible substitutions in order of desirability.

g. Date of delivery for each item as required to meet delivery schedule of the contract in question.

h. Estimated delivery cost of each item.

i. Full Commodity Classification Code (i.e., PEC, FSC, or SCC, as applicable) as set forth in the appropriate Defense Supply Agency Handbook. (See § 18–13.312.)

j. Give specific nomenclature in all cases. For example: welders—indicate whether spot, arc, butt, flash, the manufacturer, throat size, electrical characteristics, frame size; furnaces—manufacturer, model, size and capacity, electrical specifications, whether gas, oil or electrically fired, etc. Size and capacity can be given, along with complete nomenclature, even though model may not be applicable, for all items of related production equipment.

3. Purpose and detailed justification.

4. Costs of installation, entered parenthetically and excluded from Schedule III Subtotals and Totals, should be entered as Schedule V, Machinery and Equipment Installation Costs.

Schedule IV—Portable Tools and Material Handling and Automotive Equipment:

Item No.	Quantity	Description	Estimated Cost	Date Required
		(a) Portable Tools:	$	
		Portable electric and pneumatic tools		
		Total Schedule IV(a)	$	
		(b) Material Handling and Automotive Equipment:		
		All automobiles, trucks, and tractors used for transportation, and material handling vehicles such as lift trucks, trailers, etc.		
		Total Schedule IV(b)	$	
		Total Schedule IV	$	

Schedule V—Machinery and Equipment Installation Costs:

Schedule III(a) ____ $____
Schedule III(b ____ $____
Schedule III(c) ____ $____
Schedule III(d) ____ $____
Schedule III(e) ____ $____
Schedule III(f) ____ $____
Total Schedule V ____ $____

NOTE: Individual item installation costs as set forth in Schedule III (a, b, c, d, e, and f) are to be excluded from Schedule III subtotals and totals. Such totals should be entered as Schedule V, Machinery and Equipment Installation Costs.

§ 18–13.5106 Format for presenting justification data.

(a) *Contractor.* Contractor (or subcontractor) name (legal name), and address, company representative to contact, telephone number and extension; type of company organization (corporation, partnership, etc.); state in which incorporated, if applicable.

(b) *Location.* Location of proposed facilities expansion; indicate whether site is privately owned or Government-owned; if Government-owned, list the Government agency that has jurisdiction. Describe briefly the availability of laber, power, fuel, water sewage disposal, housing, transportation, etc.

(c) *Purpose of Expansion.* Identify item or system to be developed, tested and/or produced.

(d) *Basis of Need.* Reference approved NASA program from which need for facilities directly arises. Also cite the relationship of this project to other elements of the approved program.

(e) *Subcontracting.* Percentage of subcontracting planned by dollar amount and/or percent of total effort. Justify level of planned subcontracting. To the degree possible, identify subcontractors and the items to be subcontracted. Justify reasons for not subcontracting additional work. If facilities are anticipated for subcontractors, so identify.

(f) *Financial Progress.* Provide a 5-year summary of the contractor's financial progress as follows (by company division, if appropriate):

Year	Net profit	Dividends paid	Invested in facilities	Depreciation charged	Net company owned facilities after depreciation	Retained income
19						
19						
19						
19						
19						
Etc.						

(g) *Dollar Comparison.* Provide a dollar comparison of:

Schedules	All facilities provided previously (at proposed location)		Facilities to be provided this proposal	
	Contractor	Government	Contractor	Government
I				
II				
III				
IV				
V				
Total				

(h) *Financing.* The contractor will justify his reasons for not financing the proposed expansion with corporate or company funds.

(i) *Other Uses.* State the portion or percentage of the expanded capacity that will be used by other NASA Procurement Offices, or other Federal agencies. Identify the specific items and the NASA Procurement Offices or Federal agencies.

(j) *Complete Facility.* If the proposed expansion does not constitute a complete facility, cite the elements that are not included and how they will be provided.

PART 18–14—QUALITY ASSURANCE, INSPECTION AND ACCEPTANCE

Sec.

AUTHORITY: The provisions of this Part 18–14 issued under 42 U.S.C. 2473(b)(1).

§ 18–14.000 Scope of part.

This Part 18–14 covers instructions concerning quality assurance, inspection and acceptance of supplies or services under NASA contracts (other than construction contracts).

Subpart 18–14.1—Quality Assurance and Inspection

§ 18–14.100 Definitions.

(a) "Inspection" means the examination (including testing) of supplies and services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the supplies and services conform to contract requirements, including all applicable drawings, specifications, and purchase descriptions.

(b) "Testing" is an element of inspection and generally denotes the determination by technical means of the physical and chemical properties or elements of materials, supplies, or components thereof, involving not so much the element of personal judgment as the application of established scientific principles and procedures.

§ 18–14.101 General.

(a) Except as permitted by § 18–14.204, inspection on behalf of the Government shall be conducted in all cases prior to acceptance. Inspection shall be accomplished by or under the supervision of Government personnel. Except as otherwise provided in the contract, test requirements may be performed in the contractor's or subcontractor's laboratory or any other commercial laboratory acceptable to the Government. The contractor may be required under the terms of the contract to establish and maintain an acceptable inspection or quality control system to insure compliance with contract specifications with a minimum of Government inspection supervision. A manufacturer's certificate or other statement of quality or quantity may be considered in determining whether supplies or services are in conformity with the contract; but no provision of the contract shall preclude the Government from performing inspection.

(b) The type and extent of inspection needed depend on the particular procurement. For example, on items which would involve small losses in the event of defects and which would probably be replaced by suppliers without contest, inspection may consist only of checks for identity, quantity, and shipping damage. Detailed requirements for space systems and elements thereof are contained in "Quality Assurance Provisions for Government Agencies," NPC 200–1A and subpart 18–14.50.

§ 18–14.102 Activities responsible for inspection.

Inspection, or the arrangement therefor, is the responsibility of the installation effecting or administering the procurement. When a NASA installation uses the inspection services of another executive agency, the agency performing the inspection has primary inspection responsibility and its determinations relative thereto are binding on the NASA installation for which the services are performed. However, whenever NPC 200–1A applies, the NASA installation retains primary inspection responsibility.

§ 18–14.103 Service agreements.

(a) In the interest of achieving economy and efficiency in the inspection of contract items, procurement offices shall utilize the services of other executive agencies to insure the most economical and effective inspection consistent with the best interests of the Government. The purpose of inspection interchange agreements is to eliminate duplication, overlapping, or multiple assignments of Government inspection activity in any one plant.

(b) Agreements have been entered into by NASA with other Government agencies relating to performance of field service functions, including quality assurance, inspection, test, and acceptance, in support of NASA contractors. (See the 1050 series of NASA Management Issuances.) The procedures set forth in these agreements shall be observed by all NASA procurement offices in arranging for field services. Inspection agreements may also be used between NASA field installations in order to achieve maximum economy and efficiency.

§ 18–14.104 Contractor responsibility.

The inspection clauses included in NASA contracts require the contractor to maintain an inspection system acceptable to the Government and records of all inspection work performed by the contractor. See also Subpart 18–1.50. The contractor's inspection system should be such as to provide reasonable assurance that the supplies and work under the contract will conform to contract requirements and should include any quality control procedures necessary to this end. In any case, when Federal or Military specifications are used to establish requirements in the contract, the supplier shall be required to perform all examinations and tests called for by the specifications except those which the Government is expressly required to make.

§ 18–14.105 Places of inspection.

§ 18–14.105–1 General.

Each contract shall designate the place or places of inspection. Inspection of supplies and services shall be made at such times and places (including any stage during the period of manufacture, and including subcontractors' plants) as are necessary to determine that the supplies and services conform to contract requirements. When the contract provides for inspection at source, shipment prior to inspection may be authorized if it is determined to be in the best interest of the Government. In such cases, to the extent appropriate, the contract should be modified prior to shipment with respect to (a) risk of loss in transit and (b) shipping and other expenses incurred in the event of rejection at destination.

§ 18–14.105–2 Inspection at source.

Supplies and services shall be inspected at source when:

(a) Inspection at any other point would require uneconomical disassembly or destructive testing;

(b) Considerable loss would result from the manufacture and shipment of unacceptable supplies or from the delay in making necessary corrections;

(c) Special instruments, gauges, or facilities required for inspection are available only at source;

(d) Inspection at any other point would destroy or require the replacement of costly special packing and packaging;

(e) Quality control and inspection are closely related to production methods;

(f) Supplies requiring technical inspection are destined for points of embarkation for overseas shipment; or

(g) Otherwise determined to be in the best interest of the Government.

§ 18–14.105–3 Inspection at destination.

Supplies and services shall be inspected at destination when:

(a) Deliveries of supplies purchased "off the shelf" are made from a point other than that of manufacture;

(b) Necessary testing equipment is located only at destination;

(c) Biologicals being purchased are processed under direct control of the National Institutes of Health or the Federal Food and Drug Administration;

(d) The volume of procurement at a given plant is not sufficient to warrant the increased cost of inspection at origin; or

(e) Otherwise determined to be in the best interest of the Government.

§ 18–14.106 Inspection of small purchases ($2,500 or less).

(a) This § 18–14.106 applies to all small purchases, including items described in Federal and Military specifications, and qualified products. In determining the type and extent of Government inspection to be required on small purchases, the smallness of possible losses and the likelihood of uncontested replacement of defective articles shall be considered.

(b) Generally, inspection of small purchases shall be at destination. Purchasers, users, and installers may be considered inspectors for small purchase inspection purposes.

(c) Unless detailed technical inspection is necessary, inspection shall consist of examination of (1) type and kind; (2) quantity; (3) damage; (4) operability, if readily determinable; and (5) packaging and marking, if applicable.

(d) Detailed technical inspection shall be performed if special specifications are involved or if defective supplies can harm personnel or equipment.

(e) Detailed technical inspection may be limited to a check of characteristics that require separate specifications and of those likely to cause harm. Such inspection may be limited to inspection of occasional purchases of the same item from the same manufacturing source when there is good reason to rely upon the integrity of the manufacturer because of known safeguards and a significant history of defect-free purchases.

(f) Adjustments for short shipments or defective supplies shall be requested from suppliers when recovery will benefit the Government.

§ 18–14.107 Rejection of nonconforming supplies or services.

Contractors ordinarily shall be given an opportunity to correct or replace nonconforming supplies or services if this can be done within the required delivery schedule. Unless the contract provides otherwise, such correction or replacement shall be without additional cost to the Government. Notices of rejection of nonconforming supplies or services need not be in writing unless (a) the supplies have been delivered to a point other than the contractor's plant, (b) the contractor persists in offering nonconforming supplies or services for acceptance, or (c) delivery or performance is overdue without excusable cause. The reasons for rejection normally shall be stated, and the contractor may be given any suggestions that might help in eliminating the cause of rejection. If timely notice of rejection is not furnished to the contractor, acceptance may, in certain cases, be implied as a matter of law from such omission. Therefore, notices of rejection should be furnished promptly to contractors whenever rejection is intended.

§ 18–14.108 Government inspection under subcontracts.

Government inspection of subcontracted supplies or services shall be made only when required in the interest of the Government. The primary purpose of subcontract inspection is to assist the Government agency at the prime contractor's plant in determining the conformance of supplies or services with contract requirements. It does not relieve the prime contractor of any of his responsibilities under the contract. Supplies and services that do not qualify under the criteria in § 18–14.105–2 for Government inspection at source shall not be inspected by the Government at the subcontractor's plant. Supplies and workmanship for which records, reports, and similar evidence of quality are available at the prime contractor's plant shall not be Government-inspected at the subcontractor's plant except occasionally to verify such evidence. However, Government inspection shall be performed at a subcontractor's plant whenever the Government contract requires. All oral and written statements and contract provisions relating to the inspection of subcontracted supplies shall be so worded as not to (a) affect the contractual relationship between the prime contractor and the Government or between the prime contractor and the subcontractor, (b) establish a contractual relationship between the Government and the subcontractor, or (c) constitute a waiver of the Government's right to inspect or reject supplies.

Subpart 18–14.2—Acceptance

§ 18–14.201 General.

As used in NASA contracts, "acceptance" generally means the act of an authorized representative of the Government by which the Government assents to ownership by it of existing and identified supplies, or approves specific services rendered as partial or complete performance of the contract. Except as provided in § 18–14.205, and subject to other terms and conditions of the contract, the Government thereby acknowledges that the supplies or services are in conformity with contract requirements, including those of quality, quantity, packaging, and marking. Depending upon the provisions of the contract, acceptance may be effected prior to, at the time of, or after delivery. However, supplies and services shall not be accepted prior to inspection, except as stated in § 18–14.204. Acceptance shall ordinarily be accomplished by execution of the acceptance certificate contained in the Materiel Inspection and Receiving Report (DD Form 250) or by signing the receiving report section of the purchase order form used in small purchases. When acceptance is accomplished at a point other than destination, supplies shall not be reinspected at destination for acceptance purposes.

§ 18–14.202 Delivery under f.o.b. origin contracts.

(a) Satisfactory evidence of delivery is required before payment other than progress or advance payments may be made under fixed-price supply contracts. Under contracts calling for deliveries f.o.b. origin, the contracting officer or his authorized representative, in certifying that delivery has been made, may, at his discretion, rely on the contractor's signed statement on the invoice that delivery has been made on a specified date to a named carrier or to a representative of the Government. When necessary to protect the Government's interest, the contracting officer may require either that the contractor furnish a receipted copy of the bill of lading or postal receipt, or that a representative of the Government certify as to actual delivery on the applicable inspection and receiving report from. Invoicing instructions to f.o.b. origin contractors shall require that the contractor state on all invoices (1) the date of shipment, name of carrier, and bill of lading, number, (2) the name and title of the Government representative to whom delivery was made and the date of such delivery.

(b) When payment has been made on the basis of a certificate and the supplies have not been received at destination, prompt follow-up and remedial action shall be initiated.

§ 18–14.203 Point of acceptance.

Each contract shall specify the point of acceptance. Contracts which provide for delivery f.o.b. destination shall provide for acceptance at destination whether inspection is to occur at destination or at origin. Contracts which provide for delivery f.o.b. origin ordinarily shall provide for acceptance (and inspection) at origin.

§ 18–14.204 Responsibility for acceptance.

(a) Acceptance is the responsibility of the contracting officer or his authorized representative. When a NASA installation utilizes the services of another executive agency for the purpose of acceptance, acceptance by the other agency is binding on the NASA installation for which the services are performed. (See § 18–14.103 regarding performance for NASA of field service functions, including acceptance, by the Departments of the Army, Navy, and Air Force.) For Category 1 and 2 procurements (as defined in § 18–1.5002), final acceptance

may be deferred, under appropriate contract provisions, until satisfactory system integration is accomplished, or until other special conditions are fulfilled.

(b) A supplier's certificate of conformance with requirements shall not be considered a proper element incident to acceptance of supplies or services, except a supplier's certificate may be used for Government acceptance prior to inspection on selected Category 3 procurements (as defined in § 18–1.5002). At the discretion of the contracting officer, a clause may be inserted in contracts requiring the contractor to certify that supplies comply with contract requirements. However, when acceptance precedes inspection, a clause will be used to reserve the Government's right after acceptance to inspect the supplies within a reasonable time after delivery and to reject defective items. Certificates of conformance shall be required by the contract when the value of supplies or the condition of purchase, delivery, receipt, or use thereof makes it desirable to have additional assurance that supplies conform to contract requirements.

§ 18–14.205 Acceptance of supplies or services not conforming with contract requirements.

When supplies or services tendered for acceptance do not conform with contract requirements, the applicable contract provisions shall govern the action to be taken (see § 18–14.107). For reasons of economy or the urgency of the requirement, acceptance of supplies or services which do not meet all contract requirements may occasionally be desirable. Prior to such acceptance, the contracting officer shall obtain the approval of the requiring activity where the nonconformity with contract requirements (a) affects matters such as safety, durability, performance, or interchangeability of parts or assemblies, (b) results in material increases in weight where weight is a significant consideration, or (c) affects the basic objectives of the specifications. Acceptance of these types of nonconforming supplies or services shall be covered by an appropriate modification of the contract. Acceptance of other types of nonconforming supplies and services shall be covered by contract modification if determined necessary by the contracting officer. See also NPC 200–1A.

Subpart 18–14.50—Procedures for Utilization of Government Inspection Agencies for Quality Assurance Functions at NASA Supplier's Plants

§ 18–14.5000 Scope of subpart.

This Subpart 18–14.50 establishes procedures and guidelines for utilizing Government agencies to assist NASA installations in judging contractor performance of the quality assurance aspects of contracts for space systems and parts thereof.

§ 18–14.5001 Definitions.

(a) *Quality assurance.* A planned and systematic pattern of all actions necessary to provide adequate confidence that the end items will perform satisfactorily in actual operations.

(b) *Space system.* A system which includes launch vehicle(s), spacecraft, ground support equipment, and test hardware which are used in ground testing, launching, operating, and maintaining vehicles or craft in space.

§ 18–14.5002 Procedures.

(a) In arranging for quality assurance including inspection, NASA installations shall designate the Government agency, as appropriate, and:

(1) Provide a definitive statement of quality and related engineering effort required of the delegated agency (see Subpart 18–1.50, of this chapter);

(2) Review NASA requirements with the Government agency early in the procurement procedure and periodically as the contract work progresses;

(3) Determine the work requirements to be delegated to the agency and at the same time provide for—

(i) NASA engineering representation and technical liaison at the plant and test sites;

(ii) NASA performance of quality assurance functions which are not delegated; and

(iii) Designation of individuals at the NASA installation responsible for quality assurance, engineering, and documentation matters for the contract;

(4) Request the Government agency to prepare and document a quality assurance plan on the basis of NASA requirements and NPC 200–1A;

(5) Review such plans as early as possible and whenever revisions or additions are made during the progress of the work;

(6) Provide for continuous assessment of actual product quality by the installation through (i) plant visits, (ii) quality surveys, and (iii) review of quality data, regular reports, and trouble reports, including pertinent investigations and analyses by contractors and suppliers, and by the Government agency;

(7) Provide the Government agency with program information to enable planning for technically competent field personnel to be trained and available when required for assigned work; and

(8) Provide, as required, for training of Government agency and contractor quality assurance personnel as an integral part of the quality assurance program.

(b) Each installation shall reimburse Government agencies performing work for NASA in accordance with current procedures.

§ 18–14.5003 Guidelines for use in arranging for quality assurance functions at NASA suppliers' plants.

(a) *General.* (1) Circumstances will vary the timing, order, and selection of pertinent items. For major space systems, it is desirable to initiate as many arrangements as possible during the precontract negotiation period.

(2) Since the contracting officer is the only official of the Government authorized to bind the Government contractually in dealings with contractors, it is essential that all actions which affect the contract be taken through the contracting officer.

(3) NASA representatives visiting plants where inspection services are being performed for NASA by a Government agency shall notify the agency in advance of the purpose of the visit. Any instructions, decisions, or advice to the contractor shall be provided either simultaneously to the contractor and to the agency, or via the agency. All oral commitments shall be confirmed in writing.

(b) *Initial arrangements.* (1) Furnish a letter (which may confirm telephone conversation) to the Government agency indicating intent to discuss inspection assignment or, after formal assignment, to provide details.

(2) Provide the Government agency with NASA documents pertinent to the purchase of contract involved, and the following additional documents:

(i) "Quality Assurance Provisions for Government Agencies" (NPC 200–1A); and

(ii) Pertinent NASA technical direction for use by the Government inspection agency in product and process verification, quality system evaluations, and technical data documentation (or indicate when and where these will be available).

(3) Arrange for a quality assurance planning conference between the agency and the NASA installation to finalize NASA requirements.

(4) Arrange for a postaward conference between the supplier, the Government agency, and the NASA installation.

(c) *Quality assurance planning conference with Government agency.* (1) Review NASA requirements for quality assurance and technical representation at plant and test sites, including:

(i) Review of contract requirements;

(ii) Review of separate technical direction to Government agency;

(iii) Clarification of quality requirements in subparagraphs (i) and (ii) above, and determination of any omissions or conflicts for NASA resolution;

(iv) Specification of NASA criteria applicable to the contract for selection of subcontract items requiring Government inspection at source; and

(v) Arranging for providing NASA documents not already on hand.

(2) Review Government agency's quality assurance plan, including:

(i) Determination of the adequacy of proposed Government action:

(ii) Review of the numbers and qualifications of proposed Government agency manpower for various stages of contract;

(iii) Determination of work to be delegated to the Government agency;

(iv) Where a Material Review Board at a supplier's plant is authorized to act on

nonconforming material, making certain that the Government agency representative is technically qualified to make decisions within the scope delegated to the Government agency (otherwise, the NASA installation shall provide the Government representative on this board); and

(v) Arranging for the NASA installation to provide—

(*a*) NASA performance of quality assurance functions not delegated;

(*b*) NASA engineering representation and technical liaison at the plant and test sites; and

(*c*) Designation (by the contracting officer, in writing) of individuals at the responsible NASA installation to be contacted directly for quality assurance, engineering, and documentation matters for the contract.

(3) Review and discuss past quality history of supplier including:

(i) Government agency quality system evaluation results, known supplier quality system deficiencies, and supplier's progress in correcting these deficiencies; and

(ii) Government agency quality performance records for similar items, particularly troubles, product or process deficiencies, and supplier's corrective action.

(4) Arrange for a NASA-directed quality system evaluation, if desired by NASA installation.

(5) If more than one Government agency is involved in research and development work at a plant, determine as early as possible which agency shall perform desired inspection.

(d) *Postaward conference with supplier and Government agency.* (1) Review and discuss applicable items from paragraph (c) of this section.

(2) Review supplier's quality program planning including:

(i) A flow chart or tabulation showing supplier's quality assurance operations in general terms (i.e., what, where and how);

(ii) Revisions or additions to present quality operations to satisfy quality assurance provisions of the contract;

(iii) The time schedule for supplier-prepared technical documents satisfying quality assurance needs of Government agency and NASA installation;

(iv) The contract time schedule or planned events affecting quality assurance operations;

(v) The inspection and testing equipment and facilities available and planned;

(vi) The preliminary system and subsystem interface relationships affecting quality assurance operations;

(vii) Other arrangements necessary to assure system compatibility; and

(viii) The supplier's organizational structure.

(3) In connection with the review of the supplier's quality program or inspection plan, determine the location of proposed Government inspection and control stations.

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

[FR Doc. 71-5114 Filed 4-12-71;8:49 am]

Title 7—AGRICULTURE

Chapter III—Agricultural Research Service, Department of Agriculture

PART 319—FOREIGN QUARANTINE NOTICES

Subpart—Nursery Stock, Plants, and Seeds

FOREIGN NURSERIES CERTIFIED AS PRODUCING SPECIFIED DISEASE-FREE MATERIAL

Pursuant to § 319.37-28 of the regulations supplemental to the Nursery Stock, Plants, and Seeds Quarantine (Notice of Quarantine 37, 7 CFR 319.37-28), issued under the authority of sections 7 and 9 of the Plant Quarantine Act of 1912 (7 U.S.C. 160, 162), administrative instructions designated as § 319.37-28a (7 CFR 319.37-28a, 35 F.R. 17777) are hereby amended to read as follows:

§ 319.37-28a Administrative instructions designating foreign nurseries eligible to ship disease-free Malus, Prunus, and Pyrus material to the United States.

The following nurseries have been designated by the Director of the Agricultural Quarantine Inspection Division as eligible to ship disease-free Malus, Prunus, and Pyrus material to the United States.

BELGIAN NURSERIES

* * * * *

BRITISH NURSERIES

* * * * *

CANADIAN NURSERIES

* * * * *

DUTCH NURSERIES

Fa. H.M.C. Aarts, Sambeekseweg 17, Boxmeer, Netherlands.
Fa. J. Abbing & Zn., Zeist, Netherlands.
J.L.F. Akkermans, Maashees, Netherlands.
Alb. Arends Jzn., Hamsestraat 28, Opheusden, Netherlands.
G. C. Arends, Opheusden, Netherlands.
M.Th.W. Arts, Zandhoek 17, Oirlo, Netherlands.
Fa. H. G. Benckhuijsen & Zn., Boskoop, Netherlands.
A. J. Berman, Dijkwelsestraat 58, Kapelle, Netherlands.
N.V. Boomkwekerij Beveland, Zaagmolenstratt 21, Goes, Netherlands.
de Bie van Aalst N.V., Zundert, Netherlands.
Mevr. P. v.d. Bijl, Opheusden, Netherlands.
J. B. Boeks, Nautastraat 15, Muntendam, Netherlands.
C.V.A. van der Bom, Oudenbosch, Netherlands.
"Bonte Hoek" Kwekerijen, Glimmen, Netherlands.
Fa. Anne Bosgra, Bergum (Fr.), Netherlands.
Fa. O.T. Bosgra-Hogerland, Bergum (Fr.), Netherlands.
Brouwers Boomwekerijen, Groenekan, Netherlands.
Bulk & Co., Boskoop, Netherlands.
Bulten Boomwekerijen, Aalten, Netherlands.
Fa. H. Copijn & Zoon, Groenekan, Netherlands.
Fa. H. Crooymans & Zonen, Geldrop, Netherlands.
H. J. Doedens, Beneden Veensloot 2, Meeden (Gr.), Netherlands.
Fa. S. van Doesburg & Zoon, Opheusden, Netherlands.
Gebr. van Dorp, Hazerswoude, Netherlands.
N.V. Drayer Boomkwekerij, Heemstede Netherlands.
Fa. J. A. Driesprong, Boskoop, Netherlands.
Fa. Andre Ebben, Cuijk, Netherlands.
M. van Ewijk, Kesteren, Netherlands.
H. Fleuren Nursery, Baarlo (L.), Netherlands.
Fa. Jos Frijns & Zn., Groot Welsden 30, Margraten, Netherlands.
C. van Gaalen, Dorpsstraat 218, Benthuizen, Netherlands.
Fa. Chr. van Ginneken & Zoon, Zundert, Netherlands.
Gooiland Nurseries, Naarden, Netherlands.
Fa. F. J. Grootendorst & Zn., Boskoop, Netherlands.
Fa. M. C. Guiljam-Traas, Raadhuisstraat 18, Baarland, Netherlands.
Van Harn N.V., Oostweg 99, Krabbendijke, Netherlands.
I. van Hassel, Zundert, Netherlands.
J. Heines & Zonen N.V., Grotestraat 23, Baarlo (L.), Netherlands.
J. H. Neusinkveld, Lichtenvoorde, Netherlands.
A. van Hoeve, Vogelschorpolder P 159, Sluiskil, Netherlands.
Fa. C. van Hoven & Zoon, Dorpsweg 7, Hoornaar, Netherlands.
G. Huibers, Orpheusden, Netherlands.
Jan Huibers, Opheusden, Netherlands.
Johan Huiting, Vianen, Netherlands.
Gebroeders Janssen, Nederweert, Limburg, Netherlands.
W. Janssen, Groesbeek, Netherlands.
Fa. G. de Jong Pzn. & Zn., Boskoop, Netherlands.
P. G. de Jong, Haaren (N.Br.), Netherlands.
Fa. Gebrs. Jongman, Sappemeer, Netherlands.
H. Kersten, Maashees, Netherlands.
Fa. C. Klijn & Co., Boskoop, Netherlands.
Fa. J. G. Kloosterhuis, Kastanjelaan 2, Stadskanaal, Netherlands.
Jan Kloosterhuis & Zoon, Winschoten, Groningen, Netherlands.
Ha. H. Koolbergen & Zn., Boskoop, Netherlands.
J. Kruip, Lichtenvoorde, Netherlands.
J. Kruit, Wieringerwerf, Netherlands.
J. Kruyer, Noordbroekstraat 119, Sappemeer, Netherlands.
F. Kuiper, Veendam, Croningen, Netherlands.
W. G. Th. Kusters, Boxmeer, Netherlands.
M. Langen, Oudeweg 45, Swalmen, Netherlands.
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J.M.L. van Lin, Boxmeer, Netherlands.
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C. H. Luyten, Roggelsedijk 23, Meyel, Netherlands.
Fa. J. Mauritz & Zn., Opheusden, Netherlands.
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Fa. S. van Nijnatten & Zonen, Zundert, Netherlands.
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Gebroeders Oosterwiik, Sappemeer, Groningen, Netherlands.
J.C.M. Oostveen, Dronten, Netherlands.
Fa. Otto & Zonen, Boskoop, Netherlands.
"Peters" Boomkwekerijen, Hollandse Veld, Netherlands.
Fa. Gebr. Peters, Ochten, Netherlands.
Fa. D. Peters Azn. & Zn., Opheusden, Netherlands.
Fa. P. Peters & Zn., Opheusden, Netherlands.
Plantenziektekundige Dienst, Wageningen, Netherlands.
E. Roelofsen Jr., Opheusden, Netherlands.
G. J. Roelofsen Dzn., Opheusden, Netherlands.
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Firma P. Slits-Brouns, Venray, Limburg, Netherlands.
Fa. G. Snel & Zn., Ceintuurbaan 14, Huizen, Netherlands.
Jan Spek, Boskoop, Netherlands.
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C. F. Verpalen, Zundert, Netherlands.
Fa. D. Verwoert & Zn, Kesteren, Netherlands.
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N.V. A. Vogd, Boslaan 13, Midwolda (Gr.), Netherlands.
Fa. Constant Wattez, Bussum, Netherlands.
P.A.Th. v.d. Werf, Hazerswoude, Netherlands.
Fa. Gebr. J.C. & P.C. van 't Westeinde, 's-Heer Arendskerke, Netherlands.
Fa. Jan van Willegen Gzn. & Zn., Bergsebaan 36, Wouw, Netherlands.
P. Willems, Hertenweg 17, Kraggenburg.

GERMAN NURSERIES

* * * * *

(Secs. 7, 9, 37 Stat. 317, 318; 7 U.S.C. 160, 162; 29 F.R. 16210, as amended; 7 CFR 319.37–28)

This revision of administrative instructions shall become effective upon publication in the FEDERAL REGISTER (4–13–71).

This revision adds 96 Dutch nurseries to the list of nurseries designated as eligible to ship disease-free Malus. Prunus, and Pyrus material to the United States. Section 319.37–28 of the regulations provides for such designation of nurseries certified by the plant protection service of the country of origin as producing such material from parent plants that have been tested and found to be free of significant diseases, when such certification is satisfactory to the Director of the Agricultural Quarantine Inspection Division. Such admissible material may enter under permit. The above list includes all additional foreign nurseries that have been certified to date by their respective plant protection services as fulfilling the prescribed conditions.

Determination of the satisfactory compliance of the listed nurseries with the conditions imposed by § 319.37–28 depends entirely upon facts within the knowledge of the Department of Agriculture. These instructions relieve a restriction and in order to be of maximum benefit to persons desiring to import this material, they should be made effective promptly. Accordingly, under the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedure on the instructions are impracticable and unnecessary and they may be made effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Hyattsville, Md., this 8th day of April 1971.

[SEAL] T. G. DARLING,
Acting Director, Agricultural Quarantine Inspection Division.

[FR Doc.71–5086 Filed 4–12–71;8:47 am]

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

[Lime Reg. 4, Amdt. 1]

PART 944—FRUIT; IMPORT REGULATIONS

Limes

Pursuant to the provisions of section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the provisions of paragraph (a)(2) of § 944.203 (Lime Regulation 4, 35 F.R. 17107) are hereby amended to read as follows:

§ 944.203 Lime Regulation 4.

(a) * * *

(2) Such limes of the group known as large fruited or Persian limes (including Tahiti, Bearss, and similar varieties) grade at least U.S. Combination, Turning: *Provided*, That stem length shall not be considered a factor of grade, and tolerances for fruit affected by decay and for fruit failing to meet requirements set forth in the U.S. Standards for Persian (Tahiti) Limes, shall apply;

* * * * *

It is hereby found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective time of this amendment beyond that hereinafter specified (5 U.S.C. 553) in that (a) the requirements of this amended import regulation are imposed pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), which makes such regulation mandatory; (b) such regulation imposes the same restrictions being made applicable to domestic shipments of limes under amended Lime Regulation 28 (§ 911.330) which becomes effective April 12, 1971; (c) compliance with this amended import regulation will not require any special preparation which cannot be completed by the effective time hereof; and (d) this amendment relieves restrictions on the importation of limes.

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

Dated, April 7, 1971, to become effective April 12, 1971.

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

[FR Doc.71–5085 Filed 4–12–71;8:47 am]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

[Docket No. 71–539]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Areas Quarantined

Pursuant to provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f), Part 76, Title 9, Code of Federal Regulations, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases, is hereby amended in the following respects:

1. In § 76.2, in paragraph (e)(10) relating to the State of Texas, subdivision (i) relating to Bexar, El Paso, Harris, Liberty, and Montgomery Counties is amended to read:

(10) *Texas.* (i) All of Bexar, El Paso, Harris, Galveston, Liberty, and Montgomery Counties.

2. In § 76.2, in paragraph (e)(7) relating to the State of North Carolina, a new subdivision (v) relating to Greene County is added to read:

(7) *North Carolina.* * * *

(v) That portion of Greene County bounded by a line beginning at the junction of State Highway 58 and State Highway 91 in the town of Snow Hill; thence, following State Highway 91 in a northerly direction to Secondary Road 1244; thence, following Secondary Road 1244 in a southwesterly direction to Secondary Road 1240; thence, following Secondary Road 1240 in a northwesterly direction to Secondary Road 1225; thence, following Secondary Road 1225 in a southerly and then westerly direction to Secondary Road 1223; thence, following Secondary Road 1223 in a southwesterly direction to State Highway 58; thence, following State Highway 58 in a southeasterly direction to Secondary Road 1215; thence, following

Secondary Road 1215 in a southwesterly direction to Secondary Road 1253; thence, following Secondary Road 1253 in a southeasterly direction to Secondary Road 1058; thence, following Secondary Road 1058 in a southeasterly direction to Secondary Road 1252; thence, following Secondary Road 1252 in a southeasterly direction to Secondary Road 1211; thence, following Secondary Road 1211 in a southeasterly direction to Secondary Road 1210; thence, following Secondary Road 1210 in a southwesterly direction to Secondary Road 1207; thence, following Secondary Road 1207 in a southeasterly direction to Secondary Road 1205; thence, following Secondary Road 1205 in a southeasterly direction to Secondary Road 1204; thence, following Secondary Road 1204 in a northeasterly direction to Secondary Road 1202; thence, following Secondary Road 1202 in a southeasterly direction to U.S. Highway 13; thence, following U.S. Highway 13 in a northeasterly direction to State Highway 58; thence, following State Highway 58 in a southeasterly direction to its junction with State Highway 91 in the town of Snow Hill.

3. In § 76.2, paragraph (e) (3) relating to the State of Massachusetts is amended to read:

(3) *Massachusetts.* That portion of Bristol County comprised of Norton, Seekonk, and Rehoboth towns.

(Secs. 4–7, 23 Stat. 32, as amended, secs. 1, and 2, 32 Stat. 791–792, as amended, secs. 1–4, 33 Stat. 1264, 1265, as amended, sec. 1, 75 Stat. 481, secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111, 112, 113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 29 F.R. 16210, as amended)

Effective date. The foregoing amendments shall become effective upon issuance.

The amendments quarantine Galveston County, Tex., a portion of Greene County, N.C., and portions of Bristol County, Mass., because of the existence of hog cholera. This action is deemed necessary to prevent further spread of the disease. The restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will apply to Galveston County, Tex., and the quarantined portions of Greene County, N.C., and Bristol County, Mass.

The amendments impose certain further restrictions necessary to prevent the interstate spread of hog cholera and must be made effective immediately to accomplish their purpose in the public interest. Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable and contrary to the public interest, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 8th day of April 1971.

GEORGE W. IRVING, JR.,
Administrator,
Agricultural Research Service.

[FR Doc.71-5087 Filed 4-12-71;8:47 am]

[Docket No. 71-540]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Areas Quarantined

Pursuant to provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f), Part 76, Title 9, Code of Federal Regulations, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases, is hereby amended in the following respects:

In § 76.2, paragraph (e) (8) relating to the State of Ohio is amended to read:

(8) *Ohio.* That portion of Mercer County bounded by a line beginning at the junction of State Highway 49 and Philothea Road; thence, following State Highway 49 in a northerly direction to State Highway 29; thence, following State Highway 29 in an easterly direction to Gause Road; thence, following Gause Road in a southerly direction to Philothea Road; thence, following Philothea Road in a westerly direction to its junction with State Highway 49.

(Secs. 4–7, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791–792, as amended, secs. 1–4, 33 Stat. 1264, 1265, as amended, sec. 1, 75 Stat. 481, secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111, 112, 113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 29 F.R. 16210, as amended)

Effective date. The foregoing amendment shall become effective upon issuance.

The amendment quarantines a portion of Mercer County, Ohio, because of the existence of hog cholera. This action is deemed necessary to prevent further spread of the disease. The restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will apply to the quarantined portion of such county.

The amendment imposes certain further restrictions necessary to prevent the interstate spread of hog cholera and must be made effective immediately to accomplish its purpose in the public interest. Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with repsect to the amendment are impracticable 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.

Done at Washington, D.C., this 8th day of April 1971.

GEORGE W. IRVING, Jr.,
Administrator,
Agricultural Research Service.

[FR Doc.71-5088 Filed 4-12-71;8:47 am]

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Regs. G and U]

PART 207—SECURITIES CREDIT BY PERSONS OTHER THAN BANKS, BROKERS, OR DEALERS

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCKS

Authority To Approve Certain Loans Under Appropriate Circumstances

1. Effective immediately § 207.1(f) is amended by adding a new subparagraph (3) as follows:

§ 207.1 General rule.

* * * * *

(f) *Credit extended to person subject to Regulation T.* * * *

(3) The Board of Governors of the Federal Reserve System may by order exempt from the prohibitions of this paragraph (f) and the requirements of this part, either unconditionally or upon specified terms and conditions or for stated periods, any loan for the purpose of making a loan or providing capital to a person who is subject to Part 220 of this chapter (Regulation T), upon a finding that the granting of such an exemption is necessary or appropriate, in the public interest or for the protection of investors: *Provided,* That the Securities Investor Protection Corp. shall have certified to the Board that such action is appropriate under the circumstances.

* * * * *

2. Effective immediately, § 221.2 is amended by deleting the period at the end of paragraph (k) and inserting in its place "; and", and by adding a new paragraph (l) as follows:

§ 221.2 Exceptions to general rule.

Notwithstanding the provisions of § 221.1, a bank may extend and may maintain any credit for the purpose specified in § 221.1, without regard to the limitations prescribed therein, or in § 221.3(t), if the credit comes within any of the following descriptions.

* * * * *

(l) Any loan for the purpose of making a loan or providing capital to a person who is subject to Part 220 of this chapter (Regulation T), which loan has been exempted by the Board of Governors of the Federal Reserve System, by order, from the requirements of this part, either unconditionally or upon specified terms and conditions or for stated periods, upon a finding that the granting of such an exemption is necessary or appropriate, in the public interest or for the protection of investors: *Provided* That the Securities Investor Protection Corp. shall have certified to the Board that such action is appropriate under the circumstances.

3a. These amendments are issued pursuant to section 7(d)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78g (d)(E). The changes are to authorize the Board, upon certification by the Securities Investor Protection Corp. that circumstances exist which warrant such action, to exempt a loan for the purpose of making a loan or providing capital to a broker or dealer subject to Part 220 (Reg. T) from the restrictions imposed by Parts 207 and 221 (Regs. G and U).

b. The requirements of section 553(b) of title 5, United States Code, with respect to notice, public participation, and deferred effective date were not followed in connection with these amendments because following such requirements would have prevented the Board's action from becoming effective as promptly as necessary in the public interest.

By order of the Board of Governors, March 30, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-5067 Filed 4-12-71;8:45 am]

Chapter VII—National Credit Union Administration

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

Minimum Bond Coverage Schedule

On page 3829 of the FEDERAL REGISTER of February 27, 1971, there was published a notice of proposed revision of the minimum bond coverage schedule contained in 12 CFR 701.20. Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed revision.

No objections have been received and the proposed revisions are hereby adopted without change and are set forth below.

Effective date. These revisions shall be effective as of May 1, 1971.

HERMAN NICKERSON, Jr.,
Administrator.

APRIL 2, 1971.

§ 701.20 Surety bond coverage for Federal credit unions.

(a) The board of directors of each Federal credit union shall at least semiannually carefully review the bond coverage in force in order to ascertain its adequacy in relation to the exposure and to the minimum requirements fixed from time to time by the Administrator.

(b) All surety bonds must provide for faithful-performance-of-duty coverage for any officer or employee while performing any of the duties of the treasurer as prescribed in the Act, the bylaws, or rules and regulations of the Administration.

(c) No form of surety bond shall be used except as is approved by the Administrator. Credit Union Blanket Bond, Standard Form No. 23 of the Surety Association of America (revised to May 1950), plus Faithful Performance Rider (for use with this form to broaden Clause (A)) (revised to May 1950) shall be considered as the minimum coverage required and is hereby approved. Credit Union Blanket Bonds—NCUA Optional Forms 576, 577, and 578—are also approved. No other bond form may be used unless specifically approved in writing by the Administrator. No form of surety bond is approved for use by a Federal credit union having its office outside of the continental United States unless by the terms of the bond or by an appropriate rider attached thereto the provisions of the bond are made applicable within the jurisdiction in which the office of such Federal credit union is located.

(d) All sureties writing Federal credit union bonds must hold a certificate of authority from the Secretary of the Treasury under the act of Congress approved July 30, 1947 (6 U.S.C., secs. 6–13), as an acceptable surety on Federal Bonds in the State or jurisdiction concerned.

(e) The schedule of coverage set forth in paragraph (f) of this section shall not be deemed to cover cash funds of $1,000 or more. When the cash fund is $1,000 or more, additional coverage—to the full amount of the fund—will be required up to total surety bond coverage of $5 million.

(f) The following schedule shall be deemed as the minimum requirements only:

Assets:	*Minimum coverage*
$0,000 to $5,000	$1,000.
$5,001 to $10,000	$2,000.
$10,001 to $20,000	$4,000.
$20,001 to $30,000	$6,000.
$30,001 to $40,000	$8,000.
$40,001 to $50,000	$10,000.
$50,001 to $75,000	$15,000.
$75,001 to $100,000	$20,000.
$100,001 to $150,000	$30,000.
$150,001 to $200,000	$40,000.
$200,001 to $300,000	$50,000.
$30,001 to $400,000	$60,000.
$400,001 to $500,000	$70,000.
$500,001 to $750,000	$85,000.
$750,001 to $1,000,000.	$100,000.
$1,000,001 to $50,000,000.	$100,000 plus $50,000 for each million or fraction thereof of assets over $1,000,000.
$50,000,001 to $150,000,000.	$2,500,000 plus $25,000 for each million or fraction thereof of assets over $50,000,000.
Over $150,000,000	$5,000,000.

It shall be the duty of the board of directors of each Federal credit union to provide proper protection to meet any circumstances by obtaining adequate bond (and insurance) coverage in excess of the above minimum schedule.

(g) The Administrator may require additional coverage for any Federal credit union when, in his opinion, the surety bonds in force are insufficient to provide adequate surety coverage and it shall be the duty of the board of directors of the Federal credit union to obtain such additional coverage within 30 days after the date of written notice.

[FR Doc.71-5090 Filed 4-12-71;8:47 am]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAXES

[T.D. 7105]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Definition of Pooled Income Fund; Correction

On April 6, 1971, T.D. 7105 was published in the FEDERAL REGISTER (36 F.R. 6477). The corrections listed below are made to the Income Tax Regulations (26 CFR Part 1), as prescribed by T.D. 7105:

1. The word "indentify" appearing on the 37th line in paragraph (b)(3) of § 1.642(c)-5 should be corrected to read "identify".

2. The words "which are ordinarily exercised by a" appearing on the 29th line in paragraph (b)(5) of § 1.642(c)-5 should be deleted and inserted after the words "responsibilities with respect to the fund" appearing on the 13th line in paragraph (b)(6) of § 1.642(c)-5.

3. The sentence "Such adjustments may be made * * *" commencing on the 16th line in paragraph (c)(2)(iii) of § 1.642(c)-5 should be revised to read "Such adjustments may be made by any reasonable method, including the use of a method whereby the fair market value of the property in the fund at the time of the transfer is deemed to be the average of the fair market values of the property in the fund on the determination dates immediately preceding and succeeding the date of transfer."

4. Immediately after the revised sentence referred to in paragraph 3, the following sentence should be added to paragraph (c)(2)(iii) of § 1.642(c)-5: "For purposes of determining such average any property transferred to the fund between such preceding and succeeding dates, or on such succeeding date, shall be excluded."

5. In the example in paragraph (c)(2)(iii) of § 1.642(c)-5, the sentence "No other property is transferred to the fund after April 1, 1971." should be added after the sentence "On April 15, 1971, B transfers property with a fair market value of $50,000 to the fund, retaining for himself for life an income interest in such property." In addition, the last sentence "Accordingly, the fair market value * * *" in the example should be revised to read "Accordingly, the fair market value of a unit of participation in the fund on April 15, 1971, at the time of B's transfer may be deemed to be $105 ($105,000/1,000 units), and B is assigned 476.19 units of participation in the fund ($50,000/$105)."

6. The words "to be distributed currently to X University." should be inserted after the words "the end of each quarter of the fiscal year is" appearing on the 18th line of example (3) in paragraph (c)(4) of § 1.642(c)-5.

7. A comma should be added after the year "1971" on the 3d line in paragraph (a)(2) of § 1.642(c)-7.

8. The sentence "A fund which is established as a separate fund * * *" commencing on the 12th line in paragraph (a)(2) of § 1.642(c)-7 should be revised to read "A separate fund which is established pursuant to this subparagraph shall be treated as provided in paragraph (d) of this section for the period beginning on the day of the first transfer of property which becomes part of the separate fund and ending the day before the day on which the separate fund meets the requirements of section 642(c)(5) and § 1.642(c)-5."

9. The word "begun" appearing on the 12th line in paragraph (c)(1) of § 1.642(c)-7 should be changed to read "commenced".

JAMES F. DRING,
Director, Legislation and Regulations Division.

[FR Doc.71-5130 Filed 4-12-71;8:50 am]

[T.D. 7108]

PART 13—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1969

Period for Termination of Private Foundation Status by Transfer to, or Operation as, Public Charity

The following regulations relate to the application of section 507(b)(1) of the Internal Revenue Code of 1954, as added by section 101(a) of the Tax Reform Act of 1969 (83 Stat. 492) to the requirements for termination of private foundation status by transfer to, or operation as, a public charity.

The regulations set forth herein are temporary and are designed to amend Temporary Treasury Regulation § 13.12, added by T.D. 7063, 35 F.R. 15913 (1970), as modified by T.D. 7085, 36 F.R. 150 (1971), in order to provide certain organizations which have not terminated their private foundation status under section 507(b)(1)(A) or (B) by May 15, 1971, certain alternatives with respect to the payment of the tax imposed under section 4940.

In order to provide such temporary regulations under section 507(b)(1) of the Internal Revenue Code of 1954, the regulations are amended as follows:

Temporary Treasury Regulation § 13.12 is amended by revising paragraph (a)(4)(iii) and adding a new paragraph (k), as follows:

§ 13.12 Termination of private foundation status by transfer to, or operation as, public charity.

(a) * * *

(4) * * *

(iii) If the period described in subdivision (ii) of this subparagraph has not expired prior to the due date for the organization's Form 990 (determined with regard to any extension of time for filing the return) for its first taxable year which begins after December 31, 1969, and if the organization has not terminated its private foundation status under section 507(b)(1)(A) by such date, then notwithstanding the provisions of subdivision (ii) of this subparagraph, the organization must take either of the following courses of action:

(*a*) Complete and file its Form 990, including the line entitled "Tax on investment income from Part III", by such date, and pay the tax on investment income imposed under section 4940 at the time it files its Form 990. If such organization subsequently terminates its private foundation status under section 507(b)(1)(A) within the period specified in subdivision (ii) of this subparagraph, it may file a claim for refund of the tax paid under section 4940; or

(*b*) Complete and file its Form 990, except for the line entitled "Tax on investment income from Part III", by such date, and, in lieu of paying the tax on investment income imposed under section 4940, file a statement with its Form 990 which establishes to the satisfaction of the Commissioner that the organization has taken affirmative action by such date to terminate its private foundation status under section 507(b)(1)(A). Such statement must indicate the type of affirmative action taken and explain how such action will result in the termination of its private foundation status under section 507(b)(1)(A). Such affirmative action may include making application to the appropriate State court for approval of the distribution of all net assets pursuant to section 507(b)(1)(A) in the case of a charitable trust, or the passage of a resolution by the organization's governing body directing the distribution of all net assets pursuant to section 507(b)(1)(A) in the case of a not-for-profit corporation. A written commitment or letter of agreement by the trustees or governing body to one or more section 509(a)(1) distributees indicating an intent to distribute all of the organization's net assets to such distributees will also constitute appropriate affirmative action for purposes of this subdivision. An organization may take such affirmative action and may terminate its private foundation status under section 507(b)(1)(A) in reliance upon Temporary Treasury Regulation § 13.12 and upon the provisions of the notices of proposed rule making under sections 170(b)(1)(A), 507(b)(1), and 509. Thus, if a distributee organization meets the requirements of the provisions of the notices of proposed rule making under sections 170(b)(1)(A), 507, or 509 as a distributee under section 507(b)(1)(A), the distributor organization may terminate its private foundation status under section 507(b)(1)(A) in reliance upon such provisions prior to the expiration of the period described in subdivision (ii) of this subparagraph. If such organization, however, fails to terminate its private foundation status under section 507(b)(1)(A) within the period specified in subdivision (ii) of this subparagraph, pursuant either to the provisions of the notices of proposed rule making under section 170(b)(1)(A), 507(b)(1), or 509 or to the final regulations published under these code sections, the tax imposed under section 4940 shall be treated as if due from the due date for its Form 990 (determined without regard to any extension of time for filing its return).

The provisions of this subdivision are applicable only to an organization terminating its private foundation status under section 507(b)(1)(A) and may not be relied upon by any other organization with respect to its own classification under section 509(a)(1) (except as to its status as a distributee under section 507(b)(1)(A)).

* * * * *

(k) *Special transitional rules for organizations operating as public charities.* In the case of an organization seeking to terminate its private foundation status under section 507(b)(1)(B), if the period described in paragraph (j)(1) of this section has not expired prior to the due date for the organization's Form 990 (determined with regard to any extension of time for filing the return) for its first taxable year which begins after December 31, 1969, and if the organization has not terminated its private foundation status under section 507(b)(1)(B) by such date, then notwithstanding the provisions of paragraph (j) of this section, the organization must take either of the following courses of action:

(1) Complete its Form 990, including the line entitled "Tax on investment income from Part III", by such date, and pay the tax on investment income imposed under section 4940 at the time it files its Form 990. If such organization subsequently terminates its private foundation status under section 507(b)(1)(B) within the period specified in paragraph (j) of this section, it may file a claim for refund of the tax paid under section 4940; or

(2) Complete and file its Form 990, except for the line entitled "Tax on investment income from Part III", by such date, and, in lieu of paying the tax on investment income imposed under section 4940, file a statement with its Form 990 which establishes to the satisfaction of the Commissioner that the organization has taken affirmative action by such date to terminate its private foundation status under section 507(b)(1)(B). Such statement must indicate the type of affirmative action taken and explain how such action will result in the termination of its private foundation status under section 507(b)(1)(B). Such affirmative action may include making application to the appropriate State court for approval to amend the provisions of the organization's trust instrument to limit payments to specified section 509(a)(1)

or (2) beneficiaries pursuant to section 509(a)(3) in the case of a charitable trust; commencing a fund raising drive among the general public in the case of an organization seeking to become a section 170(b)(1)(A)(vi) or 509(a)(2) organization; or the passage of a resolution by the organization's governing body or the filing of an amendment to the organization's Articles of Incorporation permitting a change in the operations of the organization to enable it to conform to the provisions of section 509(a)(1), (2), or (3) in the case of a not-for-profit corporation. An organization may take such affirmative action and may terminate its private foundation status under section 507(b)(1)(B) in reliance upon Temporary Treasury Regulation § 13.12 and upon the provisions of the notices of proposed rule making under sections 170(b)(1)(A), 507(b)(1), and 509. Thus, if an organization meets the requirements of the provisions of the notice of proposed rule making as a section 509(a)(3) organization, such organization may terminate its private foundation status under section 507(b)(1)(B) in reliance upon such provisions prior to the expiration of the period described in paragraph (j) of this section. If such organization, however, fails to terminate its private foundation status under section 507(b)(1)(B) within the period specified in paragraph (j) of this section, pursuant either to the provisions of the notices of proposed rule making under section 170(b)(1)(A), 507(b)(1), or 509 or to the final regulations published under these code sections, the tax imposed under section 4940 shall be treated as if due from the due date for its Form 990 (determined without regard to any extension of time for filing its return).

While an organization can terminate its private foundation status under section 507(b)(1)(B) by operation as a section 509(a)(1), (2), or (3 organization in reliance upon the provisions of this paragraph, it will retain its status as a section 509(a)(1), (2), or (3) organization after the publication of final regulations under sections 170(b)(1)(A), 507, and 509 only if it meets the requirements of such final regulations.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b), or subject to the effective date limitation of 5 U.S.C. 553(d).

(Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] HAROLD T. SWARTZ,
Acting Commissioner of Internal Revenue.

Approved: April 8, 1971.

EDWIN S. COHEN,
Assistant Secretary of the Treasury.

[FR Doc.7-5131 Filed 4-12-71;8:50 am]

Title 29—LABOR

Chapter XVII—Occupational Safety and Health Administration, Department of Labor

PART 1901—PROCEDURES FOR STATE AGREEMENTS

Title 29 of the Code of Federal Regulations is hereby amended by adding thereto a new chapter, designated Chapter XVII. Occupational Safety and Health Administration. The rules published therein by this document consist of rules of procedure for implementing section 18(h) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1609). Section 18(h) provides that the Secretary of Labor may enter into an agreement with a State under which the State will be permitted to continue to enforce one or more occupational health and safety standards in effect in such State. An agreement under section 18(h) may remain in effect until final action is taken by the Secretary of Labor under section 18(c) of the Act with respect to a State plan submitted under section 18(b) of the Act, for 2 years from the date of enactment of the Act (December 28, 1972), whichever is earlier.

The amendments shall be effective immediately.

The new Chapter XVII of Title 29, Code of Federal Regulations, reads as follows:

Sec.
1901.1 Purpose and scope.
1901.2 Alternative to Federal preemption.
1901.3 Making of agreements.
1901.4 Action upon requests for agreements.
1901.5 Termination of agreements.
1901.6 Exclusion.
1901.7 Delegation of authority.

AUTHORITY: The provisions of this Part 1901 issued under secs. 8(g), 18(h), 84 Stat. 1600, 1609; 29 U.S.C. 1667.

§ 1901.1 Purpose and scope.

(a) This part interprets and applies section 18(h) of the Williams-Steiger Occupational Safety and Health Act of 1970. Section 18(h) provides that the Secretary of Labor may enter into an agreement with a State under which the State will be permitted to continue to enforce one or more occupational health and safety standards in effect in such State until final action is taken by the Secretary with respect to a plan submitted by a State under section 18(b), or 2 years from the date of enactment (which will be December 28, 1972), whichever is earlier.

(b) Under this part, agreements for temporary periods are permitted with any State which desires to continue to enforce any State occupational safety for health standard or standards that are in effect when a Federal standard or standards covering the same issues become effective or which become effective thereafter. Continuance of enforcement pursuant to an agreement under this part means a maintenance of State enforcement without any diminution in the level of enforcement activity. Thus, a State party to an agreement under section 18(h) may not diminish its level of enforcement activity respecting standards covered by the agreement below that existing at the time of agreement.

(c) The requirements of this part shall be considered incorporated by reference in any agreement entered into under section 18(h) of the Act.

§ 1901.2 Alternative to Federal preemption.

Section 18(a) of the Act is read as preventing any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which a Federal standard has been issued under section 6 of the Act. Section 18(h) permits the Secretary to provide an alternative to the exclusive Federal jurisdiction on such occupational safety or health issue. This alternative is temporary and may be considered a step toward the more permanent alternative to exclusive Federal jurisdiction provided by sections 18(b) and (c) following submission and approval of a plan submitted by a State for the development and enforcement of occupational safety and health standards. Agreements under section 18(h) are temporary in that they cannot continue beyond December 28, 1972, or the date of approval of the State plan under section 18(c), whichever occurs first.

§ 1901.3 Making of agreements.

(a) *Who may make agreements.* The Secretary may make an agreement under section 18(h) of the Act with any State agency designated for that purpose by the Governor. Where other State agencies or agencies of political subdivisions of the State have responsibility for enforcement of State occupational safety and health standards covered by the agreement, the State agency designated under this paragraph shall take the necessary action to insure that such other agencies will implement and adhere to the agreement.

(b) *Commencement of negotiations.* Negotiations for making an agreement may be commenced by the Governor of the State, or a State agency which may be designated for this purpose under paragraph (a) of this section, by filing an application in writing with the Secretary. No particular form of application is required. The contents of the application shall be those described in subparagraphs (1) through (5) of paragraph (c) of this section.

(c) *Contents of the agreement.* Any agreement, including any modification thereof, shall be in writing and shall contain the following:

(1) A brief description of each State standard or standards which are the subject of the agreement, including any pertinent legislative or regulatory citations. The description shall include a statement of the occupational safety or health issue covered by each standard,

and shall specify the coverage of the standard (e.g., as to such matters as covered industries, hazards, establishments, etc.).

(2) The names, addresses, and telephone numbers of the agency or agencies of the State, including any political subdivisions of the State, which have any responsibility for administering and enforcing the State standard or standards. The names, addresses, and telephone numbers of the heads of such agencies shall also be listed. The requirements of this paragraph shall not apply to any agency having only judicial or quasi-judicial responsibilities.

(3) A description of the enforcement program and procedures used by each agency administering the standard or standards. In his discretion, the Secretary may require detailed information concerning such programs and procedures, with the degree of specificity turning upon the nature of the standard or standards involved, the number of employees covered by such standards, and any other pertinent considerations.

(4) The dollars and approximate man-years allocated within each agency having responsibilities for the administration and enforcement of each State standard covered by the agreement during the previous fiscal period, and current fiscal period, and a description of the fiscal period.

(5) Notice of intention to submit plan under section 18(b): The State agency shall agree (i) to submit a notice of intention to file a section 18(b) plan within sixty (60) days following publication in the FEDERAL REGISTER of procedures for the submission of such plan under section 18(b) and for their approval under section 18(c); and (ii) to submit such a plan under section 18(b) within nine (9) months following the filing of a notice of intention. In lieu of submitting the notice, the State agency may agree to submit a plan under section 18(b) within the prescribed 60-day period, which plan may be expected to meet the requirements established under section 18 (b) and (c) with little or no modification thereof.

(6) A brief description of the Federal occupational safety or health standards dealing with the same issues as the State standards which are the subject of the agreement.

(7) The agreement shall include provisions whereunder the Secretary shall inform the State agency of his enforcement activities within the State with respect to Federal standards referred to in any agreement. (See § 1901.6.) Similarly, the agreement shall also provide that the State agency be required to make such reports to the Secretary regarding activities performed under the terms of the agreement as he shall require.

(8) The Secretary may add such further provisions as he may consider appropriate under the circumstances of the standards issue involved.

(d) *When agreements will be made.* (1) The commencement of negotiations for the making of an agreement concerning any pertinent standard should be undertaken as early as is practical before the effective date of the Federal standard involved.

(2) In view of the directive to the Secretary under section 6(a) for the adoption of established Federal standards and national consensus standards as promptly as possible after the effective date of the Act, agreements may be entered into before the issuance of such standards, which agreements shall be contingent upon their adoption.

(3) Negotiations for making an agreement may be commenced before the effective date of the Act, but any agreement resulting from such negotiations shall not be valid or adopted until that effective date.

(e) *Restriction.* As a matter of policy, in making agreements under this part the Secretary shall be mindful of the restriction on making plans, contained in section 18(c)(2) of the Act, to the effect that plans will not be approved concerning standards which unduly burden interstate commerce when applied to products which are distributed or used in interstate commerce.

§ 1901.4 Action upon requests for agreements.

The State shall be notified within a reasonable time of any decision concerning a request for agreement. If a request is denied, the State shall be informed in writing of the reasons therefor. If a request is granted or an agreement is otherwise made, notification to that effect shall be published in the FEDERAL REGISTER.

§ 1901.5 Termination of agreements.

(a) Either the Secretary or the State agency which is a party to the agreement may terminate the agreement upon the delivery of written notification to that effect not later than 10 days before the date of termination. Any termination under this paragraph shall not affect the disposition of any pending State cases.

(b) In no event shall an agreement under this part continue in effect beyond the time when final action is taken by the Secretary with respect to a plan submitted by a State under section 18(b) of the Act or December 28, 1972, whichever is earlier.

(c) The Secretary may terminate any agreement where a State fails to comply with the requirements of paragraph (c)(5) of § 1901.3.

§ 1901.6 Exclusion.

This agreement does not restrict in any way the authority and responsibility of the Secretary under sections 8, 9, 10, 13, and 17 of the Act with respect to the Federal standards referred to in any agreement.

§ 1901.7 Delegation of authority.

The powers of the Secretary under this part shall be exercised by the Assistant Secretary of Labor for Occupational Safety and Health who is empowered to subdelegate such powers. The Assistant Secretary may, at any time, upon his own motion or upon petition by any interested persons, amend any of the rules in this part.

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

J. D. HODGSON,
Secretary of Labor.

[FR Doc.71-5129 Filed 4-12-71;8:50 am]

Title 30—MINERAL RESOURCES

Chapter I—Bureau of Mines, Department of the Interior

SUBCHAPTER D—ELECTRICAL EQUIPMENT, LAMPS, METHANE DETECTORS; TESTS FOR PERMISSIBILITY; FEES

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

Subpart E—Field Approval of Electrically Operated Mining Equipment

Pursuant to the authority vested in the Secretary of the Interior under section 508 of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173), and in accordance with the provisions of section 318(i) of the Act which directs the Secretary to provide procedures including, where feasible, testing, approval, certification, and acceptance in the field of electrically operated equipment taken into or used in by the last open crosscut of any entry or room of any coal mine, there was published in the FEDERAL REGISTER for December 30, 1970 (35 F.R. 19790), a notice of proposed rule making setting forth a new Subpart E, "Field Approval of Electrically Operated Mining Equipment," to Part 18 of Title 30, Code of Federal Regulations.

Interested persons were afforded a period of 45 days from the date of publication of the notice in which to submit written comments, suggestions, or objections to the proposed new Subpart E. No written comments, suggestions, or objections were submitted. Therefore Subpart E of Part 18, Subchapter D, Chapter I, Title 30, Code of Federal Regulations is herewith promulgated as set forth below and shall become effective upon publication in the FEDERAL REGISTER (4-13-71).

ROGERS C. B. MORTON,
Secretary of the Interior.

APRIL 6, 1971.

Subpart E—Field Approval of Electrically Operated Mining Equipment

Sec.

AUTHORITY: The provision of this Subpart E issued pursuant to the authority vested in the Secretary of the Interior under sections 318(i) and 508 of the Federal Coal Mine Health and Safety Act of 1969, Public Law 91-173, 83 Stat. 742, 30 U.S.C. 801.

Subpart E—Field Approval of Electrically Operated Mining Equipment

§ 18.90 Purpose.

The regulations of this Subpart E set forth the procedures and requirements for permissibility which must be met to obtain Bureau of Mines field approval of electrically operated machinery used or intended for use in by the last open crosscut of a coal mine which has not been otherwise approved, certified or accepted under the provisions of this Part 18, Chapter I, Title 30, Code of Federal Regulations (Bureau of Mines Schedule 2G).

§ 18.91 Electric equipment for which field approvals will be issued.

(a) Individual field approvals will be issued by the Bureau of Mines under the provisions of this Subpart E for electrically operated machines commercially built, or constructed, by the owner-coal mine operator of such machines including any associated electrical equipment, electrical components, and electrical accessories.

(b) Approvals will not be issued under the provisions of this Subpart E for electrically operated mining equipment manufactured or rebuilt primarily for sale or resale to any operator of a coal mine, or for small electrically operated equipment which consumes less than 2,250 watts of electricity, or for instruments and other small devices which employ electric power.

§ 18.92 Quality of material and design.

(a) Electrically operated machinery approved under the provisions of this Subpart E shall be rugged in construction and shall be designed to facilitate maintenance and inspection.

(b) The Bureau of Mines shall conduct field investigations and, where necessary, field test electric machinery only where such machinery is found to be constructed of suitable materials and safe for its intended use.

§ 18.93 Application for field approval; filing procedures.

(a) (1) Investigation and testing leading to field approval shall be undertaken by the Bureau of Mines only pursuant to individual written applications for each machine submitted in triplicate on Bureau of Mines Form No. 6-1481, by the owner-coal mine operator of the machine.

(2) Except as provided in paragraph (b) of this section, each application shall be accompanied by appropriate photographs, drawings, specifications, and descriptions as required under the provisions of § 18.94 and each such application shall be filed with the Coal Mine Health and Safety District Manager for the District in which such machine will be employed.

(b) The Coal Mine Health and Safety District Manager may, upon receipt of any application filed pursuant to paragraph (a) of this section, waive the requirements of § 18.94 with respect to such application if he determines that the submission of photographs, drawings, specifications, or descriptions will place an undue financial burden upon the applicant. In the event a waiver is granted in accordance with this paragraph (b), initial review of the application will be waived and the applicant shall be notified on Bureau of Mines Form 6-1481 of such waiver and the date, time, and location at which field inspection of the equipment described in the application will be conducted.

(c) Following receipt of an application filed in accordance with paragraph (a) of this section, the Coal Mine Health and Safety District Manager shall determine whether the application has been filed in accordance with § 18.91, and cause the application to be reviewed by a qualified electrical representative to determine compliance with § 18.92:

(1) If it is determined on the basis of the application or the data submitted in accordance with § 18.94 that further consideration of a field approval is warranted under this Subpart E or that the machine appears suitable and safe for its intended use, the Coal Mine Health and Safety District Manager shall advise the applicant in writing that further investigation and inspection of the machine will be necessary. The notice issued by the Coal Mine Health and Safety District Manager shall set forth the time and place at which such inspection will be conducted and specify the location and size of any tapped holes required to be made by the applicant to facilitate the pressure testing of enclosures.

(2) If it is determined on the basis of data submitted in accordance with § 18.94 that the applicant is not qualified to receive an approval or that the machine does not appear to be suitable and safe for its intended use, the Coal Mine Health and Safety District Manager shall so advise the applicant in writing, setting forth the reasons for his denial of the application, and where applicable, the deficiencies in the machine which rendered it unsuitable or unsafe for use.

(3) Rejected applications, together with attached photographs, drawings, specifications and descriptions shall be forwarded by the Coal Mine Health and Safety District Manager to Approval and Testing which shall record all pertinent data with respect to the machine for which field approval was sought.

§ 18.94 Application for field approval; contents of application.

(a) Each application for field approval shall, except as provided in § 18.93(b), include the following information with respect to the electrically operated machine for which field approval is sought:

(1) The trade name and the certification number or other means of identifying any explosion-proof compartment or intrinsically-safe component installed on the machine for which a prior approval or certification has been issued under the provisions of Bureau of Mines Schedules 2D, 2E, 2F, or 2G.

(2) The trade name and the flame resistance acceptance number of any cable, cord, hose, or conveyor belt installed on the machine for which a prior acceptance has been issued under the provisions of § 18.36, § 18.39, § 18.64, or § 18.65.

(b) Each application for field approval shall be accompanied by:

(1) If the machine is constructed or assembled entirely from components which have been certified or removed from machines approved under Bureau of Mines Schedule 2D, 2E, 2F, or 2G, photographs or a single layout drawing which clearly depicts and identifies each of the permissible components and its location on the machine.

(2) If the machine contains one or more components required to be permissible which has not been approved or certified under Bureau of Mines Schedule 2D, 2E, 2F, or 2G, a single layout drawing which clearly identifies all of the components from which it was assembled.

(3) All applications shall include specifications for:

(i) Overcurrent protection of motors:

(ii) All wiring between components, including mechanical protection such as hose conduit and clamps;

(iii) Portable trailing cable for use with the machine, including the type, length, diameter, and number and size of conductors;

(iv) Insulated strain clamp for machine end of portable trailing cable;

(v) Short-circuit protection to be provided at outby end of portable trailing cable.

§ 18.95 Approval of machines constructed of components approved, accepted or certified under Bureau of Mines Schedule 2D, 2E, 2F, or 2G.

Machines for which field approval is sought which are constructed entirely from properly identified components that have been investigated and accepted or certified for applications on approved machines under the Bureau of Mines Schedule 2D, 2E, 2F, or 2G, shall be approved following a determination by the electrical representative that the construction of the entire machine is permissible and conforms to the data submitted in accordance with § 18.94.

§ 18.96 Preparation of machines for inspection; requirements.

(a) Upon receipt of written notice from the Health and Safety District Manager of the time and place at which a field approval investigation will be conducted with respect to any machine, the applicant will prepare the machine for inspection in the following manner:

(1) The machine shall be in fresh air out by the last open crosscut and free from obstructions, or, if the machine is

located on the surface, moved to a clear area;

(2) All enclosure covers shall be removed;

(3) The flanges and interior of each enclosure, including the cover, shall be cleaned thoroughly;

(4) All hoses, cables, cord, and conveyor belts shall be wiped clean to expose surface markings;

(5) All electrical components shall be cleaned to reveal all stampings, identification plates, certification numbers, or explosion test markings.

§ 18.97 Inspection of machines; minimum requirements.

(a) Except as provided in § 18.95, all machines approved under the provisions of this Subpart E shall, where practicable, meet the minimum design and performance requirements set forth in Subpart B of this Part 18 and, where necessary, the requirements of § 18.98.

(b) The inspection of each machine shall be conducted by an electrical representative and such inspection shall include:

(1) Examination of all electrical components for materials, workmanship, design, and construction;

(2) Examination of all components of the machine which have been approved or certified under Bureau of Mines Schedule 2D, 2E, 2F, or 2G to determine whether such components have been maintained in permissible conditions;

(3) Comparison of the location of components on the machine with the drawings or photographs submitted to determine that each of them is properly located, identified and marked;

(4) Pressure testing of explosion-proof compartments, when necessary, shall be conducted in accordance with § 18.98, and;

(i) Where the results of pressure testing are acceptable, the applicant shall be advised;

(ii) Where the explosion-proof enclosure is found unacceptable, the applicant shall be so informed;

(iii) If the performance of the explosion-proof enclosure is questionable, the qualified electrical representative may, at the request of the applicant, conduct a further detailed examination of the enclosure after disassembly and record his additional findings on Bureau of Mines Form No. 6–1481 under Results of Field Inspections.

§ 18.98 Enclosures, joints, and fastenings; pressure testing.

(a) Cast or welded enclosures shall be designed to withstand a minimum internal pressure of 150 pounds per square inch (gage). Castings shall be free from blowholes.

(b) Pneumatic field testing of explosion-proof enclosures shall be conducted by determining:

(1) Leak performance with a peak dynamic or static pressure of 150 pounds per square inch (gage); or,

(2) A pressure rise and rate of decay consistent with unyielding components during a pressure-time history as derived from a series of oscillograms.

(c) Welded joints forming an enclosure shall have continuous gastight welds.

§ 18.99 Notice of approval or disapproval; letters of approval and approval plates.

Upon completion of each inspection conducted in accordance with § 18.97 (b), the electrical representative conducting such inspection shall record his findings with respect to the machine examined on Bureau of Mines Form No. 6–1481 together with his recommendation of approval or disapproval of the machine.

(a) If the qualified electrical representative recommends field approval of the machine, the Coal Mine Health and Safety District Manager shall forward the completed application form together with all attached photographs, drawings, specifications, and descriptions to Approval and Testing. Approval and Testing shall record all pertinent data with respect to such machine, issue a letter of approval with a copy to the Coal Mine Health and Safety District Manager who authorized its issuance and send the field approval plate to the applicant. The approval plate shall be affixed to the machine by the applicant in such a manner so as not to impair its explosion-proof characteristics.

(b) If the electrical representative recommends disapproval of the machine, he shall record the reasons for such disapproval and the Coal Mine Health and Safety District Manager shall forward the completed application form and other data to Approval and Testing which shall record all pertinent data with respect to such machine and notify the applicant that the application for approval has been rejected and the reasons for the rejection.

[FR Doc.71–5103 Filed 4–12–71;8:48 am]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER O—POLLUTION

[CGFR 70–126]

PART 153—CONTROL OF POLLUTION BY OIL AND HAZARDOUS SUBSTANCES, DISCHARGE REMOVAL

Pollution Fund

1. The purpose of this amendment to Title 33, Code of Federal Regulations, Part 153, is to set forth policies and procedures and prescribe reporting requirements applicable to the special fund established by the Federal Water Pollution Control Act, as amended by the Water Quality Improvement Act of 1970.

2. Subsection 11(c) of the Act provides that whenever any oil is discharged into or upon the navigable waters of the United States, or adjoining shorelines, or waters of the contiguous zone, the President is authorized to act to remove such oil at any time. Subsection 11(i) provides for the recovery of reasonable costs incurred by the owner or operator of a vessel, onshore facility, or offshore facility in removing an oil discharge in certain cases. Section 12 of the Act pertains to control of hazardous polluting substances other than oil and requires that the President, if appropriate, shall remove any substance designated a hazardous polluting substance that is discharged into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone, unless removal is immediately undertaken by the owner or operator of the vessel or onshore or offshore facility from which the discharge occurs.

3. Section 11(k) of the Act authorizes an appropriation to a special fund of not to exceed $35 million to be established in the Treasury to carry out the provisions in subsection 11(c), (i) and (1) and sections 12 of the Act. Section 11(1) of the Act, provides that the President may delegate the administration of section 11 to appropriate Federal departments, agencies, and instrumentalities. Executive Order No. 11548 (35 F.R. 11677) delegates to the Secretary of Transportation, among other things, the responsibility and authority to administer the fund established pursuant to subsection 11(k) of the Act. The Secretary has redelegated the responsibility and authority for the fund to the Commandant in 49 CFR 1.46 (35 F.R. 14509).

4. These amendments add a new Subpart D to Part 153. Subpart C is reserved for rules for removing oil or hazardous substances. New § 153.303 indicates the kinds of costs that may be paid or reimbursed from the fund under the Act. The National Contingency Plan separates the actions taken to respond to a spill or pollution incident into five phases: Phase I, Discovery and Notification; Phase II, Containment and Countermeasures; Phase III, Cleanup and Disposal; Phase IV, Restoration; and Phase V, Recovery of Damages and Enforcement. Only Phase II and III actions taken in response to a spill or pollution incident are considered to be eligible costs to be charged to the fund.

5. Phase II actions are defensive actions and may include source control procedures, public health protection activities, salvage operations, placement of physical barriers to halt or slow the spread of a pollutant, emplacement or activation of booms or barriers to protect specific installations or areas, control of the water discharge from upstream impoundments and the employment of chemicals and other materials to restrain the pollutant and its effect on water related resources. Phase III includes actions taken to remove the pollutant from the water and related onshore areas such as the collection of oil through the use of sorbers, skimmers, or other collection devices, the removal of beach sand, and safe, nonpolluting disposal of the pollutants that are recovered in the cleanup process.

6. Actions described in the other phases of the plan, that is, notification,

restoration and enforcement, are not chargeable against the fund because the fund is considered to be available only for the cost of those actions taken under the plan to minimize damage from oil and hazardous polluting substance discharges, including containment, disposal, and removal.

7. Although Phase II includes defensive actions to be initiated as soon as possible after discovery of a "pollution incident", which includes an imminent threat of a spill as well as an actual spill of oil or other hazardous substance, such defensive actions in response to the imminent threat of a spill are not chargeable to the fund.

8. Although the fund is not intended to pay for removal of oil spilled by offshore facilities that are regulated under the Outer Continental Shelf Lands Act, it would be available for removal of oil discharged into the contiguous zone. To this extent, the costs of a response to a spill from a facility covered by the Outer Continental Shelf Lands Act could be charged to the fund.

9. This amendment does not specify in detail the kinds of costs that may be charged to the fund. The Coast Guard will prepare instructions to assist in the determination of appropriate costs by District Commanders and On-Scene Commanders. Until such instructions are included in the National Contingency Plan, the Coast Guard will have appropriate instructions and distribute them to individuals and agencies concerned.

10. Sections 153.305 through 153.319 contain delegations, procedural requirements and information concerning administration of the fund.

11. Since the addition of this Subpart D to Part 153 involves delegations of authority and statements of policy and procedures, I find that public notice and procedure thereon are not necessary, and that this amendment may become effective in less than 30 days. In consideration of the foregoing, Part 153 is amended effective May 13, 1971, as follows:

1. By adding the following definitions to § 153.01:

§ 153.01 Definition.

* * * * *

(k) "Act" means the Federal Water Pollution Control Act, as amended.

(l) "National Contingency Plan" means the National Oil and Hazardous Materials Pollution Contingency Plan prepared pursuant to section 11(c)(2) of the Act and published in the FEDERAL REGISTER of June 2, 1970 (35 F.R. 8508) and amendments thereto.

(m) "Pollution Fund" and "Fund" mean the fund established pursuant to section 11(k) of the Federal Water Pollution Control Act, as amended.

(n) "Regional Contingency Plan" means the applicable regional plan published pursuant to the National Contingency Plan.

2. By adding a new Subpart D to read as follows:

Subpart D—Administration of Pollution Fund

Sec.

AUTHORITY: The provisions of this Subpart D issued under subsections 11(c), (i), (k) and (l) of the Federal Water Pollution Control Act (62 Stat. 1155; 33 U.S.C. 466), as amended by the Water Quality Improvement Act of 1970 (84 stat 91), E.O. 11548 (35 F.R. 11677), 49 CFR 1.46(m), (35 F.R. 14509).

§ 153.301 Purpose.

This subpart prescribes policies, procedures, and reporting requirements concerning payments from, and deposits into, the pollution fund established by the President pursuant to section 11(k) of the Federal Water Pollution Control Act (62 Stat. 1155; 33 U.S.C. 466), as amended by the Water Quality Improvement Act of 1970 (84 Stat. 91). The President has delegated responsibility for administration of the fund to the Secretary of Transportation by Executive Order 11548. The Secretary of Transportation has redelegated this responsibility to the Commandant in 49 CFR 1.46.

§ 153.303 Use of pollution fund.

(a) Except as provided in paragraph (b) of this section, the pollution fund may be used to pay—

(1) Costs incurred for response Phase II and III actions under the National Contingency Plan to contain or remove oil or a hazardous polluting substance discharged into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone;

(2) Judgments, compromises, and settlements under section 11(i) of the Act; and

(3) Any other costs that the Commandant determines are proper charges against the fund.

(b) The fund is not available to pay costs incurred for actions to remove oil or a hazardous polluting substance discharged from a U.S. public vessel or federally-controlled facility.

§ 153.305 District commander's authority.

For each discharge of oil or a hazardous polluting substance each commander of a Coast Guard District is delegated authority to authorize payment of $1 million or less from the fund for costs allowed in § 153.303(a)(1).

§ 153.307 Procedures; Phase II and III costs.

Request for payment of costs allowed in § 153.303(a)(1) must be made in accordance with the Regional Contingency Plan.

§ 153.309 Procedures; payment of judgments and compromises.

(a) If an owner or operator of a vessel or an onshore or offshore facility obtains a judgment against the United States under section 11(i) of the Act, the Commandant pays the judgment from the fund to the proper person upon receipt of a request from the owner or operator for payment accompanied by a copy of the judgment.

(b) If an owner or operator of a vessel or an onshore or offshore facility compromises or otherwise settles a suit brought under section 11(i) of the Act, the Commandant pays the amount of compromise or settlement from the fund to the proper person upon receipt of a proper certificate from the Attorney General attesting that a sum certain is due and owing by the United States as a result of the compromise or settlement.

§ 153.311 Procedures; other costs.

Requests for payment of other costs allowed in § 153.303(a)(3) must be made in writing to the Commandant and must include documentation to establish the validity of the charge against the fund.

§ 153.313 Procedures; procurement laws.

Federal procurement procedures governing purchases and contracts to purchase property and services apply to payment from the fund. Where the public exigency will not permit the delay incident to advertising, negotiated purchases and contracts may be authorized pursuant to 10 U.S.C. 2304(a)(2) or 41 U.S.C. 252(c)(2) as applicable.

§ 153.315 Collection of costs.

As soon as practicable after an occurrence that results in response Phase II or III actions for removal of oil under subsection 11(c) of the Act or in Federal action pursuant to subsection 11(d) in case of marine disaster, the cognizant District Commander asserts a claim against the responsible party for the costs of these actions recoverable under subsections 11 (f) and (g). Claims asserted shall be in accordance with the Federal Claims Collection Act of 1966 and any of the regulations issued pursuant to that Act.

§ 153.317 Deposit of money into the fund.

(a) The Commandant deposits in the fund monies received by the United States—

(1) In payment of a fine adjudged under section 11(b)(4) of the Act;

(2) In payment of a civil penalty assessed under section 11(b)(5) or (j)(2) of the Act;

(3) As a result of demand for payment or in compromise or settlement of an action brought upon section 11 (f) or (g) of the Act; and

(4) In satisfaction of a judgment obtained by the United States under section 11 (f) or (g) of the Act.

(b) Payment must be made by check or money order payable to the U.S. Coast

Guard and must be submitted to the Commandant.

§ 153.319 Reporting and accounting data retention requirements.

(a) As soon as practicable after termination of Phase III actions, the On-Scene Commander submits to the appropriate District Commander a list that includes—

(1) Names of agencies and contractors authorized by the on-scene commander to participate in Phase II or III actions;

(2) A general description of the functions each agency and contractor performed;

(3) An estimate of the cost of each function performed; and

(4) Each contract, memorandum, or other document pertaining to a function performed or a description of each document.

(b) Within 60 days after termination of Phase III actions, each Federal agency must submit to the appropriate District Commander—

(1) An itemized list of costs that it desires to be paid from the fund;

(2) An itemized list of costs to be recovered against the responsible party under section 11 (f) or (g) of the Act.

(c) Each Federal agency desiring payment of costs from the fund must keep accounting data to support the itemized costs and submit that data to the District Commander at his request in such form as the Commandant may prescribe.

(d) A Federal agency may be reimbursed only for the costs specifically and directly incurred as a result of Phase II or III activity. Included are:

(1) Costs incurred by industrial type facilities, including charges for overhead in accordance with the agency's industrial accounting system.

(2) Actual costs where an agency is required or authorized by law to obtain full reimbursement.

(3) Out-of-pocket costs specifically and directly incurred as a result of recovery activity. These include, but are not limited to, the following:

(i) Travel (transportation and per diem) specifically requested by the on-scene commander.

(ii) Overtime for civilian personnel specifically requested by the on-scene commander.

(iii) Incremental operating costs for vessels, aircraft, vehicles and equipment incurred in connection with the response activity.

(iv) Supplies, materials, and minor equipment procured specifically for the recovery activity.

(v) Lease or rental of equipment obtained specifically for the recovery activity.

(vi) Contract costs including costs incurred by nonprofit organizations and States and political subdivisions thereof.

(e) Personnel and equipment costs which are funded by other appropriations and which would have been incurred during normal operations are not reimbursable as out-of-pocket costs.

Dated: March 31, 1971.

C. R. BENDER,
Admiral, U.S. Coast Guard,
Commandant.

[FR Doc.71-5117 Filed 4-12-71;8:49 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 0—COMMISSION ORGANIZATION

Delegation of Authority to Chief, Safety and Special Radio Services Bureau

Order. 1. On December 2, 1970, the Commission delegated authority to the Chief, Safety and Special Radio Services Bureau to act on requests for waiver of the requirements of § 89.117 of the rules so as to permit public safety dedicated organizations eligible under Part 89 of our rules to operate radio stations on the frequencies 27.235, 27.245, 27.255, 27.265, and 27.275 MHz with nontype accepted radio equipment. The rule amendment adopted herein will incorporate this action into Part 0 of the rules. This is to be done by amending present § 0.331(b) (17) which has been outdated by its own terms.

2. Authority for this action is contained in sections 4(i) and 5(d) of the Communications Act of 1934, as amended. The amendment adopted herein relates to the Commission's internal organization and, therefore, the provisions of section 4 of the Administrative Procedure Act, 5 U.S.C. 553, relating to prior notice, procedure, and effective date do not apply.

3. *Accordingly, it is ordered,* Pursuant to § 0.261(a) of the Commission's rules, that, effective April 13, 1971, § 0.331 of the Commission's rules is amended as shown below.

(Secs. 4, 5, 48 Stat., as amended, 1066, 1068, 47 U.S.C. 154, 155)

Adopted: April 7, 1971.

Released: April 7, 1971.

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

In § 0.331 of the Commission's rules, paragraph (b) (17) is amended to read as follows:

§ 0.331 Authority delegated.

* * * * *

(b) * * *

(17) To act on requests for waiver of § 89.117 of this chapter, concerning use of nontype accepted radio equipment, submitted by persons eligible in the Public Safety Radio Services in so far as they relate to operations on the frequencies 27.235, 27.245, 27.255, 27.265, and 27.275 MHz.

* * * * *

[FR Doc.71-5110 Filed 4-12-71;8:49 am]

Title 49—TRANSPORTATION

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Ex Parte Nos. MC-81, MC-37 (Sub-No. 4A)]

PART 1048—COMMERCIAL ZONES

Nashville and Davidson County, Tenn.; Postponement of Effective Date of Order

Ex Parte No. MC-81, Interpretation of Operating authorities—Nashville and Davidson County, Tenn.; Ex Parte No. MC-37 (Sub-No. 4A), commercial zones and terminal areas, (Metropolitan Government of Nashville and Davidson County, Tenn., commercial zones); No. MC-C-6310, Marvin Hayes Lines, Inc., et al., v. Gateway Transportation Co., Inc.

Present: Dale W. Hardin, Acting Chairman, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceedings; and good cause appearing therefor:

It is ordered, That on the Commission's own motion, the effective date of the order of February 11, 1971 (36 F.R. 3515), in said proceedings be, and it is hereby, postponed to May 25, 1971.

Dated at Washington, D.C., this 30th day of March 1971.

By the Commission, Acting Chairman Hardin.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-5121 Filed 4-12-71;8:50 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Part 153]

ANTIDUMPING

Notice of Proposed Rule Making

Notice is hereby given that the Treasury Department intends to conduct a review of its Antidumping Regulations (19 CFR Part 153).

The most recent broad review of these Regulations took place more than 2 years ago, resulting in revisions which became effective as of July 1, 1968. Because of renewed interest in the Act since that time, another broad review of the Antidumping Regulations is now in order.

Interested persons are invited to submit suggestions for improving the Antidumping Regulations to the Commissioner of Customs, Washington, D.C. 20226, not later than 60 days after the date of publication of this notice in the FEDERAL REGISTER. Such suggestions should be accompanied with specific language designed to implement proposals that are submitted. All submissions will be given careful consideration. Thereafter the Treasury Department will publish a notice of proposed rule making in the FEDERAL REGISTER, which will set forth for comment specific revisions of the Antidumping Regulations that are contemplated.

Since this general review of the Antidumping Regulations is likely to require extensive study, extending over an appreciable period of time, the Treasury Department serves notice that it expressly reserves the right to proceed at any time during this period with specific changes in the regulations which it may deem appropriate and proper. In all cases where such changes encompass matters of substance, they will be made effective only after publishing in the FEDERAL REGISTER a notice of proposed rule making. Thus all affected persons will have a full opportunity to comment before such changes are put into effect.

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved: April 1, 1971.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.71-5092 Filed 4-12-71;8:47 am]

Internal Revenue Service

[26 CFR Part 1]

CHARITABLE CONTRIBUTIONS DEDUCTION

Notice of Proposed Rule Making

Correction

In F.R. Doc. 71-4588 appearing at page 6082 in the issue of Friday, April 2, 1971, the following changes should be made:

1. In § 1.170A-8(b) the words "organization, will not qualify for the 50-percent limitations even though such organization makes the contribution available to an" should be inserted between the sixth and seventh lines from the end of the paragraph.

2. In § 1.170A-8(f) the seventh line from the bottom of example 2 should read "($40,000-$30,000) in respect of his contribu-".

3. In § 1.170A-10(b)(1)(ii) the figure "$1,000" inside the brackets in line 16 of example 2 should read "$1,500".

[26 CFR Part 1]

DEPRECIATION ALLOWANCES USING ASSET DEPRECIATION RANGE SYSTEM

Notice of Extension of Time for Comments and Submission of Outlines

Proposed amendments to the regulations under section 167 of the Internal Revenue Code of 1954, relating to depreciation allowances using the asset depreciation range system, appear in the FEDERAL REGISTER for March 13, 1971 (36 F.R. 4885).

Written comments or suggestions pertaining to the proposed amendments were required to be submitted by April 12, 1971. The time for submission of written comments or suggestions pertaining to the proposed amendments is hereby extended to April 26, 1971.

A public hearing on the provisions of these proposed amendments to the regulations will be held on May 3, 1971, at 10 a.m., e.d.s.t., in Room 3313, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224. If necessary the hearing will be continued through Tuesday, May 4, 1971, and Wednesday, May 5, 1971.

Persons who desire to present oral comments (in addition to having submitted written comments or suggestions) should by April 26, 1971, submit an outline of the topics and the time they wish to devote to each topic. Such outlines shall be submitted to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

Further, persons who plan to attend the hearing and persons who desire a copy (furnished only at the above address) of such written comments or suggestions or outlines should notify the Commissioner at the above address or telephone (Washington, D.C.) 202-964-3935 by April 28, 1971.

K. MARTIN WORTHY,
Chief Counsel.

[FR Doc.71-5205 Filed 4-12-71;10:42 am]

[26 CFR Parts 1, 301]

RETURNS OF TRUSTS, AND RETURNS UPON TERMINATION, ETC., OF EXEMPT ORGANIZATIONS

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 person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

In order to conform the Income Tax Regulations (26 CFR Part 1) and the Regulations on Procedure and Administration (26 CFR Part 301) under sections 6034 and 6043 of the Internal Revenue Code of 1954 to sections 101(j) (32), (33), (34), and (35) of the Tax Reform Act of 1969 (83 Stat. 487), such regulations are amended as follows:

INCOME TAX REGULATIONS (26 CFR PART 1)

PARAGRAPH 1. Section 1.6034 is amended by revising so much thereof that precedes subsection (a)(2) of section 6034, by adding a new subsection (c) to section 6034, and by adding at the end thereof an historical note. These amended and added provisions read as follows:

§ 1.6034 Statutory provisions; returns by trusts described in section 4947(a) or claiming charitable deductions under section 642(c).

SEC. 6034. *Returns by trusts described in section 4947(a) or claiming charitable deductions under section 642(c)*—(a) *General rule.* Every trust described in section 4947(a) or claiming a charitable, etc., deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary or his delegate may by forms or regulations prescribe, including—

(1) The amount of the charitable, etc., deduction taken under section 642(c) within such year.

* * * * *

(c) *Cross reference.* For provisions relating to penalties for failure to file a return required by this section, see section 6652(d).

[(Sec. 6034 as amended by sec. 101(j) (32), (33), (34), Tax Reform Act of 1969 (83 Stat. 529))]

PAR. 2. Section 1.6034–1 is amended by revising so much thereof that precedes paragraph (a)(2) and by revising paragraphs (c) and (d). These amended provisions read as follows:

§ 1.6034–1 Information returns required of trusts described in section 4947(a) or claiming charitable or other deductions under section 642(c).

(a) *In general.* Every trust (other than a trust described in paragraph (b) of this section) claiming a charitable or other deduction under section 642(c) for the taxable year shall file, with respect to such taxable year, a return of information on Form 1041–A. In addition, for taxable years beginning after December 31, 1969, every trust (other than a trust described in paragraph (b) of this section) described in section 4947 (a) (including trusts described in section 664) shall file such return for each taxable year, unless (with respect to a trust described in section 4947(a)(2)) all transfers in trust occurred before May 27, 1969. The return shall set forth the name and address of the trust and the following information concerning the trust in such detail as is prescribed by the form or in the instructions issued with respect to such form:

(1) The amount of the charitable or other deduction taken under section 642(c) for the taxable year (and, for taxable years beginning prior to January 1, 1970, showing separately for each class of activity for which disbursements were made (or amounts were permanently set aside) the amounts which, during such year, were paid out (or which were permanently set aside) for charitable or other purposes under section 642(c));

* * * * *

(c) *Time and place for filing return.* The return on Form 1041–A shall be filed on or before the 15th day of the 4th month following the close of the taxable year of the trust, with the internal revenue officer designated by the instructions applicable to such form. For extensions of time for filing returns under this section, see § 1.6081–1.

(d) *Other provisions.* For publicity of information on Form 1041–A, see section 6104 and the regulations thereunder in Part 301 of this chapter. For provisions relating to penalties for failure to file a return required by this section, see section 6652(d). For the criminal penalties for a willful failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207.

PAR. 3. Section 1.6043 is amended by revising so much thereof that precedes paragraph (1) of section 6043, by adding new subsections (b) and (c) to section 6043, and by adding an historical note. These amended and added provisions read as follows:

§ 1.6043 Statutory provisions; returns regarding liquidation, dissolution, termination, or contraction.

SEC. 6043. *Returns regarding liquidation, dissolution, termination, or contraction—*
(a) *Corporations.* Every corporation shall—

* * * * *

(b) *Exempt organizations.* Every organization which for any of its last 5 taxable years preceding its liquidation, dissolution, termination, or substantial contraction was exempt from taxation under section 501(a) shall file such return and other information with respect to such liquidation, dissolution, termination, or substantial contraction as the Secretary or his delegate shall by forms or regulations prescribe; except that—

(1) No return shall be required under this subsection from churches, their integrated auxiliaries, conventions of associations of churches, or any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than $5,000, and

(2) The Secretary or his delegate may relieve any organization from such filing where he determines that such filing is not necessary to the efficient administration of the internal revenue laws or, with respect to an organization described in section 401 (a), where the employer who established such organization files such a return.

(c) *Cross reference.* For provisions relating to penalties for failure to file a return required by subsection (b), see section 6652(d).

[Sec. 6043 as amended by sec. 101(j)(35), Tax Reform Act 1969 (83 Stat. 529)]

PAR. 4. There is inserted immediately after § 1.6043–2 the following new section:

§ 1.6043–3 Return regarding liquidation, dissolution, termination, or substantial contraction of organizations exempt from taxation under section 501(a).

(a) *In general.* Except as provided in paragraph (b) of this section, for taxable years beginning after December 31, 1969, every organization which for any of its last 5 taxable years preceding its liquidation, dissolution, termination, or substantial contraction was exempt from taxation under section 501(a) shall file, with respect to such liquidation, dissolution, termination, or substantial contraction, a return of information on Form 966–E. The return shall set forth the name and address of the organization and such information concerning the organization as is prescribed by the form or in the instructions issued with respect to such form.

(b) *Exceptions.* The following organizations are not required to file the return described in paragraph (a) of this section:

(1) Churches, their integrated auxiliaries, or conventions or associations of churches;

(2) Any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than $5,000;

(3) Any organization which has terminated its private foundation status under section 507(b)(1)(B); and

(4) Any organization described in section 401(a) if the employer who established such organization files such a return.

The Commissioner may relieve any organization or class of organizations from filing the return required by section 6043(b) of this section, where he determines that such returns are not necessary for the efficient administration of the internal revenue laws.

(c) *When to file—*(1) *Corporations and associations.* The return required by this paragraph shall be filed on or before the later of:

(i) The 30th day after publication of final regulations under this section in the FEDERAL REGISTER; or

(ii) The 30th day after the adoption of a resolution or plan for the dissolution or liquidation in whole or in part of the corporation or association, or the 30th day after the occurrence of any substantial contraction of the corporation or association.

If there is an amendment or supplement to such resolution or plan, a Form 966–E based on the resolution or plan as amended or supplemented shall be filed on or before the later of the 30th day after publication of final regulations under this section in the FEDERAL REGISTER, or the 30th day after the adoption of such amendment or supplement. If a prior return with respect to such resolution or plan has been filed, a return with respect to an amendment or supplement of such resolution or plan shall be sufficient if it provides the taxpayer's identification number and the date on which such prior return was filed, and contains a certified copy of such amendment or supplement and all other information required by Form 966–E which was not given on such prior return.

(2) *Trusts.* With respect to a trust, the return required by this section shall be filed on or before the later of the 30th day after the publication of final regulations under this section in the FEDERAL REGISTER, or the 30th day after the termination or any substantial contraction of the trust.

(d) *Where to file.* The returns required by this section shall be filed with the internal revenue officer designated by the instructions applicable to such form.

(e) *Penalties.* For provisions relating to the penalty provided for failure to furnish any return required by this section, see section 6652(d) and the regulations thereunder.

(f) *Definitions.* (1) (i) The term "substantial contraction", as used in this section, shall include any partial liquidation or any other significant disposition of assets, other than transfers for full and adequate consideration or distributions out of current income. For purposes

of this subparagraph, the term "significant disposition of assets" shall not include any disposition for a taxable year where the aggregate of—

(*a*) The dispositions for the taxable year and

(*b*) Where any disposition for the taxable year is part of a series of related dispositions made during prior taxable years, the total of the related dispositions made during such prior taxable years,

is less than 25 percent of the fair market value of the net assets of the organization at the beginning of the taxable year (in the case of (*a*) of this subdivision) or at the beginning of the first taxable year in which any of the series of related dispositions was made (in the case of (*b*) of this subdivision). A "significant disposition of assets" may result from the transfer of assets to a single organization or to several organizations, and it may occur in a single taxable year (as in (*a*) of this subdivision) or over the course of two or more taxable years (as in (*b*) of this subdivision). The determination whether a significant disposition has occurred through a series of related dispositions (within the meaning of (*b*) of this subdivision) will be determined from all the facts and circumstances of the particular case. Ordinarily, a distribution described in section 170 (b)(1)(E)(ii) shall not be taken into account as a significant disposition of assets within the meaning of this subparagraph.

(ii) The provisions of this subparagraph may be illustrated by the following examples:

Example (1). M, an organization described in section 501(c)(4), is on the calendar year basis. It has net assets worth $100,000 as of January 1, 1971. In 1971, in addition to distributions out of current income, M transfers $10,000 to N, $10,000 to O, and $10,000 to P. Such dispositions to N, O, and P are not distributions described in section 170(b)(1)(E)(ii). N, O, and P are all organizations described in section 501(c)(4). Under subdivision (i) (*a*) of this subparagraph, M has made a significant disposition of its assets in 1971 since M has disposed of more than 25 percent of it net assets (with respect to the fair market value of such assets as of January 1, 1971). Thus, M is subject to the provisions of section 6043(b) and this section for the year 1971.

Example (2). U, a tax-exempt private foundation on the calendar year basis, has net assets worth $100,000 as of January 1, 1971. As part of a series of related dispositions in 1971 and 1972, U transfers in 1971, in addition to distributions out of current income, $10,000 to private foundation X and $10,000 to private foundation Y, and in 1972, in addition to distributions out of current income, U transfers $10,000 to private foundation Z. Such dispositions to X, Y, and Z are not distributions described in section 170(b)(1)(E)(ii). Under subdivision (i) of this subparagraph, U is treated as having made a series of related dispositions in 1971 and 1972. The aggregate of the 1972 disposition (under subdivision (i) (*a*) of this subparagraph) and the series of related dispositions (under subdivision (i)(*b*) of this subparagraph) is $30,000, which is more than 25 percent of the fair market value of U's net assets as of the beginning of 1971 ($100,000), the first year in which any such disposition was made. Thus, U has made a significant disposition of its assets and is subject to the provisions of section 6043(b) and this section for the year 1972.

(2) For the definition of the term "normally" as used in paragraph (b)(2) of this section, see § 1.6033–2(g)(3).

(3) For examples of the term "integrated auxiliaries" as used in paragraph (b)(1) of this section, see § 1.6033–2(g)(1)(i)(*a*).

REGULATIONS ON PROCEDURE AND ADMINISTRATION (26 CFR PART 301)

PAR. 5. Section 301.6034 is amended by revising so much thereof that precedes subsection (a)(2) of section 6034, by adding a new subsection (c) to section 6034, and by adding an historical note at the end thereof. These amended and added provisions read as follows:

§ 301.6034 Statutory provisions; returns by trusts described in section 4947(a) or claiming charitable deductions under section 642(c).

SEC. 6034. *Returns by trusts described in section 4947(a) or claiming charitable deductions under section 642(c)*—(a) *General rule.* Every trust described in section 4947(a) or claiming a charitable, etc., deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary or his delegate may by forms or regulations prescribe, including—

(1) The amount of the charitable, etc., deduction taken under section 642(c) within such year,

* * * * *

(c) *Cross reference.* For provisions relating to penalties for failure to file a return required by this section, see section 6652(d).

[Sec. 6034 as amended by sec. 101(j)(32), (33), (34), Tax Reform Act 1969 (83 Stat. 529)]

PAR. 6. Section 301.6034–1 is amended to read as follows:

§ 301.6034–1 Returns by trusts described in section 4947(a) or claiming charitable or other deductions under section 642(c).

For provisions relating to the requirement of returns by trusts described in section 4947(a) or claiming charitable or other deductions under section 642(c), see § 1.6034–1 of this chapter (Income Tax Regulations).

PAR. 7. Section 301.6043 is amended by revising so much thereof that precedes paragraph (1) of section 6043, by adding new subsections (b) and (c) to section 6043, and by adding an historical note. These amended and added provisions read as follows:

§ 301.6043 Statutory provision; returns regarding liquidation, dissolution, termination, or contraction.

SEC. 6043. *Returns regarding liquidation, dissolution, termination, or contraction*—(a) *Corporations.* Every corporation shall—

* * * * *

(b) *Exempt organizations.* Every organization which for any of its last 5 taxable years preceding its liquidation, dissolution, termination, or substantial contraction was exempt from taxation under section 501(a) shall file such return and other information with respect to such liquidation, dissolution, termination, or substantial contraction as the Secretary or his delegate shall by forms or regulations prescribe; except that—

(1) No return shall be required under this subsection from churches, their integrated auxiliaries, conventions or associations of churches, or any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than $5,000, and

(2) The Secretary or his delegate may relieve any organization from such filing where he determines that such filing is not necessary to the efficient administration of the internal revenue laws or, with respect to an organization described in section 401(a), where the employer who established such organization files such a return.

(c) *Cross reference.* For provisions relating to penalties for failure to file a return required by subsection (b), see section 6652(d).

[Sec. 6043 as amended by sec. 101(j)(35), Tax Reform Act 1969 (83 Stat. 529)]

PAR. 8. Section 301.6043–1 is amended to read as follows:

§ 301.6043–1 Returns regarding liquidation, dissolution, termination, or contraction.

For provisions relating to the requirement of returns of information regarding liquidations, dissolutions, terminations, or contractions, see §§ 1.6043–1, 1.6043–2, and 1.6043–3 of this chapter (Income Tax Regulations).

[FR Doc.71–5133 Filed 4–12–71;8:50 am]

[26 CFR Part 53]

FOREIGN PRIVATE FOUNDATIONS

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 Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal

Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

The following regulations are prescribed under section 4948 of the Internal Revenue Code of 1954, as enacted by section 101(b) of the Tax Reform Act of 1969 (83 Stat. 498), relating to tax on investment income of and denial of exemption to certain foreign organizations. Except where otherwise specifically provided, these regulations are applicable to taxable years beginning after December 31, 1969.

Subpart I—Tax on Investment Income of and Denial of Exemption to Certain Foreign Organizations

§ 53.4948 Statutory provisions; tax on investment income and denial of exemption.

SEC. 4948. *Application of taxes and denial of exemption with respect to certain foreign organizations—(a) Tax on income of certain foreign organizations.* In lieu of the tax imposed by section 4940, there is hereby imposed for each taxable year on the gross investment income (within the meaning of section 4940(c)(2)) derived from sources within the United States (within the meaning of section 861) by every foreign organization which is a private foundation for the taxable year a tax equal to 4 percent of such income.

(b) *Certain sections inapplicable.* Section 507 (relating to termination of private foundation status), section 508 (relating to special rules with respect to section 501(c)(3) organizations), and this chapter (other than this section) shall not apply to any foreign organization which has received substantially all of its support (other than gross investment income) from sources outside the United States.

(c) *Denial of exemption to foreign organizations engaged in prohibited transactions—*(1) *General rule.* A foreign organization described in subsection (b) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after December 31, 1969.

(2) *Prohibited transactions.* For purposes of this subsection, the term "prohibited transactions" means any act or failure to act (other than with respect to section 4942(e)) which would subject a foreign organization described in subsection (b), or a disqualified person (as defined in section 4946) with respect thereto, to liability for a penalty under section 6684 or a tax under section 507 if such foreign organization were a domestic organization.

(3) *Taxable years affected.*

(A) Except as provided in subparagraph (B), a foreign organization described in subsection (b) shall be denied exemption from taxation under section 501(a) by reason of paragraph (1) for all taxable years beginning with the taxable year during which it is notified by the Secretary or his delegate that it has engaged in a prohibited transaction. The Secretary or his delegate shall publish such notice in the Federal Register on the day on which he so notifies such foreign organization.

(B) Under regulations prescribed by the Secretary or his delegate, any foreign organization described in subsection (b) which is denied exemption from taxation under section 501(a) by reason of paragraph (1) may, with respect to the second taxable year following the taxable year in which notice is given under subparagraph (A) (or any taxable year thereafter), file claim for exemption from taxation under section 501(a). If the Secretary or his delegate is satisfied that such organization will not knowingly again engage in a prohibited transaction, such organization shall not, with respect to taxable years beginning with the taxable year with respect to which such claim is filed, be denied exemption from taxation under section 501(a) by reason of any prohibited transaction which was engaged in before the date on which such notice was given under subparagraph (A).

(4) *Disallowance of certain charitable deductions.* No gift or bequest shall be allowed as a deduction under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if made—

(A) to a foreign organization described in subsection (b) after the date on which the Secretary or his delegate publishes notice under paragraph (3)(A) that he has notified such organization that it has engaged in a prohibited transaction, and

(B) in a taxable year of such organization for which it is not exempt from taxation under section 501(a) by reason of paragraph (1).

[Sec. 4948 as added by sec. 101(b), Tax Reform Act 1969 (83 Stat. 518)]

§ 53.4948–1 Application of taxes and denial of exemption with respect to certain foreign organizations.

(a) *Tax on income of certain foreign organizations.* (1) In lieu of the tax imposed by section 4940 and the regulations thereunder, there is hereby imposed for each taxable year beginning after December 31, 1969, on the gross investment income (within the meaning of section 4940(c)(2) and the regulations thereunder) derived from sources within the United States (within the meaning of section 861 and the regulations thereunder) by every foreign organization which is a private foundation (within the meaning of section 509 and the regulations thereunder) for the taxable year a tax equal to 4 percent of such income, except as provided in subparagraph (3) of this paragraph. The tax (if any) will be reported on Form 990, "Return of Organization Exempt From Income Tax", and will be paid annually at the time prescribed for filing such annual return (determined without regard to any extension of time for filing). For purposes of this section, the term "foreign organization" means any organization which is not described in section 170(c)(2)(A).

(2) With respect to the deduction and withholding of tax imposed by section 4948(a), see section 1443(b) and the regulations thereunder.

(3) Whenever there exists a tax treaty between the United States and a foreign country, and a foreign private foundation subject to section 4948(a) is a resident of such country or is otherwise entitled to the benefits of such treaty, if the treaty provides that any item or items of gross investment income (within the meaning of section 4940(c)(2)) shall be exempt from income tax, such item or items shall not be taken into account by such foundation in computing the tax to be imposed under section 4948(a) for any taxable year for which the treaty is effective.

(b) *Certain sections inapplicable.* Section 507 (relating to termination of private foundation status), section 508 (relating to special rules with respect to section 501(c)(3) organizations), and chapter 42 (other than section 4948) of the Code shall not apply to any foreign organization which from the date of its creation has received at least 85 percent of its support (as defined in section 509(d), other than section 509(d)(4)) from sources outside the United States. For purposes of this paragraph, gifts, grants, contributions, or membership fees directly or indirectly from a U.S. person (as defined in section 7701(a)(30)) are from sources within the United States.

(c) *Denial of exemption to foreign organizations engaged in prohibited transactions—*(1) *In general.* A foreign private foundation described in section 4948(b) and paragraph (b) of this section shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction (within the meaning of subparagraph (2) of this paragraph) after December 31, 1969.

(2) *Prohibited transactions.* (i) For purposes of this section, the term "prohibited transaction" means any act or failure to act (other than with respect to section 4942(e), relating to minimum investment return) which would subject a foreign private foundation described in paragraph (b) of this section, or a disqualified person (as defined in section 4946) with respect thereto, to liability for a penalty under section 6684 (relating to assessable penalties with respect to liability for tax under chapter 42) or a tax under section 507 (relating to termination of private foundation status) if such foreign private foundation were a domestic private foundation.

(ii) For purposes of subdivision (i) of this subparagraph—

(*a*) Approval by an appropriate foreign government of grants by the foreign private foundation to individuals is sufficient to satisfy the requirements of section 4945(g) and the regulations thereunder.

(*b*) In determining whether a grantee of the foreign organization is a private foundation which is not an operating foundation for purposes of section 4942(g)(1)(A)(ii) or is an organization which is not described in section 509(a)(1), (2), or (3) for purposes of section 4945(d)(4) and (h), a determination made by such foreign organization will be accepted if such determination is made in good faith after a reasonable effort to identify the status of its grantee.

(iii) For purposes of subdivision (i) of this subparagraph, in order for an act or failure to act (without regard to section 4942(e)) to be treated as a prohibited transaction under section 4948(c)(2) by reason of the application of section 6684(1), there must have been a prior act or failure to act (without regard to section 4942(e)), which—

(*a*) Would have resulted in liability for tax under chapter 42 (other than section 4940 or 4948(a)) if the foreign private foundation had been a domestic private foundation, and

(*b*) Had been the subject of a warning from the Commissioner that a second act or failure to act (without regard to section 4942(e)) would result in a prohibited transaction.

The second act or failure to act (with respect to which a warning described in subparagraph (3)(i) of this paragraph is given) need not be related to the prior act or failure to act with respect to which a warning from the Commissioner was given under (*b*) of this subdivision.

(3) *Taxable years affected.* (i) Except as provided in subdivision (ii) of this subparagraph, a foreign private foundation described in paragraph (b) of this section shall be denied exemption from taxation under section 501(a) by reason of subparagraph (1) of this paragraph for all taxable years beginning with the taxable year during which it is notified by the Commissioner that it has engaged in a prohibited transaction. The Commissioner shall publish such notice in the FEDERAL REGISTER on the day on which he so notifies such foreign private foundation. In the case of an act or failure to act (without regard to section 4942(e)) which would result in a penalty under section 6684(1) if the foreign private foundation were a domestic private foundation, before giving notice under this subdivision the Commissioner shall warn such foreign private foundation that such act or failure to act may be treated as a prohibited transaction. However, such act or failure to act will not be treated as a prohibited transaction if it is corrected (within the meaning of chapter 42 and the regulations thereunder) within 90 days after the making of such warning.

(ii) (*a*) Any foreign private foundation described in paragraph (b) of this section which is denied exemption from taxation under section 501(a) by reason of subparagraph (1) of this paragraph may, with respect to the second taxable year following the taxable year in which notice is given under subdivision (i) of this subparagraph (or any taxable year subsequent to such second taxable year), file a request for exemption from taxation under section 501(a) on Form 1023. In addition to the information generally required of an organization requesting exemption as an organization described in section 501(a), a request under this subdivision must contain or have attached to it a written declaration, made under the penalties of perjury, by a principal officer of such organization authorized to make such declaration, that the organization will not knowingly again engage in a prohibited transaction.

(*b*) If the Commissioner is satisfied that such organization will not knowingly again engage in a prohibited transaction and that the organization has satisfied all other requirements under section 501, the organization will be so notified in writing. In such case the organization shall not, with respect to taxable years beginning with the taxable year with respect to which a request under this subdivision is filed, be denied exemption from taxation under section 501(a) by reason of any prohibited transaction which was engaged in before the date on which notice was given under subdivision (i) of this subparagraph. Section 4948(c) provides that an organization denied exemption under such section will not be exempt from taxation under section 501(a) for the taxable year in which notice of loss of exemption is given and at least one immediately subsequent taxable year.

(d) *Disallowance of certain charitable deductions.* No gift, bequest, legacy, devise, or transfer shall be allowed as a deduction under section 170, 545 (b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if made:

(1) To a foreign private foundation described in paragraph (b) of this section after the date on which the Commissioner publishes notice under paragraph (c)(3)(i) of this section that he has notified such organization that it has engaged in a prohibited transaction, and

(2) In a taxable year of such organization for which it is not exempt from taxation under section 501(a) by reason of paragraph (c)(1) of this section.

For purposes of this paragraph, a bequest, legacy, devise, or transfer under section 2055 or 2106(a)(2) shall be treated as made on the date of death of the decedent. For example, assume that an individual gives money to a foreign private foundation described in section 4948(b) in January 1970, January 1971, and January 1972. The organization has a taxable year from June 1 through May 31. In February 1970, notice is duly published that the foreign organization has engaged in a prohibited transaction. In December 1970, the organization duly submits a request for exemption under paragraph (c)(3)(ii)(*a*) of this section which is granted for the taxable year ending May 31, 1972. The January 1970 gift is allowable as a deduction under section 2522 since it was made before the notice (February 1970). The January 1971 gift is not allowable as a deduction because the taxable year ending May 31, 1971, is a nonexempt year (the first taxable year subsequent to the taxable year of the notice) for the foreign organization. The January 1972 gift is allowable as a deduction under section 2522 because the taxable year ending May 31, 1972, is an exempt year for the organization.

[FR Doc.71-5132 Filed 4-12-71;8:50 am]

DEPARTMENT OF THE INTERIOR

Bureau of Mines

[30 CFR Part 75]

NEW UNDERGROUND COAL MINES

Notification of Opening

Notice is hereby given that in accordance with the provisions of section 101(a) of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173), it is proposed that Part 75, Subchapter O of Chapter I, Title 30, Code of Federal Regulations, be amended by adding a new § 75.1721, as set forth below, which provides that no development work or production shall be performed in any new underground coal mine proposed to be opened on or after June 30, 1971, until: (1) The operator of such mine has notified the Coal Mine Health and Safety District Manager for the district in which the proposed mine is located that the mine will be opened; (2) the operator has submitted to the Coal Mine Health and Safety District Manager certain information and proposed plans required to be submitted under the provisions of this Part 75; and (3) all proposed plans submitted by the operator have been approved by the Coal Mine Health and Safety District Manager.

Interested persons may submit written comments, suggestions, or objections to the Director, Bureau of Mines, Washington, D.C. 20240, no later than 30 days following publication of this notice in the FEDERAL REGISTER.

ROGERS C. B. MORTON,
Secretary of the Interior.

APRIL 6, 1971.

Part 75, Subchapter O of Chapter I, Title 30, Code of Federal Regulations, would be amended by adding the following:

§ 75.1721 Opening of new underground coal mines, notification by the operator; requirements.

(a) On and after June 30, 1971, each operator of a new proposed underground coal mine shall, prior to the development of any slope, shaft or drift, notify the Coal Mine Health and Safety District Manager for the district in which the mine is located of the approximate date upon which the new mine will be opened, and no work shall be performed in such mine until all plans submitted in accordance with paragraph (b) of this section have been approved by the Coal Mine Health and Safety District Manager.

(b) The notification required to be submitted in accordance with paragraph (a) of this section shall be in writing and shall be accompanied by the following information and proposed plans:

(1) The name and location of the proposed mine;

(2) The name and address of the mine operator;

(3) The name and address of the principal official designated by the operator as the person who is in charge of health and safety at the mine;

(4) The identification and the height of the coal bed to be developed;

(5) The system of mining to be employed;

(6) A proposed roof control plan containing the information specified in § 75.200-5;

(7) A proposed ventilation plan and methane and dust control plan containing the information specified in § 75.316-1;

(8) A proposed plan for training and retraining, containing the information specified in § 75.160-1;

(9) A proposed plan for sealing abandoned areas containing the information specified in § 75.330–1;

(10) A proposed program for searching miners for smoking materials containing the information specified in § 75.1702; and,

(11) A proposed plan for emergency medical assistance and emergency communication containing the information specified in §§ 75.1713–1 and 75.1713–2.

[FR Doc.71–5104 Filed 4–12–71;8:48 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 151]

EXPERIMENTAL SCHOOLS

Federal Financial Assistance; Closing Date for Receipt of Applications

Pursuant to the authority contained in section 2 of the Cooperative Research Act (68 Stat. 533, as amended, 21 U.S.C. 331a), notice is hereby given that the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare, proposes to amend Part 151 of Title 45 of the Code of Federal Regulations by adding a new Subpart E, as set forth below.

The proposed new Subpart E would provide the regulations applicable to the provision of Federal financial assistance under the Experimental Schools Program.

Information regarding the initial phase of the program has previously been published in the FEDERAL REGISTER on January 1, 1971, at 36 F.R. 27.

During the last 10 years, many innovations have been adopted in the Nation's schools. Derived from knowledge gained from research and practical experience, these innovations include major curriculum reforms, use of modern communications technology, differentiated staffing patterns, and new modes of scheduling students' time. Because basic research has concentrated on discrete components of the educational program, and because funding has not been available for massive, comprehensive reform, those people interested in educational change have found it difficult to organize and implement effective, articulated programs.

The Experimental Schools program is an opportunity for long-term testing, documentation, and evaluation of a limited number of comprehensive educational projects which would provide significant new approaches and alternatives to current school structures, programs, practices, and performances. Interested parties are to submit creative designs for educational projects which redefine, reshape, and reform current school programs. These comprehensive designs should represent significant alternatives in terms of the learning experiences offered to students, the manner in which those experiences are structured and organized, and the relationship between the educational programs and the community.

The initiation of the current phase of the Experimental Schools Program is a matter of high national importance. To facilitate such initiation, it is essential that the planning process (which must precede the development and operational stage of the program) be commenced during the current fiscal year. Accordingly, prospective applicants for such awards are advised that, pursuant to 45 CFR 151.4, the Commissioner will establish a closing date for receipt of such applications and that, in order to be assured of consideration, letters of interest should be received by the Commissioner no later than 40 days after publication of this notice in the FEDERAL REGISTER. (For information regarding the required form and content of such letters, interested persons should contact the Experimental Schools Program, U.S. Office of Education, Washington, D.C. 20202). The new subpart proposed to be added to Part 151 would read as follows:

Subpart E—Experimental Schools Program

§ 151.50 Scope.

The provisions contained in this subpart apply to the Experimental Schools program to be carried out by the Commissioner pursuant to the provisions of the Cooperative Research Act, Public Law 83–531. Except as otherwise provided in this subpart, the program is also subject to the provisions contained in Subparts A and B of this part.

(20 U.S.C. 331a)

§ 151.52 Eligible applicants; applications.

(a) Assistance under this subpart will be made available only upon submission of an application (which may be in the form of a letter of interest) meeting the requirements of § 151.4 at such time or times, and in such manner, as the Commissioner deems necessary. One or more eligible parties may apply for assistance under a single application pursuant to a cooperative arrangement. In addition to such other information as the Commissioner may require, an application under this subpart shall set forth the goals of the project, including (1) the kind and purpose of the learning experiences to be provided and (2) the educational problems to be addressed, which problems are pertinent to the specific needs of children described in § 151.53(a)(2).

(b) In the case of a project described in clause (1) of § 151.51, under the initial phase of the program (see 36 F.R. 27, Jan. 1, 1971), an application for Federal financial assistance for the carrying out of such project beyond the planning stage will not be considered unless the applicant has received a planning award with respect to such project.

(c) An applicant for assistance under this subpart must demonstrate, to the satisfaction of the Commissioner, that such applicant is capable and competent to design and successfully implement a project thereunder.

(20 U.S.C. 331a)

§ 151.53 Geographic scope of project.

Assistance may be available under this subpart for an Experimental Schools project which involves students and teachers from, and which may be carried out in, one or more school districts, counties, States, or other political subdivisions.

(20 U.S.C. 331a)

§ 151.54 Project requirements.

(a) Federal financial assistance may not be made available for a project pursuant to this subpart unless the Commissioner determines that—

(1) The project involves a comprehensive educational program for not less than 2,000 children nor more than (approximately) 5,000 children which encompasses education from kindergarten (or, where kindergarten is not supported with public funds in the area to be served, from first grade) through 12th grade;

(2) The project will serve primarily children (i) who are from low-income families (as determined by the Commissioner) and (ii) who are not achieving educational success;

(3) The applicant has provided satisfactory assurance that the project will involve the broad participation of the affected community (or communities) in its design, implementation, and operation;

(4) The applicant has provided satisfactory assurance that all components of the project will be implemented during the initial year of its operation;

(5) The applicant has provided satisfactory assurance that effective procedures, including provision for appropriate objective measurements of educational achievement, will be adopted for the continuing evaluation of the effectiveness of the project in meeting its stated goals;

(6) The applicant has provided satisfactory assurance that it will furnish to the Commissioner such information and reports as he may deem necessary for the administration of the program;

(7) Except in the case of an application for planning assistance, the application—

(i) Sets forth such policies and procedures as will ensure that the project to be assisted has been planned and developed, and will be operated, in consultation with, and with the involvement of, parents of the children to be served by such project;

(ii) Contains satisfactory assurance that such parents have had an opportunity to present their views with respect to the application; and

(iii) Sets forth policies and procedures for adequate dissemination of project plans and evaluations to such parents and the public.

(20 U.S.C. 331a, 1231d)

(b) The elements of a project shall be compatible with, and mutually reinforcing with respect to its goals. Such elements shall include—

(1) The nature and substance of the curriculum;

(2) The nature, role, and organization of staff and necessary staff training;

(3) The use of time and space, including possible variations in the length of the school day, school year, or the number of years required of participants in the project;

(4) An administrative and organizational structure consistent with and supportive of the program; and

(5) An evaluation design and a strategy for its implementation.

(20 U.S.C. 331a)

§ 151.55 Priorities.

In considering applications under this subpart, in addition to the criteria set forth in § 151.7, the Commissioner shall consider the extent to which the project to be assisted reflects a comprehensive and creative design for the redefinition, reshaping, and reform of current school programs.

(20 U.S.C. 331a)

§ 151.56 Federal financial participation.

(a) Federal financial assistance under this subpart for any given period may not exceed the difference between (1) the total cost of the project and (2) the number of students in the project multiplied by the average per pupil expenditure (as determined by the Commissioner) for the area to be served with respect to such period.

(b) An applicant for assistance under this subpart must establish that it has, or will have, the resources to continue the project without Federal support at the expiration of the demonstration period.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed regulations to the Experimental Schools Program, U.S. Office of Education, Washington, D.C. 20202, within 30 days after the date of publication of this notice in the FEDERAL REGISTER.

Dated: April 2, 1971.

S. P. MARLAND, JR.,
U.S. Commissioner of Education.

Approved: April 9, 1971.

JOHN G. VENEMAN,
Acting Secretary.

[FR Doc.71-5197 Filed 4-12-71;8:50 am]

Social Security Administration

[20 CFR Part 405]

[Regs. No. 5]

FEDERAL HEALTH INSURANCE FOR THE AGED

Accelerated Payments to Providers of Services

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 552 et seq.), that the amendment to the regulations set forth in tentative form below is proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. The proposed amendment reflects current policies of the Social Security Administration which authorize intermediaries to make accelerated payments to providers of services under specified conditions, and provide for the methods of computation of such payments and recovery by the intermediary.

Prior to the final adoption of the proposed amendment 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 regulation is to be issued under the authority contained in sections 1102, 1814(b), 1861(v), and 1871, 49 Stat. 647, as amended, 79 Stat. 296, 79 Stat. 322, 79 Stat. 331; 42 U.S.C. 1302, 1395 et seq.

Dated: March 17, 1971.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: April 6, 1971.

ELLIOT L. RICHARDSON,
Secretary of Health, Education, and Welfare.

Section 405.454 is amended by redesignating present paragraph (h) as paragraph (i) and by adding a new paragraph (h) to read as follows:

§ 405.454 Payments to providers.

* * * * *

(h) *Accelerated payments to providers.* Upon request, an accelerated payment may be made to a provider of services where the provider has experienced financial difficulties due to a delay by the intermediary in making payments or, in exceptional situations, where the provider has experienced a temporary delay in preparing and submitting bills to the intermediary beyond its normal billing cycle. Any such payment must be approved first by the intermediary and then by the Social Security Administration. The amount of the payment is computed as a percentage of the net reimbursement for unbilled and/or unpaid covered services not otherwise paid for under the provision for current financing. Recovery of the accelerated payment may be made by recoupment as provider bills are processed and/or by direct payment.

* * * * *

[FR Doc.71-5080 Filed 4-12-71;8:46 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Interstate Land Sales Registration

[24 CFR Part 1720]

INFORMAL PROCEDURES AND RULES OF PRACTICE

Notice of Extension of Time for the Filing of Comments

Certain land development associations and title companies which may have an interest in the proposed amendment of 24 CFR by addition of a new Part 1720 (36 F.R. 985, Jan. 21, 1971) have requested additional time within which to file written comments.

Upon consideration, the Department hereby gives notice that the time within which to file written comments or suggestions in the above-described rule making is extended to and including April 30, 1971.

Issued at Washington, D.C., April 8, 1971.

GEORGE ROMNEY,
Secretary of Housing and Urban Development.

[FR Doc.71-5127 Filed 4-12-71;8:50 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 15]

[Docket No. 19092; FCC 71-312]

CARRIER-CURRENT RADIO SYSTEMS AND LOW POWER COMMUNICATIONS DEVICES

Notice of Inquiry and Proposed Rule Making

In the matter of carrier-current radio systems operating pursuant to § 15.7 of the Commission's rules and low power communications devices operating pursuant to Subpart E of Part 15 of the Commission's rules.

1. Notice of inquiry and proposed rule making in the above entitled matter is hereby given.

2. There presently exist under Part 15 of the Commission's rules provisions permitting the operation of restricted radiation devices on standard broadcast frequencies with low strength signals, subject only to the technical operational limits set forth in the applicable sections of Part 15 of the Commission's rules. One type of device is the carrier-current systems which is operated pursuant to § 15.7 (47 CFR 15.7);[1] these self-described "college radio stations" have been chiefly popularized and used on college campuses, although we are informed that many high schools as well as other institutions operate such stations. Another

[1] The operation of carrier-current devices is described more fully in paragraph 4, infra.

group, categorized generally as low power communications devices, are miniature transmitters operating under Subpart E of Part 15, and our recent experience indicates that these devices have been operated mostly by hobbyists who emulate broadcast station formats.

3. In both of the foregoing types of operation, the Commission has assumed that the low power restrictions provided in Part 15 would insure that prospective recipients of the radiated signals would be confined to those in close proximity to the transmitting source, thus limiting the impact of such operations on the general public and conventional broadcast stations. However, the Commission has become aware of various designs to expand the coverage of both types of operation, the expansion to be effected through interconnection methods. One development involving carrier-current radio occurred in October 1969, when the Commission was approached by carrier-current radio systems WJC, Juniata College, and WFIB, University of Cincinnati, with requests for authority to expand their respective activities beyond the area of the immediate college campus. In the case of WJC, the system proposed to have its signal picked up by a local CATV system and distributed to the general public.[2] In the case of WFIB, the system proposed to feed the signal of its station, via A.T. & T. lines, to other college radio systems throughout the country, thereby establishing a carrier-current radio network.[3] Another illustration of carrier-current system proposals is seen in an article in the February 28, 1970, edition of Billboard Magazine (p. 34) which described the proposal of WBCR, the carrier-current radio system of Brooklyn College, to locate interconnected carrier-current transmitters carrying the programs of WBCR over a large area in local businesses, banks, etc. In the area of low power communication not involving carrier-current systems, the Commission was advised of the efforts of one group to organize a 25-station (or more) network of restricted radiation devices which would simultaneously transmit programs throughout the New York City area. Thus, we have seen Part 15 devices of several types develop into integrated communication facilities capable of reaching significant numbers of listeners.

4. At this point, we believe it would be useful to briefly describe the history of carrier-current radio. A carrier-current radio system is one which is authorized to operate as a lower power radiation device pursuant to § 15.7 of the Commission's rules. The station signal, a modulated RF signal, typically is conducted along power distribution wires to buildings on a campus or other institution; and systems using this technique are required, under § 15.7, to use the minimum power necessary to accomplish this purpose.[4] Carrier-current systems were originally permitted to operate in this manner under the Commission's 1938 Low Power Rules—the forerunner of Part 15. While the Commission recognized that these stations would operate in the frequency bands allocated for licensed broadcast stations, it was of the view that carrier-current operations meeting the specified minimal power and radiation limits were in the public interest, since such systems were intended to function as training laboratories for students interested in the communications arts and signal reception was generally limited to the campus or comparable area on which the system was located. It was felt that under these restrictions, such systems would not cause interference to, or have any significant impact upon licensed broadcast stations or the general public.

5. Over the years, the Commission has several times reviewed the conditions under which carrier-current systems operate. In 1949, the Commission issued a notice of proposed rule making which looked toward the licensing of such systems and permitting them to operate in accordance with the general rules governing broadcast stations.[5] The Commission received many comments regarding the proposed rules from persons in favor of permitting the continuance of carrier-current radio systems but who were apprehensive about the formalities of licensing procedures. Thereafter, in 1954, the Commission issued a further notice of proposed rule making, abandoning the licensing plan and proposing to allow carrier-current systems to continue to operate under power and radiation limitations similar to those imposed by the original Low Power Rules.[6] Carrier-current systems thus continued to operate according to those strictures and, in 1964, the Commission terminated its proceeding in Docket No. 9288, noting:

> The remaining, still unresolved area in this proceeding deals with the conditions under which carrier-current systems (including campus radio systems) should be operated. These systems are presently regulated by the general provisions in § 15.7. The problems involved in devising new regulations for such systems have not been resolved nor does a solution appear to be imminent. Moreover, the data pertaining to carrier-current operations submitted in this proceeding are now out of date.
>
> Having accomplished the bulk of its objective in this proceeding, and since § 15.7 appears to be reasonably satisfactory in regulating the operation of carrier-current systems, the Commission is of the opinion that the proceeding in this docket should be terminated. If it should appear that further regulation of carrier-current systems is required, the Commission will institute a new proceeding.[7]

6. Since the termination of the above proceeding, the number and scope of carrier-current systems, particularly on campus, has steadily increased, reflecting not only the very substantial rise in the size of college facilities and populations, but also a growing interest in such systems as important communications vehicles. We have also noted the present character of these operations as depicted in a recent survey of radio on campus conducted under the auspices of the Corporation for Public Broadcasting (CPB) and the Ford Foundation.[8] Among other things, the CPB Study points out that the average carrier-current campus system (1) has a capital investment of $5,654; (2) is exceptionally well equipped, and has a staff of 46 persons (virtually free

[2] FCC 69-1138, 20 FCC 2d 447.
[3] FCC 69-1137, 20 FCC 2d 287.

[4] Because of the physical laws attendant to this technique, some radiation from the conductor is inevitable and the signals "leaked" in this fashion allow receivers in close proximity to the conductor to pick up the signal without actually being attached to the distribution system.

[5] In the matter of amendment of Part 15 of the Commission's Rules Governing Restricted Radiation Devices, Docket No. 9288, FCC 49-459, April 13, 1949, 14 F.R. 2033. In part, the proposed 1949 rule reads as follows:

> i. Because of the social impact of broadcasting upon the general public and the responsibilities of the Commission in regard to the regulation of broadcasting; and
>
> ii. Because of the probability of interference being caused to reception in the standard broadcast services by the operation of devices in this band in view of the number of broadcast receivers and transmitters now in operation:
>
> A. Broadcasting on these frequencies will only be permitted in compliance with such rules and limitations covering eligibility, licensing, technical standards and other subjects as may now be found in the Commission's Rules Governing the Standard Broad cast Services, or as they may hereafter be amended.

[6] Further notice of proposed rule making, Docket No. 9288, FCC 54-502, April 15, 1954, 19 F.R. 2319. The proposal therein reads, in pertinent part, as follows:

> 15.104 *Carrier current systems operating above 425 kc.* * * *
>
> (a) The following provisions shall be applicable after the effective date of these rules to all carrier-current systems which operate on frequencies between 425-1605 kc. for the purpose of distributing programs to more than one broadcast receiver: *Provided, however,* That until June 30, 1955, existing carrier-current systems in this band shall be required in the alternative to meet the radiation limit of 15 microvolts per meter at a distance from any radiating source of 157,000 feet divided by the frequency in kilocycles:
>
> (1) radiation shall not exceed an intensity of 40 uv/m at distances of 100 feet or more from any radiating source: *Provided, however,* That such radiation shall not exceed 15 uv/m at the border of the property exclusively under the control and for the exclusive use of the owner and operator of the system.

[7] Fourth report and order, released on Apr. 17, 1964, 29 F.R. 5399.

[8] Vincent M. Badger, The College Radio Study: Report on Student Operated Stations at Colleges and Universities (July 1969).

of faculty supervision); and (3) is commercial with advertising income averaging $5,344 annually. Advertising is sold by the operator directly or through one or several national representatives for college radio operations and other marketing enterprises.

7. Not only have the dimensions of the individual systems continually increased but, over the past several months, the Commission has been receiving requests from carrier-current systems, such as those from Juniata College and the University of Cincinnati seeking permission to expand service beyond their respective campuses. In light of these requests for expanded service and the data set forth in the CPB Study, we believe that additional information about overall contemporary carrier-current system operation if necessary. Not reported on in the CPB Study and of particular concern to the Commission are the present policies and practices of campus carrier-current systems in such areas as the equal opportunities requirement attendant to political programing, personal attack and fairness doctrine, cigarette advertising, sponsorship identification and the like as well as programing source and distribution activities of such stations.

8. Accordingly, in connection with this inquiry, there is attached hereto a questionnaire [9] which all carrier-current systems operating pursuant to § 15.7 of the Commission's rules and receiving this survey are instructed to complete and return to the Commission within 30 days of receipt thereof. Since the great majority of sizeable carrier-current operations are located on campus and since the Commission has access to the addresses of such stations, it is to those operations that the questionnaires are initially being sent. The questions generally relate to technical and programing matters. Also included are several questions relating to the commercial activities of the systems and we wish to stress that the responses thereto will be used solely for analytical and related purposes by the Commission—such financial data will not be available for public inspection under § 0.457(d) of the Commission's rules. In addition, the Commission invites comments and information relevant to this proceeding concerning both carrier-current systems and low power communication devices from all interested persons and organizations, including noncommercial and commercial broadcasters, advertisers and educational institutions. Any such comments and other materials should be filed with the Commission by June 4, 1971.

9. Additionally, this notice shall also constitute notice of proposed rule making looking toward the imposition of certain broadcast programing operational requirements on those carrier-current systems engaging in interconnection of two or more systems or interconnection of a system with other electronic media such as broadcast stations or CATV. The proposed programing operational requirements would be substantially similar to those imposed on WJC [10] concomitant with its authorization to interconnect with a CATV system. The imposed conditions require compliance with the following: § 73.120 of the Commission's rules (equal opportunities for political candidates and related requirements); section 315 of the Communications Act of 1934, as amended, and § 73.123 of the rules (fairness, personal attacks, political editorializing); section 317 of the Communications Act and § 73.119 of the rules (sponsorship identification); 18 U.S.C. section 1304 and § 73.122 of the rules (lotteries); 18 U.S.C. sec. 1464 (broadcasting obscene, indecent, or profane language); and, 18 U.S.C. section 1343 (fraud by wire and radio). Although exact wording is not proposed at this time, we do express tentative intent to embody the foregoing limitations on interconnected carrier-current systems contingent, of course, on responses to this inquiry and proposed rule making.

10. Authority for the inquiry and proposed rule making instituted herein is contained in section 3, 4(i), 301, 303, 307, and 403 of the Communications Act of 1934, as amended.

11. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all comments, pleadings, briefs, and other documents shall be furnished the Commission.

Adopted: March 24, 1971.

Released: April 9, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[11]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-5106 Filed 4-12-71;8:48 am]

[47 CFR Part 25]

[Docket No. 16495]

ESTABLISHMENT OF DOMESTIC COMMUNICATION-SATELLITE FACILITIES BY NONGOVERNMENTAL ENTITIES

Order Extending Time for Filing Comments

Upon consideration of the "Motion for Extension of the Date for Filing Comments and Reply Comments" filed by Hughes Aircraft Co. on April 6, 1971:

It is hereby ordered, Pursuant to § 0.303 of the Commission's rules and regulations, That the times for filing comments and reply comments on the applications and rule making issues in this proceeding are extended to May 12, 1971, and June 9, 1971, respectively.

Adopted: April 6, 1971.

Released: April 7, 1971.

[SEAL] BERNARD STRASSBURG,
Chief,
Common Carrier Bureau.

[FR Doc.71-5107 Filed 4-12-71;8:49 am]

FEDERAL POWER COMMISSION

[18 CFR Part 3]

[Docket No. R-417]

DISPOSAL OF INTERESTS IN LANDS WITHIN LICENSED PROJECTS

Notice of Proposed Rule Making

APRIL 7, 1971.

Notice is given, pursuant to section 553 of title 5 of the United States Code, that the Commission is proposing to amend § 3.5 of the general rules regarding disposal of interests in lands within the boundaries of licensed projects. The Commission proposes to amend its rules and regulations to simplify and expedite handling of such transfers and at the same time insure their disposition in accord with appropriate principles of environmental protection.

Because of the increased number of hydroelectric projects under license, comprising a vast amount of land and many miles of shoreline, the Commission has experienced an increasing number of applications for disposal of interests in project lands. The prospects are for this trend to continue. Considering such applications has resulted in a consumption of time of the Commission which, by the changes proposed herein, we hope to reduce.

Under § 3.5 of our general rules (18 CFR 3.5), the Secretary has been delegated authority to approve certain conveyances of interests in project lands. In Order No. 313, issued December 27, 1965 (34 FPC 1546), which stated Commission policy in respect to outdoor recreational development, licensees were encouraged to file comprehensive Recreational Use Plans for approval and incorporation within their licenses. In that order, the Commission adopted a policy of not authorizing the disposal of any interest in project lands unless a showing is made that such disposal is not inconsistent with an approved recreational plan, or, in the absence of such a plan, that the lands do not have recreational value.

Based on our experience in dealing with requests for approval of disposal of interests in project lands and with applications regarding Recreational Use Plans, we propose to implement procedures which we believe will alleviate certain problems while continuing the policies stated in Order No. 313. We propose

[9] Questionnaire filed as part of original document.

[10] See, Letter to Juniata College, of Oct. 16, 1969, 20 FCC 2d 447.

[11] Concurring statement of Commissioner Houser in which Commissioners Burch, Chairman; Robert E. Lee and Wells join; and dissenting statement of Commissioner Johnson filed as part of original document. Commissioner Bartley not participating.

to amend § 3.5 of the general rules to revise the delegation of authority to the Secretary under paragraph (a), subparagraph (16), to allow him to act on routine applications on transfer of interests in project lands, leaving special cases, such as cases of powerplant siting or other cases involving special environmental considerations, to be handled by regular Commission procedures.

The proposed revisions to § 3.5 require that the instrument of conveyance of interests in lands within the boundaries of license projects reserve to the licensee, its successors and assigns the right to use the lands for project purposes and, except in cases of conveyances to States or municipalities for their own use, contain a covenant providing that the use of such lands will not endanger health, create a nuisance or otherwise be incompatible with overall project recreational use in accordance with the requirements of paragraph (C) of Commission Order No. 313 (34 FPC 1546, 1549).

We wish to stress that we encourage licensees to seek approval of Exhibits R or Recreational Use Plans which include sufficient lands reserved to meet future recreational needs. The type of recreational facilities planned for future development on such reserved lands may be indicated in such plans but need not be if the licensee feels that it is more advantageous to plan development as specific needs become apparent in the future. The filing of such plans for outstanding major licenses will aid the Commission in fulfilling its responsibilities under the Federal Power Act, and, allow it and the Staff to function more efficiently. Similar advantages should accrue to the licensees and to transferees of interests in project lands.

By Order No. 414, issued November 27, 1970 (44 FPC; 35 F.R. 18585, Dec. 8, 1970), the Commission articulated a policy incorporated in paragraph (c)(2) of § 2.13 of our general rules, of encouraging construction design to avoid or to minimize conflict with natural, historic and scenic values and resources of project areas. By its terms, § 2.13 requires that applications include a showing of construction design in accordance with this policy and approvals made by the Secretary under the proposed revision of § 3.5 would be contingent on such a showing.

In accordance with the policies and directives of the National Environmental Policy Act of 1969 (Public Law 91–190), we believe that the utilization of lands included within Federally licensed water power projects should be in accord with existing comprehensive land use plans adopted by local and regional agencies and are requiring in the proposed revision to § 3.5 that licensees refer to such plans and furnish a statement that the proposed use is not inconsistent with any such plan.

The proposed changes in the regulations have been designed, and so conditioned as outlined above, to allow expedited handling of certain limited classes of transfers of interests in project lands, provided the specified conditions, most of which deal with protection of the environment, are met. Under this proposal, applications submitted complying with the requirements of § 3.5 will be processed by the Commission Staff and routine cases will be routed to the Secretary while cases with special considerations, such as potential environmental problems, will be presented to the Commission for its consideration. As so designed the proposed changes in the regulations will not change procedures in cases with a potential significant environmental affect. We have designed and conditioned these proposed regulations in accordance with the policies of the National Environmental Policy Act of 1969 (Public Law 91–190), and as so designed we do not feel that this proposed rulemaking is a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of that Act.

The proposed amendments to the Commission's rules and regulations would be issued under the authority granted to the Federal Power Commission by the Federal Power Act, as amended, particularly sections 4(e), 6, 9, 10, and 309 thereof (41 Stat. 1065–1070; 49 Stat. 840–844, 858–859; 61 Stat. 501, 82 Stat. 617; 16 U.S.C. 797(e), 799, 802, 803, 825h).

Accordingly, it is proposed to amend subparagraph (16) in paragraph (a) of § 3.5, "Delegations of final authority" in Subchapter A, Chapter I, Title 18 of the Code of Federal Regulations, by deleting the words "contemplated by the license for the project" and substituting therefore, "provided that the application contains a statement that the proposed use is not inconsistent with any officially recognized local or regional land use plan and, except in cases of conveyances to States or municipalities for their own use, the instrument of conveyance contains a covenant providing that the use of such lands will not endanger health, create a nuisance or otherwise be incompatible with overall project recreational use, in accordance with the requirements of paragraph (C) of the Commission's Order No. 313, issued December 27, 1965 (34 FPC 1546, 1549–50)." As so amended, subparagraph (16) will read:

§ 3.5 Delegations of final authority.

* * * * *

(a) * * *

(16) Approve, with respect to particular parcels of land within the project area of a licensed waterpower project, the conveyance by the licensee to another legal entity of an interest therein for use for a nonproject purpose, subject to the right of the licensee, its successors and assigns to use the land for all project purposes, provided that the application contains a statement that the proposed use is not inconsistent with any officially recognized local or regional land use plan and, except in cases of conveyances to States or municipalities for their own use, the instrument of conveyance contains a covenant providing that the use of such lands will not endanger health, create a nuisance or otherwise be incompatible with overall project recreational use, in accordance, with the requirements of paragraph (C) of the Commission's Order No. 313, issued December 27, 1965 (34 FPC 1546, 1549–50).

* * * * *

Any interested person may submit to the Federal Power Commission, Washington, D.C. 20426 on or before May 21, 1971, data, views, comments, or suggestions in writing concerning all or part of the amendments proposed herein. An original and fourteen (14) conformed copies should be filed with the Secretary of the Commission. Submittals to the Commission should indicate the name, title, and mailing address of the person to whom communications concerning the proposals should be addressed, and whether the person filing them requests a conference at the Federal Power Commission to discuss the proposed amendments. The Commission will consider all such written submittals before acting on the proposed amendments.

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

By direction of the Commission.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-5082 Filed 4-12-71;8:47 am]

Notices

POST OFFICE DEPARTMENT

POSTAL SECURITY FORCE

Uniforms

Each employee serving in the Postal Service Security Force will be required to wear a complete uniform effective the day training is completed (graduation day), or as soon thereafter as uniforms are received from the vendor.

The following items of uniform wear together with specifications for each item constitute the authorized interim uniform for the Postal Service Security Force. For this purpose a complete uniform shall consist of:

Cap.	Trousers.
Shirt.	Coat.
Tie.	

While not listed as an authorized uniform item, black shoes must be worn with the above uniform at all times.

Each employee will be allowed a maximum allowance of $125 annually for this initial period. Purchases under this program will be on a direct payment to vendor basis and must be made from licensed vendors.

UNIFORM ITEMS AND SPECIFICATIONS

The authorized uniform garments and specifications are:

1. CAP

Requirements:

Design. The cap is an oval design with a one piece top, a vertical front, a plastic visor, and a front stay.

Basic material. Only authorized and specified uniform fabrics certified by the U.S. Army Natick Laboratories in color PO Blue 5013, (dark blue) shall be used in the manufacture of this cap. All basic material shall have a good commercial quality durable water repellent finish.

Components. Findings such as lining, eyelets, braid, body band, crown seam, tape, thread, and sweatband shall be of good commercial quality. Color of thread and all other visible findings, where applicable, shall match the shade of the basic fabric and have equal colorfastness.

Buttons. The buttons holding the chin strap in position above the visor shall be approved Postal Service regulation gold-plated brass 24 line buttons.

Outer body band. The outer body band for the caps shall be 1¾-inch solid rayon braid of good commercial quality. The color shall be PO Blue 5000 and shall have good color fastness.

Inner body band. The inner body band shall be of genuine cane, or of a high alpha cellulose wood pulp sheeting, impregnated with synthetic rubber binder, of a high density (linear) polyethylene plastic material, of good commercial quality. The color of the inner body band for Type II caps shall be black and colorfast.

Visor. The visor of good commercial quality shall be made of four (4) layers; top ply, plumper paper, inner core, and bottom ply, laminated together with a suitable adhesive. The polished side of the top ply shall be towards the top of the visor. The outside edge of the visor shall be bound with a black plastic film which shall finish three-sixteenths- to one-quarter-inch wide.

Top ply. The top ply shall be a vinyl film of good commercial quality 0.020 inch thick. The film shall be black on one side and shall be press polished to produce a smooth shiny patent leather surface.

Plumper paper. The plumper paper shall be a high alpha cellulose wood pulp paper, 0.022±0.003 inch thick, which has been wet-web saturated with 10 percent to 15 percent by weight chloroprene latex.

Inner core. The inner core shall be made of fiberboard 0.070 to 0.080 thick, free of lumps, ripples, and other imperfections.

Bottom ply. The bottom ply shall be a pyroxylin coated cloth. The color shall be hatter's green and the grain shall be kid.

Chin strap. The chin strap shall be gold braided cable rayon cord.

Sweatband. The sweatband shall be good commerical quality roan leather approximately 1⅛ inches wide and embossed with an imitation turned line, one-eighth inch from the top edge.

Front support. The front support shall be in accordance with good commerical practice and suitable for the use which this item will receive.

Eyelets. The eyelets for the front piece and sides shall be of good commerical quality. They shall be enameled brass and round.

Crown support. There shall be a one-eighth- to one-quarter-inch spread wire grommet of nonrust finish in the crown.

Crown protector. The crown protector shall be a flexible plastic of good commerical quality having good protection against perspiration penetration and deterioration.

Crown seam tape. The crown seam tape shall be a bias cut three-quarter inch nylon mesh covered by bias cut crown lining cloth.

Crown seam tape interlining. The crown seam tape interlining shall be natural or dyed nylon mesh, knitted on a single needle bar Raschel and weighing 6.5±0.5 ounces per square yard. The stiffness of the finished cloth shall be as follows when tested in accordance with Test Method 5202 of Federal Specification CCC-T-191:

	Stiffness, minimum	Load pounds, maximum
2 inch specimen, length parallel to wales	0.025	0.045
2 inch specimen, length across or perpendicular to wales	0.040	0.060

Knitted nylon mesh. The material for supporting the front piece shall be a nylon mesh type, dark blue, knitted on a single bar Raschel provided with ground and inlay guide bars. The mesh cloth shall be single face with knitted chain effect on the back and shall contain laid-in threads every other course. The finished cloth shall conform to the following physical requirements:

Weight, Oz. sq. yd. (min.)	7.0
Wales per inch (min.)	12.0
Course per inch (min.)	25.0
Stiffness (load pounds):	
Parallel to wales	0.120 to 0.160
Parallel to courses	0.200 to 0.240

Label. Each cap shall have a size label or a durable stamp on the face of the sweatband.

Construction:

General. The cap shall be a one piece top "oval" style with crown measuring 10¾ inches, from front to back on top of crown and 10¼ inches across crown in size 7⅛ cap. The cap shall have a spread-wire grommet which will fit snugly, without tension, around the inside of the crown. There shall be two (2) round ventilating eyelets, two (2) inches apart, on each side of the crown approximately one inch from top of band. Each cap shall have a round eyelet placed as needed on bevel of cap properly set for placement of badge at the front. The cap shall have a plastic crown protector with provision for identification card securely sewn inside cap to prevent penetration of perspiration. The cap shall be equipped with a front support securely attached and a visor, as specified, the length of which, at center front, shall not exceed 2⅛ inches. The angle of the visor from vertical front of cap to be approximately 45 degrees. The cap shall be provided with a chin strap attached in position by a 24-line brass regulation Postal Service button at each end.

Stitching and seaming crown sides and front. When seaming crown to the sides and front, use a 301 or 101 stitch type and an SSAD-3(a) seam type; press seam open; stitch each side of seam approximately one-sixteenth inch around crown catching crown seam tape in both rows of stitching on the underside using SSAD-3(b) stitch type. The ends of the tape shall overlap not less than one-half inch. When attaching knitted nylon mesh front support, superimpose and stitch support to front, approximately

one-eighth inch from edge, along top edge and along bottom edge from each side seam.

Inner body band. The inner body band shall be made in accordance with good commercial practice, approximately 2 inches wide and shall overlap three-fourths to one and one-fourth inches and be stapled with two to three staples or securely stitched.

Outer body band. The outer body band shall measure 2 inches wide and shall be covered with a strip of the basic material at the bottom sewn to a specified color rayon braid which will measure one and one-half inches after being sewn. A properly made and applied separate band will be acceptable for use on caps made under this specification.

Sweatband. The sweatband shall be sewn to a folded plastic welt, one-eighth inch exposed beyond the edge of the leather and one-half inch under the sweatband by a hatter's reeding stitch and then sewn to the cap in a flat position with a cushion effect in the front. The sweatband shall finish smooth and flat without distortion to provide a comfortable fit. A tie bow shall be attached at the center back of finished sweatband.

Linings. The crown lining shall be black or dark blue colorfast rayon cloth.

Workmanship. The finished caps shall conform to the requirements of this specification and shall be free from any defects which may affect appearance or serviceability.

Quality and assurance provisions:

Inspection. Inspection of the finished cap shall be made by the manufacturer for compliance with this specification.

2. SHIRT

Design. The shirt is a standard long or short sleeve police style polyester cotton permanent press or 100% cotton poplin shirt with an attached collar, shoulder epaulets and badge patch.

Pockets. There shall be two pleated pockets with button through flaps, and with pencil division through left flap.

Badge patch. There shall be badge piece over the left breast pocket.

Material and color. Material to be sanforized and vat dyed, 65 percent polyester/35 percent cotton, or 100 percent cotton in a standard light blue police color.

Insignia. An approved United States Postal Service embroidered eagle insignia shall be worn on the upper part of the outer half of the left sleeve three-quarters inch below top of shoulder sleeve seam.

3. TIE

Design. The tie shall be made in accordance with specifications issued by the U.S. Army Natick Laboratories, PODUQC No. 7.

Material and color. The basic material shall be a fabric approved by the U.S. Army Natick Laboratories, color PO Blue 5014.

4. COAT

Requirements:

Design. The coat is a four button, single breasted, half lined coat with collar and notched lapels; having two top pleated patch pockets with flaps, two lower hanging pockets with flaps, shoulder loops, a two-piece back, and two-piece side-bodied fronts (see fig. 1).

Patterns. Unless otherwise indicated the pattern shows a warp directional line for cutting, third-eighths inch seam allowance for all seams, and guide marks for assembling and finishing. The manufacturer may adjust the pattern to accommodate his method of manufacture but shall maintain the design in all details. Patterns shall be graded by the manufacturer who is also responsible for making garments with proper fit.

Basic material. The basic material shall be a 14–14½ oz. on a 60-inch width all wool serge, standard policy navy blue.

Components. Pocketing for hanging pockets shall be minimum 5-ounce cloth, cotton, silesia or better of good commercial quality. Findings such as collar canvas, front hair cloth interlining, shoulder pads, hanger loop, thread, wigan and gimp shall be of good commercial quality. Color of thread, gimp, and all visible findings shall match the shade of the basic fabric and shall have equal or better color fastness.

Linings. The lining shall be colorfast, navy blue or black 3.6 ounce per square yard minimum weight rayon satin lining or better, of good commercial quality.

Buttons. The buttons shall be the approved Postal Service regulation style, gold plated, 24-line short shank for the pocket flaps and sleeves, and 36-line regular shank for the front.

Construction:

General. Proper seam allowances and stitching shall be maintained to prevent raw edges, runoffs, twists, pleats, puckers, or open seams. The minimum number of stitches for stitching and seaming shall be 12. Thread breaks and ends of stitching not caught in other rows of stitching shall be backtacked not less than one-half inch. Raw edges on exposed seams shall be bound.

Coat. The coat shall be made of single needle construction in accordance with the pattern. It has a four-button single breasted straight front, two pleated breast patch pockets with three pointed flaps with buttonhole, and two lower double piped hanging pockets with three pointed flaps with buttonhole, shoulder loops, two-piece back, shoulder pads, commercial type interlined fronts, lined fronts and sleeves, half lined back, hanger loop, fitted at the waist and with brass hook to accommodate a Sam Browne belt.

Fronts. The pockets and flaps shall be positioned as indicated on the pattern.

Sleeves. The sleeves shall be set and joined with fullness properly distributed. Forearm and backarm seams of sleeve linings shall be tacked to corresponding seams of sleeves. Sleeve bottoms shall have wigan interlining and three buttons.

Collar. The collar shall be interlined. The interlining and the undercollar shall be quilted or padded with blind stitch and have proper fullness. Seam undercollar to interlining at breakline. The hanger loop shall be caught in the collar joining seam.

Shoulder loop. The shoulder loop made of PO Blue 5000 fabric shall be centered over shoulder seam. It shall be stitched to shoulder across width of loop within gage of edge stitching approximately 2 inches from shoulder seam and cross stitched between shoulder seam and stitching forming a box.

Buttonholes. The front buttonholes shall be of eyelet end, square bar, cut first type reinforced with gimp with ends bartacked. The purling shall be on the outside. When buttoned the buttonholes shall be in vertical alignment and centered below V-closing of the coat.

Buttons. The pocket flap and shoulder loop buttons shall be sewn to correspond with the eyelet end of buttonholes therein. The buttons on right front closure shall be 1 inch from front edge and to correspond with buttonholes on left front.

Edge stitching. All edge and raise stitching on fronts, pocket flaps, shoulder loops, and collar shall be ⅛-inch gage.

Badge plate. When specified, a wool felt badge plate matching color of basic fabric shall be centered vertically one-eighth inch above flap of left breast and sewn. The plate shall be approximately 2½ by 1 inches with round black enameled 3/16-inch metal eyelets placed centrally approximately one-half inch from each end. The eyelets shall be 1⅜ inches apart from center to center.

Labels. Size label shall be sewn on the inside pocket.

Pressing. All seams shall be underpressed during processing. The coat shall be pressed smooth and flat, without any gloss or pressing impressions. The sleeves shall be well blocked and pressed with top sleeve having forward roll. Sleeves and lapels shall be roll pressed.

Workmanship. The finished coat shall conform to the requirements of this specification and shall be free from any defects which may affect appearance or serviceability.

Notes:

Insignia. An approved U.S. Postal Service embroidered eagle insignia shall be worn on the upper part of the outer half of the left sleeve three-fourths inch below top of shoulder sleeve seam.

Inspection. Inspection of the finished coat shall be made by the producer for compliance with this specification.

5. TROUSERS

Requirements:

Design. The trousers are a dress type with sewn on waistband, slide fastener fly, side and hip pockets, watch pocket, plain bottoms.

Basic Material. The basic material shall be

a. 16 oz. polyester/wool venetian gabardine (winter), or

b. 8½/9 oz. polyester/wool tropical (summer).

and shall match the approved PO uniform color (PO Blue 5000) and shall be a fabric approved and certified by the U.S. Army Natick Labs.

Components. Pocketing shall be 7.5 oz. sq./yd. desized, preshrunk cloth, cotton

drill or better. (2.50 yard commercial designation.) Linings, interlining and findings such as slide fasteners and thread shall be of good commercial quality. Unless otherwise specified, the color of thread, fastener tape and all other visible findings shall match the shade of the basic fabric and have equal colorfastness.

Button. The button for the hip pocket shall be flat, 4 hole, 24 line good commercial tailor type in a shade similar to, or darker than the basic fabric.

Construction:

Stitching and seams. Proper seam allowances and stitching shall be maintained so that no raw edges, runoffs, twists, pleats, puckers or open seams will result. Seam allowances shall be overedged to prevent ravelling, and pressed open. The minimum number of stitches for seaming shall be 12 per inch with a minimum of 6 per inch for overedging. Ends of stitching not caught in other rows of stitching shall be backtacked and ends of a continuous line of stitching shall overlap. Thread breaks shall be secured by stitching back of the break not less than one-half inch. Bartacks shall be placed at all points of strain. The seat seam shall have two rows of stitching properly applied.

Trousers. The trousers shall be made in accordance with good commercial practice. There shall be two side hanging pockets, two hip hanging pockets with left to button, a watch pocket, a minimum of seven belt loops at the sewn-on waistband, slide fastener fly, and crotch lining.

Trouser bottom. The trouser leg bottom shall be plain without cuffs and shall have fabric heel stays.

Workmanship. The finished trousers shall conform to the requirements of this specification and shall be free from any defects which may affect appearance or serviceability.

Quality Assurance Provisions:

Inspection. Inspection of the finished trousers shall be made by the manufacturer for compliance with this specification.

(5 U.S.C. 301, 5901–5903; 39 U.S.C. 501, 3116)

DAVID A. NELSON,
General Counsel.

[FR Doc.71–5077 Filed 4–12–71;8:46 am]

BOARD OF GOVERNORS OF U.S. POSTAL SERVICE

Resolution

The Board of Governors of the U.S. Postal Service have adopted the following resolution:

[Resolution No. 71–14]

APPLICATION OF OTHER LAWS; EFFECTIVE DATE

Resolved:

Pursuant to section 15(a) of the Postal Reorganization Act (Public Law 91–375), the Board of Governors establishes the date of publication of this resolution in the FEDERAL REGISTER as the effective date of so much of 39 U.S.C. section 410 (a), (b), and (c) as has not previously been made effective.

The Secretary of the Board of Governors is directed to arrange for the publication of this resolution in the FEDERAL REGISTER.

The foregoing resolution was adopted by the Board of Governors on April 6, 1971.

(39 U.S.C. section 202, as enacted by Public Law 91–375 and section 15(a) of Public Law 91–375)

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

[FR Doc.71–5091 Filed 4–12–71;8:47 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ADMINISTRATIVE OFFICER, FAIRBANKS DISTRICT AND LAND OFFICE, ALASKA

Delegation of Authority Regarding Contracts and Leases

State Director, Alaska; supplement to Bureau of Land Management Manual 1510.

A. Pursuant to delegation of authority contained in Bureau Manual 1510–03B2, the Administrative Officer, Fairbanks District and Land Office, is authorized:

1. To enter into contracts with established sources for supplies and services, excluding capitalized equipment, regardless of amount, and

2. To enter into contracts on the open market for supplies and materials, excluding capitalized equipment, not to exceed $2,500 per transaction ($2,000 for construction), provided that the requirement is not available from established sources. (Section 302(c)(3) of the FPAS Act)

3. To enter into contracts in an unlimited amount for necessary procurements in the case of emergency fire suppression work for the rental of equipment and aircraft and for supplies and materials, excluding capitalized equipment, required in such operations. (Section 302(c)(2) of the FPAS Act)

BURTON W. SILCOCK,
State Director.

[FR Doc.71–5076 Filed 4–12–71;8:46 am]

IDAHO

Notice of Restricted Vehicle Use; Closure Order

Notice is hereby given in accordance with Title 43, CFR 6010.4, that public lands under the administration of the Bureau of Land Management located within the Bald Mountain Ski Area are closed to unauthorized motor vehicles. The legal description of these lands is:

T. 4 N., R. 17 E., Boise Meridian, Blaine County, Idaho,
Sec. 13, W½NW¼NW¼, SW¼NW¼, SW¼SE¼NW¼, W½NE¼SW¼, W½SW¼, SE¼SW¼;
Sec. 24, W½NE¼, W½SE¼NE¼, W½NE¼SE¼NE¼, SE¼SE¼NE¼, W½, SE¼;
Sec. 25, N½SW¼, W½SE¼.
Containing 1,365 acres.

It is found that the use of motorized vehicles on the Bald Mountain Ski Area is interfering with the authorized use of these lands by the Sun Valley Co., Inc., who holds two special land use permits in the area for the operation of ski facilities on Bald Mountain. Use of motorized vehicles on the primitive type of roads found in the area is hazardous and the use of such vehicles off the road in this area has also caused damage to the lands which has resulted in erosion problems.

Therefore, all unauthorized motor vehicles are excluded from the area and the lands closed to such use upon publication of this order in the FEDERAL REGISTER. Authorization to operate motor vehicles in the area will be handled by the Ketchum Ranger District of the Sawtooth National Forest. Signs will be posted to identify the exterior boundaries of the closed area.

Maps showing the closed area are posted at the post offices in Sun Valley, Ketchum, and Hailey, in the Blaine County Courthouse, the Ketchum Ranger District Office of the Sawtooth National Forest, and in the Bureau of Land Management, Shoshone District Office in Shoshone, Idaho.

The cooperation and assistance of the public will be sincerely appreciated.

WILLIAM L. MATHEWS,
State Director, Idaho.

[FR Doc.71–5102 Filed 4–12–71;8:48 am]

Office of the Secretary

JOHN F. ENGLISH

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of March 1, 1971.

Dated: March 22, 1971.

JOHN F. ENGLISH.

[FR Doc.71–5058 Filed 4–12–71;8:45 am]

ROBERT V. HUGO

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of March 19, 1971.

Dated: March 19, 1971.

ROBERT V. HUGO.

[FR Doc.71–5059 Filed 4–12–71;8:45 am]

MODESTO IRIARTE, JR.

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests the past 6 months:

(1) None.
(2) None.
(3) None.
(4) None.

This statement is made as of March 29, 1971.

Dated: March 29, 1971.

MODESTO IRIARTE, Jr.

[FR Doc.71-5060 Filed 4-12-71;8:45 am]

JOHN H. KLINE

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of March 22, 1971.

Dated: March 22, 1971.

JOHN H. KLINE.

[FR Doc.71-5061 Filed 4-12-71;8:45 am]

JAMES W. McWHINNEY

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of March 15, 1971.

Dated: March 24, 1971.

JAMES W. McWHINNEY.

[FR Doc.71-5062 Filed 4-12-71;8:45 am]

HAROLD C. REASONER

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) None.
(2) None.
(3) None.
(4) None.

This statement is made as of March 30, 1971.

Dated: March 30, 1971.

HAROLD C. REASONER.

[FR Doc.71-5063 Filed 4-12-71;8:45 am]

CLIFTON F. ROGERS

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) None.
(2) None.
(3) None.
(4) None.

This statement is made as of March 24, 1971.

Dated: March 24, 1971.

CLIFTON F. ROGERS.

[FR Doc.71-5064 Filed 4-12-71;8:45 am]

STANLEY MILTON SWANSON

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of March 25, 1971.

Dated: March 25, 1971.

S. M. SWANSON.

[FR Doc.71-5065 Filed 4-12-71;8:45 am]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

HUMANELY SLAUGHTERED LIVESTOCK

Identification of Carcasses; Changes in List of Establishments

Pursuant to section 4 of the Act of August 27, 1958 (7 U.S.C. 1904), and the statement of policy thereunder in 9 CFR 381.1, the lists (36 F.R. 3205 and 4710) of establishments which are operated under Federal inspection pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) and which use humane methods of slaughter and incidental handling of livestock are hereby amended as follows:

The reference to Miller Abattoir Co., Establishment 179, and the reference to calves with respect to such Establishment, are deleted. The reference to sheep with respect to Jack Agee and Co., Establishment 2281, is deleted. The reference to Dinner Bell Meat Products, Inc., Establishment 7440, and the reference to cattle with respect to such Establishment, are deleted. The reference to calves, sheep, and goats with respect to Dealaman Enterprise, Inc., Establishment 7562, is deleted. The reference to swine with respect to Fred Born, Establishment 7648, is deleted.

The following table lists species at additional establishments and additional species at previously listed establishments that have been reported as being slaughtered and handled humanely.

ESTABLISHMENTS SLAUGHTERING HUMANELY

Name of Establishment	Establishment No.	Cattle	Calves	Sheep	Goats	Swine	Horses	Mules
Meat Laboratory-Oklahoma State University	526	(*)	(*)	(*)		(*)		
Pride Packing Co. Inc.	549	(*)	(*)					
Loveland Packing Co., Inc.	2259					(*)		
Wagner Provision Co., Inc.	2770	(*)	(*)					
Rollin Packing Co.	6563	(*)	(*)					
Kachina Packing Co.	7040	(*)						
Panhandle Beef Packing, Inc.	7151	(*)						
Fulton County Packing Co.	7485	(*)				(*)		
Farmers Union Locker Association	7650	(*)				(*)		
John Bonn	7656	(*)				(*)		
Maplevale Farms, Inc.	7883	(*)	(*)					
Ferrante & Urso	7887	(*)	(*)	(*)				
New Establishments reported: 12.								
Armour & Co.	2-SA				(*)			
Hygrade Food Products Corp.	12-FW		(*)					
Insel and Insel	54			(*)	(*)			
Sunflower Beef Packers of Nebraska	62					(*)		
Frisco Packing Co.	327		(*)					
Memphis Butchers Association, Inc.	488					(*)		
Husband Brothers Packing Co.	2284		(*)					
Rollins Packing Co.	2285		(*)	(*)				
Anthony Parillo, Inc.	5193				(*)	(*)		
Johnston Dressed Beef & Veal Co., Inc.	5300				(*)			
Pasco Meat Packers, Inc.	6040			(*)				
Knute's Meat Processing & Sales	7655			(*)				
Species added: 15.								

Done at Washington, D.C., on April 7, 1971.

KENNETH M. McENROE,
Deputy Administrator,
Meat and Poultry Inspection Program.

[FR Doc.71-5126 Filed 4-12-71;8:50 am]

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket No. S-261]

STATES STEAMSHIP CO.

Notice of Application

Notice is hereby given that States Steamship Co. has applied for an increase in maximum sailings on Trade Route No. 29 (U.S. Pacific/Far East), on its subsidized Service B from 30 sailings per annum to 35 sailings per annum, and on its subsidized Service C from 28 sailings per annum to 33 sailings per annum.

States Steamship Co., has also requested that its present limitations on the number of voyages which may serve certain areas be amended consistent with its request for increased sailings. These limitations, as they now exist, and as requested in States' application, are shown in the following table:

Service	Geographic area	Present limitation	Proposed
A and B	Between Washington and Oregon and Korea and Okinawa.	36	41
A and B	Between Washington and Oregon and Indo China, Thailand, Hong Kong, and Sarawak.	30	35
A and B	Between Washington and Oregon and Philippines.	30 out 24 in	35 out 29 in
B and C	Between California and Korea and Okinawa.	48 out 40 in	58 out 50 in
B and C	Between California and Philippines, Indo China, Thailand, Hong Kong, and Sarawak.	44 out 40 in	54 out 50 in
B	California inbound	12	17

Any person, firm, or corporation having any interest in such application and desiring a hearing on issues pertinent to section 605(c) of the Merchant Marine Act, 1936, as amended, 46 U.S.C. 1175, should, by the close of business on April 27, 1971, notify the Secretary, Maritime Subsidy Board in writing, in triplicate, and file petition for leave to intervene in accordance with the Rules of Practice and Procedure of the Maritime Subsidy Board.

In the event a section 605(c) hearing is ordered to be held, the purpose thereof will be to receive evidence relevant to (1) whether the application is one with respect to a vessel to be operated on a service, route, or line served by citizens of the United States which would be in addition to the existing service, or services, and if so, whether the service already provided by vessels of United States registry in such service, route, or line is inadequate, and (2) whether in accomplishment of the purpose and policy of the Act additional vessels should be operated thereon.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Maritime Subsidy Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Maritime Subsidy Board will take such action as may be deemed appropriate.

Dated: April 9, 1971.

By order of the Maritime Subsidy Board.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.71-5200 Filed 4-12-71;8:50 am]

National Oceanic and Atmospheric Administration

[Docket No. G-494]

SUNSET FLEET, INC.

Notice of Loan Application

APRIL 6, 1971.

Sunset Fleet, Inc., Route 1, Box 153-M, Mobile, Ala. 36605, has applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a new 60-foot length overall steel vessel to engage in the fishery for shrimp.

Notice is hereby given, pursuant to the provisions of 16 U.S.C. 742c, Fisheries Loan Fund Procedures (50 CFR Part 250, as revised), and Reorganization Plan No. 4 of 1970, that the above-entitled application is being considered by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Interior Building, Washington, D.C. 20235. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, National Marine Fisheries Service, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operation of the vessel will or will not cause such economic hardship or injury.

JAMES F. MURDOCK,
Chief,
Division of Financial Assistance.

[FR Doc.71-5069 Filed 4-12-71;8:45 am]

[Docket No. B-515]

GLEN ARTHUR TARBOX

Notice of Loan Application

APRIL 6, 1971.

Glen Arthur Tarbox, 45 Pierce Road, Saunderstown, R.I. 02874 has applied for tional Marine Fisheries Service, National a loan from the Fisheries Loan Fund to aid in financing the construction of a new 35-foot LOA wood vessel to engage in the fishery for lobster.

Notice is hereby given, pursuant to the provisions of 16 U.S.C. 742c, Fisheries Loan Fund Procedures (50 CFR Part 250, as revised), and Reorganization Plan No. 4 of 1970, that the above entitled application is being considered by the Na- Oceanic and Atmospheric Administration, Department of Commerce, Interior Building, Washington, D.C. 20235. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, National Marine Fisheries Service, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operation of the vessel will or will not cause such economic hardship or injury.

JAMES F. MURDOCK,
Chief,
Division of Financial Assistance.

[FR Doc.71-5068 Filed 4-12-71;8:45 am]

Office of the Secretary

UNIVERSITY OF CONNECTICUT ET AL.

Notice of Applications for Duty-Free Entry of Scientific Articles

Correction

In F.R. Doc. 71-4133 appearing at page 5737 in the issue of Friday, March 26, 1971, the docket number in the center column of page 5738 reading "Docket No. 71-00339-01-777030" should read "Docket No. 71-00339-01-77030".

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ACTING REGIONAL ADMINISTRATOR, REGION II (NEW YORK)

Designation

The officials appointed to the following listed positions in Region II (New York) are hereby designated to serve as Acting Regional Administrator, Region II (New York), during the absence of the Regional Administrator, with all the powers, functions, and duties redelegated or assigned to the Regional Administrator: *Provided*, That no official is authorized to serve as Acting Regional Administrator unless all other officials whose titles precede his in this designation are unable to serve by reason of absence:

1. Deputy Regional Administrator.
2. Assistant Regional Administrator for Renewal Assistance.
3. Assistant Regional Administrator for Administration.
4. Assistant Regional Administrator for Metropolitan Planning and Development.

5. Assistant Regional Administrator for Housing Management and Community Services.
6. Regional Counsel.

This designation supersedes the designation effective July 2, 1969 (34 F.R. 12142 July 19, 1969).

(Redelegation of authority to take final action with respect to certain positions and employees effective as of May 4, 1969)

Effective as of March 2, 1971.

S. WILLIAM GREEN,
Regional Administrator,
Region II.

[FR Doc.71-5128 Filed 4-12-71;8:50 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50-378]

GENERAL ELECTRIC TECHNICAL SERVICES CO., INC.

Notice of Issuance of Facility Export License

Please take notice that no request for a formal hearing having been filed following publication of notice of proposed action in the FEDERAL REGISTER on March 5, 1971 (36 F.R. 4438), the Atomic Energy Commission has issued License No. XR-77 to General Electric Technical Services Co., Inc., authorizing the export of a 2,436 megawatt thermal, boiling water reactor to the Ente Nazionale per l'Energia Electtrica, Rome, Italy. The export of the reactor to Italy is within the purview of the present Additional Agreement for Cooperation Between the Government of the United States and the European Atomic Energy Community.

Dated at Bethesda, Md., this 31st day of March 1971.

For the Atomic Energy Commission.

EBER R. PRICE,
Director, Division of
State and Licensee Relations.

[FR Doc.71-5101 Filed 4-12-71;8:48 am]

NEVADA OPERATIONS OFFICE

Trespassing on Commission Property

The notice concerning unauthorized entry into or upon the Nevada Operations Headquarters Office Site of the Atomic Energy Commission dated October 12, 1965, appearing at page 13285 of the FEDERAL REGISTER of October 19, 1965, 30 F.R. 13285 (F.R. Doc. 65-11105), is hereby revised to read as follows:

Notice is hereby given that the Atomic Energy Commission, pursuant to section 229 of the Atomic Energy Act of 1954, as amended, as implemented by 10 CFR Part 160 published in the FEDERAL REGISTER on August 16, 1963 (28 F.R. 8400), prohibits the unauthorized entry, as provided in 10 CFR 160.3, and the unauthorized introduction of weapons or dangerous materials, as provided in 10 CFR 160.4, into or upon the Nevada Operations Office Headquarters site of the Atomic Energy Commission, said site consisting of an office building and appurtenant grounds and parking space located at the southwest corner of the intersection of South Highland Drive with Presidio, Las Vegas, Nev., more particularly described as follows:

Those portions of the Northeast Quarter (NE¼) of Section 8 and the Northwest Quarter (NW¼) of Section 9, Township 21 South, Range 61 East, M.D.B. & M., in the City of Las Vegas, County of Clark, State of Nevada, beginning at the Northeast corner of the Southeast Quarter (SE¼) of the Northeast Quarter (NE¼) of the said Section 8, as shown on the Registered Professional Engineer's map thereof in File 11, page 13, in the Office of the County Recorder, Clark County, Nevada; thence North 89°08'12" West along the North line of said Southeast Quarter (SE¼) of the Northeast Quarter (NE¼) a distance of 110.81 feet, the true point of beginning; thence South 35°33'42" West a distance of 136.97 feet; thence South 62°03'45" East a distance of 286.28 feet; thence North 34°10'58" East a distance of 201.20 feet; thence South 62°03'45" East a distance of 375.35 feet; thence North 27°56'15" East a distance of 450.00 feet; hence North 62°03'45" West a distance of 320.00 feet; thence South 35°33'42" West a distance of 252.23 feet; thence North 62°03'45" West a distance of 316.87 feet; thence South 35°33'42" West a distance of 11.70 feet; thence South 35°33'23" West a distance of 277.69 feet; thence South 89°08'12" East a distance of 48.65 feet to the true point of beginning.

Notices stating the pertinent prohibitions of 10 CFR 160.3 and 160.4 and penalties of 10 CFR 160.5 will be posted at all entrances of said site and at intervals along its perimeter as provided in 10 CFR 160.6.

Dated at Washington, D.C., this 6th day of April 1971.

R. E. HOLLINGSWORTH,
General Manager.

[FR Doc.71-5075 Filed 4-12-71;8:46 am]

[License No. 05-13943-01E]

STATITROL CORP.

Notice of Issuance of Byproduct Material License

Please take notice that the Atomic Energy Commission has, pursuant to § 32.26 of 10 CFR Part 32, issued License No. 05-13943-01E to the Statitrol Corporation, 140 South Union Boulevard, Lakewood, CO 80228, which authorizes the distribution of ionization fire detectors, Models 102-040 and 104-040, to persons exempt from the requirements of a license pursuant to § 30.20 of 10 CFR Part 30.

1. The devices are designed to detect incipient fires by responding to the products of combustion produced by thermal decomposition of building materials or contents prior to the appearance of visible smoke, flame, or appreciable heat. The sensitive element of the detector head is an ionization chamber in which air flowing into the chamber is made conductive by alpha particles emitted by americium 241.

2. Byproduct material incorporated in all detector models is americium oxide contained in foils manufactured by Nuclear Radiation Developments (Model A-001) or by the Radiochemical Center (Model AMM). The maximum activity contained in any unit is 1.3 microcuries.

2. Each exempt unit will have a label identifying the manufacturer (Statitrol Corporation) and the byproduct material (americium 241) contained in the unit.

A copy of the license and a safety evaluation containing additional information, prepared by the Division of Materials Licensing, is available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, DC.

Dated at Bethesda, Md., April 5, 1971.

For the Atomic Energy Commission.

LYALL JOHNSON,
Acting Director,
Division of Materials Licensing.

[FR Doc.71-5074 Filed 4-12-71;8:46 am]

FEDERAL COMMUNICATIONS COMMISSION

[Dockets Nos. 19122-19125; FCC 71R-111]

STAR STATIONS OF INDIANA, INC., ET AL.

Memorandum Opinion and Order Enlarging Issues

In regard applications of Star Stations of Indiana, Inc., for renewal of license of WIFE and WIFE-FM, Indianapolis, Ind., Docket No. 19122, Files Nos. BR-1144, BRH-1276; Indianapolis Broadcasting, Inc., for a construction permit for a standard broadcast station, Indianapolis, Ind., Docket No. 19123, File No. BP-18706; Central States Broadcasting, Inc., for renewal of license of KOIL and KOIL-FM, Omaha, Nebr., Docket No. 19124, Files Nos. BR-516, BRH-992; Star Broadcasting, Inc., for renewal of license of KISN, Vancouver, Wash., Docket No. 19125, File No. BR-1027.

1. This proceeding involves the mutually exclusive applications of Star Stations of Indiana, Inc. (Star), for renewal of license for Stations WIFE and WIFE-FM, Indianapolis, Ind.: and Indianapolis Broadcasting, Inc. (Indianapolis), for a construction permit for a standard broadcast station on the same frequency in Indianapolis, Ind. These applications were consolidated with the renewal applications of Central States Broadcasting, Inc., for renewal of license for Stations KOIL and KOIL-FM, Omaha, Nebr., and Star Broadcasting, Inc., for renewal of license for Station KISN, Vancouver, Wash. (also Star Stations), and the six applications were designated for hearing by Commission Order, FCC 70-1256, released December 15, 1970. Presently before the Review Board is a motion to enlarge issues, filed December 28, 1970, by Star seeking the addition of a comparative efforts issue, as well as

issues to adduce evidence in support of a meritorious programming record and to inquire into an alleged unlawful relationship between Indianapolis, the Merchants National Bank and Trust Company of Indianapolis (Merchants) and standard broadcast Station WIBC, Indianapolis.[1]

Past programing issue. 2. As the basis for this request, Star asserts that whenever serious questions are raised concerning the qualifications of a licensee, evidence is permitted to be adduced to mitigate adverse findings. While Star contends that this general rule can easily be applied to Stations KISN, KOIL, KOIL–FM, and WIFE–FM, it admits there is more difficulty in applying it with respect to WIFE because of Indianapolis' competing application. While Star recognizes that under the "Policy Statement on Comparative Hearings Involving Regular Renewal Applicants" (Policy Statement), 22 FCC 2d 424 (1970), evidence of past broadcast record may be adduced, it questions whether such evidence may be used to offset adverse findings under disqualifying issues. If that evidence is not allowed to be used for that purpose absent a special issue, Star urges that the past programing issue include WIFE. Indianapolis, in opposition, notes that evidence of past programing must be adduced in order to determine whether Star's service has been substantially attuned to meeting the needs and interests of the area. However, Indianapolis asserts, the introduction of past programing evidence for mitigation purposes is a moot point, because if Star fails to establish its basic qualifications, renewal of its license is prohibited no matter how good its past programing might have been. Thus, while evidence of past programing will be adduced, Indianapolis urges that such evidence be limited to the purpose of determining whether WIFE's programing has been substantially attuned to meeting the needs of the area. The Broadcast Bureau, in its comments, supports Star's request for an issue to adduce evidence of its asserted past record of meritorious programing; however, the Bureau objects to the issue as framed by Star since it omits particularization of public service programs. The Bureau therefore proposes that the issue read as follows:

To determine whether the programing of Stations WIFE, WIFE–FM, KOIL, KOIL–FM, and KISN have been meritorious, particularly with regard to public service programs;

rather than:

To determine whether the past programing of Stations WIFE, WIFE–FM, KOIL, KOIL–FM, and KISN was of such quality as to constitute a countervailing factor in the resolution of this case insofar as it relates to Issues 1–19.

In reply, Star presses for its formulation of the issue, arguing that it is more appropriate to the nature of the inquiry and would permit the Commission to make a comprehensive, balanced evaluation of Star's efforts.

3. The Review Board will add an issue permitting Star to adduce evidence in support of an asserted past record of meritorious programing on all stations whose renewal applications have been designated for hearing. While Star's past broadcast record is relevant to that phase of the renewal hearing which determine whether its programing is substantially attuned to the community's needs and interests, a separate issue is required to permit the use of past programing evidence to mitigate adverse findings and conclusions under disqualifying issues. Therefore, consistent with Commission precedent, an appropriate issue will be added. See Melody Music, Inc., 37 FCC 405, 2 RR 2d 996 (1964). Contrary to Indianapolis' assertion, the introduction of such evidence may affect Star's basic qualifications and is therefore not a "moot point". However, addition of this issue will not preclude the parties from arguing the weight to be accorded the evidence adduced. Hawaiian Paradise Park Corp., FCC 70R–266, 19 RR 2d 824. Finally, we believe that the issue should be framed as suggested by the Bureau; such formulation permits an inquiry into Star's entire programing format, while emphasizing the importance of public service broadcasts. Therefore, Star's request will be granted and the issue will be specified in accordance with our usual practice. See, e.g., Jack Straw Memorial Foundation, 26 FCC 2d 97, 20 RR 2d 492 (1970); and Western Connecticut Broadcasting Co., 26 FCC 2d 1019, 20 RR 2d 961 (1970).

Relationship between Indianapolis, the Merchants National Bank and Trust Co., and Radio Station WIBC. 4. In regard to its request to explore the connection between Indianapolis, Merchants and Station WIBC, Star first points out that Indianapolis is relying on a proposed loan of $750,000 from Merchants to be secured by a lien on the company's equipment and in all other respects to comply with "reasonable and ordinary banking or credit requirements". Star states that three members of the bank's Board of Directors, Robert E. Sweeney (who is also president), Richard M. Fairbanks and Henry T. Ice, all have interests in other broadcast facilities: Sweeney is a director and secretary of Fairbanks Broadcasting Inc. (Fairbanks), licensee of standard broadcast Station WIBC, Indianapolis; Fairbanks is the president and general manager of Stations WIBC and WNAP–FM in Indianapolis and owns 100 percent of Fairbanks; and Ice, since at least 1958, has been a director of WIBC. In view of these interests, and since Stations WIBC and WIFE have been in strong competition in the Indianapolis area, Star claims an inquiry is warranted to determine the extent to which WIBC may have improperly encouraged or abetted the filing of the Indianapolis application. Next, contends Star, even if WIBC had nothing to do with the filing of Indianapolis' application, a serious question still remains as to whether the multiple ownership rules may be violated because of the interlocking directorships. Finally, as further evidence of the relationship between Indianapolis and WIBC, Star points out that Mr. Jerry Kemkel, the proposed Executive Vice-President and Manager of Indianapolis, was a former employee of WIBC. Therefore, in view of the foregoing, petitioner urges the addition of its requested issue.

5. In response, Indianapolis denies any relationship whatever with WIBC, and insists that WIFE's assertions as to collusion are completely without factual foundation. As to the question concerning the alleged violation of the Commission's multiple ownership rules, Indianapolis points out that no person working in any capacity for Merchants or WIBC has any relation to Indianapolis. Further, respondent states that it will probably need a loan of only $150,000. Therefore, since petitioner has failed to indicate how the Bank will be able to gain control over the daily operations of the station, respondent urges denial of Star's request. The Bureau also opposes this request; it states that petitioner's assertions are based merely on speculation and points out that Star has come forth with no factual data to indicate that three of Merchant's 26 directors could, or would, have any influence on the operation of Indianapolis' proposed station. The commitment letter, argues the Bureau, contains nothing that is not customarily found in such documents. Fairbanks, supported by letters of Sweeney, Fairbanks, and Ice, has also filed comments.[2] It emphasizes that it has no relationship whatsoever with Indianapolis and points out that Ice and Fairbanks were not even aware of the commitment letter.

6. In reply, Star first maintains that neither the comments of WIBC nor the opposition of Indianapolis are supported by affidavits of persons with personal knowledge of the facts. However, petitioner states, even if these pleadings are accepted at face value, certain facts with respect to the dual obligations of the three directors remain undisputed: The bank will have a substantial stake in the success of Indianapolis and the bank's board includes individuals who are competent in the operation of broadcast facilities. No one, asserts Star, can predict that no conflict will arise should Indianapolis experience financial difficulty, and none of the three directors in question have done anything to assure the Commission that they will not participate in any further deliberations concerning the

[1] Other related pleadings before the Board for consideration are: (a) Comments, filed Jan. 15, 1971, by Fairbanks Broadcasting Co., Inc.; (b) opposition, filed Jan. 18, 1971, by Indianapolis Broadcasting, Inc.; (c) comments, filed Jan. 18, 1971, by the Broadcast Bureau; and (d) reply, filed Jan. 28, 1971, by Star.

[2] Fairbanks is not a party to this proceeding and has not sought permission to file its comments. However, since petitioner has alleged a direct relationship between Indianapolis and WIBC, and since no objection has been raised to acceptance of the comments, the Board will allow Fairbanks to participate as a party for the limited purpose of filing its comments herein.

making or collection of the loan. Further, because of their experience in the broadcast business, petitioner claims, the three directors will exercise influence disproportionate to their number and thus the fact that they are only three out of 26 directors is irrelevant. In conclusion, Star states that an issue is required to determine whether under the most adverse, unforseeable circumstances, this type of arrangement is conducive to healthy competition between broadcast stations.

7. Star's request will be denied—petitioner has brought forth no information which warrants inquiry into the relationship between Indianapolis, Merchants, and WIBC. First, Star's assertion of collusion between respondent and the Bank is completely lacking in factual support; the mere fact that thr e board members of the bank which proposes to furnish funds to Indianapolis also have broadcast interests in a competing station cannot sustain such a contention. Statements from these three individuals have been submitted denying any such relationship, and the Board perceives no substantial reason for not accepting such denials. With regard to the multiple ownership question, petitioner, relies on the loan commitment and the broadcast interests of Sweeney, Fairbanks, and Ice. The Bank's commitment letter appears to have been made in the ordinary course of business and the terms, as set forth, do not, in our view, create a potential for control. See Lamar Life Broadcasting Co., 26 FCC 2d 112, 20 RR 2d 509 (1970). Nor do the broadcast interests of the three directors, by themselves, raise a question as to possible violation of the Commission's multiple ownership or cross-interest policies. The cases relied upon by Star offer it no support. In WTAR Radio-TV Corp., FCC 70R-247, 19 RR 2d 661, affirmed FCC 70-1251, released December 7, 1970, and Shenandoah Life Insurance Co., 19 RR 1 (1948), the factual situations differed from the circumstances presented here in the important respect that in both cases a member of the Board of Directors of a bank which voted stock in a broadcast facility also had, or desired to obtain, interests in another broadcast facility. Thus, in WTAR, the Board found that the situation might "* * * violate our proscriptions against dual and simultaneous service of individuals as directors on the boards of the corporate parents of two licensee corporations". No such circumstances appear to exist here. Therefore, petitioner's allegations are insufficient to warrant an inquiry into the relationship between Indianapolis, Merchants, and WIBC.

Comparative efforts issue. 8. In view of the recent Primer on Ascertainment of Community Problems by Broadcast Applicants, 27 FCC 2d 650, 21 RR 2d 1507 (1971), released February 23, 1971, which permit applicants 90 days to amend their Suburban showings, the Review Board is of the opinion that it would be appropriate to dismiss requests for Suburban and/or comparative efforts issues without prejudice to refiling after amendments have been accepted or the period in which such amendments may be filed has expired.

9. *Accordingly, it is ordered,* That the motion to enlarge issues, filed December 28, 1970, by Star Stations of Indiana, Inc., is granted to the extent indicated below, is dismissed without prejudice as it relates to the request for a comparative efforts issue, and is denied in all other respects; and

10. *It is further ordered,* That the issues in this proceeding are enlarged by the addition of the following issue:

To determine whether the programing of Stations WIFE, WIFE-AM, KOIL, KOIL-FM, and KISN has been meritorious, particularly with regard to public service programs; and

11. *It is further ordered,* That the burdens of proceeding with the introduction of evidence and proof on the issue herein added shall be on Star Stations of Indiana, Inc.

Adopted: April 5, 1971.

Released: April 7, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[3]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-5109 Filed 4-12-71;8:49 am]

[3] Review Board Member Nelson dissenting in part and voting for a cross-interest issue.

[Docket No. 19183]

TELEVISION BROADCAST RECEIVERS AND FM TRANSMITTERS

Notice of Inquiry Regarding Alleviation of Interference to Television Reception; Correction

In the matter of inquiry into performance of television broadcast receivers and location of FM transmitters to alleviate interference to television reception.

The notice of inquiry in Docket 19183, FCC 71-309, published at 35 F.R. 6459, is corrected with respect to paragraph 9 (c). The corrected text reads as follows:

(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: (1) 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 problems?

(2) Should co-location of FM and TV transmitters serving the same city be required?

Released: April 5, 1971.

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

[FR Doc.71-5108 Filed 4-12-71;8:49 am]

FEDERAL POWER COMMISSION

[Docket No. RI71-561]

CALIFORNIA CO.

Order Providing for Hearing on and Suspension of Proposed Change in Rate, and Allowing Rate Change To Become Effective Subject to Refund; Correction

MARCH 31, 1971.

In the order providing for hearing on and suspension of proposed change in rate, and allowing rate change to become effective subject to refund, issued January 7, 1971, and published in the FEDERAL REGISTER January 15, 1971 (36 F.R. 641): Appendix A, under column headed "Rate in Effect" change footnote reference "2" relating to "20.625" to "3" and footnote reference "3" relating to "19.0" to "2".

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-5097 Filed 4-12-71;8:48 am]

[Project No. 2149]

PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY, WASH.

Notice of Land Withdrawal

APRIL 8, 1971.

Conformable to the provisions of section 24 of the Act of June 10, 1920, as amended, notice is hereby given that the lands hereinafter described insofar as title thereto remains in the United States, are included in power Project No. 2149 for which a completed application for license was filed February 2, 1970, and supplemental revisions were filed March 30, 1970, and March 8, 1971, by Public Utility District No. 1 of Douglas County, Wash. Under said section 24 these lands are from the dates of filing of said application and supplemental revisions, reserved from entry, location or other disposal until otherwise directed by this Commission or by Congress.

WILLAMETTE MERIDIAN, WASHINGTON

Those portions of the following described subdivisions lying within the project boundary as delimited upon revised map Exhibit J, sheet 1 of 2 (FPC No. 2149-165) filed March 30, 1970, revised map Exhibit K, sheets 1 through 11, 13 through 18, 20 through 26, 28, 29, 31, 33 through 37 and 39 of 39 (FPC Nos. 2149-126 through -136, -138 through -143, -145 through -151, -153, -154, -156, -158 through -162 and -164, respectively) filed February 2, 1970 and revised map Exhibit K, sheets 12, 19, 27, 30, 32 and 38 of 39 (FPC Nos. 2149-137, -144, -152, -155, -157 and -163, respectively) filed March 8, 1971:

T. 28 N., R. 24 E.,
Sec. 6, lots 2, 4, 5, 6;
Sec. 7, lots 1, 2, 3, and 4.
T. 29 N., R. 24 E.,
Sec. 6, lots 8 and 11;
Sec. 19, lot 10, SE¼SE¼;
Sec. 31, lots 3, 4, and 7.
T. 30 N., R. 24 E.,
Sec. 12, lots 3 and 4;
Sec. 13, lot 2;
Sec. 21, lot 5;
Sec. 24, lot 3.

T. 29 N., R. 25 E.,
Sec. 9, lots 7 and 8;
Sec. 10, lot 5;
Sec. 14, lot 2;[1]
Sec. 15, Part of Mineral Survey 123. (Seventh Street Block L and Eighth Street Block M, Bridgeport, Wash.)[1]
T. 30 N., R. 25 E.,
Sec. 16, lot 1;
Sec. 18, lots 1 and 2;
Sec. 20, lot 1.
T. 31 N., R. 25 E.,
Sec. 35, lot 1.
T. 32 N., R. 25 E.,
Sec. 19, lot 5.

NOTE: Land underscored is patented subject to the conditions and limitations of section 24, Act of June 10, 1920.

The area of U.S. lands reserved by this notice is approximately 225.50 acres of which approximately 210.80 acres have been previously withdrawn for power purposes in connection with Power Site Classification No. 349, Power Site Reserve Nos. 129, 135, or 592 or earlier Projects Nos. 587 or 998. Approximately 5.10 acres have previously been withdrawn for a Bureau of Reclamation Pumping Plant and approximately 6.60 acres have been previously withdrawn for the Army Corps of Engineers Chief Joseph Project.

Copies of the aforementioned project map exhibits have been transmitted to the Geological Survey, Bureau of Land Management, Bureau of Indian Affairs, Army Crops of Engineers and the Fish and Wildlife Service.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-5096 Filed 4-12-71;8:48 am]

[Docket No. RP71-5]

KANSAS-NEBRASKA NATURAL GAS CO., INC.

Notice of Filing of Stipulation and Agreement

APRIL 7, 1971.

Take notice that on April 2, 1971, Kansas-Nebraska Natural Gas Co. (Kansas-Nebraska) filed a request for approval of a proposed Stipulation and Agreement in Docket No. RP71-5. The Stipulation and Settlement Agreement is a result of discussions among Kansas-Nebraska, the Commission Staff, and interested parties in the above entitled proceedings.

The Stipulation and Agreement, among other things, provides for a reduction in rates below those which are presently in effect, subject to refund, in the above captioned proceedings and sets forth proposed rates to become effective beginning March 16, 1971; requires refunds by Kansas-Nebraska for the excess which has been collected above the rates set forth in the Stipulation and Agreement; allows Kansas-Nebraska to increase its rates from time to time until December 31, 1972, or until the filing of another rate case, whichever is earlier, to reflect rate increases of its suppliers and requires Kansas-Nebraska to decrease its rates to reflect supplier rate reductions; requires Kansas-Nebraska to flow-through to its jurisdictional customers the appropriate portion of all refunds, together with interest, received from its suppliers during the term of the Stipulation and Agreement; provides for a moratorium on rate increases being placed into effect, except for those increases pursuant to the tracking provisions, until March 16, 1972; and requires that those parties in the Docket No. RP71-5 proceeding who had filed petitions to intervene in Docket No. CP71-149 will withdraw any and all objections to the issuance of the applied-for certificate to Kansas-Nebraska in that docket. The Stipulation and Agreement represents a settlement of all issues contained in Docket No. RP71-5.

Copies of the Stipulation and Agreement were served on all parties to the proceedings in Docket No. RP71-5. Comments with respect to the proposed Stipulation and Agreement may be filed with the Commission on or before April 20, 1971.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-5098 Filed 4-12-71;8:48 am]

[Docket No. CP71-235]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Notice of Application

APRIL 6, 1971.

Take notice that on March 31, 1971, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, IL 60603, filed in Docket No. CP71-235 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of an additional 6,500 Mcf of natural gas daily to Interstate Power Co. (Interstate), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant requests authorization to increase its daily contract delivery volume to Interstate from 44,272 Mcf to 50,772 Mcf. Applicant states that no additional facilities are required to effectuate the proposed additional service. The increased volumes of natural gas will be used by Interstate to meet the expanding requirements of its customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 27, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to interevene 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.71-5083 Filed 4-12-71;8:47 am]

[Docket No. RP70-35]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Order Approving Rate Settlement

APRIL 7, 1971.

Natural Gas Pipeline Company of America (Natural), on January 15, 1971, filed a motion for approval of a settlement in the above captioned proceedings, together with a Stipulation and Agreement, which it proposes as the basis for settlement. The proposed settlement was reached after a series of conferences among the parties. Natural requests that the Commission approve the Stipulation and Agreement in settlement and disposition of all issues involved in these proceedings. The Company requests waiver of the Commission's general rules and regulations, including but not limited to section 154, to the extent necessary to effectuate all of the provisions of the Stipulation and Agreement.

The proceedings in Docket No. RP70-35 involve Natural's filing on May 28, 1970, a general rate increase. The proposed increased rates were suspended until December 1, 1970, by the Commission's order issued June 26, 1970. The originally proposed rate schedule provided for an increase in jurisdictional revenues by $46,353,851 annually. The proposed settlement provides for an increase of $36,500,000 and certain provisions which will permit additional rate adjustments during 1971.

The principal provisions of the settlement proposal may be summarized as follows:

[1] That portion which has been acquired by the Army Corps of Engineers in connection with the Chief Joseph Project.

(1) Natural shall file revised tariff sheets reflecting the rates shown on appendix A thereto to be effective as of December 1, 1970, and to refund with interest of 7 percent annually all amounts collected in excess of the rates set forth in appendix A.

(2) The "75 Percent Minimum Bill" provisions in Natural's PL–1 Rate Schedule shall be eliminated.

(3) A new purchased gas cost adjustment clause is to be added providing for adjustments of all rates either upward or downward to reflect increases and decreases in Natural's cost of purchased gas with the limitation that the combined dollar effect on Natural of such cost variations must be at least 1 mill per Mcf of jurisdictional sales and that after the first such adjustment any further adjustment may be effected no sooner than 6 months after the most recent adjustment. The purchased gas adjustment clause contains a provision that unless the Commission notifies Natural and its customers to the contrary within 15 days from the date of any filing made thereunder, the filing shall be deemed acceptable to the Commission.

(4) Natural may file and place into effect, without suspension, increased demand rates and other charges based thereon to reflect its costs under a contract with Michigan Wisconsin Pipe Line Co. for additional storage service of 45,000 Mcf per day at a cost of $1,576,800 annually, such contract to become effective March 1, 1971.

(5) Natural may file and place into effect, without suspension, increases in its demand rates and other charges based thereon to reflect the return and tax effects of the inclusion in the rate base of any expansion in Natural's storage facilities which is certificated and placed into service in 1971, together with associated operating expenses.

(6) Natural may adjust its demand rates and other charges based thereon to reflect any advance payments for gas made during 1971, but must refund, with interest, any portion thereof found by the Commission to be unjustified. It is further provided, than any repayments of such advances to Natural shall be passed on to jurisdictional customers in the form of rate reductions.

(7) In the event Natural's sales for 1971 exceed the estimated 1,100,678,743 Mcf of gas upon which Natural's proposed rates are based, refunds, with interest, will be made to its jurisdictional customers based upon the excess of revenues collected therefrom over purchased gas cost (plus 2.5 cents per Mcf transporation costs).

(8) The Stipulation and Agreement contains provision for refund in the event that Natural's claim to the State of Illinois that a lower apportionment of income should be utilized to determine Illinois Income Tax is upheld.

(9) The settlement further contains provision for refunds, if it is finally determined that depreciation on Natural's right-of-way is a valid Federal Income Tax deduction or if Natural falls to use a double declining balance depreciation method for tax purposes.

Copies of Natural's motion and the proposed Stipulation and Agreement were served on all parties to these proceedings, all of Natural's jurisdictional customers, and interested State commissions. Notice of the filing was published in the FEDERAL REGISTER (36 F.R. 2423). Illinois Power Co. and Wisconsin Southern Gas Co., both intervenors in the proceedings, filed statements in support of the proposed settlement. Comments and objections were filed by the General Services Administration (GSA) and by the City of Chicago (Chicago).

GSA objects to the inclusion of a purchased gas adjustment clause included in the Stipulation and Agreement but otherwise supports it and urges Commission approval. GSA contends that the purchased gas adjustment clause should not become a permanent part of Natural's tariff and that the following safeguards should be added: (1) Cost and revenue studies should be filed with the Commission every 12 to 24 months; (2) the clause should only be operative for 4 years before affirmative action is required to continue its use; (3) the degree to which rates could be increased without a formal proceeding should be limited to a certain amount (e.g., 6 percent or 7 percent higher than the tariff rates last set by formal FPC proceeding); and (4) some type of provision for incentive to price negotiation e.g., a requirement that the pipeline absorb a portion of the increased gas cost.

The safeguards which GSA suggests be added to this purchased gas adjustment clause are substantially the same as those GSA filed on November 17, 1970, in the rulemaking proceeding under Docket No. R–406 with respect to proposed § 154.38 (d)(4)(vi). The operation of this purchased gas adjustment clause will be subject to such provisions included in any order resulting from the Docket R–406 or any other proceedings. Additionally, the purchased gas adjustment clause is subject to our review under either section 4 or 5 of the Natural Gas Act.

Chicago objects to (1) the purchased gas adjustment clause, (2) the provision which allows Natural to adjust its rates to reflect the cost of additional storage service from Michigan Wisconsin Pipe Line Co., (3) the provision which allows adjustment of rates to reflect additional storage capacity on Natural's system, and (4) the provision which allows adjustment of rates to reflect advanced payments for gas in 1971 on the grounds that such provisions in the aggregate provide Natural a windfall. Chicago would, however, agree to the stipulation and Agreement without modification, provided that Natural agrees to a 1-year moratorium on the filing of any new rate proceeding and an agreement on the part of Natural to refund all moneys earned over an 8.25-percent rate of return under a post-audit procedure.

The purchased gas adjustment clause is an extension of the tracking principle presently included in Natural's rates, but one which more accurately adjusts for changes in the cost of purchased gas than does the present tracking provision. The other three provisions objected to by Chicago all related to adjustment which may be made to reimburse Natural for expenditures when made in an effort to increase its gas supply. The Stipulation and Agreement indicates that Natural must increase its supplies if the current level of demands of its customers during the heating seasons in the years following 1971 are to be met. We believe that these provisions will not result in a windfall to Natural and as indicated above all provisions of Natural's tariff are subject to our review.

Based upon our review of Natural's filing, data distributed and made available to the parties by staff, the terms and provisions of the Stipulation and Agreement and the objections, we conclude that the proposed settlement provides a reasonable and appropriate disposition of the issues herein.

The Commission finds: The settlement of these proceedings on the basis of the Stipulation and Agreement submitted by Natural on January 15, 1971, is reasonable and proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be approved and made effective, except that the provision contained in the purchased gas adjustment clause requiring that filings made thereunder be deemed acceptable unless the Commission notifies Natural and its customers to the contrary within 15 days is impracticable and must be deleted.

The Commisson orders:

(A) The Stipulation and Agreement submitted by Natural on January 15, 1971, and incorporated herein by reference, is approved except as hereinafter ordered modified.

(B) Natural shall within 20 days of the date hereof file revised tariff sheets to be made effective as of December 1, 1970, deleting the provision in the purchased gas adjustment clause providing for acceptance of tariff sheets filed thereunder unless notice to the contrary is given Natural and its customers within 15 days. In all other respects such revised tariff sheets shall be identical to those appended to the Stipulation and Agreement as Appendix C.

(C) Natural shall fully comply with each of the provisions of the Stipulation and Agreement and of this order.

(D) Section 154.38(d)(3) of the Commission's general rules and regulations is waived to permit the inclusion in Natural's tariff of the purchased gas adjustment clause.

(E) Natural's purchased gas adjustment clause shall be subject to, and modified to conform with, § 154.38(d)(4)(vi) of the Commission's rules and regulations, or any substitution therefor, if adopted by the Commission in Rulemaking Docket R–406.

(F) Advance payments made under Article VIII of the Stipulation and Agreement will be subject to our orders

410, 410–A and any subsequent order which may be issued in Docket No. R–411.

(G) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff, Natural, or any other party or person affected by this order, in any proceeding now pending or hereafter instituted by or against Natural or any other person or party.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Acting Secretary.*

[FR Doc.71–5094 Filed 4–12–71;8:47 am]

[Docket No. RP70–42]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Order Approving Monthly Quantity Settlement

APRIL 7, 1971.

Natural Gas Pipeline Company of America (Natural) filed a motion for approval of settlement in the above-captioned proceedings, together with a Stipulation and Agreement on January 15, 1971, and further filed a motion to correct the Stipulation and Agreement on January 22, 1971.[1] Natural requests that the Commission approve the Stipulation and Agreement, as corrected, in settlement and disposition of the issue of allocation of Natural's gas supply among its customers during the year 1971. The Company requests waiver of the Commission's rules and regulations to the extent necessary to effectuate all of the provisions of the Stipulation and Agreement.

The proceedings in Docket No. RP70–42 involve Natural's filing of June 25, 1970, revised tariff sheets which would institute "monthly quantities" for any month in which Natural's gas supply is insufficient to allow it to deliver full "contract quantities" to each customer. Conferences were held among Natural, the interveners, and the Commission Staff to explore the possibility of settlement of the issues in the proceedings. The Stipulation and Agreement here under consideration is the result of such conferences.

The principal provisions of the settlement proposal are as follows:

(1) Within twenty (20) days after the date upon which the Commission's order approving this Stipulation and Agreement shall become final and nonappealable, Natural shall file revised tariff sheets, copies of which are attached as appendix A to such Stipulation and Agreement, to become effective as of December 1, 1970, and to terminate November 30, 1971, which will implement this settlement.

(2) During the calendar year 1971 limitations in the form of monthly quantities will be placed upon the amount of gas which Natural must deliver to its customers under existing contracts. Monthly quantities for 1971 reflect full customer requests except during the months of April through October. If Natural obtains more gas than is presently anticipated, that excess is to be delivered to customers during the months of April through October in proportion to the amount of curtailment each customer agreed to accept as set out in appendix C to the Stipulation and Agreement.

(3) Natural will not be held contractually liable for failure to deliver gas in excess of the prescribed monthly quantities set out in the Stipulation and Agreement nor shall the "Adjustment for Delivery Deficiency" provided in Natural's rate schedule be effective for such failure.

(4) The tariff sheets filed in these proceedings on July 8, 1970, and made effective on December 1, 1970, shall be voluntarily suspended until December 1, 1971, during which time conferences and/or hearings will be held to determine the issues in this proceeding.

(5) A monthly over-take penalty of $2 per Mcf shall be charged on any gas taken in excess of the "monthly quantity" which does not qualify as "emergency gas" under the Stipulation and Agreement. This penalty shall not apply to any customer whose daily contract quantity is less than 30,000 Mcf.

(6) Any customer whose daily contract quantity is 30,000 Mcf or less may increase purchases from Natural up to contract demand to the extent necessary to meet the requirements for new firm year-round loads. No new seasonal or interruptible loads may be added.

(7) The Commission is requested to order that the propriety of the Tariff Sheets filed by Natural on July 8, 1970, or any modifications thereof be promptly determined under section 4 of the Natural Gas Act.

Copies of Natural's motion and the proposed Stipulation and Agreement as well as the motion to correct the Stipulation and Agreement were served on all parties to these proceedings, Natural's jurisdictional customers, and interested state commissions. Notice of the filing was published in the FEDERAL REGISTER (36 F.R. 2423). Illinois Power Co. and Wisconsin Southern Gas Co., both intervenors in the proceedings, filed statements in support of the proposed settlement. Comments and objections were filed by Northern Illinois Gas Co. (NIGAS), Iowa-Illinois Gas and Electric Co. (Iowa-Illinois) and Northern Indiana Public Service Co. (NIPSCO).

NIGAS objects to the language used in paragraph 4 of the Stipulation and Agreement wherein the Commission is requested to order that the propriety of the tariff sheets be promptly determined under the standards of section 4 of the Natural Gas Act. NIGAS on August 5, 1970, moved the Commission to dismiss these proceedings under section 4 of the Natural Gas Act asserting that the limitations of deliveries sought by Natural constitutes a partial abandonment of service which could be decided only in a section 7 proceeding. NIGAS contends that whether the standards to be applied are section 4 or section 7 or some other section of the Natural Gas Act should not be settled as a part of this agreement. With this we agree. The Commission has not yet rendered an opinion as to which section is applicable nor has the issue been briefed and argued as we ordered on September 25, 1970.

NIGAS further objects to the exclusion of any of Natural's customers whose daily Contract Quantity is less than 30,000 Mcf from the over-take penalties of paragraph 5 of the Stipulation and Agreement. NIGAS urges that to exclude these smaller customers from the penalty would be to allow them to take any amount of gas up to contract quantity for any purpose, including addition of off peak or interruptible loads. NIGAS contends that to allow such purchases by these customers at a time when NIGAS and other users are required to accept substantial curtailment of service would be unjust. The Stipulation and Agreement specifically provides that the only increases that will be allowed such customers are firm year around loads; thus, there are adequate safeguards against off peak and interruptible loads being added by these customers.

Iowa-Illinois filed comments requesting clarification of the language in paragraph 4 discussed above in the first objection by NIGAS and that discussion makes further comment here unnecessary. Iowa-Illinois requests clarification of the effect of the language in paragraph 4 which would seem to indicate that the tariff Natural proposed on July 8, 1970, plus any modifications it may wish to file on or before October 1, 1971, shall become effective on December 1, 1971. This Stipulation and Agreement provides a settlement only as to issues with respect to allocation of Natural's supply. It allows normal rate filings and modification in schedules which do not affect the allocation (such as the rate increase in Docket No. RP70–35). Hearings are hereafter ordered reconvened to resolve the remaining issues in this Docket No. RP70–42, and no further modification of tariff provisions with respect to allocation or other provisions incident thereto will be allowed except as may be ordered as a result of further proceedings in this docket. Such hearings will be set at a time which will allow the use of the most recent data on Natural's gas supply, an evaluation of the present agreement, and full examination of the issues presented.

NIPSCO agrees to the curtailment of gas delivery in accordance with the Stipulation and Agreement but objects to paragraph 5, which permits Natural to escape contract liability under the Adjustment for Delivery Deficiency provided

[1] The Corrections to the Stipulation and Agreement filed on Jan. 22, 1971, reflect the results of the corporate rearrangement of certain of Natural's customers and includes a tariff sheet setting out a penalty for unauthorized over-take included in the Stipulation and Agreement but inadvertently omitted from the tariff sheets.

in its rate schedule. We believe this objection to be without merit. The parties by voluntarily accepting curtailment tacitly agree that Natural is physically unable to meet its contract demands. Natural shows in its filing, that such curtailment is made necessary as a result of a nationwide gas shortage over which it had little or no control, and as a result of anti-pollution efforts which it could not have reasonably foreseen.

Natural in the Stipulation and Agreement, requests waiver of the Commission's general rules and regulations to the extent necessary to effectuate all of the provisions of this Stipulation and Agreement.

We have given full consideration to the merits of the controverted issues in light of the material presented and conclude that the Stipulation and Agreement should be accepted and approved.

The Commission finds: The settlement of these proceedings on the basis of the Stipulation and Agreement submitted by Natural on January 15, 1971, and corrected on January 22, 1971, is reasonable and proper and in the public interest and should be accepted, approved, and made effective.

The Commission orders:

(A) The Stipulation and Agreement of January 15, 1971, as corrected on January 22, 1971, is approved and the tariff sheets appended, as corrected appendices A, B, C, and D, are made effective as of December 1, 1970, and thereafter until November 30, 1971.

(B) Natural shall fully comply with each of the provisions of the Stipulation and Agreement, as corrected, and of this order.

(C) The hearing in this proceeding ordered on July 20, 1970, shall reconvene on July 7, 1971, to resolve the remaining issues in the proceedings under Docket No. RP70–42.

(D) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff, Natural, or any other party or person affected by this order, in any proceeding now pending or hereafter instituted by or against Natural or any other person or party.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71–5095 Filed 4–12–71;8:47 am]

[Docket No. E–7619]

NORTHERN STATES POWER CO. (MINNESOTA)

Notice of Application

APRIL 6, 1971.

Take notice that on March 30, 1971, Northern States Power Co. (Applicant) filed an application pursuant to section 204 of the Federal Power Act seeking an order authorizing the issuance of $50 million principal amount of first mortgage bonds.

Applicant is incorporated under the laws of the State of Minnesota with its principal business office at Minneapolis, Minn., and is engaged primarily in the electric utility business in central and southern Minnesota, southeastern South Dakota, and in the Fargo-Grand Forks and Minot areas of North Dakota.

The bonds are to be issued at competitive bidding pursuant to the Commission's regulations under the Federal Power Act. Applicant has scheduled May 26, 1971, as the date for the opening of bids. The bonds will be dated as of June 1, 1971, and will mature on June 1, 2001.

None of the bonds will be redeemable prior to June 1, 1976, other than for the sinking fund, with money borrowed at a lower cost.

The proceeds from the sale of the bonds will be used to prepay some of the outstanding short-term borrowings of the Applicant, which are estimated at $55 million as of the date of issuance of the bonds. The short-term borrowings have been or will be incurred in connection with the construction program of Applicant.

Expenditures during 1971 for the construction program of Applicant are estimated at $191 million, of which $181 million is for electric facilities, $6 million for gas facilities, and $4 million for heating, telephone, and general facilities.

Any person desiring to be heard or to make any protest with reference to said application should, on or before April 23, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10).

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71–5084 Filed 4–12–71;8:47 am]

[Docket No. CS71–237, etc.]

OIL PROPERTIES, INC., ET AL.

Notice of Applications for "Small Producer" Certificates [1]

APRIL 7, 1971.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce from areas for which just and reasonable rates have been established, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 3, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Acting Secretary.

Docket No.	Date filed	Name of applicant
CS71–237...	2–22–71	Oil Properties, Inc., 904 Midland Savings Bldg., Denver, CO 80202.
CS71–238...	3–12–71	M. J. Mitchell, 211 North Ervay, Room 405, Dallas, TX 75201.
CS71–239...	3–15–71	First National Bank, Trustee under the Will of Charles J. Watson (deceased), Post Office Box 999, Bartlesville, OK 74003.
CS71–240...	3–17–71	Tesoro Petroleum Corp., 8520 Crownhill, San Antonio, TX 78209.
CS71–241...	3–18–71	William Gruenerwald & Associates, Inc. (Operator) *et al.* 1111 Vickers Tower, Wichita, KS 67202.
CS71–242...	3–18–71	William Gruenerwald (Operator) *et al.*, 1111 Vickers Tower, Wichita, KS 67202.

[FR Doc.71–5099 Filed 4–12–71;8:48 am]

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Project No. 733]

WESTERN COLORADO POWER CO.

Notice of Application for New License for Constructed Project

APRIL 7, 1971.

Public notice is hereby given that application for a new license has been filed under section 15 of the Federal Power Act (16 U.S.C. 791a–825r) by the Western Colorado Power Co. (correspondence to:

Sidney G. Baucom, Post Office Box 899, Salt Lake City, UT 84110) for its constructed Ouray Plant Project No. 733, located on the Uncompahgre River in the town of Ouray, Ouray County, Colo., affecting lands of the United States within the Uncompahgre National Forest.

The Ouray Plant Project consists of: (1) A 71-foot high, 70-foot long rubble masonry diversion dam with an overflow spillway and a flow line intake; (2) a 3-acre reservoir; (3) a 6,131-foot long pipeline and penstock; (4) a pole line signal circuit roughly paralleling the pipeline; (5) a powerhouse containing a 432-kw. generating unit; and (6) appurtenant facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 30, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-5100 Filed 4-12-71;8:48 am]

FEDERAL RESERVE SYSTEM

PHMFG CORP.

Order Exempting Certain Loans by Banks From Securities Credit Regulations

In the matter of the application of PHMFG Corp., Washington, D.C., for an exemption from Securities Credit Regulations in connection with certain bank loans for the purpose of acquiring all the assets of F. I. duPont, Glore Forgan & Co.

There has come before the Board of Governors, pursuant to section 7(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78g(d)) and §§ 207.1(f)(3) of the Federal Reserve Regulation G (12 CFR 207.1(f)(3)) and 221.2(l) of Federal Reserve Regulation U (12 CFR 221.2(l)), the application of PHMFG Corp., Washington, D.C. ("Applicant"), a corporation organized and existing under the laws of the District of Columbia, for an exemption from the application of securities credit regulations in the circumstances set forth below.

Applicant proposes to obtain one or more loans from a bank or banks not exceeding $30 million in the aggregate which loan or loans will be secured by stock and the proceeds thereof used by Applicant to provide capital to F. I. duPont, Glore Forgan & Co. ("duPont"), a registered broker/dealer and member firm of the New York Stock Exchange, Inc. In connection with the proposed loan or loans, duPont will become a corporation, and Applicant will become and remain a controlling person of such corporation, as defined in a rule of the Securities and Exchange Commission (Rule 12b-2 (17 CFR 240.12b-2)).

As required by §§ 207.1(f)(3) of Regulation G and 221.2(l) of Regulation U, the Board has obtained certification by the Securities Investor Protection Corporation ("SIPC") that circumstances exist as to the financial condition of duPont which make it appropriate for the exemption to be granted.

The Board has considered the application in the light of the factors set forth in section 7(d) of the Act and in addition has obtained such certification by the SIPC. Upon such consideration, the Board finds and concludes that an exemption from securities credit regulations for the purpose of providing the substantial infusion of capital into duPont, as contemplated by Applicant, would be appropriate in the public interest and for the protection of investors: *Provided,* That all of the proceeds of such loan or loans as are covered by this order are contributed to duPont as capital (as defined in Rule 325 of the New York Stock Exchange, Inc.), that the proceeds of any withdrawal of such capital from duPont by Applicant shall be used to reduce or retire said loan or loans, and that Applicant becomes and remains a controlling person of duPont as aforesaid. It is the Board's judgment that subject to such conditions, the application should be approved.

Accordingly, it is hereby ordered, For the reasons set forth in the findings summarized above, that said application be and hereby is approved subject to the provisos hereinabove stated: *And provided further,* That the said loan or loans and related transactions are consummated within 90 calendar days following the date of this order, or within such extended period of time as may be granted by the Board upon application therefor filed 5 days prior to expiration of the said 90-day period.

By order of the Board of Governors, April 2, 1971.[1]

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-5066 Filed 4-12-71;8:45 am]

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, and Sherrill.

Absent and not voting: Governor Maisel.

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

FEDS CREEK COAL CO., INC.

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. 10868, Feds Creek Coal Co., Inc., Feds Creek No. 1 Mine, USBM ID No. 15 02097 0, Mouthcard, Pike County, Ky., Section ID No. 001 (3rd South), Section ID No. 003 (South Mains), Section ID No. 002 (2nd Right).

In accordance with the provisions of section 202(b)(4) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for renewal may be filed within 15 days after publication of this notice. Requests for public hearing must be completed in accordance with 30 CFR Part 505 (35 F.R. 11296, July 15, 1970), copies of which may be obtained from the panel on request.

A copy of the application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Suite 800, 1730 K Street NW., Washington, DC 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

APRIL 6, 1971.

[FR Doc.71-5078 Filed 4-12-71;8:46 am]

WESTMORELAND 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. 10035, Westmoreland Coal Co., Hampton No. 3 Mine, USBM ID No. 46 01283 0, Clothier, Boone County, W. Va., Section ID No. 002 (6 Right off 4 Left).

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 FR 11296, July 15, 1970), copies of which may be obtained from the panel on request.

A copy of the application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Suite 800, 1730 K Street NW., Washington, DC 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

APRIL 7, 1971.

[FR Doc.71-5079 Filed 4-12-71;8:46 am]

SECURITIES AND EXCHANGE COMMISSION

[812-2837]

ANDES COPPER MINING CO.

Notice of Application for Order of Temporary Exemption

APRIL 5, 1971.

Notice is hereby given that Andes Copper Mining Co. (Andes), 25 Broadway, New York, NY 10004, has applied pursuant to section 6(c) of the Investment Company Act of 1940 (Act) for an order of the Commission temporarily exempting it from the provisions of section 7 of the Act. All interested persons are referred to the application which is on file with the Commission for a statement of the representation, which are summarized below.

The Anaconda Co. (Anaconda) owns 99.64 percent of the outstanding stock of Andes and approximately 315 individuals, most of whom are residents of the United States, own the balance of the shares outstanding. Andes owns 49 percent of the capital stock of Compania de Cobre Salvador S.A. (Salvador), a Chilean corporation with the remaining capital stock owned by an agency of the Chilean government.

Andes has on file with the Commission an application for an order under section 3(b)(2) of the Act declaring that Andes is not an investment company. Section 3(b)(2) of the Act provides that the filing of on application thereunder shall exempt the applicant for a period of 60 days from all provisions of the Act applicable to investment companies as such.

The 60-day period expired on December 6, 1970, and Andes which has not registered as an investment company under the Act requests exemption from section 7 retroactively from that date until the Commission has acted upon the application under section 3(b)(2) of the Act.

Andes in requesting such temporary exemption has agreed that it shall be subject to all other provisions of the Act and the rules and regulations thereunder as though it were a registered company other than the following:

Section 8;
Section 10(a);
Section 13(a)(2);
Section 17 except subsections (h) and (i): *Provided however,* Anaconda may continue to act in the regular course of business as purchasing agent for Andes and for its copper mining subsidiary Salvador; Anaconda Sales Co., a wholly owned subsidiary of Anaconda, may continue to act as Salvador's sales agent; Anaconda may continue to charge Andes (as well as its other subsidiaries) for office space and overhead services provided it at Anaconda's New York offices; and Andes & Chile Exploration Co., another Anaconda subsidiary, may continue to share joint office space in Santiago, Chile, on a basis no less favorable to Andes than the present basis;
Section 18 (except subsection (d), section 30, and section 31.

Notice is further given that, in respect to the application pursuant to section 6(c) of the Act for an order of temporary exemption, any interested person may, not later than April 26, 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 appplication for an order of temporary exemption 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.71-5072 Filed 4-12-71;8:46 am]

[File No. 24C-3202]

DATACON INTERNATIONAL, INC.

Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

APRIL 6, 1971.

I. Datacon International, Inc. (issuer), a corporation incorporated under the laws of the State of Delaware on June 23, 1969, with offices at 2745 Bernice Road, Lansing, IL, filed with the Commission on June 30, 1970, a notification on Form 1-A, and an offering circular pertaining to a proposed offer to rescind the sale of 58,933 shares of its $1 par value common stock for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) thereof and Regulation A promulgated thereunder.

II. The Commission has reasonable cause to believe that the terms and conditions of Regulation A have not been complied with in the following respects:

A. The offering circular is materially deficient in that the financial statements included therein, being dated March 31, 1970, are approximately 11 months prior to the date hereof and exceed the 6-month period established by Item 11(a)(2) of Schedule I, adopted pursuant to Regulation A.

B. The financial statements are materially deficient in that:

(1) The balance sheet and accompanying notes (a) fails to disclose the method of valuing inventory; (b) includes arbitrary dollar values assigned to fixed assets, and (c) omits to disclose the material fact that a material contingent liability exists.

(2) The Operating Statement contains material omissions relating to sources of income and charges against income.

C. The issuer through its officers and directors has failed to cooperate with the Commission, as required by Rule 261(a)(7) of the general rules and regulations under the Securities Act of 1933, as amended.

III. *It is ordered,* Pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption of the issurer under Regulation A be, and it hereby is, temporarily suspended.

It is further ordered, Pursuant to Rule 7 of the Commission's rules of practice, that the issuer file answer to the allegations contained in this order within 30 days of the entry thereof.

Notice is hereby given that any persons having any interest in the matter may file with the Secretary of the Commission a written request for hearing within 30 days after the entry of this order; that within 20 days after receipt of such request, the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice however, to the consideration and presentation of additional matters at the hearing; that if no hearing is requested, and none is ordered by the Commission, this order shall become permanent on the 30th day after its entry and shall remain in effect unless, or until, it is modified or vacated by the Commission; and that notice of the time

and place for such hearing will be promptly given by the Commission.

By the Commission.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71-5070 Filed 4-12-71;8:46 am]

[811-1368]

FINANCIAL INSTITUTIONS GROWTH FUND, INC.

Notice of Proposal To Terminate Registration

APRIL 5, 1971.

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940 (Act), to declare by order upon its own motion that Financial Institutions Growth Fund, Inc. (Fund), c/o 1 Chase Manhattan Plaza, 54th Floor, New York, NY 10005, a corporation organized under the laws of the State of Maryland, and registered under the Act as an open-end, nondiversified management investment company, has ceased to be an investment company.

Fund was organized in Maryland on January 3, 1966, and filed a Notification of Registration on Form N-8A with the Commission on January 28, 1966. It filed its Registration Statement on Form N-8B-1 on April 27, 1966.

On June 7, 1967, a meeting of shareholders was held and a Plan of Complete Liquidation (the Plan) was adopted by unanimous vote. Fund has not effected any transactions in securities subsequent to the adoption of the Plan, except for the purposes of effecting the Plan. By October 1, 1967, applicant had liquidated and distributed substantially all of its assets to its sole stockholder, The Fund of Funds, Ltd.

Section 8(f) of the Act provides in pertinent part, that when the Commission, on its own motion, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that upon the effectiveness of such order, which may be issued upon the Commission's own motion where appropriate, the registration of such Company shall cease to be in effect.

Notice is further given that any interested person may, not later than April 23, 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 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 the company at the same address 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 under the Act, an order disposing of the matter may be issued by the Commission upon the basis of the information stated in this notice, unless an order for hearing upon this matter 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.71-5073 Filed 4-12-71;8:46 am]

TARIFF COMMISSION

[AA1921-68]

CERAMIC WALL TILE FROM THE UNITED KINGDOM

Determination of Injury

The Assistant Secretary of the Treasury advised the Tariff Commission on January 5, 1971, that ceramic wall tile from the United Kingdom is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended, In accordance with the requirements of section 201(a) of the Antidumping Act (19 U.S.C. 160(a)), the Tariff Commission instituted Investigation No. AA1921-68 to determine whether an industry in the United States is being, or is likely to be, injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

A public hearing was held on March 2 and 3, 1971. Notice of the investigation and hearing was published in the FEDERAL REGISTER of January 19, 1971 (36 F.R. 844).

In arriving at a determination in this case, the Commission gave due consideration to all written submissions from interested parties, evidence adduced at the hearing, and all factual information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of the investigation, the Commission determined by a vote of 4 to 1[1] that an industry in the United States was being injured by reason of the importation of ceramic wall tile from the United Kingdom sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

[1] Commissioners Sutton, Clubb, Moore, and Young determined in the affirmative. Commissioner Leonard determined in the negative.

STATEMENT OF REASONS FOR AFFIRMATIVE DETERMINATION BY COMMISSIONERS SUTTON, CLUBB, MOORE, AND YOUNG

In our opinion, an industry in the United States is being, or is likely to be, injured by reason of the importation of ceramic wall tile from the United Kingdom, which is being sold at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended.

In reaching this determination, three reasons have been persuasive: (1) Imports of ceramic wall tile from the United Kingdom have taken a sharply increased share of the U.S. market; (2) the prices of LTFV British tile have, for the most part, been below those of comparable domestic tile; and (3) the sales of LTFV ceramic wall tile have contributed to declining prices of some domestically produced tile.

The industry. The Commission has considered the injured industry to consist of those facilities in the United States engaged in the production of glazed ceramic wall tile. Such tile is currently produced domestically by 25 firms in 38 plants located in 12 States. Most of the firms produce only ceramic wall tile; some also produce mosaic tile.

The LTFV imported product. Virtually all ceramic wall tile from the United Kingdom determined by Treasury to be sold at LTFV was of the size 4¼" x 4¼" x ¼" and matching trim. The LTFV imports consisted predominantly of glazed ceramic wall tile and trim in solid shades, i.e., white, speckled white, cream, ivory, and various colors. Virtually no decorative ceramic wall tile and trim were found by Treasury to be sold at LTFV. The LTFV imports came from two manufacturers in the United Kingdom who work together in the promotion of sales of such tile to the United States.

The U.S. market. Ceramic wall tile and trim is used principally in the United States for surfacing walls in residential and nonresidential construction. The market for such products is scattered widely throughout the United States. It is related directly to the volume of domestic construction activities; sales are not highly concentrated in any particular geographic area.

Tests of injury.—The share of the U.S. market supplied by imports of ceramic wall tile from the United Kingdom rose sharply in 1968 (when LTFV sales occurred), and have remained at a higher level since then. In 1965-67, the period preceding the Treasury investigation, the United Kingdom supplied between 2 and 3 percent of annual U.S. consumption of ceramic wall tile. In 1968, the year which encompassed most of the time period covered by the Treasury study of LTFV imports, the United Kingdom supplied 6 percent of the U.S. market—double or more the share that it had supplied in the immediately preceding years. Thereafter, the United Kingdom's share rose to 7 percent in 1969, and then declined to 6 percent in 1970. As indicated above, a part of the imports of ceramic wall tile from the United Kingdom in 1968

were found to have been sold at less than fair value. However, the volume of LTFV imports was substantial, and they contributed materially to the increase in the imports of wall tile from the United Kingdom in that year.

Information obtained by the Commission in the investigation indicates that most British ceramic wall tile of the types imported at LTFV has been sold in the United States in recent years at prices below those of comparable domestic wall tile. The LTFV margins applicable to specific types of tile generally were equivalent to most of the margin of underselling in the United States; in some cases, the LTFV margin that was found was greater than the margin of underselling. In any event, it is clear that, in most cases, the British wall tile sold at LTFV would not have enjoyed the same price advantage vis-a-vis comparable U.S. wall tile except for the LTFV margin. In turn, if the British tile had had a lesser price advantage (or been offered at prices equivalent to those of domestic tile), the market penetration achieved by the British tile would have been less than in fact occurred.

Since 1968 a number of domestic producers have had to reduce the prices of their tile sold in the U.S. market. The Commission obtained information on the prices of domestic and imported tile in selected geographic markets in which substantial quantities of British tile were sold. Although pricing patterns varied somewhat, it is clear from the data that various domestic producers reduced their prices at the time that imports of British tile were increasing and being sold at prices lower than those for domestic tile. Under these circumstances, it is clear that the LTFV imports contributed to price deterioration in U.S. markets and to loss of sales by U.S. producers.

Conclusion. In the Commission's judgment, the imports of ceramic wall tile from the United Kingdom, sold at LTFV, have adversely affected the prices of comparable domestic tile, and have caused loss of sales by U.S. producers. Accordingly, we determine that an industry in the United States is being injured by reason of such LTFV imports.

STATEMENT OF REASONS FOR NEGATIVE DETERMINATION OF COMMISSIONER LEONARD

The Antidumping Act, 1921, as amended, requires that the Tariff Commission find two conditions satisfied before an affirmative determination can be made.

First, there must be injury, or likelihood of injury, to an industry in the United States, or an industry in the United States must be prevented from being established. The quantum or description of injury is not disclosed in the statute.

And second, such injury (or likelihood of injury or prevention of establishment) must be "by reason of" the importation into the United States of the class or kind of foreign merchandise the Secretary of the Treasury determined is being or is likely to be sold at less than fair value.

If either condition is not satisfied, a negative determination must be made. In the instant investigation, I find the second condition described above is not satisfied and therefore a negative determination is required. The facts before us do not show any injury or likelihood of injury to an industry in the United States by reason of the importation of ceramic wall tile from the United Kingdom sold or likely to be sold at less than fair value.[1] What the facts do show follows.

Market penetration. During the years 1965–67, the period immediately preceding Treasury's investigation of sales at less than fair value, imports of ceramic wall tile from the United Kingdom amounted to between 2 and 3 percent of U.S. consumption. In 1968, the period in which Treasury found sales at less than fair value,[1] total imports of ceramic wall tile from the United Kingdom supplied 6.4 percent of the U.S. market. A substantial share of the imports from the United Kingdom, however, were found not to have been sold at less than fair value; the LTFV imports of British tile accounted for a small share of the U.S. market, about 2 percent. The Treasury has not determined the extent of sales at less than fair value for the period since 1968, but British tile has since accounted for about the same or smaller share of the U.S. market as in 1968—6.6 percent in 1969 and 5.5 percent in 1970.

Aggregate U.S. imports of British tile did jump moderately in 1968, both absolutely and relative to U.S. production. U.S. consumption of ceramic wall tile, however, rose rather sharply in that year, being about 15 percent larger than in 1967. This rise in U.S. market demand drew increased imports from all sources. For example, the share of the U.S. market supplied by countries other than the United Kingdom, principally Japan, rose materially in 1968—from about 18 percent in 1967 to about 22 percent. After 1968 the share of the U.S. market supplied by countries other than the United Kingdom declined (as did the United Kingdom's share)—to 21 percent in 1969 and 20 percent in 1970.

There is no clear indication from the Tariff Commission's investigation that the increased sales of British ceramic wall tile in the U.S. market in recent years, had they not been made, would have accrued to the domestic industry. On the contrary, it is probable that a large proportion of such sales would have accrued to importers of tile from third countries, among them the importers of Japanese wall tile, whose prices have been materially below those of both domestically produced and imported British wall tile.

Price suppression or depression. The prices of domestically produced wall tile, on the average, have remained stable since 1964. The same can be said of the prices of British wall tile since 1967, although it is true that such prices generally held at a lower level than domestically-produced tile prices. The prices of Japanese wall tile, as noted above, have been materially below those of both domestic and British tile in recent years.

Data obtained in this investigation indicate that the net delivered prices of ceramic wall tile sold by U.S. producers, considered individually, followed divergent trends during 1967–70. For some producers such prices declined, for some they increased, and for some they remained relatively constant. The divergent trends existed for both first or second quality tile.

Conclusion. Given the relatively constant national average price for both domestically-produced and British ceramic wall tile in U.S. markets, together with diverging price patterns for individual domestic producers and materially lower prices for third-country imports, I cannot conclude that less-than-fair-value sales of British ceramic wall tile in U.S. markets have had either a suppressing or depressing effect on domestic market prices. In the absence of such fair price effects in the instant case, along with the small market penetration of less-than-fair-value sales, I cannot sustain a determination of injury or likelihood of injury to the domestic industry that is by reason of less-than-fair-value sales of imports from the United Kingdom, or of the likelihood of such sales, and hence, I determine in the negative.

My negative determination in this case is entirely consistent with my previous negative determination in the Cambridge Tile Manufacturing Co. case, a workers' case brought under the adjustment assistance provisions of the Trade Expansion Act of 1962. In the latter case I attributed increased U.S. imports, in part, to price discrimination practiced by the Japanese and stated that "In 1966, * * *, as an outgrowth of the Treasury dumping investigation of wall tile and on the basis of informal negotiations with the U.S. Government, the Japanese Government imposed mandatory quantitative controls on exports of wall and floor tile to the United States and minimum export prices on exports of wall tile to the United States. It is apparent to us that the imposition of these controls has resulted in the United Kingdom and Mexico, former major suppliers, regaining a significant share of the U.S. domestic wall tile market."[1] It was thus indicated in the Cambridge Tile case that

[1] There is no evidence that the importation of British wall tile sold or likely to be sold in the United States at less than fair value prevented an industry in the United States from being established; therefore, this consequence of dumping, a statutory alternative to injury or likelihood of injury, will not be treated further.

[1] Treasury's investigation of the prices of British tile actually covered the last three quarters of 1968 and the first quarter of 1969.

[1] Ceramic Floor and Wall Tile: Certain Workers of the Cambridge Tile Mfg. Co., Investigation No. TEA–W–11, TC Publication 318, March 1970, p. 6.

increased imports from the United Kingdom were attributable not to price discrimination practiced by the British, but rather to the imposition of export restrictions by the Japanese.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.71-5111 Filed 4-12-71;8:49 am]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

APRIL 7, 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. 42170—*Peanuts between points in Oklahoma and Texas.* Filed by Southwestern Freight Bureau, agent (No. B-218), for interested rail carriers. Rates on peanuts, unshelled, raw, in bulk or in sacks, in boxes or in barrels, in carloads, as described in the application, between points in Oklahoma, on the one hand, and points in Texas, on the other.

Grounds for relief—Private truck competition, revision of minimum weights.

Tariff—Supplement 96 to Southwestern Freight Bureau, agent, tariff ICC 4702.

FSA No. 42171—*Electrodes and Related Articles from Memphis, Tennessee.* Filed by Southwestern Freight Bureau, agent (No. B-220), for interested rail carriers. Rates on electrodes, carbon furnace or electrolytic bath (carbon plugs), NOIBN, green electrode mix, loose or in packages, straight or mixed carloads, as described in the application, from Memphis, Tenn., to Bayport, Cypress, East Baytown, and Houston, Tex.

Grounds for relief—Water competition.

Tariffs—Supplements 91 and 107 to Southwestern Freight Bureau, agent, tariffs ICC 4875 and 4847, respectively.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-5119 Filed 4-12-71;8:49 am]

FOURTH SECTION APPLICATION FOR RELIEF

APRIL 8, 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. 42172.—*Liquid caustic soda from St. Gabriel, La.* Filed by O. W. South, Jr., agent, (No. A6241), for interested rail carriers. Rates on sodium (soda), caustic (sodium hydroxide), in tank carloads, as described in the application, from St. Gabriel, La., to Graniteville, S.C.

Grounds for relief—Market competition.

Tariff—Supplement 179 to Southern Freight Association, agent, tariff ICC S-699.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-5120 Filed 4-12-71;8:49 am]

[Notice 276]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

APRIL 7, 1971.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 4483 (Sub-No. 14 TA), filed April 5, 1971. Applicant: MONSON DRAY LINE, INC., Route 1, Red Wing, MN 55066. Applicant's representative: A. R. Fowler, 2288 University Avenue, St. Paul, MN 55114. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Silos*, knocked down or in sections, and *component parts thereof, including silo loading and unloading equipment and equipment and materials* incidental to the erection and completion of silos, from Cannon Falls, Minn., to points in Iowa, Minnesota, and Wisconsin, for 180 days. Supporting shipper: H & H Silo Co., Inc., Cannon Falls, Minn. 55009. Send protests to: A. N. Spath, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 448 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

No. MC 40270 (Sub-No. 11 TA), filed April 5, 1971. Applicant: CRABBS TRANSPORT, INC., Rural Route No. 2, Post Office Box 3486, Enid OK 73701. Applicant's representative: Glenn E. Crabbs (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feed and feed ingredients*, in tank- or hopper-type vehicles, between Enid, Okla., on the one hand, and, on the other, points in Kansas, for 180 days. Supporting shipper: Farmland Industries, Inc., C. H. DeKesel, manager, Transportation Service, Kansas City, MO 64116. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240 Old Post Office Building, 215 Northwest Third, Oklahoma City, OK 73102.

No. MC 107544 (Sub-No. 99 TA), filed April 1, 1971. Applicant: LEMMON TRANSPORT COMPANY, INCORPORATED, Post Office Box 580, Marion, VA 24354. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fuel oil*, in bulk, in tank vehicles, from Piney Point, Md., to Fredericksburg and Front Royal, Va., for 180 days. Supporting shipper: FMC Corp., 633 Third Avenue, New York, NY 10017. Send protests to: Clatin M. Harmon, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 215 Campbell Avenue SW., Roanoke, VA 24011.

No. MC 110525 (Sub-No. 1000 TA), filed April 1, 1971. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 East Lancaster Avenue, Downingtown, PA 19335. Applicant's representative: Thomas J. O'Brien (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Portland cement*, in bulk, in tank vehicles, from Howes Cave, N.Y., to Garfield Heights, Ohio, for 180 days. Supporting shipper: Penn-Dixie Cement Corp., Post Office Box 152, Nazareth, PA 18064. Send protests to: Peter R. Guman, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1518 Walnut Street, Room 1600, Philadelphia, PA 19102.

No. MC 110563 (Sub-No. 61 TA), filed April 5, 1971. Applicant: COLDWAY FOOD EXPRESS, INC., Box 47, Ohio Building, Sidney, OH 45365. Applicant's representative: John L. Maurer (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Inedible boneless beef*, from plants in Norfolk, Ainsworth, Brunswick, and Gering, Nebr., to Allen Products Co., at Crete, Nebr., and Cleveland, Ohio, for 150 days. Supporting shipper: CET Enterprises, Inc., Post Office Box 979, Norfolk, Nebr. 68701. Send protests to: Keith D. Warner, District Supervisor, Interstate

Commerce Commission, Bureau of Operations, 5234 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

No. MC 111401 (Sub-No. 328 TA), filed April 5, 1971. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Boulevard, Post Office Box 632, Enid, OK 73701. Applicant's representative: Victor Comstock (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printing ink*, in bulk, from Tulsa, Okla., to Seattle, and Vancouver, Wash., for 180 days. Supporting shipper: Sum Chemical Corp., J. Bolzak, Director of Traffic, 631 Central Avenue, Carlstadt, NJ 02072. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240, Old Post Office Building, 215 Northwest Third, Oklahoma City, OK 73102.

No. MC 112750 (Sub-No. 279 TA) (Correction), filed March 19, 1971, published FEDERAL REGISTER issue of March 27, 1971, and republished in part as corrected this issue. Applicant: AMERICAN COURIER CORP., 2 Nevada Drive, Lake Success, NY 11040. Applicant's representative: John M. Delany (same address as above). NOTE: The purpose of this partial republication is to show the correct docket number assigned thereto, No. MC 112750 (Sub-No. *279* TA), in lieu of MC 112750 (Sub-No. *270 TA*), which was in error. The rest of the notice remains as previously published.

No. MC 112822 (Sub-No. 189 TA), filed April 5, 1971. Applicant: BRAY LINES INC., Post Office Box 1191, 401 North Little Street, Cushing, OK 74023. Applicant's representative: Joe W. Ballard (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Omaha, Nebr., to points in Michigan, Missouri, Ohio, Wisconsin, and East St. Louis, Ill., commercial zone and Alton, Ill., for 150 days. Supporting shipper: Albin J. Budash, Manager, Transportation Cost Analyses, Campbell Soup Co., Campbell Place, Camden, NJ 08101. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240, Old Post Office Building, 215 Northwest Third, Oklahoma City, OK 73102.

No. MC 113678 (Sub-No. 416 TA), filed April 5, 1971. Applicant: CURTIS, INC., Post Office Box 16004, Stockyard Station, Denver, CO 80216 (Commerce City). Applicant's representative: Stanley Averch (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Albuquerque, N. Mex., to Denver, Colo., for 180 days. Supporting shipper: Merit Foods, Inc., 8806 Fourth Street, Albuquerque, NM. Send protests to: District Supervisor Herbert C. Ruoff, Interstate Commerce Commission, Bureau of Operations, 2022 Federal Building, Denver, CO 80202.

No. MC 117574 (Sub-No. 199 TA), filed April 5, 1971. Applicant: DAILY EXPRESS, INC., Post Office Box 39, 1076 Harrisburg Pike, Carlisle, PA 17013. Applicant's representative: S. Berne Smith, 100 Pine Street, Harrisburg, PA 17108. Authority sought to operate as a *common carrier*, by motor vehicle over regular routes, transporting: *Tractors* (except truck tractors), with or without attachments, from the plant and warehouse sites and storage facilities of J. I. Case Co. at or near Burlington, Iowa, and Racine, Wis., to points in Alabama, Connecticut, Delaware, Florida, Georgia, Indiana, Kentucky, Maine, Maryland, Massachusetts, the Lower Peninsula of Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and the District of Columbia, for 180 days. Supporting shipper: J. I. Case Co., 700 State Street, Racine, WI 53404. Send protests to: Robert W. Ritenour, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 508 Federal Building, Post Office Box 869, Harrisburg, PA 17108.

No. MC 118831 (Sub-No. 78 TA), filed April 5, 1971. Applicant: CENTRAL TRANSPORT, INCORPORATED, Uwharrie Road Post Office Box 5044 (27261), High Point, NC 27263. Applicant's representative: Richard E. Shaw (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dimethyl terephthalate*, in bulk, from E. I. du Pont de Nemours & Co. at Gibbstown, N.J., to E. I. du Pont de Nemours & Co. plants at Cape Fear (Brunswick County), N.C., Brevard plant (Translyvania County), N.C., and Old Hickory, Tenn., for 180 days. Supporting shipper: E. I. du Pont de Nemours & Co., Inc., Wilmington, Del. 19898. Send protests to: Archie W. Andrews, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Post Office Box 26896, Raleigh, NC 27611.

No. MC 123255 (Sub-No. 9 TA), filed April 5, 1971. Applicant: B & L MOTOR FREIGHT, INC., 140 East Everett Avenue, Newark, OH. Applicant's representative: C. F. Schnee (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wine*, from Westfield, N.Y., to points in Ohio (except Cleveland, Ohio), and Chicago, Ill., for 180 days. Supporting shipper: Mogen David Wine Corp., 3737 South Sacramento Avenue, Chicago, IL 60632. Send protests to: A. M. Culver, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 225 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

No. MC 135422 (Sub-No. 1 TA), filed April 1, 1971. Applicant: B & W TRUCKING, CO., 1625 Earl Drive, Dubuque, IA 52001. Applicant's representative: Carl E. Munson, 469 Fischer Building, Dubuque, IA 52001. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and building materials* (except asphalt in bulk, in tank vehicles) from Dubuque, Iowa, to points in Carroll, Jo Daviess, and Stephenson Counties, Ill., and Crawford, Grant, Iowa, and Lafayette Counties, Wis., for 180 days. Supporting shipper: Wickes Lumber & Building Supplies, Dubuque, Iowa. Send protests to: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 332 Federal Building, Davenport, IA 52801.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-5125 Filed 4-12-71;8:50 am]

[Notice 679]

MOTOR CARRIER TRANSFER PROCEEDINGS

APRIL 7, 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-72705. By supplemental order of April 6, 1971, the Motor Carrier Board approved the transfer to O. D. Anderson, Inc., Greenville, Pa., of the operating rights in Certificate No. MC 111422 (Sub No. 6) issued February 24, 1971, to Orville D. Anderson, Greenville, Pa., authorizing the transporation of passengers and their baggage, in the same vehicles with passengers, in round-trip sightseeing or pleasure tours, beginning and ending at points in Cuyahoga, Summit, Mahoning, Median, and Portage Counties, Ohio, and Lawrence County, Pa., and extending to points in the United States including Alaska but excluding Hawaii. S. Harrison Kahn, Suite 733, Investment Building, Washington, DC 20005, attorney for applicants.

No. MC-FC-72786. By order of April 6, 1971, the Motor Carrier Board approved the transfer to Triangle Air-Trucking Corp., West Hartford, Conn., of the operating rights in Certificates Nos. MC 127898 (Sub-No. 1) and MC 127898 (Sub-No. 3) issued May 31, 1968, and February 27, 1970, to Direct Air Freight Corp., Windsor Locks, Conn., authorizing the transportation of general commodities, with usual exceptions, between Bradley International Airport, Windsor Locks, Conn., on the one hand, and, on the other, North Adams and Williamstown,

Mass., and Pownal, Vt., and between Albany, N.Y., and Bradley International Airport, Windsor Locks, Conn., restricted to traffic having an immediately prior or subsequent movement by air. Reubin Kaminsky, Post Office Box 17-067, 342 North Main Street, West Hartford, CO 06117, attorney for applicants.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-5124 Filed 4-12-71;8:50 am]

[S.O. 1063]

AUTOMOBILE MANUFACTURERS ASSOCIATION, INC.

Railroad Operating Regulations for Freight Car Movement

At a session of the Interstate Commerce Commission, Division 3, acting as an appellate division, held at its office in Washington, D.C., on the 2d day of April 1971.

Upon consideration of the petition of the Automobile Manufacturers Association, Inc., filed March 8, 1971, requesting reconsideration of the order of the Commission dated March 1, 1971, denying its previous petition for certain modifications of Service Order No. 1063.

It appearing, that Service Order No. 1063 was issued by the Railroad Service Board in accordance with applicable law and upon its determination that an emergency exists because of an acute shortage of freight cars in all sections of the country; that similar provisions in similar service orders were three times postponed during the period October 2, 1970, to December 31, 1970; that the petitioners have had ample opportunity to review their operations to avoid the excessive detention of empty freight cars held for the exclusive use of shippers of automobile parts; that numerous empty cars assigned to the exclusive use of certain shippers are held idle for excessive periods awaiting orders for placement for loading; that investigations made since Service Order No. 1063 became effective have disclosed that many shippers, in order to avoid penalty charges, have released substantial numbers of cars from assignment, thereby making them available for use by other shippers; and that the petition states no errors of fact or law warranting the relief sought, and for good cause appearing;

It is ordered, That the petition be, and it is hereby, denied.

By the Commission, Division 3, acting as an appellate division.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-5122 Filed 4-12-71;8:50 am]

[S.O. 1063]

WISCONSIN MANUFACTURERS' ASSOCIATION

Railroad Operating Regulations for Freight Car Movement

At a session of the Interstate Commerce Commission, Division 3, acting as an appellate division, held at its office in Washington, D.C., on the 2d day of April 1971.

Upon consideration of the petition filed on March 26, 1971, by the Wisconsin Manufacturers' Association, requesting modification or vacation of Service Order No. 1063.

It appearing, that Service Order No. 1063 was issued by the Railroad Service Board in accordance with applicable law and upon its determination that an emergency exists because of an acute shortage of freight cars in all sections of the country; that similar provisions in similar service orders were three times postponed during the period October 2, 1970, to December 31, 1970; that each shipper represented by the petitioner has had ample opportunity to review his operations to avoid the excessive detention of empty freight cars held for his exclusive use; that numerous empty cars assigned to the exclusive use of certain shippers are held idle for excessive periods awaiting orders for placement for loading; that investigations made since Service Order No. 1063 became effective have disclosed that many shippers, in order to avoid penalty charges, have released substantial numbers of cars from assignment, thereby making them available for use by other shippers; and that the petition states no errors of fact or law warranting the relief sought, and for good cause appearing;

It is ordered, That the petition be, and it is hereby, denied.

By the Commission, Division 3, acting as an appellate division.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-5123 Filed 4-12-71;8:50 am]

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