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Civil Aeronautics Board
Coast Guard
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Comptroller of the Currency
Consumer and Marketing Service
Customs Bureau
Defense Department
Environmental Protection Agency
Federal Aviation Administration
Federal Communications Commission
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Chapter I—Consumer and Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

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PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

PART 70—GRADING AND INSPECTION OF POULTRY AND EDIBLE PRODUCTS THEREOF AND U.S. CLASSES, STANDARDS, AND GRADES WITH RESPECT THERETO

Miscellaneous Amendments

Under authority contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), the U.S. Department of Agriculture hereby amends the regulations governing the Grading of Shell Eggs and U.S. Standards, Grades, and Weight Classes for Shell Eggs (7 CFR Part 56), and the regulations governing the Grading and Inspection of Poultry and Edible Products Thereof and U.S. Classes, Standards, and Grades with Respect Thereto (7 CFR Part 70), as set forth below:

Statement of considerations. On July 1, 1971, the Consumer and Marketing Service will change to a new accounting procedure and automatic data processing system. This change will affect program records including billings for the voluntary poultry and egg grading programs administered by the Poultry Division.

To adjust to this system, it is necessary to change some of the billing provisions contained in the shell egg and poultry grading regulations (7 CFR Parts 56 and 70). Beginning July 1, 1971, the regulations will provide for an approximate 28-day billing period rather than the present monthly period. This will result in users of the service being billed 13 times a year rather than 12 times. In order to begin and end billings at the close of each fiscal year, there will be one billing period of less than 28 days and one billing period of more than 28 days.

This change will not increase or decrease the charge for graders' salaries on an annual basis. Overall, the additional billing period will result in an increase on an annual basis in the administrative charges. The increase is not great since the volume of product for the 28-day period will be less than for a monthly period, therefore resulting generally in a lower charge per billing period. Administrative charges are used to pay "above plant cost" such as supervisory and staff cost. These charges have not been increased since July 1, 1969. Since that time, supervisory salary costs have increased about 16 percent and per diem rates have also been raised. However, these increases have been absorbed.

In spite of the increase in revenue generated by an extra billing period for administrative charges, the cost for service on a nationwide basis will be reduced because the 10-percent charge based on the regular rate charge for each grader in excess of one regular grader is being deleted from the regulations. Nationally, this change more than offsets the increase generated by the extra billing period. This reduction in overhead cost for rendering grading service on a voluntary basis is due to improved management efficiency and an opportunity created by the Egg Products Inspection Act to share overhead cost between the voluntary programs and the mandatory egg products inspection program which is paid from appropriated funds.

The present wording indicating that a "27-percent factor charge" is added to graders' salaries for various fringe benefits and related service charges has been changed to provide for "an established factor" to be added to cover these benefits and costs. Plants will be notified each time there is a change in this factor. This provides for flexibility in charging for fringe benefits and related costs when State employees are utilized. The fringe benefits for State employees licensed to grade under Federal supervision vary depending upon the State laws and regulations. The charge for fringe benefits and related costs for Federal employees is being raised to 28½ percent effective July 1, 1971. This is due to increased premiums for life insurance and health insurance which were raised from 1.7 percent to 3.2 percent. The fringe benefits for Federal employees consist of: social security or retirement, annual and sick leave, health and life insurance, additional salary and travel costs to furnish relief services, severance pay, accident payments, certain moving costs, and administrative servicing costs.

The amendments are as follows:

As to Part 56:

1. In § 56.52, paragraph (a) and subparagraphs (3), (6), and (8) are amended to read:

§ 56.52 Continuous grading performed on a resident basis.

* * * * *

(a) *Charges.* The charges for the grading of shell eggs shall be paid by the applicant for the service and shall include items listed in this section as are applicable. Payment for the full cost of the grading service rendered to the applicant shall be made by the applicant to Consumer and Marketing Service, U.S. Department of Agriculture (hereinafter referred to as "C&MS"). Such full costs shall comprise such of the items listed in this section as are due and included in the bill or bills covering the period or periods during which the grading service was rendered. Bills will be rendered by the 10th day following the end of the period in which the service was rendered and are payable upon receipt. A charge will be made by C&MS in the amount of two (2) percent of any amounts remaining unpaid after 45 days from the date of billing. Such charge shall not be less than $5.

* * * * *

(3) A charge for the salary and other costs, as specified in this subparagraph, for each grader while assigned to a plant, except that no charge will be made when the assigned grader is temporarily reassigned by C&MS to perform grading service for other than the applicant. The base salary rate will be determined by averaging the salary rate paid to each fulltime grader assigned to plants with approximately equal volume and complexity of operation in the State in which service is furnished, except that a separate average will be established for large metropolitan areas. The regular rate charge will be determined by adding an established factor to the base salary rate to cover the cost to C&MS for such items as the Employer's Tax imposed under the U.S. Internal Revenue Code (26 U.S.C.) for Old Age and Survivor's Benefits under the Social Security System, retirement benefits group life insurance, health benefits, severance pay, sick leave, annual leave, additional salary and travel costs for relief grading service, accident payments, certain moving costs, and related servicing costs. The overtime rate charge is 150 percent of the base rate. The added holiday rate charge is the same as the base rate when the grader works on a holiday.

* * * * *

(6) A charge of 10 percent of: (i) the premium pay, (ii) all charges made to the applicant for expenses which are paid by C&MS to graders assigned to the applicant.

* * * * *

(8) An administrative service charge based upon the aggregate number of 30 dozen cases of all shell eggs handled in the plant per billing period and computed in accordance with the following:

$50 for 0 to 1,000 cases[1], plus $5 for each additional 1,000 cases, or fraction thereof, per billing period, with no additional charge in excess of 45,000 cases.

[1]Also applies where an approved application is in effect and no product is handled.

2. Section 56.53 is amended to read:

§ 56.53 Fees or charges for grading service performed under cooperative agreement.

Fees or charges to be made to an applicant for grading service which differ from those listed in §§ 56.45 through 56.54 shall be provided for by a cooperative agreement.

3. In § 56.54, paragraph (a) is amended by changing the figure "30" on line 22 to read "45" and paragraph (a)(2) is amended to read:

§ 56.54 Charges for continuous grading performed on a nonresident basis.

* * * * *

(a) *Charges.* * * *

(2) A charge for the salary and other costs, as specified in this subparagraph, for each grader while assigned to a plant, except that no charge will be made when the assigned grader is temporarily reassigned by C&MS to perform grading service for other than the applicant. The base salary rate will be determined by averaging the salary rate paid to each full-time grader assigned to plants with approximately equal volume and complexity of operation in the State in which service is furnished, except that a separate average will be established for large metropolitan areas. The regular rate charge will be determined by adding an established factor to the base salary rate to cover the cost to C&MS for such items as the Employer's Tax imposed under the U.S. Internal Revenue Code (26 U.S.C.) for Old Age and Survivor's Benefits under the Social Security System, retirement benefits, group life insurance, health benefits, severance pay, sick leave, annual leave, additional salary and travel costs for relief grading service, accident payments, certain moving costs, and related servicing costs. The overtime rate charge is 150 percent of the base rate. The added holiday rate charge is the same as the base rate when the grader works on a holiday.

* * * * *

As to Part 70:

1. In § 70.137, paragraph (a) is amended by changing the figure "30" on line 22 to read "45" and paragraph (a)(2) is amended to read:

§ 70.137 Charges for continuous grading performed on a nonresident basis.

* * * * *

(a) *Charges.* * * *

(2) A charge for the salary and other costs, as specified in this subparagraph, for each grader while assigned to a plant, except that no charge will be made when the assigned grader is temporarily reassigned by C&MS to perform grading service for other than the applicant. The base salary rate will be determined by averaging the salary rate paid to each full-time grader assigned to plants with approximately equal volume and complexity of operation in the State in which service is furnished, except that a separate average will be established for large metropolitan areas. The regular rate charge will be determined by adding an established factor to the base salary rate to cover the cost to C&MS for such items as the Employer's Tax imposed under the U.S. Internal Revenue Code (26 U.S.C.) for Old Age and Survivor's Benefits under the Social Security System, retirement benefits, group life insurance, health benefits, severance pay, sick leave, annual leave, additional salary and travel costs for relief grading service, accident payments, certain moving costs, and related servicing costs. The overtime rate charge is 150 percent of the base rate. The added holiday rate charge is the same as the base rate when the grader works on a holiday.

(6) A charge of 10 percent of: (i) the premium pay, (ii) all charges made to the applicant for expenses which are paid by C&MS to graders assigned to the applicant.

* * * * *

(8) An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following:

$50 for 0 to 100,000 pounds,[1] $71 for 100,001 to 400,000 pounds, plus $7 additional for each 100,000 pounds, or fraction thereof, in excess of 400,000 pounds up to 3 million pounds, and $7 for each 1 million pounds or fraction thereof, per billing period in excess of 3 million pounds with no additional charge in excess of 6 million pounds.

2. In § 70.138, paragraph (a) and subparagraphs (3), (6), and (8) are amended to read:

§ 70.138 Continuous grading performed on a resident basis.

* * * * *

(a) *Charges.* The charges for the grading of poultry and edible products thereof shall be paid by the applicant for the service and shall include items listed in this section as are applicable. Payment for the full cost of the grading service rendered to the applicant shall be made by the applicant to the Consumer and Marketing Service, U.S. Department of Agriculture (hereinafter referred to as "C&MS"). Such full costs shall comprise such of the items listed in this section as are due and included in the bill or bills covering the period or periods during which the grading service was rendered. Bills will be rendered by the 10th day following the end of the billing period in which the service was rendered and are payable upon receipt. A charge will be made by C&MS in the amount of two (2) percent of any amounts remaining unpaid after 45 days from the date of billing. Such charge shall not be less than $5.

* * * * *

(3) A charge for the salary and other costs, as specified in this subparagraph, for each grader while assigned to a plant, except that no charge will be made when the assigned grader is temporarily reassigned by C&MC to perform grading service for other than the applicant. The base salary rate will be determined by averaging the salary rate paid to each full-time grader assigned to plants with approximately equal volume and complexity of operation in the State in which service is furnished, except that a separate average will be established for large metropolitan areas. The regular rate charge will be determined by adding an established factor to the base salary rate to cover the cost to C&MS for such items as the Employer's Tax imposed under the U.S. Internal Revenue Code (26 U.S.C.) for Old Age and Survivor's Benefits under the Social Security System, retirement benefits, group life insurance, health benefits, severance pay, sick leave, annual leave, additional salary and travel costs for relief grading service, accident payments, certain moving costs, and related servicing costs. The overtime rate charge is 150 percent of the base rate. The added holiday rate charge is the same as the base rate when the grader works on a holiday.

3. Section 70.139 is amended to read:

§ 70.139 Fees or charges for grading service performed under cooperative agreement.

Fees or charges to be made to an applicant for any grading service which differ from those listed in §§ 70.130 through 70.138 shall be provided for by a cooperative agreement.

Legislation requires that the fees and charges for inspection and grading services under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), shall be reasonable and shall, as nearly as possible, cover the cost of such services.

The facts upon which are based the determination as to the level of fees and charges necessary to cover these costs are not available to the industry, but are peculiarly within the knowledge of the Department. Therefore, public rulemaking would not result in the Department receiving additional information on this matter.

Accordingly, pursuant to 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 unnecessary.

Issued at Washington, D.C. this 22d day of April 1971, to become effective on July 1, 1971.

G. R. GRANGE,
Deputy Administrator,
Marketing Services.

[FR Doc.71-5884 Filed 4-27-17;8:49 am]

[1] Also applies where an approved application is in effect and no product is handled.

[Navel Orange Reg. 234, Amdt. 1]

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

Limitation of Handling

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907, 35 F.R. 16359), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restrictions on the handling of Navel oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b) (1) (i), and (ii) of § 907.534 (Navel Orange Reg. 234, 36 F.R. 7123) during the period April 16, 1971, through April 22, 1971, are hereby fixed as follows:

§ 907.534 Navel Orange Regulation 234.

* * * * *

(b) * * *

(1) * * *

(i) District 1: 847,000 cartons;

(ii) District 2: 253,000 cartons.

* * * * *

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

Dated: April 22, 1971.

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

[FR Doc.71–5883 Filed 4–27–71;8:49 am]

[Lemon Reg. 476, Amdt. 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

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

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of lemons grown in California and Arizona.

(b) *Order, as amended.* The provisions in paragraph (b) (1) (ii) of § 910.776 (Lemon Reg. 476, 36 F.R. 7317) during the period April 18 through April 24, 1971, are hereby amended to read as follows:

§ 910.766 Lemon Regulation 476.

* * * * *

(b) *Order* * * *

(1) * * *

(ii) District 2: 248,000 cartons.

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

Dated: April 23, 1971.

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

[FR Doc.71–5933 Filed 4–27–71;8:53 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 70–EA–65]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Area

On March 2, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 3927) stating that the Federal Aviation Administration was considering an amendment to Part 73 of the Federal Aviation Regulations that would alter Restricted Area R–5201 at Camp Drum, N.Y.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., June 24, 1971, as hereinafter set forth.

In § 73.52 (36 F.R. 2352) the boundaries of R–5201 are amended to read as follows:

Boundaries. Beginning at lat. 44°15'00'' N., long. 75°31'30'' W.; to lat. 44°11'15'' N., long. 75°25'00'' W.; to lat. 44°03'00'' N., long. 75° 33'30'' W.; to lat. 44°00'45'' N., long. 75° 37'25'' W.; to lat. 44°03'25'' N., long. 75° 39'30'' W.; to lat. 44°05'47'' N., long. 75° 44'30'' W.; to lat. 44°10'00'' N., long. 75° 39'30'' W.; to point of beginning.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on April 22, 1971.

T. MCCORMACK,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.71–5929 Filed 4–27–71;8:53 am]

[Docket No. 11001; Amdt. No. 754]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Recent Changes and Additions

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260–3, 8260–4, or 8260–5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97–696 (358 F.R. 5610).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20590. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Document Inspection Facility, HQ–405, 800 Independence Avenue SW., Washington, DC 20590, or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $125

per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Since a situation exists that requires immediate adoption of this amendment, I find that further notice and public procedure hereon is impracticable and good cause exists for making it effective in less than 30 days.

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.11 is amended by establishing, revising, or canceling the following L/MF–ADF(NDB)–VOR SIAPs, effective May 27, 1971.

Leesburg, Va.—Godfrey Airport; NDB (ADF)–1, Original; Canceled.
Washington, D.C.—Dulles International Airport; NDB (ADF) Runway 19R, Amdt. 6; Canceled.
Battle Mountain, Nev.—Lander County Airport; VOR–1, Amdt. 6; Canceled.
Yakima, Wash.—Yakima Municipal Airport; VOR Runway 27, Amdt. 9; Canceled.

2. Section 97.23 is amended by establishing, revising, or canceling the following VOR–VOR/DME SIAPs, effective May 27, 1971.

Anniston, Ala.—Anniston-Calhoun County Airport; VOR–A, Amdt. 2; Revised.
Battle Mountain, Nev.—Lander County Airport; VOR–A, Original; Established.
Corvallis, Oreg.—Corvallis Municipal Airport; VOR–A, Original; Established.
Corvallis, Oreg.—Corvallis Municipal Airport; VOR Runway 17, Amdt. 6; Revised.
Drew, Miss.—Ruleville-Drew Airport; VOR–A, Original; Established.
Fort Myers, Fla.—Page Field; VOR Runway 5, Amdt. 4; Revised.
Fort Myers, Fla.—Page Field; VOR Runway 13, Original; Established.
Fort Myers, Fla.—Page Field; VOR Runway 31, Original; Established.
Frankfort, Ky.—Capital City Airport; VOR Runway 24, Amdt. 1; Revised.
Kankakee, Ill.—Greater Kankakee Airport; VOR Runway 4, Original; Established.
Kankakee, Ill.—Greater Kankakee Airport; VOR Runway 22, Original; Established.
Key West, Fla.—Key West International Airport; VOR–A, Amdt. 2; Revised.
Laurel, Miss.—Laurel Municipal Airport; VOR Runway 13, Amdt. 6; Revised.
Melbourne, Fla.—Cape Kennedy Regional Airport; VOR Runway 9, Amdt. 9; Revised.
Melbourne, Fla.—Cape Kennedy Regional Airport; VOR Runway 27, Amdt. 3; Revised.
Paducah, Ky.—Barkley Field; VOR Runway 4, Amdt. 8; Revised.
Panama City, Fla.—Panama City-Bay County Airport; VOR Runway 14, Amdt. 4; Revised.
Panama City, Fla.—Panama City-Bay County Airport; VOR Runway 32, Amdt. 1; Revised.
Philadelphia, Pa.—North Philadelphia Airport; VOR Runway 24, Amdt. 14; Revised.
Talladega, Ala.—Talladega Municipal Airport; VOR–A, Amdt. 3; Reevised.
Washington, D.C.—Dulles International Airport; VOR Runway 19R, Original; Established.
Wichita, Kans.—Wichita Municipal Airport; VOR Runway 1L, Original; Established.
Wichita, Kans.—Wichita Municipal Airport; VOR Runway 14, Amdt. 7; Revised.
Yakima, Wash.—Yakima Municipal Airport; VOR–A, Original; Established.
Battle Mountain, Nev.—Lander County Airport; VOR/DME Runway 3, Original; Established.
Bay St. Louis, Miss.—Gulf Central Stennis Airport; VOR/DME–A, Original; Established.
Corvallis, Oreg.—Corvallis Municipal Airport; VOR/DME Runway 36, Original; Established.
Kankakee, Ill.—Greater Kankakee Airport; VOR/DME Runway 22, Original; Canceled.
Talladega, Ala.—Talladega Municipal Airport; VOR/DME Runway 3, Amdt. 1; Revised.
Yakima, Wash.—Yakima Municipal Airport; VOR/DME Runway 27, Original; Established.

3. Section 97.25 is amended by establishing, revising, or canceling the following LOC–LDA SIAPs, effective May 27, 1971.

Anniston, Ala.—Anniston-Calhoun Airport; LOC Runway 5, Amdt. 1; Revised.
West Palm Beach, Fla.—Palm Beach International Airport; LOC/DME (BC) Runway 27R, Amdt. 3; Revised.
Wichita, Kans.—Wichita Municipal Airport; LOC (BC) Runway 19L, Amdt. 9; Revised.
Yakima, Wash.—Yakima Municipal Airport; LOC/DME (BC) Runway 9, Original; Established.

4. Section 97.27 is amended by establishing, revising, or canceling the following NDB/ADF SIAPs, effective May 13, 1971.

Miami, Fla.—Miami International Airport; NDB Runway 27L, Amdt. 7; Revised.

5. Section 97.27 is amended by establishing, revising, or canceling the following NDB/ADF SIAPs effective May 27, 1971.

Albany, Ga.—Albany-Dougherty County Airport; NDB Runway 4, Original; Established.
Anniston, Ala.—Anniston-Calhoun County Airport; NDB Runway 5, Amdt. 7; Revised.
Artesia, N. Mex.—Artesia Municipal Airport; NDB Runway 12, Original; Established.
Artesia, N. Mex.—Artesia Municipal Airport; NDB Runway 30, Original; Established.
Fayetteville, Tenn.—Fayetteville Municipal Airport; NDB Runway 1, Original; Established.
Fort Lauderdale, Fla.—Fort Lauderdale-Hollywood International Airport; NDB Runway 13, Amdt. 10; Revised.
Fort Myers, Fla.—Page Field; NDB Runway 5, Amdt. 6; Revised.
Frankfort, Ky.—Capital City Airport; NDB Runway 24, Amdt. 2; Revised.
Fryeburg, Maine—Eastern Slopes Regional Airport; NDB–A, Original; Established.
Gadsden, Ala.—Gadsden Municipal Airport; NDB Runway 6, Amdt. 5; Revised.
Gulfport, Miss.—Gulfport Municipal Airport; NDB Runway 13, Original; Established.
Jacksonville, Fla.—Jacksonville International Airport; NDB Runway 7, Amdt. 2; Revised.
Kankakee, Ill.—Greater Kankakee Airport; NDB Runway 4, Amdt. 1; Revised.
Key West, Fla.—Key West International Airport; NDB–A, Amdt. 5; Revised.
Melbourne, Fla.—Cape Kennedy Regional Airport; NDB Runway 9, Amdt. 3; Revised.
Paducah, Ky.—Barkley Field; NDB Runway 4, Amdt. 4; Revised.
Philadelphia, Pa.—North Philadelphia Airport; NDB (ADF) Runway 24, Amdt. 4; Canceled.
Phillipsburg, Kans.—Phillipsburg Municipal Airport; NDB Runway 31, Original; Established.
Trenton, N.J.—Mercer County Airport; NDB Runway 6, Amdt. 2; Revised.
Washington, D.C.—Dulles International Airport; NDB Runway 1R, Amdt. 7; Revised.
Wichita, Kans.—Wichita Municipal Airport; NDB Runway 1L, Original; Established.
Wichita, Kans.—Wichita Municipal Airport; NDB Runway 1R, Amdt. 10; Revised.

6. Section 97.29 is amended by establishing, revising, or canceling the following ILS SIAPs, effective May 27, 1971.

Fort Lauderdale, Fla.—Fort Lauderdale-Hollywood International Airport; ILS Runway 9L, Amdt. 2; Revised.
Gulfport, Miss.—Gulfport Municipal Airport; ILS Runway 13, Amdt. 2; Revised.
Jacksonville, Fla.—Jacksonville International Airport; ILS Runway 7, Amdt. 2; Revised.
Panama City, Fla.—Panama City-Bay County Airport; ILS Runway 14, Amdt. 3; Revised.
Philadelphia, Pa.—North Philadelphia Airport; ILS Runway 24, Amdt. 2; Revised.
Washington, D.C.—Dulles International Airport; ILS Runway 1R, Amdt. 8; Revised.
Washington, D.C.—Dulles International Airport; ILS Runway 19R, Amdt. 10; Revised.
Wichita, Kans.—Wichita Municipal Airport; ILS Runway 1R, Amdt. 10; Revised.
Yakima, Wash.—Yakima Municipal Airport; ILS Runway 27, Amdt. 16; Revised.

7. Section 97.31 is amended by establishing, revising, or canceling the following Radar SIAPs, effective May 27, 1971.

Washington, D.C.—Dulles International Airport; Radar–1, Amdt. 5; Revised.
Wichita, Kans.—Wichita Municipal Airport; Radar–1, Amdt. 1; Revised.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1958; 49 U.S.C. 1438, 1354, 1421, 1510; sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c) and 5 U.S.C. 552(a)(1))

Issued in Washington, D.C., on April 20, 1971.

EDWARD C. HODSON,
Acting Director,
Flight Standards Service.

NOTE: Incorporation by reference provisions in §§ 97.10 and 97.20 approved by the Director of the Federal Register on May 12, 1969 (35 F.R. 5610).

[FR Doc.71-5770 Filed 4-27-71;8:45 am]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release No. 33-5141]

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

Reports by First-Time Registrants of Sales of Registered Securities and Use of Proceeds Therefrom

The Securities and Exchange Commission has adopted a new rule and form requiring issuers filing a registration statement under the Securities Act of 1933 for the first time to file with the Commission reports of sales of securities registered under the Act and the application of the proceeds from such sales.

The first report is to be made 3 months after the effective date of the registration statement. Thereafter reports are to be made at 6-month intervals during the period of the offering and until the proceeds have been applied by the registrant. Upon the completion or termination of the offering and application of the proceeds a final report is to be made and the duty to file such reports will thereupon cease.

Notice of the proposed adoption of the rule and form was published February 24, 1971, in Securities Act Release 5130 (36 F.R. 3429). The reasons for taking such action were set forth in that release.

Commission action. I. Part 230 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding thereunder a new § 230.463 reading as follows:

§ 230.463 Report of sales of securities and use of proceeds therefrom.

(a) Except as hereinafter provided in this rule, within 10 days after the end of the first 3-month period following the effective date of the first registration statement filed under the Act by an issuer, and within 10 days after the end of each 6-month period following such 3-month period, such issuer shall file with the Commission four copies of a report on Form SR (§ 239.61 of this chapter) containing the information required by that form. A final report shall be filed within 10 days after completion or termination of the offering and application of the proceeds therefrom.

(b) No report need be filed pursuant to this rule with respect to any offering of securities issued by any investment company registered under the Investment Company Act of 1940 or any public utility company or public utility holding company required to file reports with any State or Federal authority, or with respect to American depositary receipts for foreign securities.

II. Part 239 of Chapter II of Title 17 of the Code of Federal Regulations is amended by reserving §§ 239.28 through 239.60 inclusive for future purposes, and by adding thereunder a new § 239.61. Part 239, as amended, reads as follows:

§§ 239.28—239.60 [Reserved]

§ 239.61 Form SR, report by first-time registrants under the Act of sales of registered securities and use of proceeds therefrom.

(a) Except as indicated in paragraph (b) of this section, this form shall be filed, pursuant to § 230.463 of this chapter, by each issuer which files a registration statement under this Act for the first time, as a report of the sales of securities so registered under this Act and of the application of the proceeds from such sales. Four copies of such report shall be filed by such issuer within 10 days after the end of the first 3-month period following the effective date of the first registration statement filed under the Act by an issuer, and within 10 days after the end of each 6-month period following the initial 3-month period. A final report shall be filed within 10 days after completion or termination of the offering and application of the proceeds therefrom.

(b) No report on this form need be filed with respect to any offering of securities issued by any investment company which is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), or by any public utility company or public utility holding company which is required to file reports with any State or Federal authority, or with respect to American depositary receipts for foreign securities.

NOTE: Copies of Form SR have been filed with the Office of the Federal Register as part of this document. Additional copies of Form SR are available on request at the Securities and Exchange Commission, 500 North Capitol Street, Washington, DC 20549.

The new rule and form were adopted pursuant to sections 19(a) and 20(a) of the Act which, among other things, authorize the Commission to make rules and regulations necessary to carry out the provisions of the Act.

The foregoing action shall apply to registrants whose registration statements become effective after May 19, 1971.

(Sec. 19(a), 20(a), 48 Stat. 85, 86; Sec. 209, 48 Stat. 908; 49 Stat. 1921; Sec. 32(b), 62 Stat. 991; Sec. 127, 63 Stat. 107; 15 U.S.C. 77s(a), 77t(a))

By the Commission, April 19, 1971.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71–5873 Filed 4–27–71;8:48 am]

[Release Nos. IC–6430; 33–5137]

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

PART 271—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

Registration and Regulation of Insurance Company Separate Accounts

Provisions of the Investment Company Amendments Act of 1970 (Public Law 91–547) relating to insurance company separate accounts and rescission of Rules 3c–3, 6e–1, and Form N–6E–1(T) under the Investment Company Act of 1940 and Rule 156 under the Securities Act of 1933, and withdrawal of proposed Forms N–6E–1 and N–6E–2 under the Investment Company Act.

This is the third in a series of releases on problems arising under the Investment Company Amendments Act of 1970 ("1970 Act"), Public Law 91–547 [84 Stat. 1413], enacted December 14, 1970.[1] The purpose of this release is to call to the attention of insurance company separate accounts which are used as funding vehicles for certain employee stock bonus, pension and profit sharing plans and other interested persons some important provisions of the 1970 Act relating to the registration and regulation of such accounts under the Investment Company Act of 1940 and to the registration of interests and participations in such accounts under the Securities Act of 1933 [15 U.S.C. 77a et seq.]. In addition, the Commission confirms that certain rules and forms under the Investment Company Act and the Securities Act and certain proposed forms under the Investment Company Act are superseded by these provisions of the 1970 Act. Therefore, such rules are rescinded and the proposed forms are withdrawn by the Commission.

Exclusion for Certain Insurance Company Separate Accounts under the Investment Company Act, Rescission of Rules 3c–3 [17 CFR 270.3c–3], 6e–1 [17 CFR 270.6e–1] and Form N–6E–1(T) [17 CFR 274.6e–1] under the Investment Company Act and Withdrawal of Proposed Forms N–6E–1 [17 CFR 274.301] and N–6E–2 [17 CFR 274.302] under the Investment Company Act [35 F.R. 4650]:

The 1970 Act amends section 3(c)(11) [15 U.S.C. 80a–3(c)(11); 84 Stat. 1415] (formerly section 3(c)(13)) [15 U.S.C. 80a–3(c)(13)] of the Investment Company Act to exclude from the definition of "investment company" insurance company separate accounts[2] the assets of which are derived solely from contributions under pension or profit-sharing plans meeting the requirements of section 401 of the Internal Revenue Code [26 U.S.C. 401] or the requirements for deduction of the employer's contribution under section 404(a)(2) of such Code, [26 U.S.C. 404(a)(2)] and advances made by an insurance company in connection with the operation of such accounts.[3] This amendment broadens and supersedes the exemption provided by Rule 3c–3 under the Investment Company Act. Rule 3c–3 formerly exempted from the Investment Company Act, sub-

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[1] See Investment Company Act Release Nos. 6336 [36 F.R. 2867] and 6392 [36 F.R. 5840].

[2] See new section 2(a)(37) [Public Law 91–547; 84 Stat. 1414] of the Investment Company Act which defines "separate account."

[3] Amended section 3(c)(11) also codifies the Commission's interpretation of former section 3(c)(13) that bank collective trusts funds, which consist solely of assets of employees' plans, including Keogh Plans, which meet the requirements of section 401 of the Internal Revenue Code, were entitled to the exclusion provided by former section 3(c)(13).

ject to certain conditions, transactions by a separate account relating to contracts with employers covering 25 or more employees made in connection with a plan, except certain plans for self-employed individuals ("Keogh Plans"), which met the requirements of Section 401 of the Internal Revenue Code, or the requirements for deduction of the employer's contributions under section 404(a)(2) of the Code. Amended section 3(c)(11) provides a complete exclusion from the definition of investment company for separate accounts maintained solely for funding employee plans, including Keogh Plans, which meet the foregoing requirements of the Internal Revenue Code, without regard to the number of employees covered. Therefore, amended section 3(c)(11) supersedes the provisions of Rule 3c–3 and that Rule is hereby rescinded, effective July 1, 1971.

Amended section 3(c)(11) also broadens and supersedes the exemption provided by Rule 6e–1 under the Investment Company Act. Rule 6e–1 formerly provided a conditional exemption from several provisions of the Investment Company Act for separate accounts which issued interests or participations in a fund of securities pursuant to contracts made in connection with plans which met the requirements of section 401 of the Internal Revenue Code. In connection with Rule 6e–1, the Commission adopted Form N–6E–1(T), for use by separate accounts to file notifications under the Rule. Amended section 3(c)(11) affords a complete exemption to separate accounts described in Rule 6e–1 and exempted by that Rule. Therefore, amended section 3(c)(11) supersedes the provisions of Rule 6e–1, and that Rule and Form N–6E–1(T) are hereby rescinded, effective July 1, 1971.

Since Rule 6e–1 has been superseded and rescinded, proposed Forms N–6E–1 and N–6E–2 [4] are hereby withdrawn, effective immediately.

Insurance companies with separate accounts which have filed notifications pursuant to Rule 6e–1 should disclose to participants in plans relating to such accounts all material facts concerning any changes in operations of such accounts and terms of contracts which may be made as a result of these amendments by the 1970 Act. Such disclosure should be made whether or not the interests or participations in such accounts were required or are now required to be registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.].

Exclusion for Certain Interests in Insurance Company Separate Accounts under the Securities Act and Rescission of Rule 156 [17 CFR 230.156] under that [securities] Act [of 1933]:

Rule 156 defines as a transaction not involving a public offering in section 4(2) [15 U.S.C. 77d(2)] of the Securities Act any transaction with an employer whereby an insurance company offers, pursuant to a contract, interests or participations in a separate account, which meets the conditions and limitations set forth in Rule 3c–3 or Rule 6e–1 under the Investment Company Act of 1940, subject to certain conditions specified in Rule 156. Rule 156 also provides that for the purposes of section 5 [15 U.S.C. 77e] of the Securities Act, no "sale," "offer to sell," or "offer for sale" shall be deemed to be involved so far as an employee is concerned (whether or not there is a public offering to the employer), where allocations of employee contributions are made to a separate account entitled to the exemptions provided by Rule 6e–1 under the Investment Company Act pursuant to a contract meeting the conditions specified in Rule 156.

Since the exemptive provisions of Rule 156 are available only to contracts meeting the conditions of Rule 3c–3 or Rule 6e–1 under the Investment Company [Act], which were superseded by section 3(c)(11) of the Investment Company Act, as amended, and rescinded, Rule 156 is also superseded and is hereby rescinded, effective July 1, 1971.

Although Rule 156 has been superseded and rescinded, section 3(a)(2) of the Securities Act [15 U.S.C. 77a–3(a)(2)], as amended by section 27(b) of the 1970 Act [Public Law 91–547; 84 Stat. 1434], and as further amended by section 6(a) of Public Law 91–567 [84 Stat. 1497] (enacted December 22, 1970), provides similar exemptive treatment, but broadens such treatment of corporate employee plans meeting the requirements of section 401 of the Internal Revenue Code and narrows exemptive treatment for interests in Keogh Plans.

Section 3(a)(2) of the Securities Act (15 U.S.C. 77a–3(a)(2)) now defines "exempt security" to include any interest or participation in an insurance company separate account issued in connection with a pension or profit-sharing plan meeting the requirements of section 401 of the Internal Revenue Code or an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code. As indicated above, this is broader than the exemptive treatment formerly afforded by Rule 156 which was limited to a contract relating to such a plan, including a Keogh Plan, which is negotiated with an employer for the benefit of 25 or more employees. However, the exemption is made specifically inapplicable to interests in separate accounts relating to Keogh Plans.[5] Amended section 3(a)(2) (of the Securities Act) therefore narrows the exemption formerly provided by Rule 156. In this connection, insurance companies with separate accounts relating to contracts funding Keogh Plans which had filed notifications under Rule 6e–1 under the Investment Company Act or were relying on the exemption in section 3c–3 under that Act should up-date their prospectuses to disclose the changes in the law as well as changes in the operation of the plans and in the terms of such contracts. Of course, insurance companies must register under the Securities Act interests and participations of separate accounts relating to Keogh Plans that were previously exempt by Rule 156, unless prior to July 1, 1971, the effective date of the rescission of Rules 3c–3, 6e–1 and 156, the Commission has exempted such interests and participations from the registration provisions of the Securities Act pursuant to section 3(a)(2) of that Act.[6]

It should be noted that none of the foregoing amendments to the Investment Company and Securities Act provide any exemption from the antifraud provisions of the Federal securities laws.

Commission action. I. Parts 270 and 274 of Chapter II of Title 17 of the Code of Federal Regulations are amended as indicated below:

A. Section 270.3c–3 [Rescinded, effective July 1, 1971.]

B. Section 270.6e–1 [Rescinded, effective July 1, 1971.]

C. Section 274.6e–1 [Rescinded, effective July 1, 1971.]

II. Proposed Subpart D and proposed §§ 274.301 and 274.302 of Part 274 of Chapter II of Title 17 of the Code of Federal Regulations are withdrawn.

A. Subpart D [Withdrawn, effective Apr. 2, 1971.]

B. Proposed § 274.301 [Withdrawn, effective Apr. 2, 1971.]

C. Proposed § 274.302 [Withdrawn, effective Apr. 2, 1971.]

III. Section 230.156 of Chapter II of Title 17 of the Code of Federal Regulations is rescinded, said rescission to take effect on July 1, 1971.

(Secs. 6(c), 6(e), 38(a), 54 stat. 800, 841; 15 U.S.C. 80a–6(c), 80a–6(e), 80a–37(a); secs. 4, 19, 48 stat. 77, as amended, 85; 15 U.S.C. 77d, 77s; Public Law 91–547, 84 stat. 1413)

By the Commission, April 2, 1971.

[SEAL] ROSALIE F. SCHNEIDER, *Recording Secretary.*

[FR Doc.71–5874 Filed 4–27–71;8:54 am]

[4] See Investment Company Act Release No. 5996 (Mar. 6, 1970) [35 F.R. 4650].

[5] The exemption in amended section 3(a)(2) of the Securities Act is also made specifically inapplicable to employee plans qualified under the Internal Revenue Code the contributions under which are held in a separate account for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities (other than interests in the separate account itself) issued by the employer or any company directly or indirectly controlling, controlled by or under common control with the employer. This codifies the position previously taken by the Commission.

[6] Section 3(a)(2) of the Securities Act, as amended, provides that the Commission, by rules and regulations or order, shall exempt from the provisions of section 5 of that Act any interest or participation issued in connection with a Keogh Plan, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER A—ARMED SERVICES PROCUREMENT REGULATIONS

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

The following amendments to this subchapter are issued by direction of the Assistant Secretary of Defense (Installations and Logistics) pursuant to authority contained in Department of Defense Directive No. 4105.30, dated March 11, 1959 (24 F.R. 2260), as amended, and 10 U.S.C. 2202.

PART 1—GENERAL PROVISIONS

1. Section 1.108(a)(5) is amended; § 1.321 is amended by adding a new paragraph (d); § 1.323 is added; § 1.324–10 is revised; §§ 1.328 through 1.328–6 and 1.330 through 1.330–6 are revoked; § 1.406 is revised; § 1.700 is amended; § 1.701–1 is revised; in § 1.703 paragraphs (b) and (c)(1) are revised; §§ 1.704–3(a), 1.705–4(c)(6), 1.706–5(c), 1.706–6 (c)(1) and (d)(1), and 1.707–3(a) are amended; §§ 1.800, 1.801, 1.802, 1.804–2 (b)(1) and (c)(1), and 1.805–3 are revised; §§ 1.901, 1.903–1 (a) and (e), and 1.903–2(a) are amended; § 1.904–1 is revised; § 1.904–2 is revoked and present §§ 1.904–3 and 1.904–4 are redesignated as §§ 1.904–2 and 1.904–3 respectively, §§ 1.908–5(b)(3), 1.1002–6, 1.1003–9, and 1.1005–1(b)(2)(vi) are revised; and § 1.1007–4(b) is amended, as follows:

§ 1.108 Departmental procurement instructions and ASPR implementations.

(a) * * *

* * * * *

(5) procurement procedures specifically identified as being essential for carrying out the peculiar needs of specialized commodity areas when authorized by: For the Army, Deputy or Assistant Deputy for Procurement, Office of the Assistant Secretary of the Army (Installations and Logistics); for the Navy, Deputy Chief of Naval Material (Procurement); for the Air Force, Director of Procurement Policy, Office of the Deputy Chief of Staff (Systems and Logistics); for the Defense Supply Agency, Executive Director, Procurement and Production, and notification is given to the ASPR Committee immediately upon such authorization for the purpose of determining whether such procedures should be included in this subchapter;

* * * * *

§ 1.321 Procurements involving work to be performed in foreign countries by U.S. contractors.

* * * * *

(d) The contract file shall be documented as indicated in § 6.903 of this chapter.

§ 1.323 Safety precautions for ammunition and explosives.

(a) The safety requirements of DOD 41.45.26M, "DOD Contractors' Safety Manual for Ammunition, Explosives, and Related Dangerous Material" are to be applied to all contracts involving ammunition or explosives. To accomplish this policy, all solicitations and resulting contracts involving the development, testing, storage, manufacture, modification, renovation, demilitarization, packaging, transportation, handling, disposal, inspection, repair or other use of ammunition and explosives shall include the clause set forth in § 7.104–79 of this chapter. The clause is not to be included in contracts solely because of:

(1) Inert components containing no explosives, active chemicals or pyrotechnics, or

(2) Flammable liquids, acids or other chemicals having fire or explosive characterisics unless such chemicals are intended for initiation, propulsion, or detonation as an integral or component part of an ammunition or explosive end item or weapon system.

(b) It is essential that contracts containing the above clause be administered in such manner as to assure safety without unnecessary application of the requirements of the Manual to contractor operations or facilities not directly involved. As provided in the clause, the requirements of the Manual are to be applied only to the contractor's operation relating to ammunition and explosives.

(c) Omission of the clause from solicitations and contracts referred to in paragraph (a) of this section or waiver of mandatory requirements of the Manual prior to contract award must be approved by the HPA or his sole designee. When mandatory requirements of the Manual are to be waived prior to award, the specific requirements to be waived must be set forth in the solicitation or by modification thereto. Care must be taken to assure that the waivers granted are compatible with sound safety principles.

§ 1.324–10 Example of warranty clause for fixed-price construction contracts.

(a) The following clause is an example which is authorized for insertion in fixed-price type construction contracts in accordance with §§ 1.324–2 and 1.324–3.

WARRANTY OF CONSTRUCTION

(a) In addition to any other warranties set out elsewhere in this contract, the Contractor warrants that the work performed under this contract conforms to the contract requirements and is free of any defect of equipment, material or design furnished, or workmanship performed by the Contractor or any of his subcontractors or suppliers at any tier. Such warranty shall continue for a period of 1 year from the date of final acceptance of the work, but with respect to any part of the work which the Government takes possession of prior to final acceptance, such warranty shall continue for a period of 1 year from the date the Government takes possession. Under this warranty, the Contractor shall remedy at his own expense any such failure to conform or any such defect. In addition, the Contractor shall remedy at his own expense any damage to Government owned or controlled real or personal property, when that damage is the result of the Contractor's failure to conform to contract requirements or any such defect of equipment, material, workmanship, or design. The Contractor shall also restore any work damaged in fulfilling the terms of this clause. The Contractor's warranty with respect to work repaired or replaced hereunder will run for 1 year from the date of such repair or replacement.

(b) The Government shall notify the Contractor in writing within a reasonable time after the discovery of any failure, defect, or damage.

(c) Should the Contractor fail to remedy any failure, defect, or damage described in (a) above within reasonable time after receipt of notice thereof, the Government shall have the right to replace, repair, or otherwise remedy such failure, defect, or damage at the Contractor's expense.

(d) In addition to the other rights and remedies provided by this clause, all subcontractors', manufacturers', and suppliers' warranties expressed or implied, respecting any work and materials shall, at the direction of the Government, be enforced by the Contractor for the benefit of the Government. In such case if the Contractor's warranty under (a) above has expired, any suit directed by the Government to enforce a subcontractor's, manufacturer's or supplier's warranty shall be at the expense of the Government. The Contractor shall obtain any warranties which the subcontractors, manufacturers, or suppliers would give in normal commercial practice.

(e) If directed by the Contracting Officer, the Contractor shall require any such warranties to be executed in writing to the Government.

(f) Notwithstanding any other provision of this clause, unless such a defect is caused by the negligence of the Contractor or his subcontractors or suppliers at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage which results from any such defect in Government furnished material or design.

(g) The warranty specified herein shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistake, or fraud.

(b) If the Government specifies the use of any equipment by "brand name and model," the following paragraph (h) should be added to the Warranty of Construction clause of the contract.

(h) Defects in design or manufacture of equipment, specified by the Government on a "brand name and model" basis, shall not be included in this warranty. The Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties in writing directly to the Government.

(c) Final payment shall not be withheld solely to provide security for the contractor's performance under the warranty with respect to possible future defects, without the approval of the Head of Procuring Activity which shall be given only in unusual circumstances.

§§ 1.328 through 1.328–6 [Revoked]

§§ 1.330 through 1.330–6 [Revoked]

§ 1.406 Contract administration functions.

(a) When a contract is assigned for administration, functions which have been determined to be the responsibility of the contract administration component will automatically be performed by that component, and a delegation or assignment letter is unnecessary. However, if special instructions pertaining to administration of a particular contract are to apply, they should be contained in a letter accompanying the contract when it is assigned for administration. Such letters will not reference directives of the procuring department without the prior concurrence of the department peforming contract administration services.

(b) Each contract assigned by a purchasing office to a contract administration component for administration shall contain or be accompanied by all procuring agency instructions or directives which are incorporated in such contract by reference. This will not be necessary if a copy has been previously furnished for application to that contractor.

(c) This section constitutes the authority of the contract administration office designated in accordance with section XX, Part 7, of the ASPR, to perform contract administration functions to the extent applicable, in accordance with this regulation, the provisions of contracts assigned for administration, and the directives of the department performing the services. Functions listed below are the responsibility of, and, except as provided in 20–703.3 of the ASPR, shall be performed by, contract administration offices:

(1) Review contractor's compensation structure;

(2) Review the contractor's insurance plans;

(3) Review and approve or disapprove contractor's request for payments under the progress payments clause;

(4) Determine the allowability of costs suspended or disapproved on a DCAA Form 1 when a written appeal has been received from the contractor, direct the suspension or disapproval of any costs when there is reason to believe that they should be suspended or disapproved, and approve final vouchers;

(5) Negotiate billing and final overhead rates when the contract contains the clause in §3.704 of this chapter, except when negotiations responsiblity is placed elsewhere in accordance with Departmental procedures;

(6) Negotiate understandings consistent with agreements negotiated under §15.107 of this chapter applicable to treatment of costs under contracts currently assigned for administration;

(7) Negotiate prices and execute supplemental agreements for spare parts and other items selected through provisioning procedures;

(8) Review and evaluate contractor's proposals in accordance with § 3.801–3 (b) of this chapter and furnish comments and recommendations to the procuring contracting officer when negotiation will be accomplished by the procuring contracting officer;

(9) When authorized by the purchasing office, negotiate or negotiate and execute supplemental agreements incorporating contractor proposals resulting from change orders issued under the Changes clause (prior to completion of negotiations and issuance of the supplemental agreement, any delivery schedule change shall be coordinated with the purchasing office);

(10) Manage special bank accounts;

(11) Assure timely notification by the contractor of any anticipated overrun or underrun of the estimated cost under cost-type contracts;

(12) Review, approve or disapprove and maintain surveillance of the contractor's procurement system;

(13) Consent to the placement of subcontracts;

(14) Monitor contractor's financial condition and advise the procuring contracting officer when contract performance is jeopardized thereby;

(15) When authorized by the purchasing office, negotiate prices and execute priced exhibits for unpriced orders issued by the procuring contracting officer under basic ordering agreements;

(16) Issue tax exemption certificates;

(17) Conduct post-award orientation conferences;

(18) Issue work requests under maintenance, overhaul and modification contracts;

(19) Negotiate and execute contractual documents for settlement of partial and complete contract terminations for convenience, except as otherwise prescribed by Part 8 of this chapter;

(20) Perform necessary screening, redistribution, and disposal of contractor inventory;

(21) Perform property administration;

(22) Prepare findings of fact and issue decisions under the disputes clause on matters on which the contract administration office has the authority to take definitive action;

(23) Assure processing and execution of duty-free entry certificates;

(24) In facilities contracts—

(i) Evaluate contractor's requests for facilities and changes to existing facilities, and provide the procuring contracting officer with appropriate recommendations thereon;

(ii) Assure required screening of facility items before acquisition by contractor;

(iii) Approve use of facilities on a noninterference basis in accordance with paragraph (b) of the clause in § 7.702–12 of this chapter;

(iv) Assure payment of any rental due; and

(v) Assure reporting of items no longer needed for defense production;

(25) Perform production support, surveillance, and status reporting, including timely reporting of potential and actual slippages in contract schedules;

(26) Perform pre-award surveys;

(27) Perform industial readiness and mobilization production planning field surveys and schedule negotiations;

(28) Monitor compliance with labor and industrial relations matters under the contract, apprising the procuring contracting officer of actual or potential labor disputes, and removing material from strikebound contractor's plants upon instructions from the procuring contracting officer;

(29) Perform traffic management services including issuance and control of Government bills of lading and other transportation documentation;

(30) Review the adequacy of the contractor's traffic operations;

(31) Review and evaluate preservation, packaging, and packing;

(32) Provide surveillance of contractor design, development, and production engineering efforts;

(33) Review engineering studies, design, and proposals, and make recommendations to the system/project manager or purchasing office;

(34) Evaluate and monitor contractor engineering efforts and expenditures in accordance with contract terms;

(35) Conduct surveillance of contractor engineering practices with regard to subcontractors;

(36) Review, on a continuing basis, contractor test plans and directives for compliance with contract terms; compare milestone; progress, and cost against contract requirements;

(37) Assist in classification of waivers and deviations;

(38) Evaluate the adequacy of contractor engineering data control systems, including assurance that systems provide for timely incorporation of changes in data being acquired;

(39) Monitor contractor value engineering programs;

(40) Review cost reduction proposals, and submit comments regarding effect of proposed changes on the engineering requirements of the contract;

(41) Evaluate and perform surveillance of contractor configuration management systems and procedures;

(42) Perform surveillance of contractor engineering change systems; review Class I engineering change proposals, and comment on engineering feasibility and need; assist in price analysis of engineering changes; review Class II engineering changes to insure proper classification;

(43) Evaluate the contractor management, planning, scheduling, and allocation of engineering resources;

(44) Evaluate and monitor contractor reliability and maintainability programs;

(45) Review and evaluate for technical adequacy the logistic support, maintenance, and modification programs accomplished by the contractor;

(46) Make appropriate comments to purchasing offices on any inadequacies noted in specifications;

(47) Perform procurement quality assurance;

(48) Maintain surveillance of flight operations;

(49) Assure contractor compliance with applicable safety requirements;

(50) Assure contractor's compliance with small business and labor surplus area mandatory subcontracting program, conducting, on an as-required basis, small business and labor surplus area set-aside surveillance, and providing advice to small business and labor surplus area concerns;

(51) In connection with classified contracts, administer those portions of the industrial security program designated as ACO responsibilities in Appendix C, Industrial Security Regulation, DOD 5220.22-R (also see § 1.320);

(52) Make payments on assigned contracts;

(53) Assign and perform supporting administration;

(54) Assure timely submission of required reports;

(55) Will advise and assist defense contractors regarding their priorities and allocations responsibilities and assist defense purchasing activities in processing requests for special assistance and for priority ratings for privately owned capital equipment;

(56) Process and execute novation and change of name agreements in accordance with Subpart D, Part 26 of this chapter, and;

(57) When authorized by the purchasing office, negotiate or negotiate and execute supplemental agreements accelerating or decelerating contract delivery schedules.

Procurement functions not designated as contract administration functions shall remain the responsibility of the purchasing office.

§ 1.700 Scope of subpart.

This subpart, which applies only in the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands, implements the Armed Services Procurement Act, as amended (10 U.S.C. 2301), and the Small Business Act as amended (15 U.S.C. 631 et seq.), and sets forth policy and procedures governing (a) contract awards to small business concerns, (b) relationships with the Small Business Administration (SBA), (c) small business set-asides, and (d) small business subcontracting.

§ 1.701-1 Small business concern.

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

(2) *Industry Small Business Size Standards.* In addition to being independently owned and operated, and not dominant in the field of operation in which it is bidding on Government contracts, a small business concern in order to qualify as such must meet the criteria established for the industries set forth below. Annual sales and annual receipts, as used throughout this subpart, means the annual sales and annual receipts, less returns and allowances, of a concern and its affiliates during its most recently completed fiscal year. If a concern has been in business less than 1 year, its annual sales and receipts shall be computed by determining its average weekly sales and receipts for the period in which it has been in business and multiplying such figure by 52. If a concern has 50 percent or more of its annual sales and receipts attributable to business activity within Alaska, then whenever the size criterion of "annual sales and annual receipts" is used in any size definition contained in this subpart, the stated dollar limitation for the purpose of qualifying as a small business concern shall be increased by 25 percent of the indicated amount.

(i) *Construction industries.* For construction, alteration, or repair (including painting and decorating), of buildings, bridges, roads, or other real property, the average annual receipts of the concern and its affiliates for its preceding 3 fiscal years must not exceed $7,500,000. For dredging, the average annual receipts of the concern and its affiliates for its preceding 3 fiscal years must not exceed $5 million. Also, in order to be eligible for a small business set-aside award on dredging contracts, the firms must perform the dredging of at least 40 percent of the yardage advertised in the plans and specifications with dredging equipment owned by the bidder or obtained from another small business dredging concern.

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

(b) *Refined petroleum products.* Any concern bidding on a contract for a refined petroleum product other than paving mixture and blocks, asphalt felts and coatings, lubricating oils and greases, or products of petroleum and coal, not elsewhere classified, is classified as small if (1) (i) its number of employees does not exceed 1,000 persons; (ii) it does not have more than 30,000 barrels-per-day crude oil or bona fide feed stock capacity from owned or leased facilities or from facilities made available to such concern under an arrangement such as, but not limited to, an exchange agreement (except one on a refined product for refined product basis), or a throughput or other form of processing agreement, with the same effect as though such facilities had been leased; and (iii) the product to be delivered in the performance of the contract will contain at least 90 percent components refined by the bidder from either crude oil or bona fide feed stocks: *Provided, however,* That a petroleum refining concern which meets the requirement in (i) and (ii) of this subdivision may furnish the product of a refinery not qualified as small business if such product is obtained pursuant to a bona fide exchange agreement, in effect on the date of the bid or offer, between the bidder or offeror and the refiner of the product to be delivered to the Government which requires exchanges in a stated ratio on a refined petroleum product for a refined petroleum product basis, and precludes a monetary settlement, and that the products exchanged for the products offered and to be delivered to the Government meet the requirement in (iii) of this subdivision; *And, provided further,* That the exchange of products for products to be delivered to the Government will be completed within 90 days after expiration of the delivery period under the Government contract; or (2) its number of employees does not exceed 500 persons and the product to be delivered to the Government has been refined by a concern which qualifies under (1) of this subdivision.

(c) *Pneumatic tires.* For passenger cars, motorcycles, truck, bus, and off-the-road pneumatic tires, a concern is classified as small when bidding on a contract for the above listed items: *Provided,* That (1) the value of the above types of pneumatic tires which it manufactured in the United States during the preceding calendar year is more than 50 percent of the value of its total worldwide manufacture, (2) the value of these pneumatic tires which it manufactured worldwide during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during said period, and (3) the value of the principal products which it manufactured or otherwise produced or sold worldwide during the preceding year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

(d) *Passenger cars.* A company is classified as small if it is bidding on a contract for passenger cars: *Provided,* That (1) the value of the passenger cars which it manufactured or otherwise produced in the United States during the preceding calendar year is more than 50 percent of the value of its total worldwide manufacture or production of such passenger cars, (2) the value of the passenger cars which it manufactured or otherwise produced during the preceding calendar year was less than 5 percent of the total value of all such cars manufactured or produced in the United States during the said period, and (3) the value of the principal products which it manufactured or otherwise produced or sold during the preceding calendar

year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

(e) *Rebuilding of machinery on a factory basis.* Any concern bidding on a contract for the rebuilding of machinery or equipment on a factory basis is classified as small business: *Provided,* The purpose of the rebuilding is to restore such machinery or equipment to as serviceable and as like new condition as possible and the number of employees does not exceed the number of employees specified for the classification code applicable to the manufacturer of the original item. The size standard is not limited to concerns who are manufacturers of the original item but is applicable to all bidders or offerors. The term "rebuilding on a factory basis" as used in this subdivision does not include ordinary repair services such as those involving minor repair and/or preservation operations.

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

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

(iii) *Nonmanufacturing industries.* For a product not manufactured by the concern submitting a bid or proposal, other than for a construction or service contract, the number of employees of that concern must not exceed 500 persons, and in the case of a procurement set aside for small business (see § 1.706) or involving equal low bids (see § 2.407–6), or otherwise involving the preferential treatment of small business (e.g., C.O.C. procedures, see § 1.705–4), it must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands by small business concerns. However, if the goods to be furnished are wool, worsted, knitwear, duck, or webbing, nonmanufacturers (dealers and converters) shall furnish such products which have been manufactured or produced by a small weaver (small knitter for knitwear) and, if finishing is required, by a small finisher. If the product to be furnished is thread, nonmanufacturers (dealers and converters) shall furnish thread which has been finished by a small finisher. (Finishing of thread is defined as all "dyeing, bleaching, glazing, mildew proofing, coating, waxing, and other applications required by the pertinent specification, but excluding mercerizing, spinning, throwing, or twisting operations.)

(iv) *Service industries.* (a) For services not elsewhere defined in this part, the average annual sales and receipts of the concern and its affiliates for the preceding 3 fiscal years must not exceed $1 million.

(b) Any concern bidding on a contract for engineering services (other than marine engineering services), motion picture production, or motion picture services is classified as small if its average annual sales and receipts for its preceding 3 fiscal years do not exceed $5 million.

(c) Any concern bidding on a contract for naval architectural and marine engineering services is classified as small if its average annual sales and receipts for its preceding 3 fiscal years do not exceed $6 million.

(d) Any concern bidding on a contract for janitorial and custodial services is classified as small if its average annual sales and receipts for its preceding 3 fiscal years do not exceed $3 million.

(e) Any concern bidding on a contract for base maintenance is classified as small if its average annual sales and receipts for its preceding 3 fiscal years do not exceed $5 million.

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

(g) Any concern bidding on a contract for food services is classified as small if its average annual sales and receipts for its preceding 3 fiscal years do not exceed $4 million.

(h) (1) Any concern bidding on a contract for laundry including linen supply, diaper services, and industrial laundering, is classified small if its average annual sales and receipts for its preceding 3 fiscal years do not exceed $3 million.

(2) Any concern bidding on a contract for cleaning and dyeing including rug cleaning services is classified small if its average annual sales and receipts for its preceding 3 fiscal years do not exceed $1 million.

(i) Any concern bidding on a contract for computer programing services is classified as small if its average annual sales and receipts for its preceding 3 fiscal years do not exceed $3 million.

(j) Any concern bidding on a contract for flight training services is classified as small if its average annual sales and receipts for its preceding 3 fiscal years do not exceed $5 million.

(k) Any concern bidding on a contract for motorcar rental and leasing services or truck rental and leasing services is classified as small if its average annual sales and receipts for its preceding 3 fiscal years do not exceed $5 million.

(l) Any concern bidding on a contract for tire recapping services is classified as small if its average annual sales and receipts for its preceding 3 fiscal years do not exceed $3 million.

(m) Any concern bidding on a contract for data processing services is classified as small if its average annual sales and receipts for its preceding 3 fiscal years do not exceed $3 million.

(n) Any concern bidding on a contract for computer maintenance services is classified as small if its average annual sales and receipts for its preceding 3 fiscal years do not exceed $5 million.

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

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

(c) *Trucking (local and long distance), warehousing, packing and crating, and/or freight forwarding.* For trucking (local and long distance), warehousing, packing and crating, and/or freight forwarding, the annual recipts of the concern and its affiliates must not exceed $5 million. No such concern, however, will be denied small business status for the purpose of Government procurement solely because of its contractual relationship with a large interstate van line if the concern's annual receipts have not exceeded $5 million during its most recently completed fiscal year.

(vi) *Research, development or testing industries.* For research, development, or testing, which requires delivery of a manufactured product, a concern must (a) qualify as a small business manufacturer within the meaning of subdivision (ii) of this subparagraph for the industry in which the product is classified, or (b) qualify as a small business nonmanufacturer within the meaning of subdivision (iii) of this subparagraph. For research, development, or testing, which does not require delivery of a manufactured product, the number of employees of the concern and its affiliates must not exceed 500 persons.

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

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

(c) *Affiliates.* Business concerns are affiliates of each other when either directly or indirectly (1) one concern controls or has the power to control the other or (2) a third party controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration is given

to all appropriate factors including common ownership, common management, and contractual relationships: *Provided, however,* That restraints imposed on a franchisee by its franchise agreement shall not be considered in determining whether the franchiser controls or has the power to control and, therefore, is affiliated with the franchisee, if the franchisee has the right to profit from his effort commensurate with ownership, and bears the risk of loss or failure.

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

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

§ 1.703 Determination of status as small business concern.

* * * * *

(b) *Representation by a bidder or offeror.* Representation by a bidder or offeror that it is a small business concern shall be effective, even though questioned in accordance with the terms of this paragraph, unless the SBA, in response to such question and pursuant to the procedures in subparagraph (3) of this paragraph, determines that the bidder or offeror in question is not a small business concern. If a procurement calls for more than one item and the solicitation permits bids on any item, all items, or all or none, the offeror must meet the small business size standard for each item it is awarded. If the procurement calls for more than one item and the solicitation requires bid on an all or none basis, the offeror can qualify as small business for such procurement if it meets the size standard for the item accounting for the greatest percentage of the total contract value. The controlling point in time for a determination concerning the size status of a questioned bidder or offeror shall be the date of award, except that no bidder or offeror shall be eligible for award as a small business concern unless he has, or unless he could have (in those cases where a representation as to size of business has not been made), in good faith represented himself as small business prior to the opening of bids or closing date for submission of offers (see § 2.405(b) of this chapter with respect to minor informalities and irregularities in bids). A representation by a bidder or offeror that it is a small business concern will not be accepted by the contracting officer if it is known that such concern has previously been finally determined by SBA to be ineligible as a small business for the item or service being procured, and such concern has not subsequently been certified by SBA as being a small business. If SBA has determined that a concern is ineligible as a small business for the purpose of a particular procurement, it cannot thereafter become eligible for the purpose of such procurement by taking affirmative action to constitute itself as small business.

(1) *Protest of small business status.* Any bidder, offeror, or any other interested party may, in connection with a contract involving a small business set aside or otherwise involving small business preferential consideration, question the small business status of any apparently successful bidder or offeror by sending a written protest to the contracting officer responsible for the particular procurement. The protest shall contain the basis for the protest together with specific detailed evidence supporting the protestant's claim that such bidder or offeror is not a small business. Such protest must be received by the contracting officer prior to the close of business on the fifth working day exclusive of Saturday, Sunday, and Federal Legal Holidays (hereinafter referred to as working day) after bid opening date for formally advertised and small business restricted advertised procurements. In procurements requiring submission of proposals, the contracting officer shall, except under the circumstances specified in § 3.508–2 (b) of this chapter, notify the apparently unsuccessful offerors in writing of the name and location of the apparently successful offeror(s) and establish a deadline date (at least 5 working days plus a reasonable time for the notice to reach the unsuccessful offerors) by which any size protest on the instant procurement must be received. A protest received after the appropriate time indicated herein shall be considered timely, if in the case of a mailed protest, it is sent by registered or certified mail and the postmark thereon indicates that it would have been delivered within the time limit except for delays beyond the control of the protestant, or a telegraphic protest, the telegram date and time line indicates that it would have been delivered within the time limit except for delays beyond the control of the protestant. The following procedures shall apply:

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

(ii) *Untimely protests received prior to award.* A protest which is not timely, even though received before award, shall be forwarded to the Small Business Administration regional office serving the area in which the protested concern is located, with a notation thereon that the protest is not timely. The protestant shall be notified that his protest cannot be considered on the instant procurement but has been referred to SBA for its consideration in any future actions; however, see subparagraph (2) of this paragraph for authority of contracting officer to question small business status of an apparently successful offeror at any time prior to award.

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

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

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

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

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

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

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

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

(5) *Award of set-aside procurements.* Except as provided in § 3.508–1 of this chapter or when the contracting officer determines in writing that award must be made without delay to protect the public interest, award will not be made prior to (i) 5 working days after the bid opening date for procurements placed through small business restricted advertising, or (ii) the deadline date for submitting a protest set forth in the notification to the apparently unsuccessful offeror(s) for small business set-aside procurements placed through conventional negotiation.

(c) *Product classification*—(1) *Determination by Contracting Officer.* The contracting officer shall determine the appropriate classification of a product establishing the small business definition to be used in a specific procurement. If different products are being procured on the same solicitation, an appropriate small business size standard shall be established for each product. Both the classification and the applicable size standard (number of employees, average annual receipts, etc.), pursuant to § 1.701, shall be set forth in the schedule of each solicitation which anticipates an expenditure in excess of $2,500. The contracting officer's determination shall be final unless appealed in accordance with subparagraph (2) of this paragraph.

* * * * *

§ 1.704–3 Small business specialists.

(a) Small business specialists shall be appointed by name, in writing, for each principal procurement, purchasing, and contract administration office and in such other offices as the Military Departments consider appropriate. They shall be responsible directly to the appointing authority and shall not be subject to the direction of contracting or technical personnel. The appointing authority is as follows:

(i) Army—Head of a Procuring Activity (see § 1.201–14) or his designee;

(ii) Navy—Head of a Procuring Activity or the official in charge of an activity having purchase authority of $10,000 or more, or in charge of a contract administration activity;

(iii) Air Force—Director of Procurement and Production or comparable person at each central purchasing activity and Major Air Command, the chief of each contract administration activity, and the Base Commander of a local purchase activity;

(iv) Defense Supply Agency—Head of a Procuring Activity and Commanding Officers of DSA activities not designated as a supply center.

A copy of each appointment and termination of appointment of all such specialists shall be forwarded to the appropriate Departmental Office of Small Business (§ 1.704–2). In addition to performing that portion of the specific program outlined in paragraph (b) of this section that is normally performed in the activity to which he is assigned, the small business specialist shall be the small business advisor to the head of the activity and shall perform such additional functions as are prescribed for him in furtherance of the over-all Small Business Program. A small business specialist shall be appointed on a full time basis in all activities having sufficient business to justify such action. This does not preclude the assignment of responsibility for the Labor Surplus Area Program prescribed by Subpart H of this part. When it is deemed appropriate to assign a small business specialist to an activity on a part time basis, his small business duty shall take precedence over collateral responsibilities. When the volume of procurement does not warrant assignment of a small business specialist, the contracting officer shall be responsible for the program.

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§ 1.705–4 Certificates of competency.

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(c) * * *

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(6) A determination by a contracting officer that a small business concern is not responsible pursuant to § 1.903–1 (3) and (4), must be supported by substantial evidence documented in the contract files. These factors of responsibility are not covered by the certificate of competency procedure, but are for determination by the contracting officer, and approval by the head of the procuring activity or his designee. Concurrent with the contracting officer's submission of such determination of nonresponsibility to the head of the procuring activity or his designee for approval, the contracting officer shall transmit a copy of the documentation supporting the determination that a small business concern is not responsible for reasons other than deficiencies in capacity or credit to the appropriate SBA Regional Office and to the appropriate Departmental Small Business Advisor identified in § 1.704–2. The documentation transmitted to the SBA shall include: Two copies of the solicitation, and one copy of the preaward survey findings, pertinent technical and financial information, the abstract of bids, if available, and other pertinent information which supported the contracting officer's determination of nonresponsibility for reasons other than capacity and credit. The appropriate SBA Regional Office receiving the documentation shall, within 5 working days, notify the contracting officer in writing of the SBA's intent to appeal to the head of the procuring activity or his designee with information and recommendations which would materially bear on any approval action being considered by the head of the procuring activity or his designee. Within 10 working days of the SBA's written notification to the contracting officer, the SBA shall present to the head of the procuring activity or his designee the appeal in writing. Such appeal shall contain the basis for the SBA position, and include statements from the small business concern as to tenacity, integrity and perseverance and how deficiencies

noted in the contracting officer's determination have been or will be eliminated. After consideration of the appeal, the decision by the head of the procuring activity or his designee shall be final. If the contracting officer does not receive notification within 5 working days specified above that the SBA intends to appeal, it shall be deemed that the SBA does not intend to file such an appeal. The procedures of subparagraph (4) of this paragraph apply if the award must be made without delay.

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§ 1.706–5 Total set-asides.

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

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (1970 JUNE)

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

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

§ 1.706–6 Partial set-asides.

* * * * *

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

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (1970 JUNE)

(a) *General.* A portion of this procurement, as identified elsewhere in the Schedule, has been set aside for award only to one or more small business concerns. Negotiations for award of this set-aside portion will be conducted only with small business concerns who have submitted responsive bids on the non-set-aside portion at a unit price within 130 percent of the highest unit price at which an award is made on the non-set-aside portion. (For the purposes of this paragraph (a), such "unit price" in the case of award of the non-set-aside portion to a foreign bidder shall be the evaluated unit price established under applicable Buy American-Balance of Payments procedures.) Negotiations shall be conducted with such small business concerns in the following order of priority:

Group 1. Small business concerns which are also certified-eligible concerns with a first preference.

Group 2. Small business concerns which are also certified-eligible concerns with a second preference.

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

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

Within each of the above groups, negotiations with such concerns will be in the order of their bids on the none-set-aside portion, beginning with the lowest responsive bid. The set-aside shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which are considered in evaluating bids on the non-set-aside portions, except where a responsive bid has been submitted on the non-set-aside portion at a unit price which when so adjusted is lower than the adjusted highest unit price awarded on the non-set-aside portion but could not be accepted because of quantity limitations or other consideration (such as the bidder's responsibility). In the latter case if the quantity limitation or other considerations do not preclude consideration of the unit price of such unaccepted bid at the time of negotiation for the set-aside portion, a quantity of the set-aside portion equal to the quantity of such unaccepted bid shall be offered to eligible concerns in their order of priority at the adjusted unit price of such unaccepted bid. If no eligible bidder will take the entire quantity so offered at the adjusted unit price of the unaccepted bid, then all eligible concerns in their order of priority shall be offered any lesser portion at the same price. (In the event more than one such unaccepted bid is involved, the same procedure shall be applied successively to each such bid on negotiation for the set-aside portion.) Subject to the conditions set forth below any remaining quantity of the set-aside portion shall be offered to eligible concerns in their order of priority at the adjusted highest unit price awarded on the non-set-aside portion. If such an unaccepted bid is submitted by a concern eligible to participate in the set-aside, such concern must accept a quantity of the set-aside portion equal to the quantity of the unaccepted bid at the adjusted unit price of the unaccepted bid before any portion of the set-aside may be awarded to that concern at a higher price. If such an unaccepted bid is submitted by a concern not eligible to participate in the set-aside, a quantity of the set-aside portion equal to the unaccepted bid must be awarded at the adjusted unit price of such unaccepted bid before any portion of the set-aside is awarded to any eligible concern at a higher price. The Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion. The partial set-aside of this procurement for small business concerns is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, or in the interest of war or national defense programs, or in the interest of assuring that a fair portion of Government procurement is placed with small business concerns.

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

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

(i) An appropriate section of a city, State or an Indian reservation classified by the Secretary of Labor as a "section of concentrated unemployment or underemployment" (cities and States with classified sections of unemployment or underemployment, as well as eligible Indian reservations are listed by the Department of Labor in its publication "Area Trends in Employment and Unemployment."); or

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

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

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

(3) The term "labor surplus area concern" includes certified-eligible concerns with a first or second preference, and persistent or substantial labor surplus area concerns as defined below:

(i) "Certified-eligible concern with a first preference" means a concern (located in or near a section of concentrated unemployment or underemployment or in an area of persistent or substantial labor surplus) which has been certified by the Secretary of Labor in accordance with 29 CFR 8.7(b) and 8.9(c) with respect to the employment of disadvantaged individuals residing within such sections or areas and which will agree to perform, or cause to be performed by certified concerns with a first preference, a substantial proportion of a contract in or near such sections or in such areas; it includes a concern which, though not so certified, agrees to have a substantial proportion of a contract performed by certified concerns with a first preference in or near such sections or in such areas. A concern shall be deemed to perform a substantial proportion of the contract in or near sections of concentrated unemployment or underemployment or in persistent or substantial labor surplus areas if the costs that the concern will incur on account of manufacturing or production in or near such sections or in such areas (by itself if a certified concern, or by certified concerns with a first preference acting as first tier subcontractors) amount to more than 25 percent of the contract price.

(ii) "Certified-eligible concern with a second preference" means a concern (located in any area) which has been certified by the

Secretary of Labor in accordance with 29 CFR 8.7(c) and 8.9(d) with respect to the employment of disadvantaged individuals, and which will agree to perform or cause to be performed by certified concerns with a first or second preference a substantial proportion of the contract; it includes a concern which, though not so certified, agrees to have a substantial proportion of a contract performed by such certified concerns. A concern shall be deemed to perform a substantial proportion of the contract if the costs that the concern will incur on account of manufacturing or production (by itself if a certified concern, or by certified concerns with a first or second preference acting as first tier subcontractors) amount to more than 25 percent of the contract price.

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

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

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

(d) *Agreement.* The bidder agrees that (i) if awarded a contract as a certified-eligible small business concern with a first preference under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the contract in or near sections of concentrated unemployment or underemployment or in persistent or substantial labor surplus areas; and, in the performance of such contract, will employ or require certified first tier subcontractors with a first preference to employ a proportionate number of disadvantaged individuals, as defined by the Department of Labor in 29 CFR 8.2(d), residing within such sections or areas in accordance with plans approved by the Secretary of Labor; (ii) if awarded a contract as a certified-eligible small business concern with a second preference under the set-aside portion of the procurement, he will perform or cause to be performed a substantial proportion of the contract, in certified facilities and in the performance of such contract will employ, or require certified first tier subcontractors with a first or second preference to employ, disadvantaged individuals in accordance with plans approved by the Secretary of Labor; and (iii) if awarded a contract as a small business persistent or substantial labor surplus area concern under the set-aside portion of this procurement, he will perform or cause to be performed a substantial proportion of the contract (A) in areas classified at the time of award or at the time of performance of the contract as presistent or substantial labor surplus areas, or (B) in any area by himself if a certified concern or by first tier certified subcontractors.

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

* * * * *

(d)(1) After the award price for the nonset-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the nonset-aside portion at a unit price no greater than 130 percent of the highest award made or to be made on the nonset-aside portion, taking into account the evaluation factors for rent-free use of Government property pursuant to Subpart E, Part 13 of this chapter (*Provided*, however, where the successful bidder which establishes the highest award price on the nonset-aside portion is a foreign bidder, the 130 percent rule shall be applied to the evaluated price on the nonset-aside portion (see § 6.104–4 of this chapter)). Negotiations shall be conducted with small business concerns in the order of priority as indicated in the foregoing notices: *Provided*, That; where equal low bids are received on the nonset-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the nonset-aside portion (under the equal low bid procedure of § 2.407–6 of this chapter) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion will be awarded at the highest unit price awarded or to be awarded for the nonset-aside portion except that where the successful bidder which establishes the highest award price on the nonset-aside portion is a foreign bidder, the award price for the set-aside portion shall be the highest evaluated price (used for the purpose of determining eligibility of the foreign bidder for award) on the nonset-aside portion (see § 6.104–4 of this chapter). A bidder or offeror entitled to receive the award for quantities of an item under the nonset-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the procurement. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds (see § 1.312), or the change of prices after award by negotiation of a contract modification.

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§ 1.707–3 Required clauses.

(a) The Utilization of Small Business Concerns clause below shall be included in all contracts in amounts which may exceed $5,000 except (1) contracts which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands; and (2) contracts for services which are personal in nature:

UTILIZATION OF SMALL BUSINESS CONCERNS (1958 JANUARY)

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

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

* * * * *

§ 1.800 Scope of subpart.

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

§ 1.801–1 Labor surplus area concern.

The term "labor surplus area concern" includes certified-eligible concerns with a first or second preference, and persistent or substantial labor surplus concerns as defined in this section:

(a) The term "certified-eligible" is derived from 29 CFR Part 8, which makes a firm eligible for a first or second preference in the award of certain contracts on the basis that such firm agrees to employ disadvantaged individuals in the performance of a substantial proportion of the contract; and that such employment and performance must be provided by a certified firm, whether such firm be the prime or a first tier subcontractor. A certified-eligible concern is eligible for first preference in the award of certain contracts if it is (1) located in or near a section of concentrated unemployment or underemployment or in an area of persistent or substantial labor surplus; and (2) agrees to employ disadvantaged individuals in such sections or areas in accordance with plans approved by the Secretary of Labor (see 29 CFR 8.7(b) and 8.9(c)), representing at least 25 percent of the total number of new hires each month beginning with

the date of certification and continuing until the expiration of the validity period or completion of an awarded contract or subcontract, whichever is later; and (3) will perform or cause to be performed by first tier certified subcontractors with a first preference a substantial proportion of the contract, amounting to more than 25 percent of the contract price, in or near a section of concentrated unemployment or underemployment, or in an area of persistent or substantial labor surplus.

(b) A certified-eligible concern is eligible for a second preference if it is (1) located in any area of the United States; (2) agrees to employ disadvantaged individuals in accordance with plans approved by the Secretary of Labor (see 29 CFR 8.7(c) and 8.9(d)), representing at least 15 percent of the total number of new hires each month beginning with the date of certification and continuing until the expiration of the validity period or completion of an awarded contract or subcontract; and (3) will perform or cause to be performed by any first tier certified subcontractors a substantial portion of the contract, amounting to more than 25 percent of the contract price, in any area of the United States.

(i) The term "certified-eligible concern with a first preference" means a concern (located in or near a section of concentrated unemployment or underemployment or in an area of persistent or substantial labor surplus) which has been certified by the Secretary of Labor in accordance with 29 CFR 8.7(b) and 8.9(c) with respect to the employment of disadvantaged individuals residing within such sections or areas and which will agree to perform or cause to be performed by certified concerns with a first preference a substantial proportion of a contract in or near such sections or in such areas; it includes a concern which, though not so certified, agrees to have a substantial proportion of a contract performed by certified concerns with a first preference in or near such sections or in such areas. A concern shall be deemed to perform a substantial proportion of the contract in or near sections of concentrated unemployment or underemployment or in persistent or substantial labor surplus areas if the costs that the concern will incur on account of manufacturing or production in or near such sections or in such areas (by itself if a certified concern, or by certified concerns with a first preference acting as first tier subcontractors) amount to more than 25 percent of the contract price.

(ii) The term "certified-eligible concern with a second preference" means a concern (located in any area) which has been certified by the Secretary of Labor in accordance with 29 CFR 8.7(c) and 8.9(d), with respect to the employment of disadvantaged individuals, and which will agree to perform or cause to be performed by certified concerns with a first or second preference a substantial proportion of the contract; it includes a concern which, though not so certified, agrees to have a substantial proportion of a contract performed by such certified concerns. A concern shall be deemed to perform a substantial proportion of the contract if the costs that the concern will incur on account of manufacturing or production (by itself if a certified concern, or by certified concerns with a first or second preference acting as first tier subcontractors) amount to more than 25 percent of the contract price.

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

Example A. John Doe Company, manufacturing in or near a section of concentrated unemployment or underemployment and holding a current Certificate of Eligibility issued by the Secretary of Labor in accordance with 29 CFR 8.7(b) and 8.9(c) with respect to an agreement to employ disadvantaged individuals residing in such section, bids on a contract at $1,000. John Doe Company will incur the following costs:

Direct Labor	$100
Overhead	100
Purchase of materials from NOP Company which manufactures the materials in a section of concentrated unemployment and underemployment and holds a current Certificate of Eligibility issued by the Secretary of Labor in accordance with 29 CFR 8.7(b) and 8.9(c)	200
Purchase of materials from RST Company, which manufactures the materials in a full employment area	500

John Doe Company qualifies as a labor surplus area concern (certified-eligible concern with a first preference) since costs to be incurred by John Doe, the certified-eligible prime with a first preference and NOP Company, its first tier certified subcontractor with a first preference, amount to more than 25 percent of the contract price.

Example B. ABC Company, manufacturing in a full employment area and holding no current Certificate of Eligibility issued by the Secretary of Labor, bids on a contract at $1,000. ABC Company will incur the following costs:

Direct labor	$200
Overhead	200
Purchase of materials from XYZ, which manufactures the materials in a full employment area but holds a current Certificate of Eligibility in accordance with 29 CFR 8.7(c) and 8.9(d) issued by the Secretary of Labor	400
Purchase of materials from NOP Company which manufactures the materials in a labor surplus area not classified as a section of concentrated unemployment or underemployment but holds no current Certificate of Eligibility issued by the Secretary of Labor with respect to an agreement to employ disadvantaged individuals in such area	110

ABC Company qualifies as a labor surplus area concern (certified eligible concern with a second preference) since costs to be incurred by XYZ, its first tier certified subcontractor with a second preference, amount to more than 25 percent of the contract price.

Example C. DEF Company, manufacturing in a persistent labor surplus area but holds no current Certificate of Eligibility issued by the Secretary of Labor, bids on a contract at $1,000. DEF Company will incur the following costs:

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

§ 1.802 General policy.

Except as provided in § 1.806 with respect to depressed industries, it is the policy of the Department of Defense to aid labor surplus areas and encourage increased hiring of disadvantaged individuals by placing contracts with labor surplus area concerns, to the extent consistent with procurement objectives and when such contracts can be awarded at prices no higher than those obtainable from other concerns and by encouraging prime contractors to place subcontracts with labor surplus area concerns. In carrying out this policy, to accommodate the small business policies of Subpart G, of this part, preference shall be given in the following order of priority to (a) certified-eligible concerns with a first preference which are also small business concerns, (b) other certified-eligible concerns with a first preference, (c) certified-eligible concerns with a second preference which are also small business concerns, (d) other certified-eligible concerns with a second preference, (e) persistent or substantial labor surplus area concerns which are also small business concerns, (f) other persistent or substantial labor surplus area concerns, and (g) small business concerns which are not labor surplus area concerns. But in no case will price differentials be paid for the purpose of carrying out this policy. Heads of Procuring Activities and Heads of Field Purchasing and Contract Administration Activities are responsible for the effective implementation of the Labor Surplus Area Program within their respective activities. Responsibility for administration of the program may be assigned to small business specialists appointed pursuant to § 1.704–3.

§ 1.804–2 Set-aside procedures.

* * * * *

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

NOTICE OF LABOR SURPLUS AREA SET-ASIDE (1970 JUNE)

(a) *General.* A portion of this procurement, as identified elsewhere in the Schedule, has been set aside for award only to one or more labor surplus area concerns, and, to a limited extent, to small business concerns which do not qualify as labor surplus area concerns. Negotiations for award of the set-aside portion will be conducted only with labor surplus area concerns (and small business concerns to the extent indicated below) who have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 130 percent of the highest unit price at which an award is made on the non-set-aside portion. (For the purposes of this paragraph (a), such "unit price" in the case of award of the non-set-aside portion to a foreign bidder shall be the evaluated unit price established under applicable Buy American-Balance of Payments procedures.) Negotiations for the set-aside portion will be conducted with such bidders in the following order of priority:

Group 1. Certified-eligible concerns with a first preference which are also small business concerns.

Group 2. Other certified-eligible concerns with a first preference.

Group 3. Certified-eligible concerns with a second preference which are also small business concerns.

Group 4. Other certified-eligible with a second preference.

Group 5. Persistent or substantial labor surplus area concerns which are also small business concerns.

Group 6. Other persistent or substantial labor surplus area concerns.

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

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

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

(i) "Section of concentrated unemployment or underemployment" means appropriate sections of a city, State, or an Indian reservation so classified by the Secretary of Labor. (Cities and States with classified sections of unemployment and underemployment, as well as eligible Indian reservations are listed by the Department of Labor in its publication "Area Trends in Employment and Unemployment.")

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

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

(2) The term "labor surplus area concern" includes certified-eligible concerns with a first or second preference and persistent or substantial labor surplus area concerns as defined below:

(i) "Certified-eligible concern with a first preference" means a concern (located in or near a section of concentrated unemployment or underemployment or in an area of persistent or substantial labor surplus) which has been certified by the Secretary of Labor in accordance with CFR 8.7(b) and 8.9(c), with respect to the employment of disadvantaged individuals residing within such sections or areas, and which will agree to perform or cause to be performed by certified concerns with a first preference a substantial proportion of a contract in or near such sections or in such areas; it includes a concern which, though not so certified, agrees to have a substantial proportion of a contract performed by certified concerns with a first preference in or near such sections or in such areas. A concern shall be deemed to perform a substantial proportion of the contract in or near sections of concentrated unemployment or underemployment or in persistent or substantial labor surplus area if the costs that the concern will incur on account of manufacturing or production in or near such section or in such areas (by itself if a certified concern, or by certified concerns with a first preference acting as first tier subcontractors) amount to more than 25 percent of the contract price.

(ii) "Certified-eligible concern with a preference" means a concern (located in any area) which has been certified by the Secretary of labor in accordance with 29 CFR 8.7(c) and 8.9(d), with respect to the employment of disadvantaged individuals, and which will agree to perform or cause to be performed by certified concerns with a first or second preference a substantial proportion of the contract; it includes a concern which, though not so certified, agrees to have a substantial proportion of a contract performed by such certified concerns. A concern shall be deemed to perform a substantial proportion of the contract if the costs that the concern will incur on account of manufacturing or production (by itself if a certified concern, or by certified concerns with a first or second preference acting as first tier subcontractors) amount to more than 25 percent of the contract price.

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

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

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

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

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

(e) *Agreement.* The bidder agrees that (i) if awarded a contract as a certified-eligible concern with a first preference under the set-aside portion of this procurement, he will

perform or cause to be performed a substantial proportion of the contract in or near sections of concentrated unemployment or underemployment or in persistent or substantial labor surplus areas and, in the performance of such contract, will employ or require certified first tier subcontractors with a first preference to employ a proportionate number of disadvantaged individuals, as defined by the Department of Labor in 29 CFR 8.2(d), residing within such sections or areas in accordance with plans approved by the Secretary of Labor; (ii) if awarded a contract as a certified-eligible concern with a second preference under the set-aside portion of the procurement, he will perform or cause to be performed a substantial proportion of the contract, in certified facilities and in the performance of such contract will employ or require certified first tier subcontractors with a first or second preference to employ disadvantaged individuals in accordance with plans approved by the Secretary of Labor; and (iii) if awarded a contract as a persistent or substantial labor surplus area concern under the set-aside portion of this procurement, he will perform or cause to be performed a substantial proportion of the contract in (A) areas classified at the time of award or at the time of performance of the contract as persistent or substantial labor surplus areas, or (B) in any area, by himself if a certified concern or by its first tier certified subcontractors.

* * * * *

(c) (1) After the award price for the nonset-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the nonset-aside portion at a unit price no greater than 130 percent of the highest award made or to be made on the nonset-aside portion, taking into account the evaluation factors for rent-free use of Government property pursuant to subpart E, Part 13 of this chapter (provided, however, where the successful bidder which establishes the highest award price on the non-set-aside portion is a foreign bidder, the 130 percent rule shall be applied to the evaluated price on the non-set-aside portion (see § 6.104–4 of this chapter). Negotiations shall be conducted in the order of priority in the foregoing notices. *Provided that:* Where equal low bids are received on the nonset-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the nonset-aside portion (under the equal low bid procedures of § 2.407–6 of this chapter) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion shall be awarded at the highest unit price awarded or to be awarded for the nonset-aside portion except that where the successful bidder which establishes the highest award price on the nonset-aside portion is a foreign bidder, the award price for the set-aside portion shall be the highest evaluated price (used for the purpose of determining eligibility of the foreign bidder for award) on the nonset-aside portion (see § 6.104–4 of this chapter). A bidder or offeror entitled to receive the award for quantities of an item under the nonset-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the procurement. This does not prevent acceptance by the contracting officer of voluntary reductions in price prior to award, acceptance of refunds, or the change of prices after award by negotiation of a contract modification. If the entire set-aside portion cannot be awarded by the method described herein, any unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations (see §§ 3.201–2(b)(1) and 3.210–3 of this chapter as to negotiation). Since a considerable time may have elapsed since the initiation of the requirement, contracting officers, prior to issuing a new solicitation, shall review the required delivery schedule (see § 1.305–2) to insure that it is realistic in the light of all relevant factors including the capabilities of labor surplus concerns.

* * * * *

§ 1.805–3 Required clauses.

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

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

(2) Contracts for services which are personal in nature;

(3) Contracts for construction; and

(4) Contracts with the petroleum and petroleum products industry.

UTILIZATION OF LABOR SURPLUS AREA CONCERNS (1970 JUNE)

(a) It is the policy of the Government to award contracts to labor surplus area concerns, that (1) have been certified by the Secretary of Labor (hereafter referred to respectively as certified concerns with a first or second preference) regarding the employment of a proportionate number of disadvantaged individuals and have agreed to perform substantially (i) in or near sections of concentrated unemployment or underemployment or in persistent or substantial labor surplus areas or (ii) in other areas of the United States; or (2) are noncertified concerns which have agreed to perform substantially in persistent or substantial labor surplus areas, where this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy.

(b) In complying with paragraph (a) of this clause and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (1) Certified concerns with a first preference which are also small business concerns, (2) other certified concerns with a first preference, (3) certified concerns with a second preference which are also small business concerns, (4) other certified concerns with a second preference, (5) persistent or substantial labor surplus area concerns which are also small business concerns, (6) other persistent or substantial labor surplus area concerns, and (7) small business concerns which are not labor surplus area concerns.

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

LABOR SURPLUS AREA SUBCONTRACTING PROGRAM (1970 JUNE)

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

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

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

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

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

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

(b) For subcontracting purposes, a "labor surplus area concern" is a concern that (1) has been certified by the Secretary of Labor (hereafter referred to as a certified concern) regarding the employment of a proportionate number of disadvantaged individuals and has agreed to perform substantially in or near sections of concentrated unemployment or underemployment, in persistent or substantial labor surplus areas, or in other areas of the United States; or (2) is not a certified concern but has agreed to perform substantially in persistent or substantial labor surplus areas. A certified concern shall be deemed to perform a substantial proportion of a contract in or near sections of concentrated unemployment or underemployment, in persistent or substantial labor surplus areas, or in other areas of the United States if the costs that the concern will incur on account of manufacturing or production in or near such sections or in such areas amount to more than 25 percent of the price of such contracts; a concern shall be deemed to perform a substantial proportion of a contract in a persistent or substantial labor surplus area if the costs that the concern will incur on account of manufacturing or production in a persistent or substantial labor surplus cent of the price of such contract.

(c) The Contractor further agrees, with respect to any subcontract hereunder which is in excess of $500,000 and which contains

the clause entitled "Utilization of Labor Surplus Area Concerns" that he will insert provisions in the subcontract which will conform substantially to the language of this clause, including this paragraph (c), and that he will furnish the names of such subcontractors to the Contracting Officer.

§ 1.901 Applicability.

This subpart applies to procurement, advertised or negotiated, from contractors located in the United States, its possessions, or Puerto Rico and shall be applied in other places except where inconsistent with the laws and customs of the place where the prospective contractor is located. It is not applicable to procurement from (a) other governments (but see § 1.904–3), including State and local governments; (b) other United States Government departments and agencies, or their instrumentalities (such as Federal Prison Industries, Inc.); or (c) National Industries for the Blind.

§ 1.903–1 General standards.

* * * * *

(a) Have adequate financial resources, or the ability to obtain such resources as required during performance of the contract (see Defense Contract Financing Regulations, Part 2, Appendix E, and any amendments thereto; see also §§ 1.904–2 and 1.905–2; for SBA certificates of competency, see § 1.705–4);

* * * * *

(e) Be otherwise qualified and eligible to receive an award under applicable laws and regulations, e.g., subparts F and H, Part 12 of this chapter. (In the case of a small business concern, see § 1.705–4(c)(5).).

§ 1.903–2 Additional standards.

(a) *Standards for production, maintenance, construction, and research and development contracts.* In addition to the standards in § 1.903–1, in procurement involving production, maintenance, construction (see § 18.106), or research and development work (and in other procurement as appropriate), a prospective contractor must:

(1) Have the necessary organization, experience, operational controls and technical skills, or the ability to obtain them (including where appropriate, such elements as production control procedures, property control system, and quality assurance measures applicable to materials produced or services performed by the prospective contractor and subcontractors (see § 1.903–4)); and

(2) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them. Where a prospective contractor proposes to use the facilities or equipment of another concern, not a subcontractor, or of his affiliate (see § 2.201(a)(23) and (b)(27)), all existing business arrangements, firm or contingent, for the use of such facilities or equipment shall be considered in determining the ability of the prospective contractor to perform the contract; see also § 1.904–2.

* * * * *

§ 1.904–1 Requirement.

No purchase shall be made from, and no contract shall be awarded to, any person or firm unless the contracting officer first makes an affirmative determination that the prospective contractor is responsible within the meaning of § 1.902. The signing of the contract by the contracting officer constitutes such a determination; therefore, he must assure himself that the applicable requirements of § 1.903 are met before signing the contract or order. When a certificate of competency has been issued, the factors covered by the certificate of competency may be accepted by the contracting officer without further inquiry. When a bid or offer on which an award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, a determination of nonresponsibility shall be made, signed, and placed in the file. The determination of nonresponsibility shall set forth the basis of the determination. In making a determination of responsibility or nonresponsibility for purchase or contract awards of $100,000 and over, contractor performance evaluation information (see § 1.908; the information to be used is determined by the dollar value and type of effort required) and other performance data should be acquired and considered when the contracting officer deems it necessary. Supporting documents or reports, including any pre-award survey reports (see § 1.905–4) and SBA certificate of competency (see § 1.705–4), shall be included in the contract file.

§ 1.904–2 Exceptions. [Revoked]

§ 1.908–5 Performance evaluation of constructions contractors.

* * * * *

(b) *Distribution of performance reports.* * * *

(3) Reports for all contracts in excess of $200,000 to the:

Office of the Chief of Engineers, Attention: ENGMC–KC, Forrestal Building, Washington, DC 20314.

* * * * *

§ 1.1002–6 Paid advertisements in newspapers and trade journals.

See Subpart H of Part 4 of this chapter.

§ 1.1003–9 Preparation and transmittal.

(a) Each purchasing office shall transmit a synopsis of proposed procurements. Synopses shall be:

(1) Issued in a timely manner in accordance with § 1.1003–2;

(2) Forwarded daily via airmail unless proximity of the purchasing office to Chicago, Ill., makes the use of surface mail more appropriate; and

(3) Addressed to:

U.S. Department of Commerce, Commerce Business Daily, Post Office Box 5999, Chicago, IL 60680.

(b) Each synopsis shall be prepared as described below:

(1) Lines in the text commencing flush with left margin will not exceed 69 typewritten spaces. Double spaced lines will be used to describe each procurement action. Descriptions of different procurement actions will be distinguished by indenting the first five spaces.

(2) The first line of the text will state the number of the synopsis being sent. Synopses will be numbered consecutively by the purchasing office during the calendar year. New numerical series beginning with number one will start as of the first working day of January of each year. Double space between this line and the next line.

(3) The second line of the text will state name and location of the purchasing office straight across the page, not to exceed 69 typewritten spaces. No abbreviations are to be used except for name of State. If more than one line is required for name and location of purchasing office, double space and continue on subsequent line or lines if necessary, double spacing between each line. The address may include an attention phrase directed to an official by name or title.

(4) Four spaces below the preceding line entry (name and address of purchasing office), indent five spaces. Using the Department of Defense Procurement Coding Manual, section I of volume I, Commodities and Services Reported on DD Form 350, select code applicable to procurement action and insert as appropriate:

(i) "RDTE", for any procurement classified under Part A;

(ii) The single letter code for procurement actions classified under Part B (use "X" for services which do not fall within the categories cited in Part B); or

(iii) The first two digits of the 4-digit code for procurement actions classified under Part C of the Manual.

If more than one classification is applicable to the procurement action, enter the code accounting for the largest dollar volume of the procurement. Two hyphens will be inserted after the code followed by a description of the supplies or services being procured stated in narrative paragraph form, double spaced, with each line commencing flush with the left margin. The length of the lines in the description will not exceed 69 typewritten spaces. The description will be clear, concise, and with a minimum number of words but sufficient for understanding by interested parties. It will include, as appropriate, commonly used names of supply items, basic materials from which fabricated, general size or dimensions, citations of specification or drawing numbers, or other data. If the material being procured is covered by one or more specifications requiring qualification testing and approval and such requirement has not been waived by competent authority, the notation "(QPL)" shall be inserted immediately following the specification number. The Federal stock number will also be included where one has been assigned. In the absence of a Federal stock number, the service stock number will be included where one has been assigned. However, where more than six items are listed in the synopsis, stock numbers will be listed only for the six items of highest value. No abbreviations will be used in describing supplies or services, although standard abbreviations may be used in listing the quantity purchase reference numbers, specifications and bid opening date. Punctuation symbols will be used as in normal correspondence. Fractions on typewriter keys

will not be used but fractions may be expressed by (number)/(number) e.g., 11/16, 1/4, 1/2.

(5) Following the complete description of the supplies or services which will end with a period, two hyphens will be used to set off the quantity to be procured. The quantity usually will be stated in numerals followed by the unit (abbreviations of units are permissible, e.g., lbs., ea., doz.). Whenever it is necessary to use "Indefinite Quantity," the description should include a statement as to the duration of the contract or period covered.

(6) The quantity will be followed by two hyphens before indicating the place of delivery as follows: "Deliveries to _____". Places of delivery should be stated specifically when there are not more than three destinations. When delivery points are more numerous, they will be grouped, if practicable, to show the general geographical area, e.g., "West Coast", "East Coast", or other appropriate regional description. Otherwise, the places of delivery will be stated as "Various Destinations" or "Destination(s) to be furnished".

(7) The places of delivery will be followed by two hyphens before commencing with the procurement instrument identification number. Such numbers should not be broken or appear on one line carried over on the subsequent line, as the insertion of a hyphen for the carry-over would change the number.

(8) Two hyphens will be used following the procurement instrument identification number to set off the bid opening date or the advance notification date. The date should be stated in military style (date, month and year, e.g., August 1, 1970). If the synopsis will be published prior to issuance of the invitation for bids or request for proposals or quotations, the synopsis shall include a statement to the effect that requests for such invitations, proposals or quotations should be received not later than 10 days from the date of publication of such synopsis to enable the purchasing office to mail such invitation for bids, request for proposals, or request for quotations directly to the inquirer at the time of issuance thereof.

(9) On the last page of each issue, the Commerce Business Daily publishes footnote information identified as "notes" which applies to specific procurement situations and which is used in repetitive instances in certain synopses appearing in the publication. Some existing "notes" are similar to the examples stated in paragraph (e) of this section. Where existing "notes" include exact wordage applicable to a given synopsis, purchasing offices may incorporate into the body of the letter a reference "See Note No. — on the last page of this issue * * *", in lieu of typing out the specific text of the particular entry. Any reference in the transmittal to certain standard "boilerplate" notices in the Commerce Business Daily will be made by title, e.g., "Research and Development Sources Sought," when applicable. When the procurement situation of a given synopsis deviates from the standard "boilerplate" language, appropriate emphasis should be made in the text of the transmitted synopses.

NOTE: The purpose of using "notes" is to reduce the costs of preparing, transmitting and printing synopses. To promote cost reduction, contracting officers are urged to use references to "notes" in preparing synopses, when applicable. If an existing "note" does not cover a frequently recurring situation, contracting officers of each Department may request the Commerce Business Daily to establish a new "note." Requests shall be addressed to: U.S. Department of Commerce, Commerce Business Daily, Post Office Box 5999, Chicago, IL 60680.

From time to time a list of currently existing "notes" will be published in a U.S. Department of Commerce Bulletin.

(c) In addition to the foregoing, where the proposed procurement is to be effected in accordance with a small business set-aside (see § 1.706) or labor surplus area set-aside (see § 1.804), the synopsis shall (1) where there is a 100 percent small business set-aside, state that "The proposed procurement(s) listed herein is (are) under 100 percent small business set-aside," or (2) where there is a partial small business or labor surplus area set-aside, state that "An additional quantity of _____ is being reserved for _____ (insert "small business" or "labor surplus area" as appropriate) under a partial determination".

NOTE: To avoid confusion, separate letters should be sent covering proposed procurements which are under 100 percent small business set-aside so that they will be placed in the Department of Commerce Notice To Small Firm Section.

(d) (1) Notices which invite the submission of information as to research and development capabilities in specific fields of interest shall be headed "Research and Development Sources Sought". This shall be followed by a statement similar to the following: "Firms having research and development capabilities in the field of _____ and whose fa-
(Be specific)
cilities and personnel include _____
(Describe
_____
in substantial detail minimum facilities and personnel required)
are invited to submit complete information to the purchasing office listed above. Information furnished should include the total number of employees and professional qualifications of scientists, engineers, and technical personnel; a description of general and special facilities; an outline of previous projects; a statement regarding industrial security clearance, if previously granted; and other available descriptive literature. This is not a request for a proposal".

(2) Notices of specific procurements of research or development projects may state that only those sources which have been technically evaluated will be requested to submit proposals. When it is intended to award a contract based on earlier unsolicited proposals for research and development work, the notice shall so state. The name of the proposed contractor shall be given and a brief description of the work proposed, provided that information submitted in confidence is not revealed. The notice may state that a contract is in process of being awarded and therefore, other proposals cannot be considered for this procurement.

(e) Certain procurements involve demands on the contractor which may make it virtually impossible for concerns not having special capabilities or qualifications to compete realistically for the contract. So as to alert such concerns to the need for special capabilities or qualifications and thus permit them to avoid improvident expenditures for bid preparation and the like, procurements for which (1) it is impracticable to distribute plans, drawings or specifications, (2) adequate plans, drawings or specifications to describe requirements are not available, (3) security clearance is required, or (4) other circumstances exist which should be brought to the attention of prospective sources for consideration in order to clearly indicate those qualifying factors affecting the procurement, should be so identified in the synopsis. Appropriate notations for inclusion in the synopsis, such as set forth below, should be devised to meet the needs of specific situations.

(1) Availability of Specifications, Plans or Drawings:
It will be impracticable to distribute the applicable _____
_____
(Insert "specifications," "plans," "drawings" or other appropriate words) with the solicitation. This data may be examined or obtained at_____
_____
(Be specific)

(2) Complete Data Not Available:
Available specifications, plans, or drawings, relating to the procurement described below do not fully provide all necessary manufacturing and construction details.

(3) Security Requirements:
Security clearance will be required of all bidders or offerors (or of the successful bidder or offeror).

(4) Availability of Background Research Report:
This procurement of basic research is a continuation of an effort conducted for the past _____. A research report contain-
(Insert period)
ing findings to date is not available to the Government.

(5) Production Requirements:
The production of the supplies listed requires a substantial initial investment or an extended period of preparation for manufacture.

(6) Standardization Requirements:
This procurement is for technical equipment. A determination has been made in accordance with 10 U.S.C. 2304(a)(13) that standardization and interchangeability of parts are necessary in the public interest. Therefore, to achieve standardization, it is proposed that Requests for Proposals need be issued only to the following firms:
_____
_____
(Name of firm) (Address)

(f) Where the contracting officer determines in accordance with § 1.1003–6 (a) that the names of firms to whom requests for proposals have been issued should be included in the synopsis, such

synopsis shall contain substantially the following statement:

Requests for Proposals have been issued to the following firms:

(Name of firm) (Address)

It is suggested that small business firms or others interested in subcontracting opportunities in connection with this procurement make direct contact with the above firms.

§ 1.1005–1 Synopsis of contract awards.

* * * * *

(b) *Preparation and transmittal.* * * *

(2) * * *

(vi) The name, size status ((S) for small business and (L) for large business), and the full name of the contractor;

* * * * *

§ 1.1007–4 Commerce business daily announcements.

* * * * *

(b) *Preparation and Transmittal.* Activities publishing long-range procurement estimates shall, in accordance with paragraph (a) of this section, publicize them in the Commerce Business Daily by forwarding to the address listed in § 1.1003–9(a) an announcement reflecting the fact that a long-range procurement estimate has been published and citing the address of the office from which a copy of the estimate can be obtained. Each announcement should be prepared substantially as the following example.

The Defense Personnel Support Center has published an estimate of equipment and footwear procurement requirements for _____ and _____ Quarters FY _____. These estimates, which are subject to revision and are in no way binding on the Government, may be obtained, by request, from the Defense Personnel Support Center (ATTN: Procurement and Production Directorate), 2800 South 20th Street, Philadelphia, PA 19101.

PART 2—PROCUREMENT BY FORMAL ADVERTISING

2. Section 2.200 is revised; in § 2.201 paragraphs (a)(2) (iii), (vii), (3) (x), (xxx), (4)(xi), paragraph (b) (13), (25), (26), and (45) are revised; § 2.205–5 paragraph (a) is revised and paragraph (c) is deleted; § 2.303–1 is amended; § 2.402–3 is added; in § 2.405 a new paragraph (f) is added; § 2.406–3(b)(1) is amended; and § 2.407–6(a)(2) is revised, as follows:

§ 2.200 Scope of subpart.

This subpart sets forth procedures for the solicitation of bids. Forms used in inviting bids are prescribed in subparts A and D, part 16 of this chapter. Invitations for bids shall contain the applicable information described in § 2.201 and any other information required for a particular procurement. All such information shall be set forth in full in the solicitation rather than incorporated by reference, except that:

(a) Standard Forms consisting of general provisions (contract clauses) may be incorporated by reference to the form number, form name, and edition date: *Provided*, The instructions for use of the form do not prohibit incorporation of the form by reference; and

(b) Other contract clauses set forth in Part 7 of this chapter may be incorporated by reference if authorized by § 7.001 of this chapter.

No other contract clauses shall be incorporated by reference. Pen and ink entries, deletions, or alterations shall not be made in an invitation for bids after it has been reproduced for issue to prospective bidders. If a change is necessary after reproduction of the invitation for bids, the Standard Form 30 (Amendment of Solicitation/Modification of Contract) shall be used (see § 16.101 of this chapter), except that its use for construction contracts is optional (see § 16.401–1(i) of this chapter).

§ 2.201 Preparation of invitation for bids.

(a) *Supply and services contracts.* * * *

(2) *Section B*—Contract form and Representations, Certifications, and Other Statements of Offeror.

* * * * *

(iii) A statement as follows:

This procurement is not set aside for labor surplus area concerns. However, the bidder's status as such a concern may affect entitlement to award in case of tie bids or bid evaluation in accordance with the Buy American clause of this solicitation. In order to have his entitlement to a preference determined if those circumstances should apply, the bidder must:

(i) Furnish with his bid evidence that he or his first-tier subcontractor is a certified-eligible concern with a first preference in accordance with 29 CFR 8.7(b) and 8.9(c) or a certified-eligible concern with a second preference in accordance with 29 CFR 8.7(c) and 8.9(d), and identify below the address at which the costs he will incur on account of manufacturing or production (by himself if a certified concern or by certified concerns acting as first-tier subcontractors) amount to more than 25 percent of the contract price, or

(ii) Identify below the persistent or substantial labor surplus area in which the costs he will incur on account of manufacturing or production (by himself or his first-tier subcontractors) amount to more than 50 percent of the contract price. (If the bidder proposes to qualify as a persistent or substantial labor surplus area concern by including costs to be incurred by a certified concern not located in a labor surplus area, evidence of such certification must be furnished.)

Failure to furnish evidence of certification by the Secretary of Labor if applicable, and to identify the locations as specified above will preclude considerations of the bidder as a labor surplus concern. Bidder agrees that if, as a labor surplus area concern, he is awarded a contract for which he would not have qualified in the absence of such status, he will perform the contract or cause it to be performed, in accordance with the obligations which such status entails. (1970 September)

* * * * *

(vii) unless exempted by § 12.805 of this chapter from inclusion of the Equal Opportunity clause, the representations set forth in § 12.806(b);

* * * * *

(3) *Section C*—Instructions, Conditions and Notices to Bidders.

* * * * *

(x) In accordance with § 12.806(a) of this chapter, the notice of preaward on Site Equal Opportunity Compliance Review set forth therein;

* * * * *

(xxx) If the contract is to contain the Safety Precautions for Ammunition and Explosives clause prescribed by § 7.104–79 of this chapter, a specific list of any of the mandatory requirements of DOD 4145.26M which are being waived;

* * * * *

(4) *Section D*—Evaluation Factors for Award.

* * * * *

(xi) Any provision concerning evaluation or ward peculiar to the kind of contract (for example, the provision required by § 22.702–1 of this chapter for laundry and dry cleaning services, that required by § 22.502 for mortuary services and that required by §§ 22.600–3 and 22.600–4 for the preparation of personal property for shipment or storage and the performance of intra-area movements;

* * * * *

(b) *Construction contracts.* * * *

(13) Any authorized special provisions, necessary for the particular procurement, relating to such matters as progress payments, patent rights (see § 18.908 of this chapter), liquidated damages, profit limitations, Buy American Act (see Subpart E, Part 18 of this chapter), procurement by barter (see § 4.503–5 of this chapter), etc.;

* * * * *

(25) Unless exempted by § 12.805 of this chapter from inclusion of the Equal Opportunity clause—

(A) On the face page or cover sheet of the solicitation, these notices:

I. NOTE THE AFFIRMATIVE ACTION REQUIREMENT OF THE EQUAL OPPORTUNITY CLAUSE WHICH MAY APPLY TO THE CONTRACT RESULTING FROM THIS SOLICITATION.

II. NOTE THE CERTIFICATE OF NONSEGREGATED FACILITIES IN THIS SOLICITATION. Bidders, offerors and applicants are cautioned to note the "Certification of Nonsegregated Facilities" in the solicitation. 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. (1969 January)

(B) The applicable provisions set forth in § 12.806 of this chapter;

(26) The applicable small business size standard (see § 1.701 and §1.703 of this chapter); pending revision of the October 1969 edition of Standard Form 19B, Representations and Certifications, substitute $5 million for $7,500,000 in paragraph 1 when the procurement is for dredging;

* * * * *

(45) If the contract is to contain the Safety Precautions for ammunition and explosives clause in § 7.104–79 of this chapter, see § 2.201(a)(3) (xxx).

* * * * *

§ 2.205–5 Release of bidders mailing lists.

(a) The comprehensive bidders mailing list established by purchasing offices

under this section shall be made available to the public upon written request made in accordance with § 1.329. Except as provided in paragraph (b) of this section and in § 1.1003–6(a), no information concerning the use of the lists in a particular procurement, or identifiation of sources solicited shall be made available to the public prior to award. When it is necessary to dispatch identical information by means of electrical transmission to prospective bidders or offerors, the electrically transmitted message, when released for communications handling, shall be marked "BOOK MESSAGE—TRANSMIT A SINGLE ADDRESS MESSAGE" to preclude prospective bidders or offerors knowing the names of others solicited. However, information as to sources solicited may be made available to other Government agencies, at their specific request, and upon the condition that the list will not be made available for inspection prior to award to anyone outside the Government.

* * * * *

(c) [Revoked]

§ 2.303–1 General.

Bids which are received in the office designated in the invitation for bids after the exact time set for opening are "late bids," even though received only one or two minutes late (but see § 2.402–3). Late bids shall not be considered for award except as authorized in §§ 2.303 through 2.303–8.

§ 2.402–3 Postponement of openings.

(a) Notwithstanding § 2.208, an amendment postponing bid openings may be issued even after the time scheduled for bid opening but otherwise in accordance with § 2.208:

(1) When the contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails for causes beyond their control and without their fault or negligence (such as, but not limited to, flood, fire, accident, weather conditions or strikes); or

(2) When emergency or unanticipated events interrupt normal governmental processes so that the conduct of bid openings as scheduled is impracticable.

(b) At the time a determination is made to postpone a bid opening under paragraph (a)(1) of this section, an announcement of the determination shall be publicly posted and, if practicable before issuance of formal amendment of the invitation, otherwise communicated to prospective bidders likely to attend the scheduled bid opening.

(c) In the case of paragraph (a)(2) of this section, the contracting officer may proceed with the bid opening as soon as practicable after the time scheduled, without prior amendment to the invitation for bids or notice to bidders, whenever the delay incident to such amendment or notice is not in the best interest of the Government. In such case, the time of actual bid opening shall be deemed to be the time set for bid opening for the purpose of determined "late bids" under § 2.303.

§ 2.405 Minor informalities or irregularities in bids.

* * * * *

(f) Failure to execute the certifications with respect to Equal Opportunity and Affirmative Action Program.

§ 2.406–3 Other mistakes.

* * * * *

(b) * * *

(1) Department of the Army: To the Deputy or Assistant Deputy for Procurement, Office of the Assistant Secretary of the Army (Installations and Logistics); General Counsel of the U.S. Army Materiel Command; General Counsel of the Office of the Chief of Engineers.

* * * * *

§ 2.407–6 Equal low bids.

(a) * * *

(2) For the purposes of subparagraph (1) of this paragraph, preferences shall be given in the following order of priority:

(i) Certified-eligible concerns with a first preference (§ 1.801 of this chapter) that are also small business concerns (§ 1.701 of this chapter),

(ii) Other certified-eligible concerns with a first preference,

(iii) Certified-eligible concerns with a second preference (§ 1.801 of this chapter) that are also small business concerns (§ 1.701 of this chapter),

(iv) Other certified-eligible concerns with a second preference,

(v) Persistent or substantial labor surplus area concerns (§ 1.801 of this chapter) that are also small business concerns (§ 1.701 of this chapter),

(vi) Other persistent or substantial labor surplus are concerns, and

(vii) Other small business concerns.

* * * * *

PART 3—PROCUREMENT BY NEGOTIATION

3. Section 3.101(p) is revised; § 3.210–2(r) is added; § 3.403(b)(3) is amended; § 3.404–7 is added; in § 3.405–5 subparagraph (e)(3) is amended, a new paragraph (h) is added and present paragraphs (h) and (i) are redesignated as paragraphs (i) and (j) respectively § 3.410–1(b)(4) is amended; in § 3.501 paragraph (a)(1) and (2) is revised, paragraph (b)(2)(v)(C) is revoked and the present (D) is redesignated as (C), further, paragraphs (b)(2)(viii), (ix), and (xiv), (b)(3)(xxxix), (xl), and (c)(13) are revised; § 3.506(c)(3) is revised; § 3.603–1(a) is amended; § 3.608–2(b)(1)(viii) and (2)(ii)(c) is revised; §§ 3.608–6(b) and 3.608–8(b) are amended; §§ 3.700, 3.701–2, 3.702, 3.704–1, 3.704–2, 3.705, and 3.706 are revised; § 3.706–1 is added; §§ 3.807–2(c)(2) and 3.807–12 are revised; § 3.807–13 is added; § 3.1001(a) is amended and § 3.1002(f) is revised, as follows:

§ 3.101 Negotiation as distinguished from formal advertising.

* * * * *

(p) Consideration of the extent of subcontracting; and when subcontracting is consistent with the best interests of the Government, the extensive use of small business subcontractors shall be considered a favorable factor;

* * * * *

§ 3.210–2 Application.

* * * * *

(r) When the contemplated procurement is for and funded or to be reimbursed by a foreign country which requires that the product be obtained from a particular firm.

§ 3.403 Negotiation of contract type.

* * * * *

(b) *Research and development (R&D).* * * *

(3) *Engineering development and operational systems development.* Engineering and operational systems development, because of many similarities, form a logical grouping in the spectrum of R&D categories. These categories, the ultimate aim of which is production and deployment, include all effort the primary objective of which is the engineering design and final engineering demonstration of the technical, economic, logistic and operational characteristics of an experimentally feasible and acceptable system, equipment, subsystem, component or process judged to be the optimum solution to clearly stated military problems or technical objectives. In engineering development, such effort is founded on the possibility of eventual procurement for inventory and use, and, therefore, includes effort leading to the demonstration of acceptability for such procurement. Operational systems development effort has the primary objective of producibility demonstration and R&D support of final service test of the logical and operational development of an acceptable system, equipment, subsystem or component, approved for procurement and operational deployment or otherwise specifically approved for inclusion in this category. It may include the building of one or more production prototypes utilizing all processes, tooling, and test equipment considered for the production process thereby constituting a demonstration and qualification of the product process. Contract definition is often required as a prerequisite to the actual development effort in these categories. Its purpose is to reduce the risks associated with a major development program, to develop specifications, and to give a high degree of assurance that the development will be successful considering technical, schedule and cost objectives. Firm fixed-price contracts shall be used for this Contract definition effort. (See DOD Directive 3200.9.) The development effort following the contract definition phase may be accomplished under either fixed-price, incentive or combination type contracts with the Government stating the type it believes best for the specific case considering the degree of responsibility and risk that the Government desires the contractor to assume. However, even when the overall project is in engineering or operational system development, there may be integral supporting tasks that are still in the Advanced Development stage and the contract type for

these tasks should be selected accordingly. Greater flexibility in contract type selection should be given to those projects not subject to contract definition. For these the type of contract selected should be decided on the basis of major factors such as: (i) The definitiveness of the project at this stage and its bearing on the accuracy of cost estimates; (ii) the completion schedule required for satisfactory operational deployment; (iii) the degree of uncertainty expected; (iv) the contractor's willingness and ability to accept a high-risk type of contract; (v) the ability to establish meaningful and measurable incentives; (vi) the need for effort overlapping that of earlier development stages; (vii) the desirability of firm technical direction by the Government, and (viii) the degree of configuration control to be exercised. Any one or combination of these factors could have a direct bearing on the type of contract selected.

§ 3.404–7 Firm fixed-price level of effort term contract.

(a) *Description.* The firm fixed-price level of effort term contract describes the scope of work in general terms, usually calling for investigation or study in a specific research and development area. It obligates the contractor to devote a specified level of effort over a stated period of time for a fixed dollar amount. Normally, the contract requires submission by the contractor of reports which show the results achieved through application of the required level of effort; however, payment is based on effort expended rather than on results achieved. This type of contract can be a useful tool, particularly in the research and exploratory categories when the work cannot be clearly defined and the level of effort desired can be identified and agreed upon in advance of performance.

(b) *Limitations.* The firm fixed price level of effort term contract may be used only when:

(1) The work to be performed cannot otherwise be clearly defined;

(2) The level of effort desired can be identified and agreed upon in advance of performance;

(3) There is reasonable assurance that the result desired canot be achieved by expenditure of less than the stipulated effort; and

(4) The contract price does not exceed $100,000 unless approved by the HPA or his designee.

§ 3.405–5 Cost-plus-award-fee (CPAF) contract.

* * * * *

(e) *Evaluation.* * * *

(3) The contract shall set forth those criteria to be used in evaluating the contractor's performance to arrive at the award fee. See examples of such criteria set forth in paragraph (i) of this section.

* * * * *

(h) *Other application of the award fee provision.* In certain cases, it may be desirable to motivate and reward a contractor for management performance over and above that which can be objectively measured and incentivised under other forms of government contracts. For example, logistics support, quality, timeliness, cooperation, ingenuity, and cost effectiveness are areas under the control of management which may be susceptible only to subjective measurement and evaluation. In such cases, the "award amount" portion of the fee applicable to the CPAF contract is an ideal method for incorporation of these additional incentives into government contracts; the "base fee" or fixed amount portion would not be applicable in these procurements. Accordingly, subject to the guidelines and procedures set forth in paragraphs (a) through (g) of this section, and when approved by the HPA or his designee, the "award amount" portion of the CPAF contract may be used in conjunction with other types and kinds of contracts for the Government's benefit. The HPA or his designee shall appoint an Award Review Board at each appropriate installation or activity and establish procedures for the proper conduct of the necessary evaluation process. Further, the award fee provision shall not be used in conjunction with other types and kinds of contracts when the administrative effort or costs for evaluation exceed the benefits to be derived from the use of this arrangement.

§ 3.410–1 Basic agreement.

* * * * *

(b) *Applicability.* * * *

(4) Basic agreements may include negotiated overhead rates for cost-reimbursement type contracts (see § 3.700).

* * * * *

§ 3.501 Preparation of request for proposals or request for quotations.

(a) *General.* * * *

(1) Standard and DD ASPR Forms consisting of general provisions (contract clauses) prescribed by Part 7 of this chapter may be incorporated by reference to the form number, form name, and edition date; provided, the instructions for use of the form do not prohibit the incorporation of the form by reference; and

(2) other contract clauses set forth in Part 7 of this chapter may be incorporated by reference if authorized by § 7.001 of this chapter.

* * * * *

(b) *Contract forms and uniform contract format.* * * *

(2) Section B– * * *

* * * * *

(v) * * *

(C) Buy American certificate.

* * * * *

(viii) Unless exempted by § 12.805 of this chapter from inclusion of the equal opportunity clause, the representations set forth in § 12.806(b);

(ix) When Standard Form 33 or other request for proposals form is used, a statement as follows: This procurement is not set aside for labor surplus area concerns. However, the offeror's status as such a concern may affect entitlement to award in case of tie offers or offer evaluation in accordance with the Buy American clause of this solicitation. In order to have his entitlement to a preference determined if those circumstances should apply, the offeror must:

(i) Furnish with his offer evidence that he or his first-tier subcontractor is a certified-eligible concern with a first preference in accordance with 29 CFR 8.7(b) and 8.9(c) or a certified-eligible concern with a second preference in accordance with 29 CFR 8.7(c) and 8.9(d), and identify below the address at which the costs he will incur on account of manufacturing or production (by himself if a certified concern or by certified concerns acting as first tier subcontractors) amount to more than 25 percent of the contract price, or

(ii) Identify below the persistent or substantial labor surplus area in which the costs he will incur on account of manufacturing or production (by himself or his first-tier subcontractors) amount to more than 50 percent of the contract price. (If the offeror proposes to qualify as a persistent or substantial labor surplus area concern by including costs to be incurred by a certified concern not located in a labor surplus area, evidence of such certification must be furnished.)

Failure to furnish evidence of certification by the Secretary of Labor if applicable, and to identify the locations as specified above will preclude consideration of the offeror as a labor surplus area concern. Offeror agrees that if, as a labor surplus area concern, he is awarded a contract for which he would not have qualified in the absence of such status, he will perform the contract or cause it to be performed, in accordance with the obligations which such status entails. (1970 SEP)

* * * * *

(xiv) When Standard Form 33 or other request for proposals form is used for the procurement of data, the following statement:

CONTRACTOR'S DATA CERTIFICATION (1967 APRIL)

The offeror shall submit with his offer a certification as to whether he has delivered or is obligated to deliver to the Government under another contract or subcontract the same data; if so, he shall identify one such other contract or subcontract for each item of data and state where he has already delivered such data.

* * * * *

(3) Section C– * * *

* * * * *

(xxxix) in accordance with § 12.806(a) of this chapter, the notice of Pre-Award on Site Equal Opportunity Compliance Review set forth therein;

(xl) if the contract is to contain the Safety Precautions for Ammunition and Explosives clause in § 7.104–79, of this chapter, see § 2–201(a)(3)(xxx) of this chapter.

* * * * *

(c) *Construction contracts.* * * *

(13) Special provisions necessary for the particular procurement relating to such matters as progress payments (see ASPR Appendix E), patent rights (see § 18.908 of this chapter), liquidated damages, Buy American Act (see § 18.509–4 of this chapter), or procurement by barter (see § 4.503–5 of this chapter);

* * * * *

§ 3.506 Late proposals and modifications.

* * * * *

(c) * * *.

(3) Under the circumstances set forth in § 2.303 of this chapter permitting consideration of late bids.

* * * * *

§ 3.603–1 General.

(a) All purchases covered by this subpart shall be accomplished by negotiation and shall cite the appropriate subparagraph of 10 U.S.C. 2304(a) in accordance with subpart B of this part. Such purchases shall be made only when requirements cannot be satisfied by procurement in accordance with part 5 of this chapter. The contracting officer shall use the purchase method covered by this subpart which he determines to be most suitable to the immediate requirement and most efficient and economical. Simplified procedures may be used in procurements from Government established sources, if authorized by the basic contract or concurred in by the source.

* * * * *

§ 3.608–2 Order for Supplies or Services/Request for Quotations (DD Forms 1155, 1155r, 1155r–1; Standard Form 36; DD Form 1155c–1 and Standard Form 30).

* * * * *

(b) *Conditions for use*—(1) *Use as a purchase order of not more than $2,500 in the United States, its possessions, and Puerto Rico.* * * *

(viii) When Government property having an acquisition cost in excess of $25,000 is to be furnished (for use in performance of contract or for repair), the appropriate Government Property clause or clauses in § 7.104.24 of this chapter shall be inserted in the Schedule. When Government property having an acquisition cost not in excess of $25,000 is to be furnished for use in performance of the contract or for repair, the Government-Furnished Property (Short Form) clause in § 7.104–24(f) of this chapter shall be inserted in the Schedule: *Provided*, That use of the clause shall be optional when the acquisition cost of property furnished for repair is not in excess of $2,500. When a Government Property clause is inserted in the Schedule, the contractor's signature shall be obtained on DD Form 1155r.

* * * * *

(2) *Use as a purchase order of not more than $5,000 outside the United States, its possessions, and Puerto Rico.* * * *

(ii) * * *

(c) When Government property having acquisition cost in excess of $25,000 is to be furnished (for use in performance of contract or for repair), the Government Property clause in § 7.104–24(a) of this chapter shall be inserted in the Schedule in accordance with instructions in § 7.104–24(b) of this chapter. When Government property having an acquisition cost not in excess of $25,000 is to be furnished for use in performance of the contract or for repair, the Government-Furnished Property (Short Form) clause in § 7.104–24(f) of this chapter shall be inserted in the Schedule in accordance with instructions in that section: *Provided*, That use of the clause shall be optional when the acquisition cost of property furnished for repair is not in excess of $2,500. When a Government Property clause is inserted in the Schedule, the contractor's signature shall be obtained on DD Form 1155r–1.

* * * * *

§ 3.608–6 Use of DD Form 1155 as a delivery order.

* * * * *

(b) All delivery orders shall contain the typewritten name of the contracting officer or ordering officer and the original thereof shall be manually signed; when reproducible masters are used, only the masters need be manually signed; when interleaved carbon forms are used, manual signature on the original shall suffice. Facsimile signatures may be used in the production of delivery orders by automated methods, provided, specific authority for such use is obtained from the Deputy or Assistant Deputy for Procurement, Office of the Assistant Secretary of the Army (Installations and Logistics), in the Army; Deputy Chief of Naval Materiel (Procurement) in the Navy; the Director of Procurement Policy, Office of the Deputy Chief of Staff (Systems and Logistics), in the Air Force; and the Executive Director, Procurement and Production, in the Defense Supply Agency.

* * * * *

§ 3.608–8 Instructions for entries on DD Form 1155 and Standard Form 36.

* * * * *

(b) The Department of Defense and contractor organizational entity codes (address codes) referenced throughout this section are under development by the Office of the Assistant Secretary of Defense (Comptroller) and will be prescribed in the Defense Organizational Entity Standards (DOES).

* * * * *

§ 3.700 Scope of subpart.

This subpart sets forth the policy and procedure governing the negotiation of overhead rates and billing rates for use in cost reimbursement type contracts.

§ 3.701–2 Billing rates.

The term "billing rate," as used in this subpart means a tentative overhead rate established for interim reimbursement purposes pending negotiation of the final overhead rate.

§ 3.702 Purpose.

The major purposes of negotiated final overhead rates are: (a) To effect uniformity of approach in cases when more than one contract or more than one Military Department is involved; (b) to effect economy in administrative effort; and (c) to promote timely settlement of reimbusement claims. The purpose of a billing rate is to provide for interim reimbursement either at negotiated billing rates as provided in the schedule of the contract or at billing rates acceptable to the contracting officer, subject in either event to appropriate adjustment when final rates are established.

§ 3.704–1 Contracts with concerns other than educational institutions.

Insert the following clause in contracts with concerns other than educational institutions when negotiated overhead rates are to be used pursuant to this subpart.

NEGOTIATED OVERHEAD RATES
(1970 SEPTEMBER)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost, Fixed Fee, and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than ninety (90) days after the expiration of each period specified in the schedule, shall submit to the Contracting Officer with a copy to the cognizant audit activity a proposed final overhead rate or rates for that period based on the Contractor's actual cost experienced during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Part 2 of section XV of the Armed Services Procurement Regulation as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in a written overhead rate agreement, executed by both parties. Such agreement is automatically incorporated in this contract upon execution and shall specify (i) the agreed final rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, and (iv) the items treated as direct costs. The overhead rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated billing rates as provided in the Schedule or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when final rates for that period are established. To prevent substantial over or under payment, billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of the negotiated billing rates provided in the Schedule shall be set forth in a modification to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

In the case of a cost-plus-incentive-fee contract, substitute "Allowable Cost, Incentive Fee, and Payment" for "Allowable Cost, Fixed Fee, and Payment" in paragraph (a) of the foregoing clause.

§ 3.704–2 Contracts with educational institutions.

(a) *Contract with educational institutions for postdetermined rates.* Insert the following clause in contracts with educational institutions when postdetermined

overhead rates are to be used pursuant to this subpart.

NEGOTIATED OVERHEAD RATES (POSTDETERMINED) (1970 SEPTEMBER)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment", the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than six (6) months after the expiration of each period specified in the Schedule shall submit to the Contracting Officer with a copy to the cognizant audit activity, a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the Armed Services Procurement Regulation, section XV, Part 3, as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in a written overhead rate agreement, executed by both parties. Such agreement is automatically incorporated in this contract upon execution and shall specify (i) the agreed final rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, and (iv) the items treated as direct costs. The overhead rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated billing rates as provided in the Schedule or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when final rates for that period are established. To prevent substantial over or under payment, billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of the negotiated billing rates provided in the Schedule shall be set forth in a modification to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

(b) *Contracts with educational institutions for predetermined rates.* Provision may be made in cost reimbursement type research and development contracts with educational institutions for payment of reimbursable indirect costs on the basis of predetermined overhead rates: *Provided*, That this basis is used with respect to all contracts with an institution. Insert the following clause in contracts with educational institutions when such negotiated overhead rates are to be used pursuant to this subpart.

NEGOTIATED OVERHEAD RATES—PREDETERMINED (1970 SEPTEMBER)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment," the allowable indirect costs under this contract shall be obtained by applying predetermined overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than three (3) months after the expiration of his fiscal year shall submit to the Contracting Officer with a copy to the cognizant audit activity, a proposed predetermined overhead rate or rates based on the Contractor's actual cost experience during that fiscal year, together with supporting cost data. Negotiation of predetermined overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the Armed Services Procurement Regulation, section XV, part 3, as in effect on the date of this contract.

(d) Predetermined rate agreements in effect on the effective date of this contract shall be incorporated into the contract schedule. Rates for subsequent periods shall be negotiated and the results set forth in a written overhead rate agreement executed by both parties.

Such agreement shall be automatically incorporated into this contract upon execution and shall specify (i) the agreed predetermined overhead rates, (ii) the bases to which the rates apply, (iii) the fiscal year unless the parties agree to a different period for which the rates apply, and (iv) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The overhead rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(e) Pending establishment of predetermined overhead rates for any fiscal year or different period agreed to by the parties, the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the Contracting Officer subject to appropriate adjustment when the final rates for that fiscal year or other period are established.

(f) Any failure by the parties to agree on any predetermined overhead rate or rates under this clause shall not be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract. If for any fiscal year or other period specified in the schedule of this contract the parties fail to agree to a predetermined overhead rate or rates it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates in accordance with the terms of the "Negotiated Overhead Rates-Postdetermined" clause set forth in 3-704.2 of the Armed Services Procurement Regulation as in effect on the date of this contract.

(g) Allowable indirect costs for the period until the end of the Contractor's fiscal year during which performance begins shall be obtained by applying the predetermined overhead rate set forth in the schedule to the bases set forth therein.

When predetermined overhead rates are to be used and no such rate or rates have been established for the contractor's current fiscal year, the contracting officer shall obtain from the contractor during the contract negotiations a proposal for a predetermined overhead rate or rates to be applied until the end of such fiscal year. As far as practicable, such proposal should be based on the contractor's cost experience under similar contracts together with supporting cost data. The overhead rate or rates for such initial period shall be predetermined by negotiation and set forth in the contract schedule. The schedule shall also include the bases to which the rates apply and the period for which the rates apply. Pending establishment of predetermined overhead rates for the initial period, the contractor shall be reimbursed at billing rates acceptable to the contracting officer, subject to appropriate adjustment when the final rates for that period are established.

§ 3.705 Procedure.

The procedure for the establishment and use of negotiated final overhead rates generally consists of submission by the contractor of an overhead rate proposal, submission of an advisory audit report, review of the contractor's proposal and the advisory audit report, conduct of negotiation, cost or pricing data certification (see § 3.807-3(a)(2) and § 3.807-4), the preparation and execution by both parties of a binding written agreement confirming the results of the negotiation, preparation of a negotiation report or summary, and distribution of the overhead rate agreement and the negotiation report or summary. The negotiated overhead rate agreement shall be executed for the Government by a contracting officer of the cognizant negotiating activity.

(a) When only one procurement activity is concerned, the proposal shall be submitted to the contracting officer or his authorized representative, with a copy of the cognizant audit activity. When coordinated negotiations as described under § 3.706 are involved, contractors' overhead rate proposals may be submitted to the cognizant negotiating activity of the Department sponsoring the negotiation, with a copy to the cognizant audit activity.

(b) The determination as to the necessity of an advisory audit report for overhead rate negotiation purposes and the extent of the use of such report is the sole responsibility of the contracting officer. Unless advised to the contrary by the contracting officer, the cognizant audit activity shall submit an audit advisory report to the contracting officer. Such report shall (1) include a list of contracts subject to the overhead rates to be negotiated, (2) identify any advance agreements and special provisions governing specific contracts, (3) set forth the findings of the audit activity, and (4) include results of discussion of such findings with the contractor. The audit or accounting review will be governed by the provisions of

(c) When there is a significant difference of opinion between the auditor and the contractor concerning the allowability of indirect costs or the acceptability of the bases used in developing the overhead rates, representatives of the audit activity and the negotiating activity will discuss the areas of disagreement prior to the negotiation conference with the contractor. As a further aid to the negotiating activity, a representative of the audit activity will, upon request, attend the negotiation conference.

(d) The negotiation conference will be conducted by the contracting officer or

his authorized representative. When coordinated negotiation is involved (see § 3.706), the sponsoring negotiating activity will be the authorized representative of those procuring activities not represented. The negotiation shall be governed by Part 15 of this subchapter and shall encompass an agreement on final overhead rates, the specific items to be treated as direct charges, and when applicable, the billing rates for the succeeding period. To prevent substantial over or under payment, billing rates may be revised retroactively or prospectively by mutual agreement of the parties. Any such revision of the negotiated billing rates provided in the schedule shall be set forth in a modification to the contract. Billing rates are subject to appropriate adjustment when final rates are established. In the event billing rates or other rates were utilized to effect a termination settlement (see § 8.404–4 of this chapter) or closure of a specific contract, that fact will not be considered a precedent when negotiating final rates.

(e) At the completion of the negotiation, the contracting officer of the cognizant negotiation activity shall prepare an overhead rate agreement which will conform to paragraph (d) of the clause in §§ 3.704–1, 3.704–2(a), or 3.704–2(b), as applicable. The agreement will include a list of affected contracts, identifying any with advance agreements or special provisions and the rates applicable thereto, and shall be executed by the contractor and the contracting officer of the cognizant negotiating activity. In addition, the contracting officer shall prepare a negotiation report or summary, setting forth the rates negotiated; the reasons for the variations from the audit report, if any; the period of rate applicability; the bases for the determination of such rates; the specific items treated as direct costs; and, when applicable, the billing rates agreed upon for application in the succeeding period. The sponsoring Department will prepare and distribute to other Departments, DCAA, and any other interested Government agencies a copy of the executed overhead rate agreement together with the negotiation report or summary. The Departments shall make further distribution to activities within their Departments and distribute one copy of the executed overhead rate agreement to the official contract file of each affected contract, as shown in such agreement.

(f) When contracts with educational institutions using predetermined overhead rates are negotiated subsequent to an advance overhead rate agreement which establishes overhead rates for all or part of the period of contract performance, the advance overhead rate agreement shall be incorporated into the contract.

§ 3.706 Coordination.

When more than one Department contemplates the use of negotiated final overhead rates with the same contractor, the service having the preponderance of cost reimbursement type work will, generally, sponsor and conduct the negotiation. Each Department having an interest will be notified of the pending negotiation and will be invited to participate. If a Department does not have a representative at the negotiation, the sponsoring Department will represent the absentee Department. The results of the negotiation will be binding on all Departments.

§ 3.706–1 Interagency coordination for educational institutions.

Educational institutions will be assigned to one Government agency which will be responsible for negotiating final overhead rates. The procedures set forth in §§ 3.705 and 3.706 will be followed in determining rates for those institutions assigned to the Department of Defense. The sponsoring Department will notify other interested Government agencies of each pending negotiation and invite these agencies to send representatives to participate in the negotiations. Departments having contracts with institutions assigned to nondefense agencies for negotiation of overhead rates will be invited to participate in such negotiations. When institutions are assigned to agencies other than the DOD, the cognizant agency will prepare and distribute copies of negotiation reports and/or executed overhead rate agreements to interested Departments.

§ 3.807–2 Requirement for price or cost analysis.

* * * * *

(c) *Cost analysis.* * * *

(2) Cost analysis shall also include appropriate verification that the contractor's cost submissions are in accordance with part 15 of this chapter.

* * * * *

§ 3.807–12 Forward Pricing Rate Agreements (FPRAs).

(a) *Definition.* A forward pricing rate agreement is a written understanding negotiated between a contractor and the Department of Defense to make certain rates available for use during a specified period of time in pricing contracts or modifications. Such rates represent reasonable projections of specific costs to be incurred in future periods that are not easily estimated for, identified to, or generated by a specific contract, contract end item or task such as but not limited to labor rates, overhead rates, material obsolescence and usage, spare parts provisioning, and material handling.

(b) *Establishment.* Forward pricing rate agreements may be negotiated by the contracting officer on his own initiative or on request of the contractor. Normally, these agreements shall be negotiated by the administrative contracting officer (ACO). In determining whether or not to establish such an agreement, the contracting officer should consider whether the benefits to be derived from the existence of the agreement are commensurate with the effort necessary to establish and monitor it. Normally, these agreements are warranted at contractor locations where a significant volume of proposals is processed.

(c) *Use.* The rates specified in the agreement are not binding but are available for use by the contractor and Government personnel during the period of the agreement. In deciding whether to use such rates in pricing contracts or modifications, the contracting officer should consider: (1) The type of contract contemplated; (2) whether the dollar amount of the proposed contract action would significantly change the rates in the agreement; (3) whether the performance period of the proposed contract action is significantly different from the period to which the rate agreement applies; and (4) any new data or other information that may raise a question as to the acceptability of the rates. However, in the absence of any specific reason to question the rates, the contracting officer may rely upon and use them, subject to paragraph (d)(1) of this section, without revalidation of the data, negotiations or judgments that lead to the establishment of the FPRA.

(d) *Procedure.* Prior to entering into a forward pricing rate agreement, the contracting officer will obtain a proposal from the contractor which contains cost or pricing data which is accurate, complete and current as of the date of submission (see § 3.807–3(e)). However, a certificate (§ 3.807–4) is not required at this time (see subparagraph (2) of this paragraph). The contracting officer will conduct a review and analysis in accordance with § 3.800. Advice and recommendations of other contracting officers having a particular interest in the forward pricing rate agreement should be solicited. Upon completion of negotiation, a memorandum of negotiation will be prepared. (See (§ 3.811.)

(1) The forward pricing rate agreement shall provide specific terms and conditions covering expiration, application and data requirements for systematic monitoring of the agreement to assure the validity of the rates. The agreement shall provide for cancellation at the option of either party. The duration of the agreement normally should not exceed 1 year. As a minimum, the agreement shall require the contractor to submit to the contracting officer and to the cognizant contract auditor any significant change in cost or pricing data.

(2) Note 10 on the DD Form 633 requires offerors to describe, in their procurement proposals, any forward pricing rate agreement. When the FPRA is used, offerors are required to identify the latest cost or pricing data already submitted in accordance with the rate agreement. All data submitted in connection with the FPRA, updated as necessary, form a part of the total data that the contractor certifies to be accurate, complete and current at the time of agreement on price of a contract or contract modification.

§ 3.807–13 Estimated Data Prices (DD Form 1423).

(a) The Department of Defense requires estimates of the prices of data

in order to evaluate the cost to the Government of data items in terms of their management, product or engineering value.

(b) When data are required to be delivered under a contract, § 3.501(b)(2)(xiv) and (3)(xxxii) and § 16.815 of this chapter require inclusion in the solicitation of DD Form 1423, Contract Data Requirements List. The form and the provision included in the solicitation under § 3.501(b)(2)(xiv) and (3)(xxxii) request the offeror to state what portion of the total price is estimated to be attributable to the production or development of the listed data for the Government (not to the sale of rights in the data). However, offerors' estimated prices may not reflect all such costs; and different offerors may reflect these costs in a different manner, for the following reasons:

(1) Differences in business practices in competitive situations,

(2) Differences in accounting systems among offerors,

(3) Use of factors or rates on some portions of the data,

(4) Application of common effort to two or more data items,

(5) Differences in data preparation methods among offerors.

For these and other reasons, data price estimates should not be used for contract pricing purposes without further analysis.

(c) The contracting officer shall assure to the extent practicable that the negotiated price does not include any amount for data which the contractor has submitted or is obligated to submit to the Government under another contract or subcontract, and that the successful offeror furnishes the certification required by the solicitation (see § 3.501(b)(2)(xiv) and (3)(xxxii)).

(d) The provisions on the form specify that, regardless of whether the contractor has entered estimated data prices on the form and regardless of what price he enters, he is obligated to deliver all the data listed on the form and the price he is to be paid therefor is included in the total price specified in the contract.

(e) When data are procured and items 25 and 26 of DD Form 1423 are required to be completed, the contract schedule will include one or more contract line items for data.

(f) After agreeing upon a negotiated contract price, the contracting officer will adjust the estimated prices for data on the original DD Form 1423 to equal the amount included in the contract line item(s) entitled "Data." Adjusted DD Forms 1423 will be maintained so as to be readily available at each procuring activity.

(g) When printing is to be procured as an integral part of a contract for other supplies or services, each requirement in the contract for printing shall be listed as a separate line item on DD Form 1423; and the approval or waiver obtained pursuant to § 5.601 of this chapter shall be appropriately identified.

§ 3.1001 General concept.

(a) For many years, the Department of Defense has borne a major share of the cost risk entailed in the performance of many of its research, development, and production programs because of the prevalence of cost-reimbursement type contracts. In recent years, the burden of risk has been substantially shifting from the Government to defense contractors through refinements in contract techniques and the utilization of more firm fixed-price and incentive contracts, resulting in a continuing reduction in the use of cost-plus-a-fixed-fee type contracts. During the period of high Government risk, many administrative, cost, and audit controls were imposed on industry since the cost-plus-a-fixed-fee form of contract did not provide maximum motivation for prudent cost management on the part of contractors. Now that higher risk contracts are being increasingly used, it is considered desirable and practicable to measure the cost risk motivation imposed on individual contractors as evidenced by the mix of contracts, and whenever practicable to eliminate administrative controls and reasonableness overhead audits on those contractors who attain a verifiable "weighted average share" of risk which meets a prescribed threshold. This concept is based on the premise that good management by industry properly motivated to cost consciousness, can accomplish much more effective control of costs than can detailed review, control, and overhead audit by Government personnel. The CWAS concept is not intended to obviate consideration of such issues as allocability, consistency with generally accepted accounting principles, or exclusions which are not based on standards of reasonableness.

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§ 3.1002 Objectives.

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(f) To provide a basis for determining that indirect costs incurred during the applicable period by a contractor whose CWAS rating is above a predetermined threshold are reasonable. (See § 15.201.3(b)(4) of this chapter).

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PART 4—SPECIAL TYPES AND METHODS OF PROCUREMENT

4. The table of contents to part 4 is amended by adding a new subpart H; §§ 4.116–1 and 4.116–4 (d) and (e)(1) and (2) are revised; and new subpart H—Paid Advertisements in Newspapers, Magazines, Trade Journals, and Any Other Media (Including Radio and Television) is added, as follows:

§ 4.116–1 General.

In research and development contracts with commercial organizations, the clauses relating to property furnished by the Government or acquired by the contractor at Government expense are the same as those used in other types of contracts. (See §§ 7.303–7 and 7.402–25 of this chapter). Different clauses are prescribed for use in research and development contracts with educational or other nonprofit institutions where no profit or fee is involved. (See §§ 7.303–7 and 7.402–25 of this chapter). When facilities use contracts are required, special clauses are contained in §§ 7.704 and 7.706 of this chapter.

§ 4.116–4 Transfer of title to equipment to nonprofit educational or research institutions.

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(d) *Requirement for a letter of assurance.* Vesting title to equipment pursuant to paragraph (c) of this section is subject to the provisions of the Civil Rights legislation (42 U.S.C. 2000d). Before title is vested, the contracting officer must insure that the contractor has furnished a letter of assurance to the Department of Defense that provides: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment)." Headquarters, Air Force Systems Command (AFSC), (PPPR), Andrews Air Force Base, Md. 20331, is responsible in the Department of Defense for obtaining and maintaining files of letters of assurance from nonprofit institutions of higher education and other nonprofit institutions. AFSC(PPPR) will distribute, and periodically update, a list of institutions which furnished a letter of assurance. Contracting organizations may request a copy of this list; or at any time, inquire as to whether a particular institution has furnished the required letter of assurance. If transfer of title to equipment is contemplated and the contractor has not furnished a letter of assurance, the contracting officer will request, in writing, that AFSC(PPPR) obtain a letter of assurance from the contractor. This request must give the complete mailing address of the contractor.

(e) *Contract clauses.* When it is anticipated that in connection with a contract, title to equipment may be vested in a contractor in accordance with this paragraph:

(1) In fixed-price type contracts, the alternate subparagraph (c)(2) of the clause in §7.303–7 of this chapter shall be included.

(2) In cost-reimbursement type contracts, the addition to subparagraph (c)(1) of the clause in §7.402–25 of this chapter shall be included.

Subpart H—Paid Advertisements in Newspapers, Magazines, Trade Journals, and Any Other Media (Including Radio and Television)

Sec.

4.800 Scope of subpart.
4.801 Definitions.
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Sec.
4.803–1 General.
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4.803–7 Limitations.

Subpart H—Paid Advertisements in Newspapers, Magazines, Trade Journals, and Any Other Media (Including Radio and Television)

§ 4.800 Scope of subpart.

This subpart sets forth procedures to be followed in placing paid advertising in media for (a) military and civilian personnel purposes, and (b) proposed procurements.

§ 4.801 Definitions.

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

(a) "Media" means any vehicle used to convey an advertising message; it includes newspapers, magazines, trade and professional journals, special printed media, radio and television;

(b) "Space" means the space purchased for advertising messages in printed media, and the time purchased for advertising messages on radio or television broadcasts;

(c) "Advertisement" means any single message prepared for insertion in media, regardless of the number of insertions;

(d) "Publication" means (1) the insertion of an advertisement in a newspaper, magazine, trade or professional journal, or any other printed media; or (2) the broadcasting of an advertisement over radio or television; and

(e) "Newspaper" means a publication printed and distributed at stated intervals to convey news and includes trade journals which carry news in addition to technical matter.

§ 4.802 Authority and delegation to place advertisements.

§ 4.802–1 Authority and delegation.

Authority to approve the publication of paid advertisements in newspapers is vested by statute (44 U.S.C. 324) in the Secretary of each Department. This authority may be delegated by the Secretary in writing, by position designation, to subordinates within his Department. The delegation shall specify the limitations, if any, of the authority granted. Administrative duties involved in accomplishing the advertising may be delegated in writing, personally signed by the delegate, setting forth the extent of the administrative duties involved. A copy of the instrument delegating authority to advertise and a copy of the instrument assigning administrative duties thereunder will either be attached to the first voucher submitted for payment or shall be forwarded immediately upon issuance to the General Accounting Office address to which records of the Department are submitted for audit purposes. When authority to advertise has been delegated by the Secretary of the Department concerned, a reference to the authorizing directive on the advertisement order is acceptable in lieu of attaching a copy of the authority to the payment voucher. Copies of such instruments also shall be attached to the duplicate voucher submitted to the paying office pursuant to § 4.803–5.

§ 4.802–2 Request for authority to place advertisement.

(a) Special or general authority to place advertisements in newspapers must be secured in advance by the use of DD Form 1535, Request/Approval for Authority To Advertise (see § 16.504 of this chapter). Special authority permits the publication of a given advertisement a specified number of times in designated newspapers. General authority permits the publication of such advertisements during a designated fiscal year as may be required.

(b) Requests for authority to place advertisements in newspapers shall be submitted through channels to the Secretary or his designee.

(c) Unless the Secretary of the Department concerned determines otherwise, DD Form 1535 is not required as authority to place advertisements in media other than newspapers.

§ 4.803 Procedures.

§ 4.803–1 General.

Orders for paid advertisements may be placed either directly with the media or through an advertising agency (see § 4.803–6).

§ 4.803–2 Rates.

Advertisements may be paid for at rates not to exceed the commercial rates charged to private individuals, with the usual discounts.

§ 4.803–3 Forms.

Orders placed directly with the media shall be issued on DD Form 1155, Order for Supplies or Services/Request for Quotations, if not in excess of $2,500; and on Standard Form 26, Award/Contract, if over that amount. Orders placed through an advertising agency under a basic ordering agreement shall be issued on DD Form 1155 regardless of amount. If for advertisements in newspapers, the date and number of the instrument of delegation or of assignment shall be put in block 19 of DD Form 1155 or block 16 of standard form 26; such information may be included for advertisements in other media.

§ 4.803–4 Proof of publication.

Every invoice for official advertising shall be accompanied with an affidavit of publication made and furnished by the printer or publisher, by the radio or television station broadcasting the advertisement, or by the advertising agency concerned. Affidavits submitted as proof of publication shall be retained in the paying officer's files until settlement of his account by the General Accounting Office, after which they may be disposed of.

§ 4.803–5 Payment.

Upon receipt of the invoice, supported by an affidavit of publication from the media or the advertising agency concerned, the officer placing the advertisement shall attach appropriate supporting documents, sign the certificate in block 36 of DD Form 1155; or for orders over $2,500 (other than under a basic ordering agreement), make a similar certification on the second copy of the invoice; and submit the invoice in quadruplicate to the proper paying office for payment.

§ 4.803–6 Placing advertising through advertising agencies.

(a) *General.* Basic ordering agreements may be entered into with advertising agencies to provide professional advertising services. The use of an advertising agency to assist in producing and placing effective advertisements may be advisable when a significant number of advertisements is to be placed in several publications and in national media.

(b) *Placing of advertisements in commissionable media.* The services of advertising agencies in connection with the placing of advertisements in media often can be obtained at no cost to the Government, inasmuch as many media give advertising agencies a commission or discount (generally 15 percent) of the space cost, based on the standard card or other published rate. This commission or discount is not given to the Government. These services of the advertising agencies include but are not limited to counseling as to the selection of the media for insertion of the advertisement; contacting the media in the interest of the Government agency concerned; placing of insertion orders; selection and ordering of typography; copywriting; and preparation of rough layouts.

(c) *Placing of advertisements in noncommissionable media.* Some media do not grant advertising agencies a commission or discount from the standard card or other published rates, with the result that the Government activity can obtain the same rate as the advertising agency. If the advertising agency agrees to place advertisements in noncommissionable media as a no cost service to the Government, the basic ordering agreement shall so provide. If the advertising agency will not agree to place these advertisements at no cost to the Government, the agreement shall provide that the Government may place orders for advertisements directly with such media; or the agreement shall set forth an amount which the Government will pay the advertising agency for its services in placing the advertisements.

(d) *Art work, supplies and incidentals.* The basic ordering agreement also may provide for the furnishing of art work, supplies and incidentals, including brochures and pamphlets but excluding the printing thereof, by the advertising agency upon the Government's priced or unpriced order. "Incidentals" may include expense for phone calls, telegrams,

and postage incurred by the agency on behalf of the Government.

§ 4.803–7 Limitations.

No advertisement of a proposed procurement in a newspaper shall be published and printed in the District of Columbia unless the supplies or services are to be furnished for use, or the labor is to be performed, in the District of Columbia, or in the adjoining counties of Maryland or Virginia. Paid advertisements of proposed procurements shall be placed only when it is anticipated that effective competition cannot be obtained otherwise. Paid advertisements to recruit civilian personnel shall be subject to the limitations in section 332–1–9 of the Federal Personnel Manual.

PART 5—INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

5. The table of contents to part 5 is amended by deleting subpart C and reserving that subpart; § 5.100 is revised; §§ 5.106(a) and 5.200 are amended; subpart C is deleted and the subpart reserved; §§ 5.902, 5.1100, and 5.1101–1 are amended; § 5.1101–2 is deleted and the section reserved; § 5.1101–4 is amended; § 5.1101–9 is deleted and the section reserved; §§ 5.1101–10 and 5.1101–11 are amended; the title of § 5.1102 is changed; § 5.1103–1 is amended; the title of § 5.1103–2 is changed; § 5.1103–4 is revised; §§ 5.1105–1, 5.1108–1(f) and 5.1118 (c) are amended; § 5.1201–2(d) is added; in § 5.1201–3 under the Federal Supply Class Code items 1055 P[1] and 2320 P are amended; in § 5.1201–6 under the Federal Supply Class Code items 3210, 3220, 3230, 3610, 3655, 3930, 4120, 4130, 6635, 6655, 6670, 6675, and 6680 are amended; in § 5.1201–8 under the Federal Supply Class Code items 2320 P, 8710, 8710, 8720, and 8730 are amended and the footnote number 3 at the end of this section is revoked, as follows:

§ 5.100 Applicability.

This subpart applies to procurement of supplies to be delivered or services to be performed in the contiguous United States including the satisfaction of overseas requirements when such requirements are routed to facilities in the contiguous States for supply action in accordance with instructions prescribed by the military departments. This subpart may be applied optionally in Alaska and Hawaii. It does not apply in any event to items under the cognizance of the Defense Personnel Support Center or to items which are being purchased for resale.

§ 5.106 Federal supply schedules with multiple source provisions.

(a) *General.* Certain of the Federal supply schedules, listed in § 5.102–3, provide several sources for certain requirements. Additionally, some such schedules indicate that multiple sources are provided to make available a selection of supplies or services to meet a specific or an unusual requirement. When orders in excess of $250 are placed at other than the lowest Schedule price, the purchasing office shall include in the contract file a memorandum containing the facts justifying the order. The justification may be based on considerations such as delivery time and administrative expense. When the order is to fulfill a specific or an unusual need, it shall, in addition to any other basis for justification, state the unusual or specific requirements such as differences in performance characteristics, and compatibility with existing equipment or systems.

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§ 5.200 Applicability.

This subpart applies to the procurement of supplies available from General Services Administration stores depots for delivery in the contiguous United States including the satisfaction of overseas requirements when such requirements are routed to facilities in the contiguous States for supply action in accordance with instructions prescribed by the military departments. This subpart may be applied optionally in Alaska and Hawaii. It does not apply in any event to any order which amounts to $25.00 or less, or to:

(a) Any subsistence or medical item which is under the cognizance of the Defense Personnel Support Center;

(b) Any item which is being purchased for resale; or

(c) Any item used by commissaries for operation and maintenance that is available through local purchase at a price lower than from GSA stores depots.

This subpart also applies to the mandatory use of General Services Administration services and term contracts for the maintenance, repair, rehabilitation, and reclamation of all personal property described in § 5.206, in the United States, Puerto Rico, and the Virgin Islands. Services of this type which are available from Federal prisons industries and agencies for the blind will be procured under the provisions of subparts D and E of this part.

Subpart C—[Reserved]

§ 5.902 Limitation.

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

§ 5.1100 Applicability.

Although the Department of Defense Coordinated Procurement Program includes items assigned to one or more of the Departments or the General Services Administration for integrated materiel management, the procedures set forth in this subpart apply to items assigned for purchase responsibility only, and not to those in the integrated materiel management program. The latter items will be obtained in accordance with current supply procedures.

§ 5.1101–1 Coordinated procurement.

Refers to (a) the procurement by procurement activities, within the 48 contiguous States and the District of Columbia, of certain supplies to satisfy the requirements (including overseas requirements) of all Departments in compliance with assignment responsibilities set forth in Subpart L of this part; (b) procurement assignments made by the respective Unified Commanders in Alaska, Hawaii, and outside the United States, regardless of funds utilized; and (c) procurement assignments made in accordance with § 5.1118. It does not include procurements made in Alaska, Hawaii, or outside the United States which do not fall within paragraph (a) or (b) of this section.

§ 5.1101–2 [Reserved]

§ 5.1101–4 Procuring Department.

Refers to the Department or the General Services Administration whichever is assigned the procurement responsibility for the supplies.

§ 5.1101–9 [Reserved]

§ 5.1101–10 Military service managed items.

Refers to items which are within Federal supply classes assigned to the Defense Supply Agency or the General Services Administration but which are retained for supply management by the Requiring Department.

§ 5.1101–11 Integrated materiel management items.

Refers to items assigned to one Department or the General Services Administration for entire Department of Defense management. Such management normally includes responsibility for computation of requirements, funding, budgeting, storing, issuing, cataloging, standardizing and procuring functions.

§ 5.1102 Responsibilities under coordinated procurement.

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§ 5.1103–1 Standard format-development and promulgation of implementing procedures.

Implementation of procurement assignments shall be in accordance with enclosure 1 of Department of Defense Instruction 4115.1, dated October 14,

1968 (and amendments thereof), Subject: Department of Defense Coordinated Procurement Program—Purchase Assignments (NAVSUPINST 4215.4B).

§ 5.1103–2 Relationship between research and development and coordinated procurement.

* * * * *

§ 5.1103–4 Emergency.

In case of emergency, when the exigencies of the situation will not permit the delay incident to following the normal channels of coordinated procurement, purchases may be made without the prior authorization of the Procuring Department. When an emergency purchase is made, one copy of the contractual instrument, bearing or accompanied by a statement of the emergency, shall be transmitted promptly to the purchasing activity of the Procuring Department (the coordinated procurement assignee). The provisions of this section will not normally be used for stock replenishment. These emergency procedures do not apply to the purchase of integrated materiel management items as described by § 5–1101–11. Emergency purchase of such items is covered by § 5.1201–2(d).

§ 5.1105–1 Effect of assignment of procurement responsibility.

As a general rule, when the procurement responsibility for a commodity or class of commodities is assigned to one Department, or the General Services Administration, uncompleted contracts of any other Department, or the General Services Administration, for any commodity or class of commodities will not be transferred but will continue to be administered by the Procuring Department or Defense Contract Administration Services as appropriate.

§ 5.1108–1 Special instructions.

* * * * *

(f) The requiring department shall initiate and forward DD Form 254, Contract Security Classification Specification when work or information in connection with a requested procurement requires security protection.

§ 5.118 Procurement agreements.

* * * * *

(c) Agreements may be made on either a one-time basis or a continuing basis. The submission of a MIPR by a requiring activity and its acceptance by the purchasing activity of another department, even though based on oral communications, shall establish a one-time agreement. Delegated procurement responsibilities of a continuing nature shall be considered for coordinated procurement assignment. However, all agreements of a continuing nature shall be formalized, implemented, and distributed among the activities concerned even though not considered suitable for coordinated procurement assignment.

§ 5.1201–2 Exclusion—Defense Supply Agency assignments.

* * * * *

(d) *Exclusion for emergency purchase of integrated materiel managed items.* Requiring departments may purchase at their option any DSA or GSA centrally managed item within the integrated materiel managed category when such item is needed for immediate use requirements generated by emergency use conditions such as a work stoppage. When an emergency purchase is made, one copy of the contractual instrument shall be forwarded promptly to the appropriate DSA Center or the GSA, Federal Supply Service, Procurement Operations Division (FPNP), Washington, D.C. 20406.

§ 5.1201–3 Department of the Army.

FSC ("P" after the FSC number indicates a partial FSC assignment)

Federal supply class code
Commodity

* * * * * *

1055 P [1] Launchers, Rocket and Pyrotechnic.—This partial FSC assignment applies to launchers, rocket and pyrotechnic, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type and airborne type, with the exception of 2.75 inch Rocket Launchers which are included in this partial FSC assignment to the Department of the Army.

* * * * * *

2320 P Trucks and Truck Tractors.—The above two partial Federal Supply Class Assignments apply to tactical vehicles; trucks over 10,000 pounds Gross Vehicle Weight (GVW); and the following types of vehicles:
Bus, convertible to ambulance;
Truck, 4 x 4, convertible to ambulance;
Truck, 4 x 4, dump, 9,000 GVK, with cut-down cab.
These assignments do not apply to tracked landing vehicles which are not under DOD Coordinated Procurement assignment, and airport crash rescue vehicles, which are under DOD Coordinated Procurement assignment to the Department of the Air Force. With the exception of the types enumerated above, these assignments do not apply to commercial passenger carrying vehicles and trucks up to 10,000 pounds GVW, which are assigned for DOD Coordinated Procurement to the General Services Administration.

* * * * * *

§ 5.1201–6 Defense Supply Agency.[1]

FSC ("P" after the FSC number indicates a partial FSC assignment.)

Federal supply class code	Commodity	DSA center [2]
* * *	* * *	* * *
3210	Sawmill and Planing Mill Machinery	DGSC
3220	Woodworking Machines	DGSC
3230	Tools and Attachments for Woodworking Machinery	DGSC
* * *	* * *	* * *
3610	Printing, Duplicating, and Bookbinding Equipment	DGSC
* * *	* * *	* * *
3655	Gas Generating and Dispensing Systems, Fixed or Mobile	DGSC
3930	Warehouse Trucks and Tractors, Self-Propelled	DCSC
* * *	* * *	* * *
4120	Air Conditioning Equipment	DGSC
4130	Refrigeration and Air Conditioning Components	DGSC
* * *	* * *	* * *
6635	Physical Properties Testing Equipment	DGSC
* * *	* * *	* * *
6655	Geophysical and Astronomical Instruments	DGSC
6670	Scales and Balances	DGSC
6675	Drafting, Surveying and Mapping Instruments	DGSC
6680	Liquid and Gas Flow, Liquid Level and Mechanical Motion Measuring Instruments	DGSC
* * *	* * *	* * *

§ 5.1201–8 General Services Administration.[1]

FSC ("P" after FSC number indicates partial FSC assignment.)

Federal supply class commodity code

* * * * * *

2320 P Trucks and Truck Tractors.
The above two partial Federal Supply Class Assignments apply to all commercial passenger carrying vehicles and trucks up to 10,000 pounds Gross Vehicle Weight (GVW) except the following types which are assigned for DOD Coordinated Procurement to the Department of the Army.
Bus, convertible to ambulance.
Truck, 4 x 4, convertible to ambulance.
Truck, 4 x 4, dump, 9,000 pounds GVW, with cut-down cab.
(See Army Coordinated Procurement assignments in FSC 2310 and FSC 2320.)

* * * * * *

8710 Forage and Feed.
8720 Fertilizers.
8730 Seeds and Nursery Stock.

* * * * * *

Footnote 3. [Revoked]

PART 6—FOREIGN PURCHASES

6. Section 6.103–2 is revised; § 6.103–7 is amended; § 6.105 is revised; §§ 6.704–1, 6.705–1, and 6.705–2(a) are amended; § 6.705–5 is added; in § 6.805–2(a)(8)(i)(*l*) is amended, and a new (*n*) is added, also in subdivision (ii) of this paragraph (a)(8) a new (*e*) is added and the present (*e*) is redesignated as (*f*), in paragraph (b)(1)(i) of this section, (*f*) is revised and (*g*) is revoked, and in paragraph (b)(i)(iii) a new (*k*) is added; and § 6.1109(b) is revised, as follows:

§ 6.103–2 Nonavailability in the United States.

(a) The Buy American Act does not apply to articles, materials, or supplies of a class or kind which the Government has determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Procedures for the procurement of foreign end products on the basis of nonavailability are set forth in this section. Procedures for the procurement of foreign items as components of construction materials or of domestic source end products on the basis of nonavailability are in § 6.105.

(b) Any procurement of foreign articles, materials or supplies, except the items listed in § 6.105 when procured as components of construction materials or of domestic source end products, shall be made only after a determination of nonavailability has been made in accordance with Departmental procedures. Each determination also shall include a reference to the Buy American Act (41 U.S.C. 10a–d), a description of the item or items being procured, the unit, quantity, and estimated delivery cost, a brief statement establishing the necessity for the procurement and the nonavailability of a similar item or items of domestic origin. A signed copy of the determination shall be made part of the contract file. When a determination has been made that the restrictions of the Buy American Act are inapplicable for the end products being purchased, notification to this effect shall be included in the solicitation and contract.

(c) Notwithstanding the foregoing, procurement of foreign end products on the basis of "nonavailability" shall be made only if the procurement is approved:

(1) By the Secretary of the Department concerned if the procurement is estimated to exceed $100,000;

(2) By the Head of the Procuring Activity or his immediate deputy, or in the case of the Advance Research Projects Agency (ARPA), the Director, ARPA, if the procurement is estimated not to exceed $100,000;

(3) By the principal staff officer responsible for procurement within the procuring activity (or, in the Air Force, within the major air command) concerned, if the procurement is estimated not to exceed $10,000; or

(4) At a level above the contracting officer, if the amount involved is estimated not to exceed $2,500.

Before granting such approval, or making such determination, the feasibility of foregoing the requirement or providing a U.S. substitute shall be considered.

(d) Notwithstanding paragraph (c) of this section approvals and determinations covering individual procurements in the following categories may be made by the contracting officer:

(1) Procurement of spare and replacement parts, if the procurement must be restricted to the original manufacturer or his supplier in accordance with § 1.313 of this chapter;

(2) Procurement of foreign drugs by the Defense Personnel Support Center where the Chief of the Division of Technical Operations, Directorate of Medical Materiel, has determined that only the requested foreign drug will fulfill the requirements;

(3) Procurement of swords and scabbards;

(4) Procurement of books, pamphlets, newspapers, magazines, periodicals, and printed briefs and films not printed in the United States and for which domestic editions are not available; and

(5) Procurement of bananas, tea, coffee, spices, herbs, sugar, cocoa, cream of tartar, tapioca and coconut.

(e) Commissary resale: See § 6.103–7.

§ 6.103–7 Commissary resale.

The provisions of the Buy American Act do not apply to supplies purchased specifically for commissary resale. Accordingly, notwithstanding § 6.103–2(c), approvals are not required for purchases for resale in domestic commissaries of brand-name subsistence items of foreign origin for which there are no substitutes of U.S. origin. All purchases of such brand-name subsistence items of foreign origin shall be made from domestic concerns. The commissary officer is responsible for the exercise of judgment as to whether domestic items which may be available on the U.S. market are acceptable substitutes for brand-name subsistence items of foreign origin. Nonbrand-name subsistence items of foreign origin and nonsubsistence items of foreign origin purchased for resale in domestic commissaries, although not subject to the Buy American Act restrictions, are subject to approval in accordance with § 6.103–2(c) ("Gold Flow Procedures").

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

Pursuant to the Buy American Act, the Secretaries have determined that the articles, materials, and supplies listed below are not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality, or that it would be inconsistent with the public interest to apply the restrictions of the Act to such articles, materials, and supplies. When required to be incorporated into an end product or construction material manufactured in the United States, these items may be regarded as components of domestic origin for the purpose of determining the origin of such manufactured end product (see § 6.101 (a)) or construction material (see §18.506–5 of this chapter). However, the procurement of any of these items other than as components of domestic source end products or construction materials must be approved by the appropriate authority designated in § 6.103–2(c).

Acetylene black.
Asbestos, amosite.
Bananas.
Beef extract.
Bismuth.
Brazil nuts, unroasted.
Cadmium, ores and flue dust.
Calcium cyanamide.
Capers.
Cashew nuts.
Chestnuts.
Chicle.
Chrome ore or chromite.
Cinchona bark.
Cobalt, in cathodes, rondelles, or other primary forms.
Cocoa beans.
Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.
Coffee, raw or green bean.
Cork, wood or bark and waste.
Cover Glass, Microscope Slide.
Diamonds, industrial, stones.
Emetine, bulk.
Ergot, crude.
Fair linen, altar.
Fibers of the following types: Abace, ogave, coir, flax, jute, and palmyra.
Goat and kid skins.
Graphite, natural.
Hand Sewing Needles.
Hog bristles for brushes.
Hyoscine, bulk.
Ipecac, root.
Leather, Sheepskin, Hair Type.
Menthol, natural bulk.
Mica.
Nickel, primary, in ingots, pigs, shot, cathodes, or similar forms; nickel oxide and nickel salts.
Nitroguanidine (also known as picrite).
Olive oil.
Olives (green), pitted or stuffed in bulk.
Opium, crude.
Petroleum, crude oil; unfinished oils and finished products.[1]
Platinum and platinum group metals refined, as sponge, powder, ingots, or cast bars.
Pyrethrum flowers.
Quartz crystals.
Quebracho.
Radium salts.
Rosettes.
Rubber, crude and latex.
Rutile.
Silk, raw.
Sperm oil.
Spices and herbs in bulk.
Sugars, raw (Part 3 of section VI, however, applies).
Talc, block, steatite.
Tapioca flour and cassava.
Tartar, crude; tartaric acid and cream of tartar in bulk.
Tea in bulk.
Thread, metallic (gold).
Vanilla beans.
Venom, cobra.
Wax, carnauba.
Woods of the following species: Angellque, balsa, ekki, greenheart, lignum vitae, mahogany and teak.

(a) "Crude oil" means crude petroleum as it is produced at the wellhead and liquids (under atmospheric conditions) that have been recovered from mixtures of hydrocarbons which existed in a vaporous phase in a reservoir and that are not natural gas products.

(b) "Finished products" means any one or more of the following petroleum oils, or a mixture or combination of such oils, which are to be used without further processing except blending by mechanical means:

(1) Liquefied gases—hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure

[1] Petroleum Definitions, as used in this part.

to maintain a liquid state at ambient temperatures;

(ii) Gasoline—a refined petroleum distillate which by its composition, is suitable for use as a carburant in internal combustion engines;

(iii) Jet fuel—a refined petroleum distillate used to fuel jet propulsion engines;

(iv) Naphtha—a refined petroleum distillate falling within a distillation range overlapping the higher gasoline and the lower kerosenes;

(v) Fuel oil—a liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate fuel oils, gas oil, diesel fuel, topped crude oil, residues;

(vi) Lubricating oil—a refined petroleum distillate or specially treated petroleum residue used to lessen friction between surfaces;

(vii) Residual fuel oil—a topped crude oil or viscous residuum which, as obtained in refining or after blending with other fuel oil, meets or is the equivalent of Military Specification Mil–F–859 for Navy Special Fuel Oil and any other more viscous fuel oil, such as No. 5 or Bunker C;

(viii) Asphalt—a solid or semi-solid cementitious material which gradually liquefies when heated, in which the predominating constituents are bitumins, and which is obtained in refining crude oil;

(ix) Natural gas products—liquids (under atmospheric conditions), including natural gasoline, which are recovered by a process of absorption, adsorption, compression, refrigeration, cycling, or a combination of such processes, from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir and which, when recovered and without processing in a refinery, otherwise fall within any of the definitions of products contained in (ii) through (v), inclusive, of this paragraph (b).

(c) "Unfinished oils" means one or more of the petroleum oils listed in (b) above, or a mixture or combination of such oils, which are to be further processed other than by blending by mechanical means.

§ 6.704–1 General.

Military Assistance Program purchases authorized to be made outside the United States under the Foreign Military Sales Act of 1968 are exempt (Executive Order No. 10784, dated 1 October 1958, as amended by Executive Order No. 10845, dated 12 October 1959) from the requirement for examination of records by the Comptroller General (10 U.S.C. 2313(b) and section 3(b), Public Law 85–804) in the following circumstances:

(a) Contracts with foreign contractors (including foreign governments) to be performed outside the United States; and

(b) Contracts, and amendments and modifications thereof, entered into pursuant to Public Law 85–804 (see § 17.501) of this chapter. *Provided* That the Department concerned shall make a determination that it is impracticable to include the "Examination of Records" clause or to obtain compliance therewith; such determinations may be made by any officer or official authorized to approve contracts, and amendments and modifications thereof, pursuant to § 17.201 of this chapter.

Notwithstanding the exemption permitted above, the contracting officer shall, where practicable, include the "Examination of Records" clause in contracts covered in paragraph (a) of this section.

§ 6.705–1 Scope of §§ 6.705–6.705–5.

Sections 6.705–6.705–5 sets forth policies and procedures applicable to procurements for the purpose of Foreign Military Sales pursuant to the Foreign Military Sales Act of 1968. It does not apply to sales made from inventories or stocks or to procurements for replenishment of inventories or stocks.

§ 6.705–2 General.

(a)(1) Department of Defense policy prohibits sales of unclassified defense articles to the Government of any economically developed nation unless such articles are not generally available for purchase by such nations from commercial sources in the United States, except if this prohibition has been waived by the Secretary of Defense. Note that this prohibition is not limted to commercal articles: it extends to unclassified articles of a military nature, or manufactured according to military specifications, so long as they are generally available to foreign countries from U.S. commercial sources. Further, this prohibition applies, as a matter of policy, whether or not the sale depends on section 22 of the Foreign Military Sales Act of 1968, unless a waiver by the Secretary of Defense applies.

(2) Current information as to "economically developed nations" and as to waivers of the prohibition in subparagraph (1) of this paragraph is available, in the Army, from the Director of International Logistics, Army Materiel Command; in the Navy, from the Office of the Chief of Naval Operations (OP–42); and in the Air Force, from the Director of Military Assistance and Sales, Deputy Chief of Staff, Systems and Logistics. If a foreign government seeks to purchase items from any Department of Defense activity and there is doubt as to whether the items are available from commercial sources in the United States, the Department concerned may suggest the names of possible commercial sources to the foreign government to assist in making the determination.

* * * * *

§ 6.705–5 Sole source justification.

When the Foreign Military Sales contract requires that a product be obtained from a particular firm, the authority of 10 U.S.C. 2304(d)(10) may be cited as contemplated by §3.210–2(r) of this chapter and no additional approval to purchase on a sole source basis is required.

§ 6.805–2 Procurement limitations.

(a) * * *

* * * * *

(8) *Miscellaneous exceptions.* (i) * * *

(*l*) The following bulk construction materials: sand, gravel and other soil materials, stone, concrete masonry units; and fired brick;

* * * * *

(*n*) Terminal and maintenance services which can only be performed at overseas locations in support of aircraft flights.

(ii) * * *

(*e*) Ready-mixed asphalt and portland cement concrete; and

(*f*) Other mandatory requirements for contractual services which by their nature can only be performed locally and where an organic capability does not exist.

* * * * *

(b) * * *

(1) * * *

(i) *Department of the Army.* * * *

(*f*) Commanding General, his immediate deputy, the Chief of Staff, and the Deputy Commanding General Logistics, U.S. Army, Vietnam;

(*g*) [Revoked]

(iii) *Department of the Air Force.* * * *

(*k*) Commander, Air Force Communications Service

* * * * *

§ 6.1109 Excess and near-excess currency countries.

* * * * *

(b) The Department of the Treasury holds near-excess foreign currency in the following countries.

Country	*Currency*
Ghana	New Ghanian Cedis.
Indonesia	Rupiah.
Sudan	Pound.

* * * * *

PART 7—CONTRACT CLAUSES

7. The table of contents for subpart P of this part is revised; § 7.001 is revised; in § 7.103–18 the introductory text of paragraphs (a) and (b) are revised; § 7.103–26 is added; §§ 7.104–20, 7.104–24, 7.104–25 and 7.104–26 are revised, § 7.104–78 is deleted and the section reserved; §§ 7.104–79, 7.104–80, 7.108–1 and 7.108–2 are revised; §§ 7.109–2 and 7.109–3 are amended; §§ 7.203–10, 7.203–21, 7.204–16, 7.204–16, 7.204–38, and 7.302–26 are revised; § 7.302–29 is added; §§ 7.303–7 and 7.303–37 are revised; § 7.303–38 is added; § 7.402–24(c) is amended; § 7.402–25 is revised; § 7.402–27 is amended; §§ 7.403–9 and 7.403–33 are revised; § 7.404–9 is amended; § 7.503–10 is added; § 7.504–4 is revised; §§ 7.602–24(b) and 7.602–29(a) are amended; § 7.602–38 is added; §§ 7.603–14, 7.603–23, 7.604–4, 7.605–5(b), 7.605–14, and 7.605–26 are revised; § 7.606–20 is amended; § 7.607–7 is revised; § 7.607–28 is added; §§ 7.702–18 and 7.901–5 are revised; § 7.901–23 is added; § 7.902–2 is revised; § 7.1002–26 is added; § 7.1003–6 is amended; § 7.1003–14 is deleted and the section reserved; § 7.1003–15 is amended; § 7.1201–28 is added and subpart P of this part 7 is revised in its entirety, as follows:

§ 7.001 Incorporation of contract clauses by reference.

Contract clauses prescribed by this part may be incorporated by reference to the ASPR paragraph number, clause title and date of clause. *Provided:* (a) The clause does not contain blanks to be filled, (b) the clause is not modified, and (c) the instructions for use of the clause do not prohibit incorporating the clause by reference. The Head of a Procuring Activity or his designee may

further restrict incorporation by reference for certain types of contracts.

§ 7.103–18 Equal opportunity clause.

(a) *Government Contracts.* The following clause shall be included in all contracts (and modifications thereof if the clause was not included in the original contract) unless exempted in accordance with § 12.805 of this chapter (see also § 12.804).

* * * * *

(b) *Federally assisted construction contracts.* The following clause shall be included as a condition of any grant, contract, loan, insurance or guarantee involving Federally assisted construction unless exempted in accordance with § 12.850 of this chapter.

* * * * *

§ 7.103–26 Pricing of adjustments.

PRICING OF ADJUSTMENTS (1970 JULY)

When costs are a factor in any determination of a contract price adjustment pursuant to the "Changes" clause or any other provision of this contract, such costs shall be in accordance with Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract.

§ 7.104–20 Utilization of labor surplus area concerns.

(a) In accordance with § 1.805–3(a) of this chapter, insert the clause set forth therein.

(b) In accordance with § 1.805–3(b) of this chapter, insert the clause set forth therein.

§ 7.104–24 Government property.

(a) Government property clause. Except as provided in paragraphs (b) through (d) and (f) of this section, insert the following clause when a Department is to furnish to the contractor, or the contractor is to acquire Government property.

GOVERNMENT PROPERTY (FIXED PRICE) (1968 SEPT.)

(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 personality by reason of affixation to any realty.

(d) *Property Administration.* The Contractor shall comply with the provisions of Appendix B, Armed Services Procurement Regulation, as in effect on the date of the contract, which is hereby incorporated by reference and made a part of this contract. Material to be furnished by the Government shall be ordered or returned by the Contractor, when required, in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation) as in effect on the date of this contract, which Manual 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, 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 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 contract. 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 and Abandonment.* Unless otherwise provided herein, the Government:

(1) 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 or in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation).

(b) *Overseas contracts.* If the contract is an overseas contract, insert the words "United States" before the words "Government" and "Government-furnished" wherever they appear in the above clause. Also, substitute the following paragraphs (d) and (k) for paragraphs (d) and (k) of the clause prescribed in paragraph (a) of this section.

(d) *Property Administration.* The Contractor shall comply with the provisions of Appendix B, Armed Services Procurement Regulation, as in effect on the date of the contract, which is hereby incorporated by reference and made a part of this contract.

* * * * *

(k) *Communications.* All communications issued pursuant to this clause shall be in writing.

(c) *Negotiated contracts.* 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 § 3.807–1(b) of this chapter), or (3) prices set by law or regulation, substitute the following paragraph (g) for paragraph (g) of the clause in paragraph (a) of this section.

g) *Risk of Loss.* (1) Except as provided in (2) below, 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, impending 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 "excepted 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 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) Notwithstanding (1) above, the Contractor shall be responsible for any loss or damage (i) to the extent specifically provided in the clause or clauses of this contract designated in the schedule, or (ii) which results from:

(A) Willful misconduct or lack of good faith of any of the Contractor's managerial personnel; or

(B) A failure on the part of the Contractor, due to willful misconduct or lack of good faith of the Contractor's managerial personnel, (i) to maintain and administer the program for maintenance, repair, protection, and preservation of the Government property as required by paragraph (f) hereof, or (ii) to establish, maintain and administer a system for control of Government property as required by paragraph (d) of this clause. Any failure of the Contractor to act, as provided in this (B), shall be conclusively presumed to be a failure resulting from willful misconduct, or lack of good faith on the part of one of the Contractor's managerial personnel if the Contractor is notified by the Contracting Officer by registered or certified mail adressed to one of the Contractor's managerial personnel, of the Government's disapproval, withdrawal of approval, or nonacceptance of the Contractor's program or system. In such event, it shall be presumed that any loss of or damage to Government property resulted from such failure. The Contractor shall be liable for such loss or damage unless he can establish by clear and convincing evidence that such loss or damage did not result from his failure to maintain an approved program or system, or occurred during such time as an approved program or system for control of Government property was maintained.

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.

(3) 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 any self-insurance funds or reserve) covering loss or destruction of or damage to the Government property caused by any excepted peril.

(4) 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 (4) (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 accordance with the procedures provided for in the "Changes" clause of this contract.

(5) 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.

(6) 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.

(7) 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.

*(8) 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. (1970 September)

(d) *Fixed-price with reimbursement provision.* If the supply or services contract sets out a fixed-price for a portion of the contract but also provides for reimbursement of costs of certain materials, include the clause from paragraph (a) of this section, but substitute the following paragraph (c) for paragraph (c) of the clause.

(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 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 reimbursable 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.

(e) *"As Is" government property.* Insert the following clause, in addition to the clause set forth in paragraph (a) of this section when Government production and research property is furnished "as is" (see § 13–308 of this chapter).

GOVERNMENT PROPERTY FURNISHED "AS IS" (1965 APRIL)

(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, 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.

(f) *Short form clause.* Instead of the clause in paragraph (a) of this section, the following short form clause may be used when the Government is to furnish to the contractor Government property having an acquisition cost of $25,000 or less. In overseas contracts, insert the words "United States" before the words "Government furnished" in the clause below.

GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (1964 NOVEMBER)

(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 this 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.

(g) *Records of Government property.* In accordance with § 13.803 of this chapter, insert the following clause in addition to the clause in paragraph (a) of this section:

PROPERTY RECORDS (1967 AUGUST)

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.

§ 7.104–25 Special tooling.

Insert the following clause in negotiated contract when the Government is to acquire full rights in special tooling other than as a line item (see § 13.305 of this chapter).

SPECIAL TOOLING (1967 OCTOBER)

(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 production 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 of 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 waive

* This subparagraph may be omitted where it is clearly inapplicable and shall be deleted when the Ground and Flight Risk clause is omitted pursuant to § 10.404(b)(2) of this chapter.

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 superceding part and the usable special tooling for each part covered in such notice shall be retained by the Contractor subject to the provisions of paragraph (i), pending disposition under paragraph (f).

(e) *Contractor's Offer to Retain Special Tooling.* At the time he furnishes any list or notice under (c) or (d) above, the Contractor may designate those items of special tooling (either specifically or by listing the particular products, parts, or services for which such items were used or designed) which he desires to retain, together with a written offer.

(i) To retain any or all of such items, free and clear of any Government interest, for an amount designated therein, which should ordinarily not be less than the then fair value of such items which fair value takes into account, among other things, the value of such items to the Contractor for use in further work by him; or

(ii) To retain any or all such items for such period of time and subject to such terms and conditions as may be agreed to by the parties hereto, subject to ultimate retention or disposition of such items in accordance with paragraph (f) hereof.

(f) *Disposition of Special Tooling.* Within ninety (90) days after receipt of any list or notice under paragraph (c) or (d) hereof, or such further period as may be agreed upon by the parties, the Contracting Officer shall furnish to the Contractor:

(i) A list specifying the particular products, parts, or services for which the Government may require special tooling together with a request that the Contractor transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Government all usable items of special tooling which were used or designed for the manufacture or performance of any designated portion of such products, parts, or services, and which were on hand when production of such products or parts, or performance of such services, ceased;

(ii) An acceptance or rejection of any offer made by the Contractor under paragraph (e) above, or a request for further negotiation with respect thereto;

(iii) A direction to the Contractor to sell, or to dispose of as scrap, for the account of the Government, any or all of the special tooling covered by such list;

(iv) A statement with respect to any or all of the special tooling covered by such list that the Government has no further interest herein and waives its rights therein; or

(v) Any combination of the foregoing, as the circumstances warrant.

The Contractor shall promptly comply with any reqeust by the Contracting Officer under this paragraph to transfer title to any items of special tooling, and shall: (1) immediately prepare such items for shipment by proper packaging, packing, and marking, in accordance with any instructions which may be issued by the Contracting Officer, and shall promptly deliver such items to the Government as directed by the Contracting Officer; or (2) if a storage agreement has been entered into, prepare such items for storage in accordance therewith, as directed by the Contracting Officer. To the extent that compliance with such directions under (iii), (1) or (2) above occasions any cost to the Contractor for which he will not otherwise be compensated, the contract price shall be equitably adjusted in accordance with the procedures of the "Changes" clause hereof. Any items of special tooling so delivered or stored shall be accompanied by such operation sheets or other appropriate data as are necessary to show the manufacturing operations or processes for which such items were used or designed. If the Contracting Officer has requested further negotiations under (ii) of this paragraph, the Contractor agrees that he will enter into such negotiations in good faith with the Contracting Officer. Any items of special tooling which are not disposed of by transfer of title and delivery to the Government, or by acceptance of an offer of the Contractor made under paragraph (e), or of such offer as modified in the course of negotiations, shall be disposed of in the manner set forth in (iii) or (iv) of this paragraph. Any failure of the Contracting Officer to give the directions required under (i)–(v) above within the specified period shall be construed as a direction pursuant to (iii) above.

(g) *Proceeds of Retention or Disposition of Special Tooling.* If the Contracting Officer accepts an offer of the Contractor to retain any items of special tooling, or if any such items are sold to third parties or disposed of as scrap, the net proceeds shall: (i) Be deducted from the amounts due to the Contractor under this contract and the contract amended accordingly; or (ii) be otherwise paid as the contracting Officer may direct.

(h) *Property Control.* The Contractor agrees that he will follow his normal industrial practice in maintaining property control records on all the special tooling, and that he will make such records available for inspection by the Government at all reasonable times. The Contractor further agrees that, to the extent practicable, he will identify by appropriate stamp, tag or other mark all special tooling subject to this clause.

(i) *Maintenance Pending Disposition.* The Contractor agrees that between the date any usable items of special tooling are no longer needed by him, within the meaning of this clause, and the date of final disposition of such items under this clause, he will take all reasonable steps necessary to maintain the identity and existing conditions of such items, unless the Contracting Officer has directed that such items be disposed of as scrap or has given notice under (f)(iv). The Contractor shall not be required to keep any such items in place.

(j) *Special Tooling Provisions for Subcontracts.* The Contractor agrees that, in placing any subcontracts or purchase orders under this contract which involve the use of special tooling, the full cost of which is charged to such subcontract or purchase order, he will include therein appropriate provisions to obtain rights comparable to those granted to the Government by this clause, unless the Contracting Officer determines, upon the Contractor's request, that, with respect to any subcontract, purchase order, or class thereof, such rights are not of substantial interest to the Government. The Contractor further agrees that he will exercise any such rights for the benefit of the Government, as the Contracting Officer may direct.

§ 7.104–26 Special test equipment.

Insert the following clause 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 § 13.306–3(c) of this chapter).

SPECIAL TEST EQUIPMENT (1965 JUNE)

(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, nonseverable 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 Contractor 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) days' 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.

§ 7.104–78 [Reserved]

§ 7.104–79 Safety precautions for ammunition and explosives.

(a) The following clause shall be inserted in all contracts which may involve the development, testing, storage, manufacture, modification, renovation, demilitarization, packaging, transportation,

handling, disposal, inspection, repair or any other use of ammunition and explosives. The terms "ammunition" and "explosives" exclude inert components containing no explosives, active chemicals or pyrotechnics.

SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (1970 SEP)

(a) As used in this clause:

(i) "Ammunition" and "explosives" shall have the meaning set forth in DOD Contractors' Safety Manual for Ammunition, Explosives, and Related Dangerous Materials, DOD 4145.26M;

(ii) "Accident" means an event causing damage or injury involving ammunition or explosives which results in one or more of the following:

(1) One or more fatalities,*

(2) One or more disabling injuries,*

(3) Ten or more nondisabling injuries,*

(4) Damage to Government property exceeding $10,000,

(5) Production interruption exceeding 24 hours.

(b) The Contractor shall comply with the DOD Contractor's Safety Manual for Ammunition, Explosives and Related Dangerous Materials (DOD Manual 4145.26M), in effect on the date of the solicitation for this contract, as it relates to ammunition and explosives, and any other additional or more stringent requirements included in the schedule of this contract.** If the Contracting Officer notifies the Contractor of any noncompliance with such Manual, or schedule provisions, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action within the time specified by the Contracting Officer, the Contracting Officer may direct the Contractor to cease performance on all or part of this contract, or until satisfactory corrective action has been taken. Any notification of direction under this paragraph should be in writing or confirmed in writing by the Contracting Officer. The Contracting Officer may at any time remove Government personnel whenever the Contractor is in noncompliance with the safety requirements of this clause. Either action by the Contracting Officer shall not entitle the Contractor to an adjustment of the contract price or other reimbursement for resulting increased costs, or to an adjustment of the delivery or performance schedule. However, should direction to cease performance be issued or Government personnel be removed and it is later determined that the Contractor had, in fact, complied with the Manual, or schedule provisions, the Contractor shall be entitled to an equitable adjustment in delivery schedule, in contract price, or both, in accordance with the procedures provided for in the clause of this contract entitled "Changes."

(c) The Contractor shall immediately notify the Contracting Officer after an accident involving ammunition or explosives. The Contractor shall also, in accordance with this contract or as required by the Contracting Officer, conduct an investigation and submit a written report of the accident to the Contracting Officer.

(d) Neither the requirements of this clause nor any act or failure to act by the Government in surveillance or enforcement thereof shall affect or relieve the Contractor of responsibility for the safety of his personnel and his property and for the safety of the general public in connection with the performance of this contract, or impose or add to any liability of the Government for such safety. The Contractor is not entitled to rely on the requirements of this clause or on any Government surveillance or enforcement thereof, or lack thereof, or granting of any waiver or exemption in accordance with DOD 4145.26M in discharging the Contractor's responsibility.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in every subcontract hereunder which involves ammunition and explosives as defined in (a) above.

(f) Nothing contained herein shall relieve the Contractor from complying with applicable Federal, State and local laws, codes, ordinances and regulations (including the obtaining of licenses and permits) in connection with the performance of this contract.

(b) In contracts involving shipments of ammunition and explosives by military aircraft or to an aerial port of embarkation, insert the following paragraph:

(g) The Contractor shall comply with the requirements for a shipper's certificate set forth in the manual entitled "Packaging and Handling of Dangerous Materials for Transportation by Military Aircraft" (U.S. Government Printing Office Catalog Number D 301.7:71/4/2, also identified as AFM 71-4/TM - 38 - 250/NAVAIR 15 - 03 - 500/MCO P4030.19/DSAM 4145.3).

§ 7.104-8 Notice of radioactive materials.

Insert the following clause in all contracts for items, components thereof, and materials which are radioactive in which the radioactivity per gram is greater than 0.002 microcurie. Such contracts include, but are not limited to, contracts for aircraft, ammunition, missiles, vehicles, electronic tubes, instrument panel gauges, compasses and identification markers.

NOTICE OF RADIOACTIVE MATERIALS (1970 SEPTEMBER)

(a) The Contractor shall notify the Contracting Officer or his designee, in writing (------*------) days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (i) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, and set forth in Title 10 CFR, in effect on the date of this contract, or (ii) other radioactive material not requiring specific licensing in which the radioactivity per gram is greater than 0.002 microcurie. Such notice shall specify the part or parts of the items which contain such radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (BOB No. 38-R027.3).

(b) All items, parts or subassemblies which contain radioactive materials in which the radioactivity per gram is greater than 0.002 microcurie and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of Military Specification MIL-M-19590 in effect on the date of the contract.

§ 7.103-1 Firm targets.

When in accordance with the provisions of Subpart D, Part 3 of this chapter, the fixed-price incentive contract described in § 3.404-4(a)(2) of this chapter is to be used, the following clause shall be made a part of the contract. As to each items which is to be subject to incentive price revision, the contract schedule shall set forth the target cost, target profit, target price.

INCENTIVE PRICE REVISION (FIRM TARGET) (1970 SEPTEMBER)

(a) *General.* The supplies or services identified in the Schedule as items ------ are subject to price revision in accordance with the provisions of this clause: *Provided,* That in no event shall the total final price of such items exceed ------ dollars ($----------). Any supplies or services which are to be ordered separately under, or otherwise added to, this contract, and which are to be subject to price revision in accordance with the provisions of this clause, shall be identified as such in a modification to this contract.

(b) *Definition of Cost.* For the purposes of this clause, "cost" or "costs" means allowable cost in accordance with section XV of the Armed Services Procurement Regulation as in effect on the date of this contract.

(c) *Submission of Data.* Within ------ (------) days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services called for by those items referred to in paragraph (a) above, the Contractor shall submit, in such form as the Contracting Officer may require, (i) a detailed statement of all costs incurred up to the end of that month in performing all work under such items, and (ii) an estimate of costs of such further performance, if any, as may be necessary to complete performance of all work with respect to such items.

(d) *Price Revision.* Upon submission of the data required by paragraph (c) above, the Contractor and the Contracting Officer shall promptly establish the total final price in accordance with the following:

(1) On the basis of the information required by paragraph (c) above, together with any other pertinent information, there shall be established by negotiation the total final cost incurred or to be incurred for the supplies delivered (or services performed) and accepted by the Government, which are subject to price revision under this clause.

(2) The total final price shall be established by adjusting the total final negotiated cost by an amount for profit or loss determined as follows:

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* As defined in American National Standards Institute, Safety Standard, entitled "USA Standard Method of Recording and Measuring Work Injury Experience, Z16.1," in effect on the date of the solicitation.

** The Contracting Officers shall not reference in the schedule of the contract ammunition and explosive safety publications of DOD components in their entirety. Contracting Officers shall select and identify in the schedule of the contract applicable paragraphs or portions of such publications. Where contract performance will occur on a military installation, Contracting Officers may also include necessary regulations of the installation covering ammunition and explosives applicable to performance on the installation.

*The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that appropriate licenses are obtained or safeguards are taken when licenses are not required.

When the total final negotiated cost is—	*The adjustment for profit or loss is—*
Equal to the total target cost	Total target profit.
Greater than the total target cost	Total target profit less _____ percent (_____%) of the amount by which the total final negotiated cost exceeds the total target cost.
Less than the totals target cost	Total target profit plus _____ percent (_____%) of the amount by which the total final negotiated cost is less than the total target cost.

(3) The total final price of the items referred to in paragraph (a) above shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer. Such price shall not be subject to revision notwithstanding any changes in the cost of performing the contract, with the following exceptions:

(i) Insofar as the parties may agree in writing, prior to the determination of the total final price, (A) to exclude any specific elements of cost from the total final price and (B) to a procedure to provide subsequent disposition of such elements; and

(ii) To the extent any adjustment or credit is explicitly permitted or required by this or any other clause of this contract.

(e) *Subcontracts.* No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(f) *Adjustment of Payments.* Pending execution of the contract modification referred to in subparagraph (d)(3) above, the Contractor shall submit invoices or vouchers accordance with billing prices as provided in this paragraph. The billing prices shall be the target prices set forth in this contract: *Provided,* That if at any time it appears that the then current billing prices do not provide for payments consistent with the provisions of subparagraph (g)(3) below, the parties may agree to revised billing prices, which shall be reflected in a modification to this contract. Billing prices are for the sole purpose of providing for interim payments and shall not affect the determination of the total final price under paragraph (d) above. After execution of the contract modification referred to in subparagraph (d)(3) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(g) *Limitation on Payments.* (1) This paragraph (g) shall not apply after final price revision.

(2) Within forty-five (45) days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contracting Officer, with a copy thereof to the cognizant contract auditor, a cumulative statement setting forth:

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) That portion of the total target profit which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established, increased or decreased in accordance with the incentive profit formula set forth in (d)(2) above when the amount of costs stated under (ii) above differs from the aggregate target costs of such supplies or services; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2)(iv) above exceeds the sum of (2) (i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any tax credits under Section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the "Progress Payments" clause of this contract, instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this paragraph (g), including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this paragraph (g), including this subparagraph (4) modified as outlined in (i) above.

(h) *Disagreements.* If the Contractor and Contracting Officer fail to agree upon the total final price within 60 days after the date on which the data required by (c) above are to be submitted, or within such further time as may be specified by the Contracting Officer, such failure to agree shall be deemed to be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract and the Contracting Officer shall promptly issue a decision thereunder.

(i) *Termination.* If this contract is terminated prior to establishment of the total final price, prices of supplies or services subject to price revision under this clause shall be established pursuant to this clause for (i) completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, supplies and services which are not terminated. The termination shall be otherwise accomplished pursuant to other applicable provisions of this contract.

(j) *Equitable Adjustment Under Other Clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit or both. If such an adjustment is made after the total final price is established, adjustment shall be made only in the total final price.

(k) *Exclusion From Target Price and Total Final Price.* Whenever any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, such provision shall mean that neither any target price nor the total final price includes or will include any amount for such purpose.

(l) *Separate Reimbursement.* The cost of performance of an obligation that any clause of this contract expressly provides is at Government expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(m) *Taxes.* As used in the "Federal, State, and Local Taxes" clause of this contract or any other clause of this contract that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term "contract price" includes the total target price, or if it has been established, the total final price. When a provision in such clause or clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, such increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so as not to affect the contractor's profit or loss on this contract.

In contracts of the Department of the Navy, add the words "and with a copy thereof to the office or offices designated in this contract to make payments thereunder" after the words "cognizant contract auditor" in line 5 of paragraph (g)(2) above. In the event the contract calls for parts or other supplies or services which are to be ordered under a provisioning document or Government option and the prices of such supplies or services are to be made subject to incentive price revision in accordance with the above clause, the following provision (n) shall be included in such clause:

(n) *Parts.* Parts, other supplies, or services, which are to be furnished under this contract pursuant to a provisioning document or Government option, shall be subject to price revision in accordance with the provisions of this clause, and any prices established for such parts, other supplies, or services, pursuant to such provisioning document or Government option, shall be deemed to be target prices. Target cost and profit covering such parts, other supplies, or services may be established either separately, in the aggregate, or in any combination thereof, as the parties may agree. (1970 September)

§ 7.108–2 Successive targets.

When in accordance with the provisions of Subpart D, Part 3 of this chapter, the fixed-price incentive contract described in § 3.404–4(a)(3) of this chapter is to be used, the following clause shall be made a part of the contract. As to each item which is to be subject to incentive price revision, the contract schedule shall set forth the initial target cost, initial target profit, and intial target price.

INCENTIVE PRICE REVISION (SUCCESSIVE TARGETS) (1970 SEPTEMBER)

(a) *General.* The supplies or services identified in the Schedule as Items _____ are subject to price revision in accordance with the provisions of this clause: *Provided,* That

in no event shall the total final price of such items exceed _____ dollars ($_____). The prices of these items as shown in the Schedule are the initial target prices, which include an initial target profit of _____ percent (_____%) of the initial target cost. Any supplies or services which are to be ordered separately under, or otherwise added to, this contract, and which are to be subject to price revision in accordance with the provisions of this clause, shall be identified as such in a modification to this contract.

(b) *Definition of cost.* For the purposes of this clause, "cost" or "costs" means allowable costs in accordance with section XV of the Armed Services Procurement Regulations as in effect on the date of this contract.

(c) *Submission of Data for Establishment of Firm Fixed Price or Final Profit Adjustment Formula.*

(1) Within _____ (_____) days after the end of the month in which the Contractor has completed _____*, the Contractor shall submit:

(i) A proposed firm fixed price or total firm target price for supplies delivered and to be delivered;

(ii) A detailed statement of all costs incurred in the performance of this contract through the end of the month specified above, on DD Form 784 or in such other form as the parties may agree, together with sufficient supporting data to disclose unit costs and cost trends for:

(A) Supplies delivered and services performed, and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

(iii) An estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under this contract, using the statement of costs incurred plus an estimate of costs to complete performance, on DD Form 784 or in such other form as the parties may agree, together with:

(A) Sufficient data to support the accuracy and reliability of such estimate, and

(B) An explanation of the differences between such an estimate and the original estimate used in establishing the initial target prices set forth in this contract for the same supplies or services.

(2) In addition to the data submitted under subparagraph (1) above, the Contractor shall submit the following:

(i) Supplemental statements of costs incurred subsequent to the end of the month specified in (1) above for:

(A) Supplies delivered and services performed, and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data which may reasonably be required by the Contracting Officer;

as and to the extent that such information becomes available prior to the conclusion of negotiations establishing the total firm target price.

(d) *Establishment of Firm Fixed Price or Final Profit Adjustment Formula.* Upon submission of the data required by paragraph (c) above, the Contractor and the Contracting Officer shall promptly establish either a firm fixed price or a profit adjustment formula for determining final profit in accordance with the following:

(1) A total firm target cost shall be negotiated, based upon the data submitted under paragraph (c) above.

(2) If the total firm target cost is more than the total initial target cost, the total initial target profit will be decreased, or if the total firm target cost is less than the total initial target cost, the total initial target profit will be increased by _____ percent (_____%) of the difference between the total initial target cost and the total firm target cost ** and the resulting amount shall be the total firm target profit: *Provided,* That in no event will such total firm target profit be less than _____ percent (_____%) or more than _____ percent (_____%) of the total initial target cost.

(3) If the total firm target cost plus the total firm target profit present a reasonable price for performance of that part of the contract subject to price revision under this clause, the parties may agree on a firm fixed price. In this event, the firm fixed price shall be evidenced by a modification of this contract signed by the Contractor and the Contracting Officer.

(4) Failure of the parties to agree as to a firm fixed price shall not constitute a dispute under the "Disputes" clause of this contract. In such event or, if establishment of a firm fixed price is considered to be inappropriate, the Contractor and the Contracting Officer shall establish a profit adjustment formula for determining final profit or loss in accordance with the following:

When the total final negotiated cost is—	*The adjustment for final profit or loss is—*
Equal to the total firm target cost	Total firm target profit.
Greater than the total firm target cost	Total firm target profit less _____ percent (_____%) of the amount by which the total final negotiated cost exceeds the total firm target cost.
Less than the total firm target cost	Total firm target profit plus _____ percent (_____%) of the amount by which the total final negotiated cost is less than the total firm target cost.

The total firm target cost, total firm target profit, and profit adjustment formula for determining final profit shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer.

(e) *Submission of Data for Final Price Revision.* Unless a firm fixed price has been agreed to pursuant to paragraph (d) above, the Contractor shall submit in such form as the Contracting Officer may require and within _____ (_____) days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services called for by those items referred to in paragraph (a) above, (i) a detailed statement of all costs incurred up to the end of that month in performing all work under such items, and (ii) an estimate of costs of such further performance, if any, as may be necessary to complete performance of all work with respect to such items.

(f) *Final Price Revision.* Unless a firm fixed price has been agreed to pursuant to paragraph (d) above, the Contractor and the Contracting Officer shall, as soon as practicable after submission of the data required by paragraph (e) above, establish the total final price in accordance with the following:

(1) On the basis of the information required by paragraph (e) above, together with any other pertinent information, there shall be established by negotiation the total final negotiated cost incurred or to be incurred for the supplies delivered (or services performed) and accepted by the Government, which are subject to price revision under this clause.

(2) The total final price shall be established by adjusting the total final negotiated cost by an allowance for final profit or loss determined in accordance with the formula agreed to pursuant to subparagraph (d) (4) above.

(3) The total final price of the items referred to in paragraph (a) above shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer. Such price shall not be subject to revision notwithstanding any changes in the cost of performing the contract with the following exceptions:

(i) Insofar as the parties may agree in writing, prior to the determination of the total final price,

(A) To exclude any specific elements of disposition of such elements; and

(B) To a procedure to provide subsequent disposition of such elements; and

(ii) To the extent any adjustment or credit is explicitly permitted or required by this or any other clause of this contract.

(g) *Subcontracts.* No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(h) *Adjustment of Payments.* Pending execution of the contract modification referred to in subparagraph (f) (3) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the initial target prices set forth in this contract until firm target prices are established pursuant to paragraph (d) above; thereafter, the firm target prices shall be used for billing; *Provided,* That if at any time it appears that the then current billing prices do not provide for payments consistent with the provisions of subparagraph (i) (3) below, the parties may agree to revised billing prices, which shall be reflected in a modification to this contract. Billing prices are for the sole purpose of providing for interim payments and shall not affect the determination of any price under paragraph (d) or (f) above. After execution of the contract modification referred to in subparagraph (f) (3) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price and any additional payments, refunds, or credits resulting therefrom shall be promptly made.

(i) *Limitation on Payments.* (1) This paragraph (i) shall not apply after a firm fixed price or a total final price is established pursuant to subparagraph (d) (3) or (f) (2).

(2) Within forty-five (45) days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made or services are first performed and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contracting Officer, with a copy thereof to the cognizant contract auditor, a cumulative statement setting forth:

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

* The degree of completion may be based on a percentage of contract performance or any other reasonable basis.

** The language may be changed as necessary to set forth the negotiated adjustment pattern where the percentage figure to be used for adjustment of the initial target profit is not the same for all levels of cost variation.

(ii) The total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) That portion of the total firm target profit which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established, increased or decreased in accordance with the incentive profit formula set forth in subparagraph (d)(4) above when the amount of costs stated under (ii) above differs from the aggregate firm target costs of such supplies or services; and,

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount stated in (2)(iv) above exceeds the sum stated in (2) (i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any tax credits under section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the "Progress Payments" clause of this contract instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this paragraph (i), including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this paragraph (i), including this subparagraph (4) modified as outlined in (i) above.

(j) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon (i) total firm target cost and a final profit adjustment formula, or (ii) a total final price, within 60 days after the date for the submission of the data required by paragraphs (c) and (e) respectively, or within such further time as may be specified by the Contracting Officer, such failure to agree shall be deemed to be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract, and the Contracting Officer shall promptly issue a decision thereunder.

(k) *Termination.* If this contract is terminated prior to establishment of the total final price, prices of supplies or services subject to price revision under this clause shall be established pursuant to this clause for (i) completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, supplies and services which are not terminated. The termination shall be otherwise accomplished pursuant to other applicable provisions of this contract.

(l) *Equitable Adjustments Under Other Clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit or both. If such an adjustment is made after the total final price is established, adjustment shall be made only in the total final price.

(m) *Exclusion From Target Price and Total Final Price.* Whenever any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, such provision shall mean that neither any target price nor the total final price includes or will include any amount for such purpose.

(n) *Separate Reimbursement.* The cost of performance of an obligation that any clause of this contract expressly provides is at Government expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(o) *Taxes.* As used in the clause of this contract entitled "Federal, State, and Local Taxes" or any other clause of this contract that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term "contract price" includes the total target price or if it has been established, the total final price. When a provision in such clause or clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, such increase or decrease shall be made in the total target price or, if it has been established in the total final price, so as not to affect the Contractor's profit or loss on this contract.

In contracts of the Department of the Navy, add the words "and with a copy thereof to the office or offices designated in this contract to make payments thereunder" after the words "cognizant contract auditor" in line 5 of paragraph (i)(2) of the clause above. In the event the contract calls for parts or other supplies or services which are to be ordered under a provisioning document or Government option and the prices of such supplies or services are to be made subject to incentive price revision in accordance with the above clause, the following provision (p) shall be included in such clause:

(p) *Parts.* Parts, other supplies, or services, which are to be furnished under this contract pursuant to a provisioning document or Government option, shall be subject to price revision in accordance with the provisions of this clause, and any prices established for such parts, other supplies, or services, pursuant to such provisioning document or Government option, shall be deemed to be initial target prices or target prices as agreed upon and stipulated in the pricing document supporting the provisioning or added items. Initial or firm target costs and profits and final prices covering such parts, other supplies, or services may be established either separately, in the aggregate, or in any combination thereof, as the parties may agree. (1970 September)

§ 7.109–2 Prospective periodic price redetermination at stated intervals.

(a) *Description, Applicability, and Limitations.* See § 3.404–5 of this chapter.

(b) *Clause.*

PRICE REDETERMINATION (TYPE A)
(1970 SEPTEMBER)

(a) *General.* The unit prices and the total price set forth in this contract shall be periodically redetermined in accordance with the provisions of this clause.* The prices for supplies delivered and services performed prior to the first effective date of price redetermination shall remain fixed.

(b) *Price Redetermination Periods.* For the purpose of price redetermination the performance of this contract is divided into successive periods. The first period shall extend from the date of the contract to _____,** and the second and each succeeding period shall extend for _____ (_____) months from the end of the last preceding period, except that the final period may be varied by agreement of the parties. The first day of the second and each succeeding period shall be the effective date of price redetermination for the period.

(c) *Price Redetermination.* Not more than _____*** days nor less than _____*** days before the end of each redetermination period, except the last, and as otherwise provided in (iii) below, the Contractor shall submit:

(i) Proposed prices for supplies which may be delivered or services which may be performed in the next succeeding period under this contract, together with—

(A) An estimate and breakdown of the costs of such supplies or services on DD Form 784 or in any other form on which the parties may agree;

(B) Sufficient data to support the accuracy and reliability of such estimate; and

(C) An explanation of the differences between such estimate and the original (or last preceding) estimate for the same supplies or services;

(ii) A statement of all costs incurred in the performance of this contract through the end of the _____ **** month prior to the date of the submission of proposed prices, on DD Form 784 or in any other form on which the parties may agree, together with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

(iii) Supplemental statements of costs incurred subsequent to the date set forth in (ii) above for—

(A) Supplies delivered and servi es performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); as and to the extent that such information becomes available prior to the conclusion of negotiations on redetermined prices; and

(iv) Any other relevant data which may reasonably be required by the Contracting Officer.

For the purposes of the foregoing submission, "costs" means allowable costs in accordance with Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract. Upon receipt of the data required by this paragraph (c), the Contractor and the Contracting Officer shall promptly negotiate to redetermine fair and reasonable contract prices for supplies which may be delivered and services which may be performed in the period following the effective date of price redetermination. Where the Contractor fails to submit the data as required above within the time specified, payments under this contract may be suspended by the Contracting Officer until the data are furnished.

(d) *Subcontracts.* No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) *Contract Modifications.* Each negotiated redetermination of prices shall be evidenced by a modification to this contract,

signed by the Contractor and the Contract-
prices for supplies delivered and services per-
ing Officer, setting forth the redetermined
formed hereunder during the applicable price
redetermination period.

(f) *Adjustment of Payments.* Pending execution of the contract modification referred to in paragraph (e) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the prices set forth in this contract: *Provided,* That, if at any time it appears that the then current billing prices do not provide for payments consistent with the provisions of subparagraph (g)(3) below, the parties may agree to greater or lesser billing prices, which shall be reflected in an amendment or supplemental agreement to this contract. Billing prices are for the sole purpose of providing for interim payments and shall not affect the redetermination of prices under this clause. After execution of the contract modification referred to in paragraph (e) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed prices, and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(g) *Limitation on Payments.* (1) This paragraph (g) shall apply only during a period for which firm prices have not been established.

(2) Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contracting Officer, with a copy thereof to the cognizant contract auditor, ***** a statement cumulative from the inception of the contract, setting forth:

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) That portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g), Limitation on Payments), which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts aplied or to be applied to liquidate progress payments);

Provided, That such statement need not be submitted for any quarter for which either no costs are to be reported under (ii) above or revised billing prices have been established in accordance with paragraph (g) above and do not exceed the existing contract price, the Contractor's price-redetermination offer, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2)(iv) above exceeds the sum of (2)(i), (ii) and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any applicable tax credits under section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified as outlined in (i) above.

(h) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices for any price redetermination period within sixty (60) ****** days after the date on which the data required by (c) above is to be filed, or within such further time as may be agreed upon by the parties, the failure to agree upon redetermined prices shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder. For the purpose of (e), (f), and (g) above, and pending final settlement of the disagreement on appeal, or by failure to appeal, or by agreement, such a decision shall be treated as an executed contract modification. Pending such final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as hereinbefore provided.

(i) *Termination.* If this contract is terminated, prices shall continue to be established pursuant to this clause (i) for completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, for supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

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*Where a ceiling is applicable, the following proviso shall be added: *"Provided, that:* In no event shall the total amount paid under this contract exceed _____ dollars ($_____)". Alternatively, the contract may provide ceiling amounts for each or any of the price redeterminations under the contract.

**This point may be expressed in terms of units delivered, or as a calendar date, but in either case the period shall generally end on the last day of a month.

***Insert in the blanks numbers of days so that the Contractor's submission will be late enough to reflect recent cost experience (having in mind the Contractor's accounting system), but early enough to permit review, audit if necessary, and negotiation prior to the start of the prospective period.

****Insert the word "first," except the word "second" may be inserted if necessary to achieve compatibility with the contractor's accounting system.

*****Insert, in contracts of the Department of the Navy, the words "with a copy thereof to the office or offices designated in this contract to make payments thereunder."

******This period may be varied by the parties at the time of negotiating the contract.

§ 7.109–3 Retroactive price redetermination after completion.

(a) *Description, applicability, and limitations.* See § 3–404–6 of this chapter.

(b) *Clause.*

PRICE REDETERMINATION (TYPE E) (1970 SEPTEMBER)

(a) *General.* The unit prices and the total price set forth in this contract shall be redetermined in accordance with the provisions of this clause: *Provided,* That in no event shall the total amount paid under this contract exceed _____ dollars ($ _____).

(b) *Price Redetermination.* Within _____ (_____) days after delivery of all supplies to be delivered and completion of all services to be performed under this contract, the Contractor shall submit (i) proposed prices, (ii) a statement of all costs incurred in the performance of this contract, allowable in accordance with section XV of the Armed Services Procurement Regulation as in effect on the date of this contract, on DD Form 784 or any other form on which the parties may agree, and (iii) any other relevant data which may reasonably be required by the Contracting Officer. Upon receipt of the required data, the Contractor and the Contracting Officer shall promptly negotiate to redetermine fair and reasonable contract prices for supplies delivered and services performed by the Contractor under this contract. Where the Contractor fails to submit the required data within the time specified, payment of all invoices may be suspended by the Contracting Officer until the data are furnished.

(c) *Subcontracts.* No subcontract under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(d) *Contract Modification.* The negotiated redetermination of price shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, setting forth the redetermined prices which shall apply to supplies delivered and to services performed by the Contractor hereunder.

(e) *Adjustment of Payments.* Pending execution of the contract modification referred to in paragraph (d) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the prices set forth in this contract: *Provided,* That, if at any time it appears that the then current billing prices do not provide for payments consistent with the provisions of subparagraph (f)(3) below, the parties may agree to greater or lesser billing prices, which shall be reflected in an amendment or supplemental agreement to his contract. Billing prices are for the sole purpose of providing for interim payments and shall not affect the redetermination of prices under this clause. After execution of the contract modification referred to in paragraph (d) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed prices, and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(f) *Limitation on Payments.* (1) This paragraph (f) shall apply until final price redetermination to the full extent permitted by this contract.

(2) Within 45 days after the end of each quarter of the Contractor's fiscal year beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contracting Officer, with a copy thereof to the cognizant contract auditor,* a statement cumulative from the inception of the contract, setting forth:

(i) The total contract price of all supplies delivered (or services performed) and ac-

cepted by the Government for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) That portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (f), Limitation on Payments), which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(3) Notwithstanding any provision of this contract authorizing greater payments if on any quarterly statement the amount of (2) (iv) above exceeds the sum of (2) (i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any applicable tax credits under section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified as outlined in (i) above.

(g) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices within sixty (60)** days after the date on which the data required by (b) above is to be filed, or within such further time as may be agreed upon by the parties, the failure to agree upon redetermined prices shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder. For the purpose of paragraphs (d), (e), and (f) above, and pending final settlement of the disagreement on appeal, or by failure to appeal, or by agreement, such a decision shall be treated as an executed contract modification.

(h) *Termination.* If this contract is terminated prior to price redetermination, prices shall be established pursuant to this clause for completed supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

*Insert, in contracts of the Department of the Navy, the words: "and with a copy thereof to the office or offices designated in the contract to make payments thereunder."

**This period may be varied by the parties at the time of negotiating the contract.

§ 7.203–10 Termination.

In accordance with § 8.702(a) of this chapter, insert the following clause.

TERMINATION (1970 JULY)

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

(i) Whenever the Contractor shall default in performance of this contract in accordance with its term (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of 10 days (or such longer periods as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or

(ii) Whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government.

Any such termination shall be affected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (i) above, it is determined for any reason that the Contractor was not in default pursuant to (i), or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

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

(i) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

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

(iv) Assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) With the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;

(vi) Transfer title (to the extent that title has not already been transferred) and in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government, and (C) the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract;

(vii) Use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above; *provided*, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and *Provided further*, That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

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

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

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fee, or any item of reimbursable cost, under this clause. At any time after expiration of the plant clearance period, as defined in section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same; *provided*, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than 1 year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such 1-year

period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 1-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to costs and fee, or as to the amount of the fee, to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

(i) If the settlement includes cost and fee—

(A) There shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer: *Provided, however,* That the Contractor shall proceed as rapidly as practicable to discontinue such costs;

(B) There shall be included therein so far as not included under (A) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of the contract;

(C) There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts, thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory: *Provided, however,* That if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal; and

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

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

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

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

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

(f) Costs claimed, agreed to, or determined pursuant to (c), (d), and (e) hereof shall be in accordance with the section XV Contract Cost Principles and Procedures of the Armed Services Procurement Regulation as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes" from any determination made by the Contracting Officer under paragraph (c) or (e) above, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause, there shall be deducted (i) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract; (ii) any claim which the Government may have against the Contractor in connection with this contract; and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of the clause and not otherwise recovered by or credited to the Government.

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

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

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

§ 7.203–21 Government property.

Except in facilities contracts (see 13.101–11), insert the following clause when a Department is to furnish to the contractor, or the contractor is to acquire Government Property.

GOVERNMENT PROPERTY (COST-REIMBURSEMENT) (1970 SEPTEMBER)

(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 provision 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 costs 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 reimbursible 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 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." 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 or affixation to any realty.

(d) *Property Administration.* The Contractor shall comply with the provisions of Appendix B, Armed Services Procurement Regulation, as in effect on the date of the contract, which is hereby incorporated by reference and made a part of this contract. Material to be furnished by the Government shall be ordered or returned by the Contractor, when required, in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation) as in effect on the date of this contract, which Manual 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, 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

(C) 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 utilization, maintenance, repair, protection and preservation of Government property as required by paragraph (f) hereof, or to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer under paragraph (f) hereof; or

(B) To establish, maintain and administer, in accordance with (d) above, a system for control of Government property;

(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.

Any failure of the Contractor to act, as provided in subparagraph (ii) above, shall be conclusively presumed to be a failure resulting from willful misconduct, or lack of good faith on the part of such directors, officers, or other representatives mentioned in subparagraph (i) above, if the Contractor is notified by the Contracting Officer by registered or certified mail addressed to one of such directors, officers, or other representatives, of the Government's disapproval, withdrawal of approval, or nonacceptance of the Contractor's program or system. In such event it shall be presumed that any loss or damage to Government property resulted from such failure. The Contractor shall be liable for such loss or damage unless he can establish by clear and convincing evidence that such loss or damage did not result from his failure to maintain an approved program or system, or occurred during such time as an approved program or system for control of Government property was maintained.

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 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 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 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.

*(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.

(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)(i) 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 or in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation).

As provided in paragraph (i) of the above clause, the contracting officer may, subject to Departmental procedures, 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.

*This subparagraph may be omitted where it is clearly inapplicable.

§ 7.204–16 Negotiated overhead rates.

(a) In accordance with § 3.704–1 of this chapter, insert the following clause in contracts with concerns other than educational institutions.

NEGOTIATED OVERHEAD RATES (1970 SEPTEMBER)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost, Fixed Fee, and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than ninety (90) days after the expiration of each period specified in the Schedule, shall submit to the Contracting Officer with a copy to the cognizant audit activity a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Part 2 of section XV of the Armed Services Procurement Regulation as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in a written overhead rate agreement, executed by both parties. Such agreement is automatically incorporated in this contract upon execution and shall specify (i) the agreed final rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, and (iv) the items treated as direct costs. The overhead rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated billing rates as provided in the Schedule or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when final rates for that period are established. To prevent substantial over or under payment, billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of the negotiated billing rates provided in the Schedule shall be set forth in a modification to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

In the case of a cost-plus-incentive-fee contract, substitute "Allowable Cost, Incentive Fee, and Payment" for "Allowable Cost, Fixed Fee, and Payment" in paragraph (a) of the foregoing clause.

(b) In accordance with § 3.704–2 of this chapter, insert the following clause in contracts with educational institutions.

NEGOTIATED OVERHEAD RATES (POST-DETERMINED) (1970 SEPTEMBER)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment", the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than six (6) months after the expiration of each period specified in the Schedule shall submit to the Contracting Officer with a copy to the cognizant audit activity, a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the Armed Services Procurement Regulation, section XV, Part 3, as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in a written overhead rate agreement, executed by both parties. Such agreement is automatically incorporated in this contract upon execution and shall specify (i) the agreed final rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, and (iv) the items treated as direct costs. The overhead rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated billing rates as provided in the Schedule or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when final rates for that period are established. To prevent substantial over or under payment, billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of the negotiated billing rates provided in the Schedule shall be set forth in a modification to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

§ 7.204–38 Special test equipment.

Insert the clause set forth in § 7.104–26 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 § 13–306.3(c) of this chapter).

§ 7.302–26 Utilization of labor surplus area concerns.

In accordance with § 1.805–3 of this chapter, insert the clauses set forth in § 7.104–20.

§ 7.302–29 Pricing of adjustments.

Insert the clause set forth in § 7.103–26.

§ 7.303–7 Government property.

When the Government is to furnish, or the contractor is to acquire, Government property, insert the following clause if the contract is with an educational or nonprofit institution with no profit to the contractor; if not, insert the appropriate clauses as set forth and provided in § 7.104–24. Changes in the clause below, like those set forth in § 7.104–24 (e), (f), and (g), may be made as therein provided.

GOVERNMENT PROPERTY (FIXED PRICE, NONPROFIT) (1970 SEPTEMBER)

(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 Goverment-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, shipping, and disposal 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 by 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 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: *Provided, however,* That whenever the Contractor shall have obtained the prior approval of the Contracting Officer for the acquisition of any of said items having a unit cost of less than $1,000, title to such property shall vest in the Contractor. 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 or affixation to any realty.

(d) *Property Administration.* The Contractor shall comply with the provisions of Appendix C, Armed Services Procurement Regulation, as in effect on the date of the contract, which is hereby incorporated by reference and made part of this contract. Material to be furnished by the Government shall be ordered or returned by the Contractor, when required, in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation) as in effect on the date of this contract, which Manual 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, 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 provision of this contract shall be accomplished by the Contractor at his own expense.

(g) *Risk of Loss.* 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 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 to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer under paragraph (f) hereof; or

(B) To establish, maintain and administer, in accordance with (d) above, a system for control of Government property;

(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 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.

Any failure of the Contractor to act, as provided in subparagraph (ii) above, shall be conclusively presumed to be a failure resulting from willful misconduct, or lack of good faith on the part of such directors, officers, or other representatives mentioned in subparagraph (i) above, if the Contractor is notified by the Contracting Officer by registered or certified mail, addressed to one of such directors, officers or other representatives, of the Government's disapproval, withdrawal of approval, or nonacceptance of the Contractor's program or system. In such event, it shall be presumed that any loss or damage to Government property resulted from such failure. The Contractor shall be liable for such loss or damage unless he can establish by clear and convincing evidence that such loss or damage did not result from his failure to maintain an approved program or system, or occurred during such time as an approved program or system for control of Government property was maintained.

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 prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

*(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 as provided for elsewhere in 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 or accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation).

In accordance with § 4.116–4(e) of this chapter, the following alternative subparagraph (2) may be substituted for (c)(2) of the clause above.

(2) Notwithstanding subparagraph (1) above, 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. 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. The Contractor shall furnish the Contractor Officer a list of all such equipment where title is vested in the Contractor within ten (10) days following the end of the calendar quarter in which transfer of title occurs.

*This subparagraph may be omitted where it is clearly inapplicable and shall be deleted when the Ground and Flight Risk clause is omitted pursuant to § 10.404(b)(2) of this chapter.

§ 7.303–37 Special test equipment.

Insert the clause set forth in § 7.104–26 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 § 13.306–3(c) of this chapter).

§ 7.303–38 Contract Schedule Subline Items Not Separately Priced.

In accordance with 20–304.2(c)(ii) of the ASPR, insert the clause set forth in § 7.104–7.

§ 7.402–24 Military security requirements.

* * * * *

(c) The contracting officer or his authorized representative shall prepare and transmit to the contractor and the Government representative having security cognizance over the contract involved a Contract Security Classification Specification (DD Form 254) in accordance with § 16.811 of this chapter.

§ 7.402–25 Government property.

(a) Except in facilities contracts, when a Department is to furnish to the contractor, or the contractor is to acquire, Government property, insert the following clause if the contract is with an educational or nonprofit institution on a no-fee basis; if not insert the clause set forth in § 7.203–21.

GOVERNMENT PROPERTY (COST-REIMBURSEMENT, NONPROFIT) (1970 SEPTEMBER)

(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 provisions 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 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, shipping, and disposal 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.* (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: *Provided, however,* That whenever the Contractor shall have obtained prior approval of the Contracting Officer for the acquisition of said property having an acquisition cost of less than $1,000, title to such property shall vest in the Contractor, notwithstanding the fact that the Contractor shall have been reimbursed for the cost thereof. 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 Appendix C, Armed Services Procurement Regulation, as in effect on the date of the contract, which is hereby incorporated by reference and made a part of this contract. Material to be furnished by the Government shall be ordered or returned by the Contractor, when required, in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation) as in effect on the date of this contract, which Manual 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, 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 utilization, maintenance, repair, protection and preservation of Government property as required by (f) above, or to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under (f) above, or (B) to establish, maintain and administer, in accordance with (d) above, a system for control of Government property;

(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 provisions 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.

Any failure of the Contractor to act as provided in subparagraph (ii) above, shall be conclusively presumed to be a failure resulting from willful misconduct, or lack of good faith on the part of such directors, officers, or other representatives mentioned in subparagraph (i) above, if the Contractor is notified by the Contracting Officer by registered or certified mail, addressed to one of such directors, officers, or other representatives, of the Government's disapproval, withdrawal of approval, or nonacceptance of the Contractor's program or system. In such event, it shall be presumed that any loss of or damage to Government property resulted from such failure. The Contractor shall be liable for such loss or damage unless he can establish by clear and convincing evidence that such loss or damage did not result from his failure to maintain an approved program or system or occurred during such time as an approved program or system for control of Government property was maintained.

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 an 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 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 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 assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

*(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.

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*This subparagraph may be omitted where it is clearly inapplicable.

(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 for elsewhere in 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) *Communications.* All communications issued pursuant to this clause shall be in writing or in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation).

(b) In accordance with § 4.116–4(e) of this chapter, 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. The Contractor shall furnish the Contracting Officer a list of all such equipment where title is vested in the Contractor within ten (10) days following the end of the calendar quarter in which the transfer of title occurs.

§ 7.402–27 Utilization of labor surplus area concerns.

In accordance with § 1.805–3, of this chapter insert the clause set forth in § 7.104–20.

§ 7.403–9 Negotiated overhead rates.

In accordance with § 3.704, of this chapter insert the appropriate clause set forth in § 7.204–16 or the following clause.

NEGOTIATED OVERHEAD RATES—PREDETERMINED (1970 SEPTEMBER)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment", the allowable indirect costs under this contract shall be obtained by applying predetermined overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than three (3) months after the expiration of his fiscal year shall submit to the Contracting Officer with a copy to the cognizant audit activity, a proposed predetermined overhead rate or rates based on the Contractor's actual cost experience during that fiscal year, together with supporting cost data. Negotiation of predetermined overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the Armed Services Procurement Regulation, section XV, Part 3, as in effect on the date of this contract.

(d) Predetermined rate agreements in effect on the effective date of this contract shall be incorporated into the contract schedule. Rates for subsequent periods shall be negotiated and the results set forth in a written overhead rate agreement executed by both parties. Such agreement shall be automatically incorporated into this contract upon execution and shall specify (i) the agreed predetermined overhead rates, (ii) the bases to which the rates apply, (iii) the fiscal year unless the parties agree to a different period for which the rates apply, and (iv) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The overhead rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(e) Pending establishment of predetermined overhead rates for any fiscal year or different period agreed to by the parties, the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the Contracting Officer subject to appropriate adjustment when the final rates for that fiscal year or other period are established.

(f) Any failure by the parties to agree on any predetermined overhead rate or rates under this clause shall not be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract. If for any fiscal year or other period specified in the Schedule of this contract the parties fail to agree to a predetermined overhead rate or rates it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates in accordance with the terms of the "Negotiated Overhead Rates-Postdetermined" clause set forth in 3–704.2 of the Armed Services Procurement Regulation as in effect on the date of this contract.

(g) Allowable indirect costs for the period until the end of the Contractor's fiscal year during which performance begins shall be obtained by applying the predetermined overhead rate set forth in the Schedule to the bases set forth therein.

§ 7.403–33 Special test equipment.

Insert the clause set forth in § 7.104–26 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 § 13.306–3(c) of this chapter).

§ 7.404–9 Extended liability under Technical Data Warranty.

In accordance with § 1.324–11(b) of this chapter, the clause set forth in § 7.205–7(b) may be added as paragraph (g) to the Technical Data Warranty clause provided for in § 7.404–8.

§ 7.503–10 Pricing of adjustments.

Insert the clause set forth in § 7.103–26.

§ 7.504–4 Government property.

(a) *Fixed price contracts.* Insert the appropriate clause or clauses as set forth in § 7.104–24.

(b) *Cost reimbursement contracts.* Insert the clause set forth in § 7.203–21.

§ 7.602–24 Nondomestic construction material.

* * * * *

(b) In accordance with § 18.509–6 of this chapter, add when appropriate the following clause.

* * * * *

§ 7.602–29 Termination for convenience of the Government.

(a) *Contracts over $10,000.* In accordance with § 8.701 (a) and (b) of this chapter, insert the clause set forth in § 7.103–21(c) substituting paragraph (e) below for paragraph (e) of the clause in § 7.103–21(c).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree, as provided in paragraph (d), upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, pay to the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

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

(A) The cost of such work;

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

(C) A sum, as profit on (A) above, determined by the Contracting Officer pursuant to 8–303 of the Armed Services Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however,* That if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

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

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

* * * * *

§ 7.602–38 Pricing of adjustments.

Insert the clause set forth in § 7.103–26.

§ 7.603–14 Advance payments.

In accordance with Subpart D, Part 163 of this chapter insert the clause set forth in § 7.104–34.

§ 7.603–23 Fixed price incentive contract clause.

The following clause shall be inserted in all negotiated contracts providing for a fixed price with provision for an adjustment reflecting the efficiency and economy exercised by the contractor during performance of the contract.

INCENTIVE PRICE REVISION (1970 SEPTEMBER)

(a) *General.* The total contract price set forth in this contract as it may have been modified, consists of unit prices, lump sum prices or a combination thereof, and such total contract price is a total target price which includes a total target profit of ____ percent of total target costs. The total target price shall be revised in accordance with the provisions of this clause: *Provided,* That the total amount paid under this contract shall not exceed (i) the aggregate of the prices of the lump sum items, plus (ii) the unit prices of the estimated quantity items times the actual quantity of such items, plus (iii) ____ percent of the sum of (i) and (ii) above.

(b) *Definition of Cost.* For the purposes of this clause, "cost" or "costs" means allowable cost in accordance with Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract.

(c) *Submission of Data.* Within ____ days after completion of all work and services to be performed under this contract, the Contractor shall submit (i) a detailed statement of costs incurred in the performance of this contract; (ii) such other information as the Contracting Officer may require; and (iii) a price list of all materials, supplies and property, the cost of which is included in (i) above, which are on hand upon completion of the work. Where the Contractor fails to submit the required data within the time specified, no further payment may be made by the Contracting Officer until the data are furnished.

(d) *Price Revision.* Upon submission of the data required by paragraph (c) above, the Contractor and the Contracting Officer shall promptly establish the total adjusted price in accordance with the following:

(1) On the basis of the information required by paragraph (c) above, the Contractor and the Contracting Officer shall establish by negotiation the total adjusted cost incurred or to be incurred for the work and services performed under this contract and accepted by the Government.

(2) The total adjusted price of the work and services performed under this contract shall be established by adding to the total adjusted cost, as negotiated under (1) above, less the proceeds of any disposition of Contractor inventory in accordance with (h) below an allowance for profit determined in accordance with (3) below: *Provided, however,* That in no event shall the total adjusted price exceed the amount computed in accordance with paragraph (a) above.

(3) The allowance for profit with respect to this contract shall be determined as follows, subject to the provisions and limitations set forth in subparagraph (2) above:

When the total adjusted cost is—	The allowance for profit is—
Equal to the total target cost	Total target profit.
Greater than the total target cost	Total target profit less ____ percent (____%) of the amount by which the total adjusted cost exceeds the total target cost.
Less than the total target cost	Total target profit plus ____ percent (____%) of the amount by which the total adjusted cost is less than the total target cost.

(e) *Records.* (1) The Contractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred for the performance of this contract. However, no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the cost data required to be furnished under (c) above are readily ascertainable. Each subcontract placed by the Contractor hereunder on other than a firm fixed-price basis (i) shall provide that the subcontractor shall maintain books, records, documents and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of such subcontract and (ii) shall require each such subcontractor to insert the entire substance of this subparagraph, including this (ii), in all his subcontracts which are on other than a firm fixed-price basis.

(2) The Government may at all reasonable times make such examination or audit as the Contracting Officer may require of the Contractor's books, records, documents, and other evidence pertinent to the performance of this contract.

(f) *Certification.* An authorized responsible official of the Contractor shall certify on each statement of costs submitted to the Contracting Officer pursuant to (c) above that the incurred costs are based upon the records of the Contractor, that such records reflect generally accepted accounting principles and practices normally followed by the Contractor, and that such costs are correct to the best of his knowledge and belief.

(g) *Subcontracts.* (1) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis; and the Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which is on a cost-plus-a-fee basis and which would involve a total price in excess of $10,000, including the fee. The Contracting Officer may, in his discretion, ratify in writing any such cost-plus-a-fee subcontract and such action shall constitute the consent of the Contracting Officer as required by this subparagraph (1).

(2) Each subcontract placed by the Contractor hereunder (i) shall provide that the Government may in all reasonable times make such examination or audit as the Contracting Officer may require of the subcontractor's books, records, documents, and other evidence, pertinent to the performance of the subcontract and (ii) shall require each such subcontractor whose subcontract is on other than a firm fixed-price basis to insert the entire substance of this subparagraph, including this (ii), in all his subcontracts. The term "subcontract," as used in this subparagraph (2) only, excludes firm fixed-price subcontracts not in excess of $2,500 and subcontracts for utility services at rates established for uniform application to the general public.

(h) *Contractor Inventory.* Any materials, supplies and property the cost of which is allocable to the contract and included in the total adjusted cost which are on hand upon the completion of the contract, shall be disposed of in accordance with the applicable Government regulations covering the disposition of Contractor inventory and any proceeds of such disposition shall be used to reduce the total adjusted cost established pursuant to paragraph (d) above. Any materials, supplies and property which are on hand upon the completion of the contract, which are not allocable to the contract and as to which no costs have been included in the total adjusted cost, shall be and remain the property of the Contractor.

(i) *Contract Modification.* The total adjusted price, as determined in accordance with paragraph (d) above, shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer. Such final contract price shall apply to all work and services performed under this contract.

(j) *Adjustment of Payment Estimates.* If at any time it appears that the final contract price will be substantially greater or less than (i) the aggregate of the prices of the lump sum items, plus (ii) the unit prices of the estimated quantity items times the actual quantity of such items completed, the Contracting Officer may adjust each payment estimate thereafter to be made under the contract by increasing or decreasing the net amount of such payment estimate by the indicated percentage of variation: *Provided, however,* That in no event shall the percentage of increase exceed that indicated in paragraph (a)(iii) above. Any adjustment of payment estimates under this paragraph shall in no way limit or affect the price revision to be computed in accordance with the provisions of this clause.

(k) *Limitation on Payments.* Notwithstanding any provisions of this contract authorizing greater payment, the total of all amounts paid or payable under this contract, until price revision has been made to the full extent permitted by this contract, shall not exceed the sum of the following items as reported by the Contractor from time to time as hereinafter provided: (i) The total amount of costs and (ii) the total amount of target profit used in establishing the total target price and allocable by direct proportion to the work or services performed. Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which work or services are first performed under this contract and as of

the end of each quarter thereafter, the Contractor shall submit a statement setting forth the respective amounts of each of the two numbered items next above, together with the total of all amounts paid or payable under this contract as of the end of each such quarter. If on any quarterly statement the total of the amounts paid exceeds the sum of the two numbered items above, this gross excess shall be paid immediately by the Contractor to the Government or credited against existing unpaid billings.

(l) *Disagreement.* If the Contractor and the Contracting Officer are unable to agree upon the final contract price within 60 days after the date on which the data required by (c) above are to be submitted or within such further time as specified by the Contracting Officer, the Contracting Officer shall resolve the disagreement by issuing a decision pursuant to the clause of this contract entitled "Disputes."

(m) *Termination.* (i) In the event of a complete termination, the amount payable to the Contractor shall be established in accordance with the clause of this contract entitled "Termination for Convenience of the Government" or "Termination for Default—Damages for Delay—Time Extensions," as applicable.

(ii) In the event of a partial termination, the amount payable to the Contractor as to the work and services terminated shall be established in accordance with the clause of this contract entitled "Termination for the Convenience of the Government" or "Termination for Default—Damages for Delay—Time Extensions," as applicable. As to the work and services not terminated the provisions of this clause shall apply.

§ 7.604–4 Construction warranty.

In accordance with § 1.324 of this chapter, the following is an example of a clause that may be inserted when applicable in fixed-price construction and architect-engineer contracts.

WARRANTY OF CONSTRUCTION

(a) In addition to any other warranties set out elsewhere in this contract, the Contractor warrants that work performed under this contract conforms to the contract requirements and is free of any defect of equipment, material or design furnished, or workmanship performed by the Contractor or any of his subcontractors or suppliers at any tier. Such warranty shall continue for a period of 1 year from the date of final acceptance of the work, but with respect to any part of the work which the Government takes possession of prior to final acceptance, such warranty shall continue for a period of 1 year from the date the Government takes possession. Under this warranty, the Contractor shall remedy at his own expense any such failure to conform or any such defect. In addition, the Contractor shall remedy at his own expense any damage to Government owned or controlled real or personal property, when that damage is the result of the Contractor's failure to conform to contract requirements or any such defect of equipment, material, workmanship, or design. The Contractor shall also restore any work damaged in fulfilling the terms of this clause. The Contractor's warranty with respect to work repaired or replaced hereunder will run for one year from the date of such repair or replacement.

(b) The Government shall notify the Contractor in writing within a reasonable time after the discovery of any failure, defect, or damage.

(c) Should the Contractor fail to remedy any failure, defect, or damage described in (a) above within a reasonable time after receipt of notice thereof, the Government shall have the right to replace, repair, or otherwise remedy such failure, defect, or damage at the Contractor's expense.

(d) In addition to the other rights and remedies provided by this clause, all subcontractors', manufacturers', and suppliers' warranties expressed or implied, respecting any work materials shall, at the direction of the Government, be enforced by the Contractor for the benefit of the Government. In such case if the Contractor's warranty under (a) above has expired, any suit directed by the Government to enforce a subcontractor's, manufacturer's or supplier's warranty shall be at the expense of the Government. The Contractor shall obtain any warranties which the subcontractors, manufacturers, or suppliers would give in normal commercial practice.

(e) If directed by the Contracting Officer, the Contractor shall require any such warranties to be executed in writing to the Government.

(f) Notwithstanding any other provision of this clause, unless such a defect is caused by the negligence of the Contractor or his subcontractors or suppliers at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage which results from any such defect in Government furnished material or design.

(g) The warranty specified herein shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistake, or fraud.

§ 7.605–5 Allowable cost, fixed fee, and payment.

* * * * *

(b) Delete paragraph (c) and substitute the following:

(c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer. Payment of the fixed fee, if any, shall be made to the Contractor in installments based upon the percentage of completion of the work as determined from estimates submitted to and approved by the Contracting Officer: *Provided, however,* That after payment of eighty-five percent (85%) of the fixed fee set forth in (a) above, the Contracting Officer may withhold further payment of fee until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed fifteen percent (15%) of the total fixed fee or one hundred thousand dollars ($100,000), whichever is less. (1970 September)

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§ 7.605–14 Government property.

Insert the clause set forth in § 7.203–21.

§ 7.605–26 Termination.

In accordance with § 8.702 (a) and (b) of this chapter, insert the clause set forth in § 7.203–10 deleting paragraph (e)(i)(D)(II) and substituting the following paragraph (II).

(II) In the event of the termination of this contract for the default of the Contractor, the total fee payable shall be such proportionate part of the fee as the actual work in place bears to the total work in place required by the contract; (1970 September)

§ 7.606–20 Extended liability under technical data warranty.

In accordance with § 1.324–11(b) of this chapter, the clause set forth in § 7.205–7(b) may be added as paragraph (g) to the Technical Data Warranty clause provided for in § 7.606–19.

§ 7.607–7 Termination for convenience of the Government.

(a) *Contracts over $10,000.* In accordance with § 8.701 of this chapter, insert the clause set forth in § 7.103–21(c) deleting paragraph (e) and substituting therefor paragraph (e) below.

(e) In the event of the failure of the Architect-Engineer and the Contracting Officer to agree as provided in paragraph (d), upon the whole amount to be paid to the Architect-Engineer by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, pay to the Architect-Engineer the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) For completed work and services accepted by the Government, the price or prices specified in the contract for such work, less any payments previously made;

(ii) The total of—

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

(B) the cost of settling and paying claims arising out of the termination of work or services under subcontracts or orders as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of work or services delivered or furnished by subcontractors prior to the effective date of termination, which amounts shall be included in the costs payable under (A) above); and

(C) A sum, as profit on (A) above, determined by the Contracting Officer pursuant to 8–303 of the Armed Services Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however,* That if it appears that the Architect-Engineer would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (c) and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss; and

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

The total sum to be paid to the Architect-Engineer under (i) and (ii) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the

Architect-Engineer under (ii) above, the fair value, as determined by the contracting officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or a buyer pursuant to paragraph (b)(vii).

(b) *Contracts under $10,000.* In accordance with § 8.705–2 of this chapter, insert the clause set forth in § 7.602–29(b).

§ 7.607–28 Pricing of adjustments.

Insert the clause set forth in § 7.103–26.

§ 7.702–18 Liability for the facilities.

LIABILITY FOR THE FACILITIES (1970 SEPTEMBER)

(a) The Contractor shall not be liable for any loss of or damage to the Facilities, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto) which results from:

(i) Willful misconduct or lack of good faith on the part of any one of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of—

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operations at any one plant or separate location, in which the Facilities are installed or located; or

(C) A separate and complete major industrial operation in connection with which the Facilities are used;

(ii) A failure, on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (i) above—

(A) To maintain and administer, in accordance with the clause of the contract entitled "Maintenance", a program for maintenance, repair, protection, and preservation of the Facilities, or to take all reasonable steps to comply with any appropriate written directions or instruction which the Contracting Officer may prescribe as reasonably necessary for the protection of the Facilities.

(B) To establish, maintain and administer, in accordance with the clause of the contract entitled "Property Control", a system for control of the Facilities.

Any failure of the Contractor to act as provided in (A) or (B) above shall be conclusively presumed to be a failure resulting from willful misconduct, or lack of good faith on the part of such directors, officers, or other representatives mentioned in subparagraph (i) above, if the Contractor is notified by the Contracting Officer by registered or certified mail addressed to one of such directors, officers or other representatives, of the Government's disapproval, withdrawal of approval, or nonacceptance of the Contractor's program or system. In such event, it shall be presumed that any loss of or damage to Government property resulted from such failure. The Contractor shall be liable for such loss or damage unless he can establish by clear and convincing evidence that such loss or damage did not result from his failure to maintain an approved program or system, or occurred during such time as an approved program or system for control of Government property was maintained.

(iii) A risk for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule;

(iv) A risk expressly required to be insured pursuant to paragraph (c) of this clause, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) A risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

Provided, That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(b) If the Contractor transfers the facilities to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the Facilities as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the Facilities while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all the Facilities in as good condition as when received, except for reasonable wear and tear or for the utilization of the Facilities in accordance with the provision of the prime contract.

(c) Unless expressly directed in writing by the Contracting Officer,* the Contractor shall not include as an element of price or cost under any contract with the Government any amount on account of the cost of insurance (including self-insurance) against any form of loss or damage to the Facilities. Any insurance required under this clause shall be in such form, in such amounts, for such periods of time, and with such insurers (including the Contractor as self-insurer in appropriate circumstances. If so approved) as the Contracting Officer* shall require or approve. Such insurance shall contain provision for thirty (30) days prior notice to the Contracting Officer,* in the event of cancellation or material change in the policy coverage on the part of the insurer. A certificate of insurance or a certified copy of each policy of insurance taken out hereunder shall be deposited promptly with said Contracting Officer.* The Contractor shall, not less than thirty (30) days prior to the expiration of any insurance required by this contract to be carried by the Contractor on the Facilities, deliver to said Contracting Officer* a certificate of insurance or a certified copy of each renewal policy to cover the same risks. The insurance shall be in the name of the United States of America (Department of the ----------), the Contractor, and such other interested parties as the Contracting Officer shall approve, and shall contain a loss payable clause reading substantially as follows:

"Loss, if any, under this policy shall be adjusted with (Contractor) and the proceeds, at the direction of the Government, shall be paid to (Contractor). Proceeds not paid to (Contractor) shall be paid to the Treasurer of the United States of America."

(d) Upon the happening of any loss or destruction of or any damage to the Facilities:

(i) The Contractor shall promptly notify the Contracting Officer thereof, and with the assistance of the Contracting Officer* shall take all reasonable steps to protect the Facilities from further damage, separate the damaged and undamaged Facilities, put all the Facilities in the best possible order, and promptly furnish to the Contracting Officer (and in any event within thirty (30) days after the Contractor has determined that loss or destruction of, or damage to, the Facilities has occurred) a statement of—

(A) The lost, destroyed, and damaged Facilities;

(B) The time and origin of the loss, destruction, or damage;

(C) All known interests in commingled property of which the Facilities are a part; and

(D) The insurance, if any, covering any part of or interest in such commingled property; and

(ii) The Contractor shall make such repairs, replacements, and renovations of the lost, destroyed, or damaged Facilities, or take such other action as the Contracting Officer may direct in writing.

The Contractor shall perform its obligations under this paragraph (d) at Government expense, except to the extent that the Contractor is responsible for such damage, loss, or destruction under the terms of this clause, and except as any damage, loss, or destruction is compensated by insurance.

(e) The Government is not obliged to replace or repair the Facilities which have been lost, destroyed, or damaged. In such event the right of the parties to an equitable adjustment in delivery or performance dates, or price, or both, and in any other contractual condition of the related procurement contracts affected thereby shall be governed by the terms and conditions of such contracts.

(f) Except to the extent of any loss or destruction of or damage to the Facilities for which the Contractor is relieved of liability, the Facilities shall be returned to the Government or otherwise disposed of under the terms of this contract in as good condition as when received by the Contractor, as subsequently improved or as they should have been subsequently improved under the terms of this contract, less ordinary wear and tear.

(g) In the event the Contractor is indemnified, reimbursed, or otherwise compensated (excepting proceeds from use and occupancy insurance, the cost of which is not borne directly or indirectly by the Government) for any loss or destruction of, or damage to, the Facilities, he, to the extent and as directed by the Contracting Officer:

(i) Shall use the proceeds to repair, renovate, or replace the Facilities involved; or

(ii) Pay such proceeds to the Government.

(h) The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any loss or destruction of, or damage to, the Facilities, and upon the request of the Contracting Officer shall furnish to the Government, at Government expense, all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

§ 7.901–5 Government property.

Insert the following clause if the Government is to furnish to the contractor, or contractor is to acquire, Government property. See also § 7.104–24 (e), (f), and (g) for additional Government property clauses for particular situations.

GOVERNMENT PROPERTY (TIME AND MATERIAL OR LABOR HOUR) (1970 SEPTEMBER)

(a) *Government-Furnished Property.* The Government shall deliver to the Contractor,

*In contracts of the Department of the Navy, insert "the Insurance Branch, Chief of Naval Material, Department of the Navy, Washington, D.C." in lieu of "Contracting Officer".

for use in connection with and under the terms of this contract, the property described as Government-furnished 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 ceiling price, hourly rate, the delivery or performance date, 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 ceiling price, rate, the delivery or performance date, 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 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". 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 personality by reason of affixation to any realty.

(d) *Property Administration.* The Contractor shall comply with the provisions of Appendix B, Armed Services Procurement Regulation, as in effect on the date of the contract, which is hereby incorporated by reference and made a part of this contract. Material to be furnished by the Government shall be ordered or returned by the Contractor, when required, in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation) as in effect on the date of this contract, which Manual 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, 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

(C) 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 utilization, maintenance, repair, protection, and preservation of Government property as required by paragraph (f) hereof, or to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (f) hereof; or

(B) To establish, maintain, and administer, in accordance with (d) above, a system for control of Government property;

(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.

Any failure of the Contractor to act, as provided in subparagraph (ii) above, shall be conclusively presumed to be a failure resulting from willful misconduct, or lack of good faith on the part of such directors, officers, or other representatives mentioned in subparagraph (i) above, if the Contractor is notified by the Contracting Officer by registered or certified mail addressed to one of such directors, officers, or other representatives, of the Government's disapproval, withdrawal of approval, or nonacceptance of the Contractor's program or system. In such event, it shall be presumed that any loss or damage to Government property resulted from such failure. The Contractor shall be liable for such loss or damage unless he can establish by clear and convincing evidence that such loss or damage did not result from his failure to maintain an approved program or system, or occurred during such time as an approved program or system for control of Government property was maintained.

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 and 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. For any such repairs or renovations so directed, the Contracting Officer shall, upon written request of the Contractor, equitably adjust the ceiling price, hourly rate, delivery or performance date, or all of them in accordance with the procedures provided for in the clause of this contract entitled "Changes." In any such equitable adjustment due regard shall be given to the liability of the Contractor as determined under (1) above.

(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 Contracing 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 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.

*(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.

*This subparagraph may be omitted where it is clearly inapplicable.

(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, delivery 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 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) (i) 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 or in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation).

As provided in paragraph (i) of the above clause, the contracting officer may, subject to Departmental procedures, 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.

§ 7.901–23 Pricing of adjustments.

Insert the clause set forth in § 7.103–26.

§ 7.902–2 Utilization of labor surplus area concerns.

In accordance with § 1.805 of this chapter, insert the clause set forth in § 7.104–20, as appropriate.

§ 7.1002–26 Pricing of adjustments.

Insert the clause set forth in § 7.103–26.

§ 7.1003–6 Utilization of labor surplus area concerns.

In accordance with § 1.805–3(a) of this chapter, insert the clause set forth in § 7.104–20(a).

§ 7.1003–14 [Reserved]

§ 7.1003–15 Safety precautions for ammunition and explosives.

In accordance with § 7.104–79, insert the clause set forth therein.

§ 7.1201–28 Pricing of adjustments.

Insert the clause set forth in § 7.103–26.

Subpart P—Clauses for Contract for Preparation of Personal Property, Belonging to Department of Defense Personnel, for Shipment or Storage and Intra-City or Intra-Area Movement

Sec.

7.1600 Scope of subpart.
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Subpart P—Clauses for Contract for Preparation of Personal Property, Belonging to Department of Defense Personnel, for Shipment or Storage and Intracity or Intra-Area Movement

§ 7.1600 Scope of subpart.

This subpart sets forth special uniform contract clauses for use in contracts for the preparation of personal property belonging to Department of Defense personnel, for movement or storage, and for the performance of intracity or intra-area movement except as provided in § 22.601–2(a) of this chapter. These clauses are to be used in addition to other required or applicable clauses.

§ 7.1601 Required clauses.

The following clauses shall be inserted in all contracts for the preparation of personal property for movement or storage and performing intracity or intra-area movement. Overseas commands, except those in Alaska and Hawaii, may modify these clauses when necessary to conform with local trade practices and country (including political subdivisions thereof) laws and regulations.

§ 7.1601–1 Scope of contract.

SCOPE OF CONTRACT (1970 MAY)

The Contractor shall furnish services and materials for the preparation of personal property (including servicing of appliances) for movement or storage, drayage and related services. Unless otherwise indicated in the Schedule, the Contractor shall (i) furnish all materials except Government-owned containers (Type II, CONEX and Air Cargo), all equipment, plant and labor; and (ii) perform all work in accomplishing containerization of personal property for overseas or domestic movement or storage; stenciling; recooperage; drayage of personal property in connection with other services; and decontainerization of inbound shipments of personal property. Excluded from the scope of this contract is the furnishing of like services or materials which are provided incident to

complete movement of personal property when purchased by the Through Government Bill of Lading method.

§ 7.1601–2 Period of contract.

(a) The following clause shall be used in contracts covering performance for an entire year.

PERIOD OF CONTRACT (1970 MAY)

This contract shall begin January 1, 19-- and shall end December 31, 19--, both dates inclusive: *Provided, however,* That any work ordered before, and not completed by, the expiration of this contract period shall be governed by the terms of this contract. Orders requiring commencement of performance more than 15 days after the expiration date shall not be placed under this contract.

(b) When the period of performance is less than a calendar year, the above clause shall be modified to show the appropriate beginning and ending. However, the date for the end of the contract period shall not be later than December 31 of the year in which contract is awarded.

§ 7.1601–3 Ordering.

(a) Insert the clause set forth in § 7.1101. In addition to the designation of each ordering activity, the individuals authorized to place orders for each activity shall be identified by name of position title.

(b) When provisions are made for the placement of oral orders in accordance with § 7.1101, required documentation of such oral orders will be in accordance with Departmental instructions.

§ 7.1601–4 Ordering limitation.

ORDERING LIMITATION (1970 MAY)

Orders for items of supplies or services required will be placed under this contract by the Government and performed by the Contractor holding the initially awarded contract, to the extent of his guaranteed maximum daily capability. However, the Contractor may accept an additional quantity in excess of his capability to accommodate a single order. Orders for additional requirements will be placed with and performed by the next higher Contractor to the extent of his guaranteed maximum daily capability in a like manner. This procedure will be repeated until the Government's total daily requirement is fulfilled. In the event this procedure does not fulfill the Government's total daily requirement, additional orders may be offered under the contract to Contractors without regard to their guaranteed maximum daily capability.

§ 7.1601–5 Contract areas of performance.

CONTRACT AREAS OF PERFORMANCE (1970 MAY)

(a) All areas of performance described in (b) below will be considered to include the Contractor's facility regardless of geographical location.

(b) Service shall be performed within the following defined areas of performance which include terminals identified therein: (Define each area of performance as required, see Armed Services Procurement Regulation, paragraph 22–600.2.).

§ 7.1601–6 Requirements.

Insert the clause set forth in § 7.1102–2 (b). Delete paragraph (d) of the clause and substitute the following:

(d) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order; and the rights and obligations of the Contractor and the Government respecting those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period of this contract.

§ 7.1601–7 Estimated quantities.

ESTIMATED QUANTITIES (1970 MAY)

(a) The quantities shown by area of performance for each item in this Invitation for Bids are the Government's estimates of requirements which may be ordered during the period of the contract.

(b) The Government's estimated maximum daily requirements, excluding Saturday; Sunday; National, State and local holidays are listed below by area of performance within each schedule. Bidders must complete the "Bidder's Guaranteed Daily Capability," which must equal or exceed the Government's minimum acceptable daily capability, for all items within an area of performance for which they submit bids. Failure to do so will render the bid nonresponsive.

	Government's estimated maximum daily requirement	Government's minimum acceptable daily capability	Bidder's guaranteed daily capability
Outbound (Schedule I) area	GCWT	GCWT	GCWT
Inbound (Schedule II) area	GCWT	GCWT	GCWT
Intra city area (Schedule III) area	NCWT	NCWT	NCWT
(Repeat for each area listed)			

§ 7.1601–8 Facilities.

FACILITIES (1970 MAY)

(a) As the minimum standard for qualifications of a Contractor's warehouse, it must have either (i) an acceptable automatic sprinkler system; (ii) an acceptable automatic fire detection and reporting system; or (iii) a fire contents rate (FCR) of not more than $0.60 per one hundred dollars ($100) per year based on eighty percent (80%) coinsurance factors. Installed fire protective systems must be accredited by the cognizant fire-insurance rating organization for insurance rate credit. Additionally, the facility will be protected by an adequate water supply for fire fighting and a fire department which is responsive 24 hours a day. Statements from the cognizant fire insurance rating organization, municipal fire department, or local authority, having jurisdiction, will be used as a basis for determining the sufficiency or adequacy of a fire fighting water supply and the responsiveness of a fire department to protect a facility.

(b) The following information shall be furnished by the Contractor upon receipt of award:

Evidence of the following kinds and minimum amounts of insurance covering work herein to be performed by the Contractor. The Contractor shall maintain at least the minimum coverage stated below* throughout the contract period. Each policy shall contain an indorsement that cancellation or material change in the policy shall not be effective until after a 30-day written notice is furnished to the Contracting Officer.

(1) Workmen's Compensation Insurance ---------- $*----------
(2) Comprehensive General Liability Insurance------- $*----------
(3) Automobile Liability Insurance ---------- $*----------

§ 7.1601–9 Performance.

PERFORMANCE (1970 MAY)

(a) The services called for hereunder shall be performed in conformance with the latest issue of MIL–STD 212, "Preparation of Household Goods for Shipment or Storage and Related Services," in effect on date of the solicitation, for Schedules I and II, unless otherwise directed by the Contracting Officer.

*The insurance coverage specified in § 10–501 of this chapter is the minimum insurance required. Additional coverage and higher limits may be required by the Contracting Officer.

The following are desired minimum stowage factor standards in stuffing of shipping containers:

(1) For Type II and CONEX containers—5.7 net lbs. per gross cubic foot of container cube.

(2) For air cargo containers—8.9 net lbs. per gross cubic foot of container cube.

Failure to meet the above standards may be cause for rejection of the services performed unless the Contractor can demonstrate the standards cannot be met. (The term "stuffing" as related to containers means loading of personal property into shipping containers.)

(b) Labor employed to perform pickup and delivery, inventorying, packing, crating, weighing, marking, loading, drayage, unpacking, blocking, bracing, and other services described herein shall be competent in the performance of such services.

(c) Inventory of shipment shall be accomplished pursuant to provisions of the latest issue of MIL–STD 212 in effect on date of solicitation.

(d) All services shall be performed in accordance with the priority order established by the Contracting Officer.

(e) MIL–STD 212, "Military Standard-Preparation of Household Goods for Shipment and Storage and Related Services," and applicable specifications referred to therein are available for reference in the local procurement or transportation offices.

(f) When pickup of shipments is part of line-haul service, the Contractor shall perform loading on freight carrier's equipment at Contractor's facility.

§ 7.1601–10 Time requirements.

TIME REQUIREMENTS (1970 MAY)

(a) The Contractor shall commence containerization of household goods or unaccompanied baggage at owner's residence or Contractor's facility on the date specified by the Contracting Officer. If containerization is ordered at Contractor's facility, the household goods or unaccompanied baggage shall be picked up on the date and within the hours specified. Unless a longer period is authorized by the Contracting Officer, the maximum containerization time allowed at the Contractor's facility shall be three (3) working days following specified pickup date for household goods and two (2) working days following specified pickup date for unaccompanied baggage.

(b) The Contracting Officer or his designated representative shall normally give the Contractor notice to commence containeriza-

tion or to pick up household goods or baggage shipments at least twenty-four (24) hours prior to the date specified.

(c) Delivery or removal of household goods or unaccompanied baggage to or from owner's residence, or containerization of household goods or unaccompanied baggage at owner's residence, shall commence between the hours of 8 a.m.–12 m. (noon) or 12 m. (noon)–5 p.m. as specified, Monday through Friday, officially declared National, State or local holidays excluded. The Contracting Officer may authorize performance of services at other times when agreed to by the owner or his authorized agent and the Contractor.

(d) The Contractor shall accept and pick up inbound shipments of household goods, or unaccompanied baggage, effect delivery thereof to the destination, and shall unload and unpack the same on the date and within the hours specified by the Contracting Officer during the working hours set forth above. The Contractor will notify the Contracting Officer upon arrival of a shipment but no later than the morning of the next workday. Delivery shall be effected within two (2) working days following date of receipt or notification of arrival unless otherwise specified.

§ 7.1601–11 Demurrage.

DEMURRAGE (1970 MAY)

The Contractor shall be liable for all demurrage, detention, or other charges accruing as a result of his failure to load or unload trucks, freight cars, freight terminals, vessel piers, or warehouses within the free time allowed under applicable rules and tariffs.

§ 7.1601–12 Vans.

VANS (1970 MAY)

Vans used in transporting unpacked and uncrated furniture shall be of the closed type and shall be supplied with sufficient clean pads, covers, and any other equipment to protect personal property adequately during transit and delivery. Vehicles used in transporting containerized personal property may be of the open type provided, a weatherproof tarpaulin is used to protect the shipment.

§ 7.1601–13 Drayage.

DRAYAGE (1970 MAY)

(a) Drayage under the Schedules of Items in this contract shall include all outbound or inbound hauling of loose articles, containerized shipments and empty Government containers within the area of performance as defined in the clause entitled "Contract Areas of Performance." Each area includes the Contractor's facility, storage warehouse other than Contractor's facility, frequently used air and surface transportation terminals, military installation shipping offices, and ocean or river terminals/piers. The price of each item of service includes drayage within the area awarded, unless otherwise provided in the item.

(b) Repositioning of Government containers between Contractor's and Government facilities shall be at no additional cost to the Government.

§ 7.1601–14 Liability.

LIABILITY (1970 MAY)

(a) The words "reasonable time" as used in the following paragraph means a period of time not to exceed two (2) years after the time the owner discovers loss of or damage to his property or the time he should have discovered the loss or damage if he had exercised due diligence. The word "article" as used in the following paragraph means any shipping piece or package and the contents thereof.

(b) The Contractor agrees to indemnify the owner for loss of or damage to the owner's property which arises from any cause while it is in the Contractor's possession as follows:

(i) *Nonnegligent Damage.* The Contractor shall indemnify owners for any loss or damage to their property which results from any cause, other than the Contractor's negligence, at a rate not to exceed sixty cents (60¢) per pound per article.

(ii) *Negligent Damage.* When loss or damage is caused by the negligence of the Contractor, he shall be liable for the full cost of satisfactory repair or for the current replacement value of the article. The Contractor shall make prompt payment to the owner of the property for any loss or damage for which the Contractor is liable.

§ 7.1601–15 Erroneous shipments.

ERRONEOUS SHIPMENTS (1970 MAY)

(a) It shall be the responsibility of the Contractor at his expense to have articles of personal property which he inadvertently packed with goods of other than the rightful owner forwarded to the rightful owner by the quickest means of transportation, as selected by the Contracting Officer.

(b) Further, it shall be the responsibility of the Contractor to insure that all shipments have ben stenciled correctly. When a shipment is forwarded to an incorrect address due to incorrect stenciling by the Contractor or his personnel, the shipment shall be returned with the least possible delay to its rightful owner by a mode of transportation selected by the Contracting Officer. The Contractor shall be liable for all costs incurred including charges for preparation, drayage and transportation.

§ 7.1601–16 Additional marking instructions.

ADDITIONAL MARKING INSTRUCTIONS (1970 MAY)

(a) All containers of professional books, papers or equipment shall be stenciled "Professional Books, Paper, Equipment" and their weights shall be shown separately on packing lists.

(b) Unaccompanied baggage containers shall be marked as such.

§ 7.1601–17 Weight certificates.

WEIGHT CERTIFICATES (1970 MAY)

A weight certificate, in triplicate, from a certified scale or weighmaster shall be submitted to the transportation officer for all outbound shipments.

§ 7.1601–18 Inventory of damaged material.

INVENTORY OF DAMAGED MATERIAL (1970 MAY)

It shall be the responsibility of the Contractor when making delivery to prepare a separate inventory listing all articles lost or damaged and describing such loss or damage. This inventory shall be submitted to the transportation officer within seven (7) days after the delivery of the goods.

§ 7.1601–19 Subcontracting.

SUBCONTRACTING (1970 MAY)

The Contractor shall not subcontract without the prior written approval of the Contracting Officer. The facilities of any approved subcontractor shall meet the minimum standards required by this contract.

PART 8—TERMINATION OF CONTRACTS

8. Section 8.214 is revised; § 8.302 is deleted and the section reserved; § 8.307–1(d) is revised; in § 8.701, paragraph (a) is revised and the clause heading and paragraph (f) of the clause are revised and paragraph (b) of this section is revised and paragraph (f) of the clause is revoked; in § 8.702, paragraph (a), the clause heading is amended and a new clause paragraph (f) is inserted and present clause paragraphs (f), (g), (h), (i), and (j) are redesignated as (g), (h), (i), (j), and (k) respectively, and paragraphs (b), (c), and (d) are revised; and in § 8.704–1 the introductory text is revised and redesignated as paragraph (a), the clause heading is amended and a new paragraph (b) is added, as follows:

§ 8.214 Cost principles.

The cost principles and procedures set forth in the applicable Part 15 of this chapter shall, subject to the general policies set forth in § 8.301, (a) be used in claiming, negotiating, or determining costs relevant to termination settlements under fixed price and cost reimbursement type contracts with other than educational institutions; and (b) be a guide for the negotiation of settlements under fixed price or cost reimbursement type contracts for experimental, developmental or research work with educational institutions (but see 15–103(c) of this chapter).

§ 8.302 [Reserved]

§ 8.307–1 Submission of settlement proposals.

* * * * *

(d) DD Form 831 (see § 8.802–3, and § 16.702–4 of this chapter) may be used when the total claim is less than $10,000 and the contract price of the terminated portion of the contract is $100,000 or less, unless otherwise instructed by the TCO. Claims which would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract, must be consolidated wherever possible and must not be divided in such a way as to bring them below $10,000.

* * * * *

§ 8.701 Termination clause for fixed-price contracts.

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

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (1970 JULY)

* * * * *

(f) Costs claimed, agreed to, or determined pursuant to (c), (d), and (e) hereof shall be in accordance with section XV of the Armed Services Procurement Regulation as in effect on the date of this contract.

* * * * *

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

* * * * *

(f) [Revoked].

* * * * *

§ 8.702 Termination clause for cost-reimbursement type contracts.

(a) * * *

TERMINATION (JULY 1970)

* * * * *

(f) Costs claimed, agreed to, or determined pursuant to (c), (d), and (e) hereof shall be in accordance with the Section XV Contract Cost Principles and Procedures of the Armed Services Procurement Regulation as in effect on the date of this contract.

* * * * *

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

(II) In the event of the termination of this contract for the default of the Contractor, the total fee payable shall be such proportionate part of the fee as the actual work in place bears to the total work in place required by the contract; (1970 July).

(c) In any contract for Architect-Engineer services where the clause in paragraph (a) of this section is used, the term "Architect-Engineer" shall be substituted for the term "Contractor" wherever that term appears in the clause and paragraph (e) (i) (D) (II) shall be deleted and the following clause substituted therefor:

(II) In the event of the termination of this contract for the default of the Architect-Engineer, the total fee payable shall be such proportionate part of the fee as the weighted value of the actual working drawings completed bears to the weighted value of the working drawings required or contemplated by the contract; (1970 July)

(d) In accordance with § 163.621 of this chapter, the last sentence of paragraph (j) of the clause in paragraph (a) of this section may be deleted in contracts with agencies of the U.S. Government, foreign governments or agencies thereof, State or local governments or agencies thereof, or nonprofit contracts with nonprofit educational or research institutions.

§ 8.704–1 Termination clause.

(a) The following clause shall be used in any contract for experimental, developmental, or research work (whether fixed price or cost reimbursement type) with an educational or nonprofit institution when such contract is placed on a no-fee or no-profit basis, except that in the case of organizations other than educational institutions, paragraph (d) shall be deleted and the paragraph in paragraph (b) of this section shall be used.

TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT (1970 SEPTEMBER)

* * * * *

(b) The following paragraph shall be used in place of (d) in the above clause when the contract is with a nonprofit organization other than an educational institution.

(d) Costs claimed, agreed to, or determined pursuant to (c) above and (e) below shall be in accordance with the Section XV Contract Cost Principles and Procedures of the Armed Services Procurement Regulation as in effect on the date of this contract.

PART 10—BONDS, INSURANCE, AND INDEMNIFICATION

9. Sections 10.104–2(b), 10.304, 10.402, 10.501–1, and 10.604 are amended, and in § 10.604 the agreement format is amended, as follows:

§ 10.104–2 Performance bonds.

* * * * *

(b) Subject to the general policy stated in paragraph (a) of this section, determinations that performance bonds will be required in specified classes of cases (e.g., for particular types of supplies or services) may be made (1) for the Army, by the Director and Deputy Director of Requirements and Procurement, Army Materiel Command, and by all heads of procuring activities not subordinate to that command; (2) for the Navy, by the Chief of Naval Material; (3) for the Air Force, by the Deputy Chief of Staff, Systems and Logistics; (4) for the Defense Supply Agency, by the Executive Director, Procurement and Production; and (5) for the Defense Atomic Support Agency, by the Director. A copy of each such determination covering a class of cases shall be forwarded to the Office of Assistant Secretary of Defense (Installations and Logistics) for information.

* * * * *

§ 10.304 Procedures to be followed in the event of loss of or damage to Government property.

Upon the happening of loss of or damage to any Government property, concerning which the contractor is relieved of responsibility by contract provision, the procedure shall be as prescribed in subparagraphs (g) (4) of the clause in § 7.104–24 (c) and (g) (3) of the clauses in §§ 7.203–21, 7.303–7, 7.402–25(a), and 7.901–5 of this chapter.

§ 10.402 Government property.

The contractors' responsibilities for loss of or damage to Government property under fixed price contracts are set forth in the clauses in § 7.104–24 of this chapter.

§ 10.501–1 Workmen's compensation and employers' liability insurance.

Compliance with applicable workmen's compensation and occupational disease statutes shall be required. In jurisdictions where all occupational diseases are not compensable under applicable law, insurance for occupational disease shall be required under the employer's liability section of the insurance policy; however, such additional insurance shall not be required where contract operations are commingled with the contractor's commercial operations so that it would be impracticable to require such coverage. Employers' liability coverage in the minimum amount of $100,000 shall be required except in states with exclusive or monopolistic funds which do not permit the writing of workmen's compensation by private carriers (Nevada, North Dakota, Ohio, Washington, West Virginia, and Wyoming). The clause in § 10.403(a) shall be included in all public work contracts described therein to be performed outside the United States.

§ 10.503 Government property.

The contractor's responsibilities for loss or damage to Government property under cost-reimbursement-type contracts are set forth in the clause in § 7.203–21 of this chapter.

§ 10.604 Agreement for settlement of premiums under National Defense Projects Rating Plan.

* * * * *

ASSIGNMENT-ASSUMPTION OF PREMIUM OBLIGATION

It is agreed that 100 percent* of the return premiums and premium refunds (and dividends) due or to become due the prime contractor under the policies to which the National Defense Projects Rating Plan Endorsement made a part of policy _____ _____ applies are hereby assigned to and shall be paid to the United States of America, and the prime contractor directs the Company to make such payments to the Treasurer of the United States acting for and on account of the United States of America.

The United States of America hereby assumes and agrees to fulfill all present and future obligations of the prime contractor with respect to the payment of 100 percent* of the premiums under said policies.

This agreement, upon acceptance by the prime contractor, the United States of America and the Company shall be effective from _____.

Accepted _____.
(Date)

_____
(Name of Insurance Company)

By _____
(Title of Official Signing)

Accepted _____
(Date)

UNITED STATES OF AMERICA

By _____
(Authorized representative)

_____
(Prime contractor)

By _____
(Authorized representative)

Accepted _____
(Date)

* In the event the Government has less than a 100 percent interest in premium refunds or dividends, the assignment shall be appropriately modified to reflect the percentage of interest and of the extent of the Government's assumption of additional premium obligation.

PART 12—LABOR

10. Sections 12.102–4(e) and 12.103–2(b) are amended; § 12.105 is revoked, but the section reserved; and §§ 12.105–1, 12.105–2, and 12.105–3 are revoked, as follows:

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

* * * * *

(e) The Deputy or Assistant Deputy for Procurement, Office of the Assistant Secretary of the Army (Installations and Logistics), for the Army; the Deputy Chief of Naval Material (Procurement), for the Navy; the Director of Procurement Policy, Headquarters, USAF, for the Air Force; and the Executive Director for Procurement and Production, for the Defense Supply Agency, are authorized, without power of delegation, to designate without power of redesignation, officers and civilian officials for the purpose of approving 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. When two or more purchasing offices have current contracts at a single facility, and the approval of overtime by one purchasing office will affect the performance or cost of contracts of another, the approving official 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 purchasing 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 purchasing office.

§ 12.103–2 Applications for relaxation of requirements.

* * * * *

(b) Requests for authority to support an application on behalf of a contractor or supplier shall be submitted to the Labor Advisor, OASA (I&L) for the Army; Chief of Naval Material for the Navy; HQUSAF (AFSPPMA) for the Air Force; and Directorate, Procurement and Production DSAH–P, for the Defense Supply Agency. Such requests shall contain the following information:

(1) The facilities and services involved and affected;

(2) Provision(s) of law which require relaxation;

(3) Criticality or relative scarcity of the material;

(4) Circumstances necessitating the relaxation (for example, a shortage in the local supply of skilled labor);

(5) Remedial action being taken by the manufacturer (*e.g.*, training, recruiting, more effective utilization of manpower);

(6) The most limited relaxation of the requirement necessary for completion of the specific work; and

(7) The approximate period of time required for completion of the work.

* * * * *

§ 12.105 [Reserved]

§ 12.105–1 [Revoked]

§ 12.105–2 [Revoked]

§ 12.105–3 [Revoked]

PART 13—GOVERNMENT PROPERTY

11. Section 13.000 is revised; § 13.102–2(b) is amended; § 13.108 is added; §§ 13.304, 13.305–2 (b), (c), (d) (2) and (3), 13.305–3, and 13.306–3(c) are amended; in §§ 13.306–4 and 13.308(b) the introductory texts are amended; § 13.402(a)(1) is revised; § 13.405(d) is revoked; § 13.406 is deleted and the section reserved; the title of Subpart G is amended; § 13.701 is added and §§ 13.702 through 13.710 are revoked as follows:

§ 13.000 Scope of part.

This part sets forth the policies of the Department of Defense with respect to providing property for use by contractors in connection with procurement by the Military Departments and references applicable contract clauses for contracts other than facilities contracts. (For facilities contract clauses, see subpart G, part 7 of this chapter.) This section does not apply to the lease of property to contractors under 10 U.S.C. 2667 or other leasing authorities, except as to non-Government use of industrial plant equipment under § 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.

§ 13.102–2 Subcontractors.

* * * * *

(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 § 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 § 7.203–21 of this chapter; and

(2) Include in any fixed-price subcontract meeting the criteria set forth in § 13.1021(b) a provision similar to that contained in § 7.104–24(c) of this chapter.

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.

§ 13.108 Correction of defective system for control of Government property.

(a) When the property administrator is not successful in obtaining compliance with contract requirements, he shall advise the administrative contracting officer. If the administrative contracting officer concurs with the property administrator, he shall advise the contractor in writing of the changes or additions required in his property control system and shall establish a schedule for accomplishment of the corrective actions. The contractor shall be informed that approval of his property control system will be withheld (or withdrawn if previously approved) unless corrective actions is accomplished within the specified period. Such notice shall also advise the contractor that in the event approval of his property control system is withheld (or withdrawn if previously approved) (1) his liability for loss or damage may be increased, and (2) information concerning the property control system shall be entered in the Contractor Performance Record. If the contractor fails to make satisfactory progress for correction of the deficiencies in accordance with the schedule, the administrative contracting officer shall advise him in writing, with a copy to the property administrator, that approval of his property control system is, as the case may be, withheld or withdrawn.

(b) Upon withholding or withdrawing the approval of the contractor's property control system, the administrative contracting officer shall prepare a special DD Form 1661, Contractor Performance Record. The DD Form 1661 shall identify one or more contracts under which the contractor is required to establish an acceptable property control system and shall explain under "Remarks" the deficiencies found in the contractor's system and the magnitude of contracts involving Government property. Copies of the DD Form 1661 shall be furnished to the cognizant Contractor Performance Record Monitor. The procuring contracting officer will be advised of any actions recommended which are not within the province of the contract administration office. When suitable corrective action is taken by the contractor, a revised DD Form 1661 shall be forwarded to the Contractor Performance Record Monitor.

§ 13.304 Furnishing existing Government-owned special tooling.

(a) *General.* It is the policy of the Department of Defense that existing special tooling to which the Government has title, or the right to acquire title pursuant to the Special Tooling clause in § 7.104–25 of this chapter, 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 § 13.402 or § 13.403 were it furnished.

(b) *Contract provisions.* Special tooling shall be furnished pursuant to either the appropriate clause referenced in Subpart G, Part 7 of this chapter 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.

§ 13.305–2 Fixed-price contracts.

* * * * *

(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 § 7.104–25, 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, recordkeeping, 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 subcontracts pursuant to paragraph (j) of the Special Tooling clause set forth in § 7.104–25 of this chapter, 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.* * * *

(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 § 7.104–25 of this chapter 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 § 7.104–25 of this chapter. 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.

* * * * *

§ 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 § 7.203–21 and § 7.402–25 of this chapter.

§ 13.306–3 Contract provisions for acquiring special test equipment.

* * * * *

(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 § 7.104–26 of this chapter shall be used to permit the Government to furnish special test equipment in kind and thereby obtain an equitable adjustment.

§ 13.306–4 Screening existing Government-owned special test equipment.

To minimize the acquisition of new special test equipment or components thereof, the contracting officer shall, if the acquisition cost of any item or component is $1,000 or more, screen existing Government production and research property to ascertain whether any Government-owned property can be furnished in accordance with the policy set forth in § 13.306–1. To accomplish such screening for any property listed in § 13.312, DOD Industrial Plant Equipment Requisition (DD Form 1419) shall be submitted to the Defense Industrial Plant Equipment Center, Memphis, Tenn. 38102. When special test equipment is to be acquired in the manner described in § 13.306–3(b), the screening shall be accomplished before contract award. When special test equipment is to be acquired in the manner described in § 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 § 7.104–26 of this chapter. 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 § 13.312, waive the screening and shall immediately advise the contractor that the Government will not furnish the equipment. For items listed in § 13.312, when warranted by the urgency of the situation, requests for screening may be submitted to the Defense Industrial Plant Equipment Center by whatever means deemed expedient. When submitting urgent screening requirements other than on a DD Form 1419, the following elements of information must be furnished for each item of equipment: * * *

§ 13.308 Offer to furnish Government production and research property "as is".

* * * * *

(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 include the clause set forth in § 7.104–24(e) of this chapter and shall state: * * *

* * * * *

§ 13.402 Authorizing a contractor to use Government production and research property without charge.

(a) * * *

(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; or

(iii) Research, development, or educational work by non-profit organizations if the contracting officer having cognizance of such property approves such use in writing after obtaining the authorization required by § 13.407;

* * * * *

§ 13.405 Non-Government use of industrial plant equipment (IPE).

* * * * *

(d) [Revoked]

§ 13.406 [Reserved]

Subpart G—Contract Clauses, Government Property

§ 13.701 Contract clauses.

Contract clauses and guidance as to their use in specific types of contracts are included in the following sections of this chapter:

(a) *Government property.*

(1) § 3.608–2(b)(1)(viii) or small purchases.

(2) § 7.104–24 for fixed price supply contracts.
(3) § 7.203–21 for cost reimbursement type supply contracts.
(4) § 7.303–7 for fixed price research and development contracts.
(5) § 7.402–25 for cost reimbursement type research and devolpment contracts.
(6) § 7.504–4 for personal services contracts.
(7) §§ 7.603–22 and 7.603–28 for fixed price construction contracts.
(8) § 7.605–14 for cost reimbursement type construction contracts.
(9) § 7.702–18 for facilities contracts.
(10) § 7.901–5 for time and material and labor hour contracts.
(11) § 7.1401.11 for laundry and dry cleaning contracts.
(12) § 16.102–2(c)(2)(xi) for short form negotiated contracts.

(b) *Special tooling.*

(1) § 7.104–25 for fixed price supply contracts.

(c) *Special test equipment.*

(1) § 7.104–26 for fixed price supply contracts.
(2) § 7.204–38 for cost reimbursement type supply contracts.
(3) § 7.303–37 for fixed price research and development contracts.
(4) § 7.403–33 for cost reimbursement type research and development contracts.

§§ 13.702—13.710 [Revoked]

PART 15—CONTRACT COST PRINCIPLES AND PROCEDURES

12. Sections 15.000, 15.102, 15.103, 15.104, and 15.106 are revised; in § 15.107 paragraph (a) is revised and a new paragraph (1) is added; in § 15.201–3(b) subparagraphs (4) through (7) are revised and a new subparagraph (8) is added in § 15.205–6, paragraph (a)(1) is revised and paragraph (j) is revoked; in § 15.205–25 the introductory text to paragraph (b) is amended, the last sentence of paragraph (c) is amended, and paragraph (d) is revised; § 15.205–32(d)(1) is amended; §§ 15.205–33 and 15.205–36 are revised; in § 15.205–41 paragraphs (a)(5), (c), and (d) are amended; §§ 15.205–44 and 15.400 are revised; and Subpart F is deleted and the subpart reserved, as follows:

§ 15.000 Scope of part.

This part contains general cost principles and procedures for the pricing of contracts and contract modifications whenever cost analysis is performed (see § 3.807–2 of this chapter), and for the determination, negotiation, or allowance of costs when such action is required by a contract clause.

§ 15.102 Negotiated supply, service, experimental, developmental, and research contracts, and contract changes with commercial organizations.

This category includes all contracts and contract modifications for supplies, services, or experimental, developmental, or research work negotiated on the basis of cost with organizations other than educational institutions (see § 15.103) and State and local governments (see § 15.108). It does not include facilities contracts (see § 15.105) and construction contracts (see § 15.104). The cost principles and procedures set forth in subpart B of this part shall be used in the pricing of negotiated supply, service, experimental, developmental, and research contracts and contract modifications with commercial organizations whenever cost analysis is to be performed pursuant to § 3.807–2 of this chapter. In addition, the cost principles and procedures set forth in subpart B of this part shall be incorporated by reference in such contracts as the basis—

(a) For determination of reimbursable costs under cost reimbursement type contracts (§ 3.405 of this chapter) including cost reimbursement type subcontracts thereunder, and the cost reimbursement portion of time-and-materials contracts (§ 3.406–1 of this chapter) except in such contracts where material is priced on a basis other than at cost in accordance with § 3.406–1(d) of this chapter;

(b) For the negotiation of overhead rates (Subpart G, part 3 of this chapter);

(c) For claiming, negotiating, or determining costs under terminated fixed price and cost reimbursement type contracts (§ 8.204 and § 8.214 of this chapter)

(d) For the price revision of fixed price incentive contracts (§ 3.404–4 of this chapter);

(e) For price redetermination of prospective and retroactive price redetermination contracts (§ 3.404–5 and § 3.404–6 of this chapter); and

(f) For pricing changes and other contract modifications (see § 7.103–26 of this chapter).

§ 15.103 Contracts with educational institutions.

This category includes all contracts and contract modifications for experimental, developmental, or research work with educational institutions. The cost principles and procedures set forth in Subpart C of this part shall be incorporated by reference in cost reimbursement research contracts with educational institutions as the basis—

(a) For determination of reimbursable costs under cost reimbursement type contracts, including cost reimbursement type subcontracts thereunder;

(b) For the negotiation of overhead rates (Subpart G, part 3 of this chapter); and

(c) For the determination of costs of terminated cost reimbursement type contracts where the contractor elects to "voucher out" his costs (Subpart D, part 8 of this chapter), and for settlement of such contracts by determination (§ 8.210–7 of this chapter).

In addition, Subpart C of this part is to be used in determining the allowable costs of research and development performed by educational institutions under grants as a guide in the evaluation of costs in connection with the negotiation of fixed price type contracts and termination settlements.

§ 15.104 Construction contracts.

This category includes all contracts for the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property. It also includes contracts for architect-engineer services related to such construction. It does not include contracts for vessels, aircraft, or other kinds of personal property. The cost principles and procedures set forth in Subpart D of this part shall be used in the pricing of negotiated construction contracts and contract modifications with concerns other than educational institutions whenever cost analysis is to be performed pursuant to § 3.807–2 of this chapter. In addition, the cost principles and procedures set forth in Subpart D of this part shall be incorporated by reference in cost reimbursement and fixed price type construction contracts as the basis—

(a) For determination of reimbursable costs under cost reimbursement type contracts, including cost reimbursement type subcontracts thereunder (§ 3.405 of this chapter);

(b) For the negotiation of overhead rates (Subpart G, Part 3 of this chapter);

(c) For claiming, negotiating, or determining costs under terminated fixed price and cost reimbursement type contracts (§ 8.204 and § 8.214 of this chapter);

(d) For the price revision of fixed price incentive contracts (§ 3.404–4 of this chapter); and

(e) For pricing changes and other contract modifications (see § 7.103–26 of this chapter).

§ 15.106 Fixed price type contracts.

This part shall be used in the pricing of fixed price type contracts and contract modifications whenever cost analysis is performed. It also will be used whenever a fixed price type contract clause requires the determination or negotiation of costs. However, application of these cost principles to fixed price type contracts shall not be construed as a requirement to negotiate agreements on individual elements of cost in arriving at agreement on the total price. The final price accepted by the parties reflects agreement only on the total price. Further, notwithstanding the mandatory use of these cost principles, the objective will continue to be to negotiate prices that are fair and reasonable, cost and other factors considered.

§ 15.107 Advance understandings on particular cost items.

* * * * *

(a) Compensation for personal services including but not limited to allowances for off-site pay, incentive pay, location alowances, hardship pay, and cost of living differential;

* * * * *

(1) Severance pay to employees on support service contracts.

§ 15.201–3 Definition of reasonableness.

* * * * *

(b) Application of "contractor weighted average share in cost risk" (CWAS)

* * * * *

(4) The application of the CWAS applicable principles in § 15.205 to indirect costs incurred in a profit center with an approved CWAS rating shall be determined in accordance with this subparagraph. Such costs shall be considered reasonable as to nature and amount, notwithstanding any specific limitations or exclusions based on standards of reasonableness contained in § 15.205. For example, compensation for personal services (§ 15.205–6(a)) shall be considered reasonable without regard to compensation paid by other firms (§ 15.205–6(a)(2)). In addition, there are costs that are considered unallowable under § 15.205 because they exceed a stated criteria of reasonableness. These criteria do not apply to indirect costs incurred in a profit center with an approved CWAS rating and the reasonableness of such costs shall not be questioned. For example, losses from a contractor's food and dormitory operations would be allowable notwithstanding the criteria in § 15.205–10(c), or costs of idle facilities would be allowable notwithstanding the requirements of § 15.205–12(b). Similarly, specific cost limitations, such as the 30-day limitation on advance trip time for relocated employees (§ 15.205–25(c)(1)) or the 156-hour limitation for compensation for part time training (§ 15.205–44(b)(5)) shall not apply to cost incurred in a profit center with an approved CWAS rating. Also, any requirement in § 15.205 for contacting officer approval or instructions as a prerequisite to the allowability of certain cost (e.g., § 15.205–22(e)(2)) shall not apply.

(5) Questions involving the charging off of assets or setting up of other than normal year-end accruals or reserves will be considered to be questions of allocability or accounting practices rather than reasonableness.

(6) If the profit center incurs costs (e.g., travel, relocation, personnel compensation) on the basis of prescribed corporate-wide policy uniformly applied to all profit centers, consideration should be given to the corporate CWAS in determining the reasonableness of such locally incurred costs.

(7) The CWAS rating for the company shall be used in testing the reasonableness of corporate type expenses which are allocated to the profit centers. If the contractor has intermediate management organizations, such as groups, he shall develop a CWAS rating for such intermediate management organizations, which rating shall be applicable to the expenses allocated by such intermediate organizations to the profit centers.

(8) Indirect costs incurred in cost centers which are applied to specific contracts without relation to total profit center operations may be eliminated by the ACO from the application of CWAS.

§ 15.205–6 Compensation for personal services.

(a) *General.* (1) (CWAS) Compensation for personal services includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor during the period of contract performance. It includes, but is not limited to, salaries, wages, directors' and executive committee members' fees, bonuses (including stock bonuses), incentive awards, employee stock options, employee insurance, fringe benefits, contributions to pension, annuity, and management employee incentive compensation plans, allowances for off-site pay, incentive pay, location allowances, hardship pay and cost of living differential. Except as otherwise specifically provided in this § 15.205–6, such costs are allowable to the extent that the total compensation of individual employees is reasonable for the services rendered and they are not in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder.

* * * * *

§ 15.205–25 Relocation costs.

(j) *Location allowances.* [Revoked]

* * * * *

(k) (CWAS) Subject to paragraphs (c) and (d) of this section, relocation costs of the type covered in paragraph (a) (1), (2), (3), (4), and (7) of this section are allowable: *Provided* * * * (c) * * * Costs of the type covered in paragraph (a) (3), (4), and (7) of this section are allowable only in connection with the relocation of existing employees.

* * * * *

(d) (CWAS–NA) Costs of the type covered in paragraph (a) (3) and (4) of this section are not allowable for newly recruited employees.

§ 15.205–32 Gains and losses on disposition of depreciable property or other capital assets (CWAS–NA).

* * * * *

(d) * * *

(1) The gains on depreciable personal and real property shall be limited to the amount representing ordinary income recognized for Federal Income Tax purposes. (See sections 1238, 1245, and 1250 of the 1954 Internal Revenue Code, as amended.)

* * * * *

§ 15.205–33 Recruitment costs.

(a) (CWAS) Subject to paragraphs (b), (c), and (d) of this section: *And provided,* That the size of the staff recruited and maintained is in keeping with workload requirements, costs of help-wanted advertising, operating costs of an employment office necessary to secure and maintain an adequate labor force, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. When the contractor uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) Cost of help-wanted advertising is unallowable if the advertising:

(1) Is for other than for personnel required for the performance of obligations under a defense contract (see § 15.205–1); (CWAS–NA)

(2) Does not describe specific positions or classes of positions; (CWAS–NA)

(3) Is excessive in relation to the number and importance of the positions, or in relation to the practices of the industry; (CWAS)

(4) Includes material that is not relevant for recruitment purposes, such as extensive illustrations or descriptions of the company's products or capabilities; (CWAS–NA)

(5) Is designed to "pirate" personnel from another defense contractor; (CWAS–NA) and

(6) Includes color (in publications). (CWAS)

(c) (CWAS–NA) Costs of excessive salaries, fringe benefits, and special emoluments that have been offered to prospective employees, designed to "pirate" personnel from another defense contractor, or in excess of the standard practices in the industry, are unallowable.

(d) (CWAS–NA) Relocation costs incurred incident to recruitment of new employees are subject to § 15.205–25. When such costs have been allowed either as an allocable direct or indirect cost and the newly hired employee resigns for reasons within his control within 12 months after hire, the contractor shall be required to refund or credit such relocation costs to the Government.

§ 15.205–36 Royalties and other costs for use of patents.

(a) (CWAS) Royalties on a patent or amortization of the cost of acquiring by purchase a patent or rights thereto, necessary for the proper performance of the contract and applicable to contract products or processes, are allowable unless—

(1) The Government has a license or the right to free use of the patent; (CWAS–NA)

(2) The patent has been adjudicated to be invalid, or has been administratively determined to be invalid; (CWAS–NA)

(3) The patent is considered to be unenforceable; (CWAS–NA) or

(4) The patent is expired. (CWAS–NA)

(b) (CWAS) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less than arm's length bargaining; e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the contractor;

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation

that a Government contract would be awarded; or

(3) Royalties paid under an agreement entered into after the award of the contract.

(c) (CWAS) In any case involving a patent formerly owned by the contractor, the amount of royalty allowed should not exceed the cost which would have been allowed had the contractor retained title thereto.

(d) See § 15.107, regarding advance understandings.

§ 15.205–41 Taxes.

(a) * * *

(3) Taxes on any category of property which is used solely in connection with work other than on Government contracts. (Taxes on property used solely in connection with either non-Government or Government work should be considered directly applicable the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained; e.g., taxes on contractor-owned work-in-process which is used solely in connection with non-Government work should be allocated to such work; taxes on contractor-owned work-in-process inventory (and Government-owned work-in-process inventory when taxed), used solely in connection with Government work should be charged to such work.) (CWAS–NA)

* * * * *

(c) (CWAS–NA) Taxes otherwise allowable under paragraph (a) of this section, but upon which a claim of illegality or erroneous assessment exists, are allowable: *Provided*, That the contractor prior to payment of such taxes—

(1) Promptly requests instructions from the contracting officer concerning such taxes; and

(2) Takes all action directed by the contracting officer arising out of subparagraph (1) of this paragraph, or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, including cooperation with and for the benefit of the Government to (i) determine the legality of such assessment, or, (ii) secure a refund of such taxes.

Reasonable costs of any such action undertaken by the contractor at the direction or with the concurrence of the contracting officer are allowable. Interest and penalties incurred by a contractor by reason of the nonpayment of any tax at the direction of the contracting officer or by reason of the failure of the contracting officer to issue timely direction after prompt request therefor, are also allowable.

(d) (CWAS–NA) Any refund of taxes interest, or penalties, and any payment to the contractor of interest thereon, attributable to taxes, interest, or penalties which were allowed as contract costs, shall be credited or paid to the Government in the manner directed by the Government, provided any interest actually paid or credited to a contractor incident to a refund of tax, interest or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the contractor had been reimbursed by the Government for the taxes, interest or penalties.

§ 15.205–44 Training and educational costs.

(a) (CWAS) Costs of preparation and maintenance of a program of instruction at noncollege level, including but not limited to on-the-job, classroom and apprenticeship training, designed to increase the vocational effectiveness of bona fide employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom); and

(1) Salaries of the director of training and staff when the training program is conducted by the contractor; or

(2) Tuition and fees when the training is in an institution not operated by the contractor;

are allowable.

(b) (CWAS) Costs of part-time education, at an undergradute or postgraduate college level, related to the job requirements of bona fide employees, including only—

(1) Training materials;

(2) Textbooks;

(3) Fees charged by the educational institution;

(4) Tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect cost of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution; and

(5) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours;

are allowable:

(c) (CWAS) Costs of tuition, fees, training materials and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time scientific and engineering education at a post-graduate (but not under-graduate) college level related to the job requirements of bona fide employees for a total period not to exceed one school year for each employee so trained, are allowable. In unusual cases where required by military technology, the period may be extended.

(d) (CWAS) Maintenance expense, and normal depreciation or fair rental, on facilities owned or leased by the contractor for training purposes are allowable to the extent set forth in §§ 15.205–20, 15.205–9, and 15.205–34, respectively.

(e) (CWAS–NA) Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, or fellowships, are considered contributions and are unallowable.

§ 15.400 Scope of subpart.

This subpart prescribes general principles and procedures for the evaluation and determination of costs in connection with contract and subcontracts for construction and architect-engineer services related to construction. The applicability of this subpart to cost reimbursement and fixed price type contracts is set forth in § 15.104. In addition, because of the unique nature of certain aspects of construction contracts, guidance is provided with respect to some elements of cost wherein the basis for determination of cost under cost reimbursement type contracts differs from that used for evaluation of cost under fixed price type contracts.

Subpart F—[Reserved]

PART 16—PROCUREMENT FORMS

13. Section 16.102–2(c)(2)(xi) is revised; in § 16.104–2 the instruction for entry in block 26 is revised; in § 16.104–3 the instruction for entry in block 6 is revised; §§ 16.204–2, 16.206–1(a), 16.206–2, 16.504, 16.702–4, and 16.803–3 are revised; and § 16.824 is deleted and the section reserved, as follows:

§ 16.102–2 Award/Contract (Standard Form 26).

* * * * *

(c) *Short form negotiated supply and service contracts.* * * *

(2) * * *

(xi) When Government property having an acquisition cost of more than $25,000 is to be furnished, the appropriate Government Property clause or clauses in § 7.104–24 of this chapter shall be inserted in the Schedule; and when Government property having an acquisition cost of $25,000 or less is to be furnished, the Government Furnished Property (Short Form) clause in § 7.104–24(f) of this chapter shall be inserted in the Schedule;

* * * * *

§ 16.104–2 Solicitation, offer, and award (Standard Form 33).

* * * * *

Block No.	*Title and/or instructions*
26	Administered by—In the top left-hand corner, insert the name and address of the contract administration office. In the lower right-hand corner, insert the pre-award survey serial number if survey was performed; if "none," so state.

§ 16.104–3 Award/Contract (Standard Form 26).

* * * * *

Block No.	*Title and/or instructions*
6	Administered by—In the top left-hand corner, insert the name and address of the contract administration office. In the lower right-hand corner, insert the pre-award survey serial number if survey was performed; if "none," so state.

* * * * *

§ 16.204–2 Procedures.

DD ASPR Form 748 and any "Additional General Provisions" may be attached to each copy of the Request for Quotations. Alternatively, DD ASPR Form 748 may be incorporated by reference to the form number, name, and edition date; also, additional general provisions (contract clauses) that (a) are prescribed in Part 7 of this chapter and (b) do not contain blanks to be filled in by the offeror may be incorporated by reference to the ASPR paragraph number, clause title, and date. General provisions in DD ASPR Form 748 which are inapplicable to a particular procurement may be deleted by appropriate reference in an Alterations in Contract clause. No other contract clauses shall be incorporated by reference but they shall be set forth in full in the solicitation. Provisions relating to the solicitation, as distinct from contract clauses, also must be set forth in full in the solicitation.

§ 16.206–1 General.

(a) The DD Form 633 or the appropriate one or more of the forms set forth in § 16.206–2 shall be used except for negotiated final overhead rates whenever cost or pricing data, see § 3.807–3(e) of this chapter is required pursuant to §§ 3.807 and 7.104–42, of this chapter in connection with the pricing of contracts, subcontracts (including prospective subcontracts), and changes or modifications to contracts and subcontracts: *Provided, however,* That the cost elements and the estimate may be presented in a different format acceptable to the contracting officer, where the contractor's or subcontractor's accounting system makes the use of the prescribed format impracticable or when required for a more effective and efficient presentation of cost or pricing information: *And provided further,* That in such cases a signed DD Form 633 or one of the special forms set forth in § 16.206–2 is required to be submitted and fully accomplished as to all items except that the "Cost Elements" and the "Proposed Contract Estimate" may be accomplished by making reference to the contractor's format.

* * * * *

§ 16.206–2 Special forms.

The following forms may be used as appropriate:

(a) DD Form 633–1 (Contract Pricing Proposal (Technical Services)),

(b) DD Form 633–2 (Contract Pricing Proposal (Technical Publications)),

(c) DD Form 633–3 (Contract Pricing Proposal (Motion Pictures)),

(d) DD Form 633–4 (Contract Pricing Proposal (Research and Development)), and

(e) DD Form 633–5 (Contract Pricing Proposal (Change Orders)).

§ 16.504 Forms for paid advertisements (DD Forms 1155, 1155r, and 1535, and Standard Form 26).

(a) DD Form 1535 (Request/Approval for Authority to Advertise) shall be used in requesting authority to place paid advertisements in newspapers, magazines, trade journals, and any other media, including radio and television (see § 4.802 of this chapter).

(b) The following forms shall be used to order and effect payment for advertisements in newspapers and other media (see § 4.803 of this chapter):

(1) DD Forms 1155 and 1155r (Order for Supplies or Services/Request for Quotations); and

(2) Standard Form 26 (Award/Contract).

§ 16.702–4 Settlement proposal (Short Form) (DD Form 831).

DD Form 831 is authorized for use by contractors in submitting claims resulting from the termination of fixed price contracts when the total claim is less than $10,000 and the contract price of the terminated portion of the contract is $100,000 or less.

§ 16.803–3 Service contracts.

(a) *Notice of intention to make a service contract and response to notice (Standard Form 98).* Standard Form 98 is prescribed for use in accordance with § 12.1005–2(a) of this chapter.

(b) *Notice of award of contract (Standard Form 99).* Standard Form 99 is prescribed for use in accordance with § 12.1005–5(a) of this chapter.

§ 16.824 [Reserved]

PART 17—EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE

14. Sections 17.206(f) and 17.207–3(a) are amended, as follows:

§ 17.206 Contractual requirements.

* * * * *

(f) The contract clause entitled "Equal Opportunity" as set forth in § 12.804 of this chapter, wherever required under Subpart H, Part 12 of this chapter:

* * * * *

§ 17.207–3 Records.

* * * * *

(a) Army activities, to the Recorder, Army Contract Adustment Board, Office of the Assistant Secretary of the Army (Installations and Logistics);

* * * * *

PART 18—PROCUREMENT OF CONSTRUCTION AND CONTRACTING FOR ARCHITECT-ENGINEER SERVICES

15. Section 18.508–1 is revised; and §§ 18.509–2, 18.509–3, and 18.509–4 are amended, as follows:

§ 18.508–1 Nonavailability in the United States.

(a) The Buy American Act does not apply to articles, materials, and supplies of a class or kind determined to be not mined, produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality. Certain construction materials determined to be exempt under this exception are set forth in § 6.105 of this chapter.

(b) Notwithstanding the foregoing, purchase of nondomestic construction material on the basis of "nonavailability," whether or not listed in § 6.105 of this chapter, shall be made only if the purchase of such material is approved by:

(1) The Secretary of the Department concerned, if the cost of such materials is estimated to exceed $100,000;

(2) The Head of the Procuring Activity or his immediate deputy, if the cost of such materials is estimated not to exceed $100,000; or

(3) The principal staff officer responsible for procurement within the procuring activity (or, in the Air Force, within the major air command) concerned, if the cost of such materials is estimated not to exceed $10,000.

Before granting such approval or making such determination, the feasibility of foregoing the requirement or providing a United States substitute shall be considered.

§ 18.509–2 Solicitation of bids and proposals.

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

NOTICE REGARDING BUY AMERICAN ACT (1970 SEPTEMBER)

The Buy American Act (41 U.S.C. 10a–10d) generally requires that only domestic construction material be used in the performance of this contract. Exception from the Buy American Act shall be permitted only in the case of nonavailability of domestic construction materials. A bid or proposal offering nondomestic construction material will not be accepted unless specifically approved by the Government. When a bidder or offeror proposes to furnish nondomestic construction material, his bid or proposal must set forth an itemization of the quantity, unit price, and intended use of each item of such nondomestic construction material. When offering nondomestic construction material pursuant to this paragraph, bids or proposals may also offer, at stated prices, any available comparable domestic construction material, so as to avoid the possibility that failure of a nondomestic construction material to be acceptable under this paragraph will cause rejection of the entire bid.

§ 18.509–3 Requests for approval.

When proposed awards are submitted for approval under § 18.508–1(b) or § 18.508–2, each submission shall include a description of the materials, including unit and quantity, estimated costs, location of the construction project, name and address of the proposed contractor, and a detailed justification of the impracticability of using domestic materials. Submissions shall allow 21 days for processing, unless the nature of the item or market conditions indicate the need for processing in a shorter time.

§ 18.509–4 Contract listing of excepted nondomestic construction materials.

(a) When a determination has been made that certain construction materials

may be used without regard to country of origin, or where the contract is for construction in the Canal Zone, the clause set forth below shall be included in the contract and the excepted items shall be listed therein.

NONDOMESTIC CONSTRUCTION MATERIALS (1966 OCTOBER)

The requirements of the clause of this contract entitled Buy American Act do not apply to the items set forth below:

Insert list here

(b) When the above clause is used, the contracting officer shall place in the contract file a copy of the signed approval; and a copy thereof shall be available for public inspection.

PART 19—TRANSPORTATION

16. In § 19.204, paragraph (b) is revised and a new paragraph (d) is added; § 19.403–3(c) is revised, as follows:

§ 19.204 Consignment and marking instructions.

* * * * *

(b) (1) When necessary to meet required delivery schedules, instructions may be issued by telephone, teletype, or telegram provided that such instructions shall be confirmed by a Standard Form 30 for each contract. For contracts assigned for any contract administration function listed in § 1.406 of this chapter to any office listed in DOD 4105.59–H, DOD Directory of Contract Administration Services Components, such instructions shall include the modification serial number and, if a new line item is created by the issuance of shipping instructions, the new line item number and the existing line item number if affected.

(2) Confirming delivery instructions shall be stamped or marked "CONFIRMATION" in block letters and shall specify in detail those instructions being confirmed.

(3) Confirming delivery instructions shall contain no changes to the instructions being confirmed. The confirming Standard Form 30 shall be processed as follows:

(i) For contracts assigned for any contract administration function listed in § 1.406 of this chapter to any office listed in DOD 4105.59–H—within 5 working days;

(ii) Other contracts—

(a) Telephone—within 5 working days; and

(b) Teletype or telegram—consolidate on a monthly basis.

* * * * *

(d) For diversions of petroleum, oil and lubricant (POL) products overseas to new destinations, instructions issued by an office other than that issuing the contract or delivery order and issued by telephone, teletype or telegram are exempted from the requirement in subparagraph (b) (1) of this section to include the modification serial number and the new line item number in such instructions and from the time requirements in subparagraph (b) (3) of this section for issuing of the confirming Standard Form 30. Each confirming Standard Form 30 shall be issued within 30 days of the instructions being confirmed.

§ 19.403–3 Shipments by parcel post or other classes of mail.

* * * * *

(c) The contractor shall use his own labels and postage when he is not furnished official mailing labels. When reimbursement for postage is to be made, the contractor shall agree to show the postage charges as a separate item on the invoice for the supplies shipped.

* * * * *

PART 22—SERVICE CONTRACTS

17. The Table of Contents to Part 22 is amended by inserting a new Subpart F; § 22.107(a) (4) is amended; new Subpart F is added, as follows:

* * * * *

§ 22.107 Contract term.

(a) * * *

(4) A contract for expert or consultant services entered into in accordance with § 22.204–2 and calling for an end product which cannot feasibly be subdivided for separate performance in each fiscal year.

* * * * *

Subpart F—Contract for Preparation of Personal Property, Belonging to Department of Defense Personnel, for Shipment or Storage and Intracity or Intra-Area Moves

Sec.

22.600 Policy.
22.600–1 Annual Contracts.
22.600–2 Area of Performance.
22.600–3 Evaluation of bids.
22.600–4 Award.
22.600–5 Use of prebid conference.
22.600–6 Appropriate post-award orientation contractors.
22.600–7 Maximum requirements — minimum capability.
22.601 Procedure.
22.601–1 Coordination.
22.601–2 Additional services and excess requirements.
22.601–3 Contract distribution.
22.602 Schedule formats.
22.602–1 Schedule of items.

Subpart F—Contract for Preparation of Personal Property, Belonging to Department of Defense Personnel, for Shipment or Storage and Intracity or Intra-Area Moves

§ 22.600 Policy.

§ 22.600–1 Annual contracts.

Services for the preparation of personal property for shipment or storage and for the performance of intra-area movement normally shall be obtained by requirements contracts awarded as a result of formal advertising. Such contracts shall be on a calendar year basis except for noncontinuous requirements for shorter periods. Award of contracts should be made prior to 1 November of each year.

§ 22.600–2 Area of performance.

The solicitation shall define clearly each area of performance. One or more areas may be established; but, the number should be held to a minimum consistent with local conditions. Each schedule may provide for the same or different areas of performance. An area shall be determined in accordance with the following general guidelines. It shall be an area using political boundaries, streets, or any other features as lines of demarcation. Determination as to the number of areas thereof shall take into consideration such matters as total volume, size of overall area and isolated areas of high population density which will be serviced. Frequently used terminals will be specifically identified and considered as being included in each area of performance described in the solicitation.

§ 22.600–3 Evaluation of bids.

(a) The solicitation shall provide for evaluation of bids as follows.

EVALUATION OF BIDS (1970 MAY)

(a) Bids will be evaluated on the basis of total aggregate price of all items within an area of performance under a given schedule. A bidder must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that schedule. Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the Schedule.

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

(b) When "additional services" items are added to any schedule, the following (see § 22.601–2(b) (1)):

(c) Notwithstanding (a) above, when "additional services" are added to any schedule, such "additional services" items will not be considered in the evaluation of bids.

§ 22.600–4 Award.

The solicitation shall provide for award as follows:

AWARD (1970 MAY)

Award shall be made to the qualified low bidder by area under each of the specified schedules to the extent of his stated guaranteed daily capability as provided herein and the clause entitled "Estimated Quantities." The Government reserves the right to award additional contracts, as a result of this solicitation, to the extent necessary to meet its estimated maximum daily requirements.

§ 22.600–5 Use of pre-bid conference.

In accordance with provisions of § 2.207 of this chapter, the use of a pre-bid conference shall be considered and is encouraged.

§ 22.600–6 Appropriate post-award orientation of contractors.

Contracting officers will assure that in accordance with Subpart R, Part 1 of

this chapter, each successful contractor is provided appropriate post-award orientation.

§ 22.600–7 Maximum requirements—minimum capability.

The quantities established by the contracting officer in the Estimated Quantities clause in § 7.1601–7 of this chapter, must be realistic. He must be assured that the Government's minimum acceptable daily capability will provide for at least the maximum authorized individual weight allowance as prescribed by the Joint Travel Regulations. Extreme caution must be exercised to insure that the established minimum acceptable daily capability does not preclude the submission of bids by small but otherwise acceptable bidders.

§ 22.601 Procedure.

§ 22.601–1 Coordination.

(a) Single CONUS military installations or activities assigned total multiservice personal property areas of responsibility in accordance with Chapter 11, Personal Property Traffic Management Regulation (AR 55–356/NAVSUP Pub 445/AFR 75–17/MCO P4050.34B) shall contract for all estimated requirements within their assigned areas of responsibility. When two or more military installations or activities are assigned personal property responsibilities for a given area, one military activity shall contract for the estimated requirements of all activities in a contiguous area. The activity shall be designated by mutual agreement of the installation commanders concerned.

(b) The Commander, Military Traffic Management and Terminal Service (MTMTS), shall designate the contracting activity when local commanders are unable to reach an agreement as to the activity to be designated.

§ 22.601–2 Additional services and excess requirements.

(a) *Excess Requirements.* Excess requirements are those services which exceed the contractors' capabilities available under contracts. When excess requirements exist, they may be obtained by using small purchase procedures.

(b) *Additional services.* Additional services include, but are not limited to, attempted pickups or deliveries, handling in and out, hoisting or lowering of articles, drayage to or from residence outside area of performance, extra long carry, carrying of pianos or organs, reweighing, waiting time, special packaging, loading or unloading of railroad cars to include bracing and blocking and unbracing and unblocking as required. At the option of the contracting officer, additional services may be obtained by:

(1) Inclusion as items within the contract; provided, they are not used in the evaluation of bids (see § 22.602(b)); and

(2) Using small purchase procedures. Prices for additional services may be predetermined with the contractor or negotiated on a case by case basis.

(c) *Ordering of additional services.* Additional services other than attempted pickup or delivery will be performed by the contractor only upon authorization of the contracting officer regardless of the method of purchase. To the maximum extent possible, additional services required incident to an order should be identified prior to placement of the order or during the premove survey when applicable.

§ 22.601–3 Contract distribution.

In addition to the distribution requirements of § 20.402, of this chapter one copy of each contract will be furnished as follows:

(a) CONUS Personal Property Shipping Activities forward to the MTMTS Area Command Personal Property Office having jurisdiction over the respective activity. These offices are: Director of Personal Property, Eastern Area, MTMTS, Brooklyn, NY 11250; and Director of Personal Property, Western Area, MTMTS, Oakland Army Base, Oakland, CA 94626.

(b) Overseas Personal Property Shipping Activities forward to Commander, Military Traffic Management and Terminal Service, Department of the Army, Washington, D.C. 20315, Attention: MTMTS–PPR.

§ 22.602 Schedule formats.

(a) The following schedules shall be inserted in all solicitations for the preparation of personal property for shipment or storage and performing intracity or intra-area movement. When a requirement does not exist for an item or subitem in a schedule, that item or subitem number, in its proper numerical sequence, will be indicated and the statement "No Requirement" added.

(b) Within Schedules I (Outbound) and II (Inbound), item numbers have been reserved to permit the contracting officer to include additional items as may be required by local conditions. Overseas activities, except those in Alaska and Hawaii, may modify the schedules when necessary to conform with local trade practices and country (including political subdivisions thereof) laws and regulations. All generic terminology, schedule and item numbers in proper sequence shall follow those contained in the basic format. All other modifications, other than paragraph (c) of this section, of schedule format will be processed as a request for deviation in accordance with § 1.109 of this chapter.

(c) When it is determined to be in the best interest of the Government to have both outbound and inbound services within a given area of performance furnished by the same contractor, the contracting officer may modify the schedule format to combine both services in a single schedule; however, items shall follow the same sequential order as in the basic format.

§ 22.602–1 Schedule of items.

SCHEDULE I—OUTBOUND SERVICES

Item 1. *Complete Service—Outbound (HHGs).* Services shall include premove survey, servicing of appliances, disassembly of furniture if required, preliminary packing, inventorying, tagging, wrapping, padding, packing and bracing of household goods in Government owned and furnished shipping containers (Type II/CONEX or Air Cargo) at owner's residence, or at Contractor's facility when ordered by the Contracting Officer, properly securing and sealing for shipment, weighing, obliterating old markings, marking, strapping, and drayage of the container within area of performance. Service shall include loading of shipments on line-haul carrier's equipment at the Contractor's facility. When containers will not accommodate all articles of any one lot, loose articles shall be packed in the said containers before any over-packed articles are placed therein. Overflow articles which require packing and containerization shall be paid for under Item 3.

Area _____

	Estimated annual quantity	Unit	Unit price	Total
a. At owner's residence:				
(1) Type II		GCWT		
(2) CONEX		GCWT		
(3) Air cargo container		GCWT		
b. At contractor's facility:				
(1) Type II		GCWT		
(2) CONEX		GCWT		
(3) Air cargo container		GCWT		

(Repeat a and b above for additional areas as needed.)

Item 2. *Outbound (HHGs From Nontemporary Storage).* Service shall be the same as Item 1 except that: (i) household goods shall be picked up at a non-temporary storage facility and transported to Contractor's facility; or (ii) household goods shall be delivered to Contractor's facility and (iii) premove survey, servicing of appliances, preliminary packing and accessorial services shall not be provided. Overflow articles requiring containerization will be paid for under Item 3.

Area _____

	Estimated annual quantity	Unit	Unit price	Total
a. Pickup by contractor:				
(1) Type II		GCWT		
(2) CONEX		GCWT		
(3) Air cargo container		GCWT		
b. Delivered to contractor:				
(1) Type II		GCWT		
(2) CONEX		GCWT		
(3) Air cargo container		GCWT		

(Repeat a and b above for additional areas as needed.)

Item 3. *Complete Service-Outbound (HHGs-Overflow Articles and HHGs Shipments Requiring Other Than Type II/CONEX or Air Cargo Containers).* Service shall be the same as Item 1 or Item 2 except that the loose articles may be drayed to Contractor's facility when ordered by the Contracting Officer for containerization in Government-approved, Contractor-furnished containers.

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
a. Overseas pack:				
(1) Overflow articles		GCWT		
(2) Other shipments		GCWT		
b. Domestic pack:				
(1) Overflow articles		GCWT		
(2) Other shipments		GCWT		

(Repeat a and b above for additional areas as needed.)

Item 4. *Complete Service—Outbound (Unaccompanied Baggage).* Service includes inventorying, packing in Government approved containers, weighing, strapping, obliteration of old marking and marking of unaccompanied baggage. Service shall be performed at owner's residence. (Service may be performed at Contractor's facility when ordered by the Contracting Officer.) Service shall include drayage of loaded containers within area of performance when ordered by the Contracting Officer.

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
a. Government-furnished containers:				
(1) Drayage required		GCWT		
(2) Drayage not required		GCTW		
b. Contractor-furnished containers:				
(1) Drayage required		GCWT		
(2) Drayage not required		GCWT		

(Repeat a and b above for additional areas as needed.)

Item 5. *Outbound Service—Unaccompanied Baggage Packed by Owner.* Service shall include, weighing, strapping, banding, obliterating old markings, and marking. Service may include (when necessary) containerization in outer shipping containers as ordered by the Contracting Officer. Service shall include drayage of loaded containers within the area of performance when ordered by the Contracting Officer.

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
a. Containerization not required:				
(1) Drayage required		GCWT		
(2) Drayage not required		GCWT		
b. Containerization required:				
(1) Drayage required		GCWT		
(2) Drayage not required		GCWT		

(Repeat a and b above for additional areas as needed.)

Item 6. *Goods of Extraordinary Value (Hi-Value).* Service shall include inventorying (each item) packing in Government-approved, Contractor-furnished container(s), marketing, banding, weighing and cubing at owner's residence. Drayage is not required.

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
_____		GCWT		

(Repeat for additional areas as needed.)

Item 7. *Storage.* Storage of containerized articles shall be furnished when ordered by the Contracting Officer. Charges shall not commence earlier than the sixth (6th) workday following date of transportation officer's receipt of notification of completion of containerization service. Storage charges apply for each 30-day period or fraction thereof. Date of release from storage shall not be considered in computation of storage charges.

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
_____		GCWT		

(Repeat for additional areas as needed.)

Item 8. *Containers.* Under this item, the Contractor shall supply the following types of containers when ordered:

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
Type II (Fed Spec PPP-B-580)		Each		
Air cargo (Fed Spec PPP-B-580)		Each		

(Repeat for additional areas as needed.)

Item 9. *Remarking and Recooperage Service.*

a. *Remarking of Shipments for Reconsignment or Diversion.* Service shall consist of obliteration of all old markings and stenciling of necessary information on loaded shipping containers scheduled for reconsignment or diversion when ordered by the Contracting Officer.

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
		Each piece		

(Repeat for additional areas as needed.)

b. *Recooperage.* Service shall consist of repair of containers not to exceed 30 percent of total area of shipping container as necessary when ordered by the Contracting Officer. Minor repair, such as replacement of bolts, renailing and rebanding shall be accomplished at no expense to the Government.

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
		Each piece		

(Repeat for additional areas as needed.)

Items 10–14 Reserved (see 22–602(c).)

RECAPITULATION SCHEDULE I

Schedule Total—Area_____ $_____.

(Repeat for each area listed.)

OPERATING AUTHORITIES

(a) The bidder certifies that he holds in his own name the necessary I.C.C. operating authority.

(b) ICC Operating Authority Number_____.

SCHEDULE II—INBOUND SERVICES

Item 15. *Complete Service—Inbound (HHGs).* Service shall include drayage to owner's residence, decontainerization and unpacking of loaded containers of household goods and placing goods in appropriate rooms as directed by owner or his designated representative, servicing appliances, assembly of any disassembled articles and removing shipping containers, barrels, boxes/crates and debris from owner's residence and drayage of empty containers to Contractor's or Government facility as directed by Contracting Officer.

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 16. *Complete Service—Inbound (HHGs).* Service shall be same as Item 15 except that drayage of shipment to residence is not required.

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 17. *Complete Service Inbound (HHGs).* Service shall be the same as Item 15 except removal of items from outer container will be at the Contractor's facility and articles will be drayed to owner's residence. This service will be performed only upon order of the Contracting Officer.

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 18. *Inbound Service—Contractor Facility (HHGs).* Service shall include removal of items from outer shipping container(s) at the Contractor's facility and delivery of articles to property owner, motor van carrier or commercial nontemporary storage Contractor at the Contractor's facility.

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 19. *Complete Service—Extra-Ordinary Value Items.* Service includes decontainerization and unpacking of containers at owner's residence, and removal of shipping containers and debris from the residence. Drayage, if required, will be ordered by the Contracting Officer.

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
a. Drayage required		GCWT		
b. Drayage not required		GCWT		

(Repeat for additional areas as needed.)

Item 20. *Complete Service—Inbound (Unaccompanied Baggage).* Service shall include drayage of unaccompanied baggage containers to owner's residence, unpacking of containers and removal of all shipping containers and debris from the residence.

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 21. *Complete Service—Inbound (Unaccompanied Baggage).* Service shall be same as Item 20 except that drayage to residence is not required.

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 22. *Inbound Service—Contractor Facility (Unaccompanied Baggage).* Service shall include removal of unaccompanied baggage from outer shipping containers for pickup by the owner at the Contractor's facility.

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 23. *Storage.* Storage of containerized articles shall be furnished when ordered by the Contracting Officer. Charges under this item shall not commence earlier than the sixth (6th) work day following date of notification to transportation officer of arrival of shipment. Storage charges apply for each 30-day period or fraction thereof. Date of release from storage shall not be considered in computation of storage charges.

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 24. *Remarking/Recooperage Service.*

a. *Remarking of Shipments for Reconsignment or Diversion.* Service shall consist of obliteration of all old markings and stenciling of necessary information on loaded shipping containers scheduled for reconsignment or diversion when ordered by the Contracting Officer.

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
		Each piece		

(Repeat for additional areas as needed.)

b. *Recooperage.* Service shall consist of repair of containers not to exceed 30 percent of total area of shipping container as necessary when ordered by the Contracting Officer. Minor repair such as replacement of bolts, renailing and rebanding shall be accomplished at no expense to the Government.

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
		Each piece		

(Repeat for additional areas as needed.)

Items 25–28 Reserved (see 22–602(b)).

Schedule Total—Area _____ $_____.

(Repeat for each area listed.)

OPERATING AUTHORITIES

(a) The bidder certifies that he holds in his own name necessary I.C.C. operating authority.

(b) ICC Operating Authority Number _____.

SCHEDULE III—INTRACITY AND INTRA-AREA MOVERS

Item 29. *Complete Service for Intracity and Intra-Area Moves.* Service shall include a premove survey, servicing of appliances, packing at owner's residence to protect household goods properly during transit, tagging of items, inventorying, loading, weighing, drayage, unloading, unpacking, and placing of each article in owner's residence (new) as directed by owner or his designated representative and removal of all empty containers and materials from residence. Service shall be in conformance with provisions of MIL–P–22084 (S&A), except that all service shall be performed within times stipulated in clause entitled "Time Requirements."

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
		NCWT		

(Repeat for additional areas as needed.)

Item 30. *Storage.* Storage of articles shall be furnished incident to services performed under Item 29 when ordered by the Contracting Officer. Storage charges apply for each 30-day period or fraction thereof. Date of release from storage shall not be considered in computation of storage charges.

Area _____.

	Estimated annual quantity	Unit	Unit price	Total
		NCWT		

(Repeated for additional areas as needed.)

(Insert when required)

OPERATION AUTHORITIES

(a) The bidder certifies that he holds in his own name necessary ICC operating authority.

(b) ICC Operating Authority Number _____.

PART 24—DISPOSITION OF PERSONAL PROPERTY IN POSSESSION OF CONTRACTORS

18. Section 24.205–4(d)(2) is revised, as follows:

§ 24.205–4 Special screening procedures.

* * * * *

(d) *Strategic and critical materials.* * * *

(2) The General Services Administration shall review the notification letter from the holding agency and, if the General Services Administration decides that the material appears to conform to stockpile requirements and is needed for stockpile objectives, it shall furnish the holding agency with complete reporting instructions, pursuant to which the holding agency shall submit a report on Standard Form 125, Report of Strategic and Critical Materials.

Materials	Types, grades, or forms to be reported	Minimum quantity at one location to be reported
Asbestos	Chrysotile fiber, spinning grade, low iron content.	2,000 pounds.
Copper	Electrolytic cathodes. Electrolytic wire bars. Lake copper ingot bars. Fire refined copper ingot bars. Oxygen-free, high conductivity.	Do.
Fluorspar	Metallurgical grade, ores or concentrates.	20 short tons.
Jewel Bearings	As determined by GSA.	Any quantity.
Mica	Muscovite Film, 1st and 2d qualities.	100 pounds.
Palladium	Metal	Any quantity.
Platinum	Metals or alloys, as determined by GSA.	Do.
Quinidine	Powder	100 ounces.
Quinine	Sulphate	Do.
Rutile	Ore	Any quantity.
Sapphire and Ruby.	Boule	2,500 carats.
Tantalum Metal.	Capacitor Grade—powder or ingot.	Any quantity.
Titanium	Sponge	Do.

Less than minimum quantities of strategic and critical materials shall be screened in accordance with the provisions of § 24.205–2.

* * * * *

PART 26—CONTRACT MODIFICATIONS

19. Subpart D is revised, as follows:

Subpart D—Novation Agreements and Change of Name Agreements

§ 26.400 Scope of subpart.

This subpart prescribes the policy and procedures for (a) recognition of a successor in interest to Government contracts when such interests are acquired incidental to a transfer of all the assets of a contractor or such part of his assets as is involved in the performance of the contracts, (b) a change of name of a contractor, and (c) execution of novation agreements and change of name agreements by the cognizant Administrative Contracting Officer (ACO) (see definition below).

§ 26.401 General.

(a) *Definition of cognizant ACO.* The cognizant ACO is the ACO administering DOD contracts held by the transferor. When the transferor has multiple plants or divisions, the ACO responsible for the corporate office is the cognizant ACO. When purchasing offices retain responsibility for administration of all contracts of the transferor, the Department having the largest unsettled (unbilled plus billed but unpaid) dollar balance is responsible for executing or designating the office to execute novation and change of name agreements.

(b) *Legal Review.* All novation agreements and change of name agreements, prior to execution, shall be reviewed by Government Counsel for legal sufficiency.

§ 26.402 Agreement to recognize a successor in interest.

(a) The transfer of a Government contract is prohibited by law (41 U.S.C. 15). However, the Government may recognize a third party as the successor in interest to a Government contract where the third party's interest is incidental to the transfer of all the assets of the contractor, or all that part of the contractor's assets involved in the performance of the contract. Examples include, but are not limited to:

(1) Sale of such assets;

(2) Transfer of such assets pursuant to merger or consolidation of corporation and

(3) Incorporation of a proprietorship or partnership.

(b) When a contractor requests that the Government recognize a successor in interest, the contractor shall be required to provide three signed copies of the novation agreement to the cognizant ACO (see § 26.401(a)) together with one copy of each of the following, as applicable:

(1) A properly authenticated copy of the instrument by which the transfer of assets was effected, as for example, a bill of sale, certificate of merger, indenture of transfer, or decree of court;

(2) A list of all contracts and purchase order which have not been finally settled among all Departments concerned and the transferor, showing the contract number, the name and address of the purchasing office involved, the total dollar value of each contract as amended, the type of contract involved, and the balance remaining unpaid;

(3) A certified copy of the resolutions of the Boards of Directors of the corporate parties authorizing the transfer of assets;

(4) A certified copy of the minutes of any stockholders' meetings of the corporate parties necessary to approve the transfer of assets;

(5) A properly authenticated copy of the certificate and articles of incorporation of the transferee if such corporation was formed for the purpose of receiving the assets involved in the performance of the Government contracts;

(6) Opinion of counsel for the transferor and transferee that the transfer was properly effected in accordance with applicable law and the effective date of transfer;

(7) Evidence of the capability of the transferee to perform the contracts;

(8) Balance sheets of the transferor and the transferee as of dates immediately prior to and after the transfer of assets;

(9) Evidence of security clearance requirements; and

(10) Consent of sureties on all contracts listed under subparagraph (2) of this paragraph where bonds are required, or a statement that none is required.

(c) When it is consistent with the Government's interest to recognize a successor in interest to a Government contract, the cognizant ACO shall execute an agreement with the transferor and the transferee, which shall ordinarily provide in part that:

(1) The transferee assumes all the transforor's obligations under the contract;

(2) The transferor waives all rights under the contract as against the Government;

(3) The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted in lieu of such guarantee); and

(4) Nothing in the agreement shall relieve the transferor or the transferee from compliance with any Federal law.

A form for such an agreement for use when the transferor and transferee are corporations, and all the assets of the transferor are transferred, is set forth herein. This form may be adapted to fit specific cases and may be used as a guide in preparing similar agreements for use in other situations.

AGREEMENT

This Agreement, entered into as of (*date upon which the transfer of assets became effective pursuant to applicable State law*) 19__, by and between the ABC Corporation, a corporation duly organized and existing under the laws of the State of _____ with its principal office in the City of _____ (hereinafter referred to as the "Transferor"); the XYZ Corporation *add if appropriate* (formerly known as the LMN Corporation), a corporation duly organized and existing under the laws of the State of _____ with its principal office in the City of _____ (hereinafter referred to as the "Transferee"); and the United States of America (hereinafter referred to as the "Government").

Witnesseth: 1. Whereas, the Government, represented by various Contracting Officers of the Department of Defense has entered into certain contracts and purchase orders with the Transferor, (namely: _____) or as set forth in the attached list marked "Exbit A" to this Agreement and herein incorporated by reference; and the term "the contracts" as hereinafter used means the above contracts and purchase orders, and all other contracts and purchase orders, including modifications thereto, heretofore made between the Government, represented by various Contracting Officers of the above named Department, and the Transferor (whether or not performance and payment have been completed and releases executed, if the Government or the Transferor has any remaining rights, duties or obligations thereunder), and including modifications thereto hereafter made in accordance with the terms and conditions of such contracts and purchase orders between the Government and the Transferee;

2. Whereas, as of _____, 19__, the Transferor assigned, conveyed, and transferred to the Transferee all the assets of the Transferor by virtue of a (*term descriptive of the legal transaction involved*) between the Transferor and the Transferee;

3. Whereas, the Transferee, by virtue of said assignment, conveyance and transfer, has acquired all the assets of the Transferor;

4. Whereas, by virtue of said assignment, conveyance and transfer, the Transferee has assumed all the duties, obligations and liabilities of the Transferor under the contracts;

5. Whereas, the Transferee is in a position fully to perform the Contracts, and such duties and obligations as may exist under the contracts;

6. Whereas, it is consistent with the Government's interest to recognize the Transferee as the successor party to the contracts;

7. Whereas, there has been filed with the Government evidence of said assignment, conveyance or transfer, as required by ASPR 26-402(b);

Where a change of name is also involved, such as prior or concurrent change of name of the transferee, an appropriate recital shall be used; for example:

8. Whereas, there has been filed with the Government a certificate dated_____, 19__, signed by the Secretary of State of the State of _____, to the effect that the corporate name of LMN CORPORATION was changed to XYZ CORPORATION on _____ 19__);

Now, therefore, in consideration of the premises, the parties hereto agree as follows:

9. The Transferor hereby confirms said assignment, conveyance and transfer to the Transferee, and does hereby release and discharge the Government from, and does hereby waive, any and all claims, demands, and rights against the Government which it now has or may hereafter have in connection with the contracts.

10. The Transferee hereby assumes, agrees to be bound by, and undertakes to perform each and every one of the terms, covenants, and conditions contained in the contracts. The Transferee further assumes all obligations and liabilities of, and all claims and demands against, the Transferor under the contracts, in all respects as if the Transferee were the original party to the Contracts.

11. The Transferee hereby ratifies and confirms all actions heretofore taken by the Transferor with respect to the contracts with the same force and effect as if the action had been taken by the Transferee.

12. The Government hereby recognizes the Transferee as the Transferor's successor in interest in and to the contracts. The Transferee hereby becomes entitled to all right, title, and interest of the Transferor in and

to the contracts in all respects as if the Transferee were the original party to the contracts. The term "Contractor" as used in the contracts shall be deemed to refer to the Transferee rather than to the Transferor.

13. Except as expressly provided herein, nothing in this Agreement shall be construed as a waiver of any rights of the Government against the Transferor.

14. Notwithstanding the foregoing provisions, all payments and reimbursements heretofore made by the Government to the Transferor and all other action heretofore taken by the Government, pursuant to its obligations under any of the Contracts, shall be deemed to have discharged pro tanto the Government's obligations under the Contracts. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to said Transferee and shall constitute a complete discharge of the Government's obligations under the Contracts, to the extent of the amounts so paid or reimbursed.

15. The Transferor and the Transferee hereby agree that the Government shall not be obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes or other expenses, or any increases therein, directly or indirectly arising out of or resulting from (i) said assignment, conveyance and transfer, or (ii) this Agreement, other than those which the Government, in the absence of said assignment, conveyance and transfer, or this Agreement, would have been obligated to pay or reimburse under the terms of the Contracts.

16. The Transferor hereby guarantees payment of all liabilities and the performance of all obligations which the Transferee (i) assumes under this Agreement, or (ii) may hereafter undertake under the Contracts as they may hereafter be amended or modified in accordance with the terms and conditions thereof; and the Transferor hereby waives notice of and consents to any such amendment or modification.

17. Except as herein modified, the Contracts shall remain in full force and effect.

In Witness whereof, each of the parties hereto has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA
By _____
Title _____
(Corporate Seal) ABC CORPORATION
By _____
Title _____
(Corporate Seal) XYZ CORPORATION
By _____
Title _____

CERTIFICATE

I, _____, certify that I am the Secretary of ABC Corporation, named above; that _____, who signed this Agreement on behalf of said corporation, was then _____ of said corporation; and that this Agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

Witness my hand and seal of said corporation this _____ day of _____, 19__.
(Corporate Seal)
By _____

CERTIFICATE

I, _____, certify that I am the Secretary XYZ Corporation named above; that _____, who signed this Agreement on behalf of said corporation, was then _____ of said corporation; and that this Agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

Witness my hand and seal of said corporation this _____ day of _____, 19__.
(Corporate Seal)
By _____

[End of Agreement]

§ 26.403 Agreement to recognize change of name of contractor.

(a) When only a change of name is involved, so that the rights and obligations of the parties remain unaffected, an agreement shall be executed by the cognizant (ACO) (see § 26.401(a)) and the contractor modifying all existing contracts between the parties so as to reflect the contractor's change of name. Three signed copies of the Change of Name Agreement and one copy of each of the following shall be forwarded by the contractor to the cognizant ACO:

(1) A copy of the instrument by which the change of name was effected, authenticated by a proper official of the State having jurisdiction;

(2) Opinion of counsel for the contractor as to the effective date of the change of name and that it was properly effected in accordance with applicable law; and

(3) A list of all contracts and purchase orders which have not been finally settled among all Departments concerned and the transferor, showing the contract number, the name and address of the purchasing office involved, the total dollar value of each contract as amended, and the balance remaining unpaid.

(b) A format for such an agreement which shall be adapted for specific cases is set forth below.

AGREEMENT

This agreement, entered into as of (*date upon which the change of name became effective pursuant to applicable State law*) _____, 19__ by and between the ABC Corporation (formerly the XYZ Corporation and hereinafter sometimes referred to as the "Contractor"), a corporation duly organized and existing under the laws of the State of _____, and the United States of America (hereinafter referred to as the "Government").

WITNESSETH:

1. Whereas, the Government, represented by various Contracting Officers of the Department of Defense, has entered into certain contracts and purchase orders with the XYZ Corporation, [namely: _____] or [as set forth in the attached list marked "Exhibit A" to this agreement and herein incorporated by reference;] and the term "the Contracts" as hereinafter used means the above contracts and purchase orders, and all other contracts and purchase orders, including modifications thereto, entered into between the Government, represented by various Contracting Officers of the Department of Defense, and the Contractor (whether or not performance and payment have been completed and releases executed, if the Government or the Contractor has any remaining rights, duties, or obligations thereunder);

2. Whereas, the XYZ Corporation, by an amendment to its certificate of incorporation, dated _____, has changed its corporate name to ABC Corporation;

3. Whereas, a change of corporate name only is accomplished by said amendment, so that rights and obligations of the Government and of the Contractor under the Contracts are unaffected by said change; and

4. Whereas, there has been filed with the Government documentary evidence of said change in corporate name;

Now therefore, in consideration of the premises, the parties hereto agree that the Contracts covered by this agreement are hereby amended by deleting therefrom the name "XYZ Corporation" wherever it appears in the Contracts and substituting therefor the name "ABC Corporation."

In witness whereof, each of the parties hereto has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA
By _____
Title _____
(Corporate Seal) ABC CORPORATION
By _____
Title _____

CERTIFICATE

I, _____, certify that I am the Secretary of ABC Corporation, named above; that _____ who signed this Agreement on behalf of said corporation, was then _____ of said corporation; and that this Agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

Witness my hand and seal of said corporation this _____ day of _____ 19__.
(Corporate Seal)
By _____

[End of Agreement]

§ 26.404 Processing novation agreements and change of name agreements.

(a) The cognizant ACO processing a proposed novation agreement shall promptly provide notice of the proposed agreement, including the list of contracts as required by § 26.402(b)(2), to the Departments and Defense agencies having contracts with the contractor or contractors concerned. Such notice shall be transmitted to the appropriate addressee listed herein.

Department of the Army, Hq., U.S. Army Materiel Command, Attention: AMCGC-P, Washington, D.C. 20315.

Department of the Navy, Chief of Naval Material, Attention: MAT 0243, Washington, D.C. 20360.

Department of the Air Force, Hq., U.S. Air Force Systems Command, Attention: SCKPR, Washington, D.C. 20331.

Defense Supply Agency, Attention: DSAH-PPR, Cameron Station, Alexandria, Va. 22314.

Defense Communications Agency, Attention: Code 260, Washington, D.C. 20305.

Director, Defense Atomic Support Agency, Attention: LGCM, Washington, D.C. 20301.

Within 30 days after receipt of such notice, the Department may submit comments to the cognizant ACO, which comments shall be considered prior to execution of the proposed agreement. The absence of comment from a Department within 30 days after its receipt of notice of a proposed novation agreement shall be construed as approval by that Department.

(b) Where substantial alterations or additions to the formats set forth in §§ 26.402(c) and 26.403(b) are considered

appropriate by the cognizant ACO processing the proposed agreement, coordination will be made with the Departments involved prior to execution. Any objection shall be resolved before the agreement is executed.

(c) Executed novation agreements or change of name agreements shall be distributed by the cognizant ACO as follows:

(1) The original signed copy to the Finance Center listed below which services the Disbursing Office designated in the contract to make payment:

Army—Commanding General, Finance Center, U.S. Army Processing & Disposition Branch, Retained Accounts Division, Indianapolis, IN 46249.
Navy—Commanding Officer, U.S. Navy Finance Center (SMV), Cleveland, OH 44114.
Air Force—Air Force Accounting & Finance Center, 3800 York Street, Denver, CO 80205.
MarCorps—Examination Division, Marine Corps Finance Center, Kansas City, MO 64197.

(2) The duplicate signed copy shall be retained by the cognizant ACO.

(3) The triplicate signed copy shall be forwarded to the contractor.

(4) Two copies of the agreement to the appropriate addresses listed in paragraph (a) of this section.

(d) After execution and distribution of an agreement, an administrative change (Standard Form 30) shall be prepared by the cognizant ACO incorporating a summary of the agreement and attaching thereto a complete list of the contracts affected. Three copies of the Standard Form 30 for each contract shall be furnished to the purchasing offices concerned. Two additional copies will be furnished to the appropriate addressee(s) listed in paragraph (a) of this section.

(e) Novation and change of name agreements amending contracts and basic agreements for storage and related services for personal property of military and civilian personnel shall be forwarded to the appropriate Military Traffic Management and Terminal Service area operations office set forth below for execution without regard to the provisions of subparagraphs (a), (b), and (d) of this section.

Director, Eastern Personal Property Operations Office, Military Traffic Management and Terminal Service, Brooklyn, N.Y. 11250.
Director, Central Personal Property Operations Office, Military Traffic Management and Terminal Service, St. Louis, Mo. 63177.
Director, Western Personal Property Operations Office, Military Traffic Management and Terminal Service, Oakland Army Base, Oakland, Calif. 94626.

PART 30—APPENDIXES TO ARMED SERVICES PROCUREMENT REGULATIONS

20. In § 30.2, part 3, items 307 and 311(c) are revised; also in part 4, item 404 is revised; in § 30.3, part 3, item 307 is revised and in item 311 the last sentence is amended, in part 4 of this section item 404 is revised; in § 30.7, part 3, item K–301 the last sentence is amended, and in item K–303.2(d), subparagraph (ii) is amended; in § 30.8, part 3, block 22 is revised, in part 4 of this section, item I–401, table 2, the first item under Air Force is amended and in part 7 of this section tables 5 and 6 are amended or revised, as follows:

§ 30.2 Appendix B—Control of Government property in possession of contractors.

* * * * *

PART 3—RECORDS OF GOVERNMENT PROPERTY

* * * * *

307 *Records of real property.* (a) Records of real property shall consist of maps, drawings, plans, and specifications supplemented, where necessary to reflect building installations such as heating, electrical, sanitary, ventilating, drainage, sprinkler systems, etc. Appropriate changes will be made to the records to reflect alterations, additions, or extensions to real property. Where the maps, drawings, plans, and specifications do not adequately reflect descriptive data as to buildings installations, supplemental records will be maintained. The foregoing records will: (i) be complete, (ii) show the original cost of the property and improvements and the cost of changes and additions thereto, and (iii) be appropriately indexed.

(b) Costs incurred by the contractor or the Government for new construction, including erection, installation or assembly, of Government real property in possession of the contractor, shall be capitalized in the real property records and financial accounts maintained by the contractor for the Government.

(c) Costs incurred for additions, expansions, extensions, conversions, alterations, and improvements including applicable portions of capital maintenance to Government real property which increase the value, life, utility, capability and/or serviceability, shall be capitalized.

(d) Costs incurred in the following circumstances shall not be capitalized in the Government real property records or financial accounts:

(i) A facility is specifically constructed for test purposes which include destruction of the facility.

(ii) The building is designed to be portable.

(e) Cost incurred for maintenance, repair and/or rearrangement of Government real property which maintain the property in good physical condition, utility, capacity, and/or serviceability, shall be charged to expense, and the real property records shall not be affected. See (c) above for costs which shall be capitalized.

(f) When Government-owned real property is sold, transferred, donated, destroyed by fire or other cause, abandoned-in-place or condemned, the financial accounts shall be reduced by the presently recorded cost and the real property records annotated with a supporting statement including pertinent facts.

* * * * *

311 *Financial control accounts.* * * *

(c) *Reporting authority.* Bureau of the Budget No. 22–R 0235 has been assigned to the reports required under (a) and (b) above.

PART 4—IDENTIFICATION

* * * * *

404 *Plant equipment.* Unless already marked in compliance with prior instructions, Government-owned plant equipment including industrial plant equipment (IPE), but excluding minor plant equipment shall be marked by the contractor with a Government identification number, except when the size or nature of the equipment makes it impracticable, or the equipment is accessory or auxiliary and attached to or otherwise a part of an item of plant equipment and is required for its normal operation. In such case, the item shall be entered and described on the record of equipment to which it is attached or of which it is otherwise a part. Identification shall be effected by affixing a decal, metal, fiber, plastic or other plate directly to the equipment or by using indelible ink, acid or electric etch, steel dies, or other legible, permanent, conspicuous and tamper proof method. Identification by the contractor shall be in accordance with procedures established by the contractor and approved by the property administrator and shall consist of the following:

(i) A serial number and an indication of Department of Defense ownership; however, if the item is already identified as government property, the marking shall not be changed solely to conform to the provisions of this paragraph; and

(ii) In the case of items included within a standard departmental registration system (for example, automotive, construction, or material-handling equipment) application for a proper registration number will be made to the cognizant Department, which number may be used in lieu of any other identification number.

Accessory or auxiliary equipment associated with a specific item of plant equipment and recorded on the official records for that item need not be marked with an identification number unless circumstances necessitate marking to assure that the item of accessory and/or auxiliary equipment will be returned to the Government with the basic item with which associated. Identification numbers assigned and markings affixed shall be permanent and will not be changed as long as the equipment remains under the control of the Department of Defense, unless a change is necessary to eliminate duplicate numbers in which case the contractor will reidentify the item(s) in accordance with the approved system.

§ 30.3 Appendix C—Control of property in possession of nonprofit research and development contractors.

* * * * *

PART 3—RECORDS OF GOVERNMENT PROPERTY

* * * * *

307 *Records of real property.* (a) In the case of real property furnished by the Government under fixed price contracts, and in the case of real property furnished by the Government and acquired by the contractor, title to which vests in the Government, under cost type contracts the contractor shall maintain a continuous itemized record of the description, location, acquisition cost, and disposition of all government real property including unimproved real property, all alterations and all construction work, and sites connected with such alteration and construction, acquired by purchase, lease or otherwise. The foregoing records will: (i) Be complete, (ii) show the original cost of the property and improvements and the cost of changes and additions thereto, and (iii) be appropriately indexed.

(b) Costs incurred by the contractor or the Government for new construction, including erection, installation or assembly, of government real property in possession of the contractor, shall be capitalized in the real property records and financial accounts maintained by the contractor for the Government.

(c) Costs incurred for additions, expansions, extensions, conversions, alterations, and improvements including applicable portions of capital maintenance to government real property which increase the value, life, utility, capability and/or serviceability, shall be capitalized.

(d) Costs incurred in the following circumstances shall not be capitalized in the government real property records or financial accounts:

(i) A facility is specifically constructed for test purposes which include destruction of the facility.

(ii) The building is designed to be portable.

(e) Costs incurred for maintenance, repair and/or rearrangement of Government real property which maintain the property in good physical condition, utility, capacity, and/or serviceability, shall be charged to expense, and the real property records shall not be affected. See (c) above for costs which shall be capitalized.

(f) When government-owned real property is sold, transferred, donated, destroyed by fire or other cause, abandoned-in-place or condemned, the financial accounts shall be reduced by the presently recorded cost and the real property records annotated with a supporting statement including pertinent facts.

* * * * *

311 *Financial control accounts, facilities.* * * *

Bureau of the Budget No. 22-RO235 has been assigned to these reports.

* * * * *

PART 4—IDENTIFICATION

* * * * *

404 *Plant equipment.* Unless already marked in compliance with prior instructions, Government-owned plant equipment including industrial plant equipment (IPE), but excluding minor plant equipment shall be marked by the contractor with a government identification number, except when the size or nature of the equipment makes it impracticable, or the equipment is accessory or auxiliary and attached to or otherwise a part of an item of plant equipment and is required for its normal operation. In such case, the item shall be entered and described on the record of equipment to which it is attached or of which it is otherwise a part. Identification shall be effected by affixing a decal, metal, fiber, plastic or other plate directly to the equipment or by using indelible ink, acid or electric etch, steel dies, or other legible, permanent, conspicuous and tamper proof method. Identification by the contractor shall be in accordance with procedures established by the contractor and approved by the property administrator and shall consist of the following:

(i) A serial number and an indication of Department of Defense ownership; however, if the item is already identified as government property, the marking shall not be changed solely to conform to the provisions of this paragraph; and

(ii) In the case of items included within a standard departmental registration system (for example, automotive, construction, or material-handling equipment) application for a proper registration number will be made to the cognizant Department, which number may be used in lieu of any other identification number.

Accessory or auxiliary equipment associated with a specific item of plant equipment and recorded on the official records for that item need not be marked with an identification number unless circumstances necessitate marking to assure that the item of accessory and/or auxiliary equipment will be returned to the Government with the basic item with which associated. Identification numbers assigned and markings affixed shall be permanent and will not be changed as long as the equipment remains under the control of the Department of Defense, unless a change is necessary to eliminate duplicate numbers in which case the contractor will reidentify the item(s) in accordance with the approved system.

§ 30.7 Appendix K—Preaward survey procedures.

* * * * *

PART 3—SURVEY

* * * * *

K-301 *Preliminary analysis.* * * * Examples are the nature of the product, applicable specifications, delivery schedule, documentation requirements, property control requirements, and financing aspects.

K-303.2 *Production.* * * *

(d) Relating production plans to production resources. * * *

(ii) Determine whether the prospective contractor will be capable of properly controlling, maintaining, protecting and using Government property;

* * * * *

§ 30.8 Appendix I—Material Inspection and Receiving Report (DD Forms 250, 250c, and 250-1).

* * * * *

PART 3—PREPARATION OF THE DD FORM 250 AND DD FORM 250c

* * * * *

Block 22—*Receiver's use.* This block shall be used by the receiving activity (Government or contractor) to denote receipt, quantity and condition. The receiving activity shall enter in this block the date the supplies arrived. For example, when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

* * * * *

PART 4—DISTRIBUTION OF DD FORM 250 AND DD FORM 250c

I-401 *Distribution.*

* * * * *

TABLE 2.—SPECIAL DISTRIBUTION

As required	Address	Number of copies
* * *	* * *	* * *
Air Force: On shipments of new production of aircraft and missiles, class 1410 missiles, 1510 aircraft (fixed wing, all types), 1520 aircraft (rotary wing), 1540 gliders, 1550 target drones.	Air Force Logistics Command, Aerospace Vehicle Distribution Office (MCNAPV), Wright-Patterson AFB, OH 45433.	1
* * *	* * *	* * *

PART 7—DISTRIBUTION OF THE DD FORM 250-1

* * * * *

TABLE 5—AIR FORCE AEROSPACE FUELS FIELD OFFICES

Address	*Area Served*
	ZONE 1
Det 30, SAAMA (SAOA), Bldg 19-01, McGuire AFB NJ 08641.	Connecticut, Delaware, District of Columbia, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Baffin Island, Greenland, Labrador, Newfoundland, and Eastern Section of Northwest Territories.
	ZONE 2
Det 24, SAAMA (SAOB), PO Drawer K, Lynn Haven FL 32444.	Alabama, Florida, Georgia, Louisiana, East of Mississippi River (including cities of New Orleans and Baton Rouge), Mississippi, North Carolina, South Carolina, and Tennessee.
	ZONE 3
Det 25, SAAMA (SAOC), 208 N Broadway, Room 1608, St. Louis MO 63102.	Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming.
	ZONE 4
Det 26, SAAMA (SAOD), Room 5626, Federal Office & Court Bldg, 515 Rusk Ave, Houston TX 77002.	Arkansas, Louisiana, West of Mississippi, New Mexico, Oklahoma, and Texas.
	ZONE 5
Det 27, SAAMA (SAOE), US Federal Bldg & Customs House, 300 S Ferry St, Terminal Island, San Pedro, CA 90731.	Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, and Washington.

TABLE 6—AIR FORCE OVERSEAS THEATER ACCOUNTING OFFICES

Address	*Area Served*
AAC (ALDCA-A), APO Seattle 98742.	Alaska.
26 CMBT SPT GP (FGAFMT), APO New York 09012.	Europe, Africa, British Isles, and Middle East.
347 CMBT SPT GP (BCPTFA), APO San Francisco 96328.	Japan, Korea, and Okinawa.

[Rev. 8, ASPR, Sept. 30, 1970; DPC 73, Item VIII; DPC 75, Item VII; DPC 76, Item II; DPC 78, Items I and IV; DPC 79, Item I; DPC 80, Items II and V; and DPC 81, Item VII] (Secs. 2202, 2301-2314, 70A Stat. 120, 127-133; 10 U.S.C. 2202, 2301-2314)

For the Adjutant General.

R. B. BELNAP,
Special Advisor to TAG.

[FR Doc. 71-5877 Filed 4-27-71;8:48 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. 71-550]

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, the introductory portion of paragraph (e) is amended by adding thereto the name of The Commonwealth of Puerto Rico; paragraph (f) is amended by deleting the name of The Commonwealth of Puerto Rico; and a new paragraph (e)(13) relating to The Commonwealth of Puerto Rico is added to read:

(13) *The Commonwealth of Puerto Rico.* The entire Commonwealth.

(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 The Commonwealth of Puerto Rico 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 Commonwealth.

The amendment also deletes The Commonwealth of Puerto Rico from the list of hog cholera eradication States in § 76.2(f), and the special provisions pertaining to the interstate movement of swine and swine products from or to such eradication States are no longer applicable to The Commonwealth of Puerto Rico.

Insofar as the amendment imposes certain further restrictions necessary to prevent the interstate spread of hog cholera, it must be made effective immediately to accomplish its purpose in the public interest. The amendment also relieves restrictions on shipments into The Commonwealth of Puerto Rico. Such restrictions are deemed unnecessary in view of the existence of hog cholera in The Commonwealth of Puerto Rico. It does not appear that public participation in this rule making proceeding would make additional relevant information available to this Department.

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 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 23d day of April 1971.

F. J. MULHERN,
Acting Administrator,
Agricultural Research Service.

[FR Doc.71-5932 Filed 4-27-71;8:53 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER C—DRUGS

PART 135a—NEW ANIMAL DRUGS FOR OPHTHALMIC AND TOPICAL USE

Kanamycin Sulfate, Calcium Amphomycin, Hydrocortisone Acetate

The Commissioner of Food and Drugs has evaluated a new animal drug application (43-784V) filed by Bristol Laboratories proposing the safe and effective use of kanamycin sulfate, calcium amphomycin, hydrocortisone acetate ointment for the treatment of dogs. The application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 135a is amended by adding the following new section:

§ 135a.8 **Kanamycin sulfate, calcium amphomycin, and hydrocortisone acetate.**

(a) *Specifications.* (1) The kanamycin used conforms to the standards of identity, strength, quality, and purity prescribed by § 148h.1(a)(1) of this chapter.

(2) The calcium amphomycin used conforms to the standards of identity, strength, quality, and purity prescribed by § 148a.1(a)(1) of this chapter.

(3) The drug is in a water-miscible ointment base and each gram of ointment contains: 5.0 milligrams of kanamycin activity as the sulfate, 5.0 milligrams of amphomycin activity as the calcium salt, and 10.0 milligrams of hydrocortisone acetate.

(b) *Sponsor.* Bristol Laboratories, Division of Bristol-Myers Co., Post Office Box 657, Syracuse, N.Y. 13201.

(c) *Conditions of use.* (1) It is indicated for use in dogs in the following conditions associated with bacterial infections caused by organisms susceptible to one or both antibiotics: Acute otitis externa, furunculosis, folliculitis, pruritus, anal gland infections, erythema, decubital ulcer, superficial wounds, and superficial abscesses.

(2) The ointment should be applied to the affected areas of the skin at least twice daily. In severe or widespread lesions it may be desirable to apply the ointment more than twice daily. After some improvement is observed, treatment can usually be reduced to once daily. Before application, hair in the affected area should be closely clipped and the area should be thoroughly cleansed of crusts, scales, dirt, or other detritus. When treating infections of the anal gland, the drug should be introduced into the orifice of the gland and not through any fistulous tract. If no response is evident in 7 days, diagnosis and therapy should be reevaluated.

(3) For use only by or on the order of a licensed veterinarian.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER. (4-28-71).

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i))

Dated: April 14, 1971.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc.71-5852 Filed 4-27-71;8:46 am]

PART 135a—NEW ANIMAL DRUGS FOR OPHTHALMIC AND TOPICAL USE

PART 141d—CHLORAMPHENICOL AND CHLORAMPHENICOL-CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

PART 146d—CERTIFICATION OF CHLORAMPHENICOL AND CHLORAMPHENICOL-CONTAINING DRUGS

Chloramphenicol Ophthalmic Solution, Veterinary

The Commissioner of Food and Drugs has evaluated a new animal drug application (55-034V) filed by EVSCO Pharmaceutical Corp., 3345 Royal Avenue, Oceanside, NY 11572, proposing the safe and effective use of chloramphenicol ophthalmic solution in dogs and cats. The application is approved.

Since the drug is subject to batch certification under the provisions of section 512(n) of the Federal Food, Drug, and Cosmetic Act, this order establishes both antibiotic drug and new animal drug regulations.

Therefore, pursuant to provisions of the act (sec. 512 (i), (n), 82 Stat. 347, 350-51; 21 U.S.C. 260b(i)(n) and under authority delegated to the Commissioner (21 CFR 2.120), Parts 135a, 141d, and 146d are amended by adding a new section to each, as follows:

§ 135a.9 Chloramphenicol ophthalmic solution, veterinary.

(a) *Specifications.* The solution conforms to the certification requirements in § 146d.320 of this chapter and is subject to the tests and methods of assay prescribed in § 141d.320 of this chapter. The solution contains as active ingredient, chloramphenicol 0.5 percent with cholorobutanol 0.5 percent as a preservative.

(b) *Sponsor.* EVSCO Pharmaceutical Corp., 3345 Royal Avenue, Oceanside, NY 11572.

(c) *Conditions of use.* (1) It is used in dogs and cats for the treatment of bacterial conjunctivitis caused by organisms susceptible to chloramphenicol.

(2) Treat with one or two drops, 4 to 6 times a day for the first 72 hours, depending upon the severity of the condition. Intervals between applications may be increased after the first 2 days. Therapy should be continued for 48 hours after an apparent cure has been attained.

(3) Therapy for cats should not exceed 7 days. As with other antibiotics, prolonged use may result in overgrowth of nonsusceptible organisms. If superinfection occurs, or if clinical improvement is not noted within a reasonable period, discontinue use, and institute appropriate therapy. Prolonged use in cats may produce blood dyscrasias. This chloramphenicol product must not be used in meat-, egg-, or milk-producing animals. The length of time that residues persist in milk or tissues has not been determined.

(4) For use by or on the order of a licensed veterinarian.

§ 141d.320 Chloramphenicol ophthalmic solution, veterinary.

(a) *Potency.* Use either of the following methods; however, the results obtained from the microbiological turbidimetric assay shall be conclusive.

(1) *Microbiological turbidimetric assay.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Dilute an accurately measured representative portion in sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to give a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with solution 1 to the reference concentration of 2.5 micrograms of chloramphenicol per milliliter (estimated).

(2) *Spectrophotometric assay.* Dissolve a 1-milliliter aliquot of the sample in sufficient water to make a solution containing 20 milligrams of chloramphenicol per milliliter and proceed as directed in § 141d.301(a)(9). Calculate the potency of the sample as follows:

$$\text{Milligrams of chloramphenicol per milliliter} = \frac{A_1 \times \text{labeled potency per milliliter in milligrams}}{A_2},$$

where:

A_1 = Absorbance of sample solution obtained as described in § 141d.301(a)(9).

A_2 = Absorbance of standard solution obtained as described in § 141d.301(a)(9).

(b) *Sterility.* Proceed as directed in § 141.2 of this chapter, using the method described in paragraph (e)(1) of that section.

(c) *pH.* Proceed as directed in § 141.503 of this chapter, using the undiluted solution.

§ 146d.320 Chloramphenicol ophthalmic solution, veterinary.

(a) *Standards of identity, strength, quality, and purity.* Chloramphenicol ophthalmic solution contains in each millilited 5 milligrams of chloramphenicol with or without one or more suitable and harmless preservatives and surfactants in an aqueous solution. It is sterile. Its pH is not less than 3 nor more than 6. The chloramphenicol used conforms to the requirements of § 146d.301(a) (1), (3), (6), (7), (8), and (9). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(b) *Packaging.* It shall be packaged in accordance with the requirements of § 148.2 of this chapter.

(c) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter; except in lieu of the requirements of § 148.3(a)(1), it shall be labeled in accordance with the requirements prescribed by § 1.106(c) of this chapter issued under section 502(f) of the act.

(d) *Requests for certification: samples.* In addition to the requirements of § 146.2 of this chapter, each such request shall contain:

(1) Results of tests and assays on:

(i) The chloramphenicol used in making the batch for potency, toxicity, pH, specific rotation, melting point, and absorptivity.

(ii) The batch for potency, sterility, and pH.

(2) Samples required:

(i) The chloramphenicol used in making the batch: 10 containers, each containing not less than 300 milligrams.

(ii) The batch:

(*a*) For all tests except sterility: A minimum of five immediate containers.

(*b*) For sterility testing: 20 immediate containers collected at regular intervals throughout each filling operation.

Data supplied by the manufacturer concerning the subject antibiotic drug have been evaluated. Since the conditions prerequisite to providing for its certification have been complied with and since it is in the public interest not to delay in so providing, notice and public procedure and delayed effective date are not prerequisites to this promulgation.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER. (4–28–71)

(Sec. 512(i), (n), 82 Stat. 357, 350–51; 21 U.S.C. 360b(i)(n))

Dated: April 19, 1971.

C. D. VAN HOUWELING,
Director,
Bureau of Veterinary Medicine.

[FR Doc.71–5853 Filed 4–27–71;8:46 am]

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

PART 149b—AMPICILLIN

Ampicillin Trihydrate Capsules

The Commissioner of Food and Drugs has evaluated a new animal drug application (55–036V) filed by E. R. Squibb & Sons, Inc., proposing the safe and effective use of ampicillin trihydrate capsules for the treatment of dogs. The application is approved.

Since said drug is subject to batch certification under the provisions of 512 (n) of the Federal Food, Drug, and Cosmetic Act, this order provides for an appropriate amendment to the antibiotic certification regulations.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), (n), 82 Stat. 347, 350–51; 21 U.S.C. 360b (i), (n)) and under authority delegated to the Commissioner (21 CFR 2.120), Parts 135c and 149b are amended by adding a new section to each, as follows:

§ 135c.47 Ampicillin trihydrate capsules, veterinary.

(a) *Specifications.* The drug is in capsule form and conforms to the certification requirements of § 149b.7 of this chapter.

(b) *Sponsor.* E. R. Squibb & Sons, Inc., Three Bridges, NJ 08887.

(c) *Conditions of use.* (1) It is used in dogs as a treatment against strains of gram-negative and gram-positive organisms sensitive to ampicillin and associated with respiratory tract infections (tracheobronchitis and tonsillitis), urinary tract infections (cystitis), bacterial gastroenteritis, generalized infections (septicemia) associated with abscesses, lacerations and wounds, and bacterial dermatitis.

(2)(i) Administer 5 to 10 milligrams per pound of body weight two or three times daily. In severe or acute conditions 10 milligrams per pound of body weight should be given three times daily. Dosage should be administered 1 to 2 hours prior to feeding.

(ii) The drug may be given as an emergency measure; however, in vitro sensitivity tests on samples collected prior to treatment should be made. Ampicillin is contraindicated for use in infections caused by penicillinase-producing organisms and for use in dogs known to be allergic to any of the penicillins. It is also not to be used in animals raised for food production.

(3) For use only by or on the order of a licensed veterinarian.

§ 149b.7 Ampicillin trihydrate capsules, veterinary.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Ampicillin trihydrate capsules are composed of ampicillin trihydrate with or without one or more diluents, binders, or lubricants, enclosed in a gelatin capsule. Each capsule contains the equivalent of 125, 250, or 500 milligrams of ampicillin. Its potency is satisfactory if it is not less than 90 and not more than 120 percent of the number of milligrams of ampicillin that it is represented to contain. Its loss on drying is not less than 10 and not more than 15 percent. The ampicillin trihydrate used conforms to the standards prescribed by § 146a.6(a).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter, except that in lieu of the requirements of § 148.3(a)(1), it shall be labeled in accordance with the requirements prescribed by § 1.106(c) of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 146.2 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The ampicillin trihydrate used in making the batch for potency, safety, loss on drying, pH, ampicillin content, crystallinity, and identity.

(*b*) The batch for potency and loss on drying.

(ii) Samples required:

(*a*) The ampicillin trihydrate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of 30 capsules.

(b) *Tests and methods of assay—*(1) *Potency.* Assay for potency by either of the following methods; however, the results obtained from the microbiological agar diffusion assay shall be conclusive:

(i) *Microbiological agar diffusion assay.* Proceed as directed in § 141.110 of this chapter, preparing the sample for assay as follows: Place a representative number of capsules into a high-speed glass blender jar with sufficient 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to give a convenient concentration. Blend for 3 to 5 minutes. Remove an aliquot and further dilute with solution 3 to the reference concentration of 0.1 microgram of ampicillin per milliliter (estimated).

(ii) *Iodometric assay.* Proceed as directed in § 141.506 of this chapter, preparing the sample as follows: Place the contents of a representative number of capsules into a blending jar and add sufficient distilled water to give a stock solution of convenient concentration. Blend for 3 minutes. Filter through Whatman No. 2 filter paper. Further dilute an aliquot of the filtrate with distilled water to the prescribed concentration.

(2) *Loss on drying.* Proceed as directed in § 141.501(a) of this chapter.

Notice and public procedure and delayed effective date are not necessary prerequisites to this promulgation because: (1) in the case of § 135c.47, section 512(i) of the act so provides; and (2) in the case of § 149b.7, data supplied by the manufacturer concerning the subject antibiotic drug have been evaluated and the conclusions made that the conditions prerequisite to providing for certification have been complied with and that not delaying in so providing is in the public interest.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER. (4–28–71)

(Sec. 512 (i), (n), 82 Stat. 347, 350–51; 21 U.S.C. 360b (i), (n))

Dated: April 13, 1971.

C. D. VAN HOUWELING,
Director,
Bureau of Veterinary Medicine.

[FR Doc.71–5851 Filed 4–27–71;8:46 am]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER I—ANCHORAGES

[CGFR 70–65a]

PART 110—ANCHORAGE REGULATIONS

Chicago Harbor Special Anchorage Areas

The Chicago Park District, by letter dated July 28, 1969, requested that the authority to assign mooring permits for the Monroe Street Harbor, Chicago, known as Grant Park North and Grant Park South, be transferred from the U.S. Coast Guard to the Chicago Park District. In addition, it was requested that the anchorages be changed from "Anchorage Grounds" to "Special Anchorage Areas". This change in designation would allow vessels not more than 65 feet in length to anchor or moor without carrying or exhibiting anchor lights. A notice of proposed rule making proposing the change was published in the FEDERAL REGISTER on May 2, 1970 (35 F.R. 7019). Copies of the proposal were mailed to interested persons. A public hearing on the proposal was held in Chicago, Ill., on June 2, 1970. The Coast Guard received 532 comments opposing the Chicago Park District issuing the mooring permits. Three comments favored the proposal and one was noncommittal. The public hearing was attended by approximately 200 persons. The majority of the speakers at the public hearing were opposed to the Chicago Park District issuing mooring permits. No objections have been received regarding the change of designation from an "Anchorage Ground" to a "Special Anchorage Area."

As a matter of general policy, the Coast Guard desires local control of Special Anchorage Areas. Since the Chicago Park District administers seven other anchorages in and around Chicago, their assumption of the Monroe Street Harbor, which can accommodate approximately 741 vessels, appears to be a reasonable consolidation of mooring permit authority. The Chicago Park District has advised the Coast Guard that they will observe the following policies concerning the assignment of mooring locations:

a. Those persons now holding mooring permits issued by the U.S. Coast Guard will receive annual renewals upon request to the Chicago Park District.

b. The present fee for dinghy space adjacent to the anchorage will be eliminated for permit holders.

c. Moorings will be furnished and placed only by the Chicago Park District.

d. Tender service will be available.

After consideration of all views presented, the Coast Guard has concluded that the local administration of these special anchorage areas is in the public interest. The Coast Guard will retain jurisdiction over these anchorages until December 31, 1971, because permits have already been issued for the 1971 boating season. These anchorages are established as special anchorage areas at this time.

In consideration of the foregoing, Part 110 is amended as follows:

1. Effective May 28, 1971, by adding a new § 110.83, to read as follows:

§ 110.83 Chicago Harbor, Ill.

(a) *Grant Park North.* Beginning at a point 2,700 feet south of the south face of the Naval Armory Dock and 100 feet east of the Grant Park bulkhead along the west side of the harbor, said bulkhead at that point being approximately on the harbor line approved by the Department of the Army on August 3, 1940; thence north along a straight line parallel to said harbor line and to the overall alinement of said Grant Park bulkhead between its north and south ends, 1,460 feet to a point that is 100 feet east of said harbor line and 150 feet east of the Grant Park bulkhead; thence east at a right angle, 150 feet; thence north at a right angle, parallel to the first described line, passing 100 feet east of the Chicago Yacht Club dock, 693 feet; thence east at a right angle, 75 feet; thence north parallel to and 375 feet east of aforesaid Grant Park bulkhead, 390 feet; thence east at a right angle, 385 feet; thence north at a right angle 97 feet to a point 760 feet east of said Grant Park bulkhead (or 710 feet east of said harbor line) and 60 feet south of a line drawn east at a right angle thereto, from the north end of said Grant Park bulkhead at the south face of said Naval Armory Dock; thence east perpendicular to said Grant Park bulkhead, 840 feet; thence southerly 2,415 feet to a point 1,500 feet east of said harbor line and about 1,505 feet east of said Grant Park bulkhead; thence southwesterly 740 feet to a point 700 feet due east, in a direction perpendicular to the west line hereof, from the point of beginning; and thence west to the point of beginning.

(b) *Grant Park South.* Beginning at a point 3,000 feet south of the south face of the Naval Armory Dock and 100 feet east of the Grant Park bulkhead along the west side of the harbor, said bulkhead at that point being approximately on the harbor line approved by the Department of the Army on August 3, 1940; thence east, perpendicular to the overall alinement of the Grant Park bulkhead and perpendicular to said harbor line, 700 feet; thence southeasterly 697 feet to a point 1,460 feet east of said Grant Park bulkhead and 225 feet south of an extension of the first described line; thence south perpendicular to the first described line, 225 feet; thence southwesterly 2,235 feet along a line generally 150 feet northwesterly from and parallel to the northwesterly face of the narrow section of the U.S. Inner Breakwater; thence northwesterly 190 feet to a point 150 feet east of said Grant Park bulkhead (or 100 feet east of the aforesaid harbor line) and 5,140 feet south of the south face of the Naval Armory Dock; and thence north 2,140 feet to the point of beginning.

2. Effective May 28, 1971, by amending § 110.205 by deleting the notes in paragraph (a) and revising paragraph (b)(1) and adding new paragraphs (b)(7), (8), and (9) to read as follows:

§ 110.205 Chicago Harbor, Ill.

* * * * *

(b) *The rules and regulations.* (1) Except in cases of emergency, no vessel may be anchored in Chicago Harbor outside of the anchorage grounds in paragraph (a) of this section or the special anchorage areas prescribed in § 110.83.

* * * * *

(7) No vessel may use anchorages A, B, and F except commercial vessels operated for profit. No person may place floats or buoys for marking moorings or anchors in place in anchorages A and B. No person may place fixed mooring piles or stakes in anchorages A and B. (Mooring facilities are available along the south side of the filtration plant in anchorage F.)

(8) No commercial vessels operated for profit that measure 50 gross tons or more may anchor in anchorages C, D, and E. No person may place fixed mooring piles or stakes in anchorages C, D, and E. Temporary floats or buoys for marking moorings and anchors in place may be used in anchorages C, D, and E. No steamer or motor vessel that measures 5 gross tons or more may use anchorages D and E as a through channelway.

(9) Anchorages D and E are designated special anchorage areas in § 110.83. Vessels not more than 65 feet in length may anchor in anchorages D and E without carrying or exhibiting the white anchor lights required by Rule 9, Navigation Rules for the Great Lakes and Their Connecting and Tributary Waters, 33 U.S.C. 258.

3. Effective December 31, 1971, by amending § 110.205 by revoking paragraphs (a)(4), (a)(5), and (b)(9) and by revising paragraph (b)(8) to read as follows:

§ 110.205 Chicago Harbor, Ill.

(a) * * *

(4) [Revoked]

(5) [Revoked]

* * * * *

(b) * * *

(8) No commercial vessels operated for profit that measure 50 gross tons or more may anchor in anchorage C. Temporary floats or buoys for marking moorings or anchors in place may be used in anchorage C. No person may place a fixed mooring pile or stake in anchorage C.

(9) [Revoked]

* * * * *

4. Effective December 31, 1971, by amending § 110.83 by adding a note to read as follows:

§ 110.83 Chicago Harbor, Ill.

* * * * *

NOTE: The Chicago Park District controls the location and type of any moorings placed in the special anchorage areas in this section.

(Sec. 1, 28 Stat. 647, as amended, sec. 7, 38 Stat. 1053, as amended, sec. 6(g)(1) (A) and (C), 80 Stat. 937; 33 U.S.C. 258, 33 U.S.C. 471, 49 U.S.C. 1655(g)(1) (A) and (C); 49 CFR 1.46(c) (1) and (3) (35 F.R. 4959), 33 CFR 1.05-1(c)(1) (35 F.R. 8279))

Dated: April 22, 1971.

R. E. HAMMOND,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Operations.

[FR Doc.71-5906 Filed 4-27-71;8:51 am]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

SUBCHAPTER B—INTERNATIONAL MAIL

APPENDIX—INDIVIDUAL COUNTRY INFORMATION AND RATE TABLES

Miscellaneous Amendments

In the Appendix to Subchapter B, the following changes are made:

1. Under "Libya (United Kingdom of) (Tripolitania and Cyrenaica)" make the following changes:

a. Change the country name to "Libya (Arab Republic of) (Tripolitania and Cyrenaica)".

b. Under Postal Union Mail, following the paragraph on *Money orders*, insert the following paragraph:

Observations. Each small packet and dutiable letter or printed matter package should have Form 2976-A enclosed.

2. Change the country name of "Maldive Islands" to read "Maldives (Republic of)".

3. Under "Southern Yemen (People's Republic of) (Including Kamaran and Perim)" make the following changes:

a. Change the name of the country to "Yemen (People's Democratic Republic of) (Aden)".

b. Under Postal Union Mail, following the paragraph on *Money orders*, insert the following paragraph:

Observations. Mail may be addressed by the short form of the country name "Yemen (Aden)".

c. Under Parcel Post following the paragraph on *Insurance*, insert the following paragraph:

Observations. Parcels may be addressed by the short form of the country name "Yemen (Aden)".

3. Under "Yemen" make the following changes:

a. Change the name of the country to "Yemen (Arab Republic of) (Sanaa)".

b. Under Postal Union Mail, following the paragraph on *Money orders*, insert the following paragraph:

Observations. Mail may be addressed by the short form of the country name "Yemen (Sanaa)".

4. In the item *Places not included in Alphabetical List of Countries* make the following changes:

a. Delete "Aden (Southern Yemen)" and in lieu thereof insert the name "Yemen (Aden)" in its proper order.

b. Delete the following from the list:

Kamaran (Southern Yemen).

Perim (Southern Yemen).

(39 U.S.C. 301, 5 U.S.C. 501, 505)

DAVID A. NELSON,
General Counsel.

[FR Doc.71-5861 Filed 4-27-71;8:47 am]

Title 46—SHIPPING

Chapter IV—Federal Maritime Commission

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES

[Exemption Applications Nos. 6, 7, 8]

PART 531—PUBLICATION, POSTING, AND FILING OF FREIGHT RATES AND CHARGES IN THE DOMESTIC OFFSHORE TRADE

Carriage of Miscellaneous Cargoes Between Seattle, Washington and Prudhoe Bay on the Arctic Coast of Alaska; Exemption

Applications for exemption from the Intercoastal Shipping Act, 1933 and the Shipping Act, 1916, and regulations applicable thereto, for miscellaneous cargoes, including liquid in bulk, transported between Seattle, Wash., on the one hand and on the other the Arctic Coast of Alaska between Beechey Point and Tigvariak Island (Prudhoe Bay), via the Gulf of Alaska, the Bering Sea, and the Arctic Ocean were filed in the FEDERAL REGISTER.

The effect of such an exemption would be to permit movements by barge to the

area involved with freedom from tariff filing requirements and regulation with respect to the reasonableness of rates.

The proposed operations are radically different from that usually associated with common carriage. No sailing schedules can be maintained because of the timing operations dictated by the ice conditions in Prudhoe Bay. Much of the operation will be in the nature of proprietary carriage since in most instances the full capacity of a given barge will be chartered by a single company. The specialized outfit of the vessels designated for certain cargoes will make it impractical for the carriers to provide uniform service for all shippers. Finally, special contracts as to the risk of loss and damage will be required due to the extraordinary hazards involved.

The conditions under which the operation is conducted make rate and tariff regulation an unnecessary and undue burden. However, as the building of the North Slope progresses there may be a demand for a fully diversified type of common carrier service which will require full regulatory surveillance by this Commission. In view of this, the exemption is limited to the 1971 season.

Any carriers indicating a desire to perform a service similar to that proposed by the applicants may file similar applications for exemption which will be expeditiously considered.

The exemption will not substantially impair effective regulation by the Federal Maritime Commission, be unjustly discriminatory or be detrimental to commerce. Therefore, pursuant to section 4 of the Administrative Procedure Act, 5 U.S.C. 553 and sections 35 and 43 of the Shipping Act, 1916, 46 U.S.C. 833(a) and 841(a); Part 531 of Title 46 CFR is amended as follows:

Section 531.26 is amended by the revision of paragraph (c) reading as follows:

§ 531.26 Exemptions.

* * * * *

(c) The provisions of the Intercoastal Shipping Act, 1933 and the Shipping Act, 1916, as amended, shall not apply to direct service by water between Seattle, Wash., and Prudhoe Bay, Alaska, of miscellaneous cargoes including liquid in bulk provided by Foss Launch & Tug Co., Foss Alaska Line, Inc., Puget Sound Tug & Barge Co., and Alaska Barge & Transport, Inc., during 1971.

* * * * *

Effective Date. The exemption granted herein shall become effective upon publication of this order in the FEDERAL REGISTER (4–28–71).

Dated: April 22, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71–5922 Filed 4–27–71;8:52 am]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 966]

[Docket No. AO-265-A3]

TOMATOES GROWN IN FLORIDA

Notice of Hearing on Proposed Amendment of Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing formulation of marketing agreements and marketing orders, as amended (7 CFR Part 900), notice is hereby given of a public hearing to be held at the Auditorium of the Florida Fruit and Vegetable Association, 4401 East Colonial Drive, Orlando, FL, beginning at 9 a.m. local time, June 2, 1971, with respect to proposed amendment of Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR Part 966), hereinafter referred to as the "order," regulating the handling of tomatoes grown in the production area. The proposal has not received the approval of the Secretary of Agriculture.

The hearing will provide an opportunity to collect evidence with which to reevaluate the method and basis for regulating the handling of tomatoes differently for different stages of maturity. Such authority now provided in § 966.52 has been used on a number of occasions in past seasons to impose different minimum size limitations on shipments of Florida grown mature green tomatoes than those imposed on tomatoes of more advanced maturity. On these occasions, identical minimum size limitations were imposed on imported tomatoes as required by § 608e-1 of the Act.

The regulations imposed under the order have been recommended and supported by the industry. Nevertheless opposition by importers of Mexican tomatoes and others to such regulations has been evident, both in views filed under rule making proceedings and in the courts. The objective of this hearing is to provide an opportunity for all interested parties to present pertinent evidence so that all pertinent issues can be fully heard, considered, and resolved. Based on the evidence presented it is proposed that § 966.52 be amended to: (1) Clarify the authority for regulating tomatoes differently for different stages of maturity; or (2) delete the authority for regulating differently for different stages of maturity or; (3) to provide appropriate modifications of, or variations from, these alternative proposals. The alternative proposals are as follows:

§ 966.52 Issuance of regulations.

The Secretary shall limit the handling of tomatoes whenever he finds from the recommendation and information submitted by the committee, or from other available information, that such regulation would tend to effectuate the declared policy of the act. Such regulation may:

(a) Limit, in any or all portions of the production area, the handling of particular grades, sizes, qualities (including maturity as a factor of grade or quality), or packs of any or all varieties of tomatoes, during any period; or

(b) Limit the handling of particular grades, sizes, qualities, or packs of tomatoes differently, for different varieties, for different stages of maturity (including lesser minimum size specifications for mature green tomatoes than for those of greater maturity), for different portions of the production area, for different containers, for different markets, and for different purposes specified in § 966.54, or any combination of the foregoing during any period; or

* * * * *

Or in the alternative:

§ 966.52 Issuance of regulations.

The Secretary shall limit the handling of tomatoes whenever he finds from the recommendation and information submitted by the committee, or from other available information, that such regulation would tend to effectuate the declared policy of the Act. Such regulation may:

(a) Limit, in any or all portions of the production area, the handling of particular grades, sizes, qualities (including maturity as a factor of grade or quality), or packs of any or all varieties of tomatoes, during any period; or

(b) Limit the handling of particular grades, sizes, qualities, or packs of tomatoes differently, for different varieties, for different portions of the production area, for different containers, for different markets, and for different purposes specified in § 966.54, or any combination of the foregoing, during any period; or

* * * * *

Copies of this notice may be obtained from the Vegetable Branch, Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, or from M. F. Miller, Field Representative, Fruit and Vegetable Division, Consumer and Marketing Service, Post Office Box 9, Lakeland, FL 33802.

Dated: April 23, 1971.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.71-5935 Filed 4-27-71;8:53 am]

[7 CFR Parts 1090, 1098, 1103, 1104, 1106, 1121, 1130]

MILK IN THE CHATTANOOGA, TENN.; NASHVILLE, TENN.; MISSISSIPPI; RED RIVER VALLEY; OKLAHOMA METROPOLITAN; SOUTH TEXAS AND CORPUS CHRISTI MARKETING AREAS

Notice of Extension of Time for Filing Data, Views, or Arguments With Respect to Proposed Suspension or Termination of Certain Provisions

Notice is hereby given that the time for filing written data, views, or arguments in connection with the proposed suspension or termination of certain provisions of the orders regulating the handling of milk in the Chattanooga, Tenn.; Nashville, Tenn.; Mississippi; Red River Valley; Oklahoma Metropolitan; South Texas and Corpus Christi marketings areas is extended to May 10, 1971.

The provisions of these orders proposed to be suspended or terminated were set forth in Notice of Proposed Suspension or Termination of Certain Provisions of the Orders (36 F.R. 7318) issued by the Deputy Administrator, Regulatory Programs, on April 13, 1971.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.) and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Signed at Washington, D.C., on: April 23, 1971.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 71-5934 Filed 4-27-71; 8:53 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 1, 130]

CONTROLLED SUBSTANCES

Labeling, Dispensing in Emergencies, Security and Accountability; Extension of Time for Filing Comments

The notice published in the FEDERAL REGISTER of April 9, 1971 (36 F.R. 6833), proposing that Parts 1 and 130 be amended regarding "controlled substances," provided for the filing of comments within 15 days after that date.

The Commissioner has received a request to extend such time and, good reason therefor appearing, the time for filing comments on that proposal is extended to May 9, 1971.

This action is taken under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: April 23, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-5920 Filed 4-27-71;8:52 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 110]

[CGFR 71-28]

HAMPTON ROADS, VA., AND ADJACENT WATERS

Proposed Anchorage Grounds

The Coast Guard is considering amending the anchorage regulations to establish two additional anchorage grounds for vessels used in the construction of the second Hampton Roads bridge-tunnel. The proposed anchorages would allow construction equipment, water barges, and a tugboat to be moored closer to the construction site than the existing anchorages in Hampton Roads presently allow.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23705. Each person submitting comments should include his name and address, identify the anchorage, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Fifth Coast Guard District.

The Commander, Fifth Coast Guard District, will forward any comments received before May 28, 1971, and his recommendations to the Chief, Office of Operations, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that § 110.168(a) be amended by adding two subparagraphs (10) and (11) to read as follows:

§ 110.168 Hampton Roads, Va., and adjacent waters.

* * * * *

(a) * * *

(10) *Anchorage T-3, Construction Barges.* Anchorage T-3 is a 100-yard diameter area with the center at latitude 36°57'41" N., longitude 76°17'25" W. (200 yards west of the present South Island). This anchorage is for the exclusive use of equipment and water barges used in the construction of the second Hampton Roads bridge-tunnel.

(11) *Anchorage T-4, Construction Equipment.* Anchorage T-4 is a 100-yard diameter area with the center at latitude 36°59'05" N., longitude 76°18'22" W. (700 yards southwest of Anchorage J-2, Willoughby Bay). This anchorage is for the exclusive use of tugboats used in the construction of the second Hampton Road bridge-tunnel.

* * * * *

(Secs. 7, 38 Stat. 1053, as amended, sec. 6(g)(1)(A), 80 Stat. 937; 33 U.S.C. 471, 49 U.S.C 1655 (g)(1)(A); 49 CFR 146(c)(1) (35 F.R. 4959), 33 CFR 1.05-1(c)(1) (35 F.R. 8279))

Dated: April 23, 1971.

[SEAL] R. E. HAMMOND,
Rear Admiral, U.S. Coast Guard, Chief, Office of Operations.

[FR Doc.71-5905 Filed 4-27-71;8:51 am]

Federal Railroad Administration

[49 CFR Part 232]

[Docket No. PB-5, Notice No. 1]

POWER BRAKE INSPECTION OF UNIT AND RUN-THROUGH TRAINS

Advance Notice of Proposed Rule Making

The Federal Railroad Administration (FRA) is considering proposing a rule which would prescribe power brake inspections and tests for unit and run-through trains interchanged between two or more carriers without change in consist of cars, locomotives, or caboose.

By Notice published March 16, 1971, (36 F.R. 4994), FRA announced it is considering proposing general amendments to Part 232 of the regulations issued under the Power or Train Brakes Safety Appliance Act of 1958.

On April 19, 1971, the Southern Railway System Lines filed a petition requesting, among other things, that the FRA institute a separate rule-making proceeding to promulgate a run-through train brake inspection rule of general application as an amendment to § 232.12 (3). (This section requires that the initial terminal road train air brake test be repeated at the point where a train is received in interchange.) The petition noted that numerous petitions seeking special relief from the requirements of § 232.12(3) have already been filed with the FRA. It also indicated that the general revision of Part 232 announced by the FRA in the notice published March 16, 1971, is a major undertaking which is likely to require a considerable length of time to complete. In the meantime, many new petitions for similar special relief will probably be filed and each petition is likely to require nearly as much time and effort for the FRA and the public as the separate rule-making proceeding requested.

Upon further consideration in the light of this petition, the FRA has decided to make unit and run-through train brake inspections and tests the subject of a separate rule-making proceeding, FRA Docket No. PB-5.

The purpose of this advance notice is to invite public participation in the development of this rule and to solicit proposals concerning brake inspections and tests required for safe operation of unit and run-through trains. Specific advice is requested relating to: (1) The scope and frequency of inspections and tests; (2) standard operating procedures for each inspection and test; (3) maintenance standards for brake equipment; (4) location of inspection and test sites; (5) maintenance and repair personnel, equipment and facilities at inspection and test sites; (6) technical qualifications and skills of railroad personnel conducting inspections and tests and making necessary repair; (7) documentation of inspection and test results and of completion of necessary repairs; and (8) any other matter relating to brake inspections and tests for unit and run-through trains. All comments and proposals received in response to this notice will be placed in the public docket file and will be given due consideration in the development of the FRA proposed rule.

Interested persons are invited to give their views. Comments should identify the regulatory docket and notice number and be submitted in triplicate to the Docket Clerk, Office of Hearings and Proceedings, Federal Railroad Administration, Attention: Docket No. PB-5, 400 Seventh Street, SW., Washington, DC 20591, prior to May 28, 1971. All comments received will be available for examination by interested persons at any time during regular working hours in Room 5100, Nassif Building, 400 Seventh Street, SW., Washington, DC 20591.

This notice is issued under the authority of section 9 of title 45, United States Code.

Issued in Washington, D.C. on April 22, 1971.

CARL V. LYON,
Acting Administrator.

[FR Doc.71-5919 Filed 4-27-71;8:52 am]

National Highway Traffic Safety Administration

[49 CFR Part 566]

[Docket No. 71-11; Notice 1]

MANUFACTURER IDENTIFICATION

Notice of Proposed Rule Making

This notice proposes to adopt a new Part 566 in Title 49, Code of Federal Regulations, that would require manufacturers of motor vehicles, and of motor vehicle equipment to which a motor vehicle safety standard applies, to submit identifying information and a description of the items they produce.

Section 112(c) of the National Traffic and Motor Vehicle Safety Act requires manufacturers of motor vehicles and

motor vehicle equipment to "provide such information as the Secretary may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this title and motor vehicle safety standards prescribed pursuant to this title, * * *." Section 119 further grants the Secretary general authority to "issue, amend, and revoke such rules and regulations as he deems necessary to carry out this title."

In order to carry out the provisions of the Act, it is often necessary to have certain basic information about the manufacturers of motor vehicles or vehicle equipment subject to the Act. This is particularly so in the area of enforcement and in carrying out the several requirements for communication, inspection, and reporting. It is necessary to have centrally organized and collected information regarding the manufacturer's corporate status, mailing address, items manufactured, and manufacturing location. Moreover, it is necessary to assemble this information so as to make it readily accessible to those having enforcement responsibility under the Act, and provide a means for identifying and classifying manufacturers according to the types of motor vehicles or equipment which they manufacture. A system is also needed whereby the NHTSA can provide information to manufacturers of various types of vehicles or equipment.

For these reasons, the National Highway Traffic Safety Administration proposes to establish a new Part 566 in Title 49, Code of Federal Regulations, which would require manufacturers to report specified information to the Administrator within 90 days of the effective date of the proposed regulations. The regulation applies to all manufacturers of motor vehicles and of motor vehicle equipment to which a motor vehicle safety standard applies, and utilizes the definitions of "intermediate" and "final stage" manufacturer set out in 49 CFR Part 568 (36 F.R. 7054). The information required includes basic information on the manufacturer's corporate and business status and residence, the items produced, and information on production capacity.

Proposed effective date: 90 days after issuance. Interested persons are invited to submit data, views, and arguments concerning the proposed regulations. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5217, 400 Seventh Street SW., Washington, DC 20591. It is requested, but not required, that 10 copies be submitted. All comments received before the close of business June 28, 1971 will be considered, and will be available in the docket at the above address for examination both before and after the closing date. To the extent possible, comments filed after the above date will also be considered by the Administration. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The Administration will continue to file relevant material, as it becomes available, in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new materials.

This notice of proposed rulemaking is issued under the authority of sections 112 and 119 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1401 and 1407), and the delegations of authority at 49 CFR 1.51 and 49 CFR 501.8.

Issued on April 16, 1971.

RODOLFO A. DIAZ,
Acting Associate Administrator, Motor Vehicle Programs.

PART 566—MANUFACTURER IDENTIFICATION

§ 566.1 Scope.

This part requires manufacturers of motor vehicles, and of motor vehicle equipment to which a motor vehicle safety standard applies, to submit identifying information and a description of the items they produce.

§ 566.2 Purpose.

The purpose of this part is to facilitate the regulation of manufacturers under the National Traffic and Motor Vehicle Safety Act, and to aid in establishing a code numbering system for all regulated manufacturers.

§ 566.3 Application.

This part applies to all manufacturers of motor vehicles, and to manufacturers of motor vehicle equipment to which a motor vehicle safety standard applies (hereafter referred to as "covered equipment").

§ 566.4 Definitions.

All terms defined in the Act and the rules and standards issued under its authority are used as defined therein. Specifically "intermediate manufacturer" and "final-stage manufacturer" are used as defined in Part 568, Vehicles Manufactured in Two or More Stages.

§ 566.5 Requirements.

Each manufacturer of motor vehicles, and each manufacturer of covered equipment, shall furnish the information specified in paragraphs (a) through (d) of this section to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20591.

(a) Full individual, partnership, or corporate name of the manufacturer.

(b) Residence address of the manufacturer and State of incorporation if applicable.

(c) Description of each type of motor vehicle or of covered equipment manufactured by the manufacturer, including, for motor vehicles, the approximate ranges of gross vehicle weight ratings for each type. Except as noted below, the description may be of general types, such as "passenger cars" or "brake fluid." In the case of multipurpose passenger vehicles, trucks, and trailers, the description shall be specific enough also to indicate the types of use for which vehicles are intended, such as "tank trailer," "motor home," or "cargo van." In the case of motor vehicles produced in two or more stages, if the manufacturer is an intermediate manufacturer or a final-stage manufacturer, the description shall so state and include a brief description of the work performed.

EXAMPLE: "Multipurpose passenger vehicles: Motor homes with GVWR from 8,000 to 12,000 pounds. Final-stage manufacturer—add body to bare chassis."

(d) Estimated annual production of each type vehicle or covered equipment listed in response to paragraph (c) of this section.

§ 566.6 Time of submittal of information.

Each manufacturer required to submit information under § 566.4 shall submit the information not later than _____. After that date, each person who begins to manufacture a type of motor vehicle or covered equipment for which he has not submitted the required information shall submit the information specified in paragraphs (a) through (d) of § 566.4 not later than 30 days after he begins manufacture.

[FR Doc.71-5878 Filed 4-27-71;8:48 am]

Office of the Secretary

[41 CFR Ch. 12]

PROCUREMENT REGULATIONS

Extension of Time for Filing Comments

The proposed procurement regulations of the Department of Transportation (41 CFR ch. 12) were published in the FEDERAL REGISTER on March 17, 1971 (36 F.R. 5053–5141). The notice provided for the filing of comments within 45 days from said date. Notice is hereby given that the time for filing comments on the proposed procurement regulations is extended to May 17, 1971.

Issued in Washington, D.C., on April 21, 1971.

JAMES M. BEGGS,
Under Secretary.

[FR Doc.71-5875 Filed 4-27-71;8:48 am]

ENVIRONMENTAL PROTECTION AGENCY

[42 CFR Part 420]

NATIONAL AMBIENT AIR QUALITY STANDARDS

Preparation, Adoption, and Submittal of Implementation Plans; Notice of Extension of Comment Period

On April 7, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 6680) inviting comments regarding the proposed addition of a new Part 420 to Title 42 of the

Code of Federal Regulations. The proposed regulations implemented the Clean Air Act (42 U.S.C. 1857–18571, as amended by Public Law 91–604), by setting forth procedures governing the preparation, adoption and submittal of implementation plans for approval by the Administrator.

The notice stated that consideration would be given to all comments received within 21 days after publication. The Environmental Protection Agency has received a number of requests for an extension of time for submissions of comments on the proposed regulations. Accordingly, in order to assure that all interested persons are afforded an opportunity to comment on the proposed regulations, it has been determined that the time within which comments on the proposed regulations will be received should be and hereby is extended to the close of business on May 12, 1971.

Dated: April 22, 1971.

WILLIAM D. RUCKELSHAUS,
Administrator.

[FR Doc.71–5827 Filed 4–27–71;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 19045]

TELEVISION BROADCAST STATIONS

Table of Assignments, Clarksville, Tenn.; Order Extending Time for Filing Reply Comments

In the matter of amendment of § 73.606, Table of Assignments, Television Broadcast Stations (Clarksville, Tenn.), Docket No. 19045, RM–1637.

1. This proceeding was begun by a notice of proposed rule making (FCC 70–1099), adopted October 7, 1970, and published in the FEDERAL REGISTER October 15, 1970 (35 F.R. 16181). The date designated for reply comments has expired and reply comments are presently due on April 16, 1971.

2. On April 16, 1971, Professional Telecasting Systems, Inc. (Professional Systems), licensee of station WBKO, Bowling Green, Ky., requested a 3-week extension of time, until May 7, 1971, in which to file comments with respect to the proposed VHF drop-in in Clarksville, Tenn. Professional Systems states that the extension is required because of the press of other business in the office and the need to review new factors which have developed with respect to the drop-in proposal. Counsel for the rule making proponent, Tennessee Televentures, has consented to the extension requested.

3. It appears that the requested extension is warranted and would serve the public interest. *Accordingly, it is ordered,* That the request of Professional Telecasting Systems is granted to and including May 7, 1971, for the filing of reply comments.

4. This action is taken pursuant to authority found in sections 4(i) and 303 (r) of the Communications Act of 1934, as amended, and § 0.281(d)(8) of the Commission's rules.

Adopted: April 19, 1971.

Released: April 22, 1971.

[SEAL] FRANCIS R. WALSH,
Chief, Broadcast Bureau.

[FR Doc.71–5897 Filed 4–27–71;8:50 am]

[47 CFR Part 73]

[Dockets Nos. 19153, 19154; FCC 71–425]

RENEWAL OF BROADCAST LICENSES

Order Extending Time for Filing Comments

In the matter of formulation of rules and policies relating to the renewal of broadcast licenses, Docket No. 19153 (RM–1737). In the matter of formulation of policies relating to the broadcast renewal applicant, stemming from the comparative hearing process. Docket No. 19154.

1. Comments in the above-captioned proceedings are presently due by May 3, 1971, with reply comments due by June 3, 1971. The Commission has received a petition from the National Association of Broadcasters (NAB), asking that the comment dates be extended 60 days. The request is based chiefly on the importance of these matters to the broadcasting industry generally, and also the number of other important matters which have due dates about the same time and all of which are occupying interested parties and their representatives. These include the Children's Television matter (Docket No. 19142), the proceeding concerning exclusivity in nonnetwork television programing (Docket No. 18179), and the comments by individual parties in Docket No. 18110, which are due May 17.

2. We are of the opinion that, considering the importance of these matters and the fundamental nature of some of the questions raised, the additional time requested is warranted. *Accordingly, it is hereby ordered,* Pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, that the dates for filing comments and reply comments in Dockets Nos. 19153 and 19154 are extended to and including July 2 and August 2, 1971, respectively.

Adopted: April 14, 1971.

Released: April 20, 1971.

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

[FR Doc.71–5896 Filed 4–27–71;8:50 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 240, 249]

[Release No. 34–9128]

PROMPT NOTICE OF NET CAPITAL OR RECORD KEEPING VIOLATIONS

Notice of Proposed Rule Making

Notice is hereby given that the Securities and Exchange Commission has under consideration a proposal to adopt Rule 17a–11 (17 CFR 240–17a–11) under the Securities and Exchange Act of 1934 (the Act). The proposed rule has four major provisions. First, it would require that when the net capital of a broker-dealer falls below the minimum required by any capital rule to which it is subject, immediate telegraphic notice would have to be given to the Commission and the self-regulatory organizations to which it belongs, and a report setting forth the firm's financial condition would have to be filed with them within 24 hours after such net capital deficiency occurs.

Second, the proposed rule would require that when a broker-dealer's net capital computation indicates that its aggregate indebedness exceeds 1,200 percent of its net capital, measured under any capital rule to which the firm is subject, the firm must file a report on Form X–17A–11 (17 CFR 249.621) furnishing a capital computation, and specific information as to: its assets, liabilities and capital; profits and losses; pending capital additions and withdrawals; firm underwriting commitments; significant security positions; restricted security positions; securities haircuts and other capital charges; aged transfer items; stock record differences; suspense and error accounts; unsecured receivables; reserves; reconciliation accounts; box counts; fails to deliver and fails to receive; uncompared trades; DK's; and customer complaints. Such data would have to be filed within 15 days after the end of any month for which the net capital computation showing a ratio in excess of 1,200 percent was made, and within 15 days after the end of each month thereafter until 3 successive months have elapsed during which the net capital ratio does not exceed 1,200 percent.

Third, the proposed rule would require that, if any broker-dealer subject to Rule 17a–3 (17 CFR 240.17a–3) is not making and keeping current the books and records specified therein, immediate telegraphic notice of that fact, specifying the books and records not made or kept current, would have to be given to the Commission and the self-regulatory organizations to which it belongs. Within 48 hours thereafter, the broker-dealer

would have to file a written report stating what steps have been and are being taken to correct the situation.

Fourth, the proposed rule would require a notice from any self-regulatory body which learned that a member firm had failed to give a notice or file a report required by the rule.

Section 17(a) of the Act authorizes the Commission, among other things, to prescribe rules and regulations for the maintenance and preservation of books and records and the filing of reports by broker-dealers. The section further provides that these records shall be subject at any time to reasonable periodic, special or other examinations by representatives of the Commission. Under Rule 17a-3(a)(11) (17 CFR 240.17a-3(a)(11)) broker-dealers are required to make a record in the form of trial balances and, based thereon, to compute their net capital pursuant to Rule 15c3-1 (17 CFR 240.15c3-1) or the applicable rule of one of certain specified national securities exchanges of which they are members, at least once a month.

Experience during the past 3 years has demonstrated that neither the Commission nor any self-regulatory body is receiving an adequate and timely flow of information on the financial and operational condition of broker-dealers. Accordingly, there is a need for a Commission rule which would impose upon firms (and, secondarily, upon the self-regulatory bodies themselves) a duty to report net capital and operational problems.

The most pressing situations of concern are firms which may be in violation of a net capital rule and firms whose books and records are not current (many of which also have capital problems). Inasmuch as it would be logistically impossible to expect the self-regulatory bodies to detect all violations promptly through inspections or through examination of periodic reports, a duty must be placed upon all firms to report immediately when they fall into net capital violation or cease maintaining their books and records on a current basis.

Firms whose financial condition has deteriorated to a point where they may be in danger of violating the net capital rule are also of serious concern to the Commission and the self-regulatory bodies. It has been generally accepted in the industry that a capital ratio in excess of 12:1 is a danger signal. Requiring a firm to report when its net capital ratio exceeds 1,200 percent will permit the regulatory agencies to spot problems at firms in time to take corrective action. In addition, this requirement will permit the collection on a current basis of information indicating the general financial condition of the industry to aid the regulatory bodies in making decisions involving financial considerations.

Once a firm crosses the 12:1 capital ratio threshold, it would appear advisable that it be monitored on a monthly basis until three months after its last computation showing a ratio in excess of 12:1.

For this purpose a new reporting form, "Form X-17A-11", has been devised for use under the proposed rule. Part I of the proposed form consists of the financial questionnaire which was developed by the NASD, with the Commission's assistance, as the result of the meetings which were held with the NASD and the major stock exchanges in October and November of 1969. Because the questionnaire was intended for routine use by all firms, it does not call for information about a number of items which are extremely important in the case of troubled firms. Therefore the items in that questionnaire have been supplemented by adding a Part II to the form. The second part asks for information about the items which have proven of significance to troubled firms in the past, e.g., stock record differences, aged receivables and projected capital withdrawals.

Although each firm must bear the primary responsibility for notifying the Commission and the appropriate self-regulatory bodies when it is in (or is approaching) financial or operational difficulties, it appears appropriate that a reporting responsibility also be placed upon the self-regulatory bodies themselves. Frequently, through error or otherwise, firms do not accurately compute and report their financial condition. Upon examination by the Commission, the NASD or an exchange, it may be determined that a firm is in violation of one or more Federal securities laws or rules of financial responsibility, etc., although the firm is claiming to be in compliance. For expeditious handling of the situation it appears appropriate that the self-regulatory bodies notify the Commission and each other when they ascertain that a broker's condition was such as to require a report under this rule, but that no such report was filed. The requirement that reports be made to all self-regulatory bodies should increase the cooperation and coordination among these organizations in the financial area.

I. The text of the proposed § 240.17a-11 of Chapter II of Title 17 of the Code of Federal Regulations, which section is being proposed pursuant to the Securities Exchange Act of 1934, and more particularly sections 17(a) and 23(a) thereof, is set forth below.

§ 240.17a-11 Supplemental current financial and operational reports to be made by certain exchange members, brokers and dealers.

(a) Every broker, dealer, or member of a national securities exchange or of a registered securities association, subject to § 240.15c3-1 or to a net capital rule of a national securities exchange or registered securities association, whose net capital at any time is less than the minimum required by any capital rule to which such person is subject, shall:

(1) Give telegraphic notice as set forth in paragraph (e) of this section that such person's net capital is less than is required by any such capital rule, identifying the applicable net capital rule or rules. The notice shall be given on the same day that such person's capital becomes less than required by any of the aforesaid rules to which such person is subject; and

(2) Within 24 hours thereafter file a report of his financial condition as of the date which required the giving of the notice in subparagraph (1) of this paragraph.

(b) If a computation made and recorded by a member, broker or dealer pursuant to the requirements of § 240.17a-3(a)(11) shows that his aggregate indebtedness is in excess of 1,200 per centum of his net capital, such person shall file a report on Form X-17A-11 [§ 249.621 of this chapter] within 15 calendar days after the end of the month for which such computation was required to be made and recorded, and within 15 calendar days after the end of each month thereafter until 3 successive months shall have elapsed during which his aggregate indebtedness does not exceed 1,200 per centum of his net capital.

(c) At any time when a member, broker or dealer subject to § 240.17a-3 fails to make and keep current the books and records specified therein, he shall immediately give telegraphic notice of such fact, specifying the books and records which have not been made or which are not current, and within 48 hours of the telegraphic notice file a report stating what steps have been and are being taken to correct the situation.

(d) Whenever any national securities exchange or national securities association learns that a member, broker, or dealer has failed to file a notice or file a report as required by paragraphs (a), (b), or (c) of this section, such organization shall immediately report such failure as provided in paragraph (e) of this section.

(e) Every notice and report required to be given or filed by this section shall be given to or filed with the principal office of the Commission in Washington, D.C., with the Regional Office of the Commission for the region in which the member, broker, or dealer has his or its principal place of business, and with each national securities exchange and registered securities association of which such person is a member.

II. Part 249 of Chapter II of Title 17 of the Code of Federal Regulations would be amended by adding thereunder a new § 249.621 to read as follows:

§ 249.621 Form X-17A-11, for report of information required of certain members, brokers, and dealers, pursuant to section 17 of the Act and § 240.17a-11 of this chapter.

(a) This form shall be filed, as indicated in paragraph (b) of this section, pursuant to § 240.17a-11 of this chapter, as a report of capital computation for each month in which aggregate indebtedness of persons described below exceeds 1,200 per centum of net capital, as computed pursuant to § 240.17a-3(a)(11) of this chapter, and for each month thereafter until 3 successive months have elapsed during which such indebtedness does not exceed 1,200 per centum of net capital, by each of the following:

(1) Every member of a national securities exchange who transacts a business in securities directly with other members of a national securities exchange;

(2) Every broker or dealer who transacts a business in securities through the medium of any member of a national securities exchange; and

(3) Every broker or dealer registered pursuant to section 15 of the Act, as amended.

(b) This report shall be filed within 15 calendar days after the end of each month for which it is required, in the following manner:

(1) One copy shall be filed at the principal office of the Securities and Exchange Commission, 500 North Capitol Street, Washington, DC 20549.

(2) One copy shall be filed with the Regional Office of the Securities and Exchange Commission for the region in which the member, broker, or dealer has his or its principal place of business; and

(3) One copy shall be filed at the principal office of each registered national securities exchange and each registered national securities association of which such member, broker, or dealer, is a member or is otherwise entitled to the exercise of any privilege of membership.

(c) Copies of Form X–17A–11 for the above purpose may be obtained from the principal office of the Commission or from any of its regional offices.

Copies of Form X–17A–11 are included in Release No. 34–9128 dated April 20, 1971, which release has been filed with the Office of the Federal Register. Copies of such form and release may be obtained upon request from the Securities and Exchange Commission, Washington, D.C. 20549.

All interested persons are invited to submit views and comments on the above proposal in writing to the Securities and Exchange Commission, Washington, D.C. 20549 on or before May 20, 1971. All such communications will be available for public inspection.

(Secs. 15(c)(3), 17(a), 23(a), 48 Stat. 895, 897, 901, secs. 3, 4, 8, 49 Stat. 1377, 1379, secs. 2, 5, 52 Stat. 1075, 1076, sec. 6, 78 Stat. 570, secs. 7(d), 9(f), 84 Stat. 1653, 1654, 15 U.S.C. 78o(c), 78r(a), 78w(a))

By the Commission, April 20, 1971.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71–5871 Filed 4–27–71;8:48 am]

[17 CFR Parts 240, 249]

[Release No. 34–9140]

QUARTERLY SECURITIES COUNTS BY CERTAIN EXCHANGE MEMBERS, BROKERS AND DEALERS

Notice of Proposed Rule Making

Notice is hereby given that the Securities and Exchange Commission has under consideration a proposal to adopt Rule 17a–13 (17 CFR 240.17a–13), amend Form X–17A–5 (17 CFR 249.617), and amend Rule 17a–3 (17 CFR 240.17a–3) under the Securities Exchange Act of 1934 (the Act).

One of a broker-dealer's major functions is that of moving funds from buyer to seller in exchange for securities. The movement of these funds and securities is monitored and directed by the books and records of the broker-dealers involved in the various transactions. To the extent that a firm's records do not accurately reflect the movement and location of funds and securities, the ability of that firm to operate efficiently and even its continued viability come into question. The insolvency of many broker-dealers in the past few years is attributable to a large extent to their loss of operational control. Once a firm's operations reach a certain level of errors, it is a Herculean task, requiring extraordinary sums of capital, to reverse the process and to resolve past errors so that the firm's present records accurately reflect its position.

That part of the broker-dealer's operations dealing with the movement and location of securities has, in the past, been subject only to the once-a-year check of the X–17A–5 audit. The accounting record for the location and movement of securities is the stock record. The annual audit may disclose differences between positions reflected in the stock record and the results of a physical count of securities and verification of securities positions outside the firm. Many accountants have advised and urged their clients to make regular periodic box counts, but this advice has not always been followed. Furthermore, some firms have failed to research and resolve promptly stock record differences. The proposed rule and rule amendments described herein would make a major contribution to investor protection by dealing with these shortcomings in the operations of brokerage firms.

Proposed Rule 17a–13 would apply to all members of national securities exchanges who do business with or for others than members of national securities exchanges, and to all brokers and dealers except broker-dealers who limit their business to the sale and redemption of securities of registered investment companies and those who solicit accounts for federally-insured savings and loan associations, promptly transmit all funds and securities and hold no customer funds and securities. The member, broker, or dealer must, once every calendar quarter: (1) Physically examine and count all securities held (this includes firm securities and customer securities); (2) verify all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, or otherwise subject to his control or direction but not in his physical possession. Where the securities are not in the firm's physical possession, verification of these open positions may require solicitation of a confirmation of the security position by the other party; (3) compare the results of the examination and verification with the firm's record; and, (4) post the unresolved differences to the firm's books and records within 7 business days. The examination, count, verification, and comparison conducted by the firm's auditors in connection with the firm's annual report of financial condition (Form X–17A–5) may be substituted for the firm's examination, count, verification, and comparison for the quarter in which the audit date falls. The quarterly examination, count, verification, and comparison are to be made no less than 2 nor more than 4 months apart. The proposal specifically allows cyclical counts. The examination, count, verification, and comparison are to be conducted or supervised by persons not normally responsible for handling securities or making the subject records.

One proposed amendment to Rule 17a–3, a new clause (a)(4)(F), would create a security difference account to which the unresolved long and short differences would have to be posted after each examination, count, verification and comparison, by date, showing the security, number and dollar value of long and short differences. All subsequent adjustments to the differences posted would also have to be posted to this account. The other proposed amendment to Rule 17a–3, a change in existing clause (a)(5), would require that the securities record which reflects all along and short securities positions also reflect the unresolved differences remaining from each of the proposed required quarterly examinations, counts, verifications and comparisons, and all subsequent adjustments thereto. It would also require the retention of the supporting documentation. The securities record, being the main accounting record for the location and movement of securities, should reflect these unresolved stock differences and the subsequent adjustments. Retention of the supporting documentation is necessary so that the auditors will have adequate documentation for their review required under the proposed amendments to the audit requirements of Form X–17A–5. (Rule 17a–4(a) (17 CFR 240.17a–4(a)) under the Act requires that the securities record be retained for not less than 6 years, the first 2 years in an easily accessible place.)

The final change made by the proposal would be to amend Form X–17A–5. Question 13 would be amended to require reporting of the unresolved differences remaining at the audit date from each examination, count, verification, and comparison as well as an indication of how many of the differences were resolved by market action. The audit requirements would be amended to require the accountant to review and comment on: (1) The procedures used to make the quarterly examination, count, verification and comparison, and posting; and (2) the procedures used to resolve the differences uncovered. The auditors would also have to give their opinion of

the significance and impact of such differences on the firm's financial condition and operating ability.

The New York and American Stock Exchanges adopted rules similar to the proposed rules in November and December 1970 (New York Stock Exchange Rules 440.21 and 440.24, and American Stock Exchange Rule 448). The Midwest Stock Exchange is also considering adoption of a similar rule. The New York and American Stock Exchange rules provide, in essence, that all member organizations carrying customer accounts must, within 4 months after their annual audit and within each 3 months thereafter until the next audit, physically count all securities on hand and compare with their records, account for all securities in Fail to Receive, Fail to Deliver, Stocks Loaned, Stocks Borrowed, Bank Loan Collateral, and Transfer by comparing open cage detail with appropriate control accounts, and confirm certain open cage transfers. The subject member firms must, within 7 business days after each count, post the unresolved long and short differences to a security difference account showing unresolved differences from each count, long and short, by security, amount and market value. The firm's auditors as part of the annual audit, in their confidential letter to the exchanges, are to review the procedures used to comply with the rule and comment on any material inadequacies.

The rule and amendments to rules under the Securities Exchange Act of 1934 proposed herein have a broader application and impose requirements more comprehensive than those contained in the exchanges' rules. Compliance with the proposed rule and amendments will automatically result in compliance by the subject member firms with the applicable rules of the New York and American Stock Exchanges.

Proposed Rule 17a–13 would establish a minimum standard of control over securities for all subject brokers and dealers. The proposal is not intended to discourage the practice of certain brokers and dealers who examine, count, verify, and compare their securities more frequently than once a calendar quarter. The Commission encourages all brokers and dealers to make such additional examinations, counts, verifications, and comparisons as good business practice would require, and as are necessary and appropriate to comply with the requirements from time to time of the self-regulatory organizations.

Commission action. The Commission proposes to amend Parts 240 and 249 of Chapter II of Title 17 of the Code of Federal Regulations by adopting a new § 240.17a–13 and by amending §§ 240.17a–3 and 249.617 as indicated below:

I. The text of proposed new § 240.17a–13 would read as follows:

§ 240.17a–13 Quarterly securities counts to be made by certain exchange members, brokers and dealers.

(a) This section shall apply to every member of a national securities exchange who transacts a business in securities directly with or for others than members of a national securities exchange, to every broker or dealer (other than a member) who transacts a business in securities through the medium of any member of a national securities exchange, and to every broker or dealer registered pursuant to section 15 of the Act; except that a broker or dealer meeting all of the following conditions shall be exempt from the provisions of this section:

(1) His dealer transactions (as principal for his own account) are limited to the purchase, sale and redemption of redeemable shares of registered investment companies; provided that a broker or dealer transacting business as a sole proprietor may also effect occasional transactions in other securities for his own account with or through another registered broker-dealer;

(2) His transactions as broker (agent) are limited to: (i) The sale and redemption of redeemable securities of registered investment companies; (ii) the solicitation of share accounts for savings and loan associations insured by an instrumentality of the United States; and (iii) the sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies; and

(3) He promptly transmits all funds and delivers all securities received in connection with his activities as a broker or dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers.

(b) Any member, broker or dealer who is subject to the provisions of this section shall at least once in each calendar quarter-year:

(1) Physically examine and count all securities held;

(2) Verify all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, and failed to deliver or otherwise subject to his control or direction but not in his physical possession;

(3) Compare the results of the count and verification with his records; and

(4) Record on the books and records of the member, broker or dealer all unresolved differences setting forth the security involved and date of comparison in a security count difference account no later than seven business days after the date of each security examination, count, and verification in accordance with the requirements provided in paragraph (c) of this section;

Provided however, That such procedures under this paragraph (b) need not be carried out by the member, broker, or dealer for the calendar quarter-year during which the date of his annual report of financial condition (pursuant to § 240.17a–5) falls. *And further provided,* That no examination, count, verification, and comparison for the purpose of this section shall be within 2 months of or more than 4 months following a prior examination, count, verification, and comparison made hereunder.

(c) The examination, count, verification, and comparison may be made either as of a date certain or on a cyclical basis covering the entire list of securities. In either case the recordation shall be effected within 7 business days subsequent to the examination, count, verification, and comparison of a particular security. In the event that an examination, count, verification, and comparison is made on a cyclical basis, it shall not extend over more than 1 calendar quarter-year, and no security shall be examined, counted, verified or compared for the purpose of this section less than 2 months or more than 4 months after a prior examination, count, verification, and comparison.

(d) The examination, count, verification and comparison shall be made or supervised by persons whose regular duties do not require them to have responsibility for the proper care and protection of the securities or the making or preservation of the subject records.

(e) The Commission may, upon written request, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any member, broker, or dealer who satisfies the Commission that it is not necessary in the public interest and for the protection of investors to subject the particular member, broker or dealer to certain or all of the provisions of this section, because of the special nature of his business, the safeguards he has established for the protection of customers' funds and securities, or such other reason as the Commission deems appropriate.

II. Paragraph (a) of § 240.17a–3 would be amended by adding a new subdivision (vi) under subparagraph (4), and by adding in subparagraph (5) immediately after the word "short" and preceding the language "and in all cases the name of designation of the account in which each position is carried." the following new language: "the unresolved differences (broad) arising from each examination, count, verification, and comparison, by date, pursuant to §§ 240.17a–13 and 240–17a–5 and the subsequent adjustments thereto together with all working papers, memoranda and other documents in connection therewith,". As so amended § 240.17a–3 would read as follows:

§ 240.17a–3 Records to be made by certain exchange members, brokers, and dealers.

(a) * * *

(4) Ledgers (or other records) reflecting the following:

* * * * *

(vi) All long and all short stock record differences arising from the examination, count, verification and comparison pursuant to sections 240.17a–3 and 240.17a–5 of this chapter (by date of examination, count, verification, and comparison showing, by security, the number and dollar value of long and short stock record differences).

(5) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in

safekeeping) carried by such member, broker, or dealer for his account or for the accounts of his customers or partners and showing the location of all securities long (and) the offsetting position to all securities short, the unresolved differences (broad) arising from each examination, count, verification and comparison, by date, pursuant to §§ 240.17a–13 and 240.17a–5 and the subsequent adjustments thereto together with all working papers, memoranda and other documents in connection therewith, and in all cases the name or designation of the account in which each position is carried.

* * * * *

III. Form X–17A–5 [§ 249.617 of this chapter] would be amended by: (1) Adding at the end of the first paragraph of question 13, preceding the language "and other accounts not specifically mentioned herein.", the following new language: "securities count difference account shown separately by date for every securities examination, count, verification and comparison pursuant to Rule 17a–13 [17 CFR 240.17a–13] or Rule 17a–5 [17 CFR 240.17a–5] under the Securities Exchange Act of 1934;"; (2) adding a new Note 2 immediately following Note 1; and (3) adding the following new language at the end of the paragraph entitled "Audit Requirements": "In addition, the accountant shall review and comment on: (a) The practices and procedures employed for the making of the securities examinations, counts, verifications, comparisons, and recordations of differences required by Rule 17a–13 [17 CFR 240.17a–13] and (b) the methods employed and the degree of success experienced in the resolution of differences uncovered by such counts. The accountant shall also express his opinion on the significance and impact, if any, of such differences on the financial condition and operations ability of the respondent.

As so amended, question 13 of Form X–17A–5 would read as follows:

Question 13—Other Accounts, etc. State details (ledger balances; valuations of securities and spot (cash) commodities; status of future commodity positions; and any other relevant information) of any accounts which have not been included in one of the answers to the above questions. These shall include: accounts for exchange memberships; furniture, fixtures, and other fixed assets; valuation reserves; funds provided or deposited by the respondent as margin in joint accounts; revenue stamps; dividends receivable, payable, and unclaimed; floor brokerage receivable and payable; commissions receivable and payable; advances to salesmen and other employees; commodity difference account; goodwill; organization expense; prepaid expenses and deferred charges; liability reserves; mortgage payable; other liabilities and deferred credits; market value of securities borrowed (other than for delivery against customers' sales) to the extent to which no equivalent value is paid or credited; security count difference account shown separately by date for every securities examination, count, verification, and comparison pursuant to Rule 17a–13 [17 CFR 240.17a–13] or Rule 17a–5 [17 CFR 240.17a–5] under the Securities Exchange Act of 1934; and other accounts not specifically mentioned herein.

NOTE: 1. Any liability reported under this question secured by collateral in any form shall be identified by reference to the related collateral.

2. The value of long stock record differences sold and short stock record differences bought-in by respondent to resolve security count differences resulting from the counts pursuant to Rule 17a–13 [17 CFR 240.17a–13] or Rule 17a–5 [17 CFR 240.17a–5] shall be set forth as to each security count difference account shown.

AUDIT REQUIREMENTS

The audit shall be made in accordance with generally accepted auditing standards and shall include a review of the accounting system, the internal accounting control and procedures for safeguarding securities including appropriate tests thereof for the period since the prior examination date. It shall include all procedures necessary under the circumstances to substantiate the assets and liabilities and securities and commodities positions as of the date of the responses to the financial questionnaire and to permit the expression of an opinion by the independent public accountant as to the financial condition of the respondent at that date. Based upon such audit, the accountant shall comment upon any material inadequacies found to exist in the accounting system, the internal accounting control and procedures for safeguarding securities, and shall indicate any corrective action taken or proposed. In addition, the accountant shall review and comment on: (a) The practices and procedures employed for the making of the securities examinations, counts, verifications, comparisons, and recordations of differences required by Rule 17a–13 [17 CFR 240.17a–13]; and (b) the methods employed and the degree of success experienced in the resolution of differences uncovered by such counts. The accountant shall also express his opinion on the significance and impact, if any, of such differences on the financial condition and operations ability of the respondent.

All interested persons are invited to submit their views and comments on these proposals in writing to the Securities and Exchange Commission, 500 North Capitol Street, Washington, DC 25049, on or before May 28, 1971. All such communications will be available for public inspection.

(Secs. 17(a), 23(a), 48 Stat. 897, 901, as amended, 49 Stat. 1379 secs. 4, 8, 52 Stat. 1076, sec. 5, 15 U.S.C. 78q, 78w)

By the Commission.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

APRIL 19, 1971.

[FR Doc.71–5872 Filed 4–27–71;8:48 am]

[17 CFR Part 249]

[Release No. 34–9126]

DISCLOSURE BY REGISTRANTS OF RECENT SALES OF UNREGISTERED SECURITIES IN CERTAIN ANNUAL AND QUARTERLY REPORTS

Notice of Proposed Rule Making

Notice is hereby given that the Securities and Exchange Commission has under consideration a proposed amendment to Item 6 of Form 10–K [17 CFR 249.310] and an expansion of Form 10–Q [17 CFR 249.308a] under the Securities Exchange Act of 1934. Form 10–K is a general form for annual reports by companies having securities registered pursuant to section 12 of the Act and companies having securities registered under the Securities Act of 1933 which are required to file reports pursuant to section 15(d) of the Securities Exchange Act of 1934. Form 10–Q is the general quarterly form filed by the above-mentioned companies.

It is proposed to include in these forms information covering recent transactions by the issuer in unregistered securities. The staff is continuously faced with requests of when such registered securities may be sold without registration, and it is felt that this information will be of material assistance in the interpretation of section 4(2) of the Securities Act of 1933 and in the administration of the securities laws by the staff and the Commission.

The proposed changes would require a statement of recent sales of unregistered securities by the registrant for the past fiscal year in the case of Form 10–K and the past fiscal quarter for Form 10–Q. Some of this information is already furnished by registrants with respect to equity securities in the Form 10–K, and by registrants under the Securities Act of 1933 in Form S–1 [17 CFR 239.11]. Information will now be requested for transactions in all unregistered securities debt as well as equity, within the stated period of time. It is also proposed that an EDP attachment for statistical purposes will be required to be furnished by the registrant as an Exhibit I with the reports on Forms 10–K and 10–Q.

NOTE: Copies of the proposed amendments of Forms 10–K and 10–Q have been filed as part of this document with the Office of the Federal Register. Additional copies are available upon request from the Securities and Exchange Commission, Washington, D.C. 20549.

All interested persons are invited to submit their views and comments on the proposed changes. An original and three copies of written statements of views and comments would be appreciated and should be submitted to Mrs. Rose F. Jaffin, Attorney, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549, on or before May 14, 1971. All such communications will be available for public inspection.

By the Commission, April 15, 1971.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71–5870 Filed 4–27–71;8:48 am]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 121]

SMALL BUSINESS SIZE STANDARDS

Proposed Increase in Definition of Small Custom Livestock Feed Yard for Purpose of Financial Assistance

Pursuant to authority contained in section 3 of the Small Business Act (15 U.S.C. 632), notice is hereby given that

the Small Business Administration proposes to define a small custom livestock feed yard as one which, together with its affiliates, has annual receipts for its preceding fiscal year not exceeding $2 million.

Specifically it is proposed to amend Part 121 of Chapter 1 of Title 13 of the Code of Federal Regulations by adding new § 121.3–10(h) to read as follows:

* * * * *

§ 121.3–10 Definition of small business for SBA loans.

(h) *Custom livestock feeding.* Any concern primarily engaged in custom livestock feeding is classified as small if its annual receipts do not exceed $2 million.

Interested parties may file with the Small Business Administration within 30 days of publication of the proposal in the FEDERAL REGISTER written statements of facts, opinions, or arguments concerning the proposal.

All correspondence shall be addressed to:

Marshall J. Parker,
Associate Administrator for Procurement & Management Assistance,
Small Business Administration,
1441 L Street NW.,
Washington, DC 20416.
Attn: Size Standards Staff.

Dated: April 21, 1971.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.71–5864 Filed 4–27–71;8:47 am]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1048]

[Ex Parte No. MC–37; Sub-No. 14(b)]

ATLANTA, GA., COMMERCIAL ZONE

Proposed Redefinition

APRIL 23, 1971.

Joint petitioners: DeKalb Chamber of Commerce and Stone Mountain Industrial Park Association. Petitioner's representatives: Robert C. Boozer and Robert W. Gerson, 1500 Candler Building, Atlanta, GA 30303.

By petition filed March 25, 1971, petitioners request the Commission to institute a proceeding for the purpose of specifically defining the limits of the zone adjacent to and commercially a part of Atlanta, Ga., which are now determined by applying the general population-mileage formula set forth in 49 CFR 1048.101.

Specially, petitioner requests that the Atlanta commercial zone be defined as follows: (a) The area which would result by application of the general formula promulgated in § 1048.101; and in addition thereto, (b) that area of De Kalb County, Ga., contiguous to the limits defined in (a) above, bounded by a line beginning at the intersection of LaVista Road (Georgia Highway 236) and the line determined under paragraph (a) of this section, thence northeasterly along LaVista Road to its intersection with Lawrenceville Highway (U.S. Highway 29), thence due south approximately 1,000 feet along an imaginary straight line to the railroad tract of the Seaboard Coast Line Railroad Co., thence easterly approximately 0.9 mile along said railroad track to its intersection with an imaginary straight line representing the extension of Litton Drive due north from its terminus at the Stone Mountain Parkway, thence due south along said imaginary straight line to the Stone Mountain Parkway, thence southeasterly along the Stone Mountain Parkway to its intersection with the Stone Mountain Bypass, thence southwesterly along the Stone Mountain Bypass to the railroad track of the Georgia Railroad, thence northwesterly along said railroad track to a point opposite the junction of East Ponce de Leon Avenue and Veal Mill Road, thence due west along an imaginary straight line (being the south line of land lots 138, 139, and 140 of the 18th District of De Kalb County) to its intersection with an imaginary straight line running due south from the intersection of the Stone Parkway and Idlewood Road, thence due north along said imaginary straight line to the Stone Mountain Parkway near its intersection with Idlewood Road), thence southwesterly along the Stone Mountain Parkway to its intersection with the limits defined in (a) above, thence along such limits to the point of beginning. No oral hearing is contemplated at this time, but anyone wishing to make representation in favor of, or against, the above-proposed specific definition of the limits of the Atlanta, Ga., commercial zone, may do so by the submission of written data, views, or arguments.

An original and seven copies of such data, views, or arguments shall be filed with the Commission on or before June 1, 1971. Each such statement shall include a statement of position with respect to the proposed revision, and a copy thereof should be served upon petitioner's representative.

Notice to the general public of the matter herein under consideration will be given by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection and by filing a copy thereof with the Director, Office of the Federal Register. NOTE: The purpose of this republication is to correctly set forth the proposed re-definition of the Commercial Zone. Previous notice appeared in the FEDERAL REGISTER of April 14, 1971. This notice also sets forth the correct Sub number assigned thereto, in lieu of Sub-No. 146.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71–5918 Filed 4–27–71;8:52 am]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Customs

[T.D. 71-109]

TUNA FISH

Tariff-Rate Quota

APRIL 20, 1971.

It has now been determined that 77,296,137 pounds of tuna may be entered for consumption or withdrawn from warehouse for consumption during the calendar year 1971 at the rate of 7 per centum ad valorem under item 112.30, Tariff Schedules of the United States. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 15 per centum ad valorem under item 112.34 of the tariff schedules.

Pursuant to the provisions of item 112.30, Tariff Schedules of the United States, the above quota is based on the United States pack of canned tuna during the calendar year 1970.

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

[FR Doc.71-5892 Filed 4-27-71;8:49 am]

Comptroller of the Currency

INSURED BANKS

Joint Call for Report of Condition

CROSS REFERENCE: For a document relating to a joint call for report of condition of insured banks, see F.R. Doc. 71-5893, Federal Deposit Insurance Corp., *infra.*

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

Notice of Proposed Withdrawal and Reservation of Lands

APRIL 20, 1971.

The Bureau of Land Management has filed an application, serial number AA-5597, for withdrawal of the lands described herein from all forms of appropriation under the public land laws, including the mining and mineral leasing laws. The land is desired as an addition to the Bureau of Land Management Fire Control Station and Administrative Site at Glennallen, Alaska. The acreage applied for is needed for future expansion of administrative facilities now located on the present station. An analysis of the Copper River Basin has shown the need for a more intensive resource management program for this resource area. Entry under the mining and mineral leasing laws would be incompatible with the contemplated use of the land.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, 555 Cordova Street, Anchorage, AK 99501.

The Department's regulation, 43 CFR 2351.4(c), provides that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether the lands will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant, a public hearing will be held at a convenient time and place, which will be announced.

The lands involved in the application are:

GLENNALLEN, ALASKA

That portion of the E½ of the SW¼, section 23, T. 4 N., R. 2 W., Copper River Meridian, lying south of the centerline of the Glenn Highway. Containing approximately 26.8 acres.

BURTON W. SILCOCK,
State Director.

[FR Doc.71-5880 Filed 4-27-71;8:48 am]

IDAHO

Notice of Filing of Plat of Survey

APRIL 20, 1971.

1. A plat of survey for the following described lands, accepted March 30, 1971, will be officially filed in the Land Office, Boise, Idaho, effective at 10 a.m. on April 27, 1971:

BOISE MERIDIAN, IDAHO

T. 14 S., R. 41 E., unsurveyed, Tract 37.

The tract described aggregates 199.71 acres.

2. The described tract is embraced in the Cache National Forest. The tract is included in Forest Exchange application I-3280, and is segregated in accordance with 43 CFR 2202.5 from appropriation under the public land laws, including the mining laws.

ORVAL G. HADLEY,
Land Office Manager, Boise, Idaho.

[FR Doc.71-5860 Filed 4-27-71;8:47 am]

ALASKA

Notice of Proposed Withdrawal and Reservation of Lands

APRIL 20, 1971.

The Bureau of Land Management has filed an application, serial number F-13652, for withdrawal of the lands described herein from all forms of appropriation under the public land laws, including the mining and mineral leasing laws. The land is required for use as the Bureau's administrative and communications site at Fairbanks. The lands applied for are needed as a buffer zone protecting radio communications from interference and a portion of the land will be used as a training ground and field exercise area in fire control procedures. Mining and mineral leasing activities would not be compatible with the proposed use of the land.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, 555 Cordova Street, Anchorage, AK 99501.

The Department's regulation, 43 CFR 2351.4(c), provides that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether the lands will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant, a public hearing will be held at a convenient time and place, which will be announced.

The lands involved in the application are:

FAIRBANKS MERIDIAN

T. 1 S., R. 2 E., (partially surveyed), sections 14, 15, 22, and 23 (unsurveyed) containing approximately 2,560 acres, and located about 14 miles east of Fairbanks.

BURTON W. SILCOCK,
State Director.

[FR Doc.71-5881 Filed 4-27-71;8:49 am]

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

ARIZONA ELECTRIC POWER COOPERATIVE, INC.

Draft Environmental Statement

Notice is hereby given that the Rural Electrification Administration has prepared a Draft Environmental Statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 in connection with a proposed revised use of funds previously loaned to the Arizona Electric Power Cooperative, Inc., of Benson, Ariz. This proposed use of loan funds includes financing for the construction of a 35.5-mile 230-kV transmission line between Saguaro and Three Points, Ariz.

Additional information may be secured on request submitted to Mr. James N. Myers, Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. Comments are particularly invited from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved from which comments have not been requested specifically.

Copies of the REA Draft Environmental Statement have been sent to various Federal agencies, the Arizona State Department of Economic Planning and Development, and the Tucson Urban Area Regional Reviewing Committee at Tucson, Ariz. The Draft Environmental Statement may be examined during regular business hours at the offices of REA, in the South Agriculture Building, 12th and Independence Avenue SW., Washington, DC, Room 4322, or at the offices of the Arizona Electric Power Cooperative, Inc., at Benson, Ariz., and at the Trico Electric Cooperative, Inc., 1144 W. Miracle Mile, Tucson, Ariz.

Comments concerning the environmental effects of the construction proposed should be addressed to Mr. Myers, at the address given above. Comments must be received within sixty (60) days of the date of publication of this notice (thirty (30) days in the case of agencies receiving a specific request for comment) to be considered in connection with the proposed use of loan funds.

The release of loan funds pursuant to this proposed use will be subject to, and contingent upon, REA's reaching satisfactory conclusions with respect to environmental effects and after compliance with Environmental Statement procedures required by the National Environmental Policy Act.

Dated at Washington, D.C., this 23d day of April 1971.

DAVID A. HAMIL,
Administrator,
Rural Electrification Administration.

[FR Doc.71-5936 Filed 4-27-71;8:54 am]

DEPARTMENT OF COMMERCE

Office of the Secretary

MASSACHUSETTS GENERAL HOSPITAL

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 70-00731-33-43780. Applicant: The Massachusetts General Hospital, Fruit Street, Boston, MA 02114. Article: Total Hip Joint Replacements, 13 each. Manufacturer: Protek Ltd., Switzerland.

Intended use of article: The article will be used for a study and scientific assessment of hip reconstructions, using total hip replacement in contrast to previously existing modes of reconstructive hip surgery.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The article is a combination of the Charnley apparatus which combines a metal feromal head prosthesis with a head diameter of 32 mm. and a high density polyethylene acetabulum which accepts only this sized head, and the Mueller apparatus which has a larger femoral head size and acetabular component made of metal but with three polyethylene bearing points in the cup. The combination of characteristics described above is pertinent to the purposes for which the article is intended to be used. We know of no equivalent prosthesis which is being manufactured in the United States which provides this combination of characteristics. We cite as a precedent the prior recommendation of the Department of Health, Education, and Welfare relating to Docket No. 70-00488-33-43780 which conforms to the captioned application.

The Department of Commerce knows of no instrument or apparatus of equivalent scientific value to the foreign article for the purposes for which such article is intended to be used, which is being manufactured in the United States.

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.71-5839 Filed 4-27-71;8:45 am]

MASSACHUSETTS GENERAL HOSPITAL

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 70-00792-33-43780. Applicant: The Massachusetts General Hospital, Fruit Street, Boston, MA 02114. Article: Total Hip Joint Replacements, 8 each. Manufacturer: Protek Ltd., Switzerland.

Intended use of article: The article will be used for a study and scientific assessment of hip reconstructions using total hip replacement in contrast to previously existing modes of reconstructive hip surgery.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The article is a combination of the Charnley apparatus which combines a metal femoral head prosthesis with a head diameter of 32 mm. and a high density polyethylene acetabulum which accepts only this sized head, and the Mueller apparatus which has a larger femoral head size and acetabular component made of metal but with three polyethylene bearing points in the cup. The combination of characteristics described above is pertinent to the purposes for which the article is intended to be used. We know of no equivalent prosthesis which is being manufactured in the United States which provides this combination of characteristics. We cite as a precedent the prior recommendation of the Department of Health, Education, and Welfare relating to Docket No. 70-00488-33-43780 which conforms to the captioned application.

The Department of Commerce knows of no instrument or apparatus of equivalent scientific value to the foreign article for the purposes for which such article is intended to be used, which is being manufactured in the United States.

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.71-5840 Filed 4-27-71;8:45 am]

MASSACHUSETTS GENERAL HOSPITAL

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 70–00826–33–43780. Applicant: Massachusetts General Hospital, Fruit Street, Boston, MA 02114. Article: Total hip joint replacements, 16 each. Manufacturer: Protek Ltd., Switzerland.

Intended use of article: The article will be used for a study and scientific assessment of hip reconstructions, using total hip replacement on contrast to previously existing modes of reconstructive hip surgery.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The article is a combination of the Charnley apparatus which combines a metal femoral head prosthesis with a head diameter of 32 mm. and a high density polyethylene acetabulum which accepts only this sized head, and the Mueller apparatus which has a larger femoral head size and acetabular component made of metal but with three polyethylene bearing points in the cup. The combination of characteristics described above is pertinent to the purposes for which the article is intended to be used. We know of no equivalent prosthesis which is being manufactured in the United States which provides this combination of characteristics. We cite as a precedent the prior recommendation of the Department of Health, Education, and Welfare relating to Docket No. 70–00488–33–43780 which conforms to the captioned application.

The Department of Commerce knows of no instrument or apparatus of equivalent scientific value to the foreign article for the purposes for which such article is intended to be used, which is being manufactured in the United States.

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.71–5841 Filed 4–27–71;8:45 am]

NORTH TEXAS STATE UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No.: 70–00592–01–77030. Applicant: North Texas State University, Denton, Tex. 76203. Article: NMR Spectrometer, Model PS–100 and accessories. Manufacturer: Japan Electron Optics Laboratory, Co., Ltd., Japan.

Intended use of article: The article will be used for studies of various chemical compounds especially organic and organometallic compounds containing hydrogen and carbon-13 atoms. The structures of and bonding within these compounds will be studied, particularly as they relate to the chemical reactivity of the compounds. For educational purposes, the article will be used in chemistry courses to train students in the most modern methods of chemistry and for their research.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (December 11, 1969).

Reasons: The foreign article provides a homo-heteronuclear spin decoupler. The most closely comparable domestic instrument, the Model XL100–15, manufactured by Varian Associates (Varian) specifies a homo-heteronuclear spin decoupler. This accessory was not, however, available at the time the foreign article was ordered (Varian letter dated August 5, 1970). We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated July 30, 1970, and the National Bureau of Standards (NBS) in its memorandum dated December 15, 1970, that the homo-heteronuclear spin decoupler is pertinent to the purposes for which the foreign article is intended to be used.

We, therefore, find that the Model XL100–15 was not of equivalent scientific value to the foreign article for those purposes for which the foreign article is intended to be used at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article for the purposes for which such article is intended to be used, which was being manufactured in the United States at the time the foreign article was ordered.

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.71–5842 Filed 4–27–71;8:45 am]

UNIVERSITY OF CALIFORNIA

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 70–00780–00–20900. Applicant: University of California, Lawrence Radiation Laboratory, 7000 East Avenue, Livermore, CA 94550. Article: Hydrogen Thyratron Tube, Model FX2508. Manufacturer: English Electric, Ltd., United Kingdom.

Intended use of article: The article will be used in research concerned with the development of a thermonuclear fusion power source. Energy from storage bank is switched to an accelerator through 520 parallel modulators, each of which uses thyratron as the main switch tube.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a maximum peak forward anode voltage of 32 kilovolts (kv.), a maximum peak anode current of 2,000 amperes (a.), a maximum anode current rate of rise 40,000 a. per microsecond (μsec.), a maximum anode delay of 0.2 μsec., and a maximum anode delay time drift of 0.025 μsec. We are advised by the National Bureau of Standards (NBS) in its memorandum dated November 30, 1970, that the characteristics of the foreign article described above are pertinent to the purposes for which the article is intended to be used. NBS further advises that it knows of no domestic instrument or apparatus which is capable of fulfilling the purposes for which the foreign article is intended to be used.

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.71–5843 Filed 4–27–71;8:45 am]

UNIVERSITY OF PITTSBURGH

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No.: 70-00777-01-11000. Applicant: University of Pittsburgh, Department of Chemistry, 4200 Fifth Avenue, Pittsburgh, PA 15213. Article: Gas chromatograph-mass spectrometer, Model LKB 9000. Manufacturer: LKB Produkter AB, Sweden.

Intended use of article: The article will be used for research on the synthesis and reactions of crowded benzenes; conformational analysis of peptides; studies in diazonium ion decompositions and organocopper chemistry; studies in the synthesis of antitumor natural products and steroids; and for studies in biotin activity. Students from all levels from undergraduate to post-doctoral fellows will use the instrument in chemistry courses and for their research.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a multiple ion detector accessory. We are advised by the National Bureau of Standards (NBS) in its memorandum dated November 5, 1970, that the availability of such accessory is pertinent to the applicant's purposes. NBS also advises us that none of the domestically manufactured gas chromatograph-mass spectrometer systems provide a multiple ion detector accessory. We, therefore, find that none of the domestic gas chromatograph-mass spectrometer systems is of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article for the purposes for which such article is intended to be used, which is being manufactured in the United States.

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.71-5844 Filed 4-27-71;8:45 am]

VIRGINIA POLYTECHNIC INSTITUTE

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No.: 70-00712-00-72000. Applicant: Virginia Polytechnic Institute, Blacksburg, Va. 24061. Article: Rheogoniometer components. Manufacturer: Sangamo Controls Ltd., United Kingdom.

Intended use of article: The article will be used for polyurethane gel studies to determine the steady shear, dynamic mechanical and transient (stress-relaxation and creep) properties. Educationally, the article will be used in three chemistry courses to illustrate the techniques of measuring the physical properties of high polymers.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article has the capability of measuring normal force, as a function of the rate of shear. This capability of the foreign article is pertinent to the purposes for which the article is intended to be used.

The Department of Commerce knows of no instrument or apparatus being manufactured in the United States, which provides the capability of measuring normal stress as a function of the rate of shear.

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.71-5845 Filed 4-27-71;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. FDC-D-267; NADA No. 8-962V]

PITMAN-MOORE, INC.

Pyrahistine With Phenylephrine; Order Withdrawing Approval of New Animal Drug Application

On February 18, 1971, there was published in the FEDERAL REGISTER (36 F.R. 3149) a notice of opportunity for hearing in which the Commissioner of Food and Drugs proposed to issue an order under section 512(e) of the Federal Food, Drug, and Cosmetic Act withdrawing approval of new animal drug application No. 8-962V for Pyrahistine with Phenylephrine (phenylephrine hydrochloride and methapyrilene hydrochloride), and all amendments and supplements thereto, on the ground that there is a lack of substantial evidence the drug has the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Pitman-Moore, Inc., Camp Hill Road, Fort Washington, PA 19034, holder of application No. 8-962V for Pyrahistine with Phenylephrine (phenylephrine hydrochloride and methapyrilene hydrochloride) waived opportunity for hearing on the proposed withdrawal by indicating in writing its intention not to avail itself of an opportunity for hearing.

The Commissioner of Food and Drugs, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 343-51; 21 U.S.C. 360b(e)) and under authority delegated to him (21 CFR 2.120), finds on the basis of new information before him with respect to said drug, evaluated together with the evidence available to him when the application was approved, that there is a lack of substantial evidence that the drug has the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing findings, approval of the new animal drug application No. 8-962V for Pyrahistine with Phenylephrine (phenylephrine hydrochloride and methapyrilene hydrochloride) and all amendments and supplements thereto is withdrawn, effective on the date of the signature of this document.

Dated: April 19, 1971.

SAM D. FINE,
Associate Commissioner
for Compliance.

[FR Doc.71-5854 Filed 4-27-71;8:46 am]

[Docket No. FDC-D-335; NADA Nos. 8-280V, 10-683V, and 34-009V]

E. R. SQUIBB & SONS, INC.

Vioform-Hydrocortisone Cream, Mycostatin Ointment, and Amnizol Soluble; Notice of Withdrawal of Approval of New Animal Drug Applications

In the FEDERAL REGISTER of September 4, 1970 (35 F.R. 14103, DESI 7779V), August 21, 1970 (35 F.R. 13403, DESI 10863V), and August 18, 1970 (35 F.R. 13161, DESI 34009V), the Commissioner of Food and Drugs announced the conclusions of the Food and Drug Administration and the National Academy of Sciences—National Research Council, Drug Efficacy Study Group, following evaluation by the Administration of reports received from the Academy on the following preparations manufactured by E. R. Squibb & Sons, Inc., Agricultural Research Center, Three Rivers, N.J. 08887:

1. Amnizole Soluble, NADA (new animal drug application) 8-280V, which was evaluated as effective for the prevention and control of blackhead in turkeys;

2. Mycostatin Ointment, NADA 10-683V, which was evaluated as probably not effective for the treatment of cutaneous fungus infections in animals; and

3. Vioform-Hydrocortisone Cream, NADA 34-009V, which was evaluated as probably effective as an anti-inflammatory agent and antiseptic for superficial abrasions, cuts, and wounds of dogs.

E. R. Squibb & Sons, Inc., responded by advising the Commissioner that said drugs have been deleted from their product line. They waive a hearing and request withdrawal of approval of the NADA's for said drugs.

Based on the grounds set forth in said announcements and on the company's response, the Commissioner concludes that approval of said NADA's should be withdrawn. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343–51; 21 U.S.C. 360b) and under authority delegated to the Commissioner (21 CFR 2.120), approval of NADA 8–280V, NADA 10–683V and NADA 34–009V, including all amendments and supplements thereto, is hereby withdrawn effective on the date of signature of this document.

Dated: April 20, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71–5855 Filed 4–27–71;8:46 am]

[Docket No. FDC–D–188; NADA No. 6–417V]

CIBA PHARMACEUTICAL CO.

Pyribenzamine; Notice of Withdrawal of Approval of New Animal Drug Application

A notice of opportunity for a hearing proposing to withdraw approval of the new animal drug application for Pyribenzamine (a cream containing 2 percent tripelennamine hydrochloride) was published in the FEDERAL REGISTER of August 25, 1970 (35 F.R. 13535).

CIBA Pharmaceutical Co., 556 Morris Avenue, Summit, NJ 07901, holder of NADA (new animal drug application) No. 6–417V for said drug, has responded indicating that they do not wish to avail themselves of the opportunity for a hearing regarding the withdrawal of approval for the cream form of the drug.

Based on the grounds set forth in said notice of opportunity for a hearing and the response to said notice, the Commissioner of Food and Drugs concludes that approval of NADA No. 6–417V, only insofar as it concerns the use of the drug in its cream formulation, should be withdrawn. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343–51; 21 U.S.C. 360b) and under authority delegated to the Commissioner (21 CFR 2.120), approval of NADA No. 6–417V, including all amendments and supplements thereto, only insofar as they relate to the use of Pyribenzamine (tripelennamine hydrochloride 2 percent cream), is hereby withdrawn effective on the date of signature of this document.

Dated: April 20, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc. 71–5856 Filed 4–27–71;8:46 am]

[Docket No. FDC–D–126; NADA No. 9–317V]

POUL–AN LABORATORIES, INC.

Rufis Super Bio-Concentrate; Notice of Withdrawal of Approval of New Animal Drug Application

A notice of opportunity for hearing proposing to withdraw approval of NADA (new animal drug application) 9–317V for Rufis Super Bio-Concentrate was published in the FEDERAL REGISTER of June 7, 1969 [34 F.R. 9096].

On June 16, 1969, Poul-An Laboratories, Inc., 207 Westport Road, Kansas City, MO 64111, holder of NADA 9–317V, requested a hearing; however, no scientific data was presented to support the request. On October 8, 1970, the firm was advised by letter of new requirements for requesting public hearings which had been published in the FEDERAL REGISTER of May 8, 1970 (35 F.R. 7250). Thirty days were provided for submission of an amended request which was to include the required summary of scientific evidence showing that a hearing was necessary. No response was received. On January 6, 1971, Poul-An Laboratories, Inc., requested an additional delay of 120–180 days; however, no information or data were submitted to support this request for additional time.

The Commissioner of Food and Drugs finds there is no genuine and substantial issue of fact which precludes the withdrawal of said new animal drug application. The request for an extension of time and the request for hearing are hereby denied.

New information before the Commissioner with respect to said drug was evaluated together with the evidence available to him when the application was approved. The Commissioner finds that these data fail to provide substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

On the basis of the grounds set forth, the Commissioner concludes that approval of said new animal drug application should be withdrawn. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343–51; 21 U.S.C. 360b) and under authority delegated to the Commissioner (21 CFR 2.120), approval of NADA 9–317V, including all amendments and supplements thereto, is withdrawn effective on the date of signature of this document.

Dated: April 20, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc. 71–5857 Filed 4–27–71;8:46 am]

[DESI 8656]

TOPICAL CORTICOSTEROIDS

Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following corticosteroid drugs for topical use:

1. Cordran Ointment 0.05 percent and Cordran Cream 0.05 percent, containing flurandrenolide; marketed by Eli Lilly and Co., Post Office Box 618, Indianapolis, Indiana 46206 (NDA 12–806).

2. Magnacort Ointment 0.5 percent, containing hydrocortamate hydrochloride: marketed by Chas. Pfizer and Co., Inc., 235 East 42d Street, New York, New York 10017 (NDA 10–554).

3. F–Cortef Acetate 0.1 percent Ointment, containing fludrocortisone acetate; marketed by The Upjohn Co., 7171 Portage Road, Kalamazoo, Michigan 49002 (NDA 9–588).

4. Topical Medrol Acetate 0.25 percent and 1.0 percent, containing methylprednisolone acetate; marketed by The Upjohn Company (NDA 12–421).

5. Cortef Acetate Ointment 1.0 percent and 2.5 percent, containing hydrocortisone acetate; marketed by The Upjohn Company (NDA 8–917).

6. Aristocort Topical Cream 0.1 percent and 0.5 percent, containing triamcinolone acetonide; marketed by Lederle Laboratories Division, American Cyanamid Co., Pearl River, New York 10965 (NDA 11–696 and NDA 12–604).

7. Synalar Cream 0.025 percent and 0.01 percent, containing fluocinolone acetonide; marketed by Syntex Laboratories, Inc., Stanford Industrial Park, Palo Alto, California 94304 (NDA 12–787).

8. Decadron Phosphate Topical Cream 0.1 percent, containing dexamethasone sodium phosphate; marketed by Merck Sharp and Dohme, Division of Merck and Co., Inc., West Point, Pennsylvania 19101 (NDA 11–983).

9. Meti-Derm Topical Cream 0.5 percent, containing prednisolone; marketed by Schering Corp., 60 Orange Street, Bloomfield, New Jersey 07003 (NDA 10–209).

10. Decadron Topical Aerosol, containing dexamethasone; marketed by Merck Sharp and Dohme, Division of Merck and Co., Inc. (NDA 12–731).

11. Oxylone Topical Cream 0.025 percent, containing fluorometholone; marketed by The Upjohn Co. (NDA 11–748).

12. Aristoderm Foam, containing triamcinolone acetonide; marketed by Lederle Laboratories, Division of American Cyanamid Co. (NDA 12–367).

13. Hydrocortone Topical Lotion 1.0 percent, containing hydrocortisone; marketed by Merck Sharp and Dohme, Division of Merck and Co., Inc. (NDA 9–281).

14. Aristocort Topical Ointment 0.1 percent, containing triamcinolone acetonide; marketed by Lederle Laboratories

Division, American Cyanamid Co. (NDA 11-741).

15. Hydrocortone Acetate Topical Ointment 1.0 percent and 2.5 percent, containing hydrocortisone acetate; marketed by Merck Sharp and Dohme, Division of Merck and Co., Inc. (NDA 8-656).

16. Hydrocortisone Ointment 1 percent, containing hydrocortisone; marketed by The S. E. Massengill Co., 527 Fifth Street, Bristol, Tennessee 37620 (NDA 10-616).

17. Kenalog Lotion 0.1 percent, containing triamcinolone acetonide; marketed by E. R. Squibb and Sons, Inc., 909 Third Avenue, New York, New York 10022 (NDA 11-602).

18. Kenalog Ointment 0.025 percent, containing triamcinolone acetonide; marketed by E. R. Squibb and Sons, Inc. (NDA 11-600).

19. Kenalog Cream 0.1 percent, containing triamcinolone acetonide; marketed by E. R. Squibb and Sons, Inc. (NDA 11-601).

20. Kenalog Spray, containing triamcinolone acetonide; marketed by E. R. Squibb and Sons, Inc. (NDA 12-104).

21. Cort-Dome Lotion ½ percent, 1 percent, and 2 percent, containing hydrocortisone; marketed by Dome Laboratories, Division of Miles Laboratories, Inc., 125 West End Avenue, New York, New York 10023 (NDA 9-895).

22. Cort-Dome Cream ½ percent, 1 percent, and 2 percent, containing hydrocortisone; marketed by Dome Laboratories, Division of Miles Laboratories Inc. (NDA 9-585).

23. Hydrocortisone Acetate Ointment 1.0 percent, containing hydrocortisone acetate; marketed by Bryant Pharmaceutical Corporation, 70 MacQuesten Parkway South, Mount Vernon, New York 10550 (NDA 10-199).

24. Cortril Ointment 1 percent and 2.5 percent, containing hydrocortisone; marketed by Chas. Pfizer and Co., Inc. (NDA 9-176).

The drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new-drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. A new-drug application is required from any person marketing such drugs without approval.

The Food and Drug Administration is prepared to approve new-drug applications and supplements to previously approved new drug applications under conditions described in this announcement.

A. *Effectiveness classification.* The Food and Drug Administration has considered the Academy's reports, as well as other available evidence, and concludes that the subject drugs are effective for the indications described in the labeling conditions which follow.

B. *Form of drug.* The corticosteroid preparations are in ointment, cream, lotion, aerosol spray, or other form suitable for topical administration.

C. *Labeling conditions.* 1. The labels bear the statement "Caution: Federal law prohibits dispensing without prescription."

2. The drugs are labeled to comply with all requirements of the Act and regulations. Their labeling bears adequate information for safe and effective use of the drugs and is in accord with the guidelines for uniform labeling published in the FEDERAL REGISTER of February 6, 1970. The "Indications" sections are as follows:

INDICATIONS

For topical application for symptomatic relief and adjunctive management of the following dermatoses: sunburn; atopic dermatitis; contact dermatitis, eczema of the hands and feet, including dyshidrosis and pompholyx; nummular eczema; neurodermatitis; lichen simplex chronicus; eczematous dermatitis; lichen planus; infantile eczema; psoriasis; seborrheic dermatitis; otitis externa; stasis dermatitis; insect bites; exfoliative dermatitis; acute actinic dermatitis; cheilitis; eczematized mycotic dermatitis; food eczema; neurotic excoriations; post anal surgery; pruritis with lichenification.

For products in a water miscible base add the following conditions for which such products are more suitable: anogenital pruritis; intertrigo; miliaria; and diaper rash.

Occlusive dressing therapy. Closed dressings applied over the drug may be indicated for adjunctive management of a number of particularly resistant chronic dermatoses. These include: psoriasis, chronic neurodermatitis, chronic eczematous dermatitis, lichen planus, lichen simplex chronicus, and granuloma annulare.

D. *Previously approve applications.* 1. Each holder of a "deemed approved" new-drug application (i.e., an application which became effective on the basis of safety prior to October 10, 1962) for such drug is requested to seek approval of the claims of effectiveness and bring the application into conformance by submitting supplements containing:

a. Revised labeling as needed to conform to the labeling conditions described herein for the drugs and complete current container labeling, unless recently submitted.

b. Updating information as needed to make the application current in regard to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of the new drug application form FD-356H to the extent described for abbreviated new-drug applications, § 130.4(f), published in the FEDERAL REGISTER April 24, 1970 (35 F.R. 6574). (One supplement may contain all the information described in this paragraph.)

2. Such supplements should be submitted within the following time periods after the date of publication of this notice in the FEDERAL REGISTER.

a. 60 days for revised labeling—the supplement should be submitted under the provisions of § 130.9 (d) and (e) of the new-drug regulations (21 CFR 130.9) which permit certain changes to be put into effect at the earliest possible time.

b. 60 days for updating information.

3. Marketing of the drug may continue until the supplemental applications submitted in accord with the preceding subparagraphs 1 and 2 are acted upon, provided that within 60 days after the date of this publication, the labeling of the preparation shipped within the jurisdiction of the Act is in accord with the labeling conditions described in this announcement.

E. *New applications.* 1. Any other person who distributes or intends to distribute such drug which is intended for the conditions of use for which it has been shown to be effective, as described under A above, should submit an abbreviated new-drug application meeting the conditions specified in § 130.4(f) (1) and (2), published in the FEDERAL REGISTER April 24, 1970 (35 F.R. 6574). Such applications should include proposed labeling which is in accord with the labeling conditions described herein.

2. Distribution of any such preparation currently on the market without an approved new-drug application may be continued provided that:

a. Within 60 days from the date of publication of this announcement in the FEDERAL REGISTER, the labeling of such preparation shipped within the jurisdiction of the Act is in accord with the labeling conditions described herein.

b. The manufacturer, packer, or distributor of such drug submits, within 60 days from the date of this publication, a new-drug application to the Food and Drug Administration.

c. The applicant submits within a reasonable time, additional information that may be required for the approval of the application as specified in a written communication from the Food and Drug Administration.

d. The application has not been ruled incomplete or unapprovable.

F. *Unapproved use or form of drug.* 1. If the article is labeled or advertised for use in any condition other than those provided for in this announcement, it may be regarded as an unapproved new drug subject to regulatory proceedings until such recommended use is approved in a new drug application or is otherwise in accord with this announcement.

2. If the article is proposed for marketing in another form or for a use other than the use provided for in this announcement, appropriate additional information as described in § 130.4 or § 130.9 of the regulations (21 CFR 130.4, 130.9) may be required, including results of animal and clinical tests intended to show whether the drug is safe and effective.

A copy of the NAS-NRC report has been furnished to each firm referred to above. Any other interested person may obtain a copy by request to the appropriate office named below.

Communications forwarded in response to this announcement should be identified with the reference number DESI 8656, directed to the attention of the following appropriate office, and addressed (unless otherwise specified) to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852:

Supplements (identify with NDA number): Office of Scientific Evaluation (BD–100), Bureau of Drugs.

Original abbreviated new-drug applications (identify as such): Drug Efficacy Study Implementation Project Office (BD–5), Bureau of Drugs.

All other communications regarding this announcement: Drug efficacy Study Implementation Project Office (BD–5), Bureau of Drugs.

Requests for NAS–NRC report: Press Relations Office (CE–200), Food and Drug Administration, 200 "C" Street SW., Washington, DC 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–53, as amended; 21 U.S.C. 352, 355) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated April 1, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71–5858 Filed 4–27–71;8:46 am]

[DESI 8867; Docket No. FDC–D–256; NDA 8–867, etc.]

RAUWOLFIA SERPENTINA AND RAUWOLFIA ALKALOIDS

Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following single-active ingredient drugs:

RAUWOLFIA ALKALOINS AND FRACTIONS

NDA No.	Name of drug	Applicant's name and address
	ALSEROXYLON PREPARATIONS	
8–867	Rauwiloid Tablets	Riker Laboratories, 19901 Nordhoff St., Northridge, CA 91326.
9–215	Rautensin Tablets	Dorsey Laboratories, U.S. 6 and Interstate 80, Lincoln, NE 68501.
	DESERPIDINE PREPARATIONS	
10–976	Harmonyl Tablets	Abbott Laboratories, 14th and Sheridan Rd., North Chicago, IL 60064.
	RAUWOLFIA SERPENTINA PREPARATIONS	
8–842	Raudixin Tablets	E. R. Squibb and Sons, Inc., 909 Third Avenue, New York, NY 10022.
9–108	Rauval Tablets	The Vale Chemical Co., Inc., 1201 Liberty St., Allentown, PA 18101.
9–150	Raulin Tablets	Key Pharmacal Co., 1252 Heistan Pl., Memphis, TN 38104.
9–159	Rauwolfia Serpentina	Nysco Laboratories, Inc., 34–24 Vernon Blvd., Long Island City, NY 11106.
9–204	Rauwistan Tablets	M. R. Thompson, Inc., 711 Fifth Avenue, New York, NY 10022.
9–241	Serfia Tablets	Westerfield Laboratories, Inc., 3941 Brotherton Rd., Cincinnati, OH 45209.
9–255	Wolfina Tablets	Westerfield Laboratories, Inc.
9–272	Evraserp Tablets	Evron Pharmaceutical Co., Inc., 7475 North Rogers Ave., Chicago, IL 60626.
9–273	Rauwolfia Serpentina Tablets	Richlyn Laboratories, Inc., 3725 Castor Ave., Philadelphia, PA 19124.
9–276	Hiwolfia Tablets	Bowman, Inc., 119 Schroyer Ave., SW., Canton, OH 44702.
9–277	Serpentin Tablets	Gold Leaf Pharmacal Co., Inc., 223 South Dean St., Englewood, NJ 07631.
9–278	Koglucoid Tablets	Panray Division, Ormont Drug & Chemical Co., Inc., 223 South Dean St., Englewood, NJ 07631
9–299	Hyperloid Tablets	Person & Covey, Inc., 236 South Verdugo Rd., Glendale, CA 91205.
9–345	Rauwolfia Serpentina Tablets	Meer Corp., 318 West 46th St., New York, NY 10036
9–398	do	Bryant Pharmaceutical Corp., 70 South MacQuesten Parkway, Mount Vernon, NY 10550.
9–419	Rauvitine Tablets	The Vitarine Co., Inc., 227–15 North Conduit Ave., Springfield Gardens, NY 11413.
9–443	Rauwolfia Serpentina Tablets	Direct Laboratories, 377 Genesse St., Buffalo, NY 14204.
9–447	do	Vitamix Pharmaceuticals, Inc., 2900 North 17th St., Philadelphia, PA 19132.
9–454	do	Tilden-Yates Laboratories, Inc., 328 Shrewsbury St., Worcester, MA 01604.
9–462	Rautotal Tablets	Philips Roxanne Laboratories, 330 Oak St., Columbus, OH 43216.
9–464	Rauwolfia Serpentina Tablets	American Pharmaceutical Co., 120 Bruckner Blvd., New York, NY 10454.
9–477	do	The C. M. Bundy Co., 329 Perry St., Cincinnati, OH 45202.
9–481	Hyserp Tablets	Moore Kirk Laboratories, Inc., East Woodstock, Conn. 06244.
9–490	Rauwolfia Serpentina Tablets	Rexall Drug & Chemical Co., 8480 Beverly Blvd., Los Angeles, CA 90048.
9–577	Rauja Tablets	Table Rock Laboratories, Inc., 812 Hampton Ave., Greenville, SC 29602.
9–668	Rauwolfia Serpentina Tablets	Strong Cobb Arner, Inc., 11700 Shaker Blvd., Cleveland, OH 44120.
9–725	do	Kirkman Laboratories, Inc., 934 Northeast 25th Ave., Portland, OR 97208.
9–912	Rauw-Tina Tablets	Walker Corp. & Co., Inc., Easthampton Pl. and North Collingwood Ave., Syracuse, NY 13201.
9–926	Rauserpin Tablets	Ferndale Laboratories, Inc., 780 West Eight Mile Rd., Ferndale, MI 48220.
10–050	Rauwolfia Serpentina Tablets	S. F. Durst & Co., Inc., 5317 North Third St., Philadelphia, PA 19120.
10–068	do	Shaw Pharmacal Co., 5239 Brown Ave., St. Louis, MO 63115.
10–170	Serfolia Tablets	Mallard Inc., 3021 Wabash, Detroit, MI 48216.
10–221	Rau-Ten Tablets	Schlicksup Drug Co., Inc., 420 Southwest Washington St., Peoria, IL 61602.
10–408	Ekans Tablets	Haag Inc., 1503 East Main St., Richmond, VA 23219.
10–409	Rauwolfia Serpentina Tablets	Halsey Drug Co., Inc., 1827 Pacific St., Brooklyn, NY 11233.
10–427	Rautina Tablets	Testagar & Co., Inc., 1354 West Lafayette, Detroit, MI 48226.
11–038	Rauwolfia Serpentina Tablets	Stanley Drug Products, Inc., 232 Southeast Oak St., Portland, OR 97208.
11–242	do	Bates Laboratories, Inc. 7475 North Rogers Ave., Chicago, IL 60626.
	RESCINNAMINE PREPARATIONS	
10–686	Moderil Tablets	Chas. Pfizer & Co., Inc., 235 East 42d St., New York, NY 10017.
10–686	Cinnaloid Tablets	Do.
10–887	Rescinnamine Tablets	Nysco Laboratories, Inc.
11–024	Cinatabs Tablets	Table Rock Laboratories, Inc.
11–053	Nyscaps Rescinnamine (Sustained release capsules).	Nysco Laboratories, Inc.
	RESERPINE PREPARATIONS	
9–115	Serpasil Elixir and Tablets	Ciba Pharmaceutical Company, 556 Morris Ave., Summit, NJ 07901.
9–347	Reserpoid Tablets	The Upjohn Co., 7171 Portage Rd., Kalamazoo, MI 49002.
9–357	Rau-Sed Tablets	E. R. Squibb & Sons, Inc.
9–376	Sandril Tablets and Elixir	Eli Lilly & Co., Box 618, Indianapolis, IN 46206.
9–391	Serpanray Tablets	Panray Division, Ormont Drug & Chemical Co., Inc.
9–434	Serpasil Injection	Ciba Pharmaceutical Co.
9–453	Serpate Tablets	The Vale Che nical Co., Inc.
9–463	Serfin Tablets	Parke, Davis & Co., Joseph Campau Ave. at the River, Detroit, MI 48232.
9–566	Reserpine Tablets	High Chemical Co., 1760 North Howard St., Philadelphia, PA 19122.
9–573	Reserpine Alkaloid Tablets	Nysco Laboratories, Inc.
9–596	Key-Serpine Tablets	Key Pharmacal Co.
9–623	Reserpine Tablets	American Pharmaceutical Co.
9–626	do	Vitamix Pharmaceuticals, Inc.
9–627	do	Richlyn Laboratories.
9–631	Hiserpia Tablets	Bowman, Inc.
9–632	Rauwoleaf Tablets	Gold Leaf Pharmacal Co., Inc.
9–635	Reserpine Tablets	Wyeth Laboratories, Inc., Post Office Box 8299, Philadelphia, Pa. 19101.
9–639	Raurine Tablets	Westerfield Laboratories, Inc.

NDA No.	Name of drug	Applicant's name and address
	RESERPINE PREPARATIONS—continued	
9-645	Reserpine Tablets	Bryant Phar naceutical Corp.
9-661	Alkarau Tablets	Ferndale Laboratories, Inc.
9-663	Reserpine Tablets	C. M. Bundy Co., 329 Perry St., Cincinnati, O I 45202.
9-667	do	Strong Cobb Arner, Inc.
9-680	Evraloid Tablets	Evron Pharmaceutical Co., Inc.
9-720	Reserpine Tablets	Wilden-Yates Laboratories, Inc.
9-726	Sertabs Tablets	Table Rock Laboratories, Inc.
9-749	Serpivite Tablets	The Vitarine Co., Inc.
9-775	Reserpine Tablets	Shaw Pharmacal Co.
9-758	do	Morton Pharmaceuticals, Inc.
9-765	C. P. Reserpine Tablets	Hance Bros. & White Co., 12th and Hamilton Sts., Philadelphia, PA 19123.
9-771	Reserpine Alkaloid Tablets	Direct Laboratories, Inc.
9-826	Reserpine Tablets	Mallinckrodt Chemical Works, 3600 North Second St., St. Louis, MO 63160.
9-838	Lemiserp Tablets	Lemmon Pharmacal Co., Temple Ave., Sellersville, PA 18960.
9-850	Reserpoid Elixir	The Upjohn Co.
9-859	Rausingle Tablets	Philips Roxanne Laboratories.
9-879	Sertina Tablets	Fellow-Testagar, 1354 West Lafayette, Detroit, MI 48226.
9-882	R-E-S Tablets	Cole Pharmacal Co., Inc., 3715 Laclede Ave., St. Louis, MO 63108.
9-960	Reserpine Tablets	Bowman, Mell & Co., 1334-38 Howard St., Harrisburg, PA 17105.
10-012	Sandril Injection	Eli Lilly Co.
10-038	Reserpine Prolongsules (Sustained release capsules).	Richlyn Laboratories, Inc.
10-045	Vio-Serpine Tablets	Rowell Laboratories, Inc., Baudette, Minn. 56623.
10-067	Eskaserp Spansules (Sustained release capsules).	Smith, Kline, and French Laboratories, 1500 Spring Garden St., Philadelphia, PA 19101.
10-165	Resine Tablets	Kirkman Laboratories, Inc.
10-182	Serpibite Injection	The Vitarine Co.
10-197	Repoid Tablets	Schlicksup Drug Co., Inc.
10-263	Reserpine Tablets	Norwood Laboratories, Inc., 1629 Washington Ave., St. Louis, MO 63103.
10-282	Reserpine Nyscaps (Sustained release capsules).	Nysco Laboratories, Inc.
10-360	Reserpine Tablets	Halsey Drug Co., Inc.
10-378	Resercen Tablets	The Central Pharmacal Co., 120-128 East Third St., Seymour, IN 47274.
10-430	Hypersine Tablets	Don Hall Laboratories, 1935 North Argyle St., Portland, OR 97217.
10-441	Reserpine Tablets	Stanley Drug Products, Inc.
10-552	Reserpine Injection	Vitamix Pharmaceuticals, Inc.
10-632	Serpena Tablets	Haag Inc., 1503 East Main St., Richmond, VA 23219.
10-678	Reserpine Tablets	Mallard, Inc.
10-751	do	Horton & Converse, 621 West Pico Blvd., Los Angeles, CA 90015.
10-883	Serpanray Injection	Panray Division, Ormont Drug & Chemical Co., Inc.
10-974	Reserpine Tablets	Bates Laboratories, Inc.
11-554	do	Rexall Drug and Chemical Co.
	SYROSINGOPINE PREPARATIONS	
11-365	Singoserp Tablets	Ciba Pharmaceutical Co.

The drugs are regarded as new drugs (21 U.S.C. 321(p)). The effectiveness classification and marketing status are described below.

I. ALSEROXYLON; RAUWOLFIA SERPENTINA; RESCINNAMINE (IN NON-SUSTAINED RELEASE FORM); ORAL RESERPINE (IN NON-SUSTAINED RELEASE FORMS); PARENTERAL RESERPINE.

Supplemental new-drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. A new-drug application is required from any person marketing such drugs without approval.

The Food and Drug Administration is prepared to approve new-drug applications and supplements to new-drug applications under conditions described in this announcement.

A. *Effectiveness classification.* The Food and Drug Administration has considered the Academy's reports, as well as other available evidence, and concludes that:

1. Alseroxylon is:

a. Effective for the treatment of mild essential hypertension alone or as adjunctive therapy with other antihypertensive agents in the more severe forms of hypertension.

b. Possibly effective as an antianxiety agent for use in the hypertensive nervous patient and in patients with angina pectoris.

c. Lacking substantial evidence of effectiveness for relief of emotional disturbances other than endogenous depression.

2. Rauwolfia serpentina is:

a. Effective for treatment of mild essential hypertension; as adjunctive therapy with other antihypertensive agents in the more severe forms of hypertension; for relief of symptoms in agitated psychotic states, e.g. schizophrenia—primarily in those individuals unable to tolerate phenothiazine derivatives or those who also require antihypertensive medication.

b. Possibly effective as a tranquilizing agent in the management of anxiety and tension states associated with tachycardia, palpitations and angina pectoris; in conjunction with more potent hypotensive agents for the management of hypertension associated with toxemia of pregnancy.

c. Lacking substantial evidence of effectiveness for the treatment of many somatic conditions having emotional overlay, such as certain types of dermatitis, chronic insomnia, enuresis, menopausal symptoms, behavioral disorders, hypertonic and/or irritable children, or as an accompaniment to somatic or compulsive disorders; and for menopausal syndrome and various menstrual molimina including premenstrual tension and dysmenorrhea.

3. Rescinnamine (in nonsustained release form) is:

a. Effective for treatment of mild essential hypertension.

b. Probably effective as an adjunct with other antihypertensive agents in the treatment of more severe forms of hypertension.

c. Possibly effective as an antianxiety agent; for tranquilizing and calming effects, generally without hypnosis; for conditions in which barbiturates have been commonly prescribed, such as anxiety, tension, nervousness; for management of patients with psychiatric disorders such as schizophrenia; for tachycardia and palpitations; as initial therapy for more severe forms of hypertension; and for angina pectoris.

d. Lacking substantial evidence of effectiveness for treatment of depression.

4. Oral reserpine (in nonsustained release form) is:

a. Effective in the treatment of mild essential hypertension; as adjunctive therapy with other antihypertensive agents in the more severe forms of hypertension; for the relief of symptoms in agitated psychotic states, e.g., schizophrenia—primarily in those individuals unable to tolerate phenothiazine derivatives or those who also require antihypertensive medication.

b. Possibly effective as an antianxiety agent in chronic anxiety, tension, mild anxiety states, and management of anxiety and tension associated with neurodermatitis and other dermatoses; as a tranquilizer for psychotherapy in paranoid and manic states or as adjunctive therapy for the treatment of various psychoneuroses, nervous conditions and hyperemotionalism; for tension headache; for menopausal symptoms; for general paresis; for hypertension of toxemia; tachycardia and palpitations; for conditions in which barbiturates have been commonly prescribed, such as anxiety, tension, nervousness; and for angina pectoris.

c. Lacking substantial evidence of effectiveness for treatment of many somatic conditions having emotional overlay such as tension headache, dermatitis, alcoholism, chronic insomnia, menopausal symptoms, behavioral problems of children, convulsive disorders in which adequate anticonvulsive control fails to allay irritability and hyperactivity; for a calming effect and a sense of well-being in anxiety, tension, hyperemotionalism, stress, and in those disorders associated with these conditions, such as alcoholism, gynecologic or dermatologic disturbances and old age; as a possible substitute for electroconvulsive therapy in psychiatric conditions such as schizophrenia, paranoid and manic states; for sedation; for menopausal syndrome and various menstrual molimina including premenstrual tension, and dysmenorrhea; for the treatment of insomnia; for improved behavior patterns; and for use in depression.

5. Parenteral reserpine is:

a. Effective for treatment of hypertensive emergencies, such as acute hypertensive encephalopathy, in which it is desired to reduce the blood pressure promptly; for only initiating treatment in psychiatric conditions in those patients unable to accept oral medication or to control symptoms of extreme agitation.

b. Possibly effective for treatment of psychiatric conditions such as paranoia, manic states, and the manic phase of manic depressive psychosis; for the treatment of tachycardia; and for the treatment of anxiety and tension.

c. Lacking substantial evidence of effectiveness for treatment of many somatic conditions having emotional overlay such as tension headache, dermatitis, alcoholism, chronic insomnia, menopausal symptoms, behavioral problems of children, convulsive disorders in which adequate anticonvulsive control fails to allay irritability and hyperactivity; for a calming effect and a sense of well-being in anxiety, tension, hyperemotionalism, stress, and in those disorders associated with these conditions, such as alcoholism, gynecologic or dermatologic disturbances and old age; as a possible substitute for electroconvulsive therapy in phychiatric conditions such as schizophrenia, paranoid, and manic states; for sedation; for menopausal syndrome and various menstrual molimina including premenstrual tension and dysmenorrhea; for the treatment of insomnia; for improved behavior patterns; and for use in depression.

B. *Form of drug.* 1. Alseroxylon, rauwolfia, and rescinnamine are in tablet or capsule form suitable for oral administration.

2. Reserpine is in tablet, capsule, elixir form suitable for oral administration, or in sterile aqueous solution form suitable for parenteral administration.

C. *Labeling conditions.* 1. The label bears the statement "Caution: Federal law prohibits dispensing without prescription."

2. The drug is labeled to comply with all requirements of the Act and regulations promulgated thereunder, and those parts of its labeling indicated below are substantially as follows: (Optional additional information, applicable to the drug, may be proposed under other appropriate paragraph headings and should follow the information set forth below.)

ALSEROXYLON

DESCRIPTION

(Descriptive information to be included by the manufacturer or distributor should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation).

ACTION

Alseroxylon probably produces its antihypertensive effects through depletion of tiisue stores of catecholamines (epinephrine and norepinephrine) from peripheral sites. By contrast, its sedative and tranquilizing properties are thought to be related to depletion of 5-hydroxytryptamine from the brain.

Alseroxylon is characterized by slow onset of action and sustained effect. Both its cardiovascular and central nervous system effects may persist following withdrawal of the drug.

INDICATIONS

Indicated in the treatment of mild essential hypertension alone or as adjunctive therapy with other antihypertensive agents in the more severe forms of hypertension.

CONTRAINDICATIONS

Do not use in patients with known hypersensitivity, mental depression especially with suicidal tendencies, active peptic ulcer, and ulcerative colitis. It is also contraindicated in patients receiving electroconvulsive therapy.

WARNINGS

Extreme caution should be exercised in treating patients with a history of mental depression. Discontinue the drug at the first sign of despondency, early-morning insomnia, loss of appetite, impotence, or self-deprecation. Drug-induced depression may persist for several months after drug withdrawal and may be severe enough to result in suicide.

Usage in pregnancy: The safety of alseroxylon for use during pregnancy or lactation has not been established; therefore, the drug should be used in pregnant patients or in women of child-bearing potential only when, in the judgment of the physician, its use is deemed essential to the welfare of the patient. Increased respiratory secretions, nasal congestion, cyanosis, and anorexia may occur in infants born to rauwolfia alkaloid-treated mothers, since this preparation is known to cross the placental barrier, appearing in cord blood and breast milk.

PRECAUTIONS

Because rauwolfia preparations increase gastrointestinal motility and secretion, this drug should be used cautiously in patients with a history of peptic ulcer, ulcerative colitis, or gallstones, where biliary colic may be precipitated.

Caution should be exercised when treating hypertensive patients with renal insufficiency since they adjust poorly to lowered blood pressure levels.

Use alseroxylon cautiously with digitalis and quinidine since cardiac arrhythmias have occurred with rauwolfia preparations.

Preoperative withdrawal of rauwolfia derivatives does not assure that circulatory instability will not occur. It is important that the anesthesiologist be aware of the patient's drug intake and consider this in the overall management, since hypotension has occurred in patients receiving rauwolfia preparations. Anticholinergic and/or adrenergic drugs (metaraminol, norepinephrine) have been employed to treat adverse vagocirculatory effects.

ADVERSE REACTIONS

Rauwolfia preparations have caused gastrointestinal reactions including hypersecretion, nausea and vomiting, anorexia, and diarrhea; cardiovascular reactions including anginalike symptoms, arrhythmias particularly when used concurrently with digitalis or quinidine, and bradycardia; and central nervous system reactions including drowsiness, depression, nervousness, paradoxical anxiety, nightmares, rare parkinsonian syndrome, C.N.S. sensitization manifested by dull sensorium, deafness, glaucoma, uveitis, and optic atrophy. Nasal congestion is a frequent complaint, and pruritus, rash, dryness of mouth, dizziness, headache, dyspnea, purpura, impotence or decreased libido, dysuria, muscular aches, conjunctival injection, and weight gain have been reported. Extrapyramidal tract symptoms have also occurred. These reactions are usually reversible and disappear when the drug is discontinued.

Water retention with edema in patients with hypertensive vascular disease may occur rarely, but the condition generally clears with cessation of therapy, or with the administration of a diuretic agent.

DOSAGE AND ADMINISTRATION

For adults, the average initial dose is 2 to 4 mg. orally, daily. The usual maintenance dose is 2 mg. daily. Higher doses should be used cautiously because serious mental depression and other side effects may be considerably increased. (Orally, 1 mg. is approximately equivalent to 0.2 mg. of reserpine.)

Concomitant use of alseroxylon and ganglionic blocking agents, guanethidine, veratrum, hydralazine, methyldopa, chlorthalidone, or thiazides necessitates careful titration of dosage with each agent.

RAUWOLFIA SERPENTINA

DESCRIPTION

(Descriptive information to be included by the manufacturer or distributor should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation).

ACTION

Rauwolfia serpentina probably produces its antihypertensive effects through depletion of tissue stores of catecholamines (epinephrine and norepinephrine) from peripheral sites. By contrast, its sedative and tranquilizing properties are thought to be related to depletion of 5-hydroxytryptamine from the brain.

Rauwolfia serpentina is characterized by slow onset of action and sustained effect. Both its cardiovascular and central nervous system effects may persist following withdrawal of the drug.

INDICATIONS

Indicated in the treatment of mild essential hypertension. It is also useful as adjunctive therapy with other antihypertensive agents in the more severe forms of hypertension.

For the relief of symptoms in agitated psychotic states, e.g., schizophrenia—primarily in those individuals unable to tolerate phenothiazine derivatives or those who also require antihypertensive medication.

CONTRAINDICATIONS

Do not use in patients with known hypersensitivity, mental depression especially with suicidal tendencies, active peptic ulcer, and ulcerative colitis. It is also contraindicated in patients receiving electroconvulsive therapy.

WARNINGS

Extreme caution should be exercised in treating patients with a history of mental depression. Discontinue the drug at first sign of despondency, early morning insomnia, loss of appetite, impotence, or self-deprecation. Drug-induced depression may persist for several months after drug withdrawal and may be severe enough to result in suicide.

Usage in pregnancy: The safety of rauwolfia serpentina for use during pregnancy or lactation has not been established; therefore, the drug should be used in pregnant patients or in women of child-bearing potential only when, in the judgment of the physician, its use is deemed essential to the welfare of the patient. Increased respiratory secretions, nasal congestion, cyanosis, and anorexia may occur in infants born to

rauwolfia-treated mothers since this preparation is known to cross the placental barrier, appearing in cord blood and breast milk.

PRECAUTIONS

Because rauwolfia preparations increase gastrointestinal motility and secretion, this drug should be used cautiously in patients with a history of peptic ulcer, ulcerative colitis, or gallstones, where biliary colic may be precipitated.

Caution should be exercised when treating hypertensive patients with renal insufficiency since they adjust poorly to lowered blood pressure levels.

Use rauwolfia serpentina cautiously with digitalis and quinidine since cardiac arrhythmias have occurred with rauwolfia preparations.

Preoperative withdrawal of rauwolfia serpentina does not assure that circulatory instability will not occur. It is important that the anesthesiologist be aware of the patient's drug intake and consider this is the overall management, since hypotension has occurred in patients receiving rauwolfia preparations. Anticholinergic and/or adrenergic drugs (metaraminol, norepinephrine) have been employed to treat adverse vagocirculatory effects.

ADVERSE REACTIONS

Rauwolfia preparations have caused gastrointestinal reactions including hypersecretion, nausea and vomiting, anorexia, and diarrhea; cardiovascular reactions including angina-like symptoms, arrhythmias particularly when used concurrently with digitalis or quinidine; and bradycardia; and central nervous system reactions including drowsiness, depression, nervousness, paradoxical anxiety, nightmares, rare parkinsonian syndrome, C.N.S. sensitization manifested by dull sensorium, deafness, glaucoma, ureitis, and optic atrophy. Nasal congestion is a frequent complaint, and pruritus, rash, dryness of mouth, dizziness, headache, dyspnea, purpura, impotence or decreased libido, dysuria, muscular aches, conjunctival injection, and weight gain have been reported. Extrapyramidal tract symptoms have also occurred. These reactions are usually reversible and disappear when the drug is discontinued.

Water retention with edema in patients with hypertensive vascular disease may occur rarely, but the condition generally clears with cessation of therapy, or with the administration of a diuretic agent.

DOSAGE AND ADMINISTRATION

For adults the average dose is 200 to 400 mg. orally daily given in divided doses, morning and evening. Higher doses should be used cautiously, because serious mental depression and other side effects may be considerably increased. (Orally, 200 to 300 mg. of powdered whole root is equivalent to 0.5 mg. of reserpine). Maintenance doses may vary from 50 to 300 mg. per day, given as a single dose or as two divided doses.

Concomitant use of rauwolfia serpentina and ganglionic blocking agents, guanethidine, veratrum, hydralazine, methyldopa, chlorthalidone, or thiazides necessitates careful titration of dosage with each agent.

RESCINNAMINE

DESCRIPTION

(Descriptive information to be included by the manufacturer or distributor should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation).

ACTIONS

Rescinnamine probably produces its antihypertensive effects through depletion of tissue stores of catecholamines (epinephrine and norepinephrine) from peripheral sites. By contrast, its sedative and tranquilizing properties are thought to be related to depletion of 5-hydroxytryptamine from the brain.

Rescinnamine is characterized by slow onset of action and sustained effect. Both its cardiovascular and central nervous system effects may persist following withdrawal of the drug.

INDICATIONS

Indicated in the treatment of mild essential hypertension. The drug is also probably effective as an adjunct with other antihypertensive agents in the more severe forms of hypertension.

CONTRAINDICATIONS

Do not use in patients with known hypertensivity, mental depression especially with suicidal tendencies, active peptic ulcer, and ulcerative colitis. It is also contraindicated in patients receiving electroconvulsive therapy.

WARNINGS

Extreme caution should be exercised in treating patients with a history of mental depression. Discontinue the drug at the first sign of despondency, early morning insomnia, loss of appetite, impotence, or self-depreciation. Drug-induced depression may persist for several months after drug withdrawal and may be severe enough to result in suicide.

Usage in pregnancy: The safety of rescinnamine for use during pregnancy or lactation has not been established; therefore, the drug should be used in pregnant patients or in women of child-bearing potential only when, in the judgment of the physician, its use is deemed essential to the welfare of the patient. Increased respiratory secretions, nasal congestion, cyanosis, and anorexia may occur in infants born to rescinnamine-treated mothers since this preparation is known to cross the placental barrier, appearing in cord blood and breast milk.

PRECAUTIONS

Because rauwolfia preparations increase gastrointestinal motility and secretion, this drug should be used cautiously in patients with a history of peptic ulcer, ulcerative colitis, or gallstones, where biliary colic may be precipitated.

Caution should be exercised when treating hypertensive patients with renal insufficiency since they adjust poorly to lowered blood pressure levels.

Use rescinnamine cautiously with digitalis and quinidine since cardiac arrhythmias have occurred with rauwolfia preparations.

Preoperative withdrawal of rescinnamine does not assure that circulatory instability will not occur. It is important that the anesthesiologist be aware of the patient's drug intake and consider this in the overall management, since hypotension has occurred in patients receiving rauwolfia preparations. Anticholinergic and/or adrenergic drugs (metaraminol, norepinephrine) have been employed to treat adverse vagocirculatory effects.

ADVERSE REACTIONS

Rauwolfia preparations have caused gastrointestinal reactions including hypersecretion, nausea and vomiting, anorexia, and diarrhea; cardiovascular reactions including angina-like symptoms, arrhythmias particularly when used concurrently with digitalis or quinidine, and bradycardia; and central nervous system reactions including drowsiness, depression, nervousness, paradoxical anxiety, nightmares, rare parkinsonian syndrome, C.N.S. sensitization manifested by dull sensorium, deafness, glaucoma, uveitis, and optic atrophy. Nasal congestion is a frequent complaint, and pruritus, rash, dryness of mouth, dizziness, headache, dyspnea, purpura, impotence or decreased libido, dysuria, muscular aches, conjunctival injection, and weight gain have been reported. Extrapyramidal tract symptoms have also occurred. These reactions are usually reversible and disappear when the drug is discontinued.

Water retention with edema in patients with hypertensive vascular disease may occur rarely, but the condition generally clears with cessation of therapy, or with the administration of a diuretic agent.

DOSAGE AND ADMINISTRATION

For adults the average dose is 0.5 mg. orally, twice daily. Increase dosage gradually, if necessary. Maintenance doses may vary from 0.25 mg. to 0.5 mg. daily. Higher doses should be used cautiously, because serious mental depression and other side effects may be increased considerably.

Concomitant use of rescinnamine and ganglionic blocking agents, quanethidine, veratrum, hydralazine, methyldopa, chlorthalidone, or thiazides necessitates careful titration of dosage with each agent.

DESCRIPTION

(Descriptive information to be included by the manufacturer or distributor should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation.)

ACTIONS

Reserpine probably produces its antihypertensive effects through depletion of tissue stores of catecholamines (epinephrine and norepinephrine) from peripheral sites. By contrast, its sedative and tranquilizing properties are thought to be related by depletion of 5-hydroxytryptamine from the brain.

Reserpine is characterized by slow onset of action and sustained effect. Both its cardiovascular and central nervous system effects may persist following withdrawal of the drug.

INDICATIONS

Oral reserpine: Indicated in the treatment of mild essential hypertension. It is also useful as adjunctive therapy with other antihypertensive agents in the more severe forms of hypertension.

For the relief of symptoms in agitated psychotic states, e.g., schizophrenia—primarily in those individuals unable to tolerate phenothiazine derivatives or those who also require antihypertensive medication.

Parenteral reserpine: The parenteral route is indicated in the treatment of hypertensive emergencies, such as acute hypertensive encephalopathy, in which it is desired to reduce the blood pressure promptly.

The parenteral route has been used in psychiatric conditions only to initiate treatment in those patients unable to accept oral medication or to control symptoms of extreme agitation.

CONTRAINDICATIONS

Do not use in patients with known hypersensitivity, mental depression especially with suicidal tendencies, active peptic ulcer, and ulcerative colitis. It is also contraindicated in patients receiving electroconvulsive therapy.

WARNINGS

Extreme caution should be exercised in treating patients with a history of mental

depression. Discontinue the drug at the first sign of despondency, early morning insomnia, loss of appetite, impotence, or self-deprecation. Drug-induced depression may persist for several months after drug withdrawal and may be severe enough to result in suicide.

Usage in pregnancy: The safety of reserpine for use during pregnancy or lactation has not been established; therefore, the drug should be used in pregnant patients or in women of child-bearing potential only, when, in the judgment of the physician, its use is deemed essential to the welfare of the patient. Increased respiratory secretions, nasal congestion, cyanosis, and anorexia may occur in infants born to reserpine-treated mothers since the preparation is known to cross the placental barrier, appearing in cord blood and breast milk.

PRECAUTIONS

Because rauwolfia preparations increase gastrointestinal motility and secretion, this drug should be used cautiously in patients with a history of peptic ulcer, ulcerative colitis, or gallstones, where biliary colic may be precipitated.

Caution should be exercised when treating hypertensive patients with renal insufficiency since they adjust poorly to lowered blood pressure levels.

Use reserpine cautiously with digitalis and quinidine since cardiac arrhythmias have occurred with rauwolfia preparations.

Preoperative withdrawal of reserpine does not assure that circulatory instability will not occur. It is important that the anesthesiologist be aware of the patient's drug intake and consider this in the overall management, since hypotension has occurred in patients receiving rauwolfia preparations. Anticholinergic and/or adrenergic drugs (metaraminol, norepinephrine) have been employed to treat adverse vagocirculatory effects.

ADVERSE REACTIONS

Rauwolfia preparations have caused gastrointestinal reactions including hypersecretion, nausea and vomiting, anorexia, and diarrhea; cardiovascular reactions including anginalike symptoms, arrhythmias particularly when used concurrently with digitalis or quinidine, and bradycardia; and central nervous system reactions including drowsiness, depression, nervousness, paradoxical anxiety, nightmares, rare parkinsonian syndrome, C.N.S. sensitization manifested by dull sensorium, deafness, glaucoma, uveitis, and optic atrophy. Nasal congestion is a frequent complaint, and pruritus, rash, dryness of mouth, dizziness, headache, dyspnea, purpura, impotence or decreased libido, dysuria, muscular aches, conjunctival injection, and weight gain have been reported. Extrapyramidal tract symptoms have also occurred. These reactions are usually reversible and disappear when the drug is discontinued.

Water retention with edema in patients with hypertensive vascular disease may occur rarely, but the condition generally clears with cessation of therapy, or with the administration of a diuretic agent.

DOSAGE AND ADMINISTRATION

Oral reserpine:

For hypertension: In the average patient not receiving other antihypertensive agents, the usual initial dose is 0.5 mg. orally, daily for 1 or 2 weeks. For maintenance, reduce to 0.1 mg. to 0.25 mg. daily. Higher doses should be used cautiously, because serious mental depression and other side effects may be increased considerably.

For psychiatric disorders:

The average initial dose is 0.5 mg orally, with a range of 0.1 mg to 1.0 mg. Adjust dosage upward or downward according to the patient's response.

Parenteral reserpine:

Reserpine may be administered parenterally in the short term treatment of hypertensive crises. Because of the varying responsiveness, a titration procedure should be used. An initial dose of 0.5 to 1 mg intramuscularly or intravenously is followed at intervals of 3 hours, if necessary, by doses of 2 and 4 mg until the blood pressure falls to the desired level. If the 4 mg dose is ineffective, other antihypertensive agents should be used. An initial dose larger than 0.5 mg may induce severe hypotension, particularly in patients with cerebral hemorrhage.

Reserpine may be administered intramuscularly, in psychiatric emergencies, to initiate treatment in those patients unable to accept oral medication. The average dose is from 2.5 mg to 5.0 mg, following a small initial dose to test sensitivity.

Concomitant use of reserpine with ganglionic blocking agents, guanethidine, veratrum, hydralazine, methyldopa, chlorthalidone, or thiazides necessitates careful titration of dosage with each agent.

D. *Indications permitted during extended period for obtaining substantial evidence.* 1. Those indications for which a drug is described in paragraph A above as probably effective are included in the labeling conditions in paragraph C and may continue to be used for 12 months following the date of this publication to allow additional time within which holders of previously approved applications or persons marketing the drug without approval may obtain and submit to the Food and Drug Administration data to provide substantial evidence of effectiveness.

2. Those indications for which a drug is described in paragraph A above as possibly effective (not included in the labeling conditions in paragraph C) may continue to be used for 6 months following the date of this publication to allow additional time within which holders of previously approved applications or persons marketing the drug without approval may obtain and submit to the Food and Drug Administration data to provide substantial evidence of effectiveness.

3. To be acceptable for consideration in support of the effectiveness of a drug, any such data must be previously unsubmitted, well organized, and include data from adequate and well-controlled clinical investigations (identified for ready review) as described in § 130.12(a)(5) of the regulations published in the FEDERAL REGISTER of May 8, 1970 (35 F.R. 7250). Carefully conducted and documented clinical studies obtained under uncontrolled or partially controlled situations are not acceptable as a sole basis for the approval of claims of effectiveness, but such studies may be considered on their merits for corroborative support of efficacy and evidence of safety.

E. *Marketing status.* Marketing of the drugs may continue under the conditions described in F and G of this announcement except that those indications referenced in paragraph D may continue to be used as described therein.

F. *Previously approved applications.* 1. Each holder of a "deemed approved" new-drug application (i.e., an application which became effective on the basis of safety prior to October 10, 1962) for such drug is requested to seek approval of the claims of effectiveness and bring the application into conformance by submitting supplements containing:

a. Revised labeling as needed to conform to the labeling conditions described herein for the drug and complete current container labeling, unless recently submitted.

b. Adequate data to assure the biologic availability of the drug in the formulation which is marketed. If such data are already included in the application, specific reference thereto may be made.

c. Updating information as needed to make the application current in regard to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of the new-drug application form FD-356H to the extent described for abbreviated new-drug applications, § 130.4(f), published in the FEDERAL REGISTER of April 24, 1970 (35 F.R. 6574). (One supplement may contain all the information described in this paragraph.)

2. Such supplements should be submitted within the following periods after the date of publication of this notice in the FEDERAL REGISTER.

a. Sixty days for revised labeling—the supplement should be submitted under the provisions of § 130.9 (d) and (e) of the new-drug regulations (21 CFR 130.9) which permit certain changes to be put into effect at the earliest possible time.

b. 180 days for biologic availability data.

c. 60 days for updating information.

3. Marketing of the drug may continue until the supplemental applications submitted in accord with the preceding subparagraphs 1 and 2 are acted upon, provided that within 60 days after the date of this publication, the labeling of the preparation shipped within the jurisdiction of the Act is in accord with the labeling conditions described in this announcement. (It may continue to include the indications referenced in paragraph D for the period stated.)

G. *New applications.* 1. Any other person who distributes or intends to distribute such drug which is intended for the conditions of use for which it has been shown to be effective, as described under A above, should submit an abbreviated new-drug application meeting the conditions specified in § 130.4(f) (1), (2), and (3), published in the FEDERAL REGISTER of April 24, 1970 (35 F.R. 6574). Such applications should include proposed labeling which is in accord with the labeling conditions described herein and adequate data to assure the biologic availability of the drug in the formulation which is marketed or proposed for marketing.

2. Distribution of any such preparation currently on the market without an approved new-drug application may be continued provided that:

a. Within 60 days from the date of publication of this announcement in the FEDERAL REGISTER, the labeling of such preparation shipped within the jurisdiction of the Act is in accord with the labeling conditions described herein. (It may continue to include the indications referenced in paragraph D for the period stated.)

b. The manufacturer, packer, or distributor of such drug submits, within 180 days from the date of this publication, a new-drug application to the Food and Drug Administration.

c. The applicant submits within a reasonable time, additional information that may be required for the approval of the application as specified in a written communication from the Food and Drug Administration.

d. The application has not been ruled incomplete or unapprovable.

H. *Opportunity for a hearing.* 1. The Commissioner of Food and Drugs proposes to issue an order under the provisions of section 505(e) of the Federal Food, Drug, and Cosmetic Act withdrawing approval of all new-drug applications and all amendments and supplements thereto providing for the indications for which substantial evidence of effectiveness is lacking as described in paragraph I.A. and II.A. of this announcement. An order withdrawing approval of the applications will not issue if such applications are supplemented, in accord with this notice, to delete such indications. Promulgation of the proposed order may cause any related drug for human use and offered for the indications for which substantial evidence of effectiveness is lacking, to be a new drug for which an approved new-drug application is not in effect. Any such drug then on the market would be subject to regulatory proceedings.

2. In accordance with the provisions of section 505 of the Act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Part 130), the Commissioner will give the holders of any such applications, and any interested person who would be adversely affected by such an order, an opportunity for a hearing to show why such indications should not be deleted from labeling. A request for a hearing must be filed within 30 days after the date of publication of this notice in the FEDERAL REGISTER. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing, together with a well-organized and full-factual analysis of the clinical and other investigational data the objector is prepared to prove in a hearing. Any data submitted in response to this notice must be previously unsubmitted and include data from adequate and well-controlled clinical investigations (identified for ready review) as described in § 130.12(a)(5) of the regulations published in the FEDERAL REGISTER of May 8, 1970 (35 F.R. 7250). Carefully conducted and documented clinical studies obtained under uncontrolled or partially controlled situations are not acceptable as a sole basis for approval of claims of effectiveness, but such studies may be considered on their merits for corroborative support of efficacy and evidence of safety.

3. If a hearing is requested and is justified by the response to this notice, the issues will be defined, a hearing examiner will be named, and he shall issue a written notice of the time and place at which the hearing will commence.

I. *Unapproved use or form of drug.* 1. If the article is labeled or advertised for use in any condition other than those provided for in this announcement, it may be regarded as an unapproved new drug subject to regulatory proceedings until such recommended use is approved in a new-drug application, or is otherwise in accord with this announcement.

2. If the article is proposed for marketing in another form or for a use other than the use provided for in this announcement, appropriate additional information as described in § 130.4 or § 130.9 of the regulations (21 CFR 130.4, 130.9) may be required, including results of animal and clinical tests intended to show whether the drug is safe and effective.

II. DESERPIDINE, SYROSINGOPINE; RESCINNAMINE IN SUSTAINED RELEASE FORM; RESERPINE IN SUSTAINED RELEASE FORM.

A. *Effectiveness classification.* The Food and Drug Administration has considered the Academy reports, as well as other available evidence, and concludes that:

1. Deserpidine is:

a. Probably effective for treatment of mild essential hypertension and for use with benzothiadiazines (thiazides) for treating hypertension.

b. Possibly effective as a tranquilizer in some patients with mild anxiety states.

2. Syrosingopine is possibly effective for mild to moderate hypertension and for pre-eclampsia and essential hypertension associated with pregnancy.

3. Rescinnamine in sustained release form is:

a. Probably effective for treatment of mild essential hypertension; and as an adjunct with other antihypertensive agents in the treatment of more severe forms of hypertension.

b. Possibly effective for the indications described in I.A.3.c. of this announcement.

c. Lacking substantial evidence of effectiveness for treatment of depression.

4. Reserpine in sustained release form is:

a. Probably effective for the indications described in 1.A.4.a. of this announcement as effective for the nonsustained release form.

b. Possibly effective for the indications described in I.A.4.b. of this announcement.

c. Lacking substantial evidence of effectiveness for the indications described in I.A.4.c. of this announcement.

B. *Marketing status.* 1. Within 60 days of the date of publication of this announcement in the FEDERAL REGISTER, the holder of any previously approved new-drug application for a drug described in paragraph II.A. above is requested to submit a supplement to his application to provide for revised labeling, as needed, which deletes those indications for which such drug has been classified as lacking substantial evidence of effectiveness and which contains an Indication section (full labeling in the case of reserpine and rescinnamine) in accord with that described below. Such supplement should be submitted under the provisions of § 130.9 (d) and (e) of the new-drug regulations (21 CFR 130.9 (d) and (e)) which permit certain changes to be put into effect at the earliest possible time, and the revised labeling should be put into use within the 60-day period. Failure to do so may result in a proposal to withdraw approval of the new-drug application.

2. If any such preparation is on the market without an approved new-drug application, its labeling should be revised if it includes any claim for which substantial evidence of effectiveness is lacking as described in paragraph II.A. above. Failure to delete such indications and put the revised labeling into use within 60 days after the date of publication hereof in the FEDERAL REGISTER may cause the drug to be subject to regulatory proceedings.

3. Indications for a drug described in paragraph II.A. above as probably effective may continue to be used for 12 months, and indications described as possibly effective may continue to be used for 6 months, following the date of this publication, to allow additional time within which holders of previously approved applications or persons marketing the drug without approval may obtain and submit in a supplemental or original new drug application data to provide substantial evidence of effectiveness. To be acceptable for consideration in support of the effectiveness of a drug, any such data must be previously unsubmitted, well organized, and include data from adaquate and well-controlled clinical investigations (identified for ready review) as described in § 130.12(a)(5) of the regulations published in the FEDERAL REGISTER of May 8, 1970 (35 F.R. 7250). Carefully conducted and documented clinical studies obtained under uncontrolled or partially controlled situations are not acceptable as a sole basis for the approval of claims of effectiveness, but such studies may be considered on their merits for corroborative support of efficacy and evidence of safety.

4. At the end of the 6-month and 12-month periods, any such data will be evaluated to determine whether there is substantial evidence of effectiveness of the drug for such uses. The conclusions concerning the drug will be published in the FEDERAL REGISTER. If no studies have been undertaken or if the studies do not provide substantial evidence of effectiveness, procedures will be initiated to withdraw approval of the new-drug application for the drug, pursuant to the provisions of section 505(e) of the Federal Food, Drug, and Cosmetic Act. Withdrawal of approval of the application will cause any such drug on the market to be a new drug for which an approval is not in effect.

5. Labeling revised pursuant to this notice should take into account the comments of the Academy, furnish adequate information for safe and effective use of the drug, be in accord with the guidelines for uniform labeling published in the FEDERAL REGISTER of February 6, 1970 (21

CFR 3.74), and recommend use of the drug for the probably effective indications as follows: (The possibly effective indications may also be included for 6 months.) (Labeling guidelines for deserpidine are available from the Administration on request.)

INDICATIONS

DESERPIDINE

For mild essential hypertension and for use with benzothiadiazines (thiazides) for treating hypertension.

RESCINNAMINE IN SUSTAINED RELEASE FORM

RESERPINE IN SUSTAINED RELEASE FORM

(The labeling guidelines described in paragraph I.C. above for the nonsustained release forms of rescinnamine and reserpine may be used when modified as appropriate to the sustained release form.)

Representatives of the Administration are willing to meet with any interested person who desires to have a conference concerning proposed changes in labeling set forth herein. Requests for such meetings should be made to the Office of Scientific Evaluation (BD–100), at the address given below, within 30 days after the publication of this notice in the FEDERAL REGISTER.

A copy of the NAS–NRC report has been furnished to each firm referred to above. Any other interested person may obtain a copy by request to the Food and Drug Administration, Press Relations Office (CE–200), 200 C Street SW., Washington, DC 20204.

Communications forwarded in response to this announcement should be identified with the reference number DESI 8867, directed to the attention of the appropriate office listed below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852:

Supplements (identify with NDA number): Office of Scientific Evaluation (BD–100), Bureau of Drugs.

Original abbreviated new-drug applications (identify as such): Drug Efficacy Study Implementation Project Office (BD–5), Bureau of Drugs.

Request for Hearing (Identify with Docket number): Hearing Clerk, Office of General Counsel (GC–1), Room 6–62, Parklawn Building.

All other communications regarding this announcement: Drug Efficacy Study Implementation Project Office (BD–5), Bureau of Drugs.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–53, as amended; 21 U.S.C. 352, 355) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: April 1, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71–5359 Filed 4–27–71;8:47 am]

Public Health Service

COMMUNICABLE DISEASE CONTROL AND VACCINATION ASSISTANCE PROGRAM

Notice of Availability of Funds for Grants for Tuberculosis Control

Under section 317 of the Public Health Service Act, as amended by Public Law 91–464 (84 Stat. 988), the Secretary of the Department of Health, Education, and Welfare is authorized to make grants to States and, with the approval of the State health authority, to political subdivisions or instrumentalities of the States for communicable disease control and vaccination assistance programs, including the cost of studies to determine the communicable disease control need of communities and the means of best meeting such needs. In the award of such grants the Secretary is required to give consideration to the relative extent of the problems relating to tuberculosis, venereal disease, rubella, measles, RH disease, poliomyelitis, diphtheria, tetanus, whooping cough, or other communicable diseases transmitted from State to State, and to the levels of performance in preventing and controlling such diseases.

The sum of $2 million is available to implement section 317 for fiscal year 1971. In the light of the funds available, the Secretary has determined that such funds will be reserved to support currently active tuberculosis control projects.

In view of the need to provide immediate financial support to such projects, notice of proposed rule making, public participation and delayed effective date is found to be contrary to the public interest in the issuance of the following procedures which relate solely to grants.

1. *Eligible projects.* Tuberculosis control projects which are currently receiving grants under section 314(e) of the Public Health Service Act (42 U.S.C. 246(e)) are eligible for grants as provided herein.

2. *Awards.* The Secretary shall make awards to those eligible applicants whose projects, in his opinion, best promote the purposes of section 317 of the PHS Act.

3. *Costs that may be financed with Federal funds.* Grant funds awarded under section 317 of the Public Health Service Act for tuberculosis control projects may be used to purchase supplies (including vaccine) to prevent or control tuberculosis, and to pay for salaries or wages and related expenses for full- or part-time State and local health personnel directly involved in planning, organizational, promotional, epidemiologic, laboratory surveillance, and other activities in connection with a tuberculosis control program. No funds can be used for hospitalization costs.

4. *Duration of assistance.* Grants will be awarded for a period specified in the award notice, but not to exceed 2 years.

5. *Application procedures.* Appropriate grant application forms and consultation and assistance in submitting a written project proposal, including a budget, may be obtained from the Regional Health Director of the Health Services and Mental Health Administration for the region in which the applicant is located. Application forms are immediately available from the regional offices. Completed applications are to be submitted to the Regional Health Director no later than May 15, 1971.

6. *Terms and conditions of grants awarded.* Terms and conditions governing grants awarded under sec. 314(e) of the Public Health Service Act as amended (42 U.S.C. 246) shall govern grants for tuberculosis control under section 317 of the Act (42 U.S.C. 257(b)).

7. The authority to make grants for tuberculosis control projects will be vested in the Regional Health Directors of the Health Services and Mental Health Administration for their respective regions.

8. These procedures shall be effective on the date of publication of this notice in the FEDERAL REGISTER (4–28–71).

Dated: April 1, 1971.

VERNON E. WILSON,
Administrator, Health Services and Mental Health Administration.

Approved: April 22, 1971.

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

[FR Doc.71–5894 Filed 4–27–71;8:50 am]

Office of the Secretary

OFFICE OF SPECIAL CONCERNS

Organization and Functions

Chapter 1–G of the Department's statement of Organization, Functions, and Delegations of Authority (35 F.R. 6720 of April 28, 1970) is amended to create a new Office of Special Concerns and to transfer to the Office of Special Concerns the Office of Indian Affairs and the Office for Spanish Surnamed Americans.

Section 1–G.10 Organization is amended to read, from item 5, as follows:

5. The Deputy Assistant Secretary (Interdepartmental Affairs).

6. The Deputy Assistant Secretary (Program Systems).

7. Office of Special Concerns.

a. The Office of Indian Affairs.

b. The Office for Spanish Surnamed Americans.

c. The Office of Field Evaluations.

d. The Office of Women's Action Program.

e. The Office of the HEW Fellows Program.

Section 1–G.20 Functions is amended to read, from item F to the end, as follows:

F. The Deputy Assistant Secretary (Interdepartmental Affairs) is responsible for the coordination and liaison of program planning and evaluation matters in all areas where programs of the Department of Health, Education, and Welfare are intimately related to those of other departments and agencies as well as on matters which cross agency lines in a substantial way within the Department.

G. The Deputy Assistant Secretary (Program Systems) coordinates the development and operation of the Department's program planning information systems, the structuring and procedural aspects of the Department-wide Program Planning activities, and the development of systems designed to measure the Nation's progress toward its stated goal. Supervises the collection, storage, retrieval, and dissemination of information required for planning and evaluation. Provides the required computer systems support for the Office of the Assistant Secretary (Planning and Evaluation).

H. The Director, Office of Special Concerns has Department-wide responsibility for the coordination and development of long-range plans and objectives in areas of concern to minorities and other groups of special concerns. He is further responsible for conducting program analysis and alternative strategies in these areas. He will conduct studies of the costs and benefits of the Department's programs and alternatives to these programs and provide staff leadership to Department operating agencies and staff offices in these areas.

1. The Office of Indian Affairs is responsible for the coordination, development, and implementation of Department policies and programs pertaining to American Indians.

2. The Office of Spanish Surnamed Americans is responsible for the coordination, development, and implementation of Department policies and programs pertaining to Spanish Surnamed Americans.

3. The Office of Field Evaluations is responsible for coordinating the field evaluation functions with other agencies and offices within the Department to increase compliance with Departmental guidelines by progam operators.

4. The Office of Women's Action Program is responsible for the coordination, development, and implementation of Departmental programs to improve conditions for the hiring and promotion of women.

5. The Office of the HEW Fellows Program is responsible for the planning, coordination, and implementation of the Department's program to recruit young minority employees as special assistants to key officials and to develop a cadre of high caliber people as a source to fill top level administrative positions in government.

Dated: April 17, 1971.

ELLIOT L. RICHARDSON,
Secretary.

[FR Doc.71–5869 Filed 4–27–71;8:47 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGFR 71–27]

AMERICAN ZINC CO.

Notice of Qualification as a Citizen

1. This is to give notice that pursuant to 46 CFR 67.23–7, issued under the provisions of section 27A of the Merchant Marine Act, 1920, as added by the Act of September 2, 1958 (46 U.S.C. 883–1), American Zinc Co., 2209 Blount Avenue, Knoxville, TN, incorporated under the laws of the State of Maine, did on March 10, 1971, file with the Commandant, U.S. Coast Guard, in duplicate, an oath for qualification of a corporation as a citizen of the United States following the form of oath prescribed in Form 1260.

2. The oath shows that:

(a) A majority of the officers and directors of the corporation are citizens of the United States (list of names, home addresses, and citizenship attached to the oath);

(b) Not less than 90 percent of the employees of the corporation are residents of the United States;

(c) The corporation is engaged primarily in a manufacturing or mineral industry in the United States, or in a Territory, District, or possession thereof;

(d) The aggregate book value of the vessels owned by the corporation does not exceed 10 percent of the aggregate value of the assets of the corporation; and

(e) The corporation purchases or produces in the United States, its Territories, or possessions not less than 75 percent of the raw materials used or sold in its operations.

3. The Commandant, U.S. Coast Guard, having found this oath to be in compliance with the law and regulations, on April 16, 1971, issued to American Zinc Co., a certificate of compliance on Form 1262, as provided in 46 CFR 67.23–7(d). The certificate and any authorization granted thereunder will expire 3 years from the date thereof unless there first occurs a change in the corporate status requiring a report under 46 CFR 67.23–7(c).

Dated: April 16, 1971.

T. R. SARGENT,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[FR Doc.71–5876 Filed 4–27–71;8:48 am]

Federal Aviation Administration

AIRPORT TRAFFIC CONTROL TOWER AT OUTAGAMIE AIRPORT, APPLETON, WIS.

Notice of Commissioning

Notice is hereby given that on or about May 3, 1971, the Airport Traffic Control Tower at Outagamie Airport, Appleton, Wis., will be in operation as an FAA facility. The tower is now owned and operated by the Outagamie County Airport Authority. This information will be reflected in the FAA Organization Statement the next time it is reissued. Communication to the Appleton Airport Traffic Control Tower should be as follows:

Federal Aviation Administration, Airport Traffic Control Tower, Route No. 6, Box 208–A, Appleton, WI 54911.

Issued in Chicago, Ill., on April 14, 1971.

LYLE K. BROWN,
Director, Great Lakes Region.

[FR Doc.71–5930 Filed 4–27–71;8:53 am]

AIRPORT TRAFFIC CONTROL TOWER AT MUNICIPAL AIRPORT, LACROSSE, WIS.

Notice of Commissioning

Notice is hereby given that on or about May 24, 1971, the Airport Traffic Control Tower at the Municipal Airport, LaCrosse, Wis., presently owned by the Municipal Airport Authority, will be transferred to and operated by the FAA. This information will be reflected in the FAA Organization Statement the next time it is reissued. Communication to the LaCrosse Airport Traffic Control Tower should be as follows:

Federal Aviation Administration, Airport Traffic Control Tower, Municipal Airport, LaCrosse, WI 54601.

Issued in Chicago, Illinois, on April 14, 1971.

LYLE K. BROWN,
Director, Great Lakes Region.

[FR Doc.71–5931 Filed 4–27–71;8:53 am]

CIVIL AERONAUTICS BOARD

[Docket No. 23112; Order 71–4–151]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding International Route Charges

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 23d day of April 1971.

An agreement has been filed with the Board pursuant to section 412(a) of the

Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of the Composite Passenger and Cargo Traffic Conferences of the International Air Transport Association (IATA) held in Geneva in January 1971. The agreement has been assigned the above-designated CAB agreement number.

The referenced agreement provides for the establishment of fare and rate surcharges to cover international route charges.[1] In air transportation, a surcharge would be entered separately on the passenger's ticket in the amount of 1 percent of the lowest direct normal economy-class fare subject to a maximum of $10. Travel in the Western Hemisphere would be subject to a $1 minimum. As regards cargo, a surcharge of 2 percent would be entered separately on the airwaybill. In the case of passenger (cargo) charters, the charge would be determined on the basis of 1 percent (2 percent for cargo) of the total charter price. The agreement provides for the imposition of these surcharges on transportation commencing on or after November 1, 1971.

We will defer action with a view toward disapproval of the agreement insofar as it relates to air transportation. While the Board is aware of the efforts of many governments to recover the total costs of providing these services from commercial air carriers, and that the carriers may incur increased costs in this area, we are not convinced that international route charges should be treated differently from any other costs incurred by the air carriers in their day-to-day business. As such, these costs, as with all costs, should be considered in the establishment of fares and rates and not passed on directly to the user in the form of a surcharge.

No showing has been made that the increased costs associated with international route charges require an increase in the fares effective November 1, 1971. Recently, the Board approved a number of fare agreements providing for increases in international air fares. The Board gave due consideration to inflationary spiral and increased costs in approving the proposed fares. To permit a further increase in fares during the period in which these new fares are to be in effect would require a strong showing of financial need occasioned by increased costs attributable to international route charges. Moreover, it appears that the U.S. IATA member carriers are presently incurring some international route charges. However, there is no basis to evaluate the extent by which the new charges may duplicate those charges already being incurred and which are included in the cost base.

The Board is further not convinced that the uniform surcharge (1 percent passengers and 2 percent cargo) is equitable to U.S. passengers and in the public interest. For example, a special IATA study group report indicates that in 1972 a total of $55.7 million would be required from passengers to defray these costs. Based on revenue data from international passenger operation of the U.S. carrier members of IATA for the 12-month period ending September 30, 1970, these proposed increases would amount to approximately $15 million or 27 percent of the projected 1972 IATA carrier worldwide total. Considering an additional 2 years of traffic growth at higher fares, this amount could well exceed 30 percent of the worldwide estimate for 1972. The Board is concerned that U.S. carrier international passengers represent a much smaller percentage of all of the free world's international passengers (intra-Europe, intra-Asia, Europe/Africa/Asia, etc.); consequently, the results of the proposed increases may be inequitable as regards the U.S. carriers and the flying public. We will, however, defer action for a period of 30 days to provide for comments in support of or in opposition to our proposed action.

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, makes the following findings:

1. It is in the public interest to defer action for a period of 30 days on Agreement CAB 22245, R–1 and R–3 (Resolution 295d, International Route Charge-Passenger and Resolution 295e, International Route Charge-Cargo) so as to receive comments in support of or in opposition to the Board's proposed disapproval.

2. Agreement CAB 22245, R–2 and R–4 (Resolution 295dd, International Route Charge-Europe and Resolution 295g, International Route Charge-Exemption) does not directly affect air transportation within the meaning of the Act.

Accordingly, it is ordered, That:

1. Action on Agreement CAB 22245, R–1 (Resolution 295d, International Route Charge-Passenger-NEW) and R–3 (Resolution 295e, International Route Charge-Cargo-NEW) is deferred with a view toward disapproval insofar as it would establish surcharges in air transportation to recover costs for international route charges; and

2. Jurisdiction is disclaimed with respect to Agreement CAB 22245, R–2 (Resolution 295dd, International Route Charge-Europe-NEW) and R–4 (Resolution 295g, International Route Charge-Exemption-NEW) insofar as it does not involve transportation to U.S. points.

Any air carrier party to the agreement, or any interested person may, within 30 days from the date of service of this order, submit statements in writing containing reasons deemed appropriate, together with supporting data, in support of or in opposition to the Board's action and/or proposed action herein. An original and 19 copies of the statements should be filed with the Board's Docket Section. The Board may, upon consideration of any such statements filed, modify or rescind its action herein with respect to agreements approved by subsequent order.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-5907 Filed 4-27-71;8:51 am]

[1] Charges imposed by or on behalf of a government for facilities and/or services provided for air navigation and safety other than those associated with airports or approach and airport control.

[Docket No. 22628; Order 71-4-143]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Fare Matters

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 22d day of April 1971.

Agreements have been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of the International Air Transport Association (IATA) and adopted by mail vote. The agreements have been assigned the above designated CAB agreement numbers.

The agreements, which encompass amendments to IATA resolutions recently approved by the Board[1] as agreed upon at the 1970 Worldwide Passenger Fare Conference held in Honolulu would: (1) Permit construction of through South Pacific excursion, inclusive tour, and affinity group fares to/from interior U.S. points by use of proportional fares otherwise available only for the construction of round-trip economy-class fares; and (2) amend the resolutions governing North Atlantic fares by the addition of proportional fares for Terceira and Sao Miguel.

While we will herewith approve the agreements, we believe it appropriate, as regards construction of through fares involving transportation between points in the U.S. and foreign points, to restate our condition as set forth in the appendix to Order 68–7–55, dated July 12, 1968:

> No IATA resolution shall apply or be binding upon a U.S. air carrier member of IATA with respect to foreign air transportation which involves only a segment of such United States air carrier between a place in any State of the United States or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same territory or possession of the United States or the District of Columbia.

We also take this opportunity to remind the carriers of the conditions of IATA Resolution 014a, which permit the combination of IATA-established international fares with special fares within the United States. Thus, in those situations in which the terms of transportation are met, the lower fare would apply.

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, does not find the following resolutions, incorporated in the agreement indicated, to

[1] Order 71–2–59, dated February 11, 1971.

be adverse to the public interest or in violation of the Act:

Agreement CAB	IATA Resolutions
22129	JT31(Mail 189)014a.
	JT31(Mail 189)015a.
	JT31(Mail 189)070b.
	JT31(Mail 189)070p.
	JT31(Mail 189)080m.
22291	JT12(Mail 762)054a.
	JT12(Mail 762)064a.
	JT12(Mail 762)070d.
	JT12(Mail 762)071d.
	JT12(Mail 762)076m.
	JT12(Mail 762)084a.
	JT12(Mail 762)095b.

Accordingly, it is ordered, That:

Agreements CAB 22129 and CAB 22291 are approved.

Any air carrier party to the agreements, or any interested person, may, within 10 days from the date of service of this order, submit statements in writing containing reasons deemed appropriate, together with supporting data, in support of or in opposition to the Board's action as stated herein. An original and 19 copies of the statement shall be filed with the Board's Docket Section.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-5908 Filed 4-27-71;8:51 am]

ENVIRONMENTAL PROTECTION AGENCY

E. I. DU PONT DE NEMOURS & CO., INC.

Notice of Filing of Petition Regarding Pesticide Chemicals

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 1F1145) has been filed by E. I. du Pont de Nemours & Co., Inc., Wilmington, DE 19898, proposing the establishment of a tolerance (21 CFR Part 420) for residues of the fungicide benomyl (methyl 1-(butylcarbamoyl)-2 benzimidazolecarbamate) in or on the raw agricultural commodity celery at 3 part per million.

The analytical method proposed in the petition for determining residues of the fungicide is that of H. L. Pease and J. A. Gardiner, "Journal of Agricultural and Food Chemistry" *17*, 267–270 (1969).

Dated: April 22, 1971.

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

[FR Doc.71-5887 Filed 4-27-71;8:49 am]

FMC CORP.

Notice of Filing of Petition Regarding Pesticide Chemicals

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 1F1146) has been filed by FMC Corp., 100 Niagara Street, Middleport, NY 14105, proposing that the established tolerance of 0.5 part per million for residues of the insecticide carbofuran and its metabolite 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl *N*-methylcarbamate in or on the raw agricultural commodities corn fodder and forage (§ 420.254) be increased to 5 parts per million.

The analytical method proposed in the petition for determining residues of the insecticide is a microcoulometric gas chromatographic procedure using a nitrogen detector.

Dated April 22, 1971.

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

[FR Doc.71-5888 Filed 4-27-71;8:49 am]

NOR-AM AGRICULTURAL PRODUCTS, INC.

Notice of Filing of Petition Regarding Pesticide Chemicals

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 1F1141) has been filed by Nor-Am Agricultural Products, Inc., 11710 Lake Avenue, Woodstock, IL 60098, proposing the establishment of tolerances (21 CFR Part 420) for residues of the insecticide formetanate hydrochloride (*m*-[[(dimethylamino) methylene]amino]phenyl methylcarbamate hydrochloride) in or on the raw agricultural commodities grapefruit and tangerines at 4 parts per million.

The analytical method proposed in the petition for determining residues of the insecticide is a procedure in which the residue is hydrolyzed to 3-aminophenol and then analyzed colorimetrically after diazotization and coupling with *N*-1-naphthylethylenediamine dihydrochloride.

Dated: April 22, 1971.

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

[FR Doc.71-5889 Filed 4-27-71;8:49 am]

MERCK, SHARP & DOHME

Notice of Filing of Petition Regarding Pesticide Chemicals

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 1F1110) has been filed by Merck, Sharp & Dohme, A Division of Merck & Co., Inc., Rahway, N.J. 07065, proposing the establishment of tolerances (21 CFR Part 420) for negligible residues of the fungicide phenylmercuric ammonium acetate (calculated as mercury) in or on the raw agricultural commodities barley, cottonseed, flaxseed, oats, rice, sorghum and wheat at 0.05 part per million.

The analytical method proposed in the petition for determining residues of the fungicide is a procedure in which the mercury is determined using atomic absorption spectrophotometry at 254 nanometers.

Dated: April 22, 1971.

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

[FR Doc.71-5890 Filed 4-27-71;8:49 am]

PPG INDUSTRIES, INC.

Notice of Filing of Petition Regarding Pesticide Chemicals

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 1F1120) has been filed by PPG Industries, Inc., One Gateway Center, Pittsburgh, Pa. 15222, proposing the establishment of tolerances (21 CFR Part 420) for negligible residues of the herbicide isopropyl carbanilate in or on the raw agricultural commodities alfalfa, clover, and grasses at 2.5 parts per million, and in or on flax seed, lentils, lettuce, peas, safflower seed, spinach, and sugarbeets (roots and tops) at 0.1 part per million.

The analytical method proposed in the petition for determining residues of the herbicide is a procedure in which the residue is hydrolyzed in sodium hydroxide, and the liberated aniline is steam distilled, extracted into toluene, purified by silica gel column chromatography, and reacted with heptafluorobutyric anhydride to form heptafluorobutyranilide which is then determined gas chromatographically using an electron capture detector.

Dated: April 22, 1971.

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

[FR Doc.71-5891 Filed 4-27-71;8:49 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 19211, 18212; FCC 71-406]

ERWIN GLADDENBEGK AND CHARLES R. LUTZ

Order Designating Applications for Consolidated Hearing on Stated Issues

In regard applications of Erwin Gladdenbegk, Shell Lake, Wis., requests: 95.3 mcs., #237; 3kw.(H); 3kw.(V); 300 ft., Docket No. 19211, File No. BPH-7192; Charles R. Lutz, Shell Lake, Wis., requests: 95.3 mcs., #237; 3kw.(H); 3kw.(V); 265 ft., Docket No. 18212, File No. BPH-7262; for construction permits.

1. The Commission has under consideration the above-captioned and described applications which are mutually

exclusive in that operation by the applicants as proposed would result in mutually destructive interference.

2. John M. Schullo, the publisher of a weekly newspaper in Shell Lake, has objected to the Gladdenbegk application on the basis of harmful competition which he states would result. He asserts that his business would not be seriously affected by grant of the FM station to Lutz because it would then be used in conjunction with Lutz's existing AM station. The objection is devoid of any factual showing and of any explanation for the alleged difference in the impact the station would have. In our view, the objection does not raise any substantial or material question of fact. Accordingly, the objection will be denied.

3. In Suburban Broadcasters, 30 FCC 951 (1961), our Public Notice of August 22, 1968, FCC 68–847, 13 RR 2d 1903, City of Camden (WCAM), 18 FCC 2d 412 (1969), and our Primer on Ascertainment of Community Problems by Broadcast Applicants, FCC 71–176, released February 23, 1971, we indicated that applicants were expected to provide full information on their awareness of and responsiveness to local community needs and interests. In this case, neither applicant has shown that it has contacted a representative cross-section of the area nor has Gladdenbegk adequately provided the comments regarding community problems obtained from such contracts. In part, Lutz has provided satisfactory comments. Neither has adequately provided a listing of specific programs responsive to specific community needs as evaluated. As a result, we are unable at this time to determine whether either of the applicants is aware of and responsive to the needs of the area. Accordingly, Suburban issues are required.

4. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purposes of comparison, the areas and populations which would receive FM service of 1 mv./m. or greater intensity, together with the availability of other primary aural services in such areas will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, because the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. *It is ordered*, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine the efforts made by Erwin Gladdenbegk to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.

(2) To determine the efforts made by Charles R. Lutz to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.

(3) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(4) To determine in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications for construction permit should be granted.

7. *It is further ordered*, That the informal objection filed by John M. Schullo is denied.

8. *It is further ordered*, That to avail themselves of the opportunity to be heard, the applicants, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney shall, within twenty (20) days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

9. *It is further ordered*, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: April 14, 1971.

Released: April 21, 1971.

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

[FR Doc.71–5899 Filed 4–27–71;8:50 am]

[Docket No. 19213 etc.; FCC 71–408]

LAKE ERIE BROADCASTING CO., ET AL.

Order Designating Applications for Consolidated Hearing on Stated Issues

In regard applications of Lake Erie Broadcasting Co., Lorain, Ohio, requests: 104.9 mcs, No. 285; 3kw(H); 3kw(V); 300 feet, Docket No. 19213, File No. BPH–6969; Lorain Community Broadcasting Co., Lorain, Ohio, requests: 104.9 mcs, No. 285; 3kw(H); 3kw(V); 300 feet, 4 Docket No. 1921, File No. BPH–7044; Vocom, Industries, Inc., Lorain, Ohio, requests: 104.9mcs, No. 285; 3kw(H); 3kw(V); 300 feet, Docket No. 19215, File No. BPH–7191; for construction permits.

1. The Commission has under consideration the above-captioned and described applications which are mutually exclusive in that operation by the applicants as proposed would result in mutually destructive interference.

2. According to its application, Lorain Community would require $43,600 to construct and operate its proposed station for 1 year without reliance on revenues. To meet this requirement, applicant relies on cash on hand of $1,500 and a bank loan for $36,000. Adequate documentation of the latter's terms and availability is lacking. Accordingly, a financial issue will be specified.

3. According to its application, Vocom would require $76,582 to construct and operate its proposed station for 1 year without reliance on revenues. This estimate, however, was provided by Vocom's predecessor and may not reflect Vocom's proposal. Vocom itself has not provided any information regarding the availability to it of any of the funds required. Accordingly, a financial issue will be specified.

4. In Suburban Broadcasters, 30 FCC 951 (1961), our Public Notice of August 22, 1968, FCC 68–847, 13 RR 2d 1903, City of Camden (WCAM), 18 FCC 2d 412 (1969), and our Primer on Ascertainment of Community Problems by Broadcast Applicants, FCC 71–176, released February 23, 1971, we indicated that applicants were expected to provide full information on their awareness of and responsivenes to local community needs and interests. Vocom has not submitted its own material to meet this requirement, and the contacts with members of the general public, made by its predecessor, Black Resources, Inc., in any event, do not appear to be adequate. Lake Erie and Lorrain Community have not submitted an adequate description of the composition of the area so that we are unable to determine whether they have contacted a cross section of community leaders and members of the general public. As a result, we are unable at this time to determine whether any of the applicants is aware of and responsive to the needs of the area. Accordingly, Suburban issues are required.

5. The Vocom application was originally filed by Black Resources, Inc., and Vocom was substituted later as the applicant. The material submitted in connection with this substitution falls far short of providing the necessary information regarding Vocom. In particular, we note the absence of certified Articles of Incorporation, the subscriptions for 10,000 more shares of stock than the corporation is authorized to issue and the failure to provide answers to questions 11–16 and 20–22 of section II. As a result, it is necessary to specify an issue to determine the full particulars regarding the legal qualifications of Vocom.

6. Lorain Community proposes 50 percent duplicated programing while the other applicants propose independent operation. Therefore, evidence regarding program duplication will be admissible under the standard comparative issue. When duplicated programing is proposed, the showing permitted under the standard comparative issue will be limited to

evidence concerning the benefits and detriments to be derived from the proposed duplication, and a full comparison of the applicants' program proposals will not be permitted in the absence of a specific programing inquiry—Jones T. Sudbury, 8 FCC 2d 360, FCC 67-614 (1967).

7. A comparison of the programing proposals is warranted when one or more applicants proposes predominantly specialized programing and the others, general market programing—Ward L. Jones, FCC 67-82 (1967); Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393, footnote 9 at 397 (1965). In this case, Vocom proposes programing directed to the Black community, while the other applicants propose general market programing. Therefore, the programing proposals of the applicants may be compared under the standard comparative issue.[1]

8. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, because the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. *It is ordered*, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

(1) To determine whether Lorain Community has available the additional $42,100 required for construction and first-year operation of its proposed station without reliance on revenues to thus demonstrate its financial qualifications.

(2) To determine the amount required by Vocom Industries for construction and first-year operation of its proposed station without reliance on revenues and whether such funds are available to thus demonstrate its financial qualifications.

(3) To determine the facts and circumstances regarding the ownership, control and legal capacity of Vocom Industries and in light of the evidence thus adduced, whether it is qualified to construct and operate the proposed station.

(4) To determine the efforts made by Lake Erie Broadcasting to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.

(5) To determine the efforts made by Lorain Community to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.

(6) To determine the efforts made by Vocom Industries to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.

(7) To determine which of the proposals would, on a comparative basis, best serve the public interest.

(8) To determine in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the applications for construction permit should be granted.

10. *It is further ordered*, That to avail themselves of the opportunity to be heard, the applicants pursuant to § 1.221 (c) of the Commission's rules, in person or by attorney shall, within twenty (20) days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

11. *It is further ordered*, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: April 14, 1971.

Released: April 21, 1971.

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

[FR Doc.71-5898 Filed 4-27-71;8:50 am]

[1] It is not our intention to call for a complete comparison of the respective programing proposals under these circumstances. Rather, the comparison is to be limited to the format involved and the need for specialized programing as against the need for general market programing. See Resort Broadcasting Co., FCC 70R-397, and Jay Sadow (WRIP), FCC 70R-362.

[Dockets Nos. 19218, 19219; FCC 71-410]

5 KW, INC. AND CLINTON COUNTY BROADCASTING CORP.

Order Designating Applications for Consolidated Hearing on Stated Issues

In regard applications of 5 KW, Inc., Wilmington, Ohio, requests: 102.3mc, No. 272; 3 kw.(H) ; 3 kw.(V) ; 300 feet, Docket No. 19218, File No. BPH-7074; Clinton County Broadcasting Corp., Wilmington, Ohio; requests: 102.3mc, No. 272; 3 kw.(H) ; 3 kw.(V) , 300 feet, Docket No. 19219, File No. BPH-7122; for construction permits.

1. The Commission has under consideration the above-captioned and described applications which are mutually exclusive in that operation by the applicants as proposed would result in mutually destructive interference.

2. According to its application 5 KW, Inc., would require $53,362 to construct and operate its proposed station for 1 year without reliance on revenues. To meet this requirement, applicant relies on cash on hand of $30,000 and a bank loan for $50,000. The former is not reflected in a balance sheet which shows only $17,100, and the latter requires certain guarantees to which the parties involved have not indicated their agreement.

3. According to its application Clinton County Broadcasting would require $52,075 to construct and operate its proposed station for one year without reliance on revenues. Although applicant indicates reliance on anticipated revenues it has not adequately documented their availability. To meet its requirements, applicant relies on various items but credit can be given only for cash on hand ($6,250), a bank loan ($5,400) and a personal loan ($1,000). The total, $12,650, is short of its requirements.

4. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purposes of comparison, the areas and populations which would receive FM service of 1 mv/m or greater intensity, together with the availability of other primary aural services in such areas will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, because the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. *It is ordered*, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

(1) To determine whether 5 KW, Inc., has available the additional $36,262 required for construction and first-year operation of its proposed station without reliance on revenues, to thus demonstrate its financial qualifications.

(2) To determine whether Clinton County Broadcasting has available the additional $39,425 required for construction and first-year operation of its proposed station without reliance on revenues, to thus demonstrate it financial qualifications.

(3) To determine which of the proposals would on a comparative basis better serve the public interest.

(4) To determine in the light of the evidence adduced pursuant to the foregoing issue, which, if either, of the applications for construction permit should be granted.

7. *It is further ordered*, That to avail themselves of the opportunity to be heard, the applicants, pursuant to § 1.221 (c) of the Commission's rules, in person or by attorney shall, within twenty (20) days of the mailing of this order, file with the Commission in triplicate, a written

appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

8. *It is further ordered,* That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: April 14, 1971.

Released: April 21, 1971.

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

[FR Doc.71-5900 Filed 4-27-71;8:50 am]

[Dockets Nos. 19209, 19210; FCC 71-405]

WALTER J. M. KRAUS AND WILLAMETTE BROADCASTING CO., INC.

Order Designating Applications for Consolidated Hearing on Stated Issues

In regard applications of Walter J. M. Kraus, Lake Oswego, Oreg., requests: 106.7 mcs, No. 294; 100 kw.(H); 100 kw.(V); 588 feet, Docket No. 19209, File No. BPH-6914; Willamette Broadcasting Co., Inc., Milwaukie, Oreg., requests: 106.7 mcs, No. 294; 100 kw.(H); 100 kw.(V); 500 feet, Docket No. 19210, File No. BPH-7047; for construction permits.

1. The Commission has under consideration the above-captioned and described applications which are mutually exclusive in that operation by the applicants as proposed would result in mutually destructive interference.

2. The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will also be specified.

3. Each of the applicants is qualified to construct and operate as proposed. However, because of their mutual exclusivity, the Commission is unable to make a statutory finding that a grant of the subject applications would serve the public interest, convenience, and necessity, and is of the opinion that they must be designated for hearing in a consolidated proceeding on the issues set forth below.

4. *It is ordered,* That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

(1) To determine the areas and populations which would receive FM service of 1 mv/m or greater intensity from the respective proposals together with the availability of other primary aural services in such areas.

(2) To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

(3) To determine, in the event it is concluded that a choice between applications should not be based solely on considerations relating to section 307(b), which of the proposals would better serve the public interest.

(4) To determine in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications for construction permit should be granted.

5. *It is further ordered,* That to avail themselves of the opportunity to be heard, the applicants, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney shall, within twenty (20) days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

6. *It is further ordered,* That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: April 14, 1971.

Released: April 21, 1971.

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

[FR Doc.71-5901 Filed 4-27-71;8:50 am]

[Docket No. 19233; FCC 71-429]

KENNETH J. SPANGLER

Order Designating Application for Hearing on Stated Issues

In regard application of Kenneth J. Spangler, 2753 Blanche Street, Melvindale, MI 48122, for Class D citizens radio station license.

The Commission has under consideration the above-entitled application for a Class D Citizens radio station license filed by Kenneth J. Spangler on October 26, 1970.

There is a substantial question concerning the qualifications of the applicant to hold a Class D Citizens radio station license arising:

(a) From his unlicensed operation of radio apparatus on October 23, 1969; November 13, 18, 21, and 22, December 16 and 17, 1970; and January 16 and 17, 1971;

(b) From transmitting radio communications during the aforementioned periods, which, had he been licensed, would have been in violation of the Commission's Rules governing the Citizens Radio Service; and

(c) From statements contained in his letter received on December 21, 1970, which were false and evidenced a lack of candor.

The Commission is unable to find that a grant of the captioned application would serve the public interest, convenience, and necessity and must, therefore, designate the application for hearing. Except for the issues specified herein, the applicant is otherwise qualified to hold a Class D Citizens radio station license.

Accordingly, it is ordered, Pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 1.973(b) of the Commission's rules, that the captioned application is designated for hearing, at a time and place to be specified by subsequent order, upon the following issues:

1. To determine whether the applicant engaged in unlicensed operation of a radio transmitting apparatus on October 23, 1969; November 13, 18, 21, and 22, December 16 and 27, 1970; and January 16 and 17, 1971, in violation of section 301 of the Communications Act of 1934, as amended;

2. To determine whether the applicant's transmissions in the Citizens Radio Service during October 1969, November and December 1970, and January 1971, would have been in violation of various sections of Part 95 of the Commission's rules had he been a Class D Citizens radio station licensee. These sections of the Commission's rules include: Sections 95.95(c), 95.41(d)(2), 95.43, 95.83(a)(1), 95.83(a)(13), and 95.91(b);

3. To determine whether the applicant misrepresented facts to the Commission and was lacking in candor in his letter received on December 21, 1970, concerning the Commission's inquiry as to his operations on Citizens Radio Service frequencies, and his compliance with Commission rules;

4. To determine whether, in view of the evidence adduced in the above-specified issues, Kenneth J. Spangler possesses the requisite qualifications to be a licensee of the Commission; and

5. To determine whether, in light of the evidence adduced in respect to the foregoing issues, the grant of the subject application for a Class D Citizens radio station license would serve the public interest, convenience and necessity;

It is further ordered, That, to avail himself of the opportunity to be heard, the applicant herein, pursuant to § 1.221 of the Commission's rules, in person or by attorney, shall within 20 days of the mailing of this order file with the Commission, in triplicate, a written appearance stating an intent to appear on the date fixed for hearing and to present

evidence on the issues specified in this order.

Adopted: April 21, 1971.

Released: April 22, 1971.

FEDERAL COMMUNICATIONS COMMISSION [1a]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-5902 Filed 4-27-71;8:50 am]

[Docket No. 19217; FCC 71-421]

PROFESSIONAL BROADCASTING, INC.

Order Designating Application for Hearing on Stated Issues

In regard to application of Professional Broadcasting, Incorporated, Elizabeth City, N.C., requests: 106.9 mcs, No. 295; 100 kw. (H); 100 kw. (V); 500 feet, Docket No. 19217, File No. BPH-7254, for construction permit.

1. The Commission has under consideration the above captioned and described application.

2. The requested Class C channel is assigned to Elizabeth City, N.C., and applicant proposes to use it there. The site chosen, however, is more than 20 miles from Elizabeth City in the direction of the Tidewater, Va., metropolitan area. The site itself is in Chesapeake, Va., part of the Norfolk-Portsmouth Standard Metropolitan Statistical Area and operating from this site, applicant would cover much of that area with a 3.16 mv/m signal and essentially all of it with a 1 mv/m signal. Applicant contends that the site was chosen because of aeronautic considerations, but with only a 79-foot reduction in height it could locate in most of the Elizabeth City area and, in fact, there appear to be sites much closer to Elizabeth City than the one proposed that would not even require a reduction in height. Finally, we note that the choice of a site just beyond the boundary in Zone II means that applicant would be able to operate with Class C facilities. All but one of the other stations in the Tidewater area, are located in Zone I, and are limited by the rules to Class B facilities. Although some have super power facilities, none reaches the 100 kw. level that this applicant seeks. Under these circumstances, we believe that a Berwick issue is required to determine whether applicant intends to serve Elizabeth City or some other larger community.[1] We do not find that applicant's showing on the source of anticipated revenues is sufficient to obviate the need for a hearing on this issue.

3. Except as indicated by the issues specified below, the applicant is qualified to construct and operate as proposed. However, because of the matter discussed above, the application must be designated for hearing on the issues specified below.

4. *It is ordered,* That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the application is designated for hearing, at a time and place to be specified in a subsequent order, upon the following issues:

(1) To determine whether this proposal would realistically provide a transmission service for Elizabeth City or for another, larger, community.

(2) To determine, in the light of the evidence adduced pursuant to the foregoing issue, whether a grant of the application would serve the public interest, convenience, and necessity.

5. *It is further ordered,* That to avail itself of the opportunity to be heard, the applicant, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney shall, within twenty (20) days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

6. *It is further ordered,* That the applicant herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: April 14, 1971.

Released: April 21, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[2]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-5903 Filed 4-27-71;8:50 am]

[Docket No. 19220]

ROBERT HARRY SMITH

Order Designating Hearing on Stated Issues

In the matter of Robert Harry Smith, 924 Sherwood Street, Hanover, PA 17331, suspension of radiotelephone first class operator license.

1. The Commission, by the Chief of its Field Engineering Bureau, has under consideration the order released March 29, 1971, suspending for a period of thirty (30) days the Radiotelephone First Class Operator License P1-3-8636, issued to Robert Harry Smith.

2. A timely request for hearing on the matter has been filed by Mr. Smith. Hence, in accordance with the provisions of section 303(m)(2) of the Communications Act of 1934, as amended, the order suspending the said license is held in abeyance until the conclusion of the proceedings in this matter.

3. *Accordingly, it is ordered,* Under authority contained in section 303(m)(2) of the Communications Act of 1934, as amended, and § 0.311(a)(5) of the Commission's rules, that the matter of the suspension of the Radiotelephone First Class Operator License issued to Robert Harry Smith is hereby designated for hearing at a time and place and before a hearing examiner to be specified by further order of the Commission upon the following issues:

(a) To determine whether Robert Harry Smith, on October 13, 1970, while the operator on duty at standard broadcast station WGET, Gettysburg, Pa., recorded in the station log an antenna current reading allegedly taken at 9:18 a.m. on that date without having actual knowledge of the facts required and thus violated the provisions of § 73.111(a) of the Commission's rules.

(b) To determine in the light of the evidence adduced in the preceding issue whether the terms of the original suspension order shauld be made final, rescinded, or modified.

4. *It is further ordered,* That the Secretary shall send a copy of this order by Certified Mail—Return Receipt Requested to Robert Harry Smith at the address given above.

Adopted: April 16, 1971.

Released: April 20, 1971.

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

[FR Doc.71-5904 Filed 4-27-71;8:50 am]

FEDERAL DEPOSIT INSURANCE CORPORATION

INSURED BANKS

Joint Call for Report of Condition

Pursuant to the provisions of section 7(a)(3) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1817(a)(3)), each insured bank is required to make a Report of Condition as of the close of business April 20, 1971, to the appropriate agency designated herein, within 10 days after notice that such report shall be made: *Provided,* That if such reporting date is a nonbusiness day for any bank, the preceding business day shall be its reporting date.

Each national bank and each bank in the District of Columbia shall make its original Report of Condition on Office of the Comptroller Form, Call No. 477,[1] and shall send the same to the Comptroller

[1a] Chairman Burch absent.

[1] *Berwick Broadcasting Corporation,* 12 FCC 2d 8(1968). Although use of the then "25-mile" rule was involved in that case but not in this one, the effect is essentially the same. In fact, because of the considerable facilities available to Class C stations, their latitude in selecting a site can just as easily create a situation raising this issue.

[2] Commissioners Robert E. Lee and Wells dissenting.

[1] Filed as part of original document.

of the Currency, and shall send a signed and attested copy thereof to the Federal Deposit Insurance Corporation. Each insured State bank which is a member of the Federal Reserve System, except a bank in the District of Columbia, shall make its original Report of Condition on Federal Reserve Form 105—Call 199,[1] and shall send the same to the Federal Reserve Bank of the District wherein the bank is located, and shall send a signed and attested copy thereof to the Federal Deposit Insurance Corporation. Each insured State bank not a member of the Federal Reserve System, except a bank in the District of Columbia and a mutual savings bank, shall make its original Report of Condition on FDIC Form 64—Call No. 95,[1] and shall send the same to the Federal Deposit Insurance Corporation.

The original Report of Condition required to be furnished hereunder to the Comptroller of the Currency and a copy thereof required to be furnished to the Federal Deposit Insurance Corporation shall be prepared in accordance with "Instructions for preparation of Reports of Condition by National Banking Associations," dated November, 1970.[1] The original Report of Condition required to be furnished hereunder to the Federal Reserve Bank of the District wherein the bank is located and the copy thereof required to be furnished to the Federal Deposit Insurance Corporation shall be prepared in accordance with "Instructions for the preparation of Reports of Condition by State Member Banks of the Federal Reserve System," dated December, 1970.[1] The original Report of Condition required to be furnished hereunder to the Federal Deposit Insurance Corporation shall be prepared in accordance with "Instructions for the preparation of Report of Condition on Form 64 by insured State banks not members of the Federal Reserve System," dated December, 1970.[1]

Each insured mutual savings bank not a member of the Federal Reserce System shall make its original Report of Condition on FDIC Form 64 (Savings),[1] prepared in accordance with "Instructions for the preparation of Report of Condition on Form 64 (Savings) and Report of Income and Dividends on Form 73 (Savings) by Mutual Savings Banks," dated December, 1962, and any amendments thereto,[1] and shall send the same to the Federal Deposit Insurance Corporation.

[SEAL] FRANK WILLE,
Chairman,
Federal Deposit Insurance Corporation.

WILLIAM B. CAMP,
Comptroller of the Currency.

J. L. ROBERTSON,
Vice Chairman, Board of Governors of the Federal Reserve System.

[FR Doc.71-5893 Filed 4-27-71;8:50 am]

FEDERAL MARITIME COMMISSION

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Notice of Certificates Issued

Notice is hereby given that the following vessel owners and/or operators have established evidence of financial responsibility, with respect to the vessels indicated, as required by section 11(p)(1) of the Federal Water Pollution Control Act, as amended, and, accordingly, have been issued Federal Maritime Commission Certificates of Financial Responsibility (Oil Pollution) pursuant to Part 542 of Title 46 CFR.

Certificate No.	*Owner/operator and vessels*
01064---	Reinauer Transportation Companies, Inc.: Franklin Reinauer II. R.T.C. No. 400. R.T.C. No. 350. R.T.C. No. 300. R.T.C. No. 200. R.T.C. No. 100. R.T.C. No. 175. R.T.C. No. 115. B.F.T. No. 400. R.T.C. No. 125.
01524---	Monrovia Tanker Co.: Mary Livanos.
01527---	Cia Carreto de Navegacion S.A.: N. G. Livanos. Pearl Creek. Lucy.
01528---	Aegean Sea Transports S.A.: Aegean Centaur.
01566---	Giannicos Navigation Co., Ltd.: Castalia.
01567---	Marero Compania Naviera, S.A.: M/V Captain Lemos.
01568---	Eugenia Armadora S.A. Panama: M/V Captain Gerontas.
01610---	CF Industries, Inc.: CF-101-L. CF-105-B. CF-104-T. CF-103-L. CF-102-T. CF-106-B.
01639---	Marencanto Compania Naviera, S.A.: Promachos.
01854---	Southern Towing Co.: SS 2024 (EX IFS 303). SS 2325 B (EX IFS 302). SS 2023 (EX IFS 301). Dorothy I. Southern. Charles Southern. Frank Stegbauer. STC 2015. STC 2014. STC 2000. JAMES 711. STC 2003. STC 2011. STC 2019 B. STC 2509. STC 2507. STC 2506. STC 2518 B.
01640---	Corredores Delmar Armadora S.A.: Elin Naftikos.
01768---	Magna Steamship Co., S.A.: Evdori.
01770---	Ades Steamship Co., S.A.: Galatia.
01777---	Polaris Steamship Co., S.A.: Nefeli.
01778---	Vector Steamship Co., S.A.: Efyra.
01779---	Victrix Steamship Co., S.A.: Ploto.
01856---	Tennemo Towing Co., Inc.: Laguna. Jim Southern. James L. Williams.
01890---	A/S Billabong: Star Atlantic. Star Cariboo. Star Columbia. Star Billabong. Star Ballarat.
01896---	Wm. France Fenwick & Co. Ltd.: Sherwood. Dalewood. Chelwood. Star Pinewood.
01902---	Vancouver Shipping Co., Inc.: Van Ocean.
01903---	Alberti Navigation Co., Inc.: Van Enterprise.
02436---	Alexander Shipping Co., Ltd.: Queensbury. Shaftesbury. Tewkesbury. Westbury.
02467---	Ponce Corp.: Ponce.
02469---	Santurce Corp.: San Juan.
02476---	Independent Towing Co.: Elm. Oak. Locust. Chestnut.
02523---	Sitki Kocman-Selahattin Goktug Denizcilik Isletmesi Donatma Istiraki: M/S Dalaman. M/S Koycegiz.
03863---	Migrant Shipping Co., Ltd.: M/V Oro Verde.
03865---	Oceanic Navigation Co., Ltd.: M/V Montego.
02525---	Burnett Steamship Co. Ltd.: M/V Gosforth.
02581---	Alter Marine Corp.: Paterelias.
02809---	Rea Shipping Co., S.A.: Largo.
02811---	Saga Shipping Co., S.A.: Ellin.
02812---	Seacrest Shipping Co., S.A.: Harmonic.
02811---	Seahawk Shipping Co., S.A.: Laconic.
02814---	Seaspray Shipping Co., S.A.: Platonic.
02836---	The Scindia Steam Navigation Co., Ltd.: M/V Narottam Morarjee. M/V Jalatarang. M/V Jalarashmi. M/V Jalarajan. M/V Jalagirija. M/V Jalamayur. M/V Jalakala. M/V Jalakendra. M/V Jalapalaka. M/V Jalagomati. M/V Jalaganga. M/V Jalagouri. M/V Jalamangala. M/V Jalaratna. M/V Jalajyoti. M/V Jaladhanya. M/V Jalakanta.

Certificate No.	Owner/operator and vessels
	M/V Jalapankhi.
	M/V Jaladuta.
	M/V Jaladhruv.
	M/V Jaljawahar.
	M/V Jalajaya.
	Jalagopal.
	Jalamani.
	Jalamatsya.
	Jaladharati.
	Jaladhir.
	Jalakirti.
	Jalakrishna.
	Jaladurga.
	Jaladuhita.
	Jalavijaya.
	Jalavishnu.
	Jalaveera.
	Jalavikram.
	Jaladharma.
	Jalazad.
02903---	George Gibson & Co., Ltd.:
	Dryburgh.
	Ettrick.
	Yarrow.
02907---	Blue Horizon Shipping Co., S.A.:
	Aghios Nicolaos.
02908---	Ensign Shipping Co., S.A., Panama:
	Katingo H.
02982---	The Shipping Corp. of India Ltd.:
	S/O Andhra.
	S/O Trav. Cochin.
	Vishva Kusum.
	S/O Kutch.
	Vishva Kanti.
	Vishva Suman.
	Vishva Pratibha.
	Vishva Lalita.
	S/O Assam.
	S/O Bihar.
	S/O Gujarat.
	Vishva Vir.
	Vishva Pratap.
	S/O Kerala.
	S/O Orissa.
	Vishva Vinay.
	Vishva Marg.
	Vishva Anand.
	Vishva Sudha.
	Vishva Vivek.
	Vishva Vandana.
	S/O Maharashtra.
	Vishva Jyoti.
	Vishva Usha.
	Vishva Prabha.
	Vishva Kirti.
	S/O Uttar Pradesh.
	S/O Rajasthan.
	Vishva Nidhi.
	S/O Punjab.
	Vishva Prem.
	Vishva Maya.
	Vishva Mangal.
	S/O Madhya Pradesh.
	Vishva Mahima.
	S/O West Bengal.
	Vishva Kalyan.
	Vishva Vibhuti.
	Vishva Raksha.
	S/O Mysore.
	Vishva Tirth.
	Vishva Toj.
	Vishva Seva.
	Vishva Siddhi.
	Vishva Vikas.
	Vishva Sandesh.
	Vishva Bhakti.
	Vishva Chetna.
	Vishva Bindu.
	Vishva Shakti.
	Vishva Dharma.
	Vishva Vikram.
	Ajanta.
	Sanchi.
	Nalanda.
	Barauni.
	Bellary.
	Desh Bandhu.
	Lajpatrai.
	Jawaharlal Nehru.
03012---	Aliki Liberian Maritime Co.:
	Tarpon Surf.
	Tarpon Swift.
	Tarpon Springs.
03013---	Tarstar Shipping Co.:
	Aliki I.P.
03148---	Astromerito Cia. Naviera:
	Enotis.
03149---	Isla Grande Cia Naviera:
	Kalliopi Pateras.
03219---	Whitwill, Cole & Co., Ltd.:
	British Wasa.
	Scottish Wasa.
	Baltic Ore.
03262---	Marinero Atlantico Nav. S.A.:
	Kavo Aetos.
03263---	Marepoca Compania Naviera S.A.:
	Kavo Alkyon.
03264---	Mardevoto Compania Naviera S.A.:
	Kavo Delfini.
01084---	The West Hartlepool Steam Navigation Co., Ltd.:
	Grantleyhall.
01150---	Chevron Transport Corp.:
	George L. Parkhurst.
	Asa V. Call.
	William M. Allen.
	J. E. Gosline.
	Howard G. Vesper.
	R. G. Follis.
	Ralph B. Johnson.
	K. H. Crandall.
	Roy G. Lucks.
	Elmer R. Peterson.
	T. S. Petersen.
	Otto N. Miller.
	T. L. Lenzen.
	George A. Davidson.
	Paul Pigott.
	Chevron Transporter.
	Atholl McBean.
	A. N. Kemp.
	Gage Lund.
	Robert Watt Miller.
	E. J. McClanahan.
01175---	Porto Nacional Compania Naviera S.A.:
	Aegean Mariner.
01177---	Freighters Transport Corp.:
	Aegean Dolphin.
01245---	Eilert Lund's Rederi A/S:
	M/S Marianne.
	M/S Lisianne.
	M/S Susanne.
01302---	Boston Fuel Transportation Inc.:
	R.T.C. No. 55.
	Erie.
	Casco Bay.
	B.F.T. No. 300.
	B.F.T. No. 100.
	Lucy Reinauer.
	Dean Reinauer.
	N. W. Gokey.
	Ethel Tibbetts.
	Vincent Tibbetts.
	Harold Reinauer.
	Karen Tibbetts.
01351---	The Hadley Shipping Co., Ltd.:
	M/V Cumbria.
	M/V Camarina.
	M/V Corato.
	M/V Calandria.
	S/S Cerinthus.
	S/S Clymene.
	M/V Clyde Bridge.
03266---	Astrotridente Compania Naviera S.A.:
	Kavo Grossos.
03267---	Kavo Compania Naviera S.A.:
	Kavo Longos.
03268---	Alpha Compania Naviera S.A.:
	Lambros M. Fatsis.
03325---	Cavalier Towing Inc.:
	M/V Pamela D.
03326---	Downey Towing Co.:
	M/V Peggy Downey.
03327---	M/V Kathleen K. Inc.:
	M/V Ravenswood.
03600---	Bahamas Line, S.A.:
	Layla Express.
	William Express.
	Johnny Express.
	Lincoln Express.
03692---	Marmac Corp.:
	East Peco.
	M-608.
	M-609.
	M-606.
03751---	Castle & Cooke, Inc.:
	Isleways No. 5.
	Isleways No. 4.
	Isleways No. 3.
	Isleways No. 1.
	Isleways No. 7.
	Isleways No. 2.
03763---	Cargaisones Oceanicas S.A.:
	M/V Iason.
03764---	Amphion Shipping Corp.:
	M/V Phoevos.
03765---	Arpa Shipping Corp.:
	M. T. Damon.
03766---	Petroleum carriers Corp.:
	M/T Nicolas.
03767---	Orpheus Marine Transport Corp.:
	M/V Orpheus.
03769---	Rainbow Shipping Corp.:
	M/V Aikman.
03770---	El Dorado Compania Naviera S.A.:
	S/T Prodromos.
03800---	Elco Shipping Corp., SA:
	Soula K.
01383---	Mariehamns Rederi A.B., Mariehamn:
	Kalliso.
	Jarso.
	Saggo.
	Tingo.
	Norro.
	Kungso.
	Grano.
	Degero.
	Herro.
	Ranno.
	Eckero.
	Styrso.
	Sommaro.
	Gregerso.
	Germundo.
	Hamno.
02027---	Atlas Towing Co.:
	A. V. Criss.
02032---	D.B. Deniz Nakliyati T.A.S.:
	M/V Aras.
02126---	Morania Oil Tanker Corp.:
	Morania No. 200.
	Morania No. 300.
	Morania No. 170.
	Morania No. 190.
	Morania No. 180.
	Morania No. 130.
	Morania No. 140.
	Morania No. 150.
	Morania Marlin.
	Morania No. 160.
02133---	Marsimbol Compania Naviera S.A.:
	Medita.
02146---	Pittston Marine Corp.:
	Pittston 200.
	Pittston 40.
	Pittston 21.
	Pittston 20.
	Fairfield.
	Pittston 30.
	Samuel H. Herron.
	New London.

Certificate No.	Owner/operator and vessels
02194---	Compagnie Generale Transatlantique:
	Aunis.
02235---	Magda Compania Naviera S.A. Panama:
	Magdalini.
02301---	Naviera Vizcaina, S.A.:
	Ea.
02325---	Mount Vernon Tanker Co.:
	Mount Vernon Victory.
02333---	Diamond Shamrock Corp.:
	STC 008.
	301.
	302.
	504.
	507.
	701.
	Star Diamond.
	Star J.D. II.
02367---	Canadian Pacific (Bermuda) Ltd.:
	Lord Strathcona.
02163---	Rederiet Ocean A/S, Copenhagen:
	Italian Reefer.
03864---	Neptune Shipping Co., Ltd.:
	M/S Frigora.
03918---	Mobil Tankers Co. (Liberia) Ltd.:
	Mobil Vigilant.
	Mobil Valiant.
	Mobil Japan.
	Mobil Comet.
	T.B.N.
	Mobil Pride.
03936---	Liberian Valiant Transports Inc.:
	World Virtue.
03937---	Liberian Equity Transports Inc.:
	Eastern Ace.
03939---	Liberian Noble Transports Inc.:
	Eastern Merit.
03940---	Liberian Integrity Transports Inc.:
	World Diana.
03941---	Liberian Sceptre Transports Inc.:
	Rachel.
03942---	Liberian Honour Transports Inc.:
	Eastern Cherry.
03943---	Liberian Faith Transports Inc.:
	World Mobility.
03944---	Liberian Distance Transports Inc.:
	Eastern Mary.
03945---	Liberian Global Transports Inc.:
	World Standard.
03946---	World Combination Carriers Ltd.:
	World Union.
03947---	Bancroft Shipping Co., Ltd.:
	Eastern Freedom.
05003---	Wisconsin Barge Line, Inc.:
	Ray A.
	Reliance.
	Minnesota.
	Kathryn Eckstein.
	Penny of Cassville.
	Rose Tranchita.
05039---	Inland Oil & Transport Co.:
	IOT-303.
	IOT-304.
	IOT-305.
	IOT-306.
	IOT-307.
	IOT-308.
	IOT-162.
	IOT-301.
	IOT-302.
	IOT-111.
	IOT-112.
	IOT-154.
	IOT-155.
	MV-112.
	IOT-158.
	IOT-160.
	IOT-101.
	IOT-102.
	IOT-103.
	IOT-105.
	IOT-107.
	IOT-109.
	IOT-104.
	IOT-106.
	IOT-108.
	IOT-110.
	IOT-152.
	IOT-161.
	IOT-151.
	IOT-153.
	IOT-159.
	IOT-351.
	IOT-352.
	IOT-6.
	IOT-3.
	Lady Linda.
	Lady Patricia.
	Lady Rose-Mary.
	Lady Kimberly.
	Lady Gloria.
	Lady Marjorie.
05016---	Hess Oil Virgin Islands Corp.:
	Leeward Islander.
	Virgin Islander.
	Hovic 3.
	Hovic 2.
05017---	Amerada Hess Corp.:
	Huskey 852.
	U.M.I.-1809-B.
	M. J. 8.
	F. C. 605.
	JTS 600.
	JTS 200.
	JTS 100.
	G. M. 127.
	Hess 7.
	Hess 6.
	Hess Trader.
	Hess Refiner.
	Hess Petrol.
	Hess Bunker.
	Hess Voyager.
05047---	PPG Industries, Inc.:
	PPG-251.
	PPG-252.
	PPG-253.
	HCC-1.
	HCC-201.
	PPG-10.
	PPG-11.
	Atlas-329.
	Atlas-703.
	ABL-294.
	ABL-296.
	ABL-319.
	PPG-203.
	PPG-204.
	CSCC-200.
	CSCC-201.
	CSCC-202.
	PPG-209.
	PPG-158.
	PPG-157.
	PPG-156.
	PPG-155.
	PPG-153.
	PPG-152.
	PPG-151.
	CSCC-301.
	PPG-150.
	PPG-110.
	PPG-226.
	PPG-208.
	PPG-207.
	PPG-206.
	PPG-205.
	PPG-227.
	HCC-101.
	PPG-406.
	PPG-405.
	PPG-404.
	PPG-403.
	PPG-402.
	PPG-401.
	PPG-400.
	PPG-216.
	PPG-215.
	PPG-214.
	PPG-213.
	PPG-212.
	PPG-211.
	PPG-210.
05077---	J. A. Laporte, Inc.:
	Arlington.
05081---	United States Dredging Corp.:
	Rice 421.
	Magic City.
05112---	Nereid Steamship Corp.:
	Nereid.
05113---	Hesperis Shipping Corp.:
	Binky.
05125---	Bay and River Navigation Co.:
	M/V Komoku.
05130---	Naviera Humboldt S.A.:
	Huandoy.
05148---	Samyang Navigation Co., Ltd.:
	M/T Gold Star.
	M/T New Star.
	M/T Sea Star.
05175---	Harbor Towing, Inc.:
	B-1.
	B-4.
	B-7.
05188---	Marine Transport Co. S.A. of Panama:
	M/S Urania.
05193---	The Crawford Shipping Co., Ltd.:
	Vulcain.
05196---	MS Iris Reederei & Schiffahrts G.m.b.h. KG:
	Iris.
05199---	Prekookeanska Plovidba:
	Kolasin.
	Niksic.
	Virpazar.
	Bar.
	Cetinje.
	Piva.
	Ulcinj.
	Tara.
05217---	N.V. Scheepvaartbedrijf Gruno Amsterdam:
	Cumulus.
05221---	Providence Compania Naviera Corp.:
	Trigon.
05225---	Cap Phaistos Compania Naviera S.A.:
	Cap Phaistos.
05234---	Electro-Coal Transfer Corp.:
	Electro Fuel No. 25.
05331---	Northland Shipping (1962) Co., Ltd.:
	Northland Prince.
	Lakelse.
	Skeena Prince.
05334---	Ofmike Corp.:
	M/V Penny Michaels.
05335---	First Lamda Shipping Inc.:
	M/V Lamda.
05343---	Deederei E. Hanisch:
	Seeteufel.
05344---	Highland Resources, Inc.:
	Big John.
05345---	L. Figueiredo Navegacao S.A.:
	Santo Andre.
	Santo Amaro.
	Sao Marcos.
	Sao Leopoldo.
05389---	Tricia Shipping Co., Ltd.:
	Cleopatra.
05446---	Fidelity Navigation Co., Inc. Panama:
	Maritime Reliance.
05347---	Loffland Brothers Co.:
	No. 15 Orville L. Fisher.
	No. 16 Gulf Coast No. 2.
	No. 11 (No name).
	No. 9 (No name).
	No. 10 (No name).
	V-100.
05236---	Mid-South Towing Co.:
	Julia Woods.
	Girlie Knight.
	Martha Lynn.

Certificate No.	Owner/operator and vessels
05237---	Power Transportation Co.: Maba Kelce.
05242---	Rederij Adine: Adine.
05349---	Trans-Caribbean Lines, Inc.: Ultra Freeze. Deep Freeze.
05353---	Stenning Industries, Inc.: Aleta II.
05367---	Eiko Kisen Kabushiki Kaisha: M/S Eiyo Maru. M/S Koyo Maru No. 35.
05368---	Kyowa Kaiun Kabushiki Kaisha: M/S Wakashio Maru No. 27. M/S Seiyo Maru No. 7. M/S Wakashio Maru No. 26.
05390---	Massa Cap. Franceso: Capo Miseno.
05391---	Komanditselskapet Sea Venture A/S & Co.: M/S Sea Venture.
05394---	Kyma Shipping Co., Ltd.: M/V Olympian.
05418---	Laertis Shipping Enterprises Special Shipping S.A.: Maria.
05425---	Georgia Transporters, Inc.: GT 114. GT 120.
05429---	Navegacion Goya, S.A.: Sabine.
05430---	Navegacion Negvas, S.A.: Midlake.
05431---	Tidewater Construction Corp.: Barge 52. Barge 51. Barge 50. Barge 48. Barge 47. Rig No. 15. Rig. No. 18. Rig. No. 20.
05435---	Beaver Oil Transport Ltd.: Beaver (Ex Barkald).
05437---	The Dow Chemical Co.: DC-495. DC-220. DC-610. DC-620. DC-630. DCW-1. DC-710. DC-715. DC-475. DC-480. DC-485. DC-490. FT-4. ST-6. FT-8. DC-415. FT-2. DC-420. DC-425. DC-430. DC-435. DC-440. DC-445. DC-455. DC-250. DC-510. DC-110. DC-120. DC-130. DC-210. DC-230. DC-240. DC-60. DC-450. DC-50. FTS-10. DC-310. DC-90. DC-410. DC-460. DC-465. DC-470.
05401---	Marine Acoustical Services Inc., a Subsidiary of Tracor Inc.: F. V. Hunt.
05538---	Glacier Sand & Gravel Co.: ZB-45. ZB-43. ZB-31. Barge Z. ZB-14. ZB-15. ZB-2. PBM-1.
05541---	Southwind Shipping Co., S.A.; Stoic.
05542---	Akra Shipping Co., Ltd., Panama: Akra Tenaron.
05543---	Arditos Compania Naviera S.A.: Aegis Honor.
05547---	Compania Pyrgos de Navegacion S.A.: Stolt Fuji.
05548---	Dravo Corp.: KD Dredge No. 5. KD Dredge No. 9. KD Landing No. 4. ECD D.B. No. 27. KD Dredge No. 16. WCD SS12.
05560---	Gann Enterprises, Inc. City of Lisbon.
05588---	Chryselena Compania Naviera S.A.: M/S Elena M.
05589---	Maya Compania Naviera S.A.: M/S Vasilis.
05590---	Universal Constructors & Engineers Ltd.: M/V Swellmaster.
05243---	Bosma's Scheepvaart & Handel Maatschappij N.V.: Cornelia B IV. Cornelia B III. Cornelia B II. Cornelia B I.
05273---	Compania Maritima Rio Gulf, S.A.: La Rabida.
05281---	Slade, Inc.: LB 19. S-2512. S-2511. CIT-2015. CIT-2016. H.T. Co. No. 49. S-2012. S-2011. H.T. Co. No. 50. S-1513. S-1511. S-1514. S-1512. H.T. Co. No. 45. H.T. Co. No. 41. H.T. Co. No. 29. H.T. Co. No. 27. H.T. Co. No. 26. H.T. Co. No. 43. H.T. Co. No. 42. H.T. Co. No. 46. S-8502. S-8503. Pan Am-219. S-9003.
05290---	Ocean Transport Lines, Inc.: Chilean Nitrate. John Wilson.
05291---	Southern Towing Co.: ST-1502. ST-1501. H.T. Co. No. 48. REB-2501. REB-2502.
05320---	Madrigal Shipping Co., Inc.: V Madrigal.
05326---	Luna II Compania Naviera S.A. Panama: Miaoulis. Canaris.
05327---	Luna III Compania Naviera S.A. Panama: Kountouriotis.
05440---	Compania de Navegacion Siroco S.A. Panama: M/V Siroco.
05441---	Compania de Navegacion Tornado S.A. Panama: M/V Tornado.
05442---	Michalinos & Co., Ltd.: M/V Riverdore. S/S Castledore.
05443---	Rederij Motorschip Spithead: Spithead.
05445---	Eastern Seaboard Petroleum Co., Inc.: Eastpet No. 1. Eastpet No. 2. Eastpet No. 3. Eastpet No. 4. Eastpet No. 5.
05447---	Rederiaktiebolaget Asta: M/S Alca. M/S Asta. M/S Atlas.
05466---	Pan-Islamic Steamship Co., Ltd.: Safina-E-Najam. Safina-E-Haider. Safina-E-Nusrat. Safina-E-Barkat. Safina-E-Arab. Safina-E-Ismail. Safina-E-Rehmat. Safina-E-Ahmar.
05475---	Maraguila Compania Naviera S/A: Achaios.
05476---	Mireille Compania Naviera S/A Panama: Mireille.
05477---	Danaos Compania Naviera S/A: Pelops. Danaos.
05478---	Rudora Shipping Co.: Pandora.
05488---	Chung Shek Enterprises Co., Ltd.: M/V Purple Dolphin. M/V Sea Amber. M/V Sea Coral.
05489---	El Libertad Corp.: Meandros.
05500---	Petroleos Mexicanos: T/S Plan de Ayutla. T/S Plan de Guadalupe. T/S Jose Maria Morelos. T/S Francisco I. Madero. T/S Benito Juarez. T/S Alvaro Obregon. T/S Melchor Ocampo. T/S Plan de Ayala. T/S Guadalupe Victoria. T/S Juan Alvarez. T/S Abelardo L. Rodriguez. T/S Ignacio Allende. T/S Lazaro Cardenas. T/S Plutarco Elias Galles. T/S Cuauhtemoc. T/S Venustiano Carranza. T/S Plan de San Luis. T/S Mariano Escobedo. T/S Miguel Hidalgo. T/S Vicente Guerrero. T/S Salamanca. T/S Emiliano Zapata. Independencia. Petroquimico I. Pemex XXXVIII. Pemex XXXIX. Pemex XL. Pemex XXX. Pemex XXXI. Pemex XXXII. Pemex XXXIII. Pemex XXXIV. Pemex XXXV.
05501---	Industrial Navigation Co., Inc.: Sea Architect.
05503---	John Swire & Sons (Shipping) Ltd.: Erawan.

Certificate No.	Owner/operator and vessels
05505---	Marmanosa Compania Naviera S.A.:
	Pan.
05506---	Aegean Shipping Co., Ltd.:
	Mandraki.
05507---	Valerosa Compania Naviera S.A.:
	San John.
05508---	Galaction Shipping Co., Ltd.:
	Theokletos.
05509---	Samsa Compania Naviera S.A.:
	Prodromos.
05510---	Ionian Shipping Co., Ltd.:
	Theokrates.
05513---	Ulrich Harms G.m.b.H. & Co.:
	Varius I.
	Varius II.
	Varius III.
	Magnus I.
	Magnus II.
	Magnus III.
	Magnus IV.
	Magnus V.
	Magnus X.
	Magnus XI.
	Magnus XII.
	Mulus I.
	Mulus II.
	Mulus III.
05514---	Scarsdale Shipping Co., Ltd.:
	Euroliner.
05518---	Glory Navigation Co., Ltd.:
	M/V Thai Yung.
05519---	Navipa S.A.:
	M/V Marisol.
05522---	Burmah Oil Trading Ltd.:
	El Lobo.
03949---	Liberian Meridian Transports Inc.:
	World Centenary.
03950---	Liberian Star Transports Inc.:
	World Gemini.
03951---	The Windsor Shipping Co., Ltd.:
	World Harmony.
03952---	World Magnate Shipping Ltd.:
	World Soya.
03953---	Walnut Shipping Co., Ltd.:
	Eastern Kiku.
03954---	Liberian Champion Transports Inc.:
	World Queen.
03955---	Liberian Atlas Transports Inc.:
	World Leader.
03956---	The Apex Shipping Co., Ltd.:
	World Yuri.
03957---	Liberian Victor Transports Inc.:
	World Tatsu.
03958---	Liberian Oriental Transports Inc.:
	World Oriental.
03959---	The Knox Shipping Co., Ltd.:
	World Fuji.
03960---	The Judith Ann Liberian Transport Corp., Ltd.:
	Judith Ann.
03962---	The World Log Carriers Ltd.:
	Eastern Sakura.
03961---	The Medal Shipping Co., Ltd.:
	Eastern Take.
03963---	The World Ore Carriers Ltd.:
	Eastern Matsu.
03979---	Moran Towing Corp.:
	Esther Moran.
	Moran 106.
	Moran 104.
	Moran 112.
	Moran 110.
	Moran 102.
	CL&P No. 4.
	CL&P No. 3.
	CL&P No. 2.
	CL&P No. 1.
	Moran 108.
03980---	Moran Towing & Transportation Co., Inc.:
	Rangely.
	Spindletop.
	Panhandle.
	Seaboard 30.
	Seaboard 31.
	Seaboard 32.
	Signal Hill.
	Connecticut.
03981---	Moran Towing of Puerto Rico, Inc.: New Jersey.
03982---	Moran Maritime Associates:
	New York.
03984---	D. M. Picton & Co., Inc.:
	Port Arthur.
	Chemical No. 1.
03985---	Central Wharf Towboat Co., Inc.:
	Edmond J. Moran.
04068---	Papachristidis Co., Ltd.:
	Quebecois.
	Feux-Follets.
	Montrealais.
04167---	Dillingham Oceanographic Corp., Ltd.:
	Mahi.
04198---	Megaron Shipping, Ltd.:
	Vega.
04199---	Commercial Oil Carriers, Ltd.:
	Crusader.
04200---	Oil Transportation Co., Inc.:
	Eressos.
04201---	Naciente Compania Naviera, S.A.:
	Nilos.
04202---	Petroleum Transport, Inc.:
	Durham.
04210---	Anderson Petroleum Transportation Co., Inc.:
	Propane.
	APT 150.
	APT 151.
04361---	Pelican State Towing Co.:
	M/V Lachlan MacLeay.
04237---	B & B Tug & Barge Co., Inc.:
	Bollinger No. 1.
	Bollinger No. 2.
	Bollinger No. 3.
04236---	Bo-Bol Barge Co., Inc.:
	LSC-51.
	LSC-52.
04233---	S.B.A. Barge Co., Inc.:
	SBA-200.
	BB-796.
	SBA-100.
	SBA-400.
	SBA-300.
	BB-797.
04234---	Chemical Waste Disposal Co., Inc.:
	LSC-42.
	LSC-40.
04235---	Bollinger & Boyd Barge Service, Inc.:
	Z-62.
	LSC-302.
04232---	B&B Marine & Construction Corp.:
	Bollinger No. 11.
	Bollinger No. 10.
	Bollinger No. 9.
	Bollinger No. 5.
	Bollinger No. 4.
04163---	Cenac Towing Co., Inc.:
	CTCO 152.
	CTCO 160.
	HBC 161.
	CENAC 167.
	CTCO 169.
	CTC 170.
	CTCO 302-6.
	CTCO 163.
	CENAC 300-6.
	CTCO 192-7.
	CTCO 193-7.
	CENAC 150.
	CTCO 190-7.
	CTCO 162.
	CTCO 156.
	CTCO 166.
	HBC 151.
	CTCO 180.
	CTCO 182.
	CTCO 188-12.
	CTCO 189-12.
	CTCO 174.
	CTCO 301-14.
	CTCO 177.
	CTCO 176.
	CTCO 165.
	CTCO 168.
	CTCO 173.
	CTCO 183.
	CTCO 179.
	CTCO 185.
	CTCO 186-20.
	CTCO 172.
	CTCO 175.
	CTCO 178.
	CTCO 181.
	CTCO 184.
	CTCO 187-25.
	E.A.C. 151.
	E.A.C. 152.
	CTCO 191-26.
04004---	Koninklijke Java-China-Paketvaart Lijnen N.V.:
	Straat Colombo.
	Straat Bali.
	Straat Hong Kong.
	Straat Honshu.
	Straat Agulhas.
	Straat Tanga.
	Musi.
	Houtman.
	Straat Madura.
	Straat Lombok.
	Straat Luzon.
	Straat Lagos.
	Straat Luanda.
	Straat le Maire.
	Straat Frazer.
	Straat Talbot.
	Straat Tauranga.
	Straat Franklin.
	Straat Holland.
	Straat Hobart.
	Straat Algoa.
	Tjitarum.
	Tjiliwong.
	Tjimanuk.
	Straat Torres.
	Straat Cook.
	Straat Johore.
	Straat Singapore.
	Straat Cumberland.
	Straat Towa.
	Straat Clement.
	Straat Colombo.
	Straat Clarence.
	Straat Chatham.
	Straat Mozambique.
	Tjibantjet.
	Tjiluwah.
	Straat Banka.
	Tjiwangi.
	Tjinegara.
	Straat Freetown.
	Straat Fushimi.
	Straat Futami.
	Straat Florida.
	Straat Fiji.
	Straat Fremantle.
	Straat Rio.
	Straat Van Diemen.
	Straat Magelhaen.
	Straat Bali.
05520---	Union Carbide Corporation:
	S/S Carbide Texas City.
	S/S Carbide Seadrift.
	S/S Marine Chemical Transporter.
	DXE 2304.
	USL 462.
	USL 461.
	USL 460.
	USL 443.
	USL 442.
	USL 441.
	USL 434.

Certificate No.	Owner/operator and vessels
	USL 433.
	USL 432.
	USL 431.
	USL 430.
	USL 429.
	USL 428.
	CC 226.
	Wasson No. 8.
	Wasson No. 7.
	Wasson No. 6.
	Wasson No. 5.
	Wasson No. 4.
	Wasson No. 3.
	Wasson No. 1.
	RC 2006.
	RC 2005.
	RC 1401.
	RC 1400.
	PC 2902.
	PC 2901.
	NMS 3205.
	NMS 3204.
	NMS 1900.
	NMS 1202.
	NMS 1200.
	M/G 10–D.
	M/G 10–C.
	M/G 10–B.
	M/G 10–A.
	KEL 501.
	IOT 352.
	IOT 351.
	IOT 304.
	IOT 303.
	IOT 155.
	IOT 106.
	IOT 105.
	IOT 6.
	DXE 2303.
	Butcher 5.
	Butcher 4.
	Butcher 3.
	Butcher 2.
	Butcher 1.
	Bill 502.
	B 1120.
	B 921.
	B 821.
04443---	Atkinson Dredging Co.:
	Enterprise.
	Hampton Roads.
04447---	Willamette-Western Corp.:
	601.
	D. B. Sampson.
	D. B. Titan.
	D. B. Rockhound.
	D. B. Hercules.
	D. B. Goliath.
	D. B. Columbia.
	D. B. Amazon.
	H. D. McCurdy.
	D. B. Willamette.
	D. B. Zeus.
04577---	Aegean Compania Naviera S.A.:
	M/V Kostis Prois.
	M/V Georgios Xylas.
04578---	Marfo Compania S.A.:
	M/V Costas Frangos.
	M/V Georgis Prois.
04602---	Arrow Transportation Co.:
	M/V Robin.
	M/V Stantion K. Smith.
04603---	Tennessee Valley Sand & Gravel Co.:
	Dredge No. 1.
04612---	O. F. Shearer & Sons, Inc.:
	Oliver C. Shearer.
	O. F. Shearer.
	Lelia C. Shearer.
	Fort Dearborn.
	Duncan Bruce.
04615---	Lagerine Shipping Corp.:
	S/S Maria T.
04616---	Alaska-Shell, a Corporation:
	ZB103A.
	Deep Sea.
04617---	Inland Waterways, Inc.:
	Mary Ellen.
	Julie Ann.
04765---	A/S Odderø m/ Fiere (Maple):
	Maple.
04777---	Conty Compania S.A.:
	Xeny.
04780---	Margas Shipping Co., Inc.:
	Alexander Hamilton.
04861---	Interessentskapet Ariel:
	M/V Ariel.
04863---	A/S Ocean Transport:
	Concordia Fana.
04642---	South African Marine Corp., Ltd.:
	S. A. Merchant.
	S. A. Pioneer.
	S. A. Trader.
	S. A. Transporter.
	S. A. Shipper.
	S. A. Statesman.
	S. A. Van Der Stel.
	S. A. Weltevreden.
	S. A. Nederburg.
	S. A. Huguenot.
	S. A. Alphen.
	S. A. Constantia.
	S. A. Morgenster.
	S. A. Vergelegen.
	S. A. Drakenstein.
	S. A. Hexrivier.
	S. A. Langkloof.
	S. A. Letaba.
	S. A. Tzaneen.
	S. A. Zebediela.
04594---	The Valley Line Co.:
	M/V 532.
	M/V 206.
	M/V 201.
	M/V 290.
	M/V 225.
	VLT 291.
	M/V 289.
	M/V 288.
	M/V 287.
	M/V 285.
	M/V 283.
	M/V 282.
	M/V 281.
	M/V 273.
	M/V 272.
	M/V 271.
	VLT 10.
	VLT 9.
	VLT 8.
	VLT 7.
	VLT 6.
	VLT 5.
	VLT 4.
	VLT 3.
	VLT 1.
	Albert E. Heekin.
	Peoria.
	Central.
	A. M. Thompson.
	Dresden.
	Brandon.
	Dan Luckett.
	Cincinnati.
	Frank C. Rand.
	L. Wade Childress.
	W. S. Rhea.
	Indiana.
	Louisiana.
	Lillian Clark.
	Rita Barta.
	New Orleans.
	Valley Voyager.
	Valley Transporter.
	A. D. Haynes II.
	Glenn Traer.
	VLT 2.
	M/V 284.
04433---	Allied Chemical Corp.:
	Barge AC 36.
	Barge AC 31.
	Barge AC 35.
	Barge S.S. 100.
	Barge AC 38.
	Barrett 5.
	Barge AC 39.
	Barge SB1–1.
	Anchores 1.
	Barge ACBL–603.
	Barge AC 14.
	Barge AC 9.
	Barge AC 10.
	Barge AC 12.
	ETT 107.
	ETT 108.
	ETT 109.
	ETT 110.
	ETT 111.
	ETT 103.
	Barge AC 6.
	Barge AC 7.
	Barge AC 8.
	Barge AC 4.
	Barge AC 16.
	Barge AC 37.
	Barge H.O. 17.
	Barge ARC 87.
	Barge ARC 93.
	Barge ARC 95.
	Barge AC 11.
	Barge ARC 90.
	Barge AC 5.
	Mary K.
	John T.
	ARC 88.
	AC 3.
	ARC 82.
	ARC 80.
	AC 44.
	HTC 102.
	HTC 104.
	JN 102.
	JN 103.
	JN 101.
	HTC 101.
	HTC 103.
	MG 24.
	MG 25.
	MG 20.
	MG 21.
	MG 22.
	MG 23.
	WHAI No. 2.
04940---	Cryogenic Enterprises, S.A.:
	Sally H.
04994---	Astroamo Compania Naviera S.A.:
	Zographia M.
04995---	Astro Acorde Compania Naviera S.A.:
	Eugenia M.
04999---	Likrispa Shipping Co., Ltd., Monrovia:
	M/V Aliakmon Aegis.
04982---	Barrad Shipping Co. S.A.L.:
	Barrad Crest.
	Barrad Wave.
	Barrad Foam.
04993---	Ayamonte Compania Naviera S.A.:
	Cassian Mariner.
04411---	The Ulster Steamship Co., Ltd.:
	Santona.
	Roonagh Head.
	Carrigan Head.
	Torr Head.
	Inishowen Head.
	Fair Head.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-5846 Filed 4-27-71;8:45 am]

COMPANIA SUD AMERICANA DE VAPORES AND PRUDENTIAL-GRACE LINES, INC.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstance said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Ronald A. Capone, Esq., Kirlin, Campbell & Keating, The Farragut Building, 900 17th Street NW., Washington, DC 20006.

Agreement No. 9941, between Compania Sud Americana de Vapores and Prudential-Grace Lines, Inc., provides for the establishment of a pooling arrangement between the parties on all cargo, with certain exceptions set forth in the agreement, originating from all ports or points on the U.S. Atlantic coast (Maine to Key West, inclusive) and destined to all ports or points on the Chilean coast, as far south as and including the ports of Talcahuano and San Vicente.

The parties will each maintain a minimum of 20 sailings per calendar year from a port or ports on the U.S. Atlantic coast to major ports in Chile, i.e., Arica, Antofagasta, and Valparaiso. Said minimum sailings may be increased or decreased pursuant to certain conditions set forth in the agreement.

The agreement also provides that the parties will take all necessary actions to obtain from their respective governments, exemptions or waivers from governmental measures insofar as their enforcement might result in one party earning more than 50 percent of the pool revenue. The agreement, upon approval, shall supersede and cancel Agreement No. 7796 between the parties.

Dated: April 21, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-5847 Filed 4-27-71;8:46 am]

COMPANIA SUD AMERICANA DE VAPORES AND GULF & SOUTH AMERICAN STEAMSHIP CO., INC.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Ronald A. Capone, Esq., Kirlin, Campbell & Keating, The Farragut Building, 900 17th Street NW., Washington, DC 20006.

Agreement No. 9942, between Compania Sud Americana de Vapores and Gulf & South American Steamship Co., Inc., provides for the establishment of a pooling arrangement between the parties on all cargo, with certain exceptions set forth in the agreement, originating from all ports or points on the U.S. gulf coast (Key West to Brownsville, inclusive) and destined to all ports or points on the Chilean coast, as far south as and including the ports of Talcahuano and San Vicente.

The parties will each maintain a minimum of 13 sailings per calendar year from a port or ports on the U.S. gulf coast to major ports in Chile, i.e., Arica, Antofagasta, and Valparaiso. Said minimum sailings may be increased or decreased pursuant to certain conditions set forth in the agreement.

The agreement also provides that the parties will take all necessary actions to obtain from their respective governments, exemptions or waivers from governmental measures insofar as their enforcement might result in one party earning more than 50 percent of the pool revenue. The agreement, upon approval, shall supersede and cancel Agreement No. 7797 between the parties.

Dated: April 21, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-5848 Filed 4-27-71;8:46 am]

[Independent Ocean Freight Forwarder License No. 926]

PENA FORWARDING CO.

Order of Revocation

By letter dated March 15, 1971, Sergio O. Pena, Pena Forwarding Co., 269 West Street, New York, NY 10013, was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 926 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission on or before April 6, 1971.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

Sergio O. Pena doing business as Pena Forwarding Co. has failed to furnish a surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (revised) § 7.04(g) (dated Sept. 29, 1970).

It is ordered, That the Independent Ocean Freight Forwarder License of Sergio O. Pena doing business as Pena Forwarding Co. be returned to the Commission for cancellation.

It is further ordered, That the Independent Ocean Freight Forwarder License of Sergio O. Pena doing business as Pena Forwarding Co. be and is hereby revoked effective April 6, 1971.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served upon Pena Forwarding Co.

WM. JARREL SMITH, JR.,
Deputy Managing Director.

[FR Doc. 71-5849 Filed 4-27-71;8:46 am]

PORT COMMISSION OF THE CITY OF ERIE AND CODAN CONSTRUCTION CORP.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the field offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

Mr. Joseph G. Rosenthal, General Manager, Port Commission, City of Erie, Room 507, Municipal Building, Erie, PA 16501.

Agreement No. T-2507, between the Port Commission of the City of Erie (Port) and Codan Construction Corp. (Codan), provides for the 2-year lease of certain terminal facilities by the Port to Codan at Erie, Pa. As compensation, Codan will pay the Port $72,000 annually plus 15 percent of all gross customer billings in excess of $175,000 annually, and 20 percent of all such billings in excess of $400,000 annually. The agreement provides that Codan will act both as stevedore and terminal operator at the facility. The agreement also provides that Codan, during the life of the agreement and for 3 years beyond, will not interest itself directly or indirectly (nor authorize or permit any assignee, successor, or subsidiary, nor any affiliate or other entity controlled or dominated by it so to interest itself) in competitive ventures between Cleveland and Buffalo both inclusive.

Dated: April 23, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 71-5925 Filed 4-27-71; 8:53 am]

PORT OF SEATTLE AND FOSS ALASKA LINE, INC.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

Mr. T. P. McCutchan, Manager, Property Management, Port of Seattle, Post Office Box 1209, Seattle, WA 98111.

Agreement No. T-2489-1, between the Port of Seattle (Port) and Foss Alaska Line, Inc. (Line), modifies the basic agreement which provides for the lease of certain terminal facilities at Seattle, Wash. The purpose of the modification is to provide for the installation at the Port's expense of an automatic cargo-moving system and a truck scale. As compensation for the above, the Line will increase its monthly rental payment by $502.

Dated: April 22, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-5926 Filed 4-27-71;8:53 am]

RED SEA AND GULF OF ADEN/U.S. ATLANTIC AND GULF RATE AGREEMENT

Notice of Petition Filed

Notice is hereby given that the following petition has been filed with the Commission for approval pursuant to section 14b of the Shipping Act, 1916, as amended (75 Stat. 762, 46 U.S.C. 814).

Interested parties may inspect a copy of the current contract form and of the petition, reflecting the changes proposed to be made in the language of said contract, at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to the proposed changes and the petition, including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, 1405 I Street NW., Washington, DC 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed modification of the contract form and/or the approved contract system shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the petition (as indicated hereinafter), and the statement should indicate that this has been done.

Notice of a Petition to Eliminate the Termination Date of a Dual Rate Contract System Filed by:

William L. Hamm, Secretary, Red Sea and Gulf of Aden/U.S. Atlantic and Gulf Rate Agreement, 25 Broadway, New York, NY 10004.

Notice is hereby given that the member lines of the Red Sea and Gulf of Aden/U.S. Atlantic and Gulf Rate Agreement No. 8558-4, as amended, have filed with the Commission, pursuant to section 14b of the Shipping Act, 1916, a petition for permanent approval of the dual rate contract system on Coffee, now scheduled to terminate on June 14, 1971. The trade area covered is from Red Sea and Gulf of Aden ports to U.S. Atlantic and Gulf ports.

Dated: April 23, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-5927 Filed 4-27-71;8:53 am]

SOUTH AND EAST AFRICA RATE AGREEMENT

Notice of Petition Filed

Notice is hereby given that the following petition has been filed with the Commission for approval pursuant to section 14b of the Shipping Act, 1916, as amended (75 Stat. 762, 46 U.S.C. 814).

Interested parties may inspect a copy of the current contract form and of the petition, reflecting the changes proposed to be made in the language of said contract, at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to the proposed changes and the petition, including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, 1405 I Street NW., Washington, DC 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed modification of the contract form and/or the approved contract system shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the petition (as indicated hereinafter), and the statement should indicate that this has been done.

Notice of a Petition to Eliminate the Termination Date of a Dual Rate Contract System Filed by:

William L. Hamm, Secretary, South and East Africa Rate Agreement, 25 Broadway, New York, NY 10004.

Notice is hereby given that the member lines of the South and East Africa Rate Agreement No. 8054–8, as amended, have filed with the Commission, pursuant to section 14b of the Shipping Act, 1916, a petition for permanent approval of the dual rate contract system on General Cargo (except Coffee), now scheduled to terminate on June 14, 1971.

The trade area covered is from ports in Southwest, South, Southeast and East Africa as well as islands in the Indian Ocean including Madagascar, Reunion, Mauritius, the Comores, and Seychelles, and the islands of Ascension and St. Helena to U.S. Atlantic and Gulf ports.

Dated: April 23, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71–5928 Filed 4–27–71;8:53 am]

[Docket No. 71–42]

SEA-LAND SERVICE, INC.

General Increases in Rates in U.S. Atlantic and Gulf/Puerto Rico Trade; Order of Investigation and Suspension

Sea-Land Service, Inc., has filed with the Federal Maritime Commission Supplements No. 9 to its Tariffs FMC–F Nos. 18 and 21 to become effective April 25, 1971. These supplements generally increase rates and charges in the subject trade.

Upon consideration of said supplements and protests filed thereto, the Commission is of the opinion that the above designated tariff matter may be unjust, unreasonable, or otherwise unlawful and that a public investigation and hearing should be instituted to determine its lawfulness under section 18(a) of the Shipping Act, 1916, and/or sections 3 and 4 of the Intercoastal Shipping Act, 1933. This investigation and hearing shall be separate from the general investigation underway in Docket No. 70–6, Rates and Charges in the U.S. Atlantic/Puerto Rico Trade. And good cause appearing, therefore:

It is ordered, That pursuant to the authority of section 22 of the Shipping Act, 1916, and sections 3 and 4 of the Intercoastal Shipping Act, 1933, an investigation is hereby instituted into the lawfulness of said increased rates and charges with a view to making such findings and orders in the premises as the facts and circumstances warrant. In the event the matter hereby placed under investigation is further changed, amended or reissued, such matter will be included in this investigation;

It is further ordered, That pursuant to section 3, Intercoastal Shipping Act, 1933, Supplements No. 9 to Tariffs FMC–F Nos. 18 and 21 are suspended and the use thereof deferred to and including August 25, 1971, unless otherwise ordered by this Commission;

It is further ordered, That there shall be filed immediately with the Commission by Sea-Land Service, Inc., consecutively numbered supplements to the aforesaid tariffs which supplements shall bear no effective date, shall reproduce the portion of this order wherein the suspended matter is described and shall state that the aforesaid matter is suspended and may not be used until August 26, 1971, unless otherwise authorized by the Commission; and the rates and charges heretofore in effect, and which were to be changed by the suspended matter shall remain in effect during the period of suspension, and neither the matter suspended, nor the matter which is continued in effect as a result of such suspension, may be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission;

It is further ordered, That copies of this order shall be filed with the said tariff schedules in the Bureau of Compliance of the Federal Maritime Commission;

It is furthered ordered, That the provisions of Rule 12 of the Commission's Rules of Practice and Procedure which require leave of the Commission to take testimony by deposition or by written interrogatory if notice thereof is served within 20 days of the commencement of the proceeding, are hereby waived for this proceeding inasmuch as the expeditious conduct of business so requires. The provision of Rule 12(h) which requires leave of the Commission to request admissions of fact and genuineness of documents if notice thereof is served within 10 days of commencement of the proceeding, is similarly waived;

It is further ordered, That Sea-Land Service be named as respondent in this proceeding;

It is further ordered, That this proceeding be assigned for public hearing before an examiner of the Commission's Office of Hearing Examiners and that the hearing be held at a date and a place to be determined and announced by the presiding examiner;

It is further ordered, That (I) a copy of this order shall forthwith be served on the respondent herein, the petitioners listed in the appendix below and published in the FEDERAL REGISTER; and (II) the said respondent and petitioners be duly served with notice of time and place of the hearing.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies) having an interest in this proceeding and desiring to intervene therein, should notify the Secretary of the Commission promptly and file petitions for leave to intervene in accordance with Rules 5(1) of the Commission's rules of practice and procedure (46 CFR § 502.72) with a copy to all parties to this proceeding.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

APPENDIX

Edward Schmeltzer, Esq., Mario F. Escudero, Esq., Edward J. Sheppard IV, Esq., Morgan, Lewis & Bockius, 1140 Connecticut Avenue, NW., Washington, DC 20036. Attorneys for The Commonwealth of Puerto Rico.

Samuel W. Earnshaw, Esq., 833 Washington Building, Washington, DC 20005. Attorney for Glen Alden Corp., The B.V.D. Co., Inc., International Playtex Corp., Schenley Industries, Inc.

S. Donald Wiley, Esq., General Counsel and Vice President, H. J. Heinz Co., Post Office Box 57, Pittsburgh, PA 15230. (For Star-Kist Foods, Inc.), a wholly owned subsidiary).

William C. Foster, Director, Government Affairs, Ralston Purina Co., Suite 1214, 1730 Rhode Island Avenue, NW., Washington, DC. (For Van Camp Sea-Food Co., a wholly owned subsidiary).

Honorable Angel Viera Martinez, Speaker, Commonwealth of Puerto Rico, House of Representatives, Capitol Building, San Juan, PR 00903. (Copy of protest not served on respondent).

Anthony J. Kimmick, Vice President and General Manager, Tuna Operations, IBECK Foods, Inc., 1855 Broadway, New York, NY 10023.

[FR Doc.71–5923 Filed 4–27–71;8:52 am]

[Docket No. 71–43]

SEATRAIN LINES, INC.

General Increases in Rates in the U.S. Atlantic and Puerto Rico Trade; Order of Investigation and Suspension

Seatrain Lines, Inc., has filed with the Federal Maritime Commission various

supplements and revised pages, see Appendix A,[1] to its Tariffs FMC–F No. 1 and 3 to become effective April 25, 1971. These supplements and revised pages generally increase the rates and charges in the subject trade.

Upon consideration of said supplements and revised pages and protests filed thereto, the Commission is of the opinion that the above designated tariff matter may be unjust, unreasonable, or otherwise unlawful and that a public investigation and hearing should be instituted to determine its lawfulness under section 18(a) of the Shipping Act, 1916, and/or sections 3 and 4 of the Intercoastal Shipping Act, 1933. This investigation and hearing shall be separate from the general investigation underway in Docket No. 70–6, Rates and Charges in the U.S. Atlantic/Puerto Rico Trade.

Therefore, it is ordered, That pursuant to the authority of section 22 of the Shipping Act, 1916, and sections 3 and 4 of the Intercoastal Shipping Act, 1933, an investigation is hereby instituted into the lawfulness of said increased rates and charges with a view to making such findings and orders in the premises as the facts and circumstances warrant. In the event the matter hereby placed under investigation is further changed, amended or reissued, such matter will be included in this investigation;

It is further ordered, That pursuant to section 3, Intercoastal Shipping Act, 1933, the various supplements and revised pages to Tariffs FMC–F No. 1 and 3 listed in Appendix A are suspended and the use thereof deferred to and including August 25, 1971, unless otherwise ordered by this Commission;

It is further ordered, That there shall be filed immediately with the Commission by Seatrain Lines, Inc., consecutively numbered supplements to the aforesaid tariffs which supplements shall bear no effective date, shall reproduce the portion of this order wherein the suspended matter is described and shall state that the aforesaid matter is suspended and may not be used until August 26, 1971, unless otherwise authorized by the Commission; and the rates and charges heretofore in effect, and which were to be changed by the suspended matter shall remain in effect during the period of suspension, and neither the matter suspended, nor the matter which is continued in effect as a result of such suspension, may be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission;

It is further ordered, That copies of this order shall be filed with the said tariff schedules in the Bureau of Compliance of the Federal Maritime Commission;

It is further ordered, That the provisions of Rule 12 of the Commission's rules of practice and procedure which require leave of the Commission to take testimony by deposition or by written interrogatory if notice thereof is served within 20 days of the commencement of the proceeding, are hereby waived for this proceeding inasmuch as the expeditious conduct of business so requires. The provision of Rule 12(h) which requires leave of the Commission to request admissions of fact and genuineness of documents if notice thereof is served within 10 days of commencement of the proceeding, is similarly waived;

It is further ordered, That Seatrain Lines, Inc., be named as respondent in this proceeding;

It is further ordered, That this proceeding be assigned for public hearing before an examiner of the Commission's Office of Hearing Examiners and that the hearing be held at a date and a place to be determined and announced by the presiding examiner;

It is further ordered, That (I) a copy of this order shall forthwith be served on the respondent herein and the petitioners listed in Appendix B below and published in the FEDERAL REGISTER; and (II) the said respondent and petitioners be duly served with notice of time and place of the hearing.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies) having an interest in this proceeding and desiring to intervene therein, should notify the Secretary of the Commission promptly and file petitions for leave to intervene in accordance with Rule 5(1) of the Commission's rules of practice and procedure (46 CFR § 502.72) with a copy to all parties to this proceeding.

By the Commission.

[SEAL] JOSEPH C. POLKING,
Assistant to the Secretary.

APPENDIX B

Edward Schmeltzer, Esq., Mario F. Escudero, Esq., Edward J. Sheppard IV, Esq., Morgan, Lewis & Bockius, 1140 Connecticut Avenue NW., Washington, DC 20036, attorneys for The Commonwealth of Puerto Rico.

Samuel W. Earnshaw, Esq., 833 Washington Building, Washington, DC 20005, attorney for Glen Alden Corp., The B.V.D. Co., Inc., International Playtex Corp., Schenley Industries, Inc.,

S. Donald Wiley, Esq., General Counsel and Vice President, H. J. Heinz Co., Post Office Box 57, Pittsburgh, PA 15230 (for Star-Kist Foods, Inc., a wholly owned subsidiary).

William C. Foster, Director, Government Affairs, Ralston Purina Co., Suite 1214, 1730 Rhode Island Avenue NW., Washington, DC 20036 (for Van Camp Sea Food Co., a wholly owned subsidiary).

Hon. Angel Viera Martinez, Speaker, Commonwealth of Puerto Rico, House of Representatives, Capitol Building, San Juan, PR 00903.

Anthony J. Kimmick, Vice President and General Manager, Tuna Operations, IBEC Foods, Inc., 1855 Broadway, New York, NY 10023.

[FR Doc.71–5924 Filed 4–27–71;8:52 am]

[1] Filed as part of the original document.

FEDERAL RESERVE SYSTEM

INSURED BANKS

Joint Call for Report of Condition

CROSS REFERENCE: For a document relating to a joint call for report of condition of insured banks, see F.R. Doc. 71–5893, Federal Deposit Insurance Corporation, *supra.*

FIRST HOLDING CO., INC.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by First Holding Co., Inc., which is a bank holding company located in Waukesha, Wis., for prior approval by the Board of Governors of the acquisition by applicant of 80 percent or more of the voting shares of The First National Bank of Elk Horn, Elkhorn, Wis.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank in Chicago.

By order of the Board of Governors, April 22, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71–5850 Filed 4–27–71;8:46 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–3421]

CONTINENTAL VENDING MACHINE CORP.

Order Suspending Trading

APRIL 20, 1971.

It appearing to the Securities and Exchange Commission that the summary

suspension of trading in the common stock, 10 cents par value of Continental Vending Machine Corp., and the 6 percent convertible subordinated debentures due September 1, 1976, being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period April 21, 1971, through April 30, 1971.

By the Commission.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71-5865 Filed 4-27-71;8:47 am]

[812-2870]

E. I. DU PONT DE NEMOURS AND CO.

Notice of Filing of Application for Order Exempting Proposed Transaction

APRIL 21, 1971.

Notice is hereby given that E. I. du Pont de Nemours and Co. (Applicant), Wilmington, DE 19898, a Delaware corporation, has filed an application pursuant to section 17(b) of the Investment Company Act of 1940 (Act) for an order exempting from the provisions of 17(a), the proposed grant to Showa Neoprene K.K. (SNK), a Japanese corporation, exclusive rights in Japan to certain technical information and Japanese patents covering a process for converting butadiene to chloroprene. All interested persons are referred to the application on file with the Commission for a full statement of the representations therein, which are summarized below.

Christiana Securities Co. (Christiana), a registered closed-end investment company, owns approximately 28.5 percent of the outstanding common stock of Applicant, which in turn owns 50 percent of the outstanding common stock of SNK. Under section 2(a)(9) of the Act, Applicant and SNK are presumed to be controlled by Christiana and under section 2(a)(3) of the Act, are also affiliated persons of Christiana.

The proposed transaction involves Applicant's granting of an exclusive license in Japan to SNK, and any sublicensee of SNK, to import, make, use, and sell chloroprene manufactured from butadiene. Applicant will reserve to itself and to its customers the right to import, use or sell in Japan any quantity of subject chloroprene made by Applicant, including any article or product made using Applicant's chloroprene as an intermediate.

SNK has agreed to pay Applicant, in consideration for the granting of this exclusive license, an initial payment of $250,000 and a royalty of 2 percent of the "net selling price" for 12 years, as described in the application, of all quantities of neoprene made from subject chloroprene used or sold by SNK or any sublicensee.

Applicant represents that the terms of the proposed transaction were negotiated on an arms-length basis, and are reasonable to both Applicant and SNK.

Section 17(a) of the Act, as here pertinent, provides that it is unlawful for any affiliated person of a registered investment company, or an affiliated persons of such a person, to purchase any property from such registered company, or from any company controlled by such registered company.

Section 17(b) provides that a proposed transaction may be exempted from the provisions of section 17(a) upon application if the Commission finds that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company and the general purposes of the Act.

Notice is further given that any interested person may, not later than May 13, 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 Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation pursuant to delegated authority.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71-5866 Filed 4-27-71;8:47 am]

[24FW-1448]

FIRST GENERAL CORP.

Order Permanently Suspending Regulation A Exemption

APRIL 19, 1971.

First General Corp. (issuer), 325 Harvard Tower Building, 4815 South Harvard, Tulsa, OK, a Delaware corporation organized on January 3, 1969, filed with the Commission on April 21, 1969 a notification and offering circular for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, pursuant to section 3(b) thereof and Regulation A thereunder, with respect to a public offering of 320,000 shares of its $0.10 par value common stock at an offering price of $0.30 per share.

The Commission on November 27, 1970, issued an order pursuant to Route 261 of Regulation A temporarily suspending the exemption. The order alleged that the offering circular contained materially untrue or misleading statements with respect to, among other things, the issuer's intention to engage as principal in active trading in securities in the normal course of its business, and in connection therewith to maintain inventories of securities and to engage in transactions on behalf of control persons of publicly held corporations in violation of sections 5 and 17 of the Securities Act and section 10(b) of the Securities Exchange Act of 1934; the limitation on purchases in the public offering to a maximum of 10,000 shares by any one individual; the percentage of ownership by the public and by principals of the issuer upon completion of the offering; the names of all underwriters and the method of distribution for 10,000 shares of the stock offered; the manner in which issuer intends to maintain its records under the requirements of various agencies; and the background of the president of issuer.

The order further alleged that the offering was made in violation of section 17 of the Securities Act, and the terms and conditions of Regulation A were not complied with in that sales of issuer's stock were made prior to the completion of the offering without tendering an offering circular to persons to whom the securities were sold, as required by Rule 256, and in violation of section 5(a) of the Securities Act since no exemption was available.

Issuer has submitted an offer of settlement in which it waives a hearing and posthearing procedures and, solely for the purpose of this proceeding or any other proceeding pursuant to section 3(b) of the Securities Act and Rule 261(a) thereunder and without admitting or denying the allegations in the order, consents to findings that it is in the public interest and for the protection of investors that the exemption with respect to the above public offering of its stock be permanently suspended and to the entry of an appropriate order.

After due consideration of the offer of settlement and upon the recommendation of its staff, the Commission determined to accept such offer. On the basis of the order temporarily suspending issuer's Regulation A exemption and the offer of settlement, it is found that it is appropriate in the public interest and for the protection of investors that the exemption of the issuer under Regulation A be permanently suspended.

Accordingly, it is ordered, Pursuant to Rule 261 of Regulation A under the Securities Act of 1933, that the exemption from registration with respect to the above public offering of securities by First General Corporation be, and it hereby is, permanently suspended.

For the Commission, by the Office of Opinions and Review, pursuant to delegated authority.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71-5867 Filed 4-27-71;8:47 am]

[24SF-3599]

KINGS RIVER MINERAL CO.

Order Granting Applications To Withdraw Reply and Appearance; and Permanently Suspending Regulation A Exemption

APRIL 16, 1971.

Kings River Mineral Co. (issuer), 243 East Fourth South Street, Salt Lake City, UT, a Nevada corporation organized in June 1969, filed with the Commission on May 6, 1970, a notification and offering circular for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, pursuant to section 3(b) thereof and Regulation A thereunder, with respect to a public offering of 7 million shares of its $0.005 par value common stock at an offering price of $0.03 per share. Bonneville Securities, Inc., of Salt Lake City, Utah, a registered broker-dealer, was designated underwriter of the offering. A Form 2-A report filed with the Commission on November 12, 1970, stated that the offering commenced on May 25, 1970, and was completed on October 16, 1970.

The Commission on February 19, 1971, entered an order pursuant to Rule 261 of Regulation A temporarily suspending the exemption. The order alleged that the offering circular contained materially misleading statements, that the terms and conditions of Regulation A were not complied with, and that the offering was made in violation of section 17(a) of the Securities Act. The order alleged a failure to disclose, among other things, that a substantial portion of the proceeds of the offering would be paid to undisclosed affiliates of the issuer as a result of a non-arms-length transaction in which the issuer purportedly acquired interests in unpatented mining properties obtained by such affiliates at an undisclosed cost; that an affiliate and control person of issuer had been enjoined prior to the completion of the offering; that insiders of the issuer purchased in excess of 2 million shares of the offering to create a false impression that there was genuine public interest in the securities; that the market in issuer's stock was created by insiders through the use of false or misleading press releases, newspaper advertisements and stockholder reports to give insiders and others an opportunity to make substantial profits at the expense of the public; that 2,150,000 shares of the issuer's stock had been assigned in breach of the provisions of an escrow agreement described in the offering circular; the names and addresses of all officers, directors, promoters, and controlling persons of issuer; and all unregistered securities issued by the issuer or any of its predecessors or affiliated issuers within one year prior to the filing of the notification. The order also alleged that by reason of certain of the activities described above the aggregate amount of securities offered to the public exceeded the $300,000 limitation prescribed by Rule 254 of Regulation A, and that the Form 2-A filed on behalf of the issuer failed to respond accurately and adequately to the items of information required by that form.

The issuer filed a reply and requested that the matter be set down for a hearing to determine whether to vacate the temporary order or to enter an order permanently suspending the exemption, and the underwriter filed a notice of appearance. Subsequently, however, the issuer filed an application for permission to withdraw its reply and request for hearing, stating that it made such application "with full knowledge that the withdrawal of the reply and the withdrawal of the request for hearing will cause the order temporarily suspending exemption issued by the Securities and Exchange Commission in connection with the above captioned administrative proceedings * * * to become permanent." In addition, the underwriter filed an application to withdraw its notice of appearance.

In view of the foregoing it is appropriate to enter an order granting the applications and permanently suspending the exemption under Regulation A.

Accordingly, it is ordered, That the applications of Kings River Mineral Co. for permission to withdraw its reply and request for hearing, and of Bonneville Securities, Inc., to withdraw its notice of appearance, be, and they hereby are, granted; *And it is further ordered,* Pursuant to Rule 261 of Regulation A under the Securities Act of 1933, that the exemption from registration with respect to the above public offering of securities by Kings River Mineral Co. be, and it hereby is, permanently suspended.

For the Commission, by the Office of Opinions and Review, pursuant to delegated authority.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71-5868 Filed 4-27-71;8:47 am]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area 817 (Class B)]

KENTUCKY

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of April 1971, because of the effects of certain disasters damage resulted to residences and business property located in the State of Kentucky;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act, as amended.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property situated in Morgantown, Butler County, Ky., suffered damage or destruction resulting from fire occurring on April 12, 1971.

OFFICE

Small Business Administration District Office, Room 188, Federal Building, 600 Federal Place, Louisville, KY 40202.

2. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to October 31, 1971.

Dated: April 19, 1971.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.71-5863 Filed 4-27-71;8:47 am]

[Declaration of Disaster Loan Area 818 (Class B)]

TEXAS

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of April 1971, because of the effects of a certain disaster, damage resulted to residences and business property located in the State of Texas;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the area affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such area constitutes a catastrophe within the purview of the Small Business Act, as amended.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property situated in Hereford, Deaf Smith County, Tex., suffered damage or destruction resulting from a tornado occurring on April 19, 1971.

OFFICE

Small Business Administration District Office, 1616 19th Street, Lubbock, TX 79408.

2. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to October 31, 1971.

Dated: April 21, 1971.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.71-5862 Filed 4-27-71;8:47 am]

TARIFF COMMISSION

[337-27]

MEPROBAMATE

Notice of Investigation and Temporary Exclusion Order Action

A complaint under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) was filed with the U.S. Tariff Commission on August 5, 1970, by Carter-Wallace, Inc., of New York, N.Y., alleging unfair methods of competition and unfair acts in the importation and sale of meprobamate which is embraced within the claim of U.S. Patent No. 2,724,720 owned by the complainant.

Having conducted in accordance with § 203.3 of the Commission's rules of practice and procedure (19 CFR 203.3) a preliminary inquiry with respect to the matters alleged in the said complaint, the U.S. Tariff Commission, on March 15, 1971, ordered that, for the purposes of section 337 of the Tariff Act of 1930, an investigation is instituted with respect to the alleged violations in the importation and sale in the United States of the said meprobamate.

The Commission also unanimously recommended that the President issue a temporary exclusion order, in accordance with section 337(f), with respect to meprobamate and products containing meprobamate embraced within the claims of U.S. Patent No. 2,724,720. The recommendation is being forwarded to the President for his consideration, and his determination as to the issuance of a temporary exclusion order.

Public notice of the receipt of the complaint was published in the FEDERAL REGISTER for August 20, 1970 (35 F.R. 3139-40) and the complaint was served on the parties named in the complaint and has been available for inspection by interested persons continuously since issuance of the notice, at the Office of the Secretary located in the Tariff Commission Building, and also in the New York City office of the Commission located in Room 437 of the Customhouse.

Issued: April 23, 1971.

By order of the Commission.

[SEAL] KENNETH R. MASON,
Secretary.

[FR Doc.71-5937 Filed 4-27-71;8:54 am]

INTERSTATE COMMERCE COMMISSION

[Notice 684]

MOTOR CARRIER TRANSFER PROCEEDINGS

APRIL 23, 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-72719. By order of April 6, 1971, the Motor Carrier Board approved the transfer to The Edward P. Hayes & Sons Co., a corporation, Rocky Hill, Conn., of the operating rights in Certificate No. MC-115025 (Sub-No. 14) and a portion of the rights in MC-115025 (Sub-No. 13) issued February 13, 1970, and June 12, 1967, respectively to The Short Line of Connecticut, Inc., doing business as The Short Line, Rocky Hill, Conn., authorizing the transportation of passengers and their baggage, in special seasonal operations, between points on carrier's authorized regular routes (1) between Springfield, Mass., and New Haven, Conn., and (2) between Hartford and New London, Conn., on the one hand, and, on the other, Misquamicut Beach, R.I., and between specified points in Connecticut and Massachusetts, on the one hand, and, on the other, Misquamicut Beach, R.I. Reubin Kaminsky, Post Office Box 17-2067, 342 North Main Street, West Hartford, CT 06117, attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-5910 Filed 4-27-71;8:51 am]

[Notice 684-A]

MOTOR CARRIER TRANSFER PROCEEDINGS

APRIL 23, 1971.

Application filed for temporary authority under section 210(a)(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC-72833. By application filed April 16, 1971, TETERBORO AIR FREIGHT, INC., 500 Williams Avenue, Hasbrouck Heights, NJ 07604, seeks temporary authority to lease the operating rights of a portion of the motor carrier property of THRUWAY FREIGHT LINES, INC., 300 Van Riper Ave., East Paterson, NJ 07407, under section 210a (b). The transfer to TETERBORO AIR FREIGHT, INC., of a portion of the motor carrier property of THRUWAY FREIGHT LINES, INC., is presently pending.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-5911 Filed 4-27-71;8:51 am]

[Notice 684-C]

MOTOR CARRIER TRANSFER PROCEEDINGS

APRIL 23, 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 general rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 30 days from the date of service of the order. 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-72083. By order of April 21, 1971, Division 3, acting as an Appellate Division, on reconsideration, approved the transfer to Ideal Moving & Storage Co., Inc., Alexandria, Va., of the operating rights in Certificate No. MC-84509 (Sub-No. 1) issued March 12, 1963, to Aetna Van Lines, Inc. (a Maryland corporation), Alexandria, Va., authorizing the transportation of household goods, as defined by the Commission, between Washington, D.C., on the one hand, and, on the other, points in New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia. Restricted against any movement of traffic between points in Montgomery County, Md., within 10 miles of the Silver Spring post office, which are within the Washington, D.C., commercial zone, as defined in 54 M.C.C. 797, on the one hand, and, on the other, points in the States specified above. L. Agnew Myers, Jr., Suite 1122, Warner Building, Washington, DC 20004, attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-5913 Filed 4-27-71;8:51 am]

FOURTH SECTION APPLICATION FOR RELIEF

APRIL 23, 1971.

Protests to the granting of an application must be prepared in accordance with § 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42178—*Potassium (Potash) from Calvert, Ky.* Filed by O. W. South, Jr., agent (No. A6245), for interested rail carriers. Rates on potassium (potash), caustic, in tank-car loads, as described in the application, from Calvert, Kentucky, to Chicago, Chicago Heights, Joliet, LaSalle, Lemont, Lincoln, and Millsdale, Ill.

Grounds for relief—Market competition and rate relationship. Tariff—Supplement 125 to Southern Freight Association, agent tariff ICC S–800.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-5914 Filed 4-27-71;8:51 am]

[Notice 33]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

APRIL 23, 1971.

The following publications are governed by the new Special Rule 247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

No. MC 13250 (Sub-No. 109) (Republication), filed February 18, 1971, published in the FEDERAL REGISTER issues of March 11, 1971, April 1, 1971, and April 14, 1971, and republished in part, this issue, to reflect a change in the hearing information only. Applicant: J. H. ROSE TRUCK LINE, INC., 5003 Jensen Drive, Post Office Box 16190, Houston, TX 77022. Applicant's representative: James M. Doherty, Suite 401, First National Life Building, Austin, TX 78701. Hearing: Postponed indefinitely to a time and place to be later set by the Commission.

No. MC 113459 (Sub-No. 64), filed March 22, 1971, published in the FEDERAL REGISTER issue of April 14, 1971, and republished in part, this issue, to reflect a change in the hearing information only. Applicant: H. J. JEFFRIES TRUCK LINE, INC., Post Office Box 94850, 4720 South Shields Boulevard, Oklahoma City, OK 73109. Applicant's representative: James W. Hightower, 136 Wynnewood Professional Building, Dallas, TX 75224. Hearing: Postponed indefinitely to a time and place to be later set by the Commission.

No. MC 118989 (Sub-No. 62) (Republication), filed March 29, 1971, published in the FEDERAL REGISTER of April 22, 1971 and republished this issue to reflect the hearing information. Applicant: CONTAINER TRANSIT, INC., 5223 South 9th Street, Milwaukee, WI 53211. Applicant's representative: Albert A. Andrin, 29 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Containers, container ends and accessories and materials, plastic products, component parts, equipment, and supplies* used in the sale, manufacture, and distribution of containers and container ends and plastic products, between all points in the destination States listed below and from (a) Portland, Ind., to points in Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, West Virginia, and Wisconsin; from (b) Durant, Miss., to points in Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, and Wisconsin, and from (c) Manchaug and Worcester, Mass., Central Falls, R.I., and Stanhope, N.J., to points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and the District of Columbia. NOTE: Applicant states that tacking possibilities exist, but no tacking intended as of now. Hearing: May 10, 1971, in Room 204A, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, IL.

No. MC 114552 (Sub-No. 46) (Corrected Republication), filed July 29, 1970, published in the FEDERAL REGISTER issues of August 20, 1970, and April 7, 1971, under No. MC 114522 (Sub-No. 46), and republished in part as corrected, this issue. Applicant: SENN TRUCKING CO., a corporation, Post Office Box 33, Newberry, SC 29108. Applicant's representative: Frank A. Graham, Jr., 707 Security Federal Building, Columbia, SC 29201.

NOTE: The sole purpose of this partial republication is to reflect the correct docket number assigned. The rest of the application remains as previously republished on April 7, 1971.

No. MC 115113 (Sub-No. 14) (Republication), filed May 12, 1970, published in the FEDERAL REGISTER issue of June 4, 1970, and republished this issue. Applicant: IOWA PACKERS XPRESS, INC., 16 East 24th Street, Post Office Box 231, Spencer, IA 51301. Applicant's representative: William E. Husby (same address as above). A report and recommended order of the Hearing Examiner was made effective by Notice of April 5, 1971, served on April 16, 1971. The said report and order finds, that the present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of meat, meat products, meat byproducts, dairy products, and articles distributed by meat packinghouses as described in sections A, B, and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, except hides and commodities in bulk, from the plant sites and storage facilities of Spencer Foods, Inc., located at or near Spencer, Hartley, and Cherokee, Iowa; Sioux Falls, S. Dak.; and Schuyler, Nebr., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia, restricted to traffic originating at the above-named plantsites and storage facilities and destined to the above-named destinations. Because it is possible that other persons, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this report, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 121060 (Sub-No. 6) (Amended Republication), filed April 2, 1969, published in the FEDERAL REGISTER issues of May 1, 1969, and May 13, 1970, and republished as amended, this issue. Applicant: ARROW TRUCK LINES, INC., 1220 West Third, Post Office Box 5568, Birmingham, AL 35407. Applicant's representative: Robert E. Tate, Post Office Box 517, Evergreen, AL 36401. An order of the Commission, Division 1, acting as an appellate Division, dated March 29, 1971, and served April 13, 1971, which modifies the previous decision and order of April 22, 1970, finds: that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes; (1) of

lime, cement, lumber, concrete products, pipe, brick, and terra cotta pipe, between points in Jefferson, Shelby, and St. Clair Counties, Ala., on the one hand, and, on the other, points in Alabama; and (2) *of road building and excavating equipment, construction materials and supplies, and contractors machinery, iron and steel, and iron and steel articles,* between points in Alabama except points in Washington, Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Henry, and Houston Counties, both (1) and (2) above, restricted against the transportation of commodities in bulk. That applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

NOTE: APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 106401 (Sub-No. 32), filed April 5, 1971. Applicant: JOHNSON MOTOR LINES, INC., 2426 North Graham Street (Post Office Box 10877), Charlotte, NC 28201. Applicant's representatives: Thomas G. Sloan (same address as applicant) and Donald E. Cross, Suite 917 Munsey Building, 1329 E Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Class A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Connecticut. NOTE: The instant application is a matter directly related to No. MC–F 11138 published in the FEDERAL REGISTER issue of April 14, 1971. Common control may be involved. Applicant states it would tack the requested authority to its existing regular route points in Connecticut generally between New Haven and Hartford; New Haven and Putman via New London; and New Haven and Putman via Hartford. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 118142 (Sub-No. 36), filed April 7, 1971. Applicant: M. BRUENGER & CO., INC., 6330 North Broadway, Wichita, KS 67219. Applicant's representative: John E. Jandera, 641 Harrison Street, Topeka, KS 66603. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, dairy products, and articles distributed by meat packinghouses,* as described in sections A, B, and C of appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, from Wichita, Kans., to points in Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee (except Memphis, Tenn.). NOTE: The instant application is a matter directly related to No. MC–F 11131 published in the FEDERAL REGISTER issue of April 14, 1971. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Wichita, Kans., or Kansas City, Mo.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC–F–11146. Authority sought for control by CHAMPION INVESTMENTS, INC., 1815 West Market Street, Suite 211, Akron, OH 44313, of GLOSSON MOTOR LINES, INC., Route 9, Box 11A, Hargrove Road, Lexington, NC 27292, by purchasing the outstanding capital stock of PACEWAY, INC., a noncarrier, and for acquisition by CASCADE INDUSTRIES, INC., also of Akron, Ohio, of control of GLOSSON MOTOR LINES, INC. Applicants' attorneys: Homer S. Carpenter, 618 Perpetual Bldg., 1111 E Street NW., Washington, DC 20004, and James E. Wilson, 1735 K Street NW., Washington, D.C. 20006. Operating rights sought to be controlled: *General commodities,* excepting among others, dangerous explosives, and household goods, as a common carrier over irregular routes, from Roanoke and Richmond, Va., to Salisbury, N.C.; *farm machinery and parts,* from Auburn, N.Y., to points in North Carolina; *new furniture and yarn,* from Thomasville and Lexington, N.C., to New New York, N.Y., and points in New York within 15 miles of New York City, Wilmington, Del., the District of Columbia, and points in Maryland, Virginia, New Jersey, and Pennsylvania; *electrical appliances and equipment,* including *radios and refrigerators,* from New York, Newark, N.J., and Wilmington, Del., to Salisbury, N.C.; *sewing machines, and materials, supplies, and equipment* used or useful in sewing, from Salisbury, N.C., to Philadelphia, Pa., and New York, N.Y.; *such merchandise* as is dealt in by wholesale, retail, chain grocery and food business houses, and in connection therewith; *Equipment, materials, and supplies* used in the conduct of such business, from Roanoke, Va., to Winston-Salem, N.C., from Christianburg, Va., to Salisbury and Winston-Salem, N.C., *petroleum products,* in containers, and *service-station equipment,* from Roanoke and Richmond, Va., to Charlotte, N.C.; *chemicals,* from Whelan, Tenn., to Salisbury, N.C.; empty pasteboard containers and bottles, from Pittsburgh, Pa., to Salisbury, N.C.; *heating and plumbing materials, supplies and equipment,* from Richmond, Va., to Concord, N.C.; *compressed gas,* from Richmond, Va., to Charlotte, N.C.; *empty compressed gas containers,* from Charlotte and Salisbury, N.C., to Richmond, Va.; *brick manufacturing machinery and equipment,* from Danville, Va., to Salisbury, N.C.; *charcoal,* from Salisbury, N.C., to Roanoke and Richmond, Va., Baltimore, Md., and Pittsburgh, Pa.; *cleaning compounds and chemicals,* from Salisbury, N.C., to certain specified points in Virginia and South Carolina; *pianos,* from Washington, D.C., and Philadelphia, and York, Pa., to Salisbury, N.C.; *cotton piece goods, monumental stone, store fixtures, eggs, and poultry,* between points in Virginia and North Carolina within 150 miles of Salisbury, N.C., including Salisbury; *household goods,* as defined in *Practices of Motor Common Carriers of household goods,* 17 M.C.C. 467, between Salisbury, N.C., and points within 25 miles of Salisbury, on the one hand, and, on the other, points in Virginia, Pennsylvania, New Jersey, Georgia, South Carolina, Florida, Kentucky, Tennessee, Ohio, and the District of Columbia; *cotton yarn,* from Gastonia, N.C., to Elmira, N.Y., from certain specified points in North Carolina to certain specified points in New York and Pennsylvania and all points in New Jersey, from Lexington, N.C., to Elmira and Norwich, N.Y.;

New furniture, from Lexington, N.C., to points in New York except to New York, N.Y., and points in New York within 15 miles of New York, N.Y., from points within 5 miles of Lexington, N.C., to points in Georgia, Maryland, New Jersey, New York, Pennsylvania, South Carolina, Virginia, the District of Columbia and Wilmington, Del., from Ronda, N.C., to points in Delaware, Maryland, Pennsylvania, New Jersey, New York, Rhode Island, Massachusetts, Connecticut, Maine, Vermont, New Hampshire, and the District of Columbia, from Elkin, N.C., to points in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont; *empty glass containers,* from Elmira, N.Y., to points in North Carolina; *bakery products,* from Baltimore, Md., to certain specified points in North Carolina; *cotton piece goods,* from Landis, and Salisbury, N.C., and points within 5 miles of Salisbury, to Washington, D.C., Baltimore, Md., Wilmington, Del., Garnerville, N.Y., New York, N.Y., and points in New York within 15 miles of New York City, points in New Jersey, and those in Pennsylvania on and east of U.S. Highway 11; *cotton knit goods,* from Landis, N.C., to the above-specified destination points and places; *chenille piece goods,* from Salisbury and points within 5 miles thereof

to the above-specified destination points; *cotton yarn*, from points in North Carolina to Elmira Heights, N.Y.; *textiles, textile products, and supplies and equipment in the manufacture and packing of textiles and textiles products*, between Salisbury, N.C., on the one hand, and, on the other, Poulan, Ga.; *empty glass containers*, from Elmira, N.Y., to points in Virginia;

New furniture, crated and uncrated, from Lexington, N.C., to points in Georgia and South Carolina, from certain specified points in North Carolina, to points in Massachusetts and Rhode Island, from High Point, N.C., to points in Connecticut, Delaware (except Wilmington), Maine, New Hampshire, and Vermont, from Pleasant Garden, N.C., to points in Connecticut, Delaware (except Wilmington), Florida, Georgia, Maine, Maryland (except Baltimore), Massachusetts, New Hampshire, New York (except points in the New York, N.Y., commercial zone, as defined by the Commission), Rhode Island, and Vermont, from points in Davidson County, N.C., to points in Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont, and Maine, from High Point and Thomasville, N.C., to points in New York (except New York City, N.Y., and points within 15 miles thereof), from certain specified points in North Carolina, to points in Connecticut, Delaware, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and Maryland (with exceptions), from certain specified points in North Carolina, to points in Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Maryland (with exceptions), from Toccoa, Ga., to points in Alabama, Arkansas, Florida, Kentucky, Lousiana, Mississippi, Oklahoma, South Carolina, Tennessee, and Texas; *new furniture*, crated, and *new furniture*, uncrated, as described in Appendix II to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, from certain specified points in North Carolina, to points in Arkansas, Louisiana, Mississippi, Texas, and Oklahoma, with restriction:

New furniture, crated, as described in Appendix II to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, from Norwood, N.C., to points in Georgia and Florida; *frozen fruits*, from Lexington, N.C., to Spartanburg, S.C., Pittsburgh, Pa., and Albany, N.Y., from Tampa, Fla., to Canajoharie and Rochester, N.Y., Richmond, Va., Baltimore, Md., Washington, D.C., and Jersey City, N.J.; *canned and packaged cat food*, from Lawrence, Mass., to points in Florida; *packaged cat food, and canned cat food* when moving in the same vehicle and at the same time with package cat food, from Woburn and Boston, Mass., to points in Florida; *juices and beverages*, except commodities in bulk, from points in Florida, to points in North Carolina and South Carolina, Georgia, with restriction; *pet food* (except in bulk, in tank vehicles), from certain specified points in Massachusetts, to points in Mississippi, Alabama, North Carolina, Virginia, Tennessee, Kentucky, Arkansas, and Louisiana; *animal feed*, except in bulk, from the plantsite at or near Golden Meadow, La., and storage facilities at or near Lockport, La., of Usen Products Co., to points in Florida, Alabama, Georgia, North Carolina, South Carolina, Virginia, Tennessee, Kentucky, West Virginia, Maryland, Pennsylvania, Massachusetts, and the District of Columbia; *frozen seafood*, from Boston and Gloucester, Mass., to points in Florida, Georgia, Louisiana, North Carolina, South Carolina, Tennessee, Virginia, Alabama, and West Virginia; *frozen foods*, from Watertown, Mass., to points in North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, and Louisiana, from Boston, Mass., to points in Mississippi, from Washington, D.C., to points in North Carolina, South Carolina, Georgia, and Alabama;

Frozen foods, except frozen sea foods, from Boston, Mass., to points in North Carolina, South Carolina, Georgia, Florida, Alabama, and Louisiana; *frozen fruits and frozen vegetables*, from Macon, Ga., to Baltimore, Md., certain specified points in Massachusetts, New Jersey, New York, N.Y., certain specified points in Pennsylvania, Richmond, and Norfolk, Va., certain specified points in Connecticut, Providence, R.I., Wilmington, Del., and the District of Columbia, from Tampa, Fla., to Canajoharie and Rochester, N.Y., Richmond, Va., Baltimore, Md., Washington, D.C., and Jersey City, N.J.; *cheese*, from Heuvelton and Chateaugay, N.Y., to points in Alabama, Florida, Georgia, North Carolina, South Carolina, Virginia, and West Virginia; *frozen citrus juice concentrate, and citrus products* not canned and not frozen, in vehicles equipped with mechanical refrigeration, from points in Florida, to certain specified points in Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Petersburg, Va., Huntington, W. Va., and points in Maine, New Hampshire, and Vermont; *frozen fruits and frozen vegetables*, only when moving in mixed shipments with frozen citrus juice concentrate, from Plant City, Fla., to points in Maryland, Pennsylvania, and Virginia, from Jacksonville, Fla., to certain specified points in Massachusetts, Connecticut, New York, New Jersey, and Huntington, W. Va.;

Frozen vegetable juice concentrates, with additives, in mixed shipments with frozen citrus products, from certain specified points in Florida, to certain specified points in Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Petersburg, Va., Huntington, W. Va., and points in Maine, New Hampshire, and Vermont. CHAMPION INVESTMENTS, INC., holds no authority from this Commission. However, it controls P. B. MUTRIE MOTOR TRANSPORTATION, INC., Calvery Street, Waltham, MA 02154, which is authorized to operate as a *common carrier* in Massachusetts, Rhode Island, New York, Connecticut, New Hampshire, Maine, Pennsylvania, Vermont, Delaware, Illinois, Kentucky, Maryland, Michigan, Indiana, Iowa, Minnesota, Ohio, West Virginia, California, South Carolina, North Carolina, Missouri, New Jersey, Tennessee, Wisconsin, Florida, Arkansas, Alabama, Texas, Georgia, and the District of Columbia, and RENNER MOTOR LINES, INC., 622 West Waterloo Road, Akron, OH 44314, which is authorized to operate as a *common carrier* in Ohio, West Virginia, Pennsylvania, Maryland, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11147. Authority sought for purchase by ROBERT BLACK & SONS, INC., Roseville and Hydraulic Streets, Buffalo, NY 14210, of a portion of the operating rights of RICHARD L. HUNTER, doing business as HUNTER TRUCKING, 10659 Main Road, North East, PA 16428, and for acquisition by CLARENCE PL KILLIAN, 405 Brompton Road, Williamsville, NY 14221, of control of such rights through the purchase. Applicants' attorney: Forrest G. Weeks, Ellicott Square Building, Buffalo, NY 14203. Operating rights sought to be transferred: *Fertilizer and animal and poultry feed*, as a *common carrier* over irregular routes, from the borough of North East, Erie County, Pa., to the village and town of Ripley, the town of Mina, and the village of Findley Lake, N.Y.; *fresh fruit and vegetables*, from points in Erie County, Pa., to points in Erie and Chautauqua Counties, N.Y.; *empty fresh fruit and vegetable containers*, from points in Erie and Chautauqua Counties, N.Y., to points in Erie County, Pa.; *preserved fruits, vegetables, and fruit juices*, from points in Erie and Chautauqua Counties, N.Y., to North East and Erie, Pa.; *baskets*, from North East, Pa., to points in Chautauqua County, N.Y., from Ripley, N.Y., to points in Erie County, Pa.; *fertilizer and feed*, from Buffalo, N.Y., to points in Erie County, Pa., *packinghouse products*, from Erie, Pa., to points on U.S. Highway 20 between North East, Pa., and Silver Creek, N.Y., including the points named; *metal castings and forgings, and commutators*, from North East, Pa., to Buffalo, N.Y.; *flour*, from Buffalo, N.Y., to Erie, Pa.; *empty flour bags*, from Erie, Pa., to Buffalo, N.Y.; *empty metal containers* used in the transportation of flour, from Erie, Pa., to Buffalo, N.Y. Vendee is authorized to operate as a *common carrier* in New York. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11148. Authority sought for purchase by YELLOW FREIGHT SYSTEM, INC., 92d at State line, Post Office Box 8462, Kansas City, MO 64114, of the operating rights of YULE TRUCK LINES, INC., AND HILL FREIGHT LINES, INC., both of 11406 West Rogers Street, Milwaukee, WI 53227, and for acquisition by GEORGE E. POWELL, 801 64th Terrace, Kansas City, MO 64113, and GEORGE E. POWELL, JR., 1040 West 57th Street, Kansas City, MO 64113, of control of such rights through the

purchase. Applicants' attorney: Jack Goodman, 39 South La Salle Street, Chicago, IL 60603. Operating rights sought to be transferred: No. MC–79188 and Subs. *General commodities,* excepting among others, dangerous explosives, household goods and commodities in bulk, as a *common carrier* over regular routes, between Milwaukee, Wis., and Chicago, Ill., between Milwaukee, Wis., and East Chicago, Ind., from junction Wisconsin Highways 31 and 50 over Wisconsin Highway 31 to the Wisconsin-Illinois State line, thence over Illinois Highway 131 to junction Illinois Highway 120, and thence over Illinois Highway 120 to junction U.S. Highway 41 and return over the same route, between Milwaukee, Wis., and junction U.S. Highway 41 and Wisconsin Highway 50, approximately 5 miles of Kenosha, Wis., between Chicago, Ill., and the junction of Eden's Expressway and U.S. Highway 41 somewhat north of Lake Avenue, serving no intermediate points, but the authority herein granted over the Expressway may be joined or tacked to authority held by carrier over U.S. Highway 41 but is not to be construed as authorizing service at any point not already authorized, between Addison, Wis., and junction Wisconsin Highway 33 and U.S. Highway 41, between Addison, Wis., and Milwaukee, Wis., serving all intermediate points, between junction Wisconsin Highways 83 and 175 and Hartford, Wis., serving all intermediate points and serving Hartford for purposes of joinder only, between junction Washington County Trunk W and Wisconsin Highway 175 and junction Washington County Trunk W and Wisconsin Highway 33, between North Lake, Wis., and Milwaukee, Wis., serving all intermediate points, between junction Waukesha and Washington County Trunk J and Wisconsin Highway 74, and junction Waukesha and Washington County Trunk J and Wisconsin Highway 175, serving all intermediate points, between junction U.S. Highway 41 and Wisconsin Highway 33 and Milwaukee, Wis., serving no intermediate points, between junction Wisconsin Highway 60 and U.S. Highway 41 and Hartford, Wis., serving the intermediate point of Slinger, Wis., and serving junction Wisconsin Highway 60 and U.S. Highway 41, and Hartford, Wis., for purposes of joinder only, between Hartford, Wis., and North Lake, Wis., serving no intermediate points, and serving Hartford, Wis., for purposes of joinder only, between Cedarburg, Wis., and Milwaukee, Wis., serving the intermediate points of Thiensville, Mequon, and Brown Deer, Wis., over one alternate route for operating convenience only;

Empty gas cylinders, in containers, from Milwaukee to Chicago over the above-specified routes, thence over U.S. Highway 12 to East Chicago, Ind.; *inflammable and dangerous gases,* from East Chicago, Ind., over the above-specified routes to Milwaukee, Wis. No. MC–85736 Sub-2. *General commodities,* except cement in bulk, as a *common carrier* over regular routes, between Chicago, Ill., and Peoria, Ill., serving all intermediate and named off-route points in Illinois, between Dwight, Ill., and Sparland, Ill., serving all intermediate and named off-route points in Illinois, between Metamora, Ill., and La Moille, Ill., serving all intermediate and named off-route points in Illinois, between Streator, Ill., and Henry, Ill., serving all intermediate points and the off-route point of Magnolia, Ill., between Roanoke, Ill., and junction Illinois Highways 17 and 116–A, serving all intermediate points and the off-route points of Benson and Toluca, Ill., between junction U.S. Highway 6 and Illinois Highway 178, and Lowell, Ill., serving all intermediate points and the off-route points of Deer Park, and Utica, Ill., between Leland, Ill., and Pontiac, Ill., serving all intermediate and named off-route points in Illinois, between junction U.S. Highway 34 and Illinois Highway 47, and junction U.S. Highway 66 and Illinois Highway 47, serving all intermediate and named off-route points in Illinois, between junction U.S. Highway 6 and Illinois Highway 170 at Seneca, Ill., and junction Illinois Highway 17, serving all intermediate points and the off-route points of Seneca and Ransom, Ill., between Plainfield, Ill., and junction Illinois Highway 59 and U.S. Highway 66 (also between junction Illinois Highway 53 (formerly Alternate U.S. Highway 66) and Illinois Highway 129), serving all intermediate points and the off-route points of Drummond and Blodgett, Ill., between Chicago, Ill., and Bloomington, Ill., serving all intermediate and named off-route points in Illinois, with restriction;

General commodities, except cement, in bulk, liquids, in bulk, in tank vehicles, classes A and B explosives, farm grains, articles of unusual value and commodities the transportation of which requires the use of special equipment, over irregular routes, between points within 50 miles of 537 Lincoln Street, Princeton, Ill., on the one hand, and, on the other, points in Illinois, with restriction. Vendee is authorized to operate as a common carrier in Illinois, Kansas, Oklahoma, Texas, Missouri, Indiana, Kentucky, Michigan, Ohio, Iowa, Nebraska, Georgia, Arizona, New Mexico, Minnesota, South Carolina, Colorado, California, Tennessee, Wyoming, South Dakota, Utah, Wisconsin, Pennsylvania, Maryland, Virginia, Alabama, and New Jersey. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11149. Authority sought for purchase by CHESTER SAYRE, INC., Post Office Box 356, Batavia, NY 14020, of the operating rights and property of CHESTER SAYRE, 110 West Valley Road, McMurray, PA 15317, and for acquisition by RALPH FIGLOW AND PAUL McDONALD both of Post Office Box 456, Batavia, NY 14020, and KENNETH E. LIPKE, Post Office Box 356, Batavia, NY 14020, of control of such rights and property through the purchase. Applicants' attorneys: Herbert M. Canter, and Norman M. Pinsky, both of 345 South Warren Street, Syracuse, NY 13202, and Jerome Solomon, 704 Grant Building, Pittsburgh, PA 15219. Operating rights sought to be transferred: *Livestock valuable for breeding and show purposes or for other special uses, and horses which are chiefly valuable for breeding, riding, racing, and show purposes, or other special uses,* and, in connection therewith, *supplies and equipment* used in the care, exhibition, or use of such animals, together with the *household goods and personal effects of their attendants,* as a *common carrier* over irregular routes, between points in Columbiana, Jefferson, and Harrison Counties, Ohio, Ohio County, W. Va., and points in that part of Pennsylvania on and south of U.S. Highway 322 from the Ohio-Pennsylvania State line to Port Matilda, Pa., and on and west of U.S. Highway 220 from Port Matilda to the Maryland-Pennsylvania State line, on the one hand, and, on the other, points in New Hampshire, with stopover privileges en route for exhibitions, races, shows, and polo games;

Livestock (other than ordinary) and, in the same vehicle with such livestock, *stable supplies and equipment* used in the care and exhibition of such livestock, *mascots,* and *personal effects* of their attendants, trainers, and exhibitors, between points within a territory in Pennsylvania, Ohio, Maryland, and West Virginia, bounded by a line beginning at Cleveland, Ohio, and extending along U.S. Highway 322 to Port Matilda, Pa., thence along U.S. Highway 220 to Franklin, W. Va., thence along U.S. Highway 33 to Ripley, W. Va., and thence along U.S. Highway 21 to Cleveland, Ohio, on the one hand, and, on the other, points in Texas, subject to the condition that this authority may not be joined or tacked to any of carrier's authorized operations for the performance of through operations, between points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and the District of Columbia; *livestock* (other than ordinary) and, in the same vehicle with such livestock, *stable supplies and equipment* used in the care and exhibition of such livestock, *mascots,* and *personal effects* of their trainers, attendants, and exhibitors, from points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and the District of Columbia, to points in Texas, between points in New York, Maryland, Massachusetts, Delaware, Maine, and New Jersey, on the one hand, and, on the other, points in New Hampshire. Vendee holds

no authority from this Commission. However, it is affiliated with UNITED HORSE TRANSPORTERS OF AMERICA, INC., Batavia Downs Trailer Park, Post Office Box 356, Batavia, NY 14020, which is authorized to operate as a common carrier in Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11150. Authority sought for purchase by THE MASON AND DIXON LINES, INC., Eastman Road, Post Office Box 969, Kingsport, TN 37662, of a portion of the operating rights of A–OK MOTOR LINES, INC. (SAMUEL KAUFMAN—TRUSTEE IN BANKRUPTCY), Post Office Box 1186, Montgomery, AL 36102, and for acquisition by E. WILLIAM KING, Post Office Box 969, Kingsport, TN 37662, of control of such rights through the purchase. Applicants' attorneys: Carl W. Eilers, Post Office Box 3740, Kingsport, TN 37664 and Phineas Stevens, 700 Petroleum Building, Jackson, MS 39205. Operating rights sought to be transferred: Under a certificate of registration, in Docket No. MC–121218 Sub-1, covering the transportation of commodities generally, in interstate commerce, within the State of Alabama. Vendee is authorized to operate as a *common carrier* in Tennessee, North Carolina, Georgia, Virginia, South Carolina, New York, New Jersey, Maryland, Delaware, Pennsylvania, Kentucky, Ohio, Illinois, Indiana, and Alabama. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11151. Authority sought for control by SLAUGHTER BEVERAGE TRANSPORTATION, INC., Rural Route No. 1, Smyrna, DE 19977, of HOWARD G. SLAUGHTER, doing business as SLAUGHTER BEVERAGE TRANSPORT, Rural Route No. 1, Smyrna, DE 19977, and for acquisition by HOWARD G. SLAUGHTER, also of Smyrna, Del., of control of HOWARD G. SLAUGHTER, doing business as SLAUGHTER BEVERAGE TRANSPORT, through the acquisition by SLAUGHTER BEVERAGE TRANSPORTATION, INC. Applicants' representative: Howard G. Slaughter, Rural Route No. 1, Smyrna, DE 19977. Operating rights sought to be controlled: *Alcoholic beverages* (except in bulk, in tank vehicles), as a *common carrier* over irregular routes, from points in New York, New Jersey, Pennsylvania, and Maryland, to Wilmington, Del.; *malt beverages* (except in bulk, in tank vehicles), from New York, N.Y., Baltimore, Md., Philadelphia, Pa., Newark, N.J., and Reading, Pa., to Milford, Del.; and *rotex dust*, from Dover, Del., to Camden, N.J. SLAUGHTER BEVERAGE TRANSPORTATION, INC., holds no authority from this Commission. However, its controlling stockholder, controls CAPITAL EXPRESS, INC., Rural Route No. 1, Smyrna, DE 19977, which is authorized to operate as a *common carrier* in New York, New Jersey, Pennsylvania, Maryland, and the District of Columbia; and R. H. WRIGHT, INC., Rural Route No. 1, Smyrna, DE 19977, which is authorized to operate as a *common carrier* in New Jersey, Maryland, New York, Delaware, Pennsylvania, Virginia, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11152. Authority sought for purchase by K LINES, INC., 341 Foothills Road, Lake Oswego, OR 97034, a portion of the operating rights of B–LINE TRANSPORT CO., INC., 7100 E. Broadway, Spokane, WA 99213, and for acquisition by JAMES E. BERREY, MARY JEAN BERREY AND STEPHEN BERREY, all of 18690 South Nixon, West Linn, OR 97068, of control of such rights through the purchase. Applicants' attorney: Norman E. Sutherland, 1200 Jackson Tower, Portland, OR 97205. Operating rights sought to be transferred: *Cement*, in bulk, as a *common carrier*, over irregular routes, from Spokane, Wash., to Moscow, Idaho, from Irvin, Wash., to Pendleton and Umatilla, Oreg., and Missoula, Hamilton, and Kalispell, Mont., from Irvin, Wash., to points in Kootenai, Bonner, Boundary, Benewah, Latah, Nez Perce, Shoshone, Lewis, Clearwater, and Idaho Counties, Idaho, from Spokane and Irvin, Wash., to points in Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders Counties, Mont., between points in that part of Washington on and east of U.S. Highway 97, with restriction, from Lime, Oreg., to points in Adams, Washington, Valley, Payette, Gem, Boise, Custer, Ada, Canyon, and Elmore Counties, Idaho. Vendee is authorized to operate as a *common carrier* in Oregon, Washington, and California. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71–5915 Filed 4–27–71;8:51 am]

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

APRIL 23, 1971.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

State Docket No. 4308–M, filed April 9, 1971. Applicant: PEARL S. BECK AND RAY M. BECK, doing business as: CEDARTOWN-ATLANTA FREIGHT LINE, LESSOR AND CEDARTOWN-ATLANTA FREIGHT LINES, INC., LESSEE, Post Office Box 127, Cedartown, GA 30125. Applicant's representative: Ray M. Beck (same address as applicant). Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities*, between Rockmart, Ga., and Dalton, Ga., via Rome and Calhoun, over State Highways 101, 53, and 3 (U.S. 41) with the right to operate via Interstate Highway 75 between Calhoun, Ga., and Dalton, Ga., as an alternate route, without authority to handle freight from Atlanta, Ga., destined to Rome or beyond Rome, and without authority to handle freight from or through Rome destined to Atlanta or beyond Atlanta; also application for corresponding authority to conduct operations in interstate and foreign commerce under section 206(a)(6) of the Interstate Commerce Act. Both intrastate and interstate authority sought.

HEARING: May 25, 1971, at 10 A.M. at 177 State Office Building, 244 Washington Street, Atlanta, GA 30334. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Georgia Public Service Commission, 244 Washington Street, Atlanta, GA 30334 and should not be directed to the Interstate Commerce Commission.

State Docket No. MC–28523, filed March 31, 1971. Applicant: MIDWESTERN TRANSPORTATION, INC., 2400 Northwest 23d Street, Oklahoma City, OK 73107. Applicant's representative: Rufus H. Lawson (same address as applicant) (also: Post Office Box 75124). Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities*, (1) between Oklahoma City, Okla., and the Oklahoma-Texas State line approximately one (1) mile west of Texola, Okla., serving all intermediate points except Bethany, Yukon, and El Reno, Okla., and serving the off-route point of Hydro, Okla.; from Oklahoma City, Okla., via U.S. 66 and Interstate Highway 40 to the Oklahoma-Texas State line, and return over the same route; (2) between Oklahoma City, Okla., and Sayre, Okla., serving all intermediate points between Clinton, Okla., and Sayre, Okla., and the off-route points of Stafford, Okla., Hammon, Okla., and Herring, Okla.; from Oklahoma City, Okla., via Interstate Highway 40 and U.S. 66 to Clinton, Okla., thence via State Highway 73 to its junction with State Highway 34, thence via State Highway 34 to its junction with State Highway 33,

thence via State Highway 33 to its junction with U.S. 283, thence U.S. 283 to Sayre, Okla., and return over the same route; (3) between Oklahoma City, Okla., and intersection of State Highway 34 and State Highway 33, serving all intermediate points between Clinton, Okla., and intersection of State Highway 34 and State Highway 33; from Oklahoma City, Okla., via U.S. 66 and Interstate Highway 40 to Clinton Okla., thence U.S. 183 to its intersection with State Highway 33, thence State Highway 33 to its intersection with State Highway 34, and return over the same route;

(4) Between Oklahoma City, Okla., and Erick, Okla., serving the off-route points of Durham and Dempsey, and serving all intermediate points between Weatherford, Okla., and Erick, Okla.: From Oklahoma City, Okla., via Interstate Highway 40 and U.S. 66 to Weatherford, Okla., thence State Highway 54 to its intersection with State Highway 33, thence State Highway 33 to its intersection with U.S. 183, thence U.S. 183 to its intersection with U.S. 60, thence via U.S. 60 to Seiling, Okla., thence on U.S. Highway 60 to Arnett, Okla., thence north via State Highway 46 to Gage, Okla., thence via State Highway 15 to Shattuck, Okla., thence via U.S. Highway 283 to its intersection with State Highway 33, thence via State Highway 33 to its intersection with State Highway 30, thence via State Highway 30 to Erick, Okla., and return over the same route; (5) between Oklahoma City, Okla., and Sayre, Okla., serving all intermediate points between Clinton, Okla., and Sayre, Okla.: From Oklahoma City, Okla., via Interstate Highway 40 and U.S. 66 to Clinton, Okla., thence via U.S. 183 to its intersection with State Highway 47, thence via State Highway 47 to its intersection with U.S. 283, thence via U.S. 283 to Sayre, Okla., and return over the same route; (6) between Oklahoma City, Okla., and Vici, Okla., serving all intermediate points between Elk City, Okla., and Vici, Okla., and the off-route point of Trail, Okla., and return over the same route: From Oklahoma City, Okla., to Elk City, Okla., via Interstate Highway 40 and U.S. 66, thence via State Highway 34 to Vici, Okla., and return over the same route;

(7) Between Oklahoma City, Okla., and intersection of State Highway 33 and U.S. 283 approximately 1 mile north of Roll, Okla., serving all intermediate points between Elk City, Okla., and intersection of State Highway 33 and U.S. 283: From Oklahoma City, Okla., to Elk City, Okla., via Interstate Highway 40 and U.S. 66, thence via State Highway 6 to its intersection with U.S. 283, thence U.S. 283 to intersection State Highway 33 and U.S. 283, and return over the same route; (8) between Oklahoma City, Okla., and the Oklahoma-Texas State line approximately 5 miles west of Sweetwater, Okla., serving all intermediate points between the intersection of State Highway 152 and State Highway 54 and the Oklahoma-Texas State line approximately 5 miles of Sweetwater, Okla.: From Oklahoma City, Okla., via State Highway 152 to the Oklahoma-Texas State line approximately 5 miles west of Sweetwater, Okla., and return over the same route; (9) between Oklahoma City, Okla., and Weatherford, Okla., serving the off-route points of Corn, Okla., and Colony, Okla.: From Oklahoma City, Okla., to Weatherford, Okla., via Interstate Highway 40 and U.S. 66, thence via State Highway 54 to its intersection with State Highway 152, and return over the same route; (10) between Oklahoma City, Okla., and Sayre, Okla., serving all intermediate points between Cordell, Okla., and Sayre, Okla., including Cordell, Okla.: From Oklahoma City, Okla., via State Highway 152 to Cordell, Okla., thence via U.S. 183 to Rocky, Okla., thence via State Highway 55 to its intersection with State Highway 152, thence via State Highway 152 to Sayre, Okla., and return over the same route;

(11) Between Oklahoma City, Okla., and Butler, Okla., serving all intermediate points between Sentinel, Okla., and Butler, Okla., and the off-route point of Clinton Sherman Air Force Base: From Oklahoma City, Okla., via Interstate Highway 40 and U.S. 66 to Clinton, Okla., thence via State Highway 183 to Rocky, Okla., thence via State Highway 55 to Sentinel, Okla., thence via State Highway 44 to Butler, Okla., and return over the same route; (12) between Elk City, Okla., and Retrop, Okla., serving all intermediate points: From Elk City, Okla., via State Highway 6 to Retrop and return over the same route; (13) between Elk City, Okla., and intersection of State Highway 34 and State Highway 152: From Elk City, Okla., via Interstate Highway 40 and U.S. 66 to its intersection with State Highway 34, thence via State Highway 34 to its intersection with State Highway 152, and return over the same route; and (14) between Oklahoma City, Okla., to intersection with U.S. Highway 183 and State Highway 47 serving all intermediate points between Thomas, Okla., and intersection of U.S. 183: From Oklahoma City, Okla., via Interstate Highway 40 and U.S. 66 to Weatherford, Okla., thence State Highway 54 to Thomas, Okla., thence State Highway 47 to its intersection with U.S. 183, and return over the same route. Both intrastate and interstate authority sought.

HEARING: May 10, 1971, at 9 a.m., at Oklahoma Corporation Commission, 340 Jim Thorpe Building, Oklahoma City, OK. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Corporation Commission of Oklahoma, Jim Thorpe Building, Oklahoma City, OK 73105, and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-5916 Filed 4-27-71;8:51 am]

[Notice 14]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

APRIL 23, 1971.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969 (49 CFR 1042.4(d)(11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(d)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(d)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC-42487 (Deviation No. 88), CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, CA 94015, filed April 13, 1971. Carrier's representative: V. R. Oldenburg, Post Office Box 5138, Chicago, IL 60680. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From Wichita, Kans., over Interstate Highway 35-W (or U.S. Highway 81 where Interstate Highway 35-W is not complete) to junction Kansas Highway 18, thence over Kansas Highway 18 to junction U.S. Highway 281, thence over U.S. Highway 281 to junction U.S. Highway 36, thence over U.S. Highway 36 to junction Kansas Highway 8, thence over Kansas Highway 8 to the Kansas-Nebraska State line, thence over Nebraska Highway 10 to junction Interstate Highway 80, thence over Interstate Highway 80 (or U.S. Highway 30 where Interstate Highway 80 is not complete) to Cheyenne, Wyo.; and (2) from Wichita, Kans., over the route described in (1) above to junction Nebraska Highway 10 and Interstate Highway 80, thence over Interstate Highway 80 to junction Nebraska Highway 61, thence over Nebraska Highway 61 to junction U.S. Highway 26, thence over U.S. Highway 26 to Casper, Wyo., and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) from Wichita, Kans., over U.S. Highway 54 to Bucklin, Kans., thence over unnumbered highway to junction U.S. Highway 154, thence over

U.S. Highway 154 to Dodge City, Kans., thence over U.S. Highway 50 to Garden City, Kans., thence over U.S. Highway 83 to junction U.S. Highway 24, thence over U.S. Highway 24 to Limon, Colo., thence over U.S. Highway 40 to Denver, Colo., thence over U.S. Highway 85 to Cheyenne, Wyo., and (2) from Wichita, Kans., over the route described in (1) above to Cheyenne, Wyo., thence over U.S. Highway 87 to Casper, Wyo., and return over the same routes.

No. MC–42487 (Deviation No. 89), CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, CA 94015, filed April 13, 1971. Carrier's representative: V. R. Oldenburg, Post Office Box 5138, Chicago, IL 60680. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Memphis, Tenn., over Interstate Highway 55 to junction U.S. Highway 63 (near Gilmore, Ark.), thence over U.S. Highway 63 to junction U.S. Highway 60 (near Willow Springs, Mo.), thence over U.S. Highway 60 to Junction U.S. Highway 66 (at Springfield, Mo.), thence over U.S. Highway 66 to junction U.S. Highway 71 (at Carthage, Mo.), thence over U.S. Highway 71 to Kansas City, Mo., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From St. Louis, Mo., over U.S. Highway 40 to Kansas City, Mo., and (2) from St. Louis, Mo., over U.S. Highway 61 to Crystal City, Mo., thence continuing over U.S. Highway 61 to junction Missouri Highway 25, thence over Missouri Highway 25 to Jackson, Mo., thence over U.S. Highway 61 to Memphis, Tenn., and return over the same routes.

No. MC–43421 (Deviation No. 28), DOHRN TRANSFER COMPANY, Post Office Box 1237, Rock Island, IL 61202, filed March 30, 1971. Carrier's representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, IL 60603. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: Between Peoria, Ill., and Fort Wayne, Ind., over U.S. Highway 24, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Chicago, Ill., over U.S. Highway 66 to junction Illinois Highway 53 (formerly Alternate U.S. Highway 66), thence over Illinois Highway 53 to junction U.S. Highway 66, thence over U.S. Highway 66 to junction Illinois Highway 116, thence over Illinois Highway 116 to Peoria, Ill., (2) from Chicago, Ill., over U.S. Highway 41 via St. John, Ind., to junction Indiana Highway 8, thence over Indiana Highway 8 to Crown Point, Ind., thence over U.S. Highway 231 (formerly Indiana Highway 53) to Montomorenci, Ind., thence over U.S. Highway 52 to Indianapolis, Ind., and (3) from Cincinnati, Ohio, over U.S. Highway 25 to Wapakoeta, Ohio, thence over U.S. Highway 33 to Fort Wayne, Ind., thence over U.S. Highway 30 to junction U.S. Highway 41, and return over the same routes.

No. MC–59583 (Deviation No. 41), THE MASON & DIXON LINES, INCORPORATED, Post Office Box 969, Kingsport, TN 37662, filed April 14, 1971. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: Between Corbin, Ky., and Cincinnati, Ohio, over Interstate Highway 75, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Louisville, Ky., over U.S. Highway 60 to Graefenburg, Ky., thence over Kentucky Highway 151 to Alton Station, Ky., thence over U.S. Highway 127 to Danville, Ky., thence over U.S. Highway 150 via Stanford, Ky., to Mount Vernon, Ky., thence over U.S. Highway 25 to junction Kentucky Highway 490 near Livingston, Ky., thence over Kentucky Highway 490 to junction U.S. Highway 25, near Pittsburg, Ky., thence over U.S. Highway 25 to Corbin, Ky., thence over U.S. Highway 25–E to Tazewell, Tenn., thence over Tennessee Highway 33 via Knoxville and Maryville, Tenn., to junction U.S. Highway 411, thence over U.S. Highway 411 to Madison, Tenn., thence over Tennessee Highway 68 to Sweetwater, Tenn., thence over U.S. Highway 11 to Chattanooga, Tenn., (2) from Louisville, Ky., to Corbin, Ky., as specified in (1) above, thence over Kentucky Highway 26 to Williamsburg, Ky., thence over U.S. Highway 25–W to Knoxville, Tenn., thence over U.S. Highway 11 to Chattanooga, Tenn., and (3) from Louisville, Ky., over U.S. Highway 42 to Cincinnati, Ohio, and return over the same routes.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

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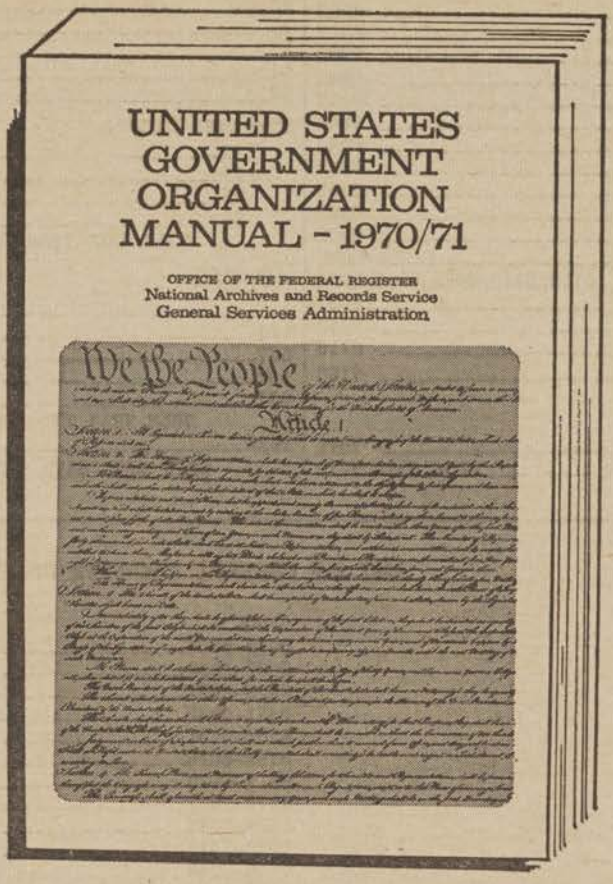

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