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PART I

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Title 3—The President

EXECUTIVE ORDER 11651

Textile Trade Agreements

By virtue of the authority vested in me by Section 204 of the Agricultural Act of 1956 (76 Stat. 104), as amended (7 U.S.C. 1854), and section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. (a) The Committee for the Implementation of Textile Agreements (hereinafter referred to as the Committee), consisting of representatives of the Departments of State, the Treasury, Commerce, and Labor, with the representative of the Department of Commerce as Chairman, is hereby established to supervise the implementation of all textile trade agreements. It shall be located for administrative purposes in the Department of Commerce. The President's Special Representative for Trade Negotiations, or his designee, shall be a non-voting member of the Committee.

(b) Except as provided in subsection (c) of this section, the Chairman of the Committee, after notice to the representatives of the other member agencies, shall take such actions or shall recommend that appropriate officials or agencies of the United States take such actions as may be necessary to implement each such textile trade agreement: Provided, however, that if a majority of the voting members of the Committee have objected to such action within ten days of receipt of notice from the Chairman, such action shall not be taken except as may otherwise be authorized.

(c) To the extent authorized by the President and by such officials as the President may from time to time designate, the Committee shall take appropriate actions concerning textiles and textile products under Section 204 of the Agricultural Act of 1956, as amended, and Articles 3 and 6 of the Long Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, as extended, and with respect to any other matter affecting textile trade policy.

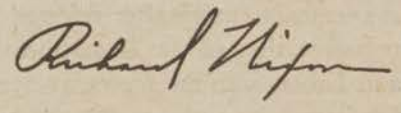
SEC. 2. (a) The Commissioner of Customs shall take such actions as the Committee, acting through its Chairman, shall recommend to carry out all agreements and arrangements entered into by the United States pursuant to Section 204 of the Agricultural Act of 1956, as amended,

with respect to entry, or withdrawal from warehouse, for consumption in the United States of textiles and textile products.

(b) Under instructions approved by the Committee, the Secretary of State shall designate the Chairman of the United States delegation to all negotiations and consultations with foreign governments undertaken with respect to the implementation of textile trade agreements pursuant to this Order. The Secretary of State shall make such representations to foreign governments, including the presentation of diplomatic notes and other communications, as may be necessary to carry out this Order.

SEC. 3. Executive Order No. 11052 of September 28, 1962, as amended, and Executive Order No. 11214 of April 7, 1965, are hereby superseded. Directives issued thereunder to the Commissioner of Customs shall remain in full force and effect in accordance with their terms until modified pursuant to this Order.

SEC. 4. This Order shall be effective upon its publication in the FEDERAL REGISTER.



THE WHITE HOUSE,
March 3, 1972.

[FR Doc.72-3475 Filed 3-3-72; 12:39 pm]

Rules and Regulations

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PART 201—ADVANCES AND DISCOUNTS BY FEDERAL RESERVE BANKS

Eligibility of Consumer Loans and Finance Company Paper

Effective immediately, § 201.104 is revised to read as follows:

§ 201.104 Eligibility of consumer loans and finance company paper.

(a) The Board of Governors has clarified and modified its position with respect to the eligibility of consumer loans and finance company paper for discount with and as collateral for advances by the reserve banks.

(b) Section 13, paragraph 2, of the Federal Reserve Act authorizes a Federal Reserve Bank, under certain conditions, to discount for member banks "* * * notes, drafts, and bills of exchange arising out of actual commercial transactions; that is, notes, drafts, and bills of exchange issued or drawn for agricultural, industrial, or commercial purposes, or the proceeds of which have been used, or are to be used, for such purposes, the Board of Governors of the Federal Reserve System to have the right to determine or define the character of the paper thus eligible for discount, within the meaning of this Act."

(c) It continues to be the opinion of the Board that borrowing for the purpose of purchasing goods is borrowing for a commercial purpose, whether the borrower intends to use the goods himself or to resell them. Hence, loans made to enable consumers to purchase automobiles or other goods should be included under commercial, agricultural, and industrial paper within the meaning of the Federal Reserve Act, and as such are eligible for discounting with the Reserve Banks and as security for advances from the Reserve Banks under section 13, paragraph 8, of the Federal Reserve Act as long as they conform to requirements with respect to maturity and other matters. This applies equally to loans made directly by banks to consumers and to paper accepted by banks from dealers or finance companies. It also applies to notes of finance companies themselves as long as the proceeds of such notes are used to finance the purchase of consumer goods or for other purposes which are eligible within the meaning of the Federal Reserve Act.

(d) If there is any question as to whether the proceeds of a note of a finance company have been or are to be used for a commercial, agricultural, or industrial purpose, a financial statement of the finance company reflecting an excess of notes receivable which appear eligible for rediscount (without regard to maturity) over total current liabilities (i.e., notes due within 1 year) may be taken as an indication of eligibility. Where information is lacking as to whether direct consumer loans by a finance company are for eligible purposes, it may be assumed that 50 percent of such loans are "notes receivable which appear eligible for rediscount". In addition, that language should be regarded as including notes given for the purchase of mobile homes that are acquired by a finance company from a dealer-seller of such homes.

(e) The principles stated above apply not only to notes of a finance company engaged in making consumer loans but also to notes of a finance company engaged in making loans for other eligible purposes, including business and agricultural loans. Under section 13a of the Federal Reserve Act, paper representing loans to finance the production, marketing, and carrying of agricultural products or the breeding, raising, fattening, or marketing of livestock is eligible for discount if the paper has a maturity of not exceeding 9 months. Consequently, a note of a finance company the proceeds of which are used by it to make loans for such purposes is eligible for discount or as security for a Federal Reserve advance, and such a note, unlike the note of a finance company making consumer loans, may have a maturity of up to 9 months.

By order of the Board of Governors, February 25, 1972.

[SEAL] TYNAN SMITH,
Secretary.

[FR Doc.72-3266 Filed 3-3-72;8:51 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 72-CE-6-AD; Amdt. 39-1398]

PART 39—AIRWORTHINESS DIRECTIVES

Bendix Wheel Assemblies (TSO C26B)

Amendment 39-1393 (37 F.R. 3409), AD 72-4-2, applicable to Bendix wheel assemblies installed on Boeing 747 series airplanes is an Airworthiness Directive which requires repetitive inspections and replacement where necessary of the subject wheel assemblies.

Subsequent to the issuance of AD 72-4-2 the agency has determined, based on information provided by Bendix regarding the implementation of new inspection procedures, that wheels manufactured after such implementation need not be subject to the AD. In addition, the manufacturer has issued Supplement No. 1 dated February 11, 1972, to it Service Information Letter No. 319 dated September 16, 1971, permitting use of a one time eddy current inspection, which the agency has determined to be an equivalent to those required by the AD. Accordingly, the AD is being amended to include these changes.

Since this amendment is relaxatory in nature and is in the interest of safety it imposes no additional burden on any person. Consequently, notice and public procedure hereon are impracticable and good cause exists for making the amendment effective in less than thirty (30) day.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89 (31 F.R. 13697)), § 39.13 of Part 39, Amendment 39-1393 (37 F.R. 3409), AD 72-4-2, is amended in the following respects:

1. The applicability statement is amended to read as follows:

BENDIX. Applies to P/N 2601901 (inboard wheel halves prior to Serial No. B5312 (Production) and Serial No. H204 (Service)) and to P/N 2603561 (inboard wheel halves prior to Serial No. B1996 (Production) and Serial No. H78 (Service)) wheel assemblies (TSO C26B).

2. Paragraph A is amended so that it now reads as follows:

(A) At the next tire change after the effective date of this AD, and thereafter at every other tire change until five (5) additional inspections have been accomplished (except as noted in paragraph B below), inspect the subject wheel assemblies for cracks. This inspection requires use of the dye penetrant method or an FAA-approved equivalent on the hubs of wheel halves, P/Ns 2602118 and 2603745, with particular attention to the area in or near the radius in the hub I.D. behind the inboard bearing cup. One such FAA-approved equivalent is an eddy current inspection conducted in accordance with Bendix Service Information Letter No. 319, dated September 16, 1971, and Supplement No. 1, dated February 11, 1972, which reduces the number of inspections required herein to one inspection.

3. Delete the sentence reading "Bendix Service Information Letter No. 319, dated September 16, 1971, pertains to this subject." and substitute in its place the following sentence: "Bendix Service Information Letter No. 319, dated September 16, 1971, and Supplement No. 1, dated February 11, 1972, pertains to this subject.".

This amendment becomes effective March 4, 1972.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on February 23, 1972.

JOHN M. CYROCKI,
Director, Central Region.

[FR Doc.72-3311 Filed 3-3-72;8:47 am]

[Airworthiness Docket No. 71-WE-28-AD; Amdt. 39-1399]

PART 39—AIRWORTHINESS DIRECTIVES

McDonnell Douglas Model DC-9 Series and C-9A (DC-9-32F) Airplanes

The preamble to Amendment 39-1378 (37 F.R. 665), AD 72-2-3, provided for a 30-day comment period by interested parties prior to the effective date of the AD. Several operators have furnished comments indicating that, because of service experience and scheduling problems, the initial and repetitive inspection intervals should, and could be, extended without adversely affecting safety. Some comments included proposals for alternative methods of accomplishment.

The service experience of several operators who have accomplished the inspections in their maintenance programs indicates that the compliance times may be extended to an initial and repetitive interval of 1,000 and 2,500 hours respectively. These programs have been established to accomplish Douglas Service Bulletins 57-86 and 57-88. The agency agrees in part with the comments, but, based upon tests conducted by the manufacturer which show that the main landing gear attach fitting cracking is due primarily to stress corrosion, believes that a ceiling based upon calendar time, rather than hours of aircraft operation, is required.

One comment proposed the use of alternate cleaning solutions, drying methods, and corrosion preventive compounds. These alternate procedures are being studied by the manufacturer and the agency for incorporation into revisions of the applicable service bulletins. As the AD provides for later FAA-approved revisions to the Service Bulletins, no further amendment to the AD is necessary. In the interim, operators are advised to submit specific alternate methods of accomplishment to the Chief, Aircraft Engineering Division, FAA Western Region.

Based upon the additional information furnished by the interested parties in their comments, the agency has determined that AD 72-2-3, effective February 22, 1972, may be amended to provide an increase in the initial inspection time to 1,000 hours' time in service from February 22, 1972, or 150 calendar days from February 22, 1972, whichever occurs earlier, and an increase in the repetitive inspection interval to 2,500 hours' time in service or 375 calendar days, whichever occurs earlier.

Since this amendment imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of Federal Regulations, Amendment 39-1378 (37 F.R. 665), AD 72-2-3, is amended as follows:

(1) Amend the first sentence of paragraph A to read, in pertinent part, as follows:

A. Within the next 1,000 hours' time in service after February 22, 1972, or 150 calendar days after February 22, 1972, whichever occurs earlier, unless previously accomplished within 1,500 hours' time in service or 225 calendar days prior to February 22, 1972, inspect * * *

(2) Amend paragraph A1(a) to read, in pertinent part, as follows:

* * * repeat the inspections and interim anticorrosion treatment at intervals not to exceed 2,500 hours' time in service or 375 calendar days, whichever occurs earlier;

(3) Amend paragraph 2(c) to read, in pertinent part, as follows:

* * * and at intervals not to exceed 2,500 hours' time in service or 375 calendar days, whichever occurs earlier * * *

This amendment becomes effective March 7, 1972.

(Sec. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Los Angeles, Calif., on February 24, 1972.

ROBERT O. BLANCHARD,
Acting Director,
FAA Western Region.

[FR Doc.72-3312 Filed 3-3-72;8:47 am]

[Airspace Docket No. 71-CE-111]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On page 25163 of the FEDERAL REGISTER dated December 29, 1972, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Lexington, Nebr.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., April 27, 1972.

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

Issued in Kansas City, Mo., on February 11, 1972.

CHESTER W. WELLS,
Acting Director, Central Region.

In § 71.181 (37 F.R. 2143), the following transition area is added:

LEXINGTON, NEBR.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Lexington Municipal Airport (latitude 40°47'38" N.; longitude 99°46'10" W.); and within 3 miles each side of the Lexington RBN 314° bearing, extending from the 5-mile-radius area to 8 miles northwest of the RBN.

[FR Doc.72-3313 Filed 3-3-72;8:47 am]

[Airspace Docket No. 71-CE-112]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

On pages 24006 and 24007 of the FEDERAL REGISTER dated December 17, 1971, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Knoxville, Iowa.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., April 27, 1972.

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

Issued in Kansas City, Mo., on February 11, 1972.

CHESTER W. WELLS,
Acting Director, Central Region.

In § 71.181 (37 F.R. 2143), the following transition area is amended to read:

KNOXVILLE, IOWA

That airspace extending upward from 700 feet above the surface within a five (5) mile radius of Knoxville Municipal Airport (latitude 41°18'00" N., longitude 93°06'40" W.) and within three (3) miles each side of the 342° bearing from Knoxville Municipal Airport extending from the five (5) mile radius area to eight (8) miles northwest of the airport, and within three (3) miles each side of the 146° bearing from the Knoxville Municipal Airport extending from the five (5) mile radius area to eight (8) miles southeast of the airport.

[FR Doc.72-3314 Filed 3-3-72;8:48 am]

[Airspace Docket No. 71-GL-23]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Controlled Airspace

On page 23730 of the FEDERAL REGISTER dated December 14, 1971, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate controlled airspace at Lone Rock, Wis.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., April 27, 1972.

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

Issued in Des Plaines, Ill., on February 17, 1972.

R. O. ZIEGLER,
Acting Director,
Great Lakes Region.

In § 71.181 (37 F.R. 2143), the following transition area is amended to read:

LONE ROCK, WIS.

That airspace extending upward from 1,200 feet above the surface within 10 miles south and 7 miles north of the Lone Rock VORTAC 089° and 269° radials, extending from 9 miles east to 20 miles west of the VORTAC; that airspace extending upward from 5,000 feet MSL in the area bounded on the north by V170, on the south by V2, and on the east by longitude 89°55'00" W.

[FR Doc.72-3315 Filed 3-3-72;8:48 am]

[Airspace Docket No. 71-GL-24]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone and Transition Area

On page 24122 of the FEDERAL REGISTER dated December 21, 1971, the Federal Aviation Administration published a notice of proposed rule making which would amend §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the control zone and transition area at Findlay, Ohio.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendments.

No objections have been received and the proposed amendments are hereby adopted without change and are set forth below.

These amendments shall be effective 0901 G.m.t., April 27, 1972.

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

Issued in Des Plaines, Ill., on February 17, 1972.

R. O. ZIEGLER,
Acting Director,
Great Lakes Region.

In § 71.171 (37 F.R. 2056), the following control zone is amended to read:

FINDLAY, OHIO

Within a 5-mile radius of the Findlay Airport (latitude 41°00'40" N., longitude 83°40'30" W.); excluding that portion within a 1-mile radius of the Lutz Airport (latitude 40°57'42" N., longitude 83°35'43" W.); within 3 miles each side of the 179° bearing from the Findlay Airport extending from the 6½-mile-radius area to 8½ miles south of the airport; within a 5-mile radius of Bluffton Flying Service Airport (latitude 40°53'09" N., longitude 83°52'04" W.), and within 2 miles each side of the Findlay VORTAC 231° radial extending from the 5-mile-radius zone to the Findlay, Ohio Airport 5-mile-radius zone.

In § 71.181 (37 F.R. 2143), the following transition area is amended to read:

FINDLAY, OHIO

That airspace extending upward from 700 feet above the surface within a 6½-mile radius of Findlay, Ohio Airport (latitude 41°00'40" N., longitude 83°40'30" W.) within 3 miles each side of the 179° bearing from the Findlay Airport extending from the 6½-mile-radius area to 8½ miles south of the airport within 2 miles each side of the Findlay VORTAC 231° radial extending from the Bluffton Flying Service Airport (latitude 40°53'09" N., longitude 83°52'04" W.), 5-mile-radius area to the 6½-mile-radius area of Findlay Airport; and that airspace extending upward from 1,200 feet above the surface bounded by a line extending from latitude 40°51'00" N., longitude 84°00'00" W., to latitude 41°18'00" N., longitude 84°07'00" W.; to latitude 41°11'00" N., longitude 83°19'00 W.; to latitude 40°50'00" N., longitude 83°30'00" W., to point of beginning.

[FR Doc.72-3316 Filed 3-3-72;8:48 am]

[Airspace Docket No. 71-GL-25]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

On page 23729 of the FEDERAL REGISTER dated December 14, 1971, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Elkhart, Ind.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., April 27, 1972.

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

Issued in Des Plaines, Ill., on February 17, 1972.

R. O. ZIEGLER,
Acting Director,
Great Lakes Region.

In § 71.181 (37 F.R. 2143), the following transition area is amended to read:

ELKHART, IND.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Elkhart Municipal Airport (latitude 41°-43'11" N., longitude 85°59'41" W.); and within 2 miles each side of the South Bend, Ind., VORTAC 101° radial, extending eastward from the 5-mile radius area to 23 miles east of the VORTAC, and within 2 miles each side of the Goshen, Ind., VORTAC 008° radial, extending south from the 5-mile radius area to 5 miles north of the Goshen VORTAC excluding the portion which overlies the South Bend, Ind., 700-foot floor transition area.

[FR Doc.72-3317 Filed 3-3-72;8:48 am]

[Airspace Docket No. 71-GL-26]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On page 23729 of the FEDERAL REGISTER, dated December 14, 1971, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Rochelle, Ill.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., April 27, 1972.

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

Issued in Des Plaines, Ill., on February 15, 1972.

R. O. ZIEGLER,
Acting Director,
Great Lakes Region.

In § 71.181 (37 F.R. 2143), the following transition area is added:

ROCHELLE, ILL.

That airspace extending upward from 700 feet above the surface within a 5½-mile radius of the Rochelle Municipal Airport (latitude 41°53'35" N., longitude 89°04'45" W.) and within 3 miles either side of the Polo VORTAC 102 radial extending 1 mile west from the 5½-mile radius area excluding the portion that overlies the Rockford, Ill., transition area.

[FR Doc.72-3318 Filed 3-3-72;8:48 am]

[Airspace Docket No. 71-NW-12]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone

On December 21, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 24124) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the North Bend, Oreg., control zone.

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 71 of the Federal Aviation Regulations is

amended, effective 0901 G.m.t., April 27, 1972, as hereinafter set forth.

Section 71.171 (37 F.R. 2056) is amended as follows:

In the North Bend, Oreg., control zone all after the phrase "4.5 miles east of the VORTAC," is deleted and the phrase "and within 3 miles each side of the 337° bearing from the Barview RBN, extending from the 5-mile-radius zone to 7 miles northwest of the RBN." is substituted therefor.

(Sec. 307(a), 1110, Federal Aviation Act of 1958, 49 U.S.C. 1348(a), 1510, Executive Order 10854, 24 F.R. 9565; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on February 28, 1972.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.72-3319 Filed 3-3-72;8:48 am]

[Airspace Docket No. 72-SO-6]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Meridian, Miss. (NAS Meridian), control zone.

The Meridian (NAS Meridian) control zone is described in § 71.171 (37 F.R. 2056) and is presently effective 24 hours per day. Effective March 1, 1972, NAS Meridian will begin reduced hours of operation. It is necessary to alter the control zone to redesignate it as part-time. Since this amendment lessens the burden on the public, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., March 1, 1972, as hereinafter set forth.

In § 71.171 (37 F.R. 2056), the Meridian, Miss. (NAS Meridian), control zone is amended as follows:

"This control zone is effective from 0600 to 2400 hours, local time, Monday through Friday; 0800 to 1800 hours, local time, Saturday, and 1200 to 2200 hours, local time, Sunday and Federal legal holidays" is added to the description.

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

Issued in East Point, Ga., on February 22, 1972.

JAMES G. ROGERS,
Director, Southern Region.

[FR Doc.72-3320 Filed 3-3-72;8:48 am]

[Airspace Docket No. 72-SO-14]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Gainesville, Fla., transition area.

The Gainesville transition area is described in § 71.181 (37 F.R. 2143). In the description, there is a proviso to exclude the portion within a 1-mile radius of Stengel Field Airport. On August 28, 1971, the Stengel Field Airport was abandoned. It is necessary to alter the decription to reflect this change. Since this amendment is minor in nature, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 71.181 (37 F.R. 2143), the Gainesville, Fla., transition area is amended to read:

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Gainesville Municipal Airport (lat. 29°41'22" N., long. 82°16'28" W.).

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

Issued in East Point, Ga., on February 18, 1972.

JAMES G. ROGERS,
Director, Southern Region.

[FR Doc.72-3321 Filed 3-3-72;8:48 am]

[Airspace Docket No. 72-SO-15]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone and Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Albany, Ga. (Albany-Dougherty County Airport), control zone and the Albany, Ga., transition area.

The Albany (Albany - Dougherty County Airport) control zone is described in § 71.171 (37 F.R. 2056) and the Albany transition area is described in § 71.181 (37 F.R. 2143). In both descriptions, an extension is predicated on the Albany VORTAC 145° radial. The final approach radial for VOR RWY 16 Instrument Approach Procedure has been changed to the Albany VORTAC 143° radial. It is necessary to alter the descriptions to reflect this change. Since this amendment is minor in nature, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 71.171 (37 F.R. 2056), the Albany, Ga. (Albany-Dougherty County Airport), control zone and in § 71.181 (37 F.R. 2143), the Albany, Ga., transition area are amended as follows:

"* * * 145° * * *" is deleted and "* * * 143° * * *" is substituted therefor.

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

Issued in East Point, Ga., on February 18, 1972.

JAMES G. ROGERS,
Director, Southern Region.

[FR Doc.72-3322 Filed 3-3-72;8:48 am]

[Airspace Docket No. 71-SW-75]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to designate a 700-foot transition area at Searcy, Ark.

On January 18, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 744) stating the Federal Aviation Administration proposed to designate the Searcy, Ark., transition area.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., April 27, 1972, as hereinafter set forth.

In § 71.181 (37 F.R. 2143), the following transition area is added:

SEARCY, ARK.

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Searcy Municipal Airport (latitude 35°13'17" N., longitude 91°44'15" W.).

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

Issued in Fort Worth, Tex., on February 24, 1972.

R. V. REYNOLDS,
Acting Director, Southwest Region.

[FR Doc.72-3324 Filed 3-3-72;8:48 am]

[Airspace Docket No. 71-SW-23]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Extension of Designation of Jet Route

On September 17, 1971, F.R. Doc. 71-13616 was published in the FEDERAL REGISTER (36 F.R. 18576) with an effective date of November 11, 1971, and was to remain in effect until May 24, 1972.

This document amended Part 75 of the Federal Aviation Regulations in part by designating Jet Route No. 166 and a segment of Jet Route No. 108 for a limited time. It also stated that during the designated period, an evaluation of the jet routes would be made to determine whether their designation should continue after May 24, 1972. That evaluation has been concluded and it has been determined that designation of the routes should be continued.

In consideration of the foregoing, F.R. Doc. 71-13616 is hereby amended, effective upon publication in the FEDERAL REGISTER (3-4-72), by deleting the words "and will remain in effect until May 24, 1972," from the third paragraph.

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

Issued in Washington, D.C., on February 28, 1972.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.72-3323 Filed 3-3-72;8:48 am]

[Docket No. 11772; Amdt. 77-10]

PART 77—OBJECTS AFFECTING NAVIGABLE AIRSPACE

Miscellaneous Amendments

The purpose of this amendment is to make certain minor editorial changes to Part 77 of the Federal Aviation Regulations.

Section 77.11(b) contains a reference to the sale of Advisory Circular 70/7460-1 entitled "Obstruction Marking and Lighting." Effective January 1, 1972, a revised edition of this Advisory Circular has become available free of charge from the Department of Transportation. Section 77.11(b) is revised to reflect this change.

Throughout Subpart B of Part 77 there are several references to FAA area offices and personnel. Since all area offices were eliminated April 2, 1971, any reference to them is deleted and replaced with reference to the appropriate regional office or personnel.

Section 77.73 provides for the establishment of antenna farm areas under the procedural requirements of section 4 of the Administrative Procedure Act. This citation is no longer accurate since the recodification of the Act, and appropriate language is substituted therefor.

Since these amendments are minor and editorial in nature and no substantive change is effected, notice and public procedure thereon are not necessary and good cause exists for making them effective on less than 30 days notice.

In consideration of the foregoing, Part 77 of the Federal Aviation Regulations is amended, effective March 4, 1972, as follows:

§ 77.11 [Amended]

1. Section 77.11(b)(3) is amended by deleting all after "Obstruction Marking and Lighting," and substituting therefor "which is available without charge from the Department of Transportation, Distribution Unit, TAD 484.3, Washington, D.C. 20590."

§ 77.13 [Amended]

2. In § 77.13 (b) and (c) "FAA area office" is deleted whenever it occurs and "FAA regional office" is substituted therefor.

3. In § 77.17 (a) and (e) are revised to read as follows:

§ 77.17 Form and time of notice.

(a) Each person who is required to notify the Administrator under § 77.13(a) shall send one executed form set (four copies) of FAA Form 7460-1, Notice of Proposed Construction or Alteration, to the Chief, Air Traffic Division, FAA Regional Office having jurisdiction over the area within which the construction or alteration will be located. Copies of FAA Form 7460-1 may be obtained from the headquarters of the Federal Aviation Administration and the regional offices.

* * * * *

(e) Each person who is required to notify the Administrator by paragraph (b) or (c) of § 77.13, or both, shall send an executed copy of FAA Form 117-1, Notice of Progress of Construction or Alteration, to the Chief, Air Traffic Division, FAA Regional Office having jurisdiction over the area involved.

4. In § 77.73(a) the last sentence is deleted and a new sentence is added as follows:

§ 77.73 General provisions.

(a) * * * Each such area is established by appropriate rule making action.

* * * * *

(Secs. 313, 1101, Federal Aviation Act of 1958, 49 U.S.C. 1354, 1501; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on February 28, 1972.

K. M. SMITH,
Acting Administrator.

[FR Doc.72-3325 Filed 3-3-72;8:49 am]

Title 7—AGRICULTURE

Chapter I—Consumer and Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 47—RULES OF PRACTICE UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

Criteria for Opportunity for Oral Hearing

The Perishable Agricultural Commodities Act, 1930 (46 Stat. 531 et. seq., as amended; 7 U.S.C. 499a et. seq.), was amended by an act of Congress dated February 15, 1972 (Public Law 92-231), to provide that opportunity for an oral hearing need not be provided in reparation cases unless the amount in dispute exceeds $3,000.

Pursuant to the authority contained in Section 15, 46 Stat. 537, as amended; 7 U.S.C. 499o, the Rules of Practice (7 CFR Part 47) under the Perishable Agricultural Commodities Act, 1930, are hereby amended, as follows:

1. In § 47.15 revise paragraph (a) to read as follows:

§ 47.15 Oral hearing before the examiner.

(a) *When permissible.* (1) Where the amount of damages claimed, either in the complaint or in the counterclaim, does not exceed $3,000 an oral hearing shall not be held, unless deemed necessary or desirable by the Division or unless granted by the examiner upon application of complainant or respondent setting forth the peculiar circumstances making an oral hearing necessary for a proper presentation of the case. In lieu of an oral hearing in any proceeding where the amount of damages claimed does not exceed $3,000 the proceeding shall be decided upon a record formed under the shortened procedure provided in § 47.20.

(2) Where the amount of damages claimed, either in the complaint or in the counterclaim, is in excess of $3,000, the procedure provided in this section (except as provided in § 47.20(b)(2)) shall be applicable.

* * * * *

2. Revise § 47.20(b) to read as follows:

in § 47.20.

* * * * *

(b) *When applicable*—(1) *Where damages claimed do not exceed $3,000.* The shortened procedure provided for in this section shall (except as provided in § 47.15(a)) be used in all reparation proceedings in which the amount of damages claimed, either in the complaint or in the counterclaim, does not exceed $3,000.

(2) *Where damages claimed exceed $3,000.* In any proceeding in which the amount of damages claimed, either in the complaint or in the counterclaim, is greater than $3,000, the examiner, whenever he is of the opinion that proof may be fairly and adequately presented by use of the shortened procedure provided for in this section, shall suggest to the parties that they consent to the use of such procedure. Parties are free to consent to such procedure if they choose and declination of consent will not affect or prejudice the rights or interests of any party. A party, if he has not waived oral hearing, may consent to the use of the shortened procedure on the condition that depositions rather than affidavits be used. In such case, if the other party agrees, depositions shall be required to be filed in lieu of verified statements. If any party who has not waived oral hearing does not consent to the use of the shortened procedure, the proceeding will be set for oral hearing. The suggestion that the shortened procedure be used need not originate with the examiner. Any party may address a request to the examiner asking that the shortened procedure be used.

* * * * *

The rules of practice (§ 47.1-47.46), as hereby amended, shall be applicable to reparation proceedings in which the initial formal complaint is served on respondent on or after March 10, 1972. Proceedings in which the initial formal complaint was served on respondent prior to that date shall be governed by such rules as effective prior to these amendments.

It is hereby found that it is unnecessary and contrary to the public interest to give preliminary notice and engage in public rule making procedure because the determination that, in general, hearings are to be held only when the damages claimed exceed $3,000 has already

been made by Congress, and the purpose of these amendments is to incorporate that policy in the rules of practice.

It is hereby further found that good cause exists for not postponing the effective date of these amendments beyond March 10, 1972, in that the amendments will not require any special preparation on the part of interested persons.

(Sec. 15, 46 Stat. 537, as amended; 7 U.S.C. 499o)

Done at Washington, D.C., this 2d day of March 1972.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.72-3431 Filed 3-3-72;8:54 am]

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER B—SUGAR REQUIREMENTS AND QUOTAS

[Sugar Reg. 811, Amdt. 7]

PART 811—CONTINENTAL SUGAR REQUIREMENTS AND AREA QUOTAS

Requirements, Quotas, and Quota Deficits for 1972

Basis and purpose and bases and considerations. This amendment is issued pursuant to the authority vested in the Secretary of Agriculture by the Sugar Act of 1948, as amended (61 Stat. 922, as amended), hereinafter referred to as the "Act." The purpose of this amendment to Sugar Regulation 811, as amended, is to revise the determination of sugar requirements for the calendar year 1972, establish quotas and prorations consistent with such requirements and to determine and prorate or allocate the deficits in quotas established pursuant to the Act.

Section 201(a) of the Act requires a determination of the amount of sugar needed to meet the requirements of consumers in the continental United States whenever necessary to attain the price objectives set forth in section 201(b) of the Act.

Section 202(g)(3) of the Act, which sets forth the procedure to use in attaining such price objective, provides that whenever the simple average of prices of raw sugar for seven consecutive market days ending after October 31 and before March 1 is 3 per centum or more above or below the average price objective for the preceding 2 calendar months, the determination of requirements of consumers shall be adjusted to the extent necessary to attain such price objective.

For the seven consecutive market days ended February 22, the simple average of the daily price of raw sugar was 9.02 cents per pound and thus more than 3 per centum above the average price objective of 8.75 cents per pound. Therefore, and additional upward adjustment in requirements is considered appropriate at this time to meet the requirements of the Act.

An increase in requirements of 100,000 short tons, raw value, is necessary to obtain the price objective set forth in the Act.

Accordingly, total sugar requirements for the calendar year 1972 are hereby increased by 100,000 short tons, raw value, to a total of 12 million short tons, raw value.

Section 204(a) of the Act provides that the Secretary shall from time to time determine whether any area or country will be unable to fill its quota or proration of a quota.

It was determined in amendment 2 of this Sugar Regulation 811 that the Domestic Sugar Beet Sugar Area would be unable to market in 1972 sugar in excess of 3,500,000 short tons, raw value. In previous amendments deficits have been determined in the quota for the Beet area of 239,667 tons representing the amount its quota exceeded 3,500,000 tons. Since this regulation increases the quota for that area by 47,666 tons an additional deficit is herein determined in the 1972 quota for the Domestic Beet Sugar Area of 47,666 short tons, raw value. If production exceeds the present estimates for the Domestic Beet Area, the marketing opportunities for that area within the total quota for that area will not be limited as a result of the deficit determination and proration provided herein.

The quota for Hawaii has been increased by 7,238 short tons, raw value, pursuant to section 202(a)(3) of the Act and on the basis of final data on production and marketing of Hawaiian sugar in 1971.

It is hereby determined that the Republic of the Philippines filed 1,592,462 short tons, raw value, of its 1971 quota and such quantity was in excess of 115 percent of its 1970 final quota and accordingly, pursuant to section 202(d)(4) of the Act, the quota established for the Republic of the Philippines for 1972 and future years will not be subject to reduction by reason of a combined deficit and shortfall of 33,110 tons in the 1971 quota established for the Philippines.

On the basis of evidence submitted by Haiti to the Department and pursuant to section 202(d)(4) of the Act, it is hereby determined that the total deficits of 9,342 tons in the 1971 quota for Haiti was due to crop disaster and its quota for future years will not be subject to reduction by reason of such shortfall.

Ecuador, Venezuela, Colombia, India, and the Malagasy Republic fell short of filling their 1971 quotas by 1,158 tons, 772 tons, 735 tons, 647 tons, and 101 tons, respectively. It is hereby determined that such shortfalls in relation to the quotas of the countries are within reasonable tolerances under the circumstances which prevailed last year and hence, the quotas of these countries for 1972 and subsequent years are not subject to reduction pursuant to section 202(d)(4).

By virtue of the authority vested in the Secretary of Agriculture by the Act, Part 811 of this chapter is hereby amended by amending §§ 811.10, 811.11, 811.12, and 811.13 as follows:

1. Section 811.10 is amended to read as follows:

§ 811.10 Sugar Requirements, 1972.

The amount of sugar needed to meet the requirements of consumers in the continental United States for the calendar year 1972 is hereby determined to be 12 million short tons, raw value.

2. Section 811.11 is amended by amending paragraph (a) to read as follows:

§ 811.11 Quotas for domestic areas.

(a) (1) For the calendar year 1972 domestic area quotas limiting the quantities of sugar which may be brought into or marketed for consumption in the continental United States are established, pursuant to section 202(a) of the Act, in column (1) and the amounts of such quotas for offshore areas that may be filled by direct-consumption sugar are established, pursuant to section 207 of the Act in column (2) as follows:

Area	Quotas	Direct-consumption limits
	(1)	(2)
	(Short tons, raw value)	
Domestic beet sugar	3,787,333	No limit
Mainland cane sugar	1,677,667	No limit
Hawaii	1,218,238	38,646
Puerto Rico	855,000	166,500

(2) It is hereby determined pursuant to section 204(a) of the Act that for the calendar year 1972 the Domestic Beet Sugar Area and Puerto Rico will be unable by 287,333 and 650,000 short tons, raw value, respectively, to fill the quotas established for such areas in subparagraph (1) of this paragraph. Pursuant to section 204(b) of the Act the determination of such deficits shall not affect the quotas established in subparagraph (1) of this paragraph.

* * * * *

3. Section 811.12 is amended by amending paragraph (a) to read as follows:

§ 811.12 Proration and allocation of deficits in quotas.

(a) Of the domestic deficits determined in § 811.11(a)(2), totaling 937,333 short tons, raw value, a quantity of 889,667 tons representing deficits in the quotas of the Domestic Beet Sugar Area and Puerto Rico of 239,667 and 650,000 tons, respectively, were previously determined, allocated and prorated in this Part 811. An additional deficit is herein determined in the quota for the Domestic Beet Area of 47,666 short tons, raw value, and is herein prorated and allocated pursuant to section 204(a) of the Act, by allocating 30.08 percent or 14,338 short tons, raw value, to the Republic of the Philippines and by prorating the remaining 33,329 short tons, raw value, to Western Hemisphere countries on the basis of quotas determined herein pursuant to section 202 of the Act.

* * * * *

4. Section 811.13 is amended by amending paragraphs (b) and (c) to read as follows:

§ 811.13 Quotas for foreign countries.

* * * * *

(b) For the calendar year 1972, the quota for the Republic of the Philippines is 1,407,970 short tons, raw value, representing 1,126,020 short tons, established pursuant to section 202 of the Act and 281,950 short tons established pursuant to section 204 of the Act. Of the quantity of 1,126,020 short tons established pursuant to section 202 of the Act, only 59,920 short tons, raw value, may be filled by direct-consumption sugar pursuant to section 207(d) of the Act.

(c) For the calendar year 1972, the prorations to individual foreign countries other than the Republic of the Philippines pursuant to section 202 of the Act are shown in columns (1) and (2) of the following table. Deficit prorations previously established in this Sugar Regulation 811 are shown in column (3). New deficit prorations established herein are shown in column (4). Total quotas and prorations are shown in column (5).

Countries	Basic quotas	Temporary quotas and prorations pursuant to Sec. 202(d) [1]	Previous deficit prorations	New deficit prorations	Total quotas and prorations
	(1)	(2)	(3)	(4)	(5)
			(Short tons, raw value)		
Dominican Republic	429,771	145,293	121,600	7,013	703,677
Mexico	380,079	128,494	107,539	6,203	622,315
Brazil	370,678	125,315	104,880	6,048	606,921
Peru	265,249	89,673	75,050	4,328	434,300
West Indies	138,338	46,766	39,140	2,257	226,496
Ecuador	54,729	18,502	15,485	893	89,609
Argentina	51,371	17,367	14,535	838	84,111
Costa Rica	46,335	15,664	34,917	756	97,672
Colombia	45,663	15,438	12,920	745	74,766
Panama	28,539	9,649	8,075	466	46,729
Nicaragua	43,313	14,643	12,255	707	70,918
Venezuela	41,298	13,962	11,685	674	67,619
Guatemala	39,620	13,394	29,159	647	82,820
El Salvador	28,875	9,762	8,170	471	47,278
British Honduras	22,832	7,718	6,460	372	37,382
Haiti	20,817	7,038	5,890	340	34,085
Bahamas	18,131	6,130	5,130	296	29,687
Honduras	8,058	2,724	6,695	132	17,609
Bolivia	4,365	1,476	1,235	71	7,147
Paraguay	4,365	1,476	1,235	71	7,147
Australia	168,551	41,932			210,483
Republic of China	70,174	17,458			87,632
India	67,487	16,790			84,277
South Africa	47,678	11,861			59,539
Fiji Islands	36,933	9,188			46,121
Mauritius	24,846	6,181			31,027
Swaziland	24,846	6,181			31,027
Thailand	15,445	3,843			19,288
Uganda	12,423	3,090			15,513
Malagasy Republic	10,073	2,506			12,579
Ireland	5,351	0			5,351
Total	2,526,228	809,514	622,055	33,328	3,991,125

[1] Proration of the quotas withheld from Cuba and Southern Rhodesia.

(Secs. 201, 202, 204, and 403; 61 Stat. 923, as amended, 924, as amended, 925, as amended, 932; and 7 U.S.C. 1111, 1112, 1114, and 1153)

Effective date. This action increases quotas for the calendar year 1972 by 100,000 tons, determines an additional deficit in quotas of 47,666 tons and prorates and allocates such deficit to the Philippines and Western Hemisphere quota countries. In order to promote orderly marketing, it is essential that this amendment by effective immediately so that all persons selling and purchasing sugar for consumption in the continental United States can promptly plan and market under the changed marketing opportunities. Therefore, it is hereby determined and found that compliance with the notice, procedure, and effective date requirements of 5 U.S.C. 553 is unnecessary, impracticable, and contrary to the public interest and this amendment shall be effective when filed for public inspection in the Office of the Federal Register.

Signed at Washington, D.C., on February 29, 1972.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.72-3302 Filed 3-1-72;3:30 pm]

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

[Amdt. 11]

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

Container, Pack, and Container Marking Regulations

On February 18, 1972, notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 3643) regarding a proposal, applicable to § 906.340 *Container, pack, and container marking regulations* (7 CFR 906.340; 36 F.R. 143; 5962; 7049; 14253; 20029; 37 F.R. 2765), recommended by the Texas Valley Citrus Committee, established pursuant to the marketing agreement, as amended, and Order No. 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. This notice allowed interested persons 7 days during which they could submit written data, views, or arguments pertaining to the proposal. None were submitted. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

This action reflects the Department's appraisal of the need for restricting the use of containers and pack sizes to those most suitable for the packing and handling of fruit to promote orderly marketing, so as to provide consumers with good quality fruit and maximize returns to producers pursuant to the declared policy of the act.

The amendment continues in effect certain requirements with respect to the packing of Navel oranges and Valencia and similar late type oranges, that have been in effect since February 7, 1972, under Amendment 10 to § 906.340. Such requirements, which unless extended beyond such date would expire March 6, 1972, expand by two-sixteenth inch, the diameter limits for fruit in each of the pack sizes for such oranges; establish limits in the variation in size, from the smallest to the largest fruit, for each pack size for fruit in individual containers for such oranges; and provide diameter limits for the fruit for pack sizes not included in the pack requirements specified in paragraph (a) (2) (i) of § 906.340 for such oranges prior to February 7, 1972. The expansion of the diameter limits for the fruit in each pack size, by lowering the minimum diameter for each pack size by two-sixteenth inch, is intended to allow greater flexibility and prevent overfilling of containers, in the packing of Navel oranges and Valencia and similar late type oranges, especially for fruit which is slightly elongated. The establishment of limits in the variation in size, from the smallest to the largest fruit for each pack size for fruit in individual containers is designed to maintain uniformity of size, of the fruit, within each container. The listing of diameter limits for the fruit for those pack sizes, in addition to those specified in paragraph (a) (2) (i) of § 906.340 for such oranges prior to February 7, 1972, is for the purpose of permitting the handling of larger size oranges packed in accordance with the standard pack requirements but of larger pack sizes than set forth in the U.S. Standards. The larger size oranges are too big to be packed according to one of the smaller pack sizes, without damage to the fruit.

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, the recommendation and information submitted by the 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 fruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of such fruit are expected to continue on and after the expiration date of the existing regulation and this amendment should be applicable to all such shipments in order to effectuate the declared policy of the act; (2) notice of proposed rule making concerning this amendment, with an effective date as hereinafter specified, was published in the FEDERAL REGISTER (37 F.R. 3643), and no objection to this amendment or such effective date was received; and (3) compliance with this amendment will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

Order. Therefore, the provisions of paragraph (a)(2)(i) of § 906.340 (7 CFR 906.340; 36 F.R. 143; 5962; 7049; 14253; 20029; 37 F.R. 2765) are amended by adding 2 provisos to subdivision (i) *Oranges,* of subparagraph (2) *Pack regulations,* reading as follows:

§ 906.340 Container, pack, and container marking regulations.

(a) * * *

(2) * * *

(i) * * *: *Provided,* That on and after March 7, 1972, Navel oranges and Valencia and similar late type oranges when place packed in any box or carton shall be sized in accordance with the sizes set forth in the following table and otherwise meet the requirements of standard pack; and when in containers not packed according to a definite pattern shall be sized in accordance with the sizes set forth in the following table and otherwise meet the requirements of standard sizing:

TABLE

Pack sizes	Diameter limits in inches	
	Minimum	Maximum
46	4 3/16	5
54	4	4 13/16
64	3 13/16	4 3/16
70 or 72	3 11/16	4 1/16
80	3 5/16	4 3/16
100	3 5/16	3 13/16
112	3 3/16	3 11/16
125	3 1/16	3 5/16
163	2 13/16	3 5/16
200	2 3/16	3 1/16
252	2 5/16	2 13/16
288	2 3/16	2 5/16
324	2 1/16	2 5/16

Provided further, That on and after March 7, 1972, the variation from the smallest to the largest fruit in any container is not more than the following applicable amount:

(a) 46, 54, 64, 70, or 72, or 80 sizes—not more than eight-sixteenths inch in diameter;

(b) 100, 112, or 125 sizes—not more than six-sixteenths inch in diameter;

(c) 163 or 200 sizes—not more than five-sixteenths inch in diameter; and

(d) 252, 288, or 324 sizes—not more than four-sixteenths inch in diameter.

* * * * *

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

Dated: March 1, 1972.

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

[FR Doc.72-3352 Filed 3-3-72;8:52 am]

[Lemon Reg. 523]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.823 Lemon Regulation 523.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 36 F.R. 9061), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on February 29, 1972.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period March 5 through March 11, 1972, is hereby fixed at 220,000 cartons.

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

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

Dated: March 1, 1972.

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

[FR Doc.72-3402 Filed 3-3-72;8:45 am]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release 34-9504]

PART 240—GENERAL RULES AND REGULATIONS SECURITIES EXCHANGE ACT OF 1934

Disqualification of Securities Firms Expelled From an Exchange or National Securities Association

On August 23, 1971, in Securities Exchange Act Release No. 9290 and in the FEDERAL REGISTER for August 19, 1971, at 36 F.R. 16119, the Securities and Exchange Commission announced a proposal to adopt Rule 15b8–2 (17 CFR 240.15b8–2) [1] under the Securities Exchange Act of 1934 (Act). The Commission has considered the comments and suggestions received and has adopted the

[1] Former Rule 15b8–2 was rescinded on May 8, 1968. See Securities Exchange Act Release No. 8308 and the FEDERAL REGISTER for May 11, 1968, at 33 F.R. 7076.

rule as set forth below effective April 10, 1972.

The rule provides that nonmember broker-dealers which have been expelled or suspended from a registered national securities association or exchange [3] for conduct inconsistent with just and equitable principles of trade and individuals who have been barred or suspended from association with any member of such an association or exchange for conduct inconsistent with just and equitable principles of trade would be unqualified to engage in securities activities pursuant to section 15(b)(8) of the Act. In addition, the rule prescribes procedures for obtaining from the Commission, upon an appropriate showing, relief from such disqualification including a provision that receipt by the Commission of an application to engage in securities activities shall stay the disqualification provisions of the rule pending the Commission's determination with respect to the merits of the application.[3]

Section 15(b)(8) under the Act provides that no registered broker or dealer during any period in which it is not a member of a registered national securities association [4] ("SECO" firm) shall engage in securities activities,

* * * unless such broker or dealer and all natural persons associated with such broker or dealer meet such specified and appropriate standards with respect to training, experience and such other qualifications as the Commission finds necessary or desirable.

Under existing provisions, if, by reason of misconduct, a firm or individual that is subject to a disciplinary sanction covered by the rule is not considered unqualified to engage in securities activities as a nonmember unless further action is taken by the Commission in administrative proceedings pursuant to section 15(b) (5) and (7) of the Act. On the other hand, under the Maloney Act amendments to the Exchange Act (section 15A) and under the NASD's rules, a Commission or exchange imposed expulsion, bar or suspension automatically results in a bar to NASD membership or association. The Commission believes that continued securities activities by such a firm or individual as a SECO firm or associated person is similarly inconsistent with the public interest and the protection of investors as well as with the purposes of section 15(b)(8), unless the Commission finds to the contrary upon appropriate application.

Commission action: The Securities and Exchange Commission acting pursuant to the provisions of the Securities Exchange Act of 1934, and more particularly sections 15(b)(8) and 23(a) thereof, hereby amends Part 240 of Chapter II of Title 17 of the Code of Federal Regulations by adopting § 240.15b8–2 as set forth below.

§ 240.15b8–2 Disqualification of nonmember brokers and dealers and their associated persons—association or exchange disciplinary actions.

(a) No nonmember broker or dealer or associated person of a nonmember broker or dealer shall be deemed qualified pursuant to section 15(b)(8) of the Act, if, by action of a registered national securities association or exchange, such nonmember broker or dealer or associated person has been and is expelled or suspended from such association or exchange or has been and is barred or suspended from being associated with all members of such association or exchange for violation of any such association or exchange rule which prohibits any act or transaction constituting conduct inconsistent with just and equitable principles of trade or requires any act the omission of which constitutes conduct inconsistent with just and equitable principles of trade.

(b) Upon written application with respect to any person deemed unqualified to engage in securities activities pursuant to paragraph (a) of this section, the Commission may, if it finds it appropriate in the public interest and for the protection of investors and to carry out the purposes of section 15(b)(8), after notice and opportunity for hearing and subject to such terms and conditions as it may determine to be necessary or desirable, find that notwithstanding such association or exchange action such person may engage in securities activities pursuant to such section. The receipt by the Commission of such application shall operate as a stay of the disqualification provisions of paragraph (a) of this section pending the Commission's determination with respect to the merits of the application. Such application should ordinarily be made by the prospective employer of such person.

(c) An application filed pursuant to paragraph (b) of this section shall set forth the facts with respect to the nature of the association or exchange action, the misconduct found by such association or exchange, the nature of the prospective business or employment in which the broker or dealer or associated person plans to engage, the activities engaged in by such broker or dealer or associated person since such misconduct and action and any other matters the applicant deems relevant: *Provided however*, Such broker or dealer or associated person shall not be heard to contest any findings made against him or facts admitted by him in the proceeding before such association or exchange upon which the disqualification provided for in paragraph (a) of this section is predicated unless the Commission in its discretion directs otherwise. If the application contains assertions of material facts that are not a matter of record before the association or exchange, it shall be sworn to or supported by affidavits. The application may be accompanied by a brief.

(d) Where it deems it appropriate to do so, the Commission may grant or deny an application or issue any other findings pursuant to paragraph (b) of this section on the basis of the papers filed without oral hearing.

(e) The rules of practice shall apply to proceedings under this section to the extent that they are not inconsistent with this section. Attention is directed particularly to § 201.22 of the rules of practice, relating to form of papers and number of copies to be filed.

(f) For purposes of this section;

(1) The term "nonmember broker or dealer" shall mean any broker or dealer, including a sole proprietor, registered under section 15 of the Act, who is not a member of a national securities association registered with the Commission under section 15A of the Act.

(2) The term "associated person" shall mean any partner, officer, director, or branch manager of a nonmember broker or dealer (or any person occupying a similar status or performing similar functions), or any natural person directly or indirectly controlling or controlled by such nonmember broker or dealer, and shall include any employee of such nonmember broker or dealer conducting business as a sole proprietor.

(Sec. 15(b)(8), 78 Stat. 570, 15 U.S.C. 78o; sec. 23, 48 Stat. 901, as amended, 49 Stat. 1379, 15 U.S.C. 78w)

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

FEBRUARY 29, 1972.

[FR Doc.72-3303 Filed 3-3-72;8:50 am]

[3] It should be noted that the proposed rule applies only to nonmember broker-dealers and their associated persons. Therefore, an NASD member firm or associated person, during the period of a suspension from the association or an exchange, would not be subject to the provisions of the rule as long as the firm or individual's affiliation with the NASD has not been otherwise terminated (as, for example, for failure to pay fees or by resignation) and so long as the individual does not become or attempt to become associated with a nonmember firm.

[3] Pursuant to one of the suggestions received, the rule has been amended to provide that the application for relief should ordinarily be made by the prospective employer of a barred or suspended individual. Even without this modification the rule would authorize the Commission to impose on an individual's employment such conditions as it finds necessary or desirable. This would usually include requiring the prospective employer to adhere to special supervisory procedures with respect to the individual for whom relief is granted. Under these circumstances it would thus be more appropriate to expect that the application should normally be made by the employer.

[4] The National Association of Securities Dealers, Inc. (NASD), is the only such association registered with the Commission under section 15A of the Act.

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 14—Department of the Interior

MISCELLANEOUS AMENDMENTS TO CHAPTER

Pursuant to the authority of the Secretary of the Interior, contained in 5 U.S.C. 301, Parts 14–1, 14–2, 14–16, and 14–30 of Chapter 14, Title 41 of the Code of Federal Regulations are hereby amended as set forth below.

It is the general policy of the Department of the Interior to allow time for interested parties to take part in the rule making process. However, the amendments and revisions contained herein are minor and entirely administrative in nature. Therefore, the public rule making process. However, the changes will become effective upon publication in the FEDERAL REGISTER (3-4-72).

WARREN F. BRECHT,
Deputy Assistant Secretary of the Interior.

FEBRUARY 25, 1972.

PART 14-1—GENERAL

Subpart 14-1.3—General Policies

1. Subpart 14-1.3 is amended by the addition of § 14-1.350.

§ 14-1.350 Obtaining a release of claims.

(a) Upon completion of work required by a contract of the type and value listed below, the final amount due a contractor shall be paid only upon presentation by him of a properly executed voucher and a release of claims against the United States. The contractor shall except all unresolved claims from the operation of the release.

(b) A release of claims shall be required in all construction contracts over $10,000, and in all cost-reimbursement contracts over $2,500. Depending upon circumstances present, a release of claims may be required in service (including architect-engineer) and supply contracts.

(c) Contracts requiring a release of claims shall include a clause substantially as follows:

After completion of work, and prior to final payment, the Contractor shall furnish to the Contracting Officer, a release of claims against the United States arising out of the contract, other than claims specifically expected from the operation of the release.

(d) Bureaus and offices of the Department of the Interior shall use the Release of Claims form DI-137.

Subpart 14-1.7—Small Business Concerns

2. The § 14-1.710 as set forth below is inserted immediately preceding § 14-1.710-4 *Review of subcontracting program.*

§ 14-1.710 Subcontracting with small business concerns.

Subpart 14-1.12—Responsible Prospective Contractors

3. Section 14-1.1204-1 is revised to read as follows:

§ 14-1.1204-1 Requirement.

The signing of a contract by the contracting officer shall satisfy the requirements of § 1-1.1204-1(a) of this title for documenting an affirmative determination that the prospective contractor is responsible with respect to that contract.

Subpart 14-1.51—Novation Agreements and Change of Name Agreements

4. Section 14-1.5101(d) is amended by the addition of new subparagraph 18 to the Novation Agreement contained therein.

§ 14-1.5101 Agreement to recognize a successor in interest.

* * * * *

(d) * * *

18. The Transferor agrees that in any rights in inventions, patents, and data which accrue to the Government or to third party beneficiaries under the contracts between the Transferor and the Government shall not be diminished as a result of the Transferor instruments of this Agreement.

* * * * *

PART 14-2—PROCUREMENT BY FORMAL ADVERTISING

Subpart 14-2.4—Opening of Bids and Award of Contract

1. Section 14-2.406-3 is revised to read as follows:

§ 14-2.406-3 Other mistakes disclosed before award.

(a) The Director of Survey and Review, Office of the Assistant Secretary—Management and Budget, is delegated authority to make the determinations under §§ 1-2.406-3(a) (1), (2), and (3), and 1-2.406-3(b) of this title.

(b) Each proposed determination shall be approved by the Solicitor, or by an Associate or Assistant Solicitor, or comparable legal officer of the Department under § 1-2.406-3(d) of this title.

(c) In addition to the requirements of § 1-2.406-3(d) (2) of this title, the following evidence shall be furnished by the bidder in support of his alleged mistake: Original worksheets accompanied by certification of genuineness in the form of a statement of identification by the bidder, preferably signed before a notary public. Otherwise, the evidence of mistake may lack the conviction essential to relief.

2. The title of § 14-2.406-4 as set forth below is substituted for the heading *Disclosures of mistakes after award.*

§ 14-2.406-4 Disclosure of mistakes after award.

PART 14-16—PROCUREMENT FORMS

1. The Interior Procurement Regulations are amended by the addition of Part 14-16 and Subpart 14-16.8.

Subpart 14-16.8—Miscellaneous Forms

Sec.
14-16.850 Department of the Interior forms.

AUTHORITY: The authority of this Part 14-16 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 14-16.850 Department of the Interior forms.

(a) The following Department of the Interior forms are for use as indicated, and are stocked as a supply item in Stores and Shipping, Room 1662, Department of the Interior, Washington, D.C. 20240.

(1) *DI-83, Notice of Assignment.* This form shall be used to provide appropriate notice of assignment of payments under contracts.

(2) *DI-84, Instrument of Assignment.* This form shall be used to make assignment of payments due under contracts.

(3) *DI-137, Release of Claims.* This form shall be used as provided in § 14-1.350 of this chapter.

PART 14-30—CONTRACT FINANCING

Subpart 14-30.4—Advance Payments

1. Subpart 14-30.4 is amended by the addition of § 14-30.410.

§ 14-30.410 Findings, determinations, and authorization.

(a) Office of Management and Budget Circular No. A-101 dated January 9, 1971, provides policies and procedures for establishing greater consistency among Federal agencies in the administration of grants, contracts or other agreements with educational institutions in the United States for research projects.

Part IV of Attachment A of the Circular provides that:

A. In view of the nonprofit position of educational institutions, and the stated Government objective of strengthening the research capabilities of these institutions, all agencies shall make advance payments in reasonable amounts on research projects whether under a contract or grant, whenever practical, in all cases where the agency is authorized by law to do so.

B. The Treasury Department's letter of credit procedure should be used as the means of furnishing advance payments, whenever feasible. The use of the letter credit procedure to the maximum extent possible will serve to limit the number of different methods to be used by the institution in obtaining funds, and will also limit the amount of advances to minimum amounts so as to reduce financing costs to the Government.

(b) Accordingly, it is hereby determined pursuant to OMB Circular No. A-101 that it is necessary in the public interest to make advance payments to educational institutions for research projects. Such payments are authorized to be made as required by the Circular and in accord with the procedures provided in Subpart 1-30.4. The requirements of §§ 1-30.405(c), 1-30.410 of this title and 14-30.406 shall be satisfied by this § 14-30.410 and a statement to that effect should be placed in contract file.

[FR Doc.72-3272 Filed 3-3-72;8:46 am]

Title 20—EMPLOYEES' BENEFITS

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

[Reg. 5, further amended]

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

Subpart D—Principles of Reimbursement for Provider Costs and for Services by Hospital-Based Physicians

ASSETS TRANSFERRED BETWEEN GOVERNMENTAL AGENCIES, AND ASSETS DONATED BY ONE PROVIDER TO ANOTHER

On August 25, 1971, there was published in the FEDERAL REGISTER (36 F.R. 16679) a notice of proposed rule making with a proposed amendment to Subpart D of Regulations No. 5 which proposed rules for determining the basis for depreciation of assets transferred from one governmental entity to another or used under the Medicare program by one provider and then donated to another.

Interested parties were given 30 days in which to submit data, views, or arguments pertaining to the proposed amendment.

After consideration of all comments received, the amendment as so proposed is hereby adopted, subject to the following change:

In § 405.415(i)(3)(i), the last sentence is changed to read as set forth below.

Effective date. This amendment shall become effective on its date of publication in the FEDERAL REGISTER (3-4-72).

(Secs. 1102, 1814(b), 1861(v), 1871, 49 Stat. 647, as amended, 79 Stat. 296, 79 Stat. 322, 79 Stat. 331, 42 U.S.C. 1302, 1395 et seq.)

Dated: February 2, 1972.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: February 28, 1972.

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

Subpart D of Regulations No. 5 of the Social Security Administration (20 CFR 405.401 et seq.) is amended by adding paragraphs (i) and (j) to § 405.415, to read as follows:

§ 405.415 Depreciation: Allowance for depreciation based on asset costs.

* * * * *

(i) *Intergovernmental transfer of facilities.* The basis for depreciation of assets transferred under appropriate legal authority from one governmental entity to another shall be as follows:

(1) The historical cost incurred by the present owner in acquiring the asset under a bona fide sale. The historical cost shall not exceed the lower of current reproduction cost adjusted for straight-line depreciation over the life of the asset to the time of the purchase or fair market value at the time of the purchase.

(2) The fair market value at the time of donation under a bona fide donation of the asset (subject to the limitations set forth under paragraph (j) of this section). An asset is considered donated when a governmental entity acquires the asset without assuming the functions for which the transferor used the asset or making any payment for it in the form of cash, property, or services.

(3) If neither subparagraph (1) nor (2) of this paragraph applies, e.g., the transfer was solely to facilitate administration or to reallocate jurisdictional responsibility or the transfer constituted a taking over in whole or in part of the function of one governmental entity by another governmental entity, the basis for depreciation shall be:

(i) With respect to an asset on which the transferor has claimed depreciation under the health insurance program, the transferor's basis under the health insurance program prior to the transfer. The method of depreciation used by the transferee may be the same as that used by the transferor, or the transferee may change the method, as permitted under subparagraph (d)(2) of this section.

(ii) With respect to an asset on which the transferor has not claimed depreciation under the health insurance program, the cost incurred by the transferor in acquiring the asset (not to exceed the basis that would have been recognized had the transferor participated in the health insurance program) less depreciation calculated on the straight-line basis over the life of the asset to the time of transfer.

(j) *Basis of assets used under the program and donated to a provider.* Where an asset that has been used or depreciated under the program is donated to a provider, the basis of depreciation for the asset shall be the lesser of the fair market value or the net book value of the asset in the hands of the owner last participating in the program. The net book value of the asset is defined as the depreciable basis used under the program by the asset's last participating owner less the depreciation recognized under the program.

[FR Doc.72-3292 Filed 3-3-72;8:51 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

ANTIOXIDANTS AND/OR STABILIZERS FOR POLYMERS

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP 1B2585) filed by Geigy Chemical Corp., Ardsley, N.Y. 10502, and other relevant material, concludes that the food additive regulations should be amended, as set forth below, to provide for the additional safe use of 2(2'-Hydroxy-5'-methylphenyl) benzotriazole as an antioxidant and/or stabilizer in polystyrene and/or rubber modified polystyrene.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 121 is amended in § 121.2566(b) by adding a fourth limitation to the subject item as follows:

§ 121.2566 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) List of substances:

	Limitations
* * *	* * *
2(2'-Hydroxy-5'-methylphenyl) benzotriazole meeting the following specification: Melting point 126°–132° C.	For use only: 1. * * * 2. * * * 3. * * * 4. At levels not to exceed 0.25 percent by weight of polystyrene and/or rubber-modified polystyrene polymers complying with § 121.2510 intended to contact nonalcoholic food: *Provided,* That the finished basic rubber-modified polystyrene polymers in contact with fatty foods shall contain not less than 90 weight percent of total polymer units derived from styrene monomer.
* * *	* * *

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order

deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (3–4–72).

Dated: February 22, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-3334 Filed 3-3-72;8:53 am]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

RESINOUS AND POLYMERIC COATINGS

The Commissioner of Food and Drugs, having evaluated data in a petition (FAP 1B2615) filed by Eastman Chemical Products, Inc., Kingsport, Tenn. 37662, and other relevant material, concludes that § 121.2514 of the food additive regulations should be amended as set forth below to provide for the safe use of 2,2-dimethyl-1,3-propanediol as a component of resinous and polymeric coatings for food-contact use.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.2514(b)(3)(vii)(*c*) is amended by alphabetically inserting in the list of substances a new item, as follows:

§ 121.2514 **Resinous and polymeric coatings.**

* * * * *

(b) * * *

(3) * * *

(vii) * * *

(*c*) Polyhydric alcohols:

* * * * *

2,2-Dimethyl-1,3-propanediol for use only in forming polyester resins for coatings intended for use in contact with nonalcoholic foods.

* * * * *

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–88, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto in quintuplicate. Objections shall show wherein the person filing wil be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (3–4–72).

Dated: February 22, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-3289 Filed 3-3-72;8:49 am]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

ANTIOXIDANTS AND/OR STABILIZERS FOR POLYMERS

The Commissioner of Food and Drugs having evaluated data in a petition filed by E. I. du Pont de Nemours and Co., Inc., Wilmington, Del. 19898, and other relevant material, concludes that the food additive regulations should be amended to provide for the safe use of cuprous iodide and cuprous bromide for heat stabilizing nylon 66 resins as set forth below.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.2566(b) is amended by alphabetically inserting in the list of substances a new item, as follows:

§ 121.2566 **Antioxidants and/or stabilizers for polymers.**

* * * * *

(b) List of substances:

	Limitations
* * *	* * *
Cuprous iodide and cuprous bromide	For use at levels not exceeding 0.0025 percent cuprous iodide and 0.0175 percent cuprous bromide by weight of nylon 66 resins complying with § 121.2502; the finished resins are used or are intended to be used to contain foods during oven baking or oven cooking at temperatures above 250° F. The average thickness of such resins in the form in which they contact food shall not exceed 0.0015 inch.
* * *	* * *

(Sec. 409(c)(1), 72 Stat. 1786, 21 U.S.C. 348(c)(1))

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–88, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (3–4–72).

Dated: February 24, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-3335 Filed 3-3-72;8:53 am]

PART 144—ANTIBIOTIC DRUGS; EXEMPTIONS FROM LABELING AND CERTIFICATION REQUIREMENTS

Iodinated Casein; Revocation

Based on a notice of withdrawal of approval of new animal drug application (Docket No. FDC–D–372) appearing elsewhere in this issue of the FEDERAL REGISTER, the Commissioner of Food and Drugs

concludes that the antibiotic drug regulations should be amended to revoke provisions for the use of iodinated casein in animal feed supplements for use in nursing sows to stimulate milk flow.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 507, 512, 59 Stat. 463 as amended, 82 Stat. 343–51; 21 U.S.C. 357, 360b) and under authority delegated to the Commissioner (21 CFR 2.120), § 144.-26 *Animal feed containing certifiable antibiotic drugs* is amended by revoking paragraph (b)(31).

Within 30 days after publication hereof in the FEDERAL REGISTER any person who will be adversely affected by the removal of any such drug from the market may file objections to this order stating reasonable grounds and requesting a hearing on such objections. Objections and request for a hearing should be filed in quintuplicate with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–88, 5600 Fishers Lane, Rockville, Md. 20852.

If a hearing is requested, the objections must identify the claimed errors in the NAS/NRC evaluation and any adequate and well controlled investigations which would indicate conclusively that the combination drug would have the claimed effectiveness. Objections and requests for a hearing which are received in response to this order may be seen in the above office during business hours, Monday through Friday.

Effective date. This order shall become effective 40 days after its date of publication in the FEDERAL REGISTER. If objections are filed, the effective date will be extended for ruling thereon.

(Secs. 507, 512, 59 Stat. 463 as amended, 82 Stat. 343–51; 21 U.S.C. 357, 360b).

Dated: February 24, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-3287 Filed 3-3-72;8:49 am]

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5163]

[Sacramento 075324]

CALIFORNIA

Powersite Restoration No. 593; Revocation of Powersite Reserves

By virtue of the authority contained in section 24 of the Act of June 10, 1920, 41 Stat. 1075, as amended, 16 U.S.C. section 818 (1970), pursuant to the determination of the Federal Power Commission in DA–1078–California, it is ordered as follows:

1. The Executive orders of October 28, 1912, and January 14, 1915, as construed by Interpretation No. 230 of October 31, 1934, are hereby revoked so far as they affect the following described lands:

MOUNT DIABLO MERIDIAN

POWERSITE RESERVE NO. 303

T. 17 S., R. 29 E.,
Sec. 15, SW¼NE¼, S½NW¼.

POWERSITE RESERVE NO. 471

T. 15 S., R. 28 E.,
Sec. 22, lots 8 to 12, inclusive, 17 to 20, inclusive;
Sec. 23, lots 1 to 11, inclusive;
Sec. 26, lots 5 and 6, 11 to 16, inclusive, 18 to 22, inclusive;
Sec. 27, lots 1 to 4, inclusive, 6 to 8, inclusive;
Sec. 35, lots 1, 2, 9, 10, 11, 12, 19, and 20;
Sec. 36, lots 2 to 7, inclusive, 11 to 16, inclusive.
T. 16 S., R. 28 E.,
Sec. 1, lots 8, 9, 10, NW¼SW¼, SE¼SW¼;
Sec. 2, lots 5, 6, 7, 12, 13, 14, 15, 16, 17, 22, 23;
Sec. 11, lots 1, 7, 8, 9, 16;
Sec. 12, lots 1, 2, 3, 4, NE¼NW¼;
Sec. 13, W½NW¼, SE¼NW¼, SW¼, W½SE¼;
Sec. 23;
Sec. 24, NE¼, N½NW¼, E½SW¼, SE¼;
Sec. 25;
Sec. 26, NW¼, SE¼;
Sec. 34, N½NE¼, SW¼NE¼, NW¼, W½SW¼.
T. 17 S., R. 28 E.,
Sec. 2, lots 1, 2, 3, S½NE¼, SE¼;
Sec. 14, N½NW¼, SW¼NW¼, W½SW¼, SE¼SW¼, SW¼SE¼.
T. 18 S., R. 29 E.,
Sec. 5, NE¼ (lots 3 and 4, S½NE¼);
Sec. 9, N½, NW¼SE¼.

The areas described, including public lands, nonpublic lands, and lands within the Sequoia National Park, aggregate approximately 6,042.03 acres.

A portion of the lands remains withdrawn for power or other purposes and some have been restored subject to section 24 of the Federal Power Act of June 10, 1920, supra. As to the latter the effect of this order is to relieve the lands of the limitations contained in the provisions of said section 24.

2. At 10 a.m. on March 31, 1972, the unappropriated, public lands outside of the Sequoia National Park shall be open to operation of the public land laws generally, subject to valid existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on March 31, 1972, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The public lands have been and will continue to be open to applications and offers under the mineral leasing laws, and to location under the U.S. mining laws.

Inquiries concerning the lands should be addressed to the Chief, Division of Technical Services, Bureau of Land Management, 2800 Cottage Way, Sacramento, CA 95825.

HARRISON LOESCH,
Assistant Secretary of the Interior.

FEBRUARY 24, 1972.

[FR Doc.72-3269 Filed 3-3-72;8:45 am]

[Public Land Order 5164]

[Fairbanks 14988]

ALASKA

Withdrawal for the Department of the Air Force

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Subject to valid existing rights the following described lands are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C., Ch. 2), and from leasing under the mineral leasing laws, and reserved for the construction and maintenance of boreholes, portable buildings, a radio antenna, and access and cable routes for use by the Department of the Air Force:

INDIAN MOUNTAIN—MELOZITNA QUADRANGLE (SHEET D–2)

An area approximately 500-foot-square around and centering on each borehole containing 5.75 acres in each area, and interconnecting access and cable routes consisting of strips of land 50 feet on each side of the centerline thereof, extending a total distance of 33.5 miles, at the geographical locations and in the legal subdivisions shown as follows:

Boreholes and access and cable routes	Geographical Co-ordinates	Kateel River Meridian (protraction survey)
Existing No. 1..	Lat. N. 65°59'50", Long. W. 153°43'15".	T. 7 N., R. 24 E., Sec. 23; Sec. 24, N½ SW¼.
Proposed No. 2.	Lat. N. 66°00'00", Long. W. 153°47'35".	Sec. 22, N½.
Proposed No. 3.	Lat. N. 65°59'05", Long. W. 153°45'15".	Sec. 26, NE¼.
Proposed No. 4.	Lat. N. 65°58'15", Long. W. 153°47'30".	Sec. 27, E½, SW¼; Sec. 34, NE¼NW¼.
Proposed No. 5.	Lat. N. 65°58'25", Long. W. 153°43'30".	Sec. 25, W½.

The areas described aggregate approximately 446.75 acres.

BEAVER CREEK—TANACROSS QUADRANGLE (SHEET A–2)

An area approximately 500-foot-square around and centering on each borehold containing 5.75 acres in each area, and interconnecting access and cable routes consisting of strips of land 50 feet on each side of the centerline thereof, extending a total distance of 33.06 miles, at the geographical locations and in the legal subdivisions shown as follows:

Boreholes and access and cable routes	Geographical coordinates	Copper River Meridian (protraction survey)
Existing No. 1..	Lat. N. 63°03'40" Long. W. 141°40'40"	T. 15 N., R. 19 E., Sec. 21, S½, NE¼.
Proposed No. 2.	Lat. N. 63°02'45" Long. W. 141°47'50"	Sec. 27, SW¼; Sec. 28, N½, SE¼; Sec. 22, S½, NW¼.
Proposed No. 3.	Lat. N. 63°04'00" Long. W. 141°47'50"	Sec. 22, S½, NW¼.
Proposed No. 4.	Lat. N. 63°04'55" Long. W. 141°46'15"	Sec. 14, SW¼-NW¼, NW¼-SW¼; Sec. 15, S½.
Proposed No. 5.	Lat. N. 63°03'45" Long. W. 141°44'40"	Sec. 23, S½.

The areas described aggregate approximately 424.75 acres.

BURNT MOUNTAIN—CHRISTIAN QUADRANGLE

An area approximately 500-foot-square around and centering on each borehole containing 5.75 acres in each area, and interconnecting access and cable routes consisting of strips of land 50 feet on each side of the centerline thereof, extending a total distance of 6.5 miles at the geographical locations shown as follows:

Boreholes and access and cable routes:	*Geographical coordinates*
Proposed No. 1__	Lat. N. 67°27'15", Long. W. 144°31'15".
Proposed No. 2__	Lat. N. 67°26'05", Long. W. 144°33'45".
Proposed No. 3__	Lat. N. 67°25'15", Long. W. 144°35'45".
Proposed No. 4__	Lat. N. 67°25'15", Long. W. 144°32'00".
Proposed No. 5__	Lat. N. 67°26'00", Long. W. 144°29'00".

The areas described aggregate approximately 107.55 acres.

The total of all of the areas described aggregates approximately 979.05 acres.

2. Because the lands described in paragraph 1 of this order are and have been in a reserved status since January 17, 1969, it is deemed unnecessary to publish advance notice of the proposed withdrawal as provided for by 2351.4(a), and the prepublication requirement of that regulation is hereby waived.

HARRISON LOESCH,
Assistant Secretary of the Interior.

FEBRUARY 28, 1972.

[FR Doc.72-3270 Filed 3-3-72;8:45 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 72-180]

PART 73—RADIO BROADCAST SERVICES

Table of Assignments, FM Broadcast Stations, Terrell Hills, Texas

Memorandum opinion and order. In the matter of amendment of the Table of Assignments for FM Broadcast Channels, § 73.202(b) of the Commission's rules and regulations, to delete a short-spaced assignment at Terrell Hills, Tex.

1. The Commission, on its own motion, is taking action herein to amend the FM Table of Assignments, § 73.202(b) of the rules, by deleting Channel 292A from Terrell Hills, Tex., in order to eliminate a prohibitive short separation between it and a co-channel assignment at Gonzales, Tex.

2. The Commission believes that, whenever an opportunity arises, existing FM assignments not meeting the minimum mileage separation requirements of the rules (§ 73.207(a)) should be removed from the FM Table of Assignments. These channels are inefficient and unusable (unless spacing requirements are waived), and the public interest and our assignment objectives are best served, in our judgment, by deleting such assignments.

3. Channel 292A at Terrell Hills is now vacant as a result of our recent action authorizing Station KBUC-FM, which formerly operated on the Terrell Hills assignment, to operate on Channel 298C, assigned to San Antonio, Tex., instead of Channel 292A at Terrell Hills.[1] Our action also removed a short spacing between an existing station and an assignment since there had been a short spacing of approximately 6 miles between the site of Station KBUC-FM's Channel 292A operation and the Channel 292A assignment at Gonzales, Tex. However, now that the Terrell Hills Channel 292A assignment is again unoccupied, the reference point for Terrell Hills rather than the KBUC-FM Channel 292A site governs, and a short spacing of approximately 6 miles with the Gonzales Channel 292A assignment still exists, in contravention of the separation requirements of the rules.

4. Since it appears that no channels are available which would be a suitable substitute for Channel 292A at either Terrell Hills or Gonzales and that the short spacing problem cannot be satisfactorily eliminated or alleviated by judicious transmitter site selection,[2] we believe the necessary and appropriate solution to the problem lies in deleting Channel 292A from either Terrell Hills or Gonzales. These communities are approximately the same size, population-wise, Gonzales having a 1970 population of 5,854, and Terrell Hills, a 1970 population of 5,225. Terrell Hills is, however, located within the San Antonio urbanized area, while Gonzales is a rural community. San Antonio, which now has nine Class C FM assignments, in our opinion, already has its fair share of the available FM channels. Consequently, we feel that, in these circumstances, rather than intermixing a Class A assignment with the multiple Class C assignments at San Antonio, it best serves the public interest and our assignment objectives to retain the Channel 292A assignment at Gonzales and to delete the Channel 292A assignment from Terrell Hills.[3] We will, however, give consideration in rule making, if requested, to proposals to assign Channel 292A to a community outside the San Antonio urbanized area if they meet spacing requirements.

5. Authority for the action taken herein is found in sections 4(i), 303(b) and (4) and 307(b) of the Communications Act of 1934, as amended, and the Administrative Procedure Act, 5 U.S.C. section 553(3)(B). We are deleting the Terrell Hills Channel 292A assignment from the FM Table of Assignments without prior rule making because we find such a proceeding is unnecessary and would serve no public interest purpose. The underlying reasons therefor are that, since the assignment is now unoccupied, its deletion will not affect any authorized or operating station; and, since the assignment is also unuseable at Terrell Hills in accordance with the separation requirements of the rules, its deletion is required, and desirable in the public interest, in order to free it and the Gonzales co-channel assignment for use at required spacing, and for the other reasons given in paragraph 4, hereof.

6. In view of the foregoing: *It is ordered*, That, effective April 7, 1972, § 73.202(b), *Table of Assignments*, FM Broadcast Stations, is amended by deleting the following entry from the table:

City	*Channel No.*
Terrell Hills, Tex	292A

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

Adopted: February 23, 1972.

Released: February 28, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[4]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-3344 Filed 3-3-72;8:53 am]

Title 50—WILDLIFE AND FISHERIES

Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

PART 240—GROUNDFISH FISHERIES

Incidental Catch

On January 19, 1972, regulations were published as miscellaneous amendments

[1] BPH-6285, granted Nov. 10, 1971, after hearing (Decision adopted July 20, 1971, Docket No. 18239, FCC 71R-230, 31 FCC 2d 162; stayed by order, adopted Aug. 31, 1971, FCC 71-890; stay dissolved by further order, adopted Nov. 10, 1971, FCC 71-1150). Until the change-over is made (the KBUC-FM construction permit for operation on Channel 298C expires Nov. 10, 1972), Station KBUC-FM continues operation on the Terrell Hills Channel 292A assignment.

[2] Two applications have been tendered for the Terrell Hills Channel 292A assignment, one on Aug. 19, 1971 by National Enterprises, Inc., for use of the channel at Alamo Heights, Tex., and the other on Dec. 8, 1971, by Terrell Hills Broadcasting Co. for use at Terrell Hills, neither of which have been accepted for filing because of spacing deficiencies.

[3] No problem is anticipated in KBUC-FM's continued operation on the deleted Channel 292A Terrell Hills assignment before it commences operation on the San Antonio Channel 298C assignment since the change-over (the KBUC-FM construction permit for operation on Channel 298C expires Nov. 10, 1972) may be expected before the Gonzales Channel 292A assignment is activated.

[4] Commissioner H. Rex Lee absent.

in the FEDERAL REGISTER (37 F.R. 786) that amended Part 240, Groundfish Fisheries, published January 6, 1971 (36 F.R. 158). These amendments were published to implement the 1971 recommendations of the International Commission for the Northwest Atlantic Fisheries.

During the preparation of these amendments the incidental catch provision for haddock was inadvertently omitted. The incidental catch of haddock in 1971 was limited to 10 percent by weight of all fish on board, but the current recommendation modified the limitation to include 5,000 pounds or 10 percent by weight of all fish on board.

Therefore, this amendment includes the modified provision as part of the groundfish regulations. Notice and public procedure on this amendment are deemed unnecessary and contrary to the public interest.

Effective date. The season opened on January 1, 1972, as set by the recommendations of ICNAF. This amendment is part of the recommendations of ICNAF and will be effective on date of publication in the FEDERAL REGISTER (3–4–72).

Accordingly § 240.9(d) is revised to read as follows:

§ 240.9 Restrictions applicable to fishing vessels.

* * * * *

(d) Any master or other person in charge of a fishing vessel which has departed port after the date of closure of the haddock season in Division 4X of Subarea 4 or Subarea 5 may possess on board such vessel and land in any port or place haddock taken as an incident to fishing for other species, but in no event shall the haddock permitted to be possessed or landed by such vessel to exceed not more than 5,000 pounds or 10 percent by weight, of all other fish on board caught in the closed area, whichever is greater.

* * * * *

Issued at Washington, D.C., and dated March 1, 1972.

T. P. GLEITER,
Assistant Administrator for Administration.

[FR Doc.72-3414 Filed 3-3-72;8:54 am]

PART 280—YELLOWFIN TUNA

A notice of proposed rule making was published February 2, 1972 (37 F.R. 2516–2520), to amend Part 280, Title 50, Code of Federal Regulations, which are regulations governing the eastern Pacific yellowfin tuna fisheries.

Interested persons were given the opportunity to participate through a public hearing at San Diego on February 18, 1972, and through submission of written material.

As evidenced by the testimony offered and by the written views received, the proposed allotment distribution for vessels less than 400 tons carrying capacity including the proposed catch rates for such vessels and the proposed modification of radio reporting requirements did not receive general approval by the participating public.

The proposed rule making announced the distribution of 6,000 tons of yellowfin tuna among three vessel categories of 400 tons carrying capacity or less. Industry felt that as much as 1,500 tons of yellowfin tuna will be available in 1972 from the unused portion of the overall country 15 percent incidental catch. They suggested that this 1,500 tons should be made available to all vessels in addition to the 6,000 ton allotment. National Marine Fisheries Service experience shows, however, that an amount as great as 1,500 tons has not been available from the overall country 15 percent incidental catch since 1968.

Careful consideration has been given to the suggested addition of 1,500 tons to the small boat allotment and the numerous plans proposed by industry for the distribution of tonnage among vessel categories of 400 tons carrying capacity or less. The proposed distribution and proposed catch rates published February 2, 1972, have, therefore, been modified in light of changes suggested by industry.

An additional 700 tons have been added to the 6,000 ton allotment. Should the unused portion of the overall country 15 percent incidental catch be greater than 700 tons, the small boat allotment will be increased. Conversely, it will be decreased should the unused amount be less than 700 tons. The revised distribution of tonnage among vessel categories is adopted as follows:

(1) Purse seiners of 301 to 400 short tons carrying capacity; 900 short tons.

(2) Purse seiners of 300 short tons carrying capacity or less; 3,500 short tons.

(3) Bait and jig boats; 2,300 short tons.

The revised yellowfin tuna incidental catch limitation for each vessel category is adopted as follows:

(1) Purse seiners of 301 to 400 short tons carrying capacity; 40 percent by round weight of each vessel's total catch: *Provided*, That vessels which are at sea longer than 70 days may land 20 percent by round weight of each vessel's established short ton carrying capacity.

(2) Purse seiners of 300 short tons carrying capacity or less; 50 percent by round weight of each vessel's total catch: *Provided*, That vessels which are at sea longer than 50 days may land 25 percent by round weight of each vessel's established short ton carrying capacity.

(3) Bait and jig boats; 50 percent by round weight of each vessel's established short ton carrying capacity.

Industry suggested that the proposed modifications to the radio reporting requirements for vessels operating outside the Commission's regulatory area are unduly burdensome. Each testimony and written view has been carefully examined. The reporting procedures described in the proposed rule making of February 2, 1972 (37 F.R. 2516–2520) as §§ 280.6(b) and 280.7(d)(1) are adopted without change.

The remaining proposed amendments which require reports prior to leaving or entering the regulatory area via the Panama Canal and prior to transferring fish for the purpose of transshipment received little opposition. They are, therefore, adopted as proposed without change. The editorial revisions described in the rule making are also adopted subject to the following modification. Paragraph (a) of § 280.1(i) is changed by substituting the words "Genus *Euthynnus*" for the words "*Euthynnus pelamis*."

In addition, industry testimony gave strong support to incorporate the year-end inspection option employed in 1971 as a continuous amendment beginning in 1972. To meet industry's request, the optional inspection procedures (36 F.R. 24118, December 21, 1971) have been revised and are adopted as new subparagraphs (1) and (2) to § 280.7(c).

Furthermore, substantial testimony was offered requesting that vessels unloading in foreign ports during the closed season be disallowed from taking part in the allocation provisions for vessels of 400 tons carrying capacity or less. The objection was that such vessels have been unloading in ports in which the U.S. Government has no enforcement jurisdiction. Since major elements of industry agreed with this view, a new paragraph has been adopted to provide equal enforcement authority over all vessels of 400 tons carrying capacity or less. In conjunction, paragraphs (b), (h) and (j) of § 280.7 (37 F.R. 2516–2520, February 2, 1972) have been editorially modified to agree with the new amendment.

Paragraph (b) of § 280.7 is modified to allow vessels participating in the small boat allotment to land fish only in U.S. ports. Paragraph (h) of § 280.7 is modified by deleting the following words from lines 9 to 14: "Vessels that are permanently based in a foreign country, and routinely unload in that country, are required to make such reports only when unloading in a country other than that in which they are based." Paragraph (j) of § 280.7 is amended by changing the paragraph designation to (k). A new paragraph (j) of § 280.7 is added as set forth below:

Therefore, the amendments as so proposed are hereby adopted, subject to the following changes:

1. Subparagraph (2) of § 280.1(i) is changed by deleting the words "(*Euthynnus pelamis*)," and inserting the words "Genus *Euthynnus*."

2. In paragraph (b) of § 280.7, the words on the sixth and seventh lines "in any port or place" are deleted.

3. Subparagraph (2) of § 280.7(b) is changed by inserting "U.S." before the word "port" and deleting the words "or place" after the word "port," and insert the following words after "catch" on the ninth line "*Provided however:* That any such vessel which is at sea longer than 70 days may land 20 percent yellowfin tuna by round weight of its established short ton carrying capacity."

4. Subparagraph (3) of § 280.7(b) is changed by inserting "U.S." before the word "port" and deleting the words "or place" after the word "port," and inserting after the word "however," the following words "that any such vessel which is at sea longer than 50 days may land 25 percent yellowfin tuna by round weight of its established short ton carrying capacity and *Provided further,*" and change the number "3,100" in line twenty-two to read "3,500."

5. Subparagraph (4) of § 280.7(b) is changed by inserting "U.S." before the word "port" and delete the words "any place," and change the number on line eleven from "2,000" to "2,300."

6. A new subparagraph (6) is added to § 280.7(b), to read as set forth below.

7. In paragraph (c) of § 280.7 new subparagraph (1) and (2) are added to read as set forth below.

8. Paragraph (h) of § 280.7 is changed by deleting the entire last sentence.

9. Paragraph designation (j) of § 280.7 is changed to (k) and a new paragraph (j) is added as set forth below.

Effective date. These regulations are effective upon date of publication in the FEDERAL REGISTER (3–4–72).

Issued at Washington, D.C., and dated March 2, 1972.

PHILIP M. ROEDEL,
Director,
National Marine Fisheries Service.

Sec.

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AUTHORITY: The provisions of this Part 280 issued under 64 Stat. 777, as amended, 16 U.S.C. 951, as modified by Reorganization Plan No. 4, effective Oct. 3, 1970 (35 F.R. 15627).

§ 280.1 Definitions.

For the purposes of this part, the following terms shall be understood to mean:

(a) *United States.* All areas under the sovereignty of the United States, the Trust Territory of the Pacific Islands, and the Canal Zone.

(b) *Convention.* The Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington, D.C., May 31, 1949, by the United States of America and the Republic of Costa Rica (1 U.S.C. 230).

(c) *Commission.* The Inter-American Tropical Tuna Commission established pursuant to the Convention.

(d) *Director of Investigations.* The Director of Investigations, Inter-American Tropical Tuna Commission, La Jolla, Calif.

(e) *Service Director.* The Director of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

(f) *Regional Director.* The Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA, telephone number, area code 213, 831–9281, Extension 575.

(g) *Regulatory area.* All waters of the eastern Pacific Ocean bounded by the mainland of the Americas and the following lines: Beginning at a point on the mainland where the parallel of 40° north latitude intersects the coast; thence due west to the meridian of 125° west longitude; thence due south to the parallel of 20° north latitude; thence due east to the meridian of 120° west longitude; thence due south to the parallel of 5° north latitude; thence due east to the meridian of 110° west longitude; thence due south to the parallel of 10° south latitude; thence due east to the meridian of 90° west longitude; thence due south to the parallel of 30° south latitude; thence due east to a point on the mainland where the parallel of 30° south latitude intersects the coast.

(h) *Yellowfin tuna.* No other fishes except the species *Thunnus albacares.*

(i) *Mingled species.* (1) Any species of billfish or shark.

(2) No other species of the family Scombridae except: Skipjack (Genus *Euthynnus*), bigeye (*Thunnus obesus*), bluefin (*Thunnus thynnus*), albacore (*Thunnus alalunga*), or bonito (*Sarda chiliensis*).

(j) *Fishing vessel.* All watercraft subject to the jurisdiction of the United States which are used for catching or processing fish, except purse seine skiffs.

(k) *Fishing voyage.* The period between the date a fishing vessel departs from any port to carry out fishing operations and the date such vessel unloads any of its catch or the date such vessel returns to any port for the express purpose of receiving an inspection by a designated agent of the National Marine Fisheries Service.

(l) *Cargo vessel.* All watercraft which are used for transporting fish or fish products, except fishing vessels.

(m) *Person.* Individual, association, corporation, or partnership subject to the jurisdiction of the United States.

(n) *Open season.* The time during which yellowfin tuna may lawfully be captured without limitation by any fishing vessel operating within the regulatory area.

(o) *Closed season.* The time during which yellowfin tuna may not be captured in the regulatory area, except in limited quantities as an incident to fishing for species with which yellowfin may be mingled.

§ 280.2 Basis and purpose.

(a) At a special meeting held at Long Beach, Calif., on September 14, 1961, the Commission recommended to the Governments of Costa Rica, Ecuador, Panama, and the United States of America, parties to the Convention, that they take joint action to limit the annual catch of yellowfin tuna from the eastern Pacific Ocean by fishermen of all nations during the calendar year 1962. This recommendation was made pursuant to paragraph 5 of Article II of the Convention on the basis of scientific investigations conducted by the Commission over a period of time dating from 1951. The most recent years of this period were marked by a substantial increase in fishing effort directed toward the yellowfin tuna stocks, resulting in a rate of exploitation of these stocks greater than that at which the maximum sustainable yield may be obtained. The Commission's recommendation for joint action by the parties to regulate the yellowfin tuna fishery has as its objective the restoration of these stocks to a level of abundance, which will permit maximum sustainable catch and the maintenance of the stocks in that condition in the future.

(b) At each annual meeting held since 1962, the Commission affirmed its conclusions regarding the need for regulating the yellowfin tuna fishery in the eastern Pacific Ocean and at each meeting recommended to the parties to the Convention that they take joint action to:

(1) Establish a prescribed tonnage limit on the total catch of yellowfin tuna by the fishermen of all nations during each calendar year from an area of the eastern Pacific Ocean defined by the Commission;

(2) Establish open and closed seasons for yellowfin tuna under prescribed conditions;

(3) Permit the landing of an incidental catch by weight of yellowfin tuna, when landed with one or more of the following fishes usually caught mingled with yellowfin tuna, that are taken on a fishing trip begun after the close of the yellowfin tuna fishing season: Skipjack tuna, bigeye tuna, bluefin tuna, albacore tuna, bonito, the billfishes, and the sharks; and

(4) Obtain from governments not parties to the Convention, but having vessels which operate in the fishery, cooperation in effecting the recommended conservation measures.

(c) The regulations in this part are designed to implement the Commission's recommendations for the conservation of yellowfin tuna so far as they affect vessels and persons subject to the jurisdiction of the United States.

§ 280.3 Catch limits.

The annual limitation on the quantity of yellowfin tuna permitted to be taken from the regulatory area by the fishing vessels of all nations participating in the fishery will be fixed and determined on the basis of recommendations made by the Commission pursuant to paragraph 5 of Article II of the Convention. Upon approval by the Secretary of State and the Secretary of Commerce of the recommended catch limit, announcement of the catch limit thus established shall be made by the Service Director through publication of a suitable notice in the

FEDERAL REGISTER. The Service Director, in like manner, shall announce any revision or modification of an approved annual catch limit which may subsequently enter into force.

§ 280.4 Open season.

The open season for yellowfin tuna fishing shall begin annually at 0001 hours on the first day of January and terminate at 0001 hours on a date to be announced as provided in § 280.5. Time in hours shall refer to local time in the area affected.

§ 280.5 Closed season.

Pursuant to authority granted by the Commission, the Director of Investigations will determine the date on which he deemed that the yellowfin fishing season should close and will promptly notify the service Director of such date. The Service Director shall then announce the season closure date thus established by publication of a notice in the FEDERAL REGISTER. The closure date so announced shall be final except that if it shall at any time become evident to the Director of Investigations that the closure date initially determined had been affected by changed circumstances, he may substitute another date which shall be announced by the Service Director in like manner as provided for the date originally determined.

§ 280.6 Open season restrictions applicable to fishing vessels.

(a) During the open yellowfin tuna season, every fishing vessel operating within the regulatory area shall transmit once each calendar week a message between 0900 and 2400 hours local California time. The message shall be transmitted directly to the Director of Investigations through the shore representative of the fishing vessel and shall state: the name of the reporting vessel and the tonnage by species of fish aboard. The above reporting procedure shall go into effect on a date to be announced by the Service Director through publication of a notice in the FEDERAL REGISTER.

(b) During the open yellowfin tuna season, every fishing vessel operating in the Pacific Ocean, but outside the regulatory area, shall transmit daily a message between 0800 and 1000 hours local California time. The message shall be transmitted directly to Coast Guard Radio New Orleans (NMG) on frequency 16,565.0, 12,421.0, or 8,281.2 KHz and shall state: "This message is being transmitted in compliance with the U.S. eastern tropical Pacific yellowfin tuna regulations, and confirms that the vessel (name of reporting vessel) is fishing in the Pacific Ocean, but outside the regulatory area as of this date (give date)." After a date to be announced by the Service Director through publication of a notice in the FEDERAL REGISTER, transmissions required under this paragraph (b) shall be sent to Coast Guard Radio San Francisco (NMC) on frequency 16,565.0, 12,421.0, or 8,281.2 KHz.

§ 280.7 Closed season restrictions applicable to fishing vessels.

Except as otherwise provided in this section, after notice has been published in the FEDERAL REGISTER announcing closure of the yellowfin season, it shall be unlawful for any person or fishing vessel to land yellowfin tuna captured from within the regulatory area in any port or place until the season reopens on the following January 1.

(a) Any fishing vessel which has departed port to engage in tuna fishing, prior to the date of closure of the yellowfin season, may continue to capture yellowfin tuna within the regulatory area without restriction until the fishing voyage has been completed.

(1) In addition, for 1972 only, any fishing vessel which has completed a voyage in the regulatory area during the open season, and is in port on the date of the season closure, will be allowed one additional unrestricted fishing voyage provided that departure is made within 30 days thereafter.

(2) For the purpose of the above, departure refers to the date a vessel leaves port prepared to carry out fishing operations. A stopover at a single intermediate port, not exceeding 48 hours, may, however, be made to meet deficiencies in outfitting, supplying, fueling, provisioning or manning needs for a fishing voyage. Remaining in excess of 48 hours shall constitute a new fishing voyage corresponding to the delayed departure date.

(b) Any fishing vessel which departs port on a fishing voyage after closure of the yellowfin season, except as provided in paragraph (a) of this section, may land yellowfin tuna captured from within the regulatory area in limited quantities as provided in subparagraphs (1) to (4) of this paragraph as an incident to fishing for species with which yellowfin may be mingled. The Service Director may, however, through publication of a notice in the FEDERAL REGISTER adjust the incidental catch limitations to assure that the special allotments designated for vessels under 400 short tons carrying capacity are not underutilized and the 15 percent overall incidental catch for the entire tuna fleet is not exceeded. Any quantity of yellowfin tuna landed in excess of the limitations provided in subparagraphs (1) to (4) of this paragraph shall be subject to seizure and forfeiture pursuant to the Tuna Conventions Act of 1950, as amended (16 U.S.C. 951–961).

(1) Purse seiners over 400 short tons carrying capacity may land in any port or place yellowfin tuna captured from within the regulatory area as an incident to fishing for species with which yellowfin may be mingled, but in no event shall any such vessel be permitted to land yellowfin tuna in excess of 15 percent by round weight of its total catch.

(2) Purse seiners of 301 to 400 short tons carrying capacity may land in any U.S. port yellowfin tuna captured from within the regulatory area as an incident to fishing for species with which yellowfin may be mingled, but in no event shall any such vessel be permitted to land yellowfin tuna in excess of 40 percent by round weight of its total catch: *Provided however*, That any such vessel which is at sea longer than 70 days may land 20 percent yellowfin tuna by round weight of its established short ton carrying capacity. When the catch of yellowfin tuna by purse seiners of 301 to 400 short tons capacity reaches 900 short tons, the amount of yellowfin tuna which any such vessel may lawfully land will revert to 15 percent by round weight of its total catch. After a date to be announced, through publication of a notice in the FEDERAL REGISTER by the Service Director, any vessel departing on a fishing voyage shall be subject to this reversion limitation of 15 percent.

(3) Purse seiners of 300 short tons carrying capacity or less may land in any U.S. port yellowfin tuna captured from within the regulatory area as an incident to fishing for species with which yellowfin may be mingled, but in no event shall any such vessel be permitted to land yellowfin tuna in excess of 50 percent by round weight of its total catch: *Provided however*, That any such vessel which is at sea longer than 50 days may land 25 percent yellowfin tuna by round weight of its established short ton carrying capacity. That local wetfish seiners may accumulate the 50 percent allowance by weight for the separate period from the date of closure of the yellowfin fishing season until the end of that month, and for each separate period consisting of 1 calendar month thereafter provided such vessels have not landed any yellowfin tuna during the open season and make deliveries only on a daily basis. When the catch of yellowfin tuna by purse seiners of 300 short tons capacity or less reaches 3,500 short tons, the amount of yellowfin tuna which any such vessel may lawfully land will revert to 15 percent by round weight of its total catch. After a date to be announced through publication of a notice in the FEDERAL REGISTER by the Service Director, any vessel departing on a fishing voyage shall be subject to this reversion limitation of 15 percent.

(4) Bait and jig boats may land in any U.S. port yellowfin tuna captured from within the regulatory area, but in no event shall any such vessel be permitted to land yellowfin tuna in excess of 50 percent by round weight of its short ton carrying capacity once established in accordance with subparagraph (5) of this paragraph. When the catch of yellowfin tuna by bait and jig boats collectively reaches 2,300 short tons, the amount of yellowfin tuna which any such vessel may lawfully land will revert to 15 percent by round weight of its total catch. After a date to be announced through publication of a notice in the FEDERAL REGISTER by the Service Director, any vessel departing on a fishing voyage shall be subject to this reversion limitation of 15 percent.

(5) The short ton capacity of vessels will be determined from tables prepared by the Commission which relate carrying capacity to registered tonnages and from official unloading records available to the National Marine Fisheries Service.

(i) Managing owners of purse seine vessels between 301 and 400 short tons carrying capacity will be notified by registered mail that their vessel is in this category and is subject to the provisions of subparagraph (2) of this paragraph.

(ii) Managing owners of vessels of 300 short tons carrying capacity or less will be notified by registered mail that their vessel is in this category and is subject to the provisions of subparagraph (3) of this paragraph.

(iii) Except as provided below for bait and jig boats, managing owners not receiving notification by registered mail can assume that their vessel is over 400 short tons carrying capacity and is subject to the provisions of subparagraph (1) of this paragraph.

(iv) To qualify for the bait and jig boat yellowfin allocation, managing owners of such vessels shall supply the Regional Director documentation concerning the gross and net tonnage of their vessels together with records of prior unloadings. This information will be used by the Regional Director to establish the short ton carrying capacity of each vessel. Failure to comply shall result in each such vessel being limited to 15 percent yellowfin tuna, by round weight of its total catch. This 15 percent limitation shall remain in effect until the aforesaid documentation is furnished by the vessel's managing owner.

(6) The tonnage limitations specified in subparagraphs (2), (3), and (4) of this paragraph are subject to adjustment upward or downward. Any such adjustment will be based upon the estimated use of the incidental catch allowance, and shall be apportioned as determined by the Service Director. Announcement of such adjustment shall be made by publication of a notice in the FEDERAL REGISTER by the Service Director.

(c) Any fishing vessel operating within the regulatory area which began its fishing voyage during the closed season and is restricted to the catch limitations as provided in paragraph (b) of this section shall be subject to such limitation regardless of its arrival date in port. In addition, any vessel so restricted which discharges some but not all of its catch, shall be subject to the same restrictions upon completion of its next fishing voyage.

(1) Any fishing vessel having incidentally caught yellowfin tuna aboard may, however, begin fishing on January 1 for yellowfin tuna without restriction, provided such vessels are made available for inspection during the period December 27 through December 31. A request for the designation of an inspection port shall be made to the Regional Director on or before December 23. Upon notification by the Regional Director of the availability of an inspection port, each vessel shall proceed to such port for inspection by a designated agent of the National Marine Fisheries Service. Official seals will be affixed to wells containing incidentally caught yellowfin tuna and the same will be noted in the vessel's log. Fish in the wells at the time of inspection shall be subject to the incidental catch limitations as set forth in paragraph (b) of this section, regardless of the date of unloading. In addition, the Regional Director shall be notified not less than 48 hours in advance of the date and place of any unloading from inspected vessels. Upon arrival at point of sale or delivery, the official seals will be removed by a designated agent of the National Marine Fisheries Service. Inspected vessels shall not be allowed to leave port to resume fishing activities until 0001 hours, January 1.

(2) Any vessel failing to file the reports and to follow the procedures of this paragraph, tampering with or removing an official seal or altering the vessel's log, shall be restricted to the incidental catch limitations set forth in paragraph (b) of this section for its entire fishing voyage.

(d) Any fishing vessel electing to fish exclusively in the Pacific Ocean, but outside the regulatory area, shall report to the Regional Director, within 48 hours before leaving port, giving the name of the reporting vessel and the port of departure; within 24 hours before leaving the regulatory area, giving the latitude of departure and the approximate time of departure; and within 24 hours before returning to the regulatory area, giving the latitude of reentry, the approximate time of reentry and the tonnage by species of fish abroad.

(1) In addition, every fishing vessel operating in the Pacific Ocean, but outside the regulatory area, shall transmit daily a message between 0800 and 1000 hours local California time. The message shall be transmitted directly to Coast Guard Radio New Orleans (NMG) on frequency 16,565.0, 12,421.0, or 8,281.2 KHz and shall state: "This message is being transmitted in compliance with the U.S. eastern tropical Pacific yellowfin tuna regulations, and confirms that the vessel (name of reporting vessel) is fishing in the Pacific Ocean, but outside the regulatory area as of this date (give date)." Any vessel failing to receive acknowledgement from Coast Guard New Orleans, must transmit the same message on the following day. Should the vessel fail to receive acknowledgement within three consecutive days, the vessel's radio equipment shall be considered inoperative and the vessel shall return directly to port without delay to unload or to receive an inspection by a designated agent of the National Marine Fisheries Service. After a date to be announced by the Service Director through publication of a notice in the FEDERAL REGISTER, transmissions required under this subparagraph (1) shall be sent to Coast Guard Radio San Francisco (NMC) on frequency 16,565.0, 12,421.0, or 8,281.2 KHz.

(2) Any vessel failing to file the reports and to follow the procedures of this paragraph, shall be restricted to the incidental catch limitations set forth in paragraph (b) of this section for its entire fishing voyage.

(e) Any fishing vessel electing to fish exclusively in the Pacific Ocean, but outside the regulatory area, shall proceed without delay to waters outside the regulatory area and upon reentering the regulatory area, shall proceed directly to port without delay.

(1) If a vessel must, however, make an emergency port call, it shall proceed directly to port without delay and shall notify the Regional Director, not less than 48 hours prior to arrival, giving the name of the port to be entered. If the vessel elects to resume fishing outside the regulatory area, it must follow the procedures required in paragraph (d) of this section and shall proceed without delay directly to waters outside the regulatory area.

(2) Any vessel failing to file the reports and to follow the procedures of this paragraph, shall be restricted to the incidental catch limitations set forth in paragraph (b) of this section for its entire fishing voyage.

(f) Any fishing vessel which on the same voyage operates within and outside the regulatory area shall be subject to the incidental catch limitations as set forth in paragraph (b) of this section, unless such vessel is made available for inspection as provided in this paragraph.

(1) Any fishing vessel electing to change fishing areas, without having that portion of its catch taken outside the regulatory area restricted to such incidental catch limitations, shall request inspection services from the Regional Director. Vessels within the regulatory area shall report not less than 48 hours prior to electing to leave the area, stating their intention and requesting the designation of an inspection port. Vessels outside the area shall report within 24 hours before returning to the regulatory area, stating their intention, requesting the designation of an inspection port, and giving the latitude of reentry, the approximate time of reentry and the tonnage by species of fish aboard. Upon notification by the Regional Director of the availability of an inspection port, each vessel shall proceed directly without delay to such port for inspection by a designated agent of the National Marine Fisheries Service. Official seals will be affixed to wells containing fish captured within or outside the regulatory area, as appropriate, and the same will be noted in the vessel's log. Upon arrival at point of sale or delivery, the official seals will be removed by a designated agent of the National Marine Fisheries Service.

(2) Any vessel failing to file the reports and to follow the procedures of this paragraph, tampering with or removing an official seal or altering the vessel's log, shall be restricted to the incidental catch limitations set forth in paragraph (b) of this section for its entire fishing voyage.

(g) All fishing vessels, except vessels proceeding directly to Puerto Rico or to any other U.S. port for unloading, shall notify the Regional Director not less than 48 hours prior to leaving the regulatory area via the Panama Canal. In addition, all fishing vessels, except vessels without fish aboard, shall notify the Regional Director not less than 48 hours prior to entering the regulatory area via the Panama Canal. Each report shall include the name of the reporting vessel, the tonnage by species of fish aboard and whether the fish were caught in or outside the regulatory area in Pacific waters or from Atlantic waters. Any vessel failing to file the reports and to follow the procedures of this paragraph, shall be

restricted to the incidental catch limitations set forth in paragraph (b) of this section for its entire fishing voyage, regardless of its arrival date in port.

(h) All fishing vessels shall notify the Regional Director not less than 48 hours prior to any sale or delivery in a foreign country, of fish caught in the Pacific Ocean from within or outside the regulatory area. Such reports shall include the tonnage by species unloaded and whether such fish were caught in or out of the regulatory area.

(i) All fishing vessels shall notify the Regional Director not less than 48 hours prior to transferring fish caught in the Pacific Ocean from within or outside the regulatory area to another vessel for the purpose of transshipment. Such reports shall include the date and place of unloading, name and destination of the on-carrying vessel, tonnage by species of fish transferred and whether the transferred fish were caught in or outside the regulatory area.

(j) All fishing vessels that are permanently based in a foreign country, which elect to participate in the allocation provisions for vessels of 400 tons carrying capacity or less, shall (1) unload in a U.S. port after each voyage begun during the closed season, or (2) transship all fish taken on such voyages to a U.S. port in accordance with paragraphs (i) of this section. Any vessel failing to follow the procedures of this paragraph, shall be limited to an incidental rate of yellowfin tuna not to exceed 15 percent by round weight of its total catch.

(k) All reports required in paragraphs (d) to (i) of this section, except messages transmitted directly to Coast Guard Radio New Orleans, shall be telephoned to area code 714, telephone number 233–5511. Such reports, which must be delivered within the time limits specified, may be made by prepaid commercial radio message or relayed through the shore representative of the reporting vessel.

§ 280.8 Emergency action by Service Director.

If during the closed yellowfin season, the Service Director finds that the provisions relating to fishing outside the regulatory area are inadequate to insure that the recommendations of the Commission are met, he shall announce such findings through publication of a notice in the FEDERAL REGISTER and immediately thereafter:

(a) Every fishing vessel at sea, having yellowfin tuna aboard in excess of the incidental catch limitations as provided in § 280.7(b) which is claimed to have been captured outside the regulatory area, but in the Pacific Ocean, shall return directly without delay to its home port or port of departure to unload or to receive an inspection by a designated agent of the National Marine Fisheries Service. Any vessel failing to comply with the above requirements, shall be restricted to the incidental catch limitations set forth in § 280.7(b) for its entire fishing voyage.

(b) Any fishing vessel which has operated in the regulatory area at any time during the calendar year and which departs on any fishing voyage within the Pacific Ocean after the notice described in this section is published in the FEDERAL REGISTER, shall be restricted to the incidental catch limitations as provided in § 280.7(b).

§ 280.9 Restrictions applicable to cargo vessels.

(a) Any fishing vessel shall be deemed to have completed a fishing voyage whenever any part of its catch is transferred to a cargo vessel in conformity with the requirements of this section.

(b) In keeping with the provisions of section 251, title 46, United States Code, no foreign-flag vessel, whether documented as cargo vessel or otherwise, is permitted to land in a port of the United States any fish or fish products taken on board such vessel on the high seas.

(c) The transfer of fish from a fishing vessel to a cargo vessel while in a foreign country or in waters over which such country has recognized jurisdiction is subject to the applicable laws and regulations of such foreign country.

(d) During the closed yellowfin tuna season, no fishing vessel shall transfer on the high seas any part of its catch to a cargo vessel documented under the laws of the United States and no such cargo vessel shall receive, possess, or bring to any place in the United States, fish taken on board on the high seas from a fishing vessel unless the cargo vessel shall hold a permit issued in conformity with paragraph (e) of this section.

(e) Upon written application made to him, the Regional Director may issue a permit authorizing a cargo vessel documented under the laws of the United States to receive, possess, and transport to the United States, fish transferred from fishing vessels on the high seas during the closed yellowfin tuna season. Such permit may authorize the possession and transportation of yellowfin tuna by a cargo vessel without regard to the quantities of fish received, but it shall contain restrictions, as the Regional Director shall determine to be necessary, to achieve compliance with the regulations in this part and the objectives of the yellowfin tuna conservation program.

§ 280.10 Restrictions applicable to purchasers.

(a) Except as provided in paragraphs (b) and (d) of this section, it shall be unlawful for any person knowingly to receive, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any yellowfin tuna taken or retained by a fishing vessel in violation of the regulations in this part.

(b) In view of the perishable nature of yellowfin tuna when not processed otherwise than by chilling or freezing, any person authorized to enforce the regulations in this part may cause to be sold, and any person may purchase, for not less than its reasonable market value such quantities of perishable yellowfin tuna as may be seized and forfeited pursuant to the Tuna Conventions Act of 1950, as amended (16 U.S.C. 951–956).

(c) The proceeds of any sale made pursuant to paragraph (b) of this section after deducting the reasonable costs of the sale, if any, shall be remitted by the purchaser to the Regional Director for deposit and retention in the Suspense Account of the National Marine Fisheries Service (Account No. 14X6875(17)) pending judgment of the court or other disposition of the case.

(d) If a duly constituted official acting under authority and in behalf of a State of the United States, of the Commonwealth of Puerto Rico, or of American Samoa seizes any yellowfin tuna under the applicable laws or regulations of such government, such yellowfin tuna may be forfeited and sold or otherwise disposed of pursuant to such laws or regulations. Any yellowfin tuna so seized by an official of a State, the Commonwealth of Puerto Rico or American Samoa shall not be seized by an officer or employee of the Federal Government unless it is voluntarily turned over to him to be processed against under applicable Federal laws or regulations.

§ 280.11 Recordkeeping and written reports.

(a) The master or other person in charge of a tuna vessel or such person as may be authorized in writing to serve as the agent of either of such persons shall throughout the open and closed yellowfin tuna fishing seasons:

(1) Keep an accurate log of all operations conducted from the vessel entering therein for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of fish aboard by species. The record and bridge log maintained at the request of the Commission shall be sufficient to comply with this paragraph provided the items of information specified herein are fully and accurately entered in such log.

(2) Furnish on a form obtainable from the Regional Director, following the sale or delivery of a catch of fish made by such vessel, a report, certified to be correct as to facts within the knowledge of the reporting individual, giving the name and official number of the fishing vessel, the dates of beginning and ending of the fishing voyage, the port of departure, and a listing separately by species of the round weight quantities (pounds or short tons) of fish sold or delivered. At the option of the vessel master or other person in charge, a copy of the fish ticket, weighout slip, settlement sheet, or similar record issued by the fish dealer or his agent may, however, be used for reporting purposes in lieu of the form obtainable from the Regional Director, if such alternate record is similarly certified and contains all items of information required by this paragraph. In addition, any vessel landing its catch in California and reporting by means of a copy of the California fish ticket, the California Fish and Game boat number may be indicated in lieu of the vessel's official number. Such sale and delivery reports shall be delivered or mailed to the Regional Director within

72 hours after the weighout has been completed.

(b) Any person authorized to carry out enforcement activities under the regulations in this part and any person authorized by the Commission shall have power, without warrant or other process to inspect, at any reasonable time, log books, catch reports, statistical records, or other reports as required by the regulations in this part to be made, kept or furnished.

§ 280.12 Persons and vessels exempted.

Nothing contained in §§ 280.2 to 280.11 shall apply to:

(a) Any person or vessel authorized by the Commission, the Service Director, or any State of the United States to engage in fishing for research purposes.

(b) Any person or vessel engaged in sport fishing for personal use.

§ 280.13 National Oceanic and Atmospheric Administration employees designated as enforcement agents.

Any employee of the National Oceanic and Atmospheric Administration duly appointed and authorized to enforce Federal laws and regulations administered by the National Oceanic and Atmospheric Administration is authorized and empowered to carry out enforcement activities under the Tuna Conventions Act of 1950, as amended (16 U.S.C. 951-961).

§ 280.14 State officers designated as enforcement agents.

Any officer or employee of a State of the United States, of the Commonwealth of Puerto Rico or of American Samoa who has been duly designated by the Service Director or his delegate with the consent of the Government concerned, is authorized to function as a Federal law enforcement agent and to carry out enforcement activities under the Tuna Conventions Act of 1950, as amended (16 U.S.C. 951-961).

[FR Doc.72-3415 Filed 3-3-72;8:54 am]

Proposed Rule Making

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Parts 118, 143]

GRANTS FOR PLANNING AND ESTABLISHING SUPPLEMENTARY EDUCATIONAL CENTERS AND SERVICES

Guidance, Counseling, and Testing Programs; Comment Period; Correction

A notice of proposed rule making was published in the FEDERAL REGISTER, volume 37, No. 25, Saturday, February 5, 1972, at page 2779, which proposed a revocation of Part 143 and a revision of Part 118 of Title 45 of the Code of Federal Regulations. Through inadvertence no limitation was established on the period for public comment. Accordingly, notice is hereby given that all written material relevant to comments, suggestions, or objections regarding the proposed regulations, as invited by the previous publication of February 5, 1972, referred to above, will be considered if received not later than 30 days after the publication of this notice in the FEDERAL REGISTER.

Dated: February 29, 1972.

STEVEN D. KOHLERT,
Acting Deputy Assistant Secretary for Management.

[FR Doc.72-3283 Filed 3-3-72;8:51 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Airworthiness Docket No. 72-SW-10]

BELL MODEL 206A AND 206B HELICOPTERS

Proposed Airworthiness Directives

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Bell Models 206A and 206B helicopters. There have been several reports of cracks in the reinforcing straps, P/N 206-031-200-23 and -24, on the upper cabin roof beam on Bell Model 206A helicopters that could possibly cause a hazardous condition. The Model 206B is identical to the Model 206A in the upper cabin roof beam area and is subject to the same operational environment. Since cracked straps are likely to exist or develop in other helicopters of the same type designs, the proposed airworthiness directive would require inspection of the straps for proper fit and for cracks and loose rivets. It would also require inspection of the support fittings, P/N 206-031-202-1 and -3, for cracks and loose rivets. Replacement of a cracked strap, loose rivets or a cracked support fitting would be required. A 50-hour periodic inspection is proposed for poorly fitted straps until these straps are replaced.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or comments as they may desire. Communications should identify the docket number and be submitted in triplicate to the Regional Counsel, Southwest Region, Federal Aviation Administration, Post Office Box 1689, Fort Worth, TX 76101.

All communications received on or before April 3, 1972, will be considered by the Director before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available for examination by interested persons before and after the closing date for comments, in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

BELL. Applies to Bell Models 206A and 206B helicopters, serial Nos. 204, 218, 221, 226, 227, 231, 236, 237, 241, 243, 246, 248, 254, 256, 257, 260, 261, 262, 267, 268, 272, 275, 278, 279, 282, 283, 288, 296, 299, 303, 345, 350, 351, 352, 358 through 362, 368, 382 through 395, 397 through 497, 499 through 654, 656 through 689, 693, 694, 697, 698, 701, 715 through 725, 727, 728, 730, 733, 734, 735, 738, 742, and 744, certificated in all categories.

Compliance required within 25 hours time in service after the effective date of this AD, unless already accomplished within the last 25 hours, and thereafter at intervals not to exceed 50 hours' time in service from the last inspection.

To detect cracks in the straps, P/N 206-031-200-23 and -24, and mating support fitting, P/N 206-031-202-1 and -3 and to determine proper fit of these straps to the supporting fitting and to the upper cabin roof beam, accomplish the following:

(a) Remove the interior lining at the upper cabin roof beam from station 90 to station 115 and remove any residue sealant on the straps on both sides of the roof beam bottom surface.

(b) Inspect the 10 high shear rivets, P/N NAS 1054, in each strap for looseness and inspect the remaining rivets in the strap and support fitting for looseness. If five or more high shear rivets are loose, replace the rivets prior to next flight. If one to four high shear rivets or other rivets in the strap or support fitting are loose, the aircraft may be flown only to a repair base in accordance with FAR 21.197 where these rivets must be replaced prior to the next flight.

(c) Inspect straps, P/N 206-031-200-23 and -24 for deformation and lateral location in accordance with items 3 and 4 of Bell Helicopter Co. Service Bulletin No. 206-20 dated December 10, 1971 (hereinafter referred to as SB 206-20), or later approved revision. If the strap is deformed or mislocated in excess of that specified in items 3 or 4 of SB 206-20, the strap must be additionally inspected for cracks as specified in item 5 of SB 206-20.

(1) If both fingers on either strap are cracked, replace the strap in accordance with item 7 of SB 206-20 or later approved revision, prior to next flight.

(2) If either strap as a detectable crack, replace the strap in accordance with item 7 of SB 206-20 or later approved revision. The aircraft may be flown only to a base in accordance with FAR 21.197 where the strap must be replaced prior to the next flight.

(d) If cracks are found in the straps, inspect the left and right support fittings, P/N 206-031-202-1 and -3 for cracks in the area around the six rivets which go into the box beam and inboard radii areas just forward and aft of these rivets, using a dye penetrant or equivalent inspection method. If cracks are found in a support fitting, replace the fitting and its strap in accordance with item 7 of SB 206-20 or later approved revision, prior to next flight.

(e) The repetitive inspections specified in this AD will no longer be required,

(1) if the strap is not deformed or mislocated in excess of that specified in items 3 and 4 of SB 206-20 or later approved revision, or

(2) after the strap has been replaced in accordance with item 7 of SB 206-20 or later approved revision.

(f) Equivalent means of compliance with this AD may be approved by the Chief, Engineering and Manufacturing Branch, FAA, Southwest Region, Post Office Box 1689, Fort Worth, TX 76101.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Fort Worth, Tex., on February 18, 1972.

R. V. REYNOLDS,
Acting Director, Southwest Region.

[FR Doc.72-3330 Filed 3-3-72;8:49 am]

[14 CFR Part 71]

[Airspace Docket No. 72-SO-16]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Fayetteville, N.C., control zone and transition area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, Post Office Box 20636, Atlanta, GA 30320. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 724, 3400 Whipple Street, East Point, GA.

The Fayetteville control zone described in § 71.171 (37 F.R. 2056) would be redesignated as:

Within a 5-mile radius of Fayetteville Municipal Airport (Grannis Field) (lat. 34°59'22" N., long. 78°52'52" W.); within 3 miles each side of Fayetteville VOR 015°, 080°, and 233° radials, extending from the 5-mile-radius zone to 8.5 miles north, east, and southwest of the VOR; excluding the portion within Simmons AAF control zone.

The Fayetteville transition area described in § 71.181 (37 F.R. 2143) would be amended as follows:

"* * * (latitude 34°59'35" N., longitude 78°52'50" W.) * * *" would be deleted and "* * * (latitude 34°59'22" N., longitude 78°-52'52" W.) * * *" would be substituted therefor.

The proposed alterations are required to provide controlled airspace protection for IFR aircraft executing the proposed VOR RWY 27 Instrument Approach Procedure to Fayetteville Municipal Airport (Grannis Field) and to change the geographic position of this airport due to the refinement of airport coordinates by the National Oceanic and Atmospheric Administration.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on February 23, 1972.

JAMES G. ROGERS,
Director, Southern Region.

[FR Doc.72-3328 Filed 3-3-72;8:49 am]

[14 CFR Part 71]

[Airspace Docket No. 72-SO-17]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Charleston, S.C., transition area.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, Post Office Box 20636, Atlanta, GA 30320. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 724, 3400 Whipple Street, East Point, GA.

The Charleston transition area described in § 71.181 (37 F.R. 2143) would be amended as follows:

"* * * northwest of the VORTAC * * *" would be deleted and "* * * northwest of the VORTAC; within a 6.5-mile radius of Johns Island Airport (lat. 32°42'00" N., long. 80°00'00" W.) * * *" would be substituted therefor.

The proposed alteration is required to provide controlled airspace protection for IFR operations at Johns Island Airport. A prescribed instrument approach to this airport, utilizing the Charleston, S.C. VORTAC, is proposed in conjunction with the alteration of this transition area.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on February 22, 1972.

JAMES G. ROGERS,
Director, Southern Region.

[FR Doc.72-3329 Filed 3-3-72;8:49 am]

CIVIL AERONAUTICS BOARD

[Docket No. 23310; PSDR-30D; EDR-219]

[14 CFR Parts 250, 399]

"CONFIRMED RESERVED SPACE" BY MEANS OTHER THAN NOTATION ON TICKET

Notice of Proposed Rule Making

MARCH 1, 1972.

The Board, by notice of proposed rule making PSDR-30 dated April 23, 1971, and published at 36 F.R. 8058, gave notice that it had under consideration an amendment to Part 399 of the regulations (14 CFR Part 399) which would establish a policy that the practice of air carriers or ticket agents in orally confirming reserved space to prospective passengers on scheduled flights in air transportation before a ticket is issued, be regarded as an unfair or deceptive practice and an unfair method of competition in air transportation or the sale thereof within the meaning of section 411 of the Act.

For the reasons set forth in the attached Explanatory Statement, the Board has determined by this supplemental notice to withdraw the proposal in PSDR-30 and invite comment instead on two alternative proposals: (1) A twin proposal comprised of a modification of the policy statement set forth in PSDR-30 and a concomitant amendment of Part 250 of the economic regulations (14 CFR Part 250); or (2) a proposal to amend said Part 250 alone.

The principal features of the proposals are described in the explanatory statement and the proposed amendments are set forth in the proposed rules. The amendments are proposed under the authority of sections 102, 204, 403, 404, 411, and 416(a) of the Federal Aviation Act of 1958, as amended (72 Stat. 740, 743, 758, 760, 769, 771; 49 U.S.C. 1302, 1324, 1373, 1374, 1381, 1386), and sections 3 and 4 of the Administrative Procedure Act (81 Stat. 54, 80 Stat. 383; 5 U.S.C. 552 and 553).

Interested persons may participate in the proposed rule making through submission of twelve (12) copies of written data, views, or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. All relevant material in communications received on or before April 18, 1972, will be considered by the Board before taking final action on the proposed rules. Within the same period the six certificated route carriers specified in the attached Explanatory Statement shall also file the data described therein, at p. 10. Thereafter, the Board will consider supplemental comments filed on or before May 2, 1972, with respect to the data filed by the six certificated route carriers referred to above. Copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 712, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, upon receipt thereof.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

EXPLANATORY STATEMENT

By PSDR-30 the Board proposed to amend Part 399 of the regulations, "Policy Statements" (14 CFR Part 399) to establish a policy that the practice of air carriers or ticket agents in orally confirming reserved space to prospective passengers on scheduled flights, before a ticket is issued, be regarded as an "unfair or deceptive practice" and an "unfair method of competition in air transportation or the sale thereof," within the meaning of section 411 of the Act.

Our purpose in issuing the proposed policy was neither to bar the generally desirable practice of reserving space by telephone nor to inconvenience the public in making oral reservations,[1] but to protect the public against misrepresentations by employees and agents of carriers that telephone reservations for scheduled flights made by prospective passengers are "confirmed" when, in fact, under the terms of the carriers' typical tariff rule, they are not. We thought it particularly desirable to provide this protection since, if the carrier failed to honor the oral reservation, the prospection passenger would have no grounds for relief under our denied boarding compensation rule.[2]

Pursuant to the notice, comments were filed by the Air Transport Association of America (ATA), on behalf of certain carrier members, the American Society of Travel Agents, Inc. (ASTA[3]), seven certificated combination route carriers,[4] the National Industrial Traffic League (NITL), Miami Dade Junior College, and four private companies or individuals.[5] All of the comments except one[6] opposed the proposed rule.

The comments opposing the proposed policy fall into the following general categories: (1) It is not justified by the small percentage of passengers who are denied boarding under existing reservations procedures and who might be said to be deceived by the use of the term "confirmed reservation"; (2) at least some of the carriers now extend denied boarding compensation even to persons whose reservations were confirmed orally and not verified on the ticket; (3) the proposed policy will be disruptive of current cost-and-time-saving ticketing practices, will cause substantial confusion in the mind of the traveling public, and will result in considerable inconvenience to the vast majority of passengers who understand and accept the current procedure of picking up a ticket at least 30 minutes before flight departure; (4) the proposed policy will put the air carriers at a severe competitive disadvantage vis-a-vis the foreign air carriers, and (5) the proposed policy leaves unsolved the problem of the responsibility of the airlines for the thousands of ticket agents who cannot be effectively controlled in their choice of words in dealing with the public.[7]

While we shall defer consideration of the foregoing arguments until we have received comment in response to this supplemental notice, the comments received thus far indicate the existence of facts other than those with respect to which the Board acted in formulating the policy expressed in PSDR–30. We therefore think it appropriate at this time for the Board to take into account these newly disclosed facts by proposing alternative responses to the underlying problem, in an effort to protect, to the maximum possible extent, that segment of the traveling public which prefers to reserve airline space by telephone. Accordingly, as next discussed, the Board is inviting additional comment on two alternative proposals, either of which, in our tentative view, would be preferable to the policy statement proposed in PSDR–30.

1. At the time we issued PSDR–30, and for many years before that, all domestic carriers had a tariff rule stating that: "A reservation of space is tentative only and shall not be valid until a passenger has received a ticket specifying thereon his confirmed reserved space." The universality of this tariff rule is reflected in the definition of "confirmed reserved space," which is, as stated above, basic to our "denied boarding compensation" rule under Part 250. It is therefore significant that, in response to the proposed policy statement which we set forth in PSDR–30, several carriers[8] revised their tariff rules so as to recognize oral reservations as binding and not merely tentative.[9]

By obligating themselves to issue a validated ticket on the basis of an oral confirmation these carriers have, at least in part, vitiated the factual predicate for our proposed policy since carriers who have adopted such revised tariffs cannot now be said to engage in an "unfair or deceptive practice" in confirming space by telephone. In light of this intervening change in factual circumstances, we are modifying our proposed policy so that it will be clear that the Board considers the practice of orally confirming reservations to be "unfair or deceptive" only as to carriers whose tariff rules require reservations to be in writing. Thus, our policy statement will not apply where the carrier's tariff provides for oral confirmation of reserved space. Moreover, since the present definition of "confirmed reserved space" in Part 250, insofar as it is limited to reservations verified "on the ticket," is reflective of a universality in tariff rules which no longer prevails, we propose also to amend Part 250 accordingly, by expanding the definition of "confirmed reserved space" to encompass all reservations of space verified in any manner provided therefor by the carrier's tariff.

We think the principal value in the foregoing proposal lies in its flexibility, namely, it gives the carrier some latitude, within the framework of its tariff rules, to shape a reservation policy suited to its particular needs. Thus, under the revised policy, the carrier would continue to be free to decide whether it chooses to be bound, in its tariff, by reservations made orally, but if it decides to be bound by oral reservations, then a reservation so made would entitle a passenger to the remedy of denied boarding compensation under Part 250.

2. We recognize, however, that by giving the carriers discretion to decide whether to be bound by oral reservations, the foregoing proposal allows for nonuniformity among carriers' practices with respect to confirming reservations and thus with respect to passengers' eligibility for denied boarding compensation. We are therefore considering an alternative proposal, to simply amend the definition of "confirmed reserved

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[1] Indeed, the Board has recognized that "the present reservation system of the carriers is designed to provide maximum benefit to the traveling public and to reduce the carriers' reservation costs." EDR–109, Jan. 17, 1967, ER–503, Oct. 17, 1967.

[2] Part 250, 14 CFR Part 250. Under that regulation the remedy of denied boarding compensation is available only to a passenger having "confirmed reserved space," which term is in turn, defined as space on a specific date and specific flight and class of service which has been requested by a passenger and which the carrier has verified as reserved for such passenger "by appropriate notation on the ticket." Thus, an oral representation of confirmed space is not "confirmed reserved space" within the meaning of the denied boarding compensation rule.

[3] In addition to its initial comment, ASTA on Aug. 16, 1971, filed a petition to file an otherwise unauthorized document, namely, a late-filed supplemental comment in opposition to the proposed rule making. ASTA has shown good cause for the late filing; hence the document will be received as part of the record in this proceeding.

[4] American, Continental, Eastern, Ozark, Pan American, United and Western.

[5] General Mills, Inc.; Talbert, Cox & Associates of West Columbia, S.C.; REA International Corp. of Rahway, N.J.; and Frank C. Brooks of Dallas, Tex.

[6] That of Eastern.

[7] Additionally, Pan American raises a legal issue, contending that the proposed rule appears to (1) abridge the constitutional right of "free speech," by attempting to prohibit oral confirmation, and (2) go beyond the Board's statutory authority. Pan American's first contention, that the First Amendment to the U.S. Constitution precludes the Board from controlling air carriers' deceptive practices which happen to take the form of misleading oral communications, lacks sufficient substance to warrant further comment. Pan American's second contention is also without merit. The Board has ample authority under sections 411, 416(b), and the broad regulatory powers contained in section 204 (a) of the Act to proscribe, by rule making, deceptive trade practices and unfair methods of competition of air carriers and ticket agents in air transportation or the sale thereof. See ER–503, Oct. 17, 1967.

[8] As of this date, American, Western, United, Wien, Aloha and Hawaiian.

[9] This new tariff rule, which the Board permitted to become effective, reads as follows:

"A reservation of space on a given flight is valid when the availability and allocation of such space is confirmed by a reservations agent of the carrier. Subject to payment or satisfactory credit arrangement, a validated ticket will be issued by the carrier indicating such confirmed space provided passenger applies to carrier for such ticket at least 30 minutes prior to the scheduled departure time of the flight to which such reservation applies. Such reservation of space is subject to cancellation by the carrier without notice if the passenger has not obtained a validated ticket specifying thereon his confirmed reserved space at least 30 minutes prior to the scheduled departure time of the flight to which such reservation applies."

space" in Part 250, so as to make available the remedy of denied boarding compensation to all prospective passengers who have been given an oral confirmation of reserved space, whether or not the particular carrier's tariff provides for valid oral reservations.

There will be thus no need to issue a policy statement designating oral confirmation practices as deceptive, since any carrier who denies boarding to a passenger holding an orally confirmed reservation would no longer be able to disclaim its obligation to pay denied boarding compensation under Part 250.

While this latter proposal has the advantage of achieving uniformity in the application of denied boarding compensation to carrier reservation practices, we recognize that it would impose upon an unwilling carrier the evidentiary problems inevitably entailed by having to determine whether a reservation allegedly made and confirmed by telephone was, in fact, so made. Thus, a carrier could no longer avoid exposure to claims by unscrupulous persons seeking payment of denied boarding compensation on the basis of reservations allegedly confirmed by telephone. Those carriers which have revised their tariffs to provide for oral confirmation of reserved space have by now probably had some actual experience with the problem of dealing with such spurious claims so that their comments on this alternative proposal should be particularly helpful to the Board in deciding how to proceed further.

Finally, it should be emphasized that the Board is not committed to either of the foregoing alternative proposals, but by this supplemental notice is soliciting additional views and data to assist the Board in weighing the pros and cons of each such alternative proposal. To that end, it is especially desirable that the Board receive data with respect to the experience of the six carriers which have already provided in their tariffs for oral confirmation of reserved space. We are directing them, pursuant to section 407(a) of the Act, to file in addition to their general comments, a report based on a sampling of any 15-consecutive-day period during the 45-day period allowed for the filing of comments on the notice in this proceeding. The report should include the following data: (1) Total number of denied boarding claims for the period; (2) number of such denied boarding claims based solely upon an oral confirmation of reserved space; (3) total number of denied boarding claims acknowledged by the carrier; (4) number of such acknowledged denied boarding claims based solely upon an oral confirmation of reserved space; and (5) any difficulties experienced by these carriers in particular connection with oral confirmation of reservation by travel agents. We are also directing each of these same carriers to file an additional report furnishing us with any data which it may already have gathered, of the nature described in (1) through (5) above, covering the entire period since it changed its tariff to provide for oral confirmation of reserved space.

These reports should be filed with the Board's Docket Section (and one copy should be filed with the Board's Bureau of Economics) no later than the last day for filing original comments on the notice in this proceeding. We shall also provide for a 2-week period thereafter for the filing of supplemental comments limited to responses to the data filed by the six carriers specified above.[10]

We also urge all carriers which have been honoring oral reservations, whether by tariff or by practice, to submit any other data, information, or views which might be useful to the Board in evaluating the feasibility of permitting or requiring orally confirmed reservations to be binding on carriers.

It is proposed to amend Part 250 of the Economic Regulations (14 CFR Part 250) and Part 399, Statements of General Policy (14 CFR Part 399) as follows:

PART 250—PRIORITY RULES, DENIED BOARDING COMPENSATION TARIFFS AND REPORTS OF UNACCOMMODATED PASSENGERS

1. Amend § 250.1 to read in part as follows:

§ 250.1 **Definitions.**

For the purposes of this part:

* * * * *

"Confirmed reserved space" means space on a specific date and on a specific flight and class of service of a carrier which has been requested by a passenger and which the carrier or its agent has verified, by appropriate notation on the ticket or in any other manner provided therefor by the carrier's tariff, as being reserved for the accommodation of the passenger.

* * * * *

2. As an alternative to 1 above and 3 and 4 below, amend § 250.1 to read in part as follows:

"Confirmed reserved space" means space on a specific date and on a specific flight and class of service of a carrier which has been requested by a passenger and which the carrier or its agent has verified, by appropriate notation on the ticket or otherwise, orally or in writing, as being reserved for the accommodation of the passenger.

PART 399—STATEMENTS OF GENERAL POLICY

3. Amend the Table of Contents by adding a new § 399.83 as follows:

[10] If the Board makes final either of the proposed amendments to Part 250, modification will be made at that time with respect to the reporting requirements of the part (§ 250.10) to provide for a breakdown of denied boarding statistics, so as to indicate separately denied boarding based on reservations noted on the ticket and denied boarding based on reservations made by other means.

Sec.
399.83 Unfair or deceptive practice of air carrier or ticket agent in orally confirming to prospective passenger reserved space on scheduled flights.

4. Add new § 399.83 as follows:

§ 399.83 **Unfair or deceptive practice of air carrier or ticket agent in orally confirming to prospective passenger reserved space on scheduled flights.**

It is the policy of the Board to consider the practice of an air carrier or ticket agent of stating to a prospective passenger by telephone or other means of communication that a reservation of space on a scheduled flight in air transportation is confirmed before a passenger has received a ticket specifying thereon his confirmed reserved space to be an unfair or deceptive practice and an unfair method of competition in air transportation or the sale thereof within the meaning of section 411 of the Act, unless the carrier's tariff provides for confirmation of reserved space by the means so used.

[FR Doc.72-3350 Filed 3-3-72;8:54 am]

FEDERAL POWER COMMISSION

[18 CFR Parts 101, 104, 105, 141, 154, 201, 204, 205, 260]

[Docket No. R-430]

UNIFORM SYSTEMS OF ACCOUNTS FOR PUBLIC UTILITIES AND LICENSEES AND NATURAL GAS COMPANIES AND RELATED REPORT FORMS

Further Extension of Time

FEBRUARY 24, 1972.

The Public Service Commission of Wisconsin and the NARUC Subcommittee of Staff Experts on Accounting filed requests for a further extension of time within which to file comments in the above-designated matter.

Upon consideration, notice is hereby given that the time is further extended to and including March 31, 1972, within which any interested person may submit data, views, comments or suggestions in writing concerning the notice of proposed rule making issued October 8, 1971 (36 F.R. 20174, October 16, 1972).

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-3260 Filed 3-3-72;8:50 am]

FEDERAL TRADE COMMISSION

[16 CFR Part 303]

TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

Notice of Proposed New Generic Name and Definition of Manufactured Fiber

On December 21, 1970, The Carborundum Co., Post Office Box 337, Niagara

Falls, NY 14302 (applicant), filed an application pursuant to § 303.8 (16 CFR 303.8) (Rule 8) of the rules and regulations under the Textile Fiber Products Identification Act, 72 Stat. 1717, et seq., 79 Stat. 124, 15 U.S.C. section 70, et seq. (hereinafter referred to as "Act"), requesting that 16 CFR 303.7 (Rule 7 under the Act), setting forth generic names and definitions of manufactured textile fibers, be amended by adding thereto a new generic name and definition. The proposed addition would cover a fiber which, applicant alleges, should not be identified by any existing generic name because it differs substantially from fibers in present classifications, both in properties and in chemical structure. The new name and definition recommended by applicant are as follows:

Novolon [or novoloid]—a manufactured fiber containing at least 85 percent of a cross-linked novolac.

The application has been placed in the public record in this proceeding and is available for public inspection.

Pursuant to 16 CFR 303.8 (Rule 8 under the Act) the Commission assigned the symbol "CA–0001" for temporary use by the applicant in designating the subject fiber pending further consideration of the application. Applicant has used the tradename "Kynol" for the fiber.

The application described the fiber as follows:

The composition of the fiber may be considered with reference to the basic aspects of the method by which such fibers may be made. A phenolic-aldehyde novolac is prepared by condensing a phenolic compound and an aldehyde in the presence of an acid catalyst, a stoichiometric excess of the phenolic compound preferably and customarily being employed. The novolac so obtained is fiberized by any conventional method such as melt spinning. The resulting novolac fibers are then heated in an environment containing formaldehyde and an acid catalyst to effect curing, i.e., cross-linking, of the novolac. Such cross-linking occurs primarily by virtue of methylene bridges formed between the 2, 4, and/or 6 positions of the phenolic structural unit.

The term "phenolic compound" in the present context refers primarily to the compound phenol itself, from which most novolacs are prepared. However, it also encompasses phenol wherein one or more of the hydrogen atoms are substituted by a monovalent radical, provided, however, that the phenol is not so extensively substituted in the 2, 4, and/or 6 positions as to preclude subsequent cross-linking. Cresol is a primary example of such a substituted phenol. Similarly, the term "aldehyde" refers to any aldehyde capable of condensing with the phenolic compound to form a novolac. Formaldehyde is by far the most commonly used, but other aldehydes such as acetaldehyde may be employed. The novolac melt from which the instant fibers are formed preferably contains at least 50 percent of a novolac produced from phenol and formaldehyde.

Prior to fiberization, up to 15 percent of a suitable additive may be incorporated in the novolac, if desired, to obtain improvements in certain respects.

Applicant stated that the subject fiber is most significantly characterized by remarkable resistance to heat and flame, being infusible and nonflammable; that it is also substantially unaffected by many acids; and that it is insoluble in organic solvents. It further stated that additional information concerning the fiber is included in U.S. patent application serial No. 710,292, filed March 4, 1968, by J. Economy and R. Clark, assignors to applicant. A copy of this patent application was submitted with the application, along with fiber and fabric samples.

Applicant proposed to market the fiber in commerce for other than development or testing purposes on or after March 1, 1971.

The Commission is considering the above-described application, including the following questions:

(1) Whether the fiber described in the application may properly be designated by any existing generic name or names contained in 16 CFR 303.7 (Rule 7 under the Act), and

(2) What, if any, amendment to the rules and regulations under the Act, particularly § 303.7 (Rule 7) thereof, may be necessary and proper with regard to matters raised in the application.

Interested parties may participate by submitting in writing on or before May 4, 1972, their views, arguments, or other pertinent data to the Division of Textiles and Furs, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

This action is taken pursuant to section 7(c) of the Act, 72 Stat. 1721, 15 U.S.C. section 70e(c), in accordance with 5 U.S.C. section 553 and Subpart B of Part 1 of the Commission's Procedures and Rules of Practice, 16 CFR 1.11, et seq.

Institution of this rule making proceeding is not to be construed as a determination by the Commission as to the merits of the application.

By direction of the Commission dated February 25, 1972.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.72-3361 Filed 3-3-72;8:53 am]

[16 CFR Part 303]

TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

Notice of Proposed New Generic Name and Definition of Manufactured Fiber and Proposed Modification of Azlon and/or Modacrylic Definitions

On February 2, 1971, Toyobo Co., Ltd., a corporation of Japan with principal offices at 8 Dojima Hamdori, 2 Chome, Kita-Ku, Osaka, Japan, filed an application pursuant to § 303.8 (16 CFR 303.8) (Rule 8) of the rules and regulations under the Textile Fiber Products Identification Act, 72 Stat. 1717, et seq., 79 Stat. 124, 15 U.S.C. section 70, et seq. (hereinafter referred to as "Act"), requesting that 16 CFR 303.7 (Rule 7 under the Act), setting forth generic names and definitions of manufactured textiles fibers, be amended by adding thereto a new generic name and definition to cover its fiber called "Chinon" or "K–6." According to the application the fiber is comprised of about 30 percent by weight of casein which has been chemically modified by the grafting thereon of vinyl monomers, including acrylonitrile. The new generic definition proposed by applicant is as follows:

A manufactured fiber in which the fiber-forming substance is a graft copolymer of protein and vinyl monomers, the protein comprising 25 to 60 percent by weight of the fiber and the vinyl monomers comprising 40 to 75 percent by weight, at least one half the vinyl monomers by weight comprising acrylonitrile.

The new generic name proposed by applicant is one of the following, listed in order of (applicant's) preference: Soagraft, sonyl, soanyl, protenyl, promix, or pronyl.

The application has been placed in the public record in this proceeding and is available for public inspection.

Pursuant to 16 CFR 303.8 (Rule 8 under the Act) the Commission assigned the symbol "TO–0001" for temporary use by the applicant in designating the subject fiber pending further consideration of the application.

According to the application:

(Chinon) * * * is silk-like and its market is in products where silk has heretofore been used. The new fiber, however, has all the benefits of silk plus other advantages not possessed by silk.

* * * * *

In addition, Chinon fiber is characterized by marked chemical resistance, the ability to be dyed evenly (level) with all classes of dyes useable on silk including acid dyes which will not dye acrylic or modacrylics. It has a greater elastic recovery than silk so that it will not crease easily and it does not have the cold, clammy feel and high static charge characteristics of many synthetics.

It requires very special dyeing techniques which in itself is a reason for granting it a new generic name so that the trade will not make the mistake of using dyeing and finishing procedures common with other fibers, thereby damaging the fabric.

With regard to the chemical makeup of fibers within the proposed new generic category, the application states:

* * * (T)he new fiber is prepared as described in * * * U.S. Patent 3,104,154 (Sept. 17, 1963) * * * issue to Toyo Spinning Co., Ltd., applicant's previous name. The process for making the fiber involves dissolving in zinc chloride solution casein, a naturally occurring protein found in milk, and vinyl monomers which are predominantly acrylonitrile. The vinyl monomers are then polymerized in the solution to form a graft copolymer i.e. chains of the vinyl polymer project from protein molecules and together constitute a single polymeric mass which is in solution and which is extruded to form filaments.

The resulting filaments are a chemical hybrid, i.e. they are neither protein nor acrylic fiber. Thus, the product is not a mixture of the two materials and it is not possible to isolate or even to regenerate by chemical means the protein portion and the vinyl or acrylonitrile monomer portion, i.e. the chemical reaction involved is irreversible.

In the final fiber about 25–60 percent by weight comes from the initial protein, and about 40–75 percent from vinyl monomer units of which at least one-half by weight are acrylonitrile units.

Applicant maintains that its fiber should not be classified as "modacrylic," paragraph (b) of 16 CFR 303.7 (Rule 7 under the Act); and that it should not be classified as "azlon," paragraph (g) of § 303.7 (Rule 7) because the casein in the fiber is not regenerated protein within the meaning of such section (Rule) and the protein content is not high enough. Regarding these points, applicant states:

> * * * (The modacrylic) category was established to embrace modified acrylics as its name clearly implies * * *. The commercial products which necessitated establishment of this category were the modified acrylics which incorporated chlorine-containing monomers to overcome flammability properties of acrylics and thus render them especially suited for use in products to be handled by children such as dolls' hair or loosely constructed products which might pose fire hazards as a direct result of their construction, such as synthetic fur. The commercial products are sold in the United States under the trademarks Dynel and Verel.
>
> Stated otherwise, modacrylic is recognized as an acrylic which has been modified with a halogenated monomer so as to be flame resistant.
>
> Page 135 of the United Piece Dye Works Guidebook, * * * (Guidebook to Man-Made Textile Fibers and Textured Yarns of the World, Third Edition 1969, gives) the full entry under "modacrylic." It is noted that Dynel is described as not supporting combustion and Verel is set out as used in "flame-resistant draperies."
>
> (The Textile World's 1964 Man-Made Fiber Chart shows) * * * the complete entry under modacrylic, listing both Dynel and Verel and under effect of heat * * * (states) that both "will not support combustion."
>
> A thought which readily comes to mind is to amend or modify the present definition of modacrylic to embrace the novel fiber. This, however, would be a marked disservice both to the industry and the consumer whom the act is intended to protect. While the definition of modacrylic says nothing about flame resistance, that is what it means to the trade and public. To change the definition to embrace products which are not especially flameproof, only as much so as ordinary fibers, might result in the novel fiber unintentionally and mistakenly being used in end products where it does not have the desired properties, potentially posing a safety hazard, e.g. childrens' wear, sleepwear, theater draperies, curtains, dolls' hair, etc.
>
> While it is not the Commission's fault that modacrylic has come to mean certain physical properties as a result of chemical properties not included in the definition, it must be the Commission's concern that they do not act in such manner as will create confusion and a safety hazard.
>
> In modacrylics, by definition the fiber-forming substance is a "long chain synthetic polymer." This does not hold true for the novel polymer which is composed of grafted natural polymer with a three-dimensional structure wherein the runs of polymer molecules are cross-linked * * *.

Applicant states that there are differences between Chinon and acrylic-type fibers with regard to such properties as transition temperature, stress-strain curve, solubility, and dyeing characteristics, and then continues:

> The marked resistance of Chinon to acids and chemicals and caustic soda, unlike silk * * *, further evidences that the protein is involved in a special way which imparts fundamentally different properties. Thus, except for the presence of the dye sites of its "parents," the offspring fiber is markedly different from both of its "parents" casein and acrylonitrile, and their relatives, silk and acrylics and modacrylics.

According to the application, the subject fiber is covered by various foreign patents, issued and pending, as well as the aforementioned U.S. Patent No. 3,104,154.

As to commercialization, applicant states that the fiber is now being produced commercially in Japan at a rate of about 1 million pounds annually with intentions of expanding and that it is being sold under the trademark Chinon, registered in Japan, at more than $5 per pound. Applicant further states: "Efforts are presently being made to interest American end product manufacturers to purchase fabric and/or yarn. Applicant in Japan not only makes the fiber but makes greige goods as well."

Along with its application applicant submitted as exhibits copies of U.S. Patent No. 3,104,154; pages 124 and 135 of the "Guidebook to Man-Made Textile Fibers and Textured Yarns of the World," 3d Ed.; Textile World's 1964 Man-Made Fiber Chart, in part; pages 23–32 of "Industrial and Engineering Chemistry," March 1970 (Vol. 62, No. 3); advertisement from "Japan Industrial World," May 1970, page 13; inside front cover of "Japan Exports and Imports," 1970; and a "Technical Guide to Chinon for Dyeing and Finishing." It also submitted exhibits comparing solubilities of Chinon with those of silk and dyeing characteristics of Chinon with those of modacrylic, along with Chinon samples—some yarn, a printed woven fabric, a scarf, and a necktie—and a list of issued Japanese patents.

The Commission is considering the above-described application and what, if any, amendment to the rules and regulations under the Act, particularly 16 CFR 303.7 (Rule 7) thereof, may be necessary and proper with regard to matters raised therein, including (but not necessarily by way of limitation):

(1) Whether the fiber described in the application may properly be designated by any existing generic name or names contained in 16 CFR 303.7 (Rule 7 under the Act),

(2) Whether any definition or definitions of generic names contained in 16 CFR 303.7 (Rule 7) should be modified so as to cover a fiber such as applicant's, or

(3) Whether a new generic name and definition should be added to § 303.7 (Rule 7) which would cover a fiber such as applicant's.

The Commission is also considering whether the modacrylic definition, paragraph (b) of 16 CFR 303.7 (Rule 7), should be narrowed so that existing, possible, and future fibers falling therein will be more alike and predictable with regard to chemical and physical properties.

Interested parties may participate by submitting in writing on or before May 4, 1972, their views, arguments, or other pertinent data to the Division of Textiles and Furs, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

This action is taken pursuant to section 7(c) of the Act, 72 Stat. 1721, 15 U.S.C. section 70e(c), in accordance with 5 U.S.C. section 553 and Subpart B of Part 1 of the Commission's procedures and rules of practice, 16 CFR 1.11, et seq.

Institution of this rule making proceeding is not to be construed as a determination by the Commission as to the merits of the application.

By direction of the Commission, dated February 25, 1972.

[SEAL] CHARLES A. TOBIN,
Secretary.

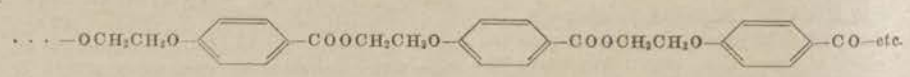
[FR Doc.72-3363 Filed 3-3-72;8:53 am]

[16 CFR Part 303]

TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

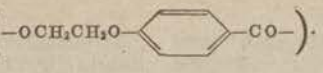
Notice of Proposed New Generic Name and Definition of Manufactured Fiber and Proposed Modification of Polyester Definition

On December 9, 1970, Unitika Ltd., a Japanese corporation with executive offices at 4–68 Kitakyutaro-Machi, Higashiku, Osaka, Japan, and U.S. offices at 350 Fifth Avenue, New York, NY 10001, filed an application pursuant to § 303.8 (16 CFR 303.8) (Rule 8) of the rules and regulations under the Textile Fiber Products Identification Act, 72 Stat. 1717, et seq., 79 Stat. 124, 15 U.S.C. section 70, et seq. (hereinafter referred to as "Act"), requesting that 16 CFR 303.7 (Rule 7 under the Act), setting forth generic names and definitions of manufactured textiles fibers, be amended by adding thereto a new generic name and definition to cover its fiber called "A-Tell." According to the application the fiber has essentially the following chemical formula:



The new generic name and definition proposed by applicant are as follows:

Benzoate [or Peb or Pebfil or Benox]—a manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85 percent by weight of para-ethylene-oxy benzoate units.



The application has been placed in the public record in this proceeding and is available for public inspection.

Pursuant to 16 CFR 303.8 (Rule 8 under the Act) the Commission assigned the symbol "UT–0001" for temporary use by the applicant in designating the subject fiber pending further consideration of the application.

Applicant states that its fiber is a distinctive new one exhibiting advantageous physical and chemical properties; that it is not covered by any generic classification in 16 CFR 303.7 (Rule 7 under the Act); and that it should not be identified by any of the generic names in such section (Rule).

According to the application, the subject fiber is covered by U.S. Patent No. 3,291,778, Dec. 13, 1966, issued to Mikio Korematsu, Saeki, Japan, assignor to Polyester-ether Development Co., Ltd., Tokyo, Japan. Applicant submitted with its application copies of this patent, a number of fiber and fabric exhibits, commercial development exhibits relating to promotion and advertising, detailed information concerning the physical and chemical properties of its fiber, and a flow sheet showing the steps in its manufacture.

The application contains the following with regard to commercial development of the subject fiber:

Limited test marketing to the consumer is planned for no later than late 1970 or early 1971. This will consist of a promotional program on specific fibrous structures. The Unitika fibers have already been shipped in interstate commerce in noncommercial quantities totaling several thousand pounds for experimental evaluation.

The fiber is presently available in quantity and has met with considerable commercial success in countries foreign to the United States. In Japan, for example, a plant now exists which has a capacity of approximately 3 million pounds per year of the fiber. This facility can be expanded to an estimated capacity of approximately 5 million pounds per year by late 1972. Unitika Ltd. is moreover presently engaged in evaluation programs with various leading domestic textile companies representing a broad range of interests in the industry. Their experience with the fiber and evaluation thereof should enable Unitika to estimate with reasonable accuracy potential U.S. market for this product. The initial response has been most favorable and encouraging.

At the time of the application, most of applicant's production was being sold in Japan. "A-Tell" has been advertised in Japan in connection with printed fabric, kimonos, and high fashion women's wear and in France in connection with high fashion women's wear.

The Commission is considering the above-described application, including the following questions:

(1) Whether the fiber described in the application may properly be designated by any existing generic name or names contained in 16 CFR 303.7 (Rule 7 under the Act), and

(2) What, if any, amendment to the rules and regulations under the Act, particularly § 303.7 (Rule 7) thereof, may be necessary and proper with regard to matters raised in the application.

Should the Commission determine that some amendment of § 303.7 (Rule 7) is necessary, it will consider whether the present definition of polyester, paragraph (c) thereof, should be broadened to cover fibers such as applicant's or whether a new generic name and definition should be added to § 303.7 (Rule 7).

Interested parties may participate by submitting in writing on or before May 4, 1972, their views, arguments, or other pertinent data to the Division of Textiles and Furs, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

This action is taken pursuant to section 7(c) of the Act, 72 Stat. 1721, 15 U.S.C. section 70e(c), in accordance with 5 U.S.C. section 553 and Subpart B of Part 1 of the Commission's procedures and rules of practice, 16 CFR 1.11, et seq.

Institution of this rule making proceeding is not to be construed as a determination by the Commission as to the merits of the application.

By direction of the Commission dated February 25, 1972.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.72-3362 Filed 3-3-72;8:53 am]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1048]

[Ex Parte No. MC–37 (Sub-No. 21)]

COMMERCIAL ZONE, WILMINGTON, DEL.

Notice of Proposed Rule Making

Order. At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 16th day of November 1971.

It appearing, that as disclosed by the record in No. MC–C–6905, Mercer Motor Freight, Inc.—Investigation—M.C.C.—the city of Wilmington, Del., decreased in population from more than 100,000, prior to 1960, to less than 100,000 as reflected in the 1960 and 1970 decennial censuses, thereby arguably contracting its commercial zone by application of the population-mileage formula as set forth at 49 CFR 1048.101 and 1048.102;

It further appearing, that for the reasons noted in the above-cited report, it would be in the public interest to institute a rule making proceeding to determine (1) the legal status and significance upon this Commission's regulatory functions of the effect of this population contraction upon the commercial zone of Wilmington by application of the population-mileage formula; (2) the proper interpretation of certificates, permits, and licenses authorizing service at Wilmington; and (3) the limits of the commercial zone of Wilmington;

It is ordered, That a proceeding be, and it is hereby, instituted under the authority of part II of the Interstate Commerce Act, and 5 U.S.C. 553 and 557 (the Administrative Procedure Act), (1) to inquire into the present status of the commercial zone of Wilmington; (2) to interpret certificates, permits, and licenses authorizing service at Wilmington; (3) to define the limits of the commercial zone of Wilmington, if necessary; and (4) to take such other and further action as the facts and circumstances may justify or require.

It is further ordered, That no oral hearing be scheduled for the receiving of testimony in these proceedings unless a need therefor should later appear, but that any interested person may participate in the ordered rulemaking proceeding by submitting for consideration written statements of facts, views, and arguments on the subjects mentioned above, or any other subject pertinent to these proceedings.

It is further ordered, That any person wishing to participate in these proceedings by submitting statements, views, or arguments on the involved matters shall file an original and 15 copies of such statements, views, or arguments with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, on or before the 30th calendar day after publication in the FEDERAL REGISTER, or the next working day if that deadline falls on a weekend or holiday.

And it is further ordered, That a copy of this order be posted in the Office of the Secretary, Interstate Commerce Commission, for public inspection and that a copy be delivered to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER as notice to all interested persons; written materials or suggestions submitted will be available for public inspection at the offices of the Interstate Commerce Commission, 12th and Constitution, Washington, DC, during regular business hours.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-3360 Filed 3-3-72;8:53 am]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Customs

INSTANT POTATO GRANULES FROM CANADA

Withholding of Appraisement Notice

Information was received on August 27, 1971, that instant potato granules from Canada were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the FEDERAL REGISTER of September 28, 1971, on page 19095. The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

Pursuant to section 201(b) of the Act (19 U.S.C. 160(b)), notice is hereby given that there are reasonable grounds to believe or suspect that the purchase price (section 203 of the Act; 19 U.S.C. 162) or the exporter's sales price (section 204 of the Act; 19 U.S.C. 163), as applicable, of instant potato granules from Canada is less, or likely to be less, than the foreign market value (section 205 of the Act; 19 U.S.C. 164).

Statement of reasons. The information currently before the Bureau tends to indicate that the probable basis of comparison for fair value purposes is between purchase price of exporter's sales price and the adjusted home market price.

Purchase price will probably be based on the f.o.b. delivered packed price with deductions for discounts, freight, and other charges, as applicable.

Exporter's sales price will probably be calculated on the delivered price in the United States with appropriate deductions for discounts, inland freight in Canada and the United States, U.S. duty, brokerage charges, and other selling expenses incurred in the United States.

Home market price will probably be based on the delivered packed price to distributors in the home market with deductions made for discounts, inland freight, and other included charges, as applicable.

Using the above criteria, there are reasonable grounds to believe or suspect that purchase price or exporter's sales price, as appropriate, will be lower than the adjusted home market price.

Customs officers are being directed to withhold appraisement of instant potato granules from Canada in accordance with § 153.48, Customs regulations (19 CFR 153.48).

In accordance with § 153.32(b) and 153.37, Customs regulations (19 CFR 153.32(b), 153.37), interested parties may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any requests that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 2100 K Street NW., Washington, DC 20226, in time to be received by his office not later than 10 calendar days from the date of publication of this notice in the FEDERAL REGISTER.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER.

This notice, which is published pursuant to § 153.34(b), Customs regulations, shall become effective upon publication in the FEDERAL REGISTER (3-4-72). It shall cease to be effective at the expiration of 6 months from the date of this publication, unless previously revoked.

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved: March 2, 1972.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.72-3440 Filed 3-3-72;9:53 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A 6593]

ARIZONA

Notice of Proposed Withdrawal and Reservation of Lands

The Bureau of Reclamation, U.S. Department of the Interior, has filed an application, Serial No. A 6593 for the withdrawal of the mineral estate in the lands described below, from mineral location, entry and patent under the mining laws, including the mineral leasing laws, subject to valid existing rights.

The applicant desires the lands for the proposed location and construction of the Central Arizona Project facilities for a continuous period of time.

For a period of thirty 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, Department of the Interior, 3022 Federal Building, Phoenix, Ariz. 85025.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

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.

The lands involved in the application are:

GILA AND SALT RIVER MERIDIAN, ARIZONA

T. 5 N., R. 3 E.,
Sec. 31, lots 2, 3, and 4, E½SW¼, and SW¼SE¼.
T. 4 N., R. 4 W.,
Sec. 7, E½ and SE¼SW¼;
Sec. 8, E½;
Sec. 18, lots 2, 3, and 4, E½E½, and E½W½.
T. 4 N., R. 5 W.,
Sec. 13, SE¼SW¼;
Sec. 20, SE¼SE¼;
Sec. 21, S½SW¼ and SW¼SE¼;
Sec. 22, S½SE¼;
Sec. 23, NE¼SE¼ and S½SE¼;
Sec. 24, E½, E½W½, SW¼NW¼, and W½SW¼;
Sec. 25, W½NE¼, W½, and SE¼SE¼;
Sec. 26, E½, SE¼NW¼, W½NW¼, and SW¼;
Sec. 27, N½, N½S½, SW¼SW¼, and SE¼SE¼;
Sec. 28, N½, N½S½, and SE¼SE¼;
Sec. 29, E½, SE¼NW¼, and SW¼;
Sec. 30, SE¼SE¼;
Sec. 31, lots 2, 3, and 4, SE¼NW¼, E½SW¼, and E½.
T. 3 N., R. 6 W.,
Sec. 1, lots 1, 2, and 3, S½N½, and S½;
Sec. 2, SW¼SE¼ and E½SE¼;
Sec. 11, NE¼ and E½SE¼;
Sec. 12, W½.
T. 4 N., R. 6 W.,
Sec. 25, S½NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 26, SE¼NE¼ and NE¼SE¼;
Sec. 36, N½NW¼, SE¼NE¼, NE¼SE¼, and S½SE¼.

The areas described above aggregate 7,535.26 acres of patented lands within Maricopa County, Ariz., with the minerals reserved to the United States.

Dated: February 28, 1972.

EDWARD J. HOFFMANN,
Acting State Director.

[FR Doc.72-3348 Filed 3-3-72;8:54 am]

Office of Hearings and Appeals

[Docket No. M 72-32]

KINGS STATION COAL CORP.

Notice of Petition for Modification of Mandatory Safety Standard

In regard petition of Kings Station Coal Corp. for modification of mandatory safety standard (section 305(d)).

In accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. section 861(c) (1970)), notice is given that Kings Station Coal Corp. has filed a petition to modify the application of

section 305(d) of the Act, 30 U.S.C. section 865(d) (1970), to its King Mine, located in Gibson County, Ind.

Section 305(d), which is repeated in 30 CFR 75.507, provides as follows:

(d) All power-connection points, except where permissible power connection units are used, outby the last open crosscut shall be in intake air.

Petitioner proposes as an alternative to relocating certain power connection points from return air courses the installation of methane monitors at certain points in the main return air courses near the hoist shaft which will be set to deenergize at 1 percent methane content all power distributed to and through the shaft bottom. The monitors will have monthly functional checks with the results recorded. During all periods of monitor repair or replacement a certified person will maintain manual methane checks. Petitioner estimates that the main returns at the monitors will average 0.3 percent calculated methane.

Petitioner proposes also to install a fresh air split duct extending from the fresh air circuit near the approximate air shaft bottom to the shop area and to disconnect permanently all trolley wires and lights in the return air entries inby the methane monitors.

Petitioner asserts that the alternative method proposed will achieve equal or more protection to the miners than the standard set forth in section 305(d).

Parties interested in this petition should file their answers or comments within 30 days from the date of publication of this notice in the FEDERAL REGISTER with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. Copies of the petition are available for inspection at that address.

JAMES M. DAY,
Director,
Office of Hearings and Appeals.

FEBRUARY 24, 1972.

[FR Doc.72-3271 Filed 3-3-72;8:46 am]

Office of the Secretary

WILD FREE-ROAMING HORSES AND BURROS

Protection on Public Lands

The Act of December 15, 1971 (85 Stat. 649), Public Law 92-195, provides for the protection of wild free-roaming horses and burros on the public lands administered by the Department of the Interior through the Bureau of Land Management.

Section 3 of the Act places wild free-roaming horses and burros on these public lands under the jurisdiction of the Secretary of the Interior for the purpose of management and protection.

Section 5 of the Act provides that a person claiming ownership of a horse or burro on these public lands shall be entitled to recover it only if recovery is permissible under the branding and estray laws of the State in which the animal is found.

Section 8 of the Act provides that any person who

(1) Willfully removes or attempts to remove a wild free-roaming horse or burro from these public lands, without authority from the Secretary of the Interior, or

(2) Converts a wild free-roaming horse or burro on these public lands to private use, without authority from the Secretary of the Interior, or

(3) Maliciously causes the death or harassment of any wild free-roaming horse or burro on or from these public lands, or

(4) Processes or permits to be processed into commercial products the remains of a wild free-roaming horse or burro from these public lands, or

(5) Sells, directly or indirectly, a wild free-roaming horse or burro maintained on private or leased land pursuant to Section 4 of the Act, or the remains thereof, or

(6) Willfully violates a regulation issued pursuant to the Act, shall be subject to a fine of not more than $2,000, or imprisonment for not more than 1 year, or both.

Pursuant to this authority and responsibility given to the Secretary of the Interior under the Act, public notice is hereby given that rounding up, harassing, or removing from public lands administered by the Bureau of Land Management any horse or burro whose presence on such lands is not authorized by a license or permit, without written authorization from the Bureau of Land Management District Manager responsible for the management of such lands, is prohibited. Any person wishing to round up or remove unauthorized horses and burros from public lands must request authorization from the Bureau of Land Management District Manager.

Bureau of Land Management District Managers will carry out the provisions of this notice and take such action as considered necessary to enforce the Act.

The Act also applies to lands administered by the Department of Agriculture through the Forest Service. Any person wishing to round up or remove unauthorized horses or burros from National Forest lands must request authorization from the appropriate officer of the Forest Service.

HARRISON LOESCH,
Assistant Secretary of the Interior.

FEBRUARY 28, 1972.

[FR Doc.72-3268 Filed 3-3-72;8:46 am]

[DES 72-38; FY 1973]

TRANSMISSION SYSTEM OPERATIONS AND MAINTENANCE

Notice of Availability of Draft Environmental Statement

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Southwestern Power Administration has prepared a draft environmental statement for its transmission system operations and maintenance for FY 1973, and invites comments within forty-five (45) days of this notice.

The environmental statement considers the operation and maintenance of 1,700 miles of high-voltage transmission line and 32 substations and switching stations during FY 1973, in the States of Missouri, Oklahoma, Arkansas, and Texas.

Copies are available for inspection at the following locations:

Office of Assistant Secretary—Water and Power Resources, Department of the Interior, Room 5615, Washington, D.C. 20240, Telephone (FTS)-(202) 343-5113 or (202) 343-1100, Ext. 5113.

Office of the Administrator, Southwestern Power Administration, Post Office Drawer 1619, Tulsa, OK 74101, Telephone (FTS) (918) 584-7474 or (918) 584-7151, Ext. 7474.

Single copies are available and may be obtained by writing to the Administrator, Southwestern Power Administration, Post Office Drawer 1619, Tulsa, OK 74101.

Dated: February 24, 1972.

WILLIAM W. LYONS,
Deputy Assistant Secretary of the Interior.

[FR Doc.72-3273 Filed 3-3-72;8:51 am]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

WILD FREE-ROAMING HORSES AND BURROS

Protection on National Forest Lands

The Act of December 15, 1971 (85 Stat. 649), Public Law 92-195, provides for the protection of wild free-roaming horses and burros on the public lands administered by the Department of Agriculture through the Forest Service.

Section 3 of the Act places wild free-roaming horses and burros on National Forest lands under the jurisdiction of the Secretary of Agriculture for the purpose of management and protection.

Section 5 of the Act provides that a person claiming ownership of a horse or burro on these public lands shall be entitled to recover it only if recovery is permissible under the branding and estray laws of the State in which the animal is found.

Section 8 of the Act provides that any person who

(1) Willfully removes or attempts to remove a wild free-roaming horse or burro from these public lands, without authority from the Secretary of Agriculture, or

(2) Converts a wild free-roaming horse or burro on these public lands to private use, without authority from the Secretary of Agriculture, or

(3) Maliciously causes the death or harassment of any wild free-roaming

horse or burro on or from these public lands, or

(4) Processes or permits to be processed into commercial products the remains of a wild free-roaming horse or burro from these public lands,

(5) Sells, directly or indirectly, a wild free-roaming horse or burro maintained on private or leased land pursuant to section 4 of the Act, or the remains thereof, or

(6) Willfully violates a regulation issued pursuant to the Act, shall be subject to a fine of not more than $2,000, or imprisonment for not more than 1 year, or both.

Notice is hereby given that, as provided by the Act, rounding up, harassing, or removing any wild free-roaming horse or burro from public lands administered by the Forest Service is prohibited. Wild free-roaming horses or burros may be rounded up and removed from such lands only when written authorization has been obtained from the Forest Service.

Forest Service personnel will carry out the provisions of this notice and take such action as considered necessary to enforce the Act.

The Act also applies to lands administered by the Department of the Interior through the Bureau of Land Management. Any person wishing to round up or remove unauthorized horses or burros from public lands under the jurisdiction of the Bureau of Land Management should request authorization from the appropriate officer of the Bureau of Land Management.

EARL L. BUTZ,
Secretary of Agriculture.

FEBRUARY 28, 1972.

[FR Doc.72-3267 Filed 3-3-72;8:46 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. B-535]

F. BRENT BRADFORD

Notice of Loan Application

FEBRUARY 25, 1972.

F. Brent Bradford, Box 155, Boothbay, ME 04537, has applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a used wood vessel, about 36 feet in length, to engage in the fishery for lobsters.

Notice is hereby given, pursuant to the provisions of 16 U.S.C. 742c, Fisheries Loan Fund Procedures (50 CFR Part 250, as revised), and Reorganization Plan No. 4 of 1970, that the above entitled application is being considered by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Interior Building, Washington, D.C. 20235. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, National Marine Fisheries Service, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operation of the vessel will or will not cause such economic hardship or injury.

JOSEPH W. SLAVIN,
Acting Director.

[FR Doc.72-3256 Filed 3-3-72;8:45 am]

GROUNDFISH FISHERIES

Closure of Season

Notice is hereby given pursuant to § 240.8(a)(4), Title 50, Code of Federal Regulations, as follows:

On March 1, 1972, the Director, National Marine Fisheries Service, determined that U.S. vessels operating in regulatory areas. Subarea 5, east of 69°00′ W. longitude, defined in § 200.1(b)(5) and § 240.6(b)(2) had reached the quarterly catch limit for yellowtail flounder of 1,900 metric tons for the period January 1–March 31, 1972, as described in § 240.6(b)(2), published in the FEDERAL REGISTER 37 F.R. 786–787.

I hereby announce that the season for taking yellowtail flounder without restriction as to quantity by persons and vessels subject to the jurisdiction of the United States will terminate at 0001 hours local time in the area affected March 9, 1972. The restriction will remain in effect until 0001 hours local time April 1, 1972.

Issued at Washington, D.C., and dated March 1, 1972.

PHILIP M. ROEDEL,
Director,
National Marine Fisheries Service.

[FR Doc.72-3343 Filed 3-3-72;8:52 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. FDC-D-372; NADA 5-633V, etc.]

AGRI-TECH, INC., ET AL.

Iodinated Casein; Notice of Withdrawal of Approval of New Animal Drug Applications

A notice of opportunity for a hearing was published in the FEDERAL REGISTER of August 28, 1971 (36 F.R. 17367), proposing to withdraw approval of the following new animal drug applications covering drugs containing iodinated casein.

1. Protomone Thyroactive Casein; NADA (new animal drug application) No. 5-633V and NADA No. 5-987V, Agri-Tech, Inc., 4722 Broadway, Kansas City, Mo. 64112.

2. Stimulac Pellets; NADA No. 5-987V; Agri-Tech, Inc.

3. MOM Sow Milking Tablets; NADA No. 5-987V; Agri-Tech, Inc.

4. Iocine; NADA No. 7-857V; Haver-Lockhart Laboratories, Post Office Box 676, Kansas City, Mo. 64141.

5. Libidoxin Powder; NADA No. 8-581V, Jensen-Salsbery Laboratories, 520 West 21st Street, Kansas City, Mo. 64141.

Agri-Tech, Inc., holder of NADA No. 5-987V and NADA No. 5-633V requested a hearing. However, a well-organized and full-factual analysis of the clinical and other investigational data was not presented to support the request. Therefore, the Commissioner of Food and Drugs finds that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the applications. The hearing request is therefore denied.

No other responses to the notice of opportunity for a hearing were received.

The Commissioner finds on the basis of new information before him with respect to said drugs, evaluated together with the evidence available to him when the applications were approved that there is a lack of substantial evidence that the drugs will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Based on the grounds set forth, the Commissioner concludes that approval of said new animal drug applications 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. 5-633V, 5-987V, 7-857V, and 8-581V including all amendments and supplements thereto, is hereby withdrawn effective on the date of publication of this document.

Dated: February 24, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-3286 Filed 3-3-72;8:49 am]

[DESI 2-0001 NV]

DIAMOND LABORATORIES, INC.

Neomycin and Certain Other Drug Ingredients; Notice of Drugs Deemed Adulterated

An announcement published in the FEDERAL REGISTER of May 28, 1970 (35 F.R. 8403), concerning Keosul Rx Boluses with Neojel and Keosul Rx with Neojel manufactured by Diamond Laboratories, Inc., Post Office Box 863, Des Moines, Iowa 50303, set forth the findings of the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, and the Food and Drug Administration that the drugs are probably not effective for oral treatment of diarrhea (scours) and enteritis in pigs, dogs, cats, calves, colts, and lambs. Said announcement provided the manufacturer and all interested parties a 6-month period in which to submit new animal drug applications.

Diamond Laboratories, Inc., responded on June 29, 1970, by submitting a protocol proposal for demonstrating efficacy. However, a new animal drug application was not submitted within the 6-month period.

On the basis of the foregoing information and other information before him, the Commissioner of Food and Drugs concludes that the above-named drugs are adulterated within the meaning of section 501(a)(5) of the Federal Food, Drug, and Cosmetic Act in that they are not the subject of approved new animal drug applications pursuant to section 512 of the act. Therefore, notice is given to Diamond Laboratories, Inc., and all interested persons that all stocks of said drugs within the jurisdiction of the Federal Food, Drug, and Cosmetic Act are deemed adulterated within the meaning of the act and are subject to appropriate regulatory action.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 501(a)(5) and 512, 52 Stat. 1049, as amended, 82 Stat. 343–51; 21 U.S.C. 351(a)(5) and 360b) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: February 18, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-3291 Filed 3-3-72;8:49 am]

NEUTRON PRODUCTS, INC.

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 2B2766) has been filed by Neutron Products, Inc., Dickerson, Md. 20753 proposing the issuance of a food additive regulation to provide for the safe use of gamma radiation from cobalt 60 for microbiological control of a coextruded composite film consisting of ethylene-vinyl acetate copolymer, polypropylene and polyethylene to be used in contact with food.

Dated: February 24, 1972.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.72-3336 Filed 3-3-72;8:53 am]

[DESI 9861]

CERTAIN CARDIOVASCULAR PREPARATIONS

Drugs for Human Use; Drug Efficacy Study Implementation

Certain cardiovascular preparations, containing reserpine and calcium pentobarbital; deserpidine and calcium pentobarbital; reserpine and mephobarbital or reserpine and sodium butabarbital.

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 drugs for oral use:

1. Nembu-Serpin Tablets and Nembu-Serpin ½ Strength Tablets, containing reserpine and calcium pentobarbital; Abbott Laboratories, 14th and Sheridan Road, North Chicago, Ill. 60064 (NDA 9–861).

2. Harmonyl-N Tablets and Harmonyl-N Half-Strength Tablets, containing deserpidine and calcium pentobarbital; Abbott Laboratories (NDA 11–191).

3. Reserpine with Mebaral Tablets, containing reserpine and mephobarbital; Winthrop Laboratories, Division of Sterling Drug, Inc., 90 Park Avenue, New York, N.Y. 10016 (NDA 10–227).

4. Mephoserp Tablets, containing reserpine and mephobarbital; Nysco Laboratories, Inc., 34–24 Vernon Boulevard, Long Island City, N.Y., 11106 (NDA 11–572).

5. Butiserpine Tablets, containing reserpine and sodium butabarbital; McNeil Laboratories, Inc., Camp Hill Road, Fort Washington, Pa. 19034 (NDA 9–921).

6. Butiserpine Elixir, containing reserpine and sodium butabarbital; McNeil Laboratories (NDA 10–456).

7. Butiserpine R-A Tablets, containing reserpine and sodium butabarbital; McNeil Laboratories (NDA 10–646).

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). The effectiveness classification and marketing status are described below.

The Food and Drug Administration has considered the Academy's reports, as well as other available evidence, and concludes that there is a lack of substantial evidence, within the meaning of the Federal Food, Drug, and Cosmetic Act, that these fixed combinations drugs will have the effect that they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or that each component of the combination contributes to the total effect claimed for the drug.

Accordingly, the Commissioner of Food and Drugs intends to initiate proceedings to withdraw approval of the above-listed new drug applications. Any related drug for human use, not the subject of an approved new drug application, may be affected by this action.

Prior to initiating such action, however, the Commissioner invites the holders of the new drug applications for these drugs and any interested person who might be adversely affected by their removal from the market, to submit pertinent data bearing on the proposal within 30 days after publication hereof in the FEDERAL REGISTER.

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 21 CFR Part 130 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.

This announcement of the proposed action and implementation of the NAS–NRC reports for these drugs is made to give notice to persons who might be adversely affected by their withdrawal from the market.

A copy of the Academy's report has been furnished to each firm referred to above. Communications forwarded in response to this announcement should be identified with the reference number DESI 9861, directed to the attention of the appropriate office listed below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

Requests for the Academy's report: Drug Efficacy Study Information Control (BD–67), Bureau of Drugs.

All other communications regarding this announcement: Drug Efficacy Study Implementation Project Office (BD–60), 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 the authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: February 4, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-3290 Filed 3-3-72;8:49 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D–72–154]

ACTING AREA DIRECTOR, ET AL., INDIANAPOLIS AREA OFFICE

Designation

SECTION A. *Designation.* The listed officials are designated to serve as Acting Area Director, Indianapolis Area Office, in the order named, during the present vacancy in that office, with all the powers, functions, and duties redelegated or assigned to the Area Director: *Provided,* That no official here listed is authorized to serve as Acting Area Director unless and until all the officials listed before him in this designation are unavailable to act by reason of absence or vacancy in the position of Area Director, Indianapolis:

1. Steven J. Hans, Acting Area Director.

2. Louciene Watson, Acting Deputy Director.

3. Stephen J. Havens, Director, Operations Division.

4. Theodore E. Bruzas, Deputy Director, Operations Division.

SEC. B. *Supersedure.* This designation supersedes the designation of Acting Area Director published December 14, 1971 (36 F.R. 23733).

(The authority for this designation is set forth in 36 F.R. 3389 Feb. 23, 1971, sec. B.2.; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Effective date. This designation shall be effective as of January 24, 1972.

DON MORROW,
Deputy Regional Administrator, Region V, Chicago Ill.

[FR Doc.72-3282 Filed 3-3-72;8:47 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50-352, 50-353]

PHILADELPHIA ELECTRIC CO.

Order Confirming Order Setting Evidentiary Hearing

In the matter of Philadelphia Electric Co. (Limerick Generating Station Units 1 and 2).

At a prehearing conference held on February 24, 1972, inquiry was submitted and determination was made concerning the convenience and availability of the parties and intended intervenors for the initial session of the evidentiary hearing in this proceeding to convene on April 24, 1972. An order designating and permitting intervention will be issued as soon as the parties and the intended intervenors file further responses in reference to the presently filed petitions which were received within the time designated by the Commission in its notice of hearing.

Take notice: *and it is hereby ordered,* In accordance with the Atomic Energy Act, as amended, and the rules of practice of the Commission that the initial session of evidentiary hearing in this proceeding shall convene at 9 a.m. on Monday, April 24, 1972, in the Meeting Room of the Holiday Inn, West King Street at Route 100, Pottstown, Pa.

At the first day of this evidentiary session, the Atomic Safety and Licensing Board will provide opportunity for members of the public, who desire to do so, to present statements by way of limited appearance in reference to the application here involved. The hours of all daily sessions may be greater in number than ordinary for administrative hearings in an effort to provide full opportunity for presentation of statements from limited appearance participants as well as for the formal evidentiary presentations.

Issued: February 29, 1972, Germantown, Md.

ATOMIC SAFETY AND LICENSING BOARD,
SAMUEL W. JENSCH,
Chairman.

[FR Doc.72-3255 Filed 3-3-72;8:45 am]

[Docket No. 50-322]

LONG ISLAND LIGHTING CO.

Supplementary Notice of Hearing on Application for Provisional Construction Permit

In the matter of Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit No. 1), Docket No. 50-322.

On February 25, 1970, a notice of hearing on application for provisional construction permit was published by the Atomic Energy Commission (the Commission) in the FEDERAL REGISTER (35 F.R. 3693) in the captioned proceeding. That notice designated an Atomic Safety and Licensing Board (Board) to conduct the hearing, specified the issues to be determined by the Board, provided an opportunity to intervene with respect to the issues specified in such Notice to persons whose interests may be affected by the proceeding, and provided an opportunity to make limited appearances to other persons who wished to make a statement in the proceeding but who did not wish to intervene.

On September 9, 1971, the Commission published a revision of its regulations in 10 CFR Part 50, Appendix D, "Implementation of the National Environmental Policy Act of 1969," (36 F.R. 18071) to set forth an interim statement of Commission policy and procedure for implementation of the National Environmental Policy Act of 1969 (NEPA).[1] The revised regulations require the consideration of additional matters in applicants' Environmental Reports and in Detailed Statements of environmental considerations and provide for determination by the presiding Atomic Safety and Licensing Board in pending proceedings of specified issues in addition to and different from those previously in issue in AEC licensing proceedings.

Notice is hereby given, pursuant to 10 CFR Part 2, rules of practice, and Appendix D of 10 CFR Part 50, "Licensing of Production and Utilization Facilities," that in the conduct of the captioned proceeding, the Atomic Safety and Licensing Board will, in addition to considering and determining the issues pertaining to radiological health and safety and the common defense and security specified for hearing in the notice of hearing in this proceeding published on February 25, 1970, consider and make determinations, pursuant to the National Environmental Policy Act of 1969, on the matters set forth below.

1. In the event that this proceeding is not a contested proceeding as defined by 10 CFR 2.4(n) of the Commission's rules of practice, the Board will determine whether the environmental review conducted by the Commission's regulatory staff pursuant to Appendix D of 10 CFR Part 50 has been adequate.

2. In the event that this proceeding is or becomes a contested proceeding, the Board will decide any matters in controversy among the parties with respect to matters within the scope of Appendix D of 10 CFR Part 50, and will consider and decide whether, in accordance with the requirements of Appendix D of 10 CFR Part 50, the provisional construction permit should be issued as proposed.

3. Regardless of whether the proceeding is contested or uncontested, the Board will, in accordance with section A.11 of Appendix D of 10 CFR Part 50, (a) determine whether the requirements of section 102(2) (C) and (D) of NEPA and Appendix D of 10 CFR Part 50 of the Commission's regulations have been complied with in this proceeding; (b) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view toward determining the appropriate action to be taken; (c) determine whether the provisional construction permit should be granted, denied or appropriately conditioned to protect environmental values.

This notice supplements the Notice of Hearing published on February 25, 1970, with respect to the matters which may now be raised under paragraph A.11 of Appendix D of 10 CFR Part 50, but does not affect the status of any person previously admitted as a party to this proceeding or provide an additional opportunity to any person to intervene on the basis of, or to raise matters encompassed within, the issues pertaining to radiological health and safety and the common defense and security specified for hearing in the prior above-referenced notice of hearing.

As they become available, any new or supplemental Environmental Report, and any new or supplemental Detailed Statement required by Appendix D of 10 CFR Part 50 will be placed in the Commission's Public Document Room at 1717 H Street NW., Washington, DC, where they will be available for inspection by members of the public. Copies of those documents will also be made available at the Comsewogue Public Library, 170 Terryville Road, Port Jefferson Station, NY, for inspection by members of the public between the hours 10 a.m. and 9 p.m. Monday through Thursday, and 10 a.m. and 5 p.m. Friday and Saturday. A copy of any new or supplemental Detailed Statement prepared and, to the extent of supply, a copy of any new or supplemental Environmental Report filed, may be obtained, when available, by request to the Director of the Division of Reactor Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

Any person who wishes to make an oral or written statement in this proceeding setting forth his position on the issues specified in this notice, but who does not wish to file a petition for leave to intervene, may request permission to make a limited appearance pursuant to

[1] The Commission has since adopted certain amendments to revised Appendix D which were published in the FEDERAL REGISTER on Sept. 30, 1971 (36 F.R. 19158), Nov. 11, 1971 (36 F.R. 21579), and Jan. 20, 1972 (37 F.R. 864).

the provisions of 10 CFR § 2.715 of the Commission's rules of practice. Limited appearances will be permitted at the time of the hearing in the discretion of the Board, within such limits and on such conditions as may be fixed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, not later than thirty (30) days from the date of publication of this notice in the FEDERAL REGISTER.

Any person whose interest may be affected by the proceeding who does not wish to make a limited appearance and who wishes to participate as a party in the proceeding with respect to the issues set forth in this notice must file a petition for leave to intervene.

Petitions for leave to intervene, pursuant to the provisions of 10 CFR 2.714 of the Commission's rules of practice, must be received in the Office of the Secretary of the Commission, United States Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Branch, or the Commission's Public Document Room, 1717 H Street NW., Washington, DC, not later than thirty (30) days from the date of publication of this notice in the FEDERAL REGISTER. The petition shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by Commission action, and the contentions of the petitioner in reasonably specific detail. A petition which sets forth contentions relating to matters outside of the issues specified in this notice will be denied. A petition for leave to intervene which is not timely will be denied unless, in accordance with 10 CFR 2.714, the petitioner shows good cause for failure to file it on time.

A person permitted to intervene becomes a party to the proceeding, and has all the rights of the applicant and the regulatory staff to participate fully in the conduct of the hearing. For example, he may examine and cross-examine witnesses. A person permitted to make a limited appearance does not become a party, but may state his position and raise questions which he would like to have answered to the extent that the questions are within the scope of the hearing as specified in the issues set out above. A member of the public does not have the right to participate unless he has been granted the right to intervene as a party or the right of limited appearance.

An answer to this notice, or an amended answer with respect to the issues specified in this notice, must be filed by the applicant, pursuant to the provisions of 10 CFR 2.705 of the Commission's rules of practice, not later than twenty (20) days from the date of publication of this notice in the FEDERAL REGISTER. Parties already participating in this proceeding as intervenors with respect to the issues specified in the notice of hearing published February 25, 1970, must also file an answer with respect to the issues specified in this notice not later than twenty (20) days from the date of publication of this notice in the FEDERAL REGISTER, in accordance with the requirements of 10 CFR § 2.705 of the Commission's rules of practice.

Answers and petitions required to be filed in this proceeding may be filed by mail or telegram addressed to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Branch, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

The date and place of further hearings will be set by subsequent order of the Board and notice thereof will be provided to the parties, including persons granted leave to intervene on issues set forth in this notice, and will be published in the FEDERAL REGISTER. In setting these dates, due regard will be had for the convenience and necessity of the parties or their representatives, as well as Board members.

Dated at Germantown, Md., this 1st day of March 1972.

For the Atomic Energy Commission.

W. B. McCOOL,
Secretary of the Commission.

[FR Doc.72-3394 Filed 3-3-72;8:54 am]

[Docket No. 50-271]

VERMONT YANKEE NUCLEAR POWER CORP.

Supplementary Notice of Hearing on Operating License Application

In the matter of Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Station), Docket No. 50-271.

On February 27, 1971, a notice of hearing on application for an operating license was published by the Atomic Energy Commission (the Commission) in the FEDERAL REGISTER (36 F.R. 3837) in the captioned proceeding. That notice designated an Atomic Safety and Licensing Board (Board) to conduct the hearing, specified the issues to be determined by the Board, provided an opportunity to intervene with respect to the issues specified in such Notice to persons whose interests may be affected by the proceeding, and provided an opportunity to make limited appearances to other persons who wished to make a statement in the proceeding but who did not wish to intervene.

On September 9, 1971, the Commission published a revision of its regulations in 10 CFR Part 50, Appendix D, "Implementation of the National Environmental Policy Act of 1969," (36 F.R. 18071) to set forth an interim statement of Commission policy and procedure for implementation of the National Environmental Policy Act of 1969 (NEPA).[1] The revised regulations require the consideration of additional matters in applicants' Environmental Reports and in Detailed Statements of environmental considerations and provide for determination by the presiding Atomic Safety and Licensing Board in pending proceedings of specified issues in addition to and different from those previously in issue in AEC licensing proceedings.

Notice is hereby given, pursuant to 10 CFR Part 2, rules of practice, and Appendix D of 10 CFR Part 50, "Licensing of Production and Utilization Facilities," that in the conduct of the captioned proceeding, the Atomic Safety and Licensing Board will consider and determine, in addition to the issues pertaining to radiological health and safety and the common defense and security specified for hearing in the notice of hearing in this proceeding published February 27, 1971, and pursuant to the National Environmental Policy Act of 1969, any matter in controversy with respect to whether, in accordance with the requirements of Appendix D of 10 CFR Part 50, the operating license should be issued as proposed.

If matters covered by Appendix D of 10 CFR Part 50 are in issue, the Board will, in accordance with section A.11 of Appendix D of 10 CFR Part 50, in addition to deciding any matters in controversy among the parties with respect to those matters: (1) Determine whether the requirements of section 102(2) (C) and (D) of NEPA and Appendix D of 10 CFR Part 50 of the Commission's regulations have been complied with in this proceeding; and (2) independently consider the final balance among conflicting factors covered by Appendix D to 10 CFR Part 50 and contained in the record of the proceeding with a view toward determining the appropriate action to be taken. On the basis of the foregoing, a determination will be made whether the operating license should be granted, denied or appropriately conditioned to protect environmental values. This notice supersedes the notice of hearing published on February 27, 1971 with respect to matters which may be raised under paragraph A.11 of Appendix D of 10 CFR Part 50, but does not affect the status of any person previously admitted as a party to this proceeding or provide an additional opportunity to any person to intervene on the basis of, or to raise matters encompassed within, the issues pertaining to radiological health and safety and the common defense and security specified for hearing in the prior above-referenced notice of hearing.

While the matter of the full power operating license is pending before the Board, the applicant may make a motion in writing pursuant to § 50.57(c) of 10 CFR Part 50 for an operating license authorizing low power testing, that is, operation at not more than 1 percent of full power for the purpose of testing the facility (in this proceeding such a motion is pending), and further operations short of full power operation. The Board may grant the motion upon finding that the proposed licensing action will not

[1] The Commission has since adopted certain amendments to revised Appendix D which were published in the FEDERAL REGISTER on Sept. 30, 1971 (36 F.R. 19158), Nov. 11, 1971 (36 F.R. 21579), and Jan. 20, 1972 (37 F.R. 864).

have a significant, adverse impact on the quality of the environment and upon satisfaction of the requirements of § 50.57 (c) of 10 CFR Part 50. In addition, the Board may grant a motion, pursuant to § 50.57(c) of 10 CFR Part 50, upon satisfaction of the requirements of that paragraph, after consideration and balancing of the following factors:

(a) Whether it is likely that limited operation during the prospective review period will give rise to a significant, adverse impact on the environment; the nature and extent of such impact, if any; and whether redress of any such adverse environmental impact can reasonably be effected should modification or termination of the limited license result from the ongoing NEPA environmental review.

(b) Whether limited operation during the prospective review period would foreclose subsequent adoption of alternatives in facility design or operation of the type that could result from the ongoing NEPA environmental review.

(c) The effect of delay in facility operation upon the public interest. Of primary importance under this criterion are the power needs to be served by the facility; the availability of alternative sources, if any, to meet those needs on a timely basis; and delay costs to the licensee and to consumers.

Operation beyond twenty percent (20%) of full power will not be authorized except on specific approval of the Commission, upon the Commission's finding that an emergency situation or other situation requiring such operation in the public interest exists.

Prior to taking any action on a motion pursuant to § 50.57(c) of 10 CFR Part 50, which any party opposes, the Board shall, with respect to the contested activity sought to be authorized, make findings on the issues specified in the Notice of Hearing published on February 27, 1971, and will determine whether the proposed licensing action will have a significant, adverse impact on the quality of the environment or make findings on the factors specified above, as appropriate, in the form of an initial decision. If the license is one which requires the specific approval of the Commission, the Board will certify directly to the Commission, for determination, without ruling thereon, the matter of whether operation beyond twenty percent (20%) of full power should be authorized.

Any license issued pursuant to the foregoing will be without prejudice to subsequent licensing action which may be taken by the Commission with regard to the environmental aspects of the facility and will be conditioned to that effect.

As they become available, any new or supplemental Environmental Report, and any new or supplemental Detailed Statement required by Appendix D of CFR Part 50 will be placed in the Commission's Public Document Room at 1717 H Street NW, Washington, D.C., where they will be available for inspection by members of the public. Copies of those documents will also be made avaliable at the Brooks Memorial Library, 224 Main Street, Brattleboro, VT, for inspection by members of the public between the hours of 9 a.m. and 9 p.m., Monday through Friday, and 9 a.m. and 6 p.m. on Saturday. Copies of any new or supplemental Environmental Report filed and any new or supplemental Detailed Statement prepared may be obtained, when available, by request to the Director of the Division of Reactor Licensing, U.S. Atomic Energy Commission, Washington, DC 20545.

Any person who wishes to make an oral or written statement in this proceeding setting forth his position on the issues specified in this notice, but who does not wish to file a petition for leave to intervene, may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715 of the Commission's rules of practice. Limited appearances will be permitted at the time of the hearing in the discretion of the Board, within such limits and on such conditions as may be fixed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, not later than thirty (30) days from the date of publication of this notice in the FEDERAL REGISTER.

Any person whose interest may be affected by the proceeding who does not wish to make a limited appearance and who wishes to participate as a party in the proceeding with respect to the issues set forth in this notice, must file a petition for leave to intervene.

Petitions for leave to intervene, pursuant to the provisions of 10 CFR 2.714 of the Commission's rules of practice, must be received in the Office of the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Branch, or the Commission's Public Document Room, 1717 H Street NW., Washington, DC, not later than thirty (30) days from the date of publication of this notice in the FEDERAL REGISTER. The petition shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by Commission action, and the contentions of the petitioner in reasonably specific detail. A petition which sets forth contentions relating to matters outside of the issues specified in this notice will be denied. A petition for leave to intervene which is not timely will be denied unless, in accordance with 10 CFR 2.714, the petitioner shows good cause for failure to file it on time.

A person permitted to intervene becomes a party to the proceeding, and has all the rights of the applicant and the regulatory staff to particiapte fully in the conduct of the hearing. For example, he may examine and cross-examine witnesses. A person permitted to make a limited appearance does not become a party, but may state his position and raise questions which he would like to have answered to the extent that the questions are within the scope of the hearing as specified in the issues set out above. A member of the public does not have the right to participate unless he has been granted the right to intervene as a party or the right of limited appearance.

An answer to this notice, or an amended answer with respect to the issues specified in this notice, must be filed by the applicant, pursuant to the provisions of 10 CFR § 2.705 of the Commission's rules of practice, not later than twenty (20) days from the date of publication of this notice in the FEDERAL REGISTER. Parties already participating in this proceeding as intervenors with respect to the issues specified in the notice of hearing dated February 27, 1971, must also file an answer with respect to the issues specified in this notice not later than twenty (20) days from the date of publication of this notice in the FEDERAL REGISTER, in accordance with the requirements of 10 CFR 2.750 of the Commission's rules of practice.

Answers and petitions required to be filed in this proceeding may be filed by mail or telegram addressed to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Branch, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

The date and place of further hearings will be set by subsequent order of the Board and notice thereof will be provided to the parties, including persons granted leave to intervene on issues set forth in this notice, and will be published in the FEDERAL REGISTER. In setting these dates, due regard will be had for the convenience and necessity of the parties or their representatives, as well as Board members.

Dated at Germantown, Md., this 1st day of March 1972.

For the Atomic Energy Commission.

W. B. McCOOL,
Secretary of the Commission.

[FR Doc.72-3395 Filed 3-3-72;8:54 am]

CIVIL AERONAUTICS BOARD

[Docket No. 24215]

AIRLIFT INTERNATIONAL, INC.

Notice of Prehearing Conference Regarding Blocked-Space Multi-container General Commodity Rates

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on March 24, 1972, at 10 a.m. (local time), in Room 503, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner Merritt Ruhlen.

In order to facilitate the conduct of the conference parties are instructed to submit to the Examiner and other parties (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statement of positions of parties; and (5) proposed procedural dates. The Bureau of Economics

will circulate its material on or before March 13, 1972, and the other parties on or before March 20, 1972. The submissions of the other parties shall be limited to points on which they differ with the Bureau of Economics.

Dated at Washington, D.C., March 1, 1972.

[SEAL] RALPH L. WISER,
Chief Examiner.

[FR Doc.72-3349 Filed 3-3-72;8:54 am]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS

Notice of Availability

Environmental impact statements received by the Council on Environmental Quality, February 22–February 25, 1972.

NOTE: At the head of the listing of statements received from each agency is the name of an individual who can answer questions regarding those statements.

DEPARTMENT OF AGRICULTURE

Contact: Dr. T. C. Byerly, Office of the Secretary, Washington, D.C. 20250 (202) 388-7803.

FOREST SERVICE

Draft, February 16

Beaverhead National Forest, Madison and Beaverhead Counties, Mont. Herbicide control of Big Sage brush with 2,4-dichlorophenoxyacetic acid. Specific control areas are being planned and designated on the ground by the Ranger with the assistance of specialists in ecology, wildlife biology, soil science, and range science. The chemical 2,4-D may have some effect on animal organisms and nontarget plants. (ELR Order No. 1957, 73 pages) (NTIS Order No. PB-206 786-D)

RURAL ELECTRIFICATION ADMINISTRATION

Draft, February 14

Palo Pinto Generating Station Unit No. 3, Palo Pinto County, Tex. Construction of a 200,000-kw. electrical generating unit, as an addition to the Palo Pinto generating station. This will be the third unit at this station and will bring the total name plate capacity to 366,000 kilowatts. Will result in release of oxides of sulfur oxides and nitrogen oxides, and in discharge of cooling water into Palo Pinto Lake. (ELR Order No. 1888, 162 pages) (NTIS Order No. PB-206 638-D)

SOIL CONSERVATION SERVICE

Draft, February 15

Mud Creek Subwatershed, Iowa. Conservation land treatment and construction of nine grade stabilization structures. Approximately 35 acres of land will be inundated. (ELR Order No. 1915, 7 pages) (NTIS Order No. PB-206 760-D)

Final, February 10

Union Creek Watershed, Union County, S. Dak. Project proposes land treatment measures and four floodwater retarding structures, 13 grade stabilization structures and 1.6 miles of channel improvement. Five miles of intermittent stream channel, 40 acres of cropland and 55 acres of grassland will be inundated by the sediment pools. Comments made by DOD, Army, and EPA. (ELR Order No. 1882, 18 pages) (NTIS Order No. PB-206 620-F)

DEPARTMENT OF DEFENSE

DEPARTMENT OF ARMY

Contact: George A. Cunney, Jr., Acting Chief, Environmental Office, Directorate of Installations, Office of the Deputy Chief of Staff for Logistics, Washington, D.C. 20310, (202) OX 4-4269

Final, February 16

Airfield Complex, Campbell Army Airfield, three phases, Fort Campbell, Ky. Three phases of construction (a) Phase I (fiscal year 1972) construction consists of operations, maintenance and parking facilities, for one cargo helicopter battalion and one separate cargo helicopter company; aviation medical dispensary and boiler plant. Construction of four hangars, and natural gas fired central heating plant. Included will be 177,580 sq. yds. of aircraft pavement and 55,750 sq. yds. of vehicle pavement. (b) Phase II (fiscal year 1973) Construction of parking facilities, operations and maintenance for two assault helicopter battalions, an airfield operations building and a fire rescue station. (c) Phase III (1974) construction will provide a complete heliport facility including operations, maintenance and parking facilities for an aerial field artillery battalion; an aerial cavalry squadron and aviation elements of the Division Artillery. Comments made by USDA, HEW, HUD, DOI, DOT, EPA, various State and local agencies. (ELR Order No. 1934, 45 pages) (NTIS Order No. PB-206 761-F)

Corps of Engineers

Contact: Francis X. Kelly, Assistant for Conservation Liaison, Public Affairs Office, Office, Chief of Engineers, 1000 Independence Avenue SW., Washington, DC 20314 (202) 693-6346.

Draft, February 11

Lost Creek Lake Project, Rogue River, Jackson County, Oreg. Construction of an embankment dam and related structures to provide 315,000 acre-feet of usable storage for flood control and water conservation for municipal and industrial water supply, fish and wildlife enhancement, water quality control, etc. (ELR Order No. 1851, 33 pages) (NTIS Order No. PB-206 619-D)

Draft, February 14

Arkansas River and tributaries above John Martin Dam, Colo. A general investigations study of projects involving proposed construction of several large dams and reservoirs, levees, floodways, river channels, and a fishery. Fish and wildlife habitat would be damaged, residences and businesses displaced. (ELR Order No. 1894, 115 pages) (NTIS Order No. PB-206 637-D)

Draft, February 15

Supplement to Laneport, North Fork, and South Fork Lakes, San Gabriel River, Tex. (Sept. 3, 1971). Construction of three dams and lakes along the San Gabriel River Watershed. Laneport Dam will inundate 6,230 acres; North Fork Dam will inundate 1,310 acres; and South Fork Dam will inundate 1,160 acres. Purpose: Flood control, increasing water supply to the lower Brazeo Valley, etc. (ELR Order No. 1902, 10 pages) (NTIS Order No. PB-202 321-D)

Draft, February 18

U.S. Post Office, Honolulu, Hawaii. Construction of a one-story general industrial-type building with a two-story office wing. Auxiliary construction consists of parking area, paved maneuvering areas, an underpass, and all necessary utilities and landscaping. Facility will occupy about 400,000 gross square feet. (ELR Order No. 1936, 20 pages) (NTIS Order No. PB-206 762-D)

Final, February 15

Fowl River, Mobile Bay, Ala. Dredging of a new channel approaching and entering Fowl River. Approximately 30 acres of marsh land will be filled in. Comments made by DOC, EPA, FAA, HUD, and DOI. (ELR Order No. 1907, 43 pages) (NTIS Order No. PB-206 639-F)

Final, February 17

Blue Springs Lake, Little Blue River Lakes, Jackson County, Mo. Construction of a dam and lake. Purpose to provide downstream flood protection, provide open space and a lake of 560 acres for recreation (at top of multipurpose pool). Will inundate 5 miles of stream below Lake Jacomo. Comments made by Missouri Department of Conservation, Water Resources Board, DOI, HEW, EPA, DOC. (ELR Order No. 1937, 33 pages) (NTIS Order No. PB-202 652-F)

Final, February 18

Dyersburg, Tenn. Project consists of a levee to provide flood protection from the North Fork, Forked Deer River, and a pumping station and gated outlets for evacuation of interior runoff. Comments made by EPA, DOI, USDA, HUD, HEW, city of Dyersburg, State of Tennessee. (ELR Order No. 1940, 28 pages) (NTIS Order No. PB-203 237-F)

Final, February 17

Presque Isle Peninsula Cooperative Beach Erosion Control Project South Shore of Lake Erie at Erie County, Pa. Work to be performed provides for the replenishment and protection of about 1,500 linear feet of beach frontage by placement of sand fill and construction of a low barrier composed of sand or grout filled nylon bags and mats. Comments made by Commonwealth of Pennsylvania, DOI, EPA. (ELR Order No. 1941, 35 pages) (NTIS Order No. PB-199 637-F)

Final, February 18

Wynoochee Dam and Lake, Wynoochee River, Grays Harbor County, Wash. Construction of a multipurpose concrete gravity dam 663 feet long and 175 feet high. A lake 4.4 miles long with a surface area of 1,140 acres will be created. Wynoochee lake will provide 35,000 acre-feet of water storage for flood control. Comments made by State of Washington, county officials, EPA, DOC, DOI. (ELR Order No. 1952, 42 pages) (NTIS Order No. PB-200 798-F)

Final, February 17

Oswego Steam Station—Unit 5, Niagara Mohawk Power Corp., N.Y. Construction of unit No. 5, an oil fueled electric generating unit with intake and discharge structures. Approximately 10 acres of land will be required, cooling water will be discharged in Lake Ontario, air borne oxides and particulates will be emitted. Comments made by USDA, Coast Guard, EPA, DOI, DOT, numerous State and regional offices. (ELR Order No. 1968, 222 pages) (NTIS Order No. PB-204 155-F)

DEPARTMENT OF THE NAVY

Contact: Joseph A. Grimes, Jr., Special Civilian Assistant to the Secretary of Navy, Washington, D.C. 20350, (202) 691–0892.

Final, February 23

Kahoolawe Island Target Complex, Hawaiian Archipelago. Approximately 7,750 acres, centrally located and comprising one fourth of the island, is used for training in air-to-ground weapons delivery and shore bombardment, using both live and inert ordnance. Environmental impact consists of explosions and fragmentation of metal shell and bomb casings on very infertile soil. Studies have been done by natural science specialists concerning plants and animals inhabiting the island. Comments made by EPA, Advisory Council on Historical Preservation, DOI. (ELR Order No. 1956, 103 pages) (NTIS Order No. PB–203 876–F)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Sheldon Meyers, Director, Office of Federal Activities, Room 3630, Waterside Mall, Washington, D.C. 20460, (202) 755–0940.

Draft, February 8

Spencer, Iowa. Construction of an anaerobic-aerated lagoon system, intercepting sewer, two new pumping stations and force main, and odor control facilities. The project will provide 1.9 m.g.d. of sewage treatment capacity to serve the waste treatment needs of a packinghouse and a portion of the domestic population. Approximately 130 acres of farm land will be required for the project. (ELR Order No. 1860, 210 pages) (NTIS Order No. PB–206 773–D)

FEDERAL POWER COMMISSION

Contact: Frederick H. Warren, Advisor on Environmental Quality, 441 G Street NW., Washington, DC 20426, (202) 386–6084.

Draft, February 16

Pueblo County, Colo. Proposal to allow construction of 2.54 miles of railway track by the Colorado and Wyoming Railway Co. This will require approximately 51.51 acres of land. Finance Docket No. 27022. (ELR Order No. 1914, 10 pages) (NTIS Order No. PB–206 759–D)

Draft, February 18

Arkansas Louisiana Gas Co., Docket No. CP70–267. Proposes to construct a natural gas pipeline from the Texas panhandle to eastern Oklahoma. The line would run 298 miles where it would connect with the company's existing pipeline system. Also proposes to construct a 42-mile lateral, together with gas treating plants and gathering facilities. (ELR Order No. 1948, 21 pages) (NTIS Order No. PB–206 769–D)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Contact: Richard H. Broun, Director, Environmental and Land Use Planning Division, Washington, D.C. 20410, (202) 755–6186.

Final, February 16

Goose Hollow, Portland, Oreg. Proposal for a HUD loan of $3,193,000 in order to construct a 16-story college student apartment building. Comments made by DOC, EPA, HEW, DOI, OEO, DOT, Office of the Governor, State agencies, and concerned citizens. (ELR Order No. 1890, 105 pages) (NTIS Order No. PB–206 648–F)

Final, February 23

Proposed New Community, The Woodlands, Montgomery County, Tex. Proposed HUD offer of commitment to guarantee loan of $50 million over a 20-year period for the Woodlands. The project will result in more rational organization or urban systems in the urbanizing outer metropolitan area as opposed to normal sprawl. (ELR Order No. 1959, 40 pages) (NTIS Order No. PB–204 498–F)

DEPARTMENT OF INTERIOR

Contact: Office of Communications, Room 7214, Washington, D.C. 20240, (202) 343–6416.

BUREAU OF MINES

Draft, February 18

Demonstration—Hydraulic Backfilling of Mines Voids, Scranton, Pa. Bureau of Mines proposes to conduct a demonstration project that will test the economic feasibility of the Dowell hydraulic slurry injection process for blind backfilling of dry and flooded underground mine voids in order to stabilize remaining coal pillars and roof rock thereby preventing surface subsidence. If successfully completed the project will backfill mine voids in the Clark and New County coalbeds. (ELR Order No. 1946, 23 pages) (NTIS Order No. PB–206 767–D)

Final, February 18

Oil Shale Retort Research Project, Anvil Points, Colo. Proposed action would encourage further research on the development of surface retorting of oil shale and, at the same time, provide experience and information on waste management techniques. Operations that would be conducted over the 5-year term of the proposed lease include the construction of a vertical kiln retort and the mining, crushing, retorting, and disposal of probably no more than 600,000 tons of oil shale. This is less than a one week requirement for a commercial plant that produces 50,000 barrels of shale oil per day. (ELR Order No. 1958, 40 pages) (NTIS Order No. PB–203 318–F)

BUREAU OF RECLAMATION

Draft, February 14

Lyman to Torrington, Wyo. Construction of a 115-kv. transmission line with 12.3 miles of wood pole and 1 mile of steel structures; and construction of a substation terminal on a 5-acre tract near Torrington. Trees near the North Platte River will be removed and/or trimmed, causing an impact upon wildlife habitat. (ELR Order No. 1895, 28 pages) (NTIS Order No. PB–206 642–D)

Draft, February 15

Rehabilitation and Betterment Program Cascade Irrigation District, Washington. Rehabilitation of a diversion dam on the Yakima River, a new inlet to the irrigation canal, construction of a fish ladder on the dam and installation of a fish screen and bypass pipe, reshaping 14,100 feet of canal and lining with concrete, and construction of a pumping plant. (ELR Order No. 1943, 16 pages) (NTIS Order No. PB–206 765–D)

TENNESSEE VALLEY AUTHORITY

Contact: Dr. Francis Gartell, Director of Environmental Research and Development, 720 Edney Building, Chattanooga, Tenn. 37401, (615) 755–2002.

Draft, February 16

Control of Eurasian Watermilfoil (Myriophyllum Spicatum L.) in TVA Reservoirs. There are two methods of controlling watermilfoil: Water level management to dry the plant by dewatering or by otherwise disturbing its habitat, and application of 2, 4-D herbicide applied by boats. (ELR Order No. 1947, 30 pages) (NTIS Order No. PB–206 768–D)

DEPARTMENT OF TRANSPORTATION

Contact: Martin Convisser,[1] Director, Office of Program Coordination, 400 Seventh Street SW., Washington, DC 20590, (202) 462–4357.

FEDERAL AVIATION ADMINISTRATION

Final, February 16

Big Bear City Airport, San Bernardino County, Big Bear, Calif. Realignment of the existing runway, land acquisition, obstruction removal, etc. Comments made by DOI, USDA, DOT, EPA, Army COE, county and local offices, State of California. (ELR Order No. 1939, 47 pages) (NTIS Order No. PB–204 023–F)

Final, February 23

Atlanta Municipal Airport, Atlanta, Tex. Acquisition of land for airport development. Proposed construction of a 50 feet by 3,200 feet runway, a 30-foot taxiway, a 150 feet by 250 feet parking apron and installation of a segmented circle and wind cone and fencing. Comments made by USDA, EPA, HEW, HUD, DOT. (ELR Order No. 1966, 35 pages) (NTIS Order No. PB–202 593–F)

Nut Tree Airport, Vacaville, Calif. Extension of runway from 3,300 feet to 3,800 feet; marking and lighting. Construction of parallel taxiway with holding aprons, and expansion of parking apron. Comments made by Army COE, DOI, DOT. (ELR Order No. 1967, 30 pages) (NTIS Order No. PB–205 198–F)

FEDERAL HIGHWAY ADMINISTRATION

Draft, February 10

Omaha-Fremont Freeway: Douglas, Dodge, and Saunders Counties, Nebr. Construction of a four-lane highway to connect Omaha and Fremont. Ten alternate routes of approximately 23 miles each are under consideration. Project F–20(35). (ELR Order No. 1862, 30 pages) (NTIS Order No. PB–206 584–D)

Draft, February 9

State Road 435: Orange County, Fla. Reconstruction of S.R. 435, making it four-lane within the city of Apopka (a distance of 1.785 miles) and widening to 24 feet and resurfacing its two lanes for a distance of 4 miles north of the city limits. Displacement of a number of dwellings will result. (ELR Order No. 1897, 63 pages) (NTIS Order No. PB–206 772–D)

FA Route 171 (Illinois Route 76): Boone County, Ill. Establishment of a transportation corridor, 5½ miles long and 2,000 feet wide. Within this a two-lane partially access controlled facility (Illinois Route 76) will be constructed, to be expanded to a four-lane facility if needed. (ELR Order No. 1900, 62 pages) (NTIS Order No. PB–206 647–D)

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[1] Mr. Convisser's office will refer you to the regional office from which the statement originated.

Route 148: Morgan, Scott, and Pike Counties, Ill. Construction of a 52-mile, four-lane, fully access controlled highway between the cities of Jacksonville and Berry. A 4(f) statement is required for the taking of conservation area land. Approximately 2,600 acres of various types of land, much of it highly productive farmland and established timberland, will be required by the highway, as well as several farm residences. Project F-408. (ELR Order No. 1901, 103 pages) (NTIS Order No. PB-206 640-D)

Draft, February 16

Federal Route 6, Ellington Parkway: Davidson County, Tenn. Construction of a 2.44-mile section of four-lane highway in Nashville. Seven residences and three businesses will be displaced. Project U-006-3(40). (ELR Order No. 1906, 55 pages) (NTIS Order No. PB-206 641-D)

U.S. Highway 301, Hillsborough and Pasco Counties, Fla. Reconstruction of 22.9 miles of U.S. 301 from two to four lanes between Tampa and Zephyrhills. Some homes and businesses will be displaced. (ELR Order No. 1908, 31 pages) (NTIS Order No. PB-206 643-D)

Draft, February 15

S.H. 110: Montgomery County, Ala. Construction of 2.26 miles of road improvements, on six lanes from Vaughn Road to Interstate 85 and on four lanes from Interstate 85 to the Atlanta Highway. Approximately 50 to 80 feet of additional right-of-way will be required. Project SU-5105(101). (ELR Order No. 1910, 14 pages) (NTIS Order No. PB-206 644-D)

Draft, February 14

S.H. 39: Bingham County, Idaho. Construction of a 6.1-mile segment of two-lane State Highway 39. Structures would be required for canal crossings. Minimum right-of-way width would be 100 feet. Some disruption and severance to existing agricultural units will result. (ELR Order No. 1911, 24 pages) (NTIS Order No. PB-206 645-D)

Draft, February 17

Leigh Street Viaduct: Richmond, Va. Demolition of Marshall Street bridge and construction of a new crossing of the Shockoe Valley, the Lehigh Street Viaduct. Project SU-127-2(8). (ELR Order No. 1912, 130 pages) (NTIS Order No. PB-206 646-D)

Route 141, Centre Road, Woodward Avenue to Lancaster Pike: New Castle County, Del. Construction of a six-lane freeway with two, two-lane frontage roads. This is the last link in the improvement of R. 141 around city of Wilmington. 4(f) required for land used as a recreational park. (ELR Order No. 1926, 100 pages) (NTIS Order No. PB-206 787-D)

Draft, February 14

Elgin-O'Hare Freeway: Cook County, Ill. Construction of 19 miles of multilane divided highway from U.S. 20 at Elgin to Illinois Route 19 at Chicago O'Hare International Airport. The displacement of 99 residences, 12 commercial establishments, and one industrial establishment will result. (ELR Order No. 1932, 81 pages) (NTIS Order No. PB-206 774-D)

Draft February 18

New Salisbury Connector Between U.S. 29-601 and I-85: Rowan County, Salisbury, N.C. Construction of a new five-lane curb and gutter road extending from U.S. 29-601 at S.R. 1530 to I-85 at the S.R. 2541 interchange. Project S-1120. (ELR Order No. 1938, 17 pages) (NTIS Order No. PB-206 763-D)

Draft, February 15

State Route 20: Lauderdale County, Ala. Relocation of Alabama State Route 20, beginning at Alabama-Tennessee. State line, proceeding southeast on new location to Natchez Trace Parkway (7.1 miles). Project S-202-F. (ELR Order No. 1944, 15 pages) (NTIS Order No. PB-206 766-D)

Draft, February 17

Assembly Street, Columbia, S.C. Extension of Assembly Street, from Elmwood Avenue northerly to River Drive (U.S. 176), a distance of about 0.65 mile. (ELR Order No. 1945, 15 pages) (NTIS Order No. PB-206 783-D)

Oconomowoc-Pewaukee Road U.S.H. 16 and Oconomowoc South Beltline S.T.H. 67: Waukesha County, Wis. Project consists of widening existing U.S.H. 16 from a two-lane conventional highway to a four-lane freeway (11.9 miles) Project F 06-1( ), I.D. 1371-2-00, S 0444 ( ), I.D. 3033-1-00. (ELR Order No. 1953, 228 pages) (NTIS Order No. PB-206 771-D)

Draft, February 22

I-280: Lucas County, Oregon, Ohio. Construction and addition of the following safety features to I-280 to the latest Federal standards: Provide median barrier, reconstruct berms, flatten ditch slopes, resurface pavement, etc. Project I-280-2(4)79, LUC-280-0.00. (ELR Order No. 1960, 11 pages) (NTIS Order No. PB-206 785-D)

Final, February 10

West Wallace Interchange to East Wallace Interchange: Shoshone County, city of Wallace, Idaho. Construction of a 1.7-mile segment of four-lane divided Interstate 90 highway. Project I-90-1(47)61. Comments made by USDA, Army COE, HUD, HEW, DOI, EPA, several State and local offices. (ELR Order No. 1849, 59 pages) (NTIS Order No. PB-201 573-F)

Final, February 15

K-25: Rawling County, Kans. Spot location improvements which will replace three existing timber structures along with improvements of the grade lines at each location. Project 25-77. Comments made by USDA, DOI, EPA, Army COE. (ELR Order No. 1916, 26 pages) (NTIS Order No. PB-202 788-F)

NACO-Don Luis Highway: Cochise County, Ariz. Project will provide a 64-foot roadway with curb, gutter, and sidewalk and a 40-foot roadway in the second unit. Project located adjacent to the international boundary between United States and Mexico. Project S-SG-204(4). Comments made by EPA, DOI, State of Arizona. (ELR Order No. 1917, 29 pages) (NTIS Order No. PB-202 325-F)

Final, February 18

State Route 93: Holmes County, and Tuscarawas County, Ohio. Construction of a relocated two-lane highway on non-limited right of way. Project S-969(11). Comments made by HUD, DOI. (ELR Order No. 1918, 22 pages) (NTIS Order No. PB-200 204-F)

Final, February 15

State Road 808: Palm Beach County, Fla. Straightening and widening S.R. 808 from S.R. 7 (U.S. 441) to S.R. 5 (U.S. 1), a distance of 7 miles in the city of Boca Raton. Project U.S. 298(2). Comments made by DOI, DOC, EPA, State and local agencies. (ELR Order No. 1919, 29 pages) (NTIS Order No. PB-201 690-F)

U.S. 70-74, Proposed Freeway Connector: Buncombe County, N.C. Construction of a basic four-lane divided freeway from I-40 to U.S. 70 and a basic six-lane divided freeway from U.S. 70 to the East-West Expressway in Asheville. Project F-34-1(6). Comments made by University of North Carolina, TVA, DOI, HEW, EPA, Army COE, USDA, State and local agencies. (ELR Order No. 1920, 80 pages) (NTIS Order No. PB-202 433-F)

U.S. 421, from Sanford to Seminole: Lee-Harnett Counties, N.C. Construction of a highway improvement for U.S. 421, for 6.9 miles. Consists of widening to five lanes of N.C. 87 and construction of a new two-lane highway. Project 6.801741. Comments made by State of North Carolina, EPA, OEO, DOI, GSA, Army COE, USDA. (ELR Order No. 1921, 34 pages) (NTIS Order No. PB-202 434-F)

Highway 41: Saline County, Nebr. Construction of a new highway N-41 located on a former county road just north of Milligan, east 11 miles to junction with State Highway N-15. Project S-185(5). Comments made by State of Nebraska, EPA, DOI, Army COE, USDA. (ELR Order No. 1922, 26 pages) (NTIS Order No. PB-199 236-F)

U.S. Highway No. 12: Golden Valley County, Ryegate, Mont. Project will provide the public with a 34-foot-wide roadway with two 12-foot traffic lanes approximately 12.2 miles in length. Project F 268(7). Comments made by EPA, DOI, DOC, USDA, Army COE, HEW, HUD, Montana Water Resources Board, State Forester, Montana Department of Health. (ELR Order No. 1923, 52 pages) (NTIS Order No. PB-200 373-F)

U.S. 45 Business Route: Fulton County, Ky. Improvement on new alignment in the urban renewal area between the U.S. 45 Bypass and Fourth Street at Carr Street. Project F-144. Comments made by city of Fulton, HUD. (ELR Order No. 1924, 18 pages) (NTIS Order No. PB-206 788-F)

Woonsocket Industrial Highway: Woonsocket - Cumberland - Lincoln - North Smithfield, R.I. Construction of a modern, fast, safe, and efficient highway beginning at the Louisquisset Pike (S.R. 146) and extending generally northeasterly to Mendon Road (S.R. 122). Length of route could be anywhere from 1¾ to 3 miles. Comments made by DOI, Army COE, EPA, FPC, USDA, GSA, DOC. (ELR Order No. 1927, 56 pages) (NTIS Order No. PB-199 868-F)

Interstate 78: Northhampton County, Pa. Improvements on a short segment of I-78 on new location. The project consists of two 36-foot divided pavements, dual structures over the Delaware River. Project 1-1045-0-4-A07-055, 1-1045-0-4-A08-055. Comments made by DOC, EPA, Army COE, HUD, DOI, various Commonwealth of Pennsylvania offices. (ELR Order No. 1928, 65 pages) (NTIS Order No. PB-206 770-F)

Route 17J, city of Jamestown: East-West Arterial, Chautauqua County, N.Y. Construction of a four-lane surface arterial requiring a bridge over Chadakoin River and Erie-Lackawanna Railroad. Project P.I.N. 5289.00, .01 and .02. Comments made by DOI, USDA, HEW, New York State Historic Trust. (ELR Order No. 1929, 59 pages) (NTIS Order No. PB-199 243-F)

County Road 60: Washington County, Ohio. Relocation of 2,000 feet of two-lane County Road 60. One residence will be displaced. Comments made by Army COE, EPA, DOI. (ELR Order No. 1930, 22 pages) (NTIS Order No. PB-202 309-F)

Highway No. 89: Teton and Cascade Counties, Mont. Reconstruction of 9.6 miles of Highway 89. Approximately 40 acres of irrigated land will be taken out of production. Comments made by Army COE, EPA, HUD, DOI, DOT. (ELR Order No. 1931, 70 pages) (NTIS Order No. PB-200 217-F)

Wacker Drive Extension (U.S. Route 7): Cook County, Chicago, Ill. Construction of a tri-level structure, from Michigan Avenue to North Lake Shore Drive. Comments made by Army COE, Coast Guard, EPA, DOI, DOT, and numerous State agencies. (ELR Order No. 1933, 257 pages) (NTIS Order No. PB–202 432–F)

Final, February 18

State Route 180: Baldwin County, Gulf Shores, Ala. Relocation of Alabama S.R. 180 beginning at the intersection of Alabama 59 and 20th Street and runs eastward. 4(f) required for a portion of Gulf State Park in Gulf Shores. Comments made by Alabama Department of Conservation, DOI, EPA, Army COE, FAA, DOC, several other State agencies. (ELR Order No. 1951, 49 pages) (NTIS Order No. PB–206 784–F)

U.S. COAST GUARD

Contact: D. B. Charter, Jr., Commander, U.S. Coast Guard, Chief, Environmental Coordination Branch, 400 Seventh Street SW., Washington, DC 20591, (202) 426–9573.

Final, February 22

State Route 152 Bridge, Atlantic County, N.J. Plans for the construction of a bridge to replace an existing aged and deteriorated highway bridge (S.R. 152) over Broad Thorofare, New Jersey Intracoastal Waterway. Comments made by Atlantic County Citizens Council on Environment, Inc., New Jersey Department of Environmental Protection, and DOC. (ELR Order No. 1949, 25 pages) (NTIS Order No. PB–199 741–F)

BRIAN P. JENNY,
Acting General Counsel.

[FR Doc.72–3332 Filed 3–3–72;8:51 am]

ENVIRONMENTAL PROTECTION AGENCY

ENVIRONMENTAL IMPACT STATEMENTS

Availability of Comments

Appendix I contains a listing of draft environmental impact statements which the Environmental Protection Agency (EPA) has reviewed and commented upon in writing during the period from December 1, 1971, to January 15, 1972, as required by section 102(2)(C) of the "National Environmental Policy Act" of 1969 and section 309 of the "Clean Air Act", as amended. The listing includes the Federal agency responsible for the statement, the number assigned by EPA to the statement, the title of the statement, the classification of the nature of EPA's comments, and the source for copies of the comments.

Appendix II contains a listing of proposed regulations reviewed by EPA during the period from December 1, 1971, to January 15, 1972, under section 309 of the "Clean Air Act". Each listing includes the Federal agency responsible for the proposed regulations, the title of the regulations, the classification of the nature of EPA's comments, and the source for copies of the comments.

Appendix III contains definitions of the four classifications of the general nature of EPA's comments. Copies of EPA's comments on these draft environmental impact statements are available to the public from the EPA offices noted.

Appendix IV contains a listing of the addresses of the sources for copies of EPA comments listed in Appendix I.

Copies of the draft environmental impact statements are available from the Federal department or agency which prepared the draft statement or from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

Dated: February 25, 1972.

WILLIAM D. RUCKELSHAUS,
Administrator.

APPENDIX I.—ENVIRONMENTAL IMPACT STATEMENTS FOR WHICH COMMENTS WERE ISSUED BETWEEN DECEMBER 1, 1971 AND JANUARY 15, 1972

Responsible Federal Agency	Title and number of statement [1]	General nature of comments	Source for copies of comments
Department of Defense	D–DOD–11010–00: Demilitarization of Toxic Munitions (U.S. Army).	1	A
	D–DOD–21002–51: Ammunition Pier (Sella Bay, Guam).	3	A
	D–DOD–11006–12: Harry Diamond Labs, U.S. Army (Maryland).	2	D
	D–DOD–32055–15: Southern Branch Navigation Project, No. 3–57–SAW (Virginia).	3	D
	D–DOD–61003–33: Cache River Basin (Arkansas)	2	G
	D–DOD–24006–39: Perry County Drainage and Levee Districts (Missouri).	1	H
	D–DOD–61007–46: U.S. Army Western Medical Institute of Research (California).	2	J
	D–DOD–10012–39: Safeguard Ballistic Missile Defense System (Missouri).	2	A
	D–DOD–50037–08: Bridge for Rancocas Creek (Bridgeboro, N.J.).	1	C
	D–DOD–60022–49: Kahoolawe Island Target Complex (Hawaii).	2	J
Atomic Energy Commission	D–AEC–00005–00: Liquid Metal Fast Breeder Reactor, No. EPA 352.	2	A
	D–AEC–06018–19: Oconee Nuclear Station (South Carolina).	2	A
Federal Power Commission	D–FPC–05160–56: High Mountain Sheep Project No. 71–102–FPC (Idaho).		A
	D–FPC–07016–15: Appalachian Power Co. (Virginia)	2	D
	D–FPC–03001–00: Natural Gas Pipe Certificate Application, No. EPA 154 (Louisiana).	1	G
	D–FPC–03006–35: Arkansas Louisiana Gas Co. (Louisiana).	2	G
Department of Housing and Urban Development.	D–HUD–36039–00: Community Development Project Selection Systems.		A
	D–HUD–81010–12: Peach Tree Run, Section 236 (Maryland).	2	D
	D–HUD–85010–18: New Community (Soul City, N.C.).	3	E
	D–HUD–34015–32: Water Treatment Facilities (Foss Reservoir, Okla.).	2	G
	D–HUD–85010–55: Section 236, Housing Project (Portland, Oreg.).	1	K
Department of Agriculture	D–DOA–62001–02: Waterville Valley Area (New Hampshire).	2	B
	D–DOA–36021–12: Dividing Creek Watershed, EPA No. 494–W (Maryland).	4	D
	F–DOA–32096–24: Pearl River Basin (Mississippi and Louisiana).	2	E
	D–DOA–36025–19: Rabon Creek Watershed (Laurens and Greenville Counties, S.C.).	2	E
	D–DOA–36031–18: Clarks Fork and Bullocks Creek Watershed (North Carolina).	1	E
	D–DOA–36032–24: Palatlaksha River Watershed (Mississippi).	3	E
	D–DOA–36030–31: T or C—Williamsburg Arroyos Watershed (New Mexico).	1	G
	D–DOA–36015–28: East Fork of Whitewater River Watershed (Ohio, Indiana).	2	F
	D–DOA–36059–34: Hitson, C&L, Washborn Draws Watershed (Texas).	1	G
	D–DOA–36060–31: Cornudas, North and Culp Draws Watershed (Texas, New Mexico).	1	G
Department of Commerce	D–DOC–24020–04: Sewerage System (Greenfield, Mass.).	2	B
	D–DOC–24021–05: Improvements to Water Supply (Winchester, Conn.).	2	B
	D–DOC–24026–05: Improvements to Water Supply, Sewer Systems (Connecticut).	2	B
	D–DOC–31016–08: Test Wells (Hamburg, N.J.)	1	C
	D–DOC–31017–08: Test Wells (Franklin, N.J.)	1	C
	D–DOC–24016–04: Sewerage System for Plymouth Middle School (Massachusetts).	1	B
	D–DOC–25012–05: Solid Waste Reduction Facility (Connecticut).	1	B
	D–DOC–34014–04: Water Distribution System (Bondsville, Mass.).	1	B
	D–DOC–81023–01: County Office Building (Caribou, Maine).	1	B
	D–DOC–81024–05: Central Fire House (Westfield, Conn.).	1	B
	D–DOC–81025–05: Public Works Garage (Enfield, Conn.).	2	B
	D–DOC–20413–18: Lower Cape Fear, Kings Bluff (Bladen County, N.C.).	2	E
	D–DOC–24011–14: Lower Cape Fear Water and Sewer Authority (West Virginia).	2	E
	D–DOC–40380–29: First Street Widening, Railroad Tracks (Belmont County, Ohio).	2	F
	D–DOC–34020–55: City of Dundee, Oregon Water System (Oregon).	1	K
	D–DOC–40464–57: Alaskan Way Sanitary Sewer Lines (Seattle, Wash.).	1	K

See footnote at end of table

APPENDIX I.—ENVIRONMENTAL IMPACT STATEMENTS FOR WHICH COMMENTS WERE ISSUED BETWEEN DECEMBER 1, 1971 AND JANUARY 15, 1972—Continued

Responsible Federal Agency	Title and number of statement [1]	General nature of comments	Source for copies of comments
Department of Transportation	D-DOT-40427-00: Reconstruction of Croton-Mansfield Highway.	2	B
	D-DOT-40131-07: White Plains Arterial Feeder Route Highway (Westchester County, N.Y.).	1	C
	D-DOT-40295-12: I-95, Caton Avenue to Hanover Street (Baltimore, Md.).	2	D
	D-DOT-40408-21: S.R. 415 (Seminole and Volusia Counties, Fla.).	1	E
	D-DOT-40409-21: S.R. 50 (Lake County, Fla.)	1	E
	D-DOT-40432-21: S.R. 438 (Orange County, Fla.)	1	E
	D-DOT-40433-21: S.R. 83 (Pinellas County, Fla.)	1	E
	D-DOT-40434-18: U.S.-52 (Davidson, Forsyth Counties, N.C.).	1	E
	D-DOT-40435-22: F-248(11) (Shelby and Talladega Counties, Ala.).	1	E
	D-DOT-40436-18: U.S.-204 (Wake, Nash, and Wilson Counties, N.C.).	2	E
	D-DOT-40441-22: I-85 (From Lanett, Ala. to Georgia-Alabama State line).	2	E
	D-DOT-40442-22: State Route 21 (Jacksonville to Piedmont, Ala.).	1	E
	D-DOT-40443-17: U.S.-119 (Harlan-Cumberland-Whitesburg Road, Kentucky).	2	E
	D-DOT-40444-18: Fairview Road Extension, from Sharon Road to Sardis Road (Charlotte, N.C.).	1	E
	D-DOT-40445-22: S-189-D (Franklin County, Ala.)	2	E
	D-DOT-40477-18: S.R.-2147, Friendly Road (Greensboro, N.C.).	1	E
	D-DOT-40498-19: Lockwood Boulevard Extension (Charleston, S.C.).	3	E
	D-DOT-40499-17: S.R.-56 (Jefferson County, Ky.)	1	E
	D-DOT-40499-22: Highway Improvement S-6109(104) from Porters Gap to Talladega (Clay-Talladega Counties, Ala.).	1	E
	D-DOT-51035-20: Jaspers-Pickens County Airport (Georgia).	1	E
	D-DOT-40476-31: S.R.-292 from Amador Avenue to U.S. 70-80 (New Mexico).		G
	D-DOT-40097-05: I-86, No. 2741 (Manchester-Vernon-South Windsor, Conn.).	1	B
	D-DOT-40371-05: Relocation of U.S.-7 (Wilton, Conn.).	2	B
	D-DOT-81016-05: Construction of Town Hall (Plymouth, Conn.).	2	B
	D-DOT-40124-07: County line-Arcade, S.H.-1155, Route 39 (Wyoming County, N.Y.).	1	C
	D-DOT-32087-13: Delaware River Study (Delaware)	1	D
	D-DOT-40296-15: Route 83 (Dickenson and Wise Counties, Va.).	1	D
	D-DOT-40356-15: Quick's Mill Road. No. 3-58-SAW (Augusta County, Va.).	1	D
	D-DOT-40398-11: L.R. 1023, Section 14 (Lawrence County, Pa.).	2	D
	D-DOT-40363-18: Winston-Salem Corp. Freeway (North Carolina).	1	E
	D-DOT-40364-18: Charlotte Inner Loop (Meklenburg County, N.C.).	1	E
	D-DOT-40366-22: Highway Project (Coffee-Dale-Houston County, Ala.).	1	E
	D-DOT-40367-21: Highway Project, S.R.-50 (Brevard, Fla.).	1	E
	D-DOT-40368-21: Highway Project (Charlotte County, Fla.).	1	E
	D-DOT-40369-21: Highway Project State Job 9904-1401 (Florida).	3	E
	D-DOT-40370-22: Highway Project F-377(2) (Mobile County, Ala.).	1	E
	D-DOT-40394-18: I-85, from SR-2025 (Davidson County) to Groomtown (Guilford County, N.C.).	1	E
	D-DOT-40395-22: Highway Project S-184-D (Cullman County, Ala.).	1	E
	D-DOT-40396-22: Highway Project S-50-E (Russell County, Ala.).	3	E

See footnote at end of table

APPENDIX I.—ENVIRONMENTAL IMPACT STATEMENTS FOR WHICH COMMENTS WERE ISSUED BETWEEN DECEMBER 1, 1971 AND JANUARY 15, 1972—Continued

Responsible Federal Agency	Title and number of statement [1]	General nature of comments	Source for copies of comments
Department of Transportation—Continued	D-DOT-40397-21: State Road 35 (U.S.-17) (Charlotte County, Fla.).		E
	D-DOT-40401-18: F-34-1(16), (Buncombe County, N.C.).	1	E
	D-DOT-40410-18: NC-68, Westchester Drive, U.S.-311 to Elgin Avenue (North Carolina).	1	E
	D-DOT-40430-21: S.R. 683 (Sarasota and Manatee Counties, Fla.).	1	E
	D-DOT-40431-21: S.R. 44 (Lake County, Fla.)	1	E
	D-DOT-40433-20: Highway Project, S 2556 (Cobb County, Ga.).	1	E
	D-DOT-51021-18: New General Airport (Rockingham County, N.C.).	1	E
	D-DOT-51025-20: Fleming-Mason Airport (Flemingsburg, Ky.).	1	E
	D-DOT-40256-28: State Freeway 411 (Harrisburg, Williamson, Saline Counties, Ind.).	1	F
	D-DOT-40264-29: S.R.-122 (Bulter County, Ohio)	2	F
	D-DOT-40265-29: S.R.-235 (Champaign County, Ohio).	2	F
	D-DOT-40268-27: F.A. 406, Morton to South of Tremont (Illinois).	1	F
	D-DOT-40273-27: Randolph Street, Bascule Bridge (Cook County, Ill.).	2	F
	D-DOT-40276-27: Columbia Drainage and Levee District 3 (Illinois).	1	F
	D-DOT-40278-26: Rhinelander Beltline, U.S.H. 8 (Oneida County, Wisc.).	2	F
	D-DOT-40279-27: F.A.P. 68 (Marked Illinois Route 4) (Madison County, Ill.).	1	F
	D-DOT-40282-27: F.A. Route 102 (Du Page County, Ill.).	1	F
	D-DOT-40286-27: Lake Freeway, Illinois State Line-Layton Avenue Road (Illinois).	2	F
	D-DOT-40287-27: Franklin Street Connector (Cook County, Ill.).	2	F
	D-DOT-40289-25: I-69 (Clinton and Eaton Counties, Mich.).	1	F
	D-DOT-40290-26: U.S.H.-51, Boulder Junction Road (Wisconsin).	2	F
	D-DOT-40291-26: State Highway 150 and U.S.-41 (Winnebago County, Wis.).	2	F
	D-DOT-40388-26: CTH "M" and CTH "D" (Dane County, Wis.).	2	F
	D-DOT-50038-30: Bridge, Red Lake River (Polk County, Minn.).	1	F
	D-DOT-51010-29: Lorain County Airport (Ohio)	2	F
	D-DOT-51016-28: Purdue University Airport (Tippecanoe County, Ind.).	2	F
	D-DOT-90015-27: Capital Improvement Grant Project (Cook County, Ill.).	2	F
	D-DOT-40389-34: La.-Chinchuba-Covington Highway (St. Tammany, La.)	1	G
	D-DOT-40437-34: Tex.-IH-45: Between Southern Street and Santa Elena Street (Houston, Tex.).	1	G
	D-DOT-49005-34: Texas-Park Road 100: Bowie Park to Cameron-Willacy County Line (Texas).	4	G
	D-DOT-51020-34: Tex-Ector County Airport (Odesa, Tex.).	2	G
	D-DOT-40375-39: VII-190, Route 63 (Boone-Callaway, Mo.).	2	H
	D-DOT-40376-39: VII-191, Route 71 (Nodaway-Andrew Counties, Mo.).	1	H
	D-DOT-40377-39: VII-192, Route 36 (Marion-Ralls Counties, Mo.).	2	H
	D-DOT-40378-39: VII-193, Route I-435 (Platte County, Mo.).	2	H
	D-DOT-40379-39: VII-194, Route 67 (Butler County, Mo.).	2	H
	D-DOT-40390-37: VII-195, U.S. 20 (Webster County, Fort Dodge, Iowa).	1	H
	D-DOT-40392-39: VII-198, Route 755 (St. Louis, Mo.)	2	H

APPENDIX I.—ENVIRONMENTAL IMPACT STATEMENTS FOR WHICH COMMENTS WERE ISSUED BETWEEN DECEMBER 1, 1971 AND JANUARY 15, 1972—Continued

Responsible Federal Agency	Title and number of statement [1]	General nature of comments	Source for copies of comment
Department of Transportation—Continued	D-DOT-40434-37: U.S.-30 Expressway (Benton, Linn County, Iowa).	2	H
	D-DOT-40435-36: Kennedy Freeway, U.S.-73 and U.S.-75 (Nebraska).	2	H
	D-DOT-40436-39: Route 60 (Wright County, Mo.)	2	H
	D-DOT-40448-38: 56-64F 062-3(5) (Morris County), 56-56F 062-3(6) (Lyon County, Kans.).	2	H
	D-DOT-49006-38: Wichita (Sedgwick County, Kans.)	2	H
	D-DOT-40437-40: 10 Street Bridge (Great Falls, Mont.).	2	I
	D-DOT-40438-41: County Road from Niobe (Ward County, N. Dak.).	1	I
	D-DOT-40470-42: Highway Project, FO 30-6 (Brookings County, S. Dak.).	2	I
	D-DOT-42075-49: Halawa Heights Road, Halawa Stream to Salt Lake Boulevard (Oahu, Hawaii).	2	J
	D-DOT-40357-54: Lower Crossing Snoqualmie River to National Forest (Washington).	2	K
	D-DOT-40358-55: Hess Creek, Chelem Creek Section (Pacific, Oreg.).	1	K
	D-DOT-40428-57: F-03702 Fairbanks, Anchorage Highway (Alaska).	2	K
	D-DOT-40429-57: S-0463, Kenai River Crossing and S-0937, Petersburg (Alaska).	2	K
	D-DOT-40461-57: Fairbanks-Anchorage Highway (Cantwell-McKinley Park, Alaska).	1	K
	D-DOT-40466-56: Focatello Municipal Airport (Idaho).	1	K
	D-DOT-51029-54: Grand Coulee Dam Airport (Washington).	1	K
	D-DOT-51031-57: Scammon Bay (Alaska)	1	K
	D-DOT-51032-57: Chignik Lake (Alaska)	1	K
	D-DOT-50036-29: Bridge (Erie County, Milan, Ohio)	1	F
	D-DOT-40292-30: T.H. 61 and T.H. 316 (Goodhue and Dakota Counties, Minn.).	2	F
	D-DOT-40353-30: County State Aid, Highway No. 12 (Olmsted County, Minn.).	2	F
	D-DOT-40381-28: Federal Secondary Route S-1431 (Wayne County, Ind.).	1	F
	D-DOT-40382-26: Sauk City-Utica Road (Dane County, Wis.).	2	F
	D-DOT-40383-26: Park Falls Municipal Airport (Price County, Wis.).	1	F
	D-DOT-40384-28: FAS RTS-175 (Franklin County, Ind.).	1	F
	D-DOT-40385-30: Trunk Highway 52 (Olmsted County, Minn.).	1	F
	D-DOT-40386-25: Reconstruction of M-43 (Kalamazoo, Van Buren, Mich.).	2	F
	D-DOT-40439-29: S.R. 56 (Athens, Ohio)	1	F
	D-DOT-40440-29: U.S. 250 (Ashland County, Ohio)	2	F
	D-DOT-49012-29: Lorain County Road 204 (Ohio)	1	F
	D-DOT-40456-35: State Routes (Leesville, Vernon Parish, La.).	2	G
	D-DOT-40451-39: Route 63 (Macon County, Mo.)	2	H
	D-DOT-51034-36: VII-204, Falls City Airport Nebraska).	2	H
	D-DOT-51037-36: Miller Field Airport (Valentine, Nebr.).	2	H
	D-DOT-40471-42: Highway Project (Beadle and Sanborn Counties, S. Dak.).	2	I
	D-DOT-40492-42: FO 16-5 Highway (Lincoln County, S. Dak.).	1	I
	D-DOT-51033-45: New Runway and Accessories (Stapleton, Colo.).	2	I
	D-DOT-40440-48: IS. Defense Highway 40 Bypass (Winslow, Ariz.).	2	J
	D-DOT-40454-48: Stoneman Lake Road from I-17 to FAS 209 (Arizona).	2	J
	D-DOT-40493-47: U.S. 95 Freeway (Clark County, Nev.).	2	J
	D-DOT-42074-49: Ahukini-Naiviliwili Cutoff Road, Route 51 (Kauai, Hawaii).	2	J
	D-DOT-40430-57: F-044-1 (5) and (6), Tudor and Muldoon Roads (Alaska).	2	K
	D-DOT-40463-57: Richardson Highway to Dayville (Alaska).	2	K
	D-DOT-40464-57: Rigby Freeway (Alaska)	2	K
	D-DOT-50035-11: L.R. 147, Spur Sections 1 and 2 (Chester and Montgomery Counties, Pa.).	1	D
Corps of Engineers	D-COE-32077-07: Buffalo Harbor Maintenance (New York).	1	C
	D-COE-32078-07: Black Rock Channel and Tonawanda Harbor (New York).	2	C
	D-COE-32092-07: Rochester Harbor (New York)	1	C
	D-COE-30011-15: Virginia Beach Erosion Control, Hurricane Project (Virginia).	2	D
	D-COE-32076-11: Woodcock Creek Lake, French Creek Basin (Pennsylvania).	2	D
	D-COE-32075-21: Navigation Project (Miami, Fla.)	3	E
	D-COE-32079-17: Camp Ground Lake, Salt River Basin (Kentucky).		E
	D-COE-32083-04: Weymouth Landing, Local Protection (Massachusetts).	1	B
	D-COE-90020-04: Enlargement of Anchorage (Falmouth, Mass.).	1	B
	D-COE-32017-07: Navigation Improvement (Great South Bay, N.Y.).	1	C
	D-COE-32063-11: Declaration of Penn's Landing Navigable Waters (Pennsylvania).	1	D
	D-COE-50038-11: LR 1103-4, Bridges over Schuylkill River (Pottsville, Pa.).	1	D
	D-COE-32065-24: Edinburg Dam and Lake, Pearl River Basin (Mississippi).		E
	D-COE-32067-24: Dam and Lake Construction on Tallahala-Creek Lake (Mississippi).	3	E
	D-COE-30010-27: Lake Forest Beach Erosion (Illinois).	1	F
	D-COE-32052-30: Red River of the North (Norman County, Minn.).	1	F
	D-COE-32056-29: Vermilion Harbor (Ohio)	1	F
	D-COE-32081-20: Lorain Harbor (Ohio)	3	F
	D-COE-32091-26: Lafarge Lake, Kickapoo River (Wisconsin).	1	F
	D-COE-34011-28: Wabash River Basin (2d Draft) (Indiana).	1	F
	D-COE-53005-29: Railroad Closure Structure (Beach City Lake, Ohio).	2	F
	D-COE-61022-29: Recreation Improvement, Cuyahoga River (Ohio).	2	F
	D-COE-24011-34: Aquatic Plant Control Program (Texas).	3	G
	D-COE-40391-39: VII-197, Route 13 (Greene County, Mo.).	2	H
	D-COE-32025-40: Western Unit Flood Protection (Montana).	1	I
	D-COE-32072-46: Channel Improvements for Lytle and Warm Creeks (California).	2	J
	D-COE-36034-46: Corte Madera Creek Flood Control (California).	2	J
	D-COE-81013-46: Construction of U.S. Army Western Medical (California).	2	J
	D-COE-89025-54: Zintel Canyon Project (Washington).	1	K
	D-COE-31006-27: Dively Drainage and Levee District (Illinois).	2	F
	D-COE-30016-31: Emergency Snagging and Clearing on Galinas River (New Mexico).	1	G
	D-COE-32084-34: Matagorda Ship Channel (Texas)	3	G
	D-COE-31010-39: VII-205, Missouri River Levee System (Missouri).	1	H
	D-COE-30011-49: Kahului Harbor West Breakwater Repair (Maui, Hawaii).	1	J

See footnote at end of table

APPENDIX I.—ENVIRONMENTAL IMPACT STATEMENTS FOR WHICH COMMENTS WERE ISSUED BETWEEN DECEMBER 1, 1971 AND JANUARY 15, 1972—Continued

Responsible Federal Agency	Title and number of statement [1]	General nature of comments	Source for copies of comments
General Services Administration	D-GSA-21010-11: Disposal of Philadelphia Army Supply Base (Pennsylvania).	1	D
	D-GSA-81018-11: Disposal of Birdsboro Army Tank, Steel Foundry (Pennsylvania).	1	D
	D-GSA-81020-46: Disposal of Lewiston Government Camp (California).	2	J
Federal Aviation Administration	D-FAA-51017-18: Lincolnton-Cherryville Airport (North Carolina).	1	E
	D-FAA-51046-46: Auburn Municipal Airport (Auburn, Calif.).	2	J
Tennessee Valley Authority	D-TVA-06008-23: Sequoyah Nuclear Plant (Tennessee).	3	E
	D-TVA-06018-23: Browns Ferry Nuclear Plant, Units 1, 2, and 3.	3	E
Department of Interior	D-DOI-89024-27: Boat Launch Facility (Fulton, Ill.).	1	F
	D-DOI-01001-45: Oil Shale Retort Research Project (Colorado).	2	I
	D-DOI-50037-40: Project 42-A Sloan Bridge (Montana).	2	I
	D-DOI-31005-48: Central Arizona Project (Arizona)	3	J
	D-DOI-32060-54: Marcus Whitman and Milton Freewater Division (Washington).	2	K
	D-DOI-89000-46: Santa Margarita Project (California).	3	J

[1] The number preceding the title is an EPA number assigned to each draft impact statement reviewed. This number should be cited when requesting copies of EPA's comments.

APPENDIX II—PROPOSED REGULATIONS FOR WHICH COMMENTS WERE ISSUED BETWEEN DECEMBER 1, 1971, AND JANUARY 15, 1972

Federal Trade Commission	Procedures to Implement the "National Environmental Policy Act" (36 F.R. 22814-22815).	2	A
Department of Agriculture	National Practice L-1, Disposal Pits for Solid Waste, 1972 Rural Environmental Assistance Program.	3	A

APPENDIX III—DEFINITION OF CODES FOR THE GENERAL NATURE OF EPA COMMENTS

(1) *General agreement/lack of objections.* The Agency generally:

(a) Has no objections to the proposed action as described in the draft impact statement;

(b) Suggests only minor changes in the proposed action or the draft impact statement; or

(c) Has no comments on the draft impact statement or the proposed action.

(2) *Inadequate information.* The Agency feels that the draft impact statement does not contain adequate information to assess fully the environmental impact of the proposed action. The Agency's comments call for more information about the potential environmental hazards addressed in the statement, or ask that a potential environmental hazard be addressed since it was not addressed in the draft statement.

(3) *Major changes necessary.* The Agency believes that the proposed action, as described in the draft impact statement, needs major revisions or major additional safeguards to adequately protect the environment.

(4) *Unsatisfactory.* The Agency believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, the Agency believes that the safeguards which might be utilized may not adequately protect the environment from the hazards arising from this action. The Agency therefore recommends that alternatives to the action be analyzed further (including the possibility of no action at all).

APPENDIX IV—SOURCES FOR COPIES OF EPA COMMENTS

A. Director, Office of Public Affairs, Environmental Protection Agency, Washington, D.C. 20460.

B. Director of Public Affairs, Region I, Environmental Protection Agency, Room 2303, John F. Kennedy Federal Building, Boston, Mass. 02203.

C. Director of Public Affairs, Region II, Environmental Protection Agency, Room 847, 26 Federal Plaza, New York, NY 10007.

D. Director of Public Affairs, Region III, Environmental Protection Agency, Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106.

E. Director of Public Affairs, Region IV, Environmental Protection Agency, Suite 300, 1421 Peachtree Street NE., Atlanta, GA 30309.

F. Director of Public Affairs, Region V, Environmental Protection Agency, 1 North Wacker Drive, Chicago, IL 60606.

G. Director of Public Affairs, Region VI, Environmental Protection Agency, 1600 Patterson Street, Dallas, TX 75201.

H. Director of Public Affairs, Region VII, Environmental Protection Agency, 1735 Baltimore Street, Kansas City, MO 64108.

I. Director of Public Affairs, Region VIII, Environmental Protection Agency, Lincoln Tower, Room 916, 1860 Lincoln Street, Denver, CO 80203.

J. Director of Public Affairs, Region IX, Environmental Protection Agency, 100 California Street, San Francisco, CA 94111.

K. Director of Public Affairs, Region X, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101.

[FR Doc.72-3140 Filed 3-3-72;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Dockets Nos. 19437, 19438]

BENJAMIN J. FRIEDLAND AND WARREN BROADCASTING CO.

Order Designating Applications for Consolidated Hearing on Stated Issues

In regard applications of Benjamin J. Friedland, Blairstown, N.J., Docket No. 19437, File No. BPH-7495, requests: Channel 292; 3 kw. (H); 3 kw. (V); 300 feet; Warren Broadcasting Corp., Blairstown, N.J., Docket No. 19438, File No. BPH-7566, requests: Channel 292; 1.75 kw. (H); 1.75 kw. (V); 380 feet, for construction permits.

1. The Commission, by the Chief of the Broadcast Bureau, acting under delegated authority, has under consideration the captioned applications which are mutually exclusive in that operation by the applicants as proposed would result in mutually destructive interference.

2. 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.

3. Accordingly, *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 which of the proposals would, on a comparative basis, better serve the public interest;

(2) To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications for a construction permit should be granted.

4. *It is further ordered,* That the applicants shall file a written appearance stating an intention to appear and present evidence on the specified issues, within the time and in the manner required by § 1.221(c) of the rules.

5. *It is further ordered,* That the applicants shall give notice of the hearing within the time and in the manner specified in § 1.594 of the rules, and shall seasonably file the statement required by § 1.594(g).

Adopted: February 22, 1972.

Released: February 24, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.72-3345 Filed 3-3-72;8:52 am]

[Docket No. 18888; FCC 72-140]

CENTREVILLE BROADCASTING CO.

Memorandum Opinion and Order Modifying Issue

In regard application of Centreville Broadcasting Co., Centreville, Va., Docket No. 18888, File No. BP-17564, for construction permit.

1. This proceeding involves the application of Centreville Broadcasting Co. (CBC) for a construction permit for a new daytime-only, Class II, standard broadcast station at Centreville, Va. When the CBC application was filed, an application for a standard broadcast station at Tappahannock, Va., filed by Rappahannock Broadcasting Corp. (RBC) was also pending. Because of overlap of their proposed service contours, the CBC and RBC applications were mutually exclusive. In order to eliminate this mutual exclusivity, CBC thereafter amended its proposal to modify its directional antenna system. Although O.K. Broadcasting Co., licensee of Station WEEL, Fairfax, Va., urged that overlap problems continued to exist, we concluded that prohibitive overlap was unlikely in view of the surveys and measurements submitted by the applicants. Accordingly, we granted RBC's application without hearing, FCC 69-379, August 20, 1969.

2. After RBC had constructed its station (WRAR) and was granted program test authority on October 23, 1970, WEEL made additional measurements on the actual operation of that station. Based on allegations showing prohibitive overlap between WRAR and the CBC proposal, WEEL requested the Review Board to enlarge the issues in this proceeding to determine whether or not the existing operation of WRAR would result in prohibitive overlap with the CBC proposal. In the light of WEEL's further showing, the Review Board, at 28 FCC 2d 438, concluded that the extent of overlap, if any, which might be caused to CBC by WRAR would be best determined in the evidentiary hearing and that Issue No. 1 should be modified to read as follows:

> To determine whether the existing 0.05 mV/ contour of either Station WIOO, Carlisle, Pa., or Station WRAR, Tappahannock, Va., would overlap CBC's proposed 1.0 mV/m contour in contravention of § 73.37 (b) (2) of the Commission's rules.

In addition, because the matter was deemed beyond its jurisdiction, the Board certified to us a question concerning the proper implementation of CBC's right to a full comparative hearing under Ashbacker Radio Corp. v. F.C.C., 326 U.S. 327 (1945), if it should be determined that prohibitive overlap does exist.

3. In its comments regarding certification and application for review,[1] CBC urges that review of this matter is warranted, that the Board erred in modifying Issue No. 1, and that, even if prohibited overlap does exist, its application should be granted on the condition that it would agree to accept any interference from WRAR. Without further discussion of the parties' views, we are persuaded that the peculiar circumstances in this case warrant action at this time. On the basis of the present record, it appears that an error may have been made in the original determination that no overlap would occur between WRAR and CBC's proposal. Nonetheless, the station was constructed and it began to provide service for a significant area of rural population before the present allegations were submitted.

4. Under these circumstances, we are convinced that the equities reasonably accruing to WRAR far outweigh the considerations warranting strict enforcement of the overlap prohibitions and that it would be grossly unfair to make WRAR submit, at this juncture, to the requirements of a full evidentiary hearing. Thus, to the extent that there may be some possible violation of the rule involving overlap of Station WRAR and CBC's proposal as a result of the earlier mistaken understanding of the facts, we believe that the public interest would be best served by granting a waiver of the provisions of section 73.37(b)(2) of the rules. For this reason, we shall also vacate the Review Board's order modifying Issue No. 1, and this proceeding may be resolved without any further consideration of the alleged overlap between CBC's proposal and Station WRAR.

5. *Accordingly, it is ordered:*

(a) That the comments regarding certification and application for review filed May 7, 1971, by Centreville Broadcasting Co. are granted to the extent reflected in this memorandum opinion and order and are denied in all other respects;

(b) That the provisions of § 73.37(b)(2) of the rules are waived insofar as any possible prohibited overlap might exist between the proposed operation of Centreville Broadcasting Co. and the actual operation of Station WRAR, Tappahannock, Va.;

(c) That the action of the Review Board, FCC 71R-115, 28 FCC 2d 438, modifying Issue No. 1 in this proceeding is vacated;

(d) That the request for official notice filed January 20, 1972, by Centreville Broadcasting Co. is dismissed as moot.

Adopted: February 16, 1972.

Released: February 24, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[2]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-3346 Filed 3-3-72;8:52 am]

[1] CBC's pleading was filed May 7, 1971. In addition, the Broadcast Bureau filed a response on May 27, 1971; WRAR filed a letter on May 28, 1971; WEEL filed comments on June 3, 1971; WRAR filed a further letter on June 8, 1971; CBC filed a reply on June 15, 1971; and CBC filed a request on Jan. 20, 1972, for official notice of a decision of the United States Court of Appeals for the District of Columbia Circuit in WLVA, Inc. v. F.C.C., Case No. 24,702, decided Jan. 4, 1972, 23 RR 2d 2081. In view of our action herein, CBC's request for official notice will be dismissed as moot.

[2] Commissioners Johnson and H. Rex Lee absent.

[Docket No. 16070; FCC 72-154]

COMMUNICATIONS SATELLITE CORP.

Order Enlarging Investigation

In the matter of Communications Satellite Corp., Docket No. 16070, investigation into charges, practices, classifications, rates, and regulations.

1. The Commission has under consideration: (a) Its orders herein, instituting an investigation into the lawfulness of the Communications Satellite Corp.'s (Comsat) Tariff FCC No. 1, 38 FCC 1286 (1965) and 1 FCC 2d 533 (1965), and Comsat's Tariff FCC No. 3, FCC 67-57 (1967); and (b) Comsat's Tariff FCC No. 5, filed January 31, 1972, to become effective February 1, 1972, which offers leased channel service to authorized common carriers between Comsat's Jamesburg, Calif. earth station and an earth station provided by the National Science Foundation on the continent of Antarctica via an appropriate communications satellite.

2. The rate-making principles and assumptions used in developing Tariffs FCC No. 1 and 3, under investigation herein were, to a large extent, also used in developing the charges contained in Tariff FCC No. 5. In addition, certain novel principles have been applied in developing these charges. Therefore, we believe that the investigation herein should also include consideration of the charges, practices, classifications, rates, and regulations contained in Comsat's Tariff FCC No. 5.

3. Among the issues to be investigated in connection with this tariff are (a) whether Comsat, which will furnish the space segment capacity between the satellite and the NSF Antarctica station, should separately tariff such charges, and if so, at what rate (see, in this connection, establishment of regulatory policies relating to authorizations under section 214 of the Communications Act of 1934, memorandum opinion and statement of policy released May 18, 1970 (FCC 70-509) as clarified by memorandum opinion and order released June 29, 1971 (FCC 71-650)); (b) whether NSF should be authorized to acquire such units of satellite utilization relating to the link between the satellite and Antarctica directly from INTELSAT at the INTELSAT charge; and (c) whether the NSF station in Antarctica should be considered as a U.S. point, and have applied to it such rate pattern as may be determined by the Commission in Docket No. 16070, to be applied between U.S. points.

4. Wherefore, *it is ordered*, That the investigation herein is enlarged, pursuant to sections 203, 204, 205, and 403 of the Communications Act of 1934, to include consideration of the investigation into the lawfulness under sections 201 and 202 of the Communications Act of 1934 and sections 201(c) (2) and (5) of the Communications Satellite Act of 1962, of Tariff FCC No. 5 and any amendments thereof as well as any successive issues

of such tariff as may hereafter be made until the close of the record herein.

Adopted: February 16, 1972.

Released: February 23, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-3347 Filed 3-3-72;8:52 am]

FEDERAL MARITIME COMMISSION

ATLANTIC LINES, LTD. AND PAN AMERICAN MAIL 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 1015; 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. S. Doolos, Conferences and Tariffs, Chester, Blackburn & Roder, Inc., 1 World Trade Center, Suite 1035, New York, NY 10048.

Agreement No. 9864-1, between Atlantic Lines, Ltd. (initial carrier) and Pan American Mail Line, Inc. (delivering carrier), modifies the basic agreement which covers a through billing arrangement for the movement of general cargo from U.S. Atlantic and Gulf ports with transshipment at Kingston, Jamaica, to ports in Aruba, Bonaire, Curacao, Netherlands West Indies, and Panama by amending Article 1 thereof to include St. Croix and St. Thomas in the U.S. Virgin Islands as additional ports of transshipment, and adding St. Maarten, Netherlands West Indies as a port of discharge.

Dated: February 28, 1972.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-3338 Filed 3-3-72;8:51 am]

[1] Commissioners Johnson and H. Rex Lee absent.

ATLANTIC PASSENGER STEAMSHIP CONFERENCE

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

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 1015; 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 for approval by:

Mr. R. M. L. Duffy, Secretary General, Atlantic Passenger Steamship Conference, 139, Sandgate Road, Folkestone, Kent, England.

Agreement No. 7840-80 of the Atlantic Passenger Steamship Conference provides for the modification of Agreement No. 7840, as amended, by revising the formula for the apportionment of conference expenses.

Dated: February 28, 1972.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-3340 Filed 3-3-72;8:51 am]

AUSTRALIA, NEW ZEALAND, AND SOUTH SEA ISLANDS PACIFIC COAST CONFERENCE

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; 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. J. R. Harper, Secretary, Australia, New Zealand, and South Sea Islands, Pacific Coast Conference, 635 Sacramento Street, Room 330, San Francisco, CA 94111.

Agreement No. 7580-13 modifies the basic agreement of the Australia, New Zealand, and South Sea Islands Pacific Coast Conference by amending Article 1(c)(2) authorizing absorption and equalization of cargo transfer costs at U.S. discharge ports.

Dated: February 28, 1972.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-3339 Filed 3-3-72;8:51 am]

CERTIFICATES OF FINANCIAL RESPONSIBILITY FOR OIL POLLUTION

Notice of Name Changes

Notice is hereby given that all certificates of financial responsibility (oil pollution) bearing the below-listed numbers have been reissued for the purpose of indicating on the new certificates the more correct English translations of the

operating companies' names. The originally issued certificates have been revoked simultaneously.

Certificate No.	Originally issued as—	Reissued as—
05577	Far-Eastern Steamship Co.	Far-Eastern Shipping Co.
05578	Baltic Steamship Co.	Baltic Shipping Co.
05579	Black Sea Steamship Co.	Black Sea Shipping Co.
05580	Kamchatka Steamship Co.	Kamchatka Shipping Co.
05581	Latvian Steamship Co.	Latvian Shipping Co.
05704	Murmansk Steamship Co.	Murmansk Shipping Co.
05984	Sakhalin Steamship Co.	Sakhalin Shipping Co.
06129	Azov Steamship Co.	Azov Shipping Co.
06130	Northern Steamship Co.	Northern Shipping Co.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-3337 Filed 3-3-72;8:51 am]

DOMINION NAVIGATION CO., LTD.

Notice of Issuance of Casualty Certificate

Security for the protection of the public; financial responsibility to meet liability incurred for death or injury to passengers or other persons on voyages.

Notice is hereby given that the following have been issued a certificate of financial responsibility to meet liability incurred for death or injury to passengers or other persons on voyages pursuant to the provisions of section 2, Public Law 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540):

Dominion Navigation Co., Ltd., Bahamas International Trust Building, Bank Lane, Nassau, Bahamas.

Dated: February 29, 1972.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-3341 Filed 3-3-72;8:51 am]

DOMINION NAVIGATION CO., LTD.

Notice of Issuance of Performance Certificate

Security for the protection of the public; indemnification of passengers for nonperformance of transportation.

Notice is hereby given that the following have been issued a certificate of Financial responsibility for indemnification of passengers for nonperformance of transportation pursuant to the provisions of section 3, Public Law 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Dominion Navigation Co., Ltd., Bahamas International Trust Building, Bank Lane, Nassau, Bahamas.

Dated: February 29, 1972.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 72-3342 Filed 3-3-72;8:51 am]

FEDERAL POWER COMMISSION

[Project 619-California]

PACIFIC GAS AND ELECTRIC CO.

Notice of Availability of Environmental Statement for Inspection

FEBRUARY 29, 1972.

Notice is hereby given that on July 21, 1971, an agency draft statement pursuant to section 7 of the guidelines of the Council on Environmental Quality (36 F.R. 7724, April 23, 1971) was placed in the public files of the Federal Power Commission. This statement deals with an application for new major license filed by Pacific Gas and Electric Co. for its Bucks Creek Project No. 619, pursuant to the Federal Power Act.

This statement is available for public inspection in the Commission's Office of Public Information, Room 2523, General Accounting Office, 441 G Street NW., Washington, DC. Copies will be available from the National Technical Information Service, Department of Commerce, Springfield, Va. 22151.

The project is located on Bucks, Grizzly, and Milk Ranch Creeks and their tributaries—all tributaries of the North Fork Feather River—and on North Fork Feather River, in Plumas County, and Plumas National Forest, Calif.

The project consists of: (1) Bucks Lake, a 1,827-acre reservoir formed by a 109-foot high, 1,220-foot long dam discharging to Bucks Creek and thence into Lower Bucks Lake; (2) Lower Bucks Lake, a 136-acre reservoir formed by a 96-foot high, 500-foot long dam; (3) Three Lakes, a 40-acre reservoir formed by a 30-foot high, 560-foot long dam; (4) Grizzly Forebay, a 38-acre reservoir formed by a 87-foot high, 420-foot long dam; (5) Milk Ranch Conduit, a 42,297-foot long conduit diverting Three Lakes water releases from Milk Ranch Creek, and other small creeks en route, to Lower Bucks Lake; (6) Lower Bucks Lake Tunnel, a 5,716-foot long tunnel conveying the combined Bucks Lake, Three Lakes, and Lower Bucks Lake water releases into Grizzly Creek which flows into Grizzly Forebay; (7) Grizzly Forebay Tunnel, a 9,575-foot long tunnel conveying water from Grizzly Forebay to the Bucks Creek penstocks; (8) two 4,786-foot long penstocks from Grizzly Forebay Tunnel to the powerhouse; (9) Buck Creek Powerhouse having an installed capacity of 55,000 kw.; (10) a switchyard and a 1.3-mile 230-kv. transmission line; and (11) recreation facilities as described in the Exhibit R.

Any person desiring to present evidence regarding environmental matters in this proceeding must file with the Federal Power Commission a petition to intervene, and also file an explanation of their environmental position, specifying any difference with the environmental statement upon which the intervenor wishes to be heard, including therein a discussion of the factors enumerated in § 2.80 of Order 415-B. Written statements by persons not wishing to intervene may be filed for the Commission's consideration. The petitions to intervene or comments should be filed with the Commission on or before 60 days from February 29, 1972. The Commission will consider all responses to the statement.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-3360 Filed 3-3-72;8:50 am]

[Project 2705]

CITY OF SEATTLE, WASH.

Notice of Availability of Environmental Statement for Inspection

FEBRUARY 29, 1972.

Notice is hereby given that on February 4, 1972, as required by § 2.81(b) of Commission regulations under Order 415-B (36 F.R. 22738, November 30, 1971) a draft environmental statement containing information comparable to an agency draft statement pursuant to section 7 of the guidelines of the Council on Environmental Quality (36 F.R. 7724, April 23, 1971) was placed in the public files of the Federal Power Commission. This statement deals with an application for license filed by the city of Seattle, Wash., for its Newhalem Creek Project No. 2705, pursuant to the Federal Power Act.

This statement is available for public inspection in the Commission's Office of Public Information, Room 2523, General Accounting Office, 441 G Street NW., Washington, DC. Copies will be available from the National Technical Information Service, Department of Commerce, Springfield, Va. 22151.

The project is located on Newhalem Creek, a tributary of the Skagit River in Whatcom County, Wash. The project is a run-of-river hydroelectric development consisting of: (1) A concrete, overflow crest, diversion dam (crest elevation 1,010 feet) approximately 45 feet long and 10 feet high; a combination sluiceway and intake structure; a 6-foot by 7-foot unlined tunnel and 33-inch steel penstock approximately 3,300 feet long; (2) a woodframe powerhouse containing a generating unit consisting of: Two Pelton impulse water wheels connected to a generator rated at 2,500 kv.-a., 0.7 P.F. (1,750 kw.); and (3) appurtenant facilities.

Any person desiring to present evidence regarding environmental matters in this proceeding must file with the Federal Power Commission a petition to intervene, and also file an explanation of their environmental position, specifying any difference with the environmental statement upon which the intervenor wishes to be heard, including therein a discussion of the factors, enumerated in § 2.80 of Order 415-B. Written statements by persons not wishing to intervene may be filed for the Commission's consideration. The petitions to intervene or comments should be filed with the Commission on or before 60 days from February 28, 1972. The Commission will consider all responses to the statement.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-3297 Filed 3-3-72;8:50 am]

[Project 1855]

NEW ENGLAND POWER CO.

Notice of Availability of Environmental Statement for Inspection

FEBRUARY 29, 1972.

Notice is hereby given that on February 17, 1972, as required by § 2.81(b) of Commission regulations under Order 415–B (36 F.R. 22738, November 30, 1971) a draft environmental statement containing information comparable to an agency draft statement pursuant to section 7 of the guidelines of the Council on Environmental Quality (36 F.R. 7724, April 23, 1971) was placed in the public files of the Federal Power Commission. This statement deals with an application for new major license for the constructed Bellows Falls Project No. 1855 filed pursuant to the Federal Power Act.

This statement is available for public inspection in the Commission's Office of Public Information, Room 2523, General Accounting Office, 441 G Street NW., Washington, DC. Copies will be available from the National Technical Information Service, Department of Commerce, Springfield, Va. 22151.

The project, which is located in the counties of Cheshire and Sullivan, N.H., and Windham and Windsor, Vt., on the Connecticut River consists of a 40,800-kw. hydroelectric generating facility with a concrete gravity dam and a 2,800-acre 26-mile long reservoir and picnicking, hiking, fishing, and boat launching facilities.

Any person desiring to present evidence regarding environmental matters in this proceeding must file with the Federal Power Commission a petition to intervene, and also file an explanation of their environmental position, specifying any difference with the environmental statement upon which the intervenor wishes to be heard, including therein a discussion of the factors enumerated in § 2.80 of Order 415–B. Written statement by persons not wishing to intervene may be filed for the Commission's consideration. The petitions to intervene or comments should be filed with the Commission on or before 60 days from February 17, 1972. The Commission will consider all responses to the statement.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-3298 Filed 3-3-72;8:50 am]

[Project 1904]

NEW ENGLAND POWER CO.

Notice of Availability of Environmental Statement for Inspection

FEBRUARY 29, 1972.

Notice is hereby given that on February 16, 1972, as required by § 2.81(b) of Commission regulations under Order 415–B (36 F.R. 22738, November 30, 1971) a draft environmental statement containing information comparable to an agency draft statement pursuant to section 7 of the guidelines of the Council on Environmental Quality (36 F.R. 7724, April 23, 1971) was placed in the public files of the Federal Power Commission. This statement deals with an application for new major license for the constructed Vernon Project No. 1904 filed pursuant to the Federal Power Act.

This statement is available for public inspection in the Commission's Office of Public Information, Room 2523, General Accounting Office, 441 G Street NW., Washington, DC. Copies will be available from the National Technical Information Service, Department of Commerce, Springfield, Va. 22151.

The project, which is located in Cheshire County, N.H., and Windham County, Vt., on the Connecticut River, consists of a 24,400-kw. hydroelectric generating facility with a concrete gravity dam and a 2,550-acre, 26-mile long reservoir and picnicking, hiking, fishing, and boat launching facilities.

Any person desiring to present evidence regarding environmental matters in this proceeding must file with the Federal Power Commission a petition to intervene, and also file an explanation of their environmental position, specifying any difference with the environmental statement upon which the intervenor wishes to be heard, including therein a discussion of the factors enumerated in § 2.80 of Order 415–B. Written statement by persons not wishing to intervene may be filed for the Commission's consideration. The petitions to intervene or comments should be filed with the Commission on or before 60 days from February 16, 1972. The Commission will consider all responses to the statement.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-3299 Filed 3-3-72;8:50 am]

[Project 67]

SOUTHERN CALIFORNIA EDISON CO.

Notice of Availability of Environmental Statement for Inspection

FEBRUARY 29, 1972.

Notice is hereby given that on August 21, 1970, as required by § 2.81(b) of Commission regulations under Order 415–B (36 F.R. 22738, November 30, 1971) a draft environmental statement containing information comparable to an agency draft statement pursuant to section 7 of the guidelines of the Council on Environmental Quality (36 F.R. 7724, April 23, 1971) was placed in the public files of the Federal Power Commission. This statement deals with an application for a new major license for constructed Big Creek No. 2A and No. 8 Project No. 67 filed pursuant to the Federal Power Act.

This statement is available for public inspection in the Commission's Office of Public Information, Room 2523, General Accounting Office, 441 G Street NW., Washington, DC. Copies will be available from the National Technical Information Service, Department of Commerce, Springfield, Va. 22151.

This statement discusses the environmental impact of Big Creek No. 2A and No. 8 Project, located in the vicinity of cities and towns of Madera, Fresno, and Visalia, in Fresno and Madera Counties, Calif.

The project consists of several diversion dams, conduits, natural channels, reservoirs, and two powerhouses containing a total installed capacity of 138,000 kw. The project has been in operation since 1921.

Any person desiring to present evidence regarding environmental matters in this proceeding must file with the Federal Power Commission a petition to intervene, and also file an explanation of their environmental position, specifying any difference with the environmental statement upon which the intervenor wishes to be heard, including therein a discussion of the factors enumerated in § 2.80 of Order 415–B. Written statement by persons not wishing to intervene may be filed for the Commission's consideration. The petitions to intervene or comments should be filed with the Commission on or before 60 days from February 29, 1972. The Commission will consider all responses to the statement.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-3301 Filed 3-3-72;8:50 am]

[Docket No. CP72-207]

EL PASO NATURAL GAS CO.

Notice of Application

FEBRUARY 29, 1972.

Take notice that on February 18, 1972, El Paso Natural Gas Co. (applicant), Post Office Box 1492, El Paso, TX 79978, filed in Docket No. CP72-207 an application pursuant to section 7(c) of the Natural Gas Act for permission for and approval of the abandonment of service to Foote Mineral Co. (Foote) and related natural gas facilities in Montrose County, Colo., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks permission and approval to abandon direct interruptible natural gas service to Foote, the successor to Vanadium Corporation of America (Vanadium) and to abandon by removal and salvage its Nucla Meter Station and appurtenances in Montrose County, Colo., which were utilized for service to Vanadium. Applicant states that delivery of gas to Foote's plant in Nucla, Colo., is no longer needed and that Foote, by letter agreement of September 28, 1971, acknowledged the cancellation of the original related sales contract. Applicant further states that the proposed abandonment will have no adverse impact on any of its other customers.

Applicant estimates the cost of the proposed project at $1,050.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 24, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure

(18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-3293 Filed 3-3-72;8:49 am]

[Docket No. CP72-204]

KANSAS-NEBRASKA NATURAL GAS CO., INC.

Notice of Application

FEBRUARY 29, 1972.

Take notice that on February 14, 1972, Kansas-Nebraska Natural Gas Co., Inc. (applicant), Hastings, Nebr. 68901, filed in Docket No. CP72-204 an application pursuant to section 7(b) and section 7(c) of the Natural Gas Act for permission and approval to abandon and remove certain natural gas facilities and for a certificate of public convenience and necessity authorizing construction and operation of natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks permission and approval to abandon and remove 14.5 miles of 3-inch pipeline in its Norton system located in Decatur County, Kans., together with abandonment of service to five rural customers.

Applicant states that this section of pipe has been and is a constant source of maintenance problems. Applicant further states that in order to continue service to the five customers mentioned above, it would be necessary to replace approximately 5.3 miles of the 3-inch pipeline. Applicant states that these customers can be converted to LPG which is readily available.

Applicant proposes to construct and operate 4 miles of 3-inch and 9.7 miles of 2-inch buried pipeline to replace the present 13.7 miles of 2-inch top-of-ground pipeline on applicant's Kensington line located in Phillips County, Kans. Applicant states that the present pipeline has been damaged by outside forces at various times, requires constant surveillance and is a source of excessive maintenance problems. Applicant further proposes to construct and operate 6 miles of 6-inch loop on its Sharon Springs line in order to correct a low pressure problem on the north segment of this line and provide additional capacity if required.

Applicant estimates the total cost of the construction of the facilities proposed at $120,000 which will be financed out of current working capital or will be obtained from interim bank loans which at a later date will be funded through a long-term security issue. Applicant estimates the total cost of the abandonment of facilities at $13,500.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 21, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-3294 Filed 3-3-72;8:50 am]

[Docket No. CP72-205]

TEXAS GAS TRANSMISSION CORP.

Notice of Application

FEBRUARY 29, 1972.

Take notice that on February 14, 1972, Texas Gas Transmission Corp. (applicant), Post Office Box 1160, Owensboro, KY 42301, filed in Docket No. CP72-205 an application pursuant to section 7(b) of the Natural Gas Act for permission for and approval of the abandonment of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to abandon by sale to Western Kentucky Gas Co. (Western) approximately 1,863 feet of 2-inch pipeline together with all right-of-way properties and easements appurtenant thereto. This line comprises all of applicant's Sebree 2-inch line located in Webster County, Ky. This pipeline is used exclusively to serve Western. Western desires to purchase the facilities for integration into its system. Applicant states that the proposed abandonment will not affect the design and operation of its main line system. Applicant further states that the agreed purchase price shall be $950.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 21, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-3295 Filed 3-3-72;8:50 am]

[Docket No. CP72-199]

MISSISSIPPI RIVER TRANSMISSION CORP.

Notice of Application

FEBRUARY 24, 1972.

Take notice that on February 7, 1972, Mississippi River Transmission Corp. (applicant), 9900 Clayton Road, St. Louis, MO 63124, filed in Docket No. CP72-199 an application pursuant to section 7(b) and section 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing construction and operation of natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to construct additional pipeline loop sections on its Main Line System, to relocate certain existing compressor units, and to abandon other Main Line System compressor units and stations. The proposed construction consists of the installation of approximately 4.2 miles of 26-inch pipeline loops on applicant's Main Line System in two sections in the State of Arkansas, including a 1.7-mile section crossing the Arkansas River, and the transfer of two 1,000 horsepower compressor units from Neelyville Station, located in Butler County, Mo., to Poplar Bluff No. 1 Station, also located in Butler County, Mo., together with construction and installation of miscellaneous related equipment and facilities.

Applicant proposes to abandon the Neelyville Station, including the two 600 horsepower compressor units which will remain after the transfer of the two 1,000 horsepower units described above, and the Glendale No. 1 Station located in Glendale, Lincoln County, Ark., with seven 1,000 horsepower compressor units. Applicant states that the proposed abandonments involve the retirement of certain of the oldest compressors on applicant's system.

Applicant states that the program proposed will result in improvements in operating dependability and efficiency. The proposals will involve a reduction of the physical delivery capacity of the Main Line System by approximately 20,000 Mcf per day. Applicant states that this reduction reflects correct gas supply conditions and the present availability of supply input solely at Perryville, La., the origin of its Main Line System.

Applicant estimates the total cost of the construction and transfer of facilities at $1,948,000 which will be financed from internally generated funds and interim bank loans.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 14, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-3263 Filed 3-3-72;8:45 am]

[Docket No. CP72-202]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Notice of Application

FEBRUARY 24, 1972.

Take notice that on February 9, 1972, Natural Gas Pipeline Company of America (applicant), 122 South Michigan Avenue, Chicago, IL 60603, filed in Docket No. CP72-202 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the replacement of a portion of applicant's 24-inch No. 1 Crawford pipeline in Will County, Ill., with 42-inch pipe, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to continue a program of replacing portions of its original 24-inch No. 1 Crawford pipeline with 42-inch pipe. This program was begun in 1968 and since that date 18 miles of the total of 34.44 miles of 24-inch line has been replaced. Applicant proposes to replace an additional 10.45 miles of 24-inch pipe in 1972. This program was begun when the flow requirements of the Crawford lines, of which there are three, began to exceed capacity. Upon completion of construction of the facilities proposed the capacity of the Crawford lines will be approximately 1,176,000 Mcf per day. This would exceed present flow capabilities by 131,000 Mcf.

Applicant states that only short sections of replacement can be undertaken in any 1 year because of the area traversed by the pipeline, limitations on construction and proximity to ultimate points on consumption.

The applicant states that the estimated cost of the above replacement is $3,600,000 which it plans to finance from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 14, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-3261 Filed 3-3-72;8:45 am]

[Docket No. CP72-201]

NORTHERN STATES POWER CO.

Notice of Application

FEBRUARY 24, 1972.

Take notice that on February 9, 1972, Northern States Power Co. (applicant), 100 North Barstow Street, Eau Claire, Wis. 54701, filed in Docket No. CP72-201 an application pursuant to section 7(c) of the Natural Gas Act for a certificate

of public convenience and necessity authorizing the transportation and sale of liquefied natural gas (LNG) in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant operates an LNG plant at Eau Claire, Wis., the production of which it utilizes for peak-shaving operations on its distribution systems in Wisconsin. Applicant seeks authorization to transport and sell LNG from this plant to its parent company, Northern States Power Co. of Minnesota (NSP), a public utility engaged in the distribution of natural gas in North Dakota and Minnesota. NSP is constructing an LNG satellite storage tank at its Wescott Plant located in Inver Grove Heights near St. Paul, Minn. This tank is being built to expand NSP's peak-shaving capacity in its St. Paul operations. Applicant proposes to commence sales and deliveries of LNG to NSP in July 1972. Applicant states that presently no precise determination as to the quantity of LNG to be sold can be made but the quantity to be delivered and sold to NSP will not normally exceed 2 million gallons annually. Applicant further states that the proposed transactions will take place in such volumes and at such times as are appropriate in the operation of the peak-shaving operations of these companies. No new facilities are required to be constructed to implement the proposed plan.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 14, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

MARY B. KIDD,
Secretary.

[FR Doc.72-3262 Filed 3-3-72;8:45 am]

SIERRA PACIFIC POWER CO.

Notice of Proposed Changes in Electric Rate Schedules

FEBRUARY 24, 1972.

Take notice that on January 27, 1972, Sierra Pacific Power Co. (Sierra Pacific) tendered for filing proposed changes in its FPC Electric Tariff, Original Volume No. 1, applicable to wholesale sales of electric energy. The rate schedule changes proposed to become effective on April 1, 1972, are applicable to resale power service, both medium and high voltage.

Sierra Pacific's filing indicates that the proposed changes would: (i) Increase revenues approximately $273,608 annually, based upon operations for the 12 months ended September 1971; and (ii) include a new fuel adjustment clause. The company states that the increase in rates is necessitated by increases in operating expenses, particularly in fuel costs; increases in cost of plant additions; and higher capital costs.

Copies of the filing have been served on customers and interested State regulatory agencies.

Any person desiring to be heard or make protest with reference to said application should on or before March 15, 1972, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission' rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate in any hearing therein, must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-3264 Filed 3-3-72;8:45 am]

[Docket No. E-7711]

SOUTHWESTERN ELECTRIC POWER CO.

Notice of Tender for Filing of Proposed Initial Rate Schedule and Notice of Cancellation

FEBRUARY 28, 1972.

On December 27, 1971, Southwestern Electric Power Co. tendered for filing with the Commission in Docket No. E-7711 a proposed initial rate schedule designated REA. Southwestern proposes to make such rate schedule applicable to its wholesale electric service to rural electric cooperatives in Texas and Louisiana.[1] On February 7, 1972, Southwestern filed in this docket a notice of cancellation of its FPC rate schedule No. 56 under which Southwestern sells electric power to Tex-La Electric Cooperative, Inc., of Quitman, Tex., for resale to Tex-La's distribution cooperative members.[1] Southwestern proposes an effective date of February 29, 1972, for the cancellation of rate schedule FPC No. 56 and proposes to make rate schedule REA available for service on the same date.

In its letter of transmittal, Southwestern states the filing of rate schedule REA is necessary by reason of the cancellation of the contract between the company and Tex-La Electric Cooperative by letter dated August 5, 1971, with cancellation to be effective February 29, 1972.

Southwestern states that rate schedule REA is based upon the company's best judgment of what a fair and equitable rate schedule should be for the purposes of wholesale service for resale to electric cooperative corporations. Southwestern further states the proposed rate schedule REA is based upon current costs and assures that service will be rendered through the company's existing facilities.

Copies of the proposed rate schedule REA were served by the company on the electric cooperatives involved.

Any person desiring to be heard with reference to Southwestern Electric Power Co.'s proposed rate schedule REA should file a petition to intervene or protest with the Federal Power Commission, Washington, D.C. 20426, in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before March 22, 1972. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a petition to intervene in accordance with the Commission's rules.

Southwestern's transmittal letter, proposed rate schedule REA, and notice of cancellation are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-3296 Filed 3-3-72;8:50 am]

[1] Bossier Rural Electric Membership Corp., Bossier City, La.; Bowie-Cass Electric Cooperative, Inc., Douglasville, Tex.; Deep East Texas Electric Coop., Inc., San Augustine, Tex.; Panola-Harrison Electric Coop., Inc., Marshall, Tex.; Rusk County Electric Cooperative, Inc., Henderson, Tex.; Upshur-Rural Electric Cooperative, Inc., Gilmer, Tex.; Valley Electric Membership Corp., Natchitoches, La.; and Wood County Electric Cooperative, Inc., Quitman, Tex.

[Dockets Nos. CP72–100, CP72–101]

TECON GASIFICATION CO. AND TEXAS EASTERN TRANSMISSION CORP.

Order Consolidating Proceedings, Granting Interventions and Fixing Date for Formal Hearing

FEBRUARY 24, 1972.

On October 12, 1971, pursuant to section 7(c) of the Natural Gas Act, Tecon Gasification Co. (Tecon) filed in Docket No. CP72–100 and Texas Eastern Transmission Corp. (Texas Eastern) filed in Docket No. CP72–101 applications for certificates of public convenience and necessity authorizing the construction and operation of certain natural gas pipeline, compression and gasification facilities, and in Docket No. CP72–101, Texas Eastern also requested permission and approval under section 7(b) of the Natural Gas Act to abandon approximately 15 miles of 20-inch and 12-inch pipeline, all as more fully set forth in the applications which are on file with the Commission and open to the public inspection.

Tecon, in Docket No. CP72–100, requests authorization for the construction and operation of a liquid hydrocarbon gasification plant to gasify liquid hydrocarbons (generally known as naphtha) into pipeline quality gas with a heating value of approximately 1,000 B.t.u. per cubic foot. This plant, which is to include approximately 30,000 horsepower of compression, will be constructed at an estimated cost of $139,849,000 near South Plainfield, N.J. The estimated output production of this plant is 500,000 Mcf of gas per day. Tecon states that this plant will be located adjacent to the pipeline system of Texas Eastern and that the entire production from this plant will be delivered to Texas Eastern. Tecon proposes to sell 300,000 Mcf of this gas per day to Texas Eastern while the remaining volume of 200,000 Mcf per day will be sold to Consolidated Natural Gas Co. (Consolidated). Consolidated will own approqimately 40 percent of the capital stock of Tecon, with the remaining 60 percent being owned by a subsidiary of Texas Eastern.

According to Tecon, approximately one-third of the liquid hydrocarbons necessary for the operation of this plant will be purchased domestically and the other two-thirds will be obtained from foreign sources. The weighted average 1974 cost of all supplies is $3.775 per barrel. These liquid hydrocarbons will be delivered to Tecon's plant by Texas Eastern Terminal Co. (Terminal), a subsidiary of Texas Eastern, by means of docking, terminal, storage, and liquid hydrocarbon pipeline facilities proposed to be constructed or acquired by Terminal. These facilities will consist of a dock, unloading lines, header system, booster pumps, and liquid hydrocarbon storage tanks on Staten Island, N.Y.; a 20-inch liquid hydrocarbon pipeline approximately 15 miles in length extending from the terminal facilities to Tecon's plant; and liquid hydrocarbon storage tanks adjacent to said plant, together with certain related facilities.

Texas Eastern, in Docket No. CP72–101, seeks permission for and approval of the abandonment of approximately 15 miles of pipeline consisting of 12.73 miles of 20-inch and 2.3 miles of 12-inch line. Texas Eastern proposes to abandon this line by sale to Terminal for conversion of a liquid hydrocarbon pipeline. Texas Eastern also seeks authorization to construct and operate approximately 21.6 miles of 42-inch pipeline in lieu of an equal length of 36-inch pipeline which was previously authorized in Docket No. CP69–82 as a loop to its Hanover line in New Jersey, and to install and operate certain natural gas metering and regulating facilities. Texas Eastern will employ its facilities for the delivery to Consolidated by displacement of the volumes of natural gas purchased by Consolidated from Tecon. The overall capital cost of increasing the size of the Hanover loop and constructing the metering and regulating facilities, less the selling price of the pipeline facilities to be abandoned, is approximately $4 million. Texas Eastern states that this cost will be financed by use of its revolving credit agreements.

The sale of gas by Tecon to Texas Eastern and Consolidated will be made on a cost-of-service basis beginning in late 1973 or early 1974. The estimated cost per Mcf for the gas to be purchased from Tecon is $1.23. Texas Eastern and Consolidated request that the Commission, in authorizing Tecon's proposal, specifically authorize them to track without suspension their respective costs of purchasing gas from Tecon. Neither Texas Eastern nor Consolidated proposes to absorb these gas purchase costs.

The Commission notes that there exists an interrelationship between the two above-described proceedings and concludes that their ultimate disposition would best be accomplished in a consolidated proceedings. The Commission therefore shall consolidate Docket No. CP72–100 and Docket No. CP72–101 for hearing and disposition.

Notice of receipt of the applications was issued on October 26, 1971, and was published in the FEDERAL REGISTER on October 30, 1971, at 36 F.R. 20912. November 15, 1971, was set as the final date for filing protests and petitions to intervene. Accordingly, timely petitions to intervene were filed by the following parties:

The Public Service Commission for the State of New York.
Rochester Gas & Electric Corp.
Shell Oil Co.
Texaco, Inc.
The Brooklyn Union Gas Co.
New York State Electric & Gas Corp.
The Philadelphia Gas Works Division of UGI Corp.
South Side Civic Association.
Columbia Gas Transmission Corp.
Long Island Lighting Co.
Consolidated Edison Co. of New York, Inc.
Continental Oil Co.
Distrigas Corp.
Public Service Electric and Gas Co.
Boston Gas Co. et al.
The Municipal Defense Group.
Mobil Oil Corp.
Pennsylvania Gas and Water Co.
Elizabethtown Gas Co.
United Gas Pipeline Co.
Humble Oil & Refining Co.
Consolidated Gas Supply Co.
The New Jersey Board of Public Utility Commissioners.
Algonquin Gas Transmission Co.
Texas Gas Transmission Co.
Transcontinental Gas Pipeline Corp.
Philadelphia Electric Co.

Untimely petitions to intervene were filed by the following parties:

Memphis Light, Gas, and Water Division, City of Memphis, Tenn.
Western Kentucky Gas Co.
Louisville Gas and Electric Co.
Southern Indiana Gas and Electric Co.
Cities Service Oil Co.
Union Carbide Corp. and The Dow Chemical Co.

Having reviewed the petitions to intervene, we are convinced that the petitioners, including those who filed late, have all sufficient interest in these proceedings to warrant intervention. We also believe that the significant and novel questions presented by these applications, as well as the requests of some petitioners, require a public hearing at which time all issues hearing upon the public interest can be fully developed on the evidentiary record.

The Commission finds:

(1) It is necessary and appropriate that the proceedings in the above-named applications be consolidated for hearing and decision.

(2) It is desirable and in the public interest to allow the above-named petitioners to intervene in these consolidated proceedings in order that they may establish the facts and the law from which the nature and validity of their alleged rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

(3) It is necessary and appropriate that the consolidated proceedings involving the above-named applications be set for hearing.

The Commission orders:

(A) Docket No. CP72–100 and Docket No. CP72–101 are consolidated for purposes of hearing and disposition.

(B) The above-named petitioners are permitted to intervene in this consolidated proceeding subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in said petitions for leave to intervene: *And provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(C) The direct case of Tecon Gasification Co. and Texas Eastern Transmission Corp. and all intervenors in support thereof shall be filed and served on all parties on or before March 13, 1972.

(D) A formal hearing shall be convened in these proceedings in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, DC, on April 3, 1972, at 10 a.m., e.s.t. The Chief Examiner will designate an appropriate officer of the Commission to preside at the formal hearing of these matters, pursuant to the Commission's rules of practice and procedure.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.72-3265 Filed 3-3-72;8:45 am]

[Docket No. E-7704]

ELECTRIC AND WATER PLANT BOARD, CITY OF FRANKFORT, KY., AND KENTUCKY UTILITIES CO.

Notice of Extension of Time and Postponement of Hearing

FEBRUARY 29, 1972.

On February 18, 1972, the Electric and Water Plant Board of the city of Frankfort, Ky. (Frankfort), filed a motion for an extension of time to a date 5 weeks after the completion of Frankfort's discovery procedure, within which to file its direct testimony and exhibits, pursuant to paragraph (c) of the order issued January 26, 1972, in the above-designated matter. No answers to the motion have been filed.

Upon consideration, notice is hereby given that the time is extended to and including 5 weeks after the completion of Frankfort's discovery procedure, or May 9, 1972, whichever date is earlier, within which Frankfort shall file with the Commission and serve on all parties to the proceeding, including the Staff of the Commission, direct testimony and exhibits in support of its allegations. The hearing is postponed pending further notice.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.72-3353 Filed 3-3-72;8:52 am]

[Project 13]

NIAGARA MOHAWK POWER CORP.

Notice of Issuance of Annual License

FEBRUARY 29, 1972.

On March 2, 1970, Niagara Mohawk Power Corp., Licensee for Green Island Project No. 13 located in the vicinity of the town of Green Island, Albany County, N.Y., on the Hudson River filed an application for a new license under section 15 of the Federal Power Act and Commission regulations thereunder (§§ 16.1–16.6). Licensee also made a supplemental filing pursuant to Commission Order No. 384 on December 28, 1970.

The license for Project No. 13 was issued effective March 3, 1921, for a period ending March 2, 1971. An annual license was issued from the original date of expiration until March 2, 1972. In order to authorize the continued operation of the project pursuant to section 15 of the Act pending completion of licensee's application and Commission action thereon it is appropriate and in the public interest to issue an annual license to Niagara Mohawk Power Corp. for continued operation and maintenance of Project No. 13.

Take notice that an annual license is issued to Niagara Mohawk Power Corp. (Licensee) under section 15 of the Federal Power Act for the period March 3, 1972 to March 2, 1973, or until Federal takeover, or the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Green Island Project No. 13, subject to the terms and conditions of its license.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.72-3355 Filed 3-3-72;8:52 am]

[Docket No. CI72-528]

PRAIRIE PRODUCING CO.

Notice of Application

MARCH 2, 1972.

Take notice that on February 28, 1972, Prairie Producing Co. (applicant), 504 The Main Building, Houston, Tex. 77002, filed in Docket No. CI72-528 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Trunkline Gas Co. from the East Lake Creek Field, Montgomery County, Tex., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell natural gas for 1 year from the date of initial delivery within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70) at the rate of 30 cents per Mcf at 14.65 p.s.i.a. The estimated daily sales volume is 2,000 Mcf of gas.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before March 13, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.72-3376 Filed 3-3-72;8:54 am]

[Project 120]

SOUTHERN CALIFORNIA EDISON CO.

Notice of Issuance of Annual License

FEBRUARY 29, 1972.

On February 12, 1970, Southern California Edison Co., licensee for Big Creek No. 3 Project No. 120 located in the vicinity of Fresno, Kern, Madera, Los Angeles, and Tulare Counties, Calif., on the San Joaquin River filed an application for a new license under section 15 of the Federal Power Act and Commission regulations thereunder (§§ 16.1–16.6). Licensee also made a supplemental filing pursuant to Commission Order No. 384 on August 20, 1970.

The license for Project No. 120 was issued effective June 8, 1922, for a period ending March 3, 1971. An annual license was issued from the original date of expiration until March 3, 1972. In order to authorize the continued operation of the project, pursuant to section 15 of the Act pending completion of licensee's application and Commission action thereon it is appropriate and in the public interest to issue an annual license to Southern California Edison Co. for continued operation and maintenance of Project No. 120.

Take notice that an annual license is issued to Southern California Edison Co. (licensee) under section 15 of the Federal Power Act for the period March 4, 1972, to March 3, 1973, or until Federal takeover, or the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Big Creek No. 3 Project No. 120, subject to the terms and conditions of its license.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.72-3356 Filed 3-3-72;8:52 am]

[Docket No. CS72-739, etc.]

SOHYDE PRODUCTION COMPANY, INC., ET AL.

Notice of Applications for "Small Producer" Certificates [1]

FEBRUARY 29, 1972.

Take notice that each of the applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 28, 1972, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Name of applicant
CS72-739...	2-11-72	Sohyde Production Co., Inc., Oil & Gas Bldg., Suite 640, New Orleans, La. 70112.
CS72-740...	2-16-72	Cactus Oil Co., Box 662, Pampa, TX 79065.
CS72-741...	2-16-72	King Oil Co., 35 East 18th, Tulsa, OK 74119.
CS72-742...	2-17-72	Robert L. Austin, 1111 Vickers Tower, Wichita, Kans. 67202.
CS72-743...	2-17-72	Gray Gillette Nicholson, 309 College Blvd., San Antonio, TX 78209.
CS72-744...	2-17-72	SAG Ventures Penna. Co., No. 2, Campbell Pl., Camden, N.J. 08101.
CS72-745...	2-17-72	Anthony Granatelli, STP Corp., 125 Oakton, Des Plaines, IL 60018.

[FR Doc.72-3357 Filed 3-3-72;8:52 am]

[Project 67]

SOUTHERN CALIFORNIA EDISON CO.

Notice of Issuance of Annual License

FEBRUARY 29, 1972.

On February 12, 1970, Southern California Edison Co., licensee for Big Creek No. 2A and No. 8 Project No. 67 located in the vicinity of Fresno, Fresno County, Calif., on the San Joaquin River filed an application for a new license under section 15 of the Federal Power Act and Commission regulations thereunder (§§ 16.1–16.6). Licensee also made a supplemental filing pursuant to Commission Order No. 384 on August 21, 1970.

The License for Project No. 67 was issued effective March 3, 1921, for a period ending March 2, 1971. An annual license was issued from the original date of expiration until March 2, 1972. In order to authorize the continued operation of the project pursuant to section 15 of the Act pending completion of the licensee's application and Commission action thereon it is appropriate and in the public interest to issue an annual license to Southern California Edison Co. for continued operation and maintenance of Project No. 67.

Take notice that an annual license is issued to Southern California Edison Co. (licensee) under section 15 of the Federal Power Act for the period March 3, 1972 to March 2, 1973 or until Federal takeover, or the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Big Creek No. 2A and No. 8 Project No. 67, subject to the terms and conditions of its license.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-3354 Filed 3-3-72;8:52 am]

FEDERAL RESERVE SYSTEM

BARNETT BANKS OF FLORIDA, INC.

Order Approving Acquisition of Bank

Barnett Banks of Florida, Inc., Jacksonville, Fla., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of Barnett Bank of West Orlando, Orlando, Fla. (Bank), a proposed new bank.

Notice of receipt of the application has been given in accordance with section 3(b) of the Act, and the time for filing comments and views has expired. The Board has considered the application and all comments received in the light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)) and finds that:

Applicant controls 31 banks with aggregate deposits of about $943 million, representing 6.4 percent of the commercial bank deposits in Florida and ranking it third in the State. Since Bank is a proposed new bank no existing competition would be eliminated, nor would concentration be increased in any relevant areas.

Applicant presently operates four banks in the Orlando area; three of these four are recently chartered and applicant's share of deposits in the Orlando area is 11.4 percent. Consummation of the proposal will not place applicant in a dominant position in the Orlando area since the largest organization has something over 40 percent of area deposits, and two other organizations are approximately applicant's size. Significant barriers to entry will not be raised since the population per banking office in Bank's service area will still be relatively high. For these reasons and other facts of record, the Board concludes that consummation of the transaction will not adversely affect competition in any relevant area.

The financial and managerial resources and future prospects of applicant, its subsidiary banks and Bank are generally satisfactory and consistent with approval of the application. Considerations relating to the convenience of the community to be served lend some weight to approval of the application since the service area of Bank appears to be relatively underbanked and would benefit from an additional source of services. The Board finds that the proposed application is in the public interest and should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the date of this

order or (b) later than 3 months after the date of this order; and (c) Barnett Bank of West Orlando, Orlando, Fla., shall be opened for business not later than 6 months after the date of this order. Each of the periods described in (b) and (c) may be extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[2] February 25, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-3275 Filed 3-3-72;8:46 am]

FLORIDA BANCORP, INC.
Order Approving Formation of Bank Holding Company

Florida Bancorp, Inc., Pompano Beach, Fla., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) of formation of a bank holding company through acquisition of 80 percent or more of the voting shares of Pompano Beach Bank and Trust Co. (Pompano Bank), and Oceanside Bank, both located in Pompano Beach, Fla.

Notice of receipt of the application has been given in accordance with section 3(b) of the Act, and the time for filing comments and views has expired. The Board has considered the application and all comments received in the light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)) and finds that:

Applicant, an inactive corporation, was formed for the purpose of acquiring Pompano Bank (deposits of $38.3 million) and Oceanside Bank (deposits of $9.8 million).[1] Applicant, upon consummation of the proposal, would control .4 percent of aggregate commercial bank deposits in Florida, and would become the State's 25th largest bank holding company. In the North Broward County-Boca Raton area (the relevant banking market), applicant would become the fourth largest of seven competing banking organizations, and would control 11.7 percent of market area deposits.

The two banks that would form the holding company group are located in Pompano Beach. In spite of the overlapping service area of the two banks, formation of the holding company would not eliminate any substantial amount of present competition nor would it likely foreclose potential competition because of the close affiliation of the two banks. Oceanside Bank was organized in 1969 by the stockholders of Pompano Bank; common stockholders have continuously owned more than 51 percent of the stock of both banks. The two banks have a common auditor, share advertising, participate a substantial amount of loans with the other, and their disaffiliation appears unlikely. The proposed holding company would compete with two bank holding companies in rapidly growing Broward County, and it appears that the formation would not adversely effect other area banks.

The managment of applicant and the banks to be acquired is generally satisfactory. Applicant plans to increase the capital of both banks; prospects for the group are favorable and banking factors are consistent with approval. Convenience and needs aspects of the proposal are consistent with, and lend some weight toward approval. The holding company form of organization would increase operating efficiencies with respect to loan participations, trust and financial advisory services, purchasing, and the interchanging of personnel. It is the Board's judgment that the proposed transaction would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[2] February 25, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-3276 Filed 3-3-72;8:46 am]

JACOBUS CO. AND INLAND FINANCIAL CORP.
Order Approving Acquisition of Bank

The Jacobus Co. (Jacobus) and its majority owned subsidiary Inland Financial Corp. (Inland), both of Milwaukee, Wis., bank holding companies within the meaning of the Bank Holding Company Act, have applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent (less directors' qualifying shares) of the voting shares of Heritage Bank-Mayfair, Wauwatosa, Wis. (Bank). The acquisition will be made by Inland and as a result Jacobus will indirectly acquire voting shares of the Bank.

Notice of receipt of the application has been given in accordance with section 3(b) of the Act, and the time for filing comments and views has expired. The Board has considered the applications and all comments received in the light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)). and finds that:

Applicants control one bank with aggregate deposits of approximately $46 million, representing 0.5 percent of the commercial bank deposits in Wisconsin. Since Bank was only opened on December 13, 1971, its acquisition by applicants would not significantly increase their share of deposits in any relevant area.

Applicants' only banking subsidiary is located in the Milwaukee area which includes Wauwatosa. However, that subsidiary controls under 1½ percent of deposits in the market and the acquisition of Bank will not have any significant adverse effects on present or potential competition. Rather, Bank's acquisition by applicants could have a procompetitive impact on the Milwaukee area, since affiliation of Bank with Inland should make Bank a stronger competitor in an area where there are many subsidiaries of major Wisconsin bank holding companies.

The financial and managerial resources and future prospects of applicants, its subsidiary bank, and Bank are generally satisfactory and consistent with approval of the application. In this connection, applicants have assured the Board that the acquisition debt relating to Bank will shortly be paid off through the proceeds obtained from sale of capital stock. Considerations relating to the convenience of the community to be served lend some weight for approval of the applications, since Bank proposes to offer some services which are not widely available in the area at the present time.

Jacobus is a bank holding company only through its ownership of Inland. To be able to expand its activities outside of the field of banking, Jacobus has filed an irrevocable declaration with the Board pursuant to 12 CFR 225.4(d) that it will cease to be a bank holding company by January 1, 1981. Normally, the Board would not approve acquisition of another bank by a company that has filed such a declaration. However, Jacobus has committed itself to divest itself of its interest in Inland within 90 days of the passage of any enabling legislation permitting distribution of Inland shares to Jacobus shareholders on a tax-free basis. Legislation is pending which is similar to that included in the original Bank Holding Company Act, and under the proposed legislation Jacobus could divest itself of Inland on a tax-free basis. Inland would thereupon become an independent multibank holding company. Thus, approval of the application would be in the public interest by separating nonbanking activities from banking at an earlier time than divestiture is required by statute.

Upon consummation of the proposed transaction, Jacobus shall divest itself of Inland within 90 days of the passage of legislation such as referred to above, and, in any event, applicants shall not retain or acquire any nonbank shares or engage in any nonbanking activities to a greater extent or for a longer period than would apply in the case of a bank holding company which became such on the date of such consummation, except to the extent otherwise permitted in any

[2] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, and Sheehan. Absent and not voting: Governor Maisel.

[1] Banking data are as of June 30, 1971, and reflect holding company formations and acquisitions approved through Jan. 31, 1972.

[2] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, and Sheehan. Absent and not voting: Governor Maisel.

regulation of the Board hereafter adopted specifically relating to the effect of the acquisition of an additional bank on the status of nonbank shares and activities of a one-bank holding company formed prior to 1971, or unless the Board fails to adopt any such regulation before the expiration of 2 years after the consummation of the proposed acquisition.

On the basis of the record, the applications are approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Chicago pursuant to delegated authority.

By order of the Board of Governors,[1] February 25, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-3277 Filed 3-3-72;8:46 am]

MOUNTAIN BANKS, LTD.

Order Approving Acquisition of Nonbanking Companies

Mountain Banks, Ltd., has applied for the Board's approval under section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)) to acquire all the shares of each of the following companies: Plaza Finance Co., Pueblo, Colo.; Valley Industrial Bank, Blende, Colo.; Bankers Motor Leasing, Inc., Colorado Springs, Colo.; and Cherokee Life Insurance Co., Phoenix, Ariz. These nonbanking companies, as well as a bank, are now owned by Rocky Mountain Financial Services, Inc., Colorado Springs, Colo., a registered bank holding company. Mountain Banks, Ltd., has today received the Board's permission to become a bank holding company through the acquisition of 51 percent or more of the voting shares of five banks located in Colorado.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been duly published. The time for filing comments and views has expired and all those received have been considered.

Plaza Finance Co. is engaged in the business of a finance company. Valley Industrial Bank is engaged in the business of an industrial bank and does not accept demand deposits. Both Plaza Finance Co. and Valley Industrial Bank engage in certain insurance agency activities which are directly related to their extensions of credit. Bankers Motor Leasing, Inc. engages in full payment leasing of automobiles. The operation by a bank holding company of companies engaged in the above activities has previously been determined by the Board to be closely related to banking. 12 CFR 225.4(a)(1), (2), (6), (9), (11). Cherokee Life Insurance Co. formerly engaged in the business of reinsuring credit life and disability insurance but has terminated all business activities and Applicant is not seeking approval for it to engage in any activities.

Plaza Finance Co. ($2.4 million in assets)[1] is a consumer finance company doing business in Pueblo, Colorado Springs, Longmont, and Fort Collins.[2] In Pueblo and Colorado Springs (where applicant will have bank subsidiaries), Plaza Finance is a relatively small competitor, having only $0.8 million of loans outstanding in Pueblo, and $0.4 million of loans outstanding in Colorado Springs; it appears that, in each city, over 50 companies make consumer loans. Accordingly, the proposed acquisition of Plaza Finance would appear to have only very slight adverse effects on competition in the relevant markets.

Valley Industrial Bank makes consumer loans in the Pueblo market, where applicant has two bank subsidiaries. The industrial bank, however, has only $1.1 million in outstanding loans in a market where over 50 consumer lenders compete. Accordingly, the proposed acquisition of Valley Industrial Bank would appear to have only slightly adverse effects on competition in the Pueblo market.

Bankers Motor Leasing, Inc., which leases automobiles in the Colorado Springs area, does not compete with any of the proposed subsidiaries of Mountain Banks, Ltd. There is no evidence in the record indicating that consummation of the proposed transactions would result in any undue concentration of resources, unfair competition, conflict of interests, unsound banking practices, or other adverse effects on the public interest.

Consummation of applicant's proposed nonbanking acquisitions would result in greater efficiency through the use of centralized auditing and computer services. Several of the proposed subsidiaries appear to be unable to expand their activities significantly because they lack access to additional funds from banks or from their present parent company, Rocky Mountain Financial Services, Inc. Mountain Banks, Ltd., which has access to substantial financial resources, could provide these companies with needed funds, thereby allowing the companies to expand their services to the public. On balance, the Board concludes that these public benefits outweight any adverse effects on competition.

On the basis of the foregoing and other considerations reflected in the record, the Board has determined that the balance of the public interest factors the Board is required to consider under section 4(c)(8) of the Act is favorable, and the application is hereby approved. This determination is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's determination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions of the Act and the Board's regulations and orders issued thereunder, or to prevent evasions thereof.

By order of the Board of Governors,[3] February 25, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-3278 Filed 3-3-72;8:46 am]

MOUNTAIN BANKS, LTD.

Order Approving Formation of Bank Holding Company

Mountain Banks, Ltd., Colorado Springs, Colo., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) of formation of a bank holding company through acquisition of 51 percent or more of the voting shares of The Exchange National Bank of Colorado Springs, Colorado Springs (Exchange National); The First National Bank of Pueblo, Pueblo (First National); Cherry Creek National Bank, Denver (Cherry Creek National); South Denver National Bank, Glendale (South Denver National); and Park National Bank of Pueblo, Pueblo (Park National), all in Colorado.

Notice of receipt of the application has been given in accordance with section 3(b) of the Act, and the time for filing comments and views has expired. The Board has considered the application and all comments received in the light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)) and finds that:

Applicant proposes to acquire Cherry Creek National ($37.5 million in deposits), the 11th largest of 81 banks in the Denver banking market, and South Denver National ($10.2 million in deposits), the 38th largest bank in that market. Cherry Creek National controls 1.4 percent and South Denver National controls 0.4 percent of total deposits in commercial banks in the market. South Denver National has been affiliated with Cherry Creek National since it was organized in 1963; the President of Cherry Creek National serves also as chairman of the board of South Denver National, and more than 92 percent of South Denver National's stock is owned by Cherry Creek National stockholders controlling 90 percent of the stock of the latter bank. A change in this common control in the foreseeable future appears unlikely. Accordingly, consummation of the proposal would not appear to eliminate any meaningful existing or potential competition between the two banks.

Applicant further proposes to acquire control of three other banks now under common control: First National ($57.5 million in deposits), Park National ($4.7 million in deposits), and Exchange National ($72.6 million). One individual, through family holdings of stock and as

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Maisel, Brimmer, and Sheehan.

[1] Asset data for Plaza Finance Co. and for other proposed subsidiaries are as of Dec. 1970.

[2] Plaza Finance also owns First Industrial Loan Co., Greeley, Colo., with outstanding loans of $0.3 million.

[3] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, and Sheehan. Absent and not voting: Governor Maisel.

beneficiary of family trusts, controls 52 percent of First National, 63 percent of Park National, and 55 percent of Exchange National. First National, the largest bank in the Pueblo banking market, and Park National, the seventh largest of nine banks in that market, control 34.9 percent and 2.8 percent, respectively, of total deposits in commercial banks in the market. Park National was established in 1963 as an affiliate of First National and has remained an affiliate since that time. Exchange National controls 18.7 percent of total commercial bank deposits ni the Colorado Springs banking market which is located 43 miles south of Pueblo. In view of the existing relationships between the banks and in view of the fact that these relationships appear unlikely to end in the foreseeable future, it appears that consummation of this proposal would not eliminate any meaningful existing or potential competition between these three banks.

The two banks in the Denver banking market are located approximately 65 miles from Exchange National and 108 miles from First National and Park National. In view of the distances separating the Denver area banks and the three other banks, the numerous intervening banks, and Colorado's laws prohibiting branching, there appears to be no existing competition between the two groups, and such competition appears unlikely to develop.

Consummation of the propsal would create the State's seventh largest banking organization and the sixth largest multibank holding company, controlling 3.9 percent of the State's total commercial bank deposits. Applicant should thus be able to provide more effective competition to the other holding companies in the three banking markets where its proposed bank subsidiaries are located.

Formation of the holding company would permit the banks to make larger loans through participation agreements, would enable more funds to be channeled into mortgage lending through Exchange National's mortgage lending department, and would coordinate and improve the effectiveness of the trust activities of First National and Exchange National. The banks should benefit from the savings resulting from more efficient auditing, data processing, management selection, training and succession, and marketing functions. Applicant also intends to construct new banking houses for Exchange National and Park National. Considerations related to the convenience and needs of the communities to be served lend weight toward approval.

The financial and managerial resources and future prospects of applicant are dependent on its proposed bank subsidiaries, all of whose resources and prospects are satisfactory and consistent with approval. It is the Board's judgment that the transaction is in the public interest and that the application should be approved.

In connection with the present application, applicant has applied to acquire substantially all of the nonbanking assets of Rocky Mountain Financial Services, Inc. a one-bank holding company presently owning Park National. This matter was separately considered by the Board under section 4(c)(8) of the Act and is the subject of another order issued today by the Board.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Kansas City pursuant to delegated authority.

By order of the Board of Governors,[1] February 25, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-3279 Filed 3-3-72;8:46 am]

U.S. BANCORP

Order Approving Retention of Shares of U.S. Datacorp

U.S. Bancorp, Portland, Oreg., a bank holding company registered under the Bank Holding Company Act of 1956, as amended, has applied for the Board's approval under section 4(c)(8) of the Act and § 225.4(b)(2) of the Board's Regulation Y to retain shares of U.S. Datacorp, Portland, Oreg. Notice of the application, affording opportunity for interested persons to submit comments and views, was duly published (36 F.R. 23840). The time for filing comments and views has expired, and none have been received.

The Board has determined that certain types of data processing activities are closely related to banking (12 CFR 225.4(a)(8)). A bank holding company may own shares of a company engaged in such activities if such ownership is consistent with the relevant factors specified in section 4(c)(8) of the Act.

Applicant's only banking subsidiary is United States National Bank of Oregon (deposits $1.5 billion), the second largest bank in Oregon, with control of 37.7 percent of the total commercial bank deposits in the State. The data processing operations it formerly conducted were transferred to U.S. Datacorp when that company was organized by applicant in January 1971 (apparently on authority of section 4(c)(5) of the Act). Those operations were conducted principally in Portland, where the offices of United States National Bank of Oregon were located. Applicant expanded the scope and range of U.S. Datacorp's activities (all of the type described in 12 CFR 225.4(a)(8)) by acquiring, immediately after the organization of Datacorp, the assets of Data Planning Corp., Seattle, Wash., a going concern. (Hence, the Board treats the application to retain the shares of U.S. Datacorp as an application also to retain the assets of Data Planning.)

At the time of its acquisition by applicant, Data Planning was offering data processing services in the local Seattle market that were, for the most part, similar to the data processing services offered by applicant's subsidiaries. It was also supplying a computer output microfilm service, for which the relevant market included both Portland and Seattle.

At the time of the acquisition, applicant competed in the data processing field in Portland with three bank or bank-related firms and 36 other companies. Data Planning was competing in the Seattle market with 42 banks and 80 other companies in the data processing field. In view of the relatively small amount of data processing performed by applicant and Data Planning, the large number of competitors in the market area of each, the distance between market areas, and other such considerations, it appears that applicant and Data Planning were not significant competitors with each other at the time of the acquisition, nor that they would become such in the future. Moreover, it appears likely that U.S. Bancorp, through U.S. Datacorp, will be able to expand the range of services offered to the public. The Board concludes that the acquisition by applicant of the assets of Data Planning did not have significant anticompetitive effects; that the continued operation of U.S. Datacorp by applicant will not have significant anticompetitive effects; and that, on balance, the public benefits to be expected by permitting U.S. Bancorp to retain shares of U.S. Datacorp outweigh any possible adverse effects on competition.

On the basis of the foregoing and other considerations reflected in the record, the Board has determined that the balance of the public interest factors the Board is required to consider under section 4(c)(8) is favorable. Accordingly, the application is approved, and the applicant is hereby permitted to engage in the activities conducted by U.S. Datacorp that are authorized by 12 CFR 225.4(a)(8). This determination is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

By order of the Board of Governors,[1] February 25, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-3280 Filed 3-3-72;8:46 am]

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, and Sheehan. Absent and not voting: Governor Maisel.

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, and Sheehan. Absent and not voting: Governor Maisel.

WYOMING BANCORPORATION

Acquisition of Bank

Wyoming Bancorporation, Cheyenne, Wyo., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 90 percent or more of the voting shares of University National Bank of Laramie, Laramie, Wyo. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than March 20, 1972.

Board of Governors of the Federal Reserve System, February 28, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-3281 Filed 3-3-72;8:47 am]

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN POLAND

Entry or Withdrawal From Warehouse for Consumption

FEBRUARY 29, 1972.

On March 15, 1967, the U.S. Government, in furtherance of the objectives of, and under the terms of, the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, concluded a comprehensive bilateral agreement with the Government of the Polish People's Republic concerning exports of cotton textiles and cotton textile products from Poland to the United States. On February 25, 1970, the two Governments exchanged notes amending the bilateral agreement of March 15, 1967. Among the provisions of the agreement, as amended, are those applying specific export limitations to Categories 19, 26 (including a sublimit on duck fabric), 28, 42, 43, 46, 53, 60, and 62, for the third amended agreement year beginning March 1, 1972.

There is published below a letter of February 29, 1972, from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs, directing that the amounts of cotton textile products in the above categories, produced or manufactured in Poland, which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning on March 1, 1972, and extending through February 28, 1973, be limited to certain designated levels. This letter and the actions pursuant thereto are not designed to implement all of the provisions of the bilateral agreement, as amended, but are designed to assist only in the implementation of certain of its provisions.

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

SECRETARY OF COMMERCE

PRESIDENT'S CABINET TEXTILE ADVISORY COMMITTEE

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

FEBRUARY 29, 1972.

DEAR MR. COMMISSIONER: Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the bilateral cotton textile agreement of March 15, 1967, as amended, between the Governments of the United States and the Polish People's Republic, and in accordance with the procedures outlined in Executive Order 11052 of September 28, 1962, as amended by Executive Order 11214 of April 7, 1965, you are directed to prohibit, effective March 1, 1972, and for the 12-month period extending through February 28, 1973, entry into the United States for consumption and withdrawal from warehouse for consumption, of cotton textile products in Categories 19, 26, 28, 42, 43, 46, 53, 60, and 62, produced or manufactured in the Polish People's Republic, in excess of the following 12-month levels of restraint:

Category		12-month level of restraint
19	square yards	1,102,500
26	do [1]	1,323,000
28	pieces	303,188
42	dozen	33,075
43	do	66,150
46	do	5,513
53	do	3,308
60	do	17,229
62	lbs	187,425

[1] Of this amount, not more than 165,375 square yards may be in duck, T.S.U.S.A. Nos.:
320.--01 through 04, 06, 08
321.--01 through 04, 06, 08
322.--01 through 04, 06, 08
326.--01 through 04, 06, 08
327.--01 through 04, 06, 08
328.--01 through 04, 06, 08

In carrying out this directive, entries of cotton textile products in the above categories, produced or manufactured in the Polish People's Republic, and which have been exported to the United States from the Polish People's Republic prior to March 1, 1972, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period March 1, 1971, through February 29, 1972. In the event that the levels of restraint established for such goods for that period have been exhausted by previous entries such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of March 15, 1967, as amended, between the Governments of the United States and the Polish People's Republic, which provide in part that within the aggregate and applicable group limits, limits on specific categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements. Any appropriate adjustments pursuant to the provisions of the bilateral agreement referred to above, will be made to you by letter from the Chairman of the Interagency Textile Administrative Committee.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on October 9, 1971 (36 F.R. 19722).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Polish People's Republic, and with respect to imports of cotton textiles and cotton textile products from the Polish People's Republic, have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely yours,

PETER G. PETERSON,
Secretary of Commerce, Chairman, President's Cabinet Textile Advisory Committee.

[FR Doc.72-3399 Filed 3-3-72;8:48 am]

CERTAIN COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN BRITISH HONDURAS

Entry or Withdrawal From Warehouse for Consumption

FEBRUARY 29, 1972.

On February 24, 1972, the U.S. Government in furtherance of the objectives of, and under the terms of, the Long-Term Arrangement Regarding International Trade in Cotton Textiles, done at Geneva on February 9, 1962, and extended through September 30, 1973, requested the Government of British Honduras to enter into consultations concerning exports to the United States of cotton textile products in Category 50 produced or manufactured in British Honduras. In that request the U.S. Government stated its view that exports in this category from British Honduras should be restrained for the 12-month period beginning February 24, 1972, and extending through February 23, 1973.

Notice is hereby given that under the provisions of articles 3 and 6(c) of the Long-Term Arrangement, if no solution is mutually agreed upon by the two governments within sixty (60) days of the date of delivery of the aforementioned note, entry and withdrawal from warehouse for consumption of cotton textile products in Category 50 produced or manufactured in British Honduras and exported from British Honduras on and after the date of delivery of such note may be restrained.

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

[FR Doc.72-3400 Filed 3-3-72;8:48 am]

SECURITIES AND EXCHANGE COMMISSION

[811-1981]

ALPHA PLANS

Notice of Application for Order Declaring That Company Has Ceased To Be an Investment Company

FEBRUARY 28, 1972.

Notice is hereby given that Alpha Plans (Applicant), c/o Alpha Research Corp., 2900 First National Bank Tower, Atlanta, Ga. 30303, an unincorporated association registered as an investment company of the unit investment trust type under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations as set forth therein which are summarized below.

Applicant registered under the Act by filing a notification of registration on Form N-8A and a registration statement on Form N-8B-2 on December 15, 1969. A registration statement on Form S-6 for the securities of Applicant was filed with the Commission under the Securities Act of 1933, but said registration statement has not been made effective and Applicant has requested its withdrawal. None of the securities covered by said registration statement on Form S-6 were offered or issued publicly. Two privately placed Single-Payment Contractual Plans totaling $100,000 which were issued have been terminated.

Section 3(c)(1) of the Act excepts from the definition of investment company any issuer whose outstanding securities are beneficially owned by not more than 100 persons, and which is not making and does not presently propose to make a public offering of its securities.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than March 22, 1972, 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, if any, of fact or law proposed to be controverted, or he may request he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-3304 Filed 3-3-72;8:47 am]

[70-5151]

ARKANSAS POWER & LIGHT CO.

Notice of Proposed Issue and Sale of First Mortgage Bonds and Preferred Stock at Competitive Bidding

FEBRUARY 29, 1972.

Notice is hereby given that Arkansas Power & Light Co. (Arkansas), Ninth and Louisiana Streets, Little Rock, Ark. 72203, an electric utility subsidiary company of Middle South Utilities, Inc., a registered holding company, has filed an application-declaration and an amendment thereto with this Commission, pursuant to the Public Utility Holding Company Act of 1935 (Act), designating section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Arkansas proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 promulgated under the Act, $35 million principal amount of its First Mortgage Bonds, _____ percent Series due 2002 (Bonds). The interest rate on the Bonds (which will be a multiple of one-eighth of 1 percent) and the price, exclusive of accrued interest, to be paid to Arkansas (which will be not less than 100 percent nor more than 102¾ percent of the principal amount thereof) will be determined by the competitive bidding. The Bonds will be issued under Arkansas' Mortgage and Deed of Trust dated as of October 1, 1944 to Morgan Guaranty Trust of New York and John W. Flaherty, as successor trustees, as heretofore supplemented and as to be further supplemented by a 22d Supplemental Indenture to be dated as of April 1, 1972, which includes a prohibition until April 1, 1977, against refunding the Bonds with the proceeds of funds borrowed at a lower effective interest cost.

Arkansas also proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, 150,000 shares of its Cumulative Preferred Stock (which shall be not less a par value $100 per share (Preferred Stock). The dividend rate of the Preferred Stock (which shall not be less than $100 nor more than $102.75 per share) will be determined by the competitive bidding. The terms of the Preferred Stock will include a prohibition until April 1, 1977, against refunding the Preferred Stock, directly or indirectly, with funds obtained from the issuance of debt securities at a lower effective interest cost or of other stock which ranks prior to or on a parity with the the Preferred Stock as to dividends or assets, at lower effective dividend cost.

Arkansas proposes to use the net proceeds from the sale of the Bonds and Preferred Stock for the payment of bank loans and commercial paper indebtedness approximating $25 million incurred or estimated to be incurred prior to the completion of the proposed financing, to pay part of the cost of its construction program, and for other corporate purposes. It is stated that the construction program of Arkansas for 1972 is expected to result in expenditures of approximately $117,600,000. Arkansas estimates that it will require approximately $42 million of additional funds to finance its 1972 construction program which funds are expected to be obtained through short-term borrowings from banks, the issuance and sale of commercial paper, and the sale of securities, the nature and amount of which have not been determined.

Fees and expenses incident to the proposed transactions are estimated at $100,000 for the Bonds (including auditors' fees of $5,000, and counsel fees of $26,000); and $37,500 for the Preferred Stock (including legal fees of $16,000 and auditors' fees of $2,500). The fees of counsel for the successful bidders are estimated at $10,000 in respect of the Bonds and $6,500 in respect of the Preferred Stock; these fees, together with counsel's out-of-pocket expenses, will be paid by such bidders.

The filing states that the Arkansas Public Service Commission and the Tennessee Public Service Commission have authorized the issuance and sale of the Bonds and Preferred Stock; and that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than March 23, 1972, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if

the person being served is located more than 500 miles from the point of mailing) upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-3305 Filed 3-3-72;8:47 am]

[File No. 500-1]

DATAMEDIA INTERNATIONAL, INC.

Order Suspending Trading

FEBRUARY 28, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, no par value, of Datamedia International, Inc., 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 from February 28, 1972, through March 8, 1972.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-3306 Filed 3-3-72;8:47 am]

[811-1698]

FIRST HEDGE FUND OF BOSTON, INC.

Notice of Application for Order Declaring Company Has Ceased To Be an Investment Company

FEBRUARY 28, 1972.

Notice is hereby given that First Hedge Fund of Boston (Applicant), 1212 Manor Building, Pittsburgh, Pa. 15219, a Massachusetts corporation registered as a diversified open-end management investment company under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations as set forth therein, which are summarized below.

Applicant registered under the Act on August 1, 1968 by filing a notification of registration on Form N-8A and a registration statement on Form N-8B-1. A registration statement under the Securities Act of 1933 ('33 Act), on Form S-5 was filed with the Commission on the same date and was declared effective on June 16, 1969. Subsequent to the effective date of the Registration Statement under the '33 Act, Applicant sold its securities to approximately 35 individuals.

On November 27, 1970, Applicant filed a post-effective amendment to its '33 Act registration statement and discontinued its offering of shares until such amendment should become effective. The post-effective amendment has not become effective, and a request pursuant to Rule 477 under the '33 Act to withdraw such amendment has been filed.

Applicant represents that it has a single class of common stock outstanding with a par value of $1. Applicant further represents that there are presently a total of 15,053 shares of common stock outstanding and the net asset value per share is $2.40 (or an aggregate of $36,127). Applicant presently has a total of eleven shareholders all of whom are individuals.

Applicant represents that it has not offered its securities to the public since on or about November 27, 1970, that it has abandoned its plans to continue the public offering of its securities and that it does not now intend to offer or sell any of its securities to the public.

Section 3(c)(1) of the Act excepts from the definition of investment company any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order the registration of such company shall cease to be in effect.

Notice is hereby given that any interested person may, not later than March 21, 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, if any, of fact or law proposed to be controverted or he may request he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of attorney at law by certificate) shall be filed contemporaneously with the request. At any time later than said date as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in such 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] RONALD F. HUNT, *Secretary.*

[FR Doc.72-3307 Filed 3-3-72;8:47 am]

[70-5146]

NEW ENGLAND ELECTRIC SYSTEM

Notice of Proposed Amendment of Articles of Trust and Solicitation of Proxies in Connection Therewith

FEBRUARY 29, 1972.

Notice is hereby given that New England Electric System (NEES), 20 Turnpike Road, Westborough, MA 01581, a registered holding company, has filed a declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a), 7(e), and 12(e) of the Act and Rule 62 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration which is summarized below, for a complete statement of the proposed transactions.

NEES proposes to submit to its shareholders at its annual meeting, to be held on April 25, 1972, a management proposal to amend Article 22 of its Agreement and Declaration of Trust to modify the provisions dealing with indemnification of its trustees, officers, and directors. It is stated that the effect of the proposed Article 22 would be to authorize indemnification by NEES of its directors and officers against liabilities and expenses, including counsel fees reasonably incurred, resulting from litigation or threatened litigation in which any director or officer might be involved as a result of his position. NEES also states that the proposed amendment is consistent with Massachusetts statutory authorization for indemnification by corporations of officers and directors and that the scope of the proposed indemnification is limited to the standard which would be permissible if NEES were a corporation organized under the laws of Massachusetts rather than a Massachusetts business trust.

NEES also states that indemnification under the proposed amendment will be withheld whenever a director or officer

is adjudicated "not to have acted in good faith in the reasonable belief that his action was in the best interest of the Company". With regard to actions and threatened actions resolved by compromise agreement, indemnification will be available only when a compromise agreement is approved as being in the best interests of NEES by a disinterested majority of its board of directors, or by a majority of disinterested directors: *Provided*, That an opinion of independent legal counsel has been obtained stating that the director or officer seeking indemnification appears to have acted in good faith in the reasonable belief that his actions were in the best interests of the Company, or by a majority of the holders of outstanding shares entitled to vote, not counting shares owned by any interested director or officer. The proposed amendment also clarifies the standards of conduct which will entitle the Trustee to indemnification, provides that directors and officers may rely on corporate books and similar material, and authorizes the Company to pay expenses incurred in advance of a final disposition of an action upon receipt of an undertaking to repay by the director or officer should he be determined ultimately not entitled to indemnification. In addition, the amendment provides that a shareholder is entitled to indemnification for any personal liability incurred solely by reason of being a shareholder. The amendment requires the affirmative vote of the holders of a majority of the common shares outstanding, and of two-thirds of the Board of Directors.

It is stated that no fees or commissions (including legal fees) will be paid or incurred in connection with the proposed transactions and that incidental services, estimated at $1,500, will be performed at cost by New England Power Service Co., an affiliated service company. It is further stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is hereby given that any interested person may, not later than March 15, 1972, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of any attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-3308 Filed 3-3-72;8:47 am]

TARIFF COMMISSION

[TEA-W-131]

BALDWIN-LIMA-HAMILTON CORP.

Workers' Petition for Determination of Eligibility to Apply for Adjustment Assistance; Notice of Invesitgation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the workers of the Eddystone, Pa., plant of Baldwin-Lima-Hamilton Corp., a subsidiary of Armour & Co., which, in turn, is a subsidiary of Greyhound Corp., the U.S. Tariff Commission, on March 1, 1972, instituted an investigation under section 301(c)(2) of the act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with ship-driving propellers (of the types provided for in item 657.35 of the Tariff Schedules of the United States (TSUS)), hydraulic turbines (of the types provided for in item 660.70 of the TSUS), and hydraulic forging and extrusion presses (of the types provided for in item 674.35 of the TSUS) manufactured by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such company.

The petitioners have not requested a public hearing. A hearing will be held on request of any other party showing a proper interest in the subject matter of the investigation, provided such request is filed within 10 days after the notice is published in the FEDERAL REGISTER.

The petition filed in this case is available for inspection at the Office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, DC, and at the New York City office of the Tariff Commission located in room 437 of the Customhouse.

Issued: March 1, 1972.

By order of the Commission.

[SEAL] KENNETH R. MASON,
Secretary.

[FR Doc.72-3351 Filed 3-3-72;8:52 am]

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF HEARINGS

MARCH 1, 1972.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

I & S M-25475, General Increase—Central States Territory, now assigned April 17, 1972, at Washington, D.C., canceled.

MC 107583 Sub 50, Salem Transportation Co., Inc., now assigned March 13, 1972, at Philadelphia, Pa., will be held in Room 313, U.S. Customshouse Building, Second and Chestnut Streets.

I & S M-25444, and I & S M-25444, General Increase, Eastern Central Territory, now assigned March 21, 1972, Washington, D.C., is canceled.

MC 112822 Sub 212, Bray Lines, MC 127028 Sub 13, Bredehoeft, Produce, now assigned March 2, 1972, at Los Angeles, Calif., canceled and application dismissed.

MC 2860 Sub 56, National Freight, Inc., application dismissed.

MC 61592 Sub 223, Jenkins Truck Line, Inc., application dismissed.

MC 120981 Sub 12, Bestway Express, Inc., assigned for hearing May 1, 1972, at Nashville, Tenn., in a hearing room to be later designated.

MC-F-11473, Continental Trailways, Inc.—Investigation of Control—Colonial Trailways, assigned for hearing March 13, 1972, in Room 5A15, New Federal Building, 1100 Commerce Street, Dallas, Tex.

MC-F-11320, Bowman Trucking Company, Inc. vs. Delbert J. Spencer, et al., assigned for hearing May 4, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-F-11327, National Freight, Inc.—Control—Cross Transportation, Inc., MC-F-11332, Boston & Taunton Transportation Co.—Purchase (Portion)—Cross Transportation, Inc., MC-F-11336, Garton's Express, Inc.—Purchase (Portion)—Cross Transportation, Inc., MC-F-11337, Burgmeyer Bros.—Purchase (Portion)—Cross Transportation, Inc., MC-F-11338, Kenmore Transportation Co.—Purchase (Portion)—Cross Transportation, Inc., MC-F-11343, Towers Transportation, Inc.—Purchase (Portion)—Cross Transportation, Inc., assigned for hearing May 15, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-F-11339, DeHart Motor Lines, Inc.—Purchase—R. D. Fowler Motor Lines, Inc., assigned for hearing May 9, 1972, at the Offices of the Interstate Commerce Commission, Washington D.C.

MC-F-11380, Overnite Transportation Co.—Purchase—Tidewater Express Lines Co., assigned for hearing May 2, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-F-11389, E. B. Libe, Inc.—Control—War-Hunt Trucking Co., Inc., assigned for hearing May 3, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 119777 Sub 208, Ligon Specialized Hauler, Inc., now assigned March 6, 1972, at Washington, D.C., postponed indefinitely.

MC 135960, Jacob Sacker, Dba Fleetwood Ski & Sports Club, now assigned March 8, 1972, at Chicago, Ill., postponed indefinitely.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-3358 Filed 3-3-72;8:53 am]

[Rev. S. O. No. 944; ICC Order No. 65]

ILLINOIS CENTRAL RAILROAD CO.

Rerouting or Diversion of Traffic

In the opinion of R. D. Pfahler, agent, the Illinois Central Railroad Co. is unable to transport traffic over its line to and from Helena, Ark., because of bridge damage.

It is ordered, That:

(a) *Rerouting traffic.* The Illinois Central Railroad Co., being unable to transport traffic over its line to and from Helena, Ark., because of bridge damage, that carrier is hereby authorized to reroute or divert such traffic via any available route to expedite the movement. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad desiring to divert or reroute traffic under this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or division is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order shall notify each shipper at the time each car is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 4 p.m., February 25, 1972.

(g) *Expiration date.* This order shall expire at 11:59 p.m., March 31, 1972, unless otherwise modified, changed, or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 25, 1972.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.72-3359 Filed 3-3-72;8:53 am]

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SATURDAY, MARCH 4, 1972
WASHINGTON, D.C.
Volume 37 ■ Number 44

PART II

DEPARTMENT OF TRANSPORTATION

■

Procurement Regulations

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 12—Department of Transportation

PROCUREMENT REGULATIONS

On March 17, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 5053–5141) stating that the Department of Transportation proposed to revise its procurement regulations, as set forth in the notice. Interested persons were invited to submit written data, views, or arguments within 45 days after publication, and this was subsequently extended to May 17, 1971.

Statement of considerations. Fourteen organizations submitted written comments on the proposed procurement regulations. Several subjects in the proposed regulations generated comments from more than one of the organizations, and these will be discussed here in detail.

Five organizations objected to the suggestion in the regulations that a reasonable fee to a tax-exempt firm would be lower than a fee to a commercial firm with no tax-exempt status, and to the provision that any proposed fee to a tax-exempt firm in excess of 5 percent of the estimated costs must have the prior approval of the Office of the Secretary of Transportation. A sixth organization objected to the principle of payment of any fee to Government-sponsored, tax-exempt institutions. We consider our proposed regulations on this subject to be proper, and they have been retained unchanged. We would point out that while the 5 percent figure was characterized in some of the comments as a ceiling, it is not. Fees in excess of 5 percent may be awarded to tax-exempt firms by the Department of Transportation, but they will be considered to be unusually high fees and must accordingly be justified and approved by the Office of the Secretary of Transportation.

We received comments from two organizations concerning the liability provisions in the proposed Government-Furnished Property clauses. As a result of these comments, we have modified the instructions to permit use of the Risk of Loss provisions of ASPR 7–104.24(c) as an alternative to the provisions of the standard clause.

Six organizations expressed disagreement with the patent provisions, generally because they permit the Government to take title to patents generated under DOT contracts. To the extent that these provisions permit this they are consistent with Federal policy as recently reannunciated by the President. In any event, the Patent Rights, Title, clause actually does not provide automatically for taking title but provides for a deferred determination by the Secretary as to whether to take title. The final patent regulations are substantially those which were published for comment, but as a result of the comments received we are in the process of preparing detailed regulations which will govern when the Government does in fact acquire title and when the contractor would be permitted to retain title.

Five organizations expressed reservations concerning the Rights in Data provisions. We have made some changes as a result of some of the comments received, and we will continue to watch this area closely as we gain experience under the new procedures.

Four organizations expressed disagreement with the DOT Recovery of Cost clause. We continue to feel that it is proper for the Government to recover its costs of developing products sold to the general public and while we have made some changes in the provisions as a result of comments received, the material is substantively the same as that which was published for comment.

We received comments concerning the coverage of Service Contracts in general. However, in view of the fact that Federal policy, generally, in this area is under reexamination, we have elected not to publish this material at this time, and have reserved Subpart 12–50.1 for future coverage.

We received comments on the coverage of Architect-Engineer Services, and have made changes as a result of those commments.

We received a number of comments on various other parts of the regulations, many editorial in nature and some substantive. All of these comments were considered and many are reflected in the final regulations as changes from the proposed regulations. The regulations, as revised, are adopted as set forth below.

Effective date. These regulations shall become effective 90 days after publication in the FEDERAL REGISTER, but may be observed earlier.

Dated: February 11, 1972.

JAMES M. BEGGS,
Acting Secretary of Transportation.

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AUTHORITY: The provisions of this Part 12–1 issued under sec. 205(c), 63 Stat. 389; 40 U.S.C. 486(c), 10 U.S.C. 2301–2314.

Subpart 12–1.0—Regulation System

§ 12–1.001 Scope of subpart.

This subpart describes the Department of Transportation Procurement Regulations in terms of establishment, authority, applicability, issuance, arrangement, implementation, and supplementation of the Federal Procurement Regulations, exclusions, and deviation procedure.

§ 12–1.002 Purpose.

(a) This subpart establishes Chapter 12, Department of Transportation Procurement Regulations (DOTPR), implementing and supplementing the Federal Procurement Regulations (FPR), and states its relationship to the FPR.

(b) The FPR, as implemented and supplemented by Chapter 12 (DOTPR), are the authorized regulations governing the procurement of supplies and services (including construction and concessions) and the procurement of real property by lease, by the Department of Transportation.

§ 12–1.003 Authority.

The DOTPR are prescribed pursuant to the authority of section 205(c) of the Federal Property and Administrative Services Act of 1949.

§ 12–1.004 Applicability.

These regulations apply to all Department of Transportation procurements, unless otherwise specified.

§ 12–1.005 Exclusions.

(a) Certain Department of Transportation procurement policies and procedures which come within the scope of this Chapter 12 nevertheless may be excluded when there is appropriate justification, such as:

(1) Subject matter which bears a security classification.

(2) Policies or procedures which are expected to be effective for a period of less than 6 months.

(3) Policies and procedures which are effective on an experimental basis for a reasonable period.

§ 12–1.006 Issuances.

§ 12–1.006–1 Code arrangement.

DOTPR which implement, supplement or deviate from the FPR (Chapter 1 of Title 41 of the Code of Federal Regulations) and have an impact upon the public will be published as Chapter 12 of Title 41, Code of Federal Regulations.

§ 12–1.006–2 Publication.

Chapter 12 of Title 41, Code of Federal Regulations will be published in the FEDERAL REGISTER, in cumulative form in the Code of Federal Regulations, and in separate looseleaf form on blue paper. The looseleaf form is designed to permit interleaf into the FPR.

§ 12–1.006–3 Copies.

Copies of the DOTPR in the FEDERAL REGISTER and in the Code of Federal Regulations may be purchased by Federal agencies and the public, at nominal cost, from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Looseleaf copies of Chapter 12 will be distributed to Department of Transportation activities as authorized by the Director of Installations and Logistics, Office of the Secretary of Transportation.

§ 12–1.007 Arrangement.

§ 12–1.007–1 General plan.

The DOTPR employ the same numbering system and nomenclature used in the FPR, and conform with FEDERAL REGISTER standards approved for the FPR, except that material published in looseleaf form which is not published in Title 41, Code of Federal Regulations, will be indicated by the letters "DOT" preceding and following the material.

§ 12–1.007–2 Numbering.

(a) Where the DOTPR implements a part, subpart, section, or subsection of the FPR, the implementing part, subpart, section, or subsection of DOTPR will be numbered (and captioned) to correspond to the part, subpart, section, or subsection of the FPR.

(b) Where the DOTPR supplements the FPR, the number 50 and up will be assigned to the parts, subparts, or sections involved.

(c) Where the subject matter contained in a part, subpart, section, or subsection of FPR requires no implementation, the DOTPR will contain no corresponding part, subpart, section, or subsection number and the subject matter as published in the FPR governs.

§ 12–1.007–3 Citation.

DOTPR will be cited in accordance with FEDERAL REGISTER standards approved for the FPR. For example, this section, when referred to in the DOTPR, may be cited as "12–1.007–3". Any section of these regulations may be informally identified for purposes of brevity, as DOTPR, followed by the section number; i.e., "DOTPR 12–1.007–3".

§ 12–1.008 Implementation.

(a) The DOTPR implement and supplement the FPR. Implementing material is that which expands upon related FPR material. Supplementing material is that for which there is no counterpart in the FPR.

(b) The DOTPR may in turn be implemented and supplemented by regulations issued by the following, using the letter suffix indicated:

Issuing organization	*Letter suffix*
Federal Aviation Administration.	12A (i.e., 12A–1.008(b)).
Coast Guard	12B.
Federal Highway Administration.	12C.
Federal Railroad Administration.	12D.
St. Lawrence Seaway Development Corporation.	12E.
Office of Administrative Operations, OST.	12F.
National Transportation Safety Board.	12G.
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National Highway Traffic Safety Administration.	12I.
Transportation Systems Center.	12J.

(c) The Administrations and their subordinate organizations shall not issue instructions, including directives, regulations, contract forms, contract clauses, policies, or procedures implementing the DOTPR or covering the procurement of supplies or services or the administration of contracts for such supplies or services, unless permitted by one of the following and consistent with paragraph (d) of this section:

(1) Internal procurement management instructions such as designations and delegations of authority, assignments of responsibilities; work flow procedures, and internal reporting requirements;

(2) Any special contract clause of a non-repetitive nature designed specifically to accomplish the peculiar requirements of an individual procurement, provided a clause relating to the subject is not set forth in this regulation;

(3) A variation of any contract clause which is set forth in this regulation but not for use verbatim, provided that such variation is not inconsistent with the intent, principle and substance of the DOTPR clause or related coverage of the subject matter;

(4) Procurement procedures specifically identified as being essential for carrying out the peculiar needs of an Administration when authorized by the head of the agency, or his designee, and notification is given to OST/TAD–60 prior to such authorization for the purpose of determining whether such procedures should be included in this regulation;

(5) Procurement instructions specifically identified as being essential for carrying out the peculiar needs of overseas commands of the Coast Guard, authorized by the Commandant of the Coast Guard (or his designee) and notification is given to OST/TAD–60 prior to such authorization for the purpose of determining whether such instructions should be included in this regulation;

(6) Material determined by OST/TAD–60 to be inappropriate for DOTPR coverage, but appropriate for inclusion in Administration publications.

(d) Instructions issued in accordance with paragraph (c) of this section shall not contain material which duplicates, is inconsistent with, or increases or restricts the use of, any authority contained in this regulation.

(e) Each Administration shall screen all existing instructions as well as those subsequently issued pursuant to paragraphs (c) and (d) of this section to assure strict compliance with this paragraph, and for the purpose of determining if the subject matter is appropriate for inclusion in this regulation.

(f) Each Administration shall furnish to OST/TAD–60 one copy of each Administration procurement instruction issued in accordance with paragraph (c) of this section.

(g) Regulations implementing and supplementing the DOTPR will not be published in the FEDERAL REGISTER. Any such regulations which are deemed to have an impact on the general public, and any regulations which establish procurement policy, will be reserved for OST publication as DOTPR, Chapter 12.

(h) Those FAA Procurement Regulations which supplement the DOTPR, and which are basically instructional in nature, may be retained until they are superseded by comparable material published by the Office of the Secretary.

§ 12–1.009 Deviations.

§ 12–1.009–1 Description.

See FPR 1–1.009–1.

§ 12–1.009–2 Procedure.

(a) In the interest of establishing and maintaining uniformity to the greatest extent feasible, deviations from the FPR and DOTPR will be authorized only when essential to effect necessary procurement or where special circumstances make such deviations clearly in the best interest of the Government.

(b) Requests for authority to deviate from the provisions of the FPR or the DOTPR shall be submitted as far in advance as the exigencies of the situation will permit. Each request for deviation shall contain the following:

(1) A clear statement of the deviation desired, including identification of the specific paragraph number(s) of the FPR or DOTPR,

(2) The reason why the deviation is considered necessary or would be in the best interests of the Government,

(3) If applicable, the name of the contractor and identification of the contract affected,

(4) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request,

(5) A description of the intended effect of the deviation,

(6) A statement of the period of time for which the deviation is needed, and

(7) Any pertinent background information which will contribute to a full understanding of the desired deviation.

(c) Deviations from the FPR and DOTPR involving a single contract or procurement may be authorized by the Administrator of the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, St. Lawrence Seaway Development Corporation, Urban Mass Transportation Administration, National Highway Traffic Safety Administration, the Commandant of the Coast Guard, and the Chairman of the National Transportation Safety Board each with the power of redelegation. For procurements processed by the Transportation Systems Center and Office of Administrative Operations (OST), deviations may be authorized by the Assistant Secretary for Administration, with the power of redelegation. A copy of each authorized deviation shall be sent to the Director of Installations and Logistics.

(d) Request for deviations from the FPR or DOTPR affecting more than one contract or contractor shall be forwarded to the Director of Installations and Logistics. Requests involving deviations from the FPR will be considered jointly by the Department and the General Services Administration, unless, in the judgment of the Assistant Secretary for Administration, after due consideration of the objective of uniformity and program responsibility of the Department, circumstances preclude such joint effort. In such cases, the Assistant Secretary for Administration will approve such class deviations as he determines necessary and will appropriately notify the General Services Administration.

Subpart 12–1.2—Definition of Terms

§ 12–1.204 Head of the agency.

"Head of the agency" means the Secretary and the following assistant chief officials: the Under Secretary, the Assistant Secretary for Administration; and for procurements within their administrations, the Administrators of the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Urban Mass Transportation Administration, National Highway Traffic Safety Administration, St. Lawrence Seaway Development Corporation, the Commandant, U.S. Coast Guard, and the Chairman, National Transportation Safety Board.

§ 12–1.206 Head of the procuring activity.

The following officials have been designated as "head of the procuring activity":

(a) In the Office of the Secretary:

(1) The Director, Transportation Systems Center, Cambridge, Mass.

(2) The Chief, Procurement Operations Division, Washington, D.C.

(b) In the Federal Aviation Administration:

(1) The Director, Logistics Service, Washington, D.C.

(2) The Director, Bureau of National Capital Airports, Falls Church, Va.

(3) The Director, Alaskan Region, Anchorage, Alaska.

(4) The Director, Western Region, Los Angeles, Calif.

(5) The Director, Southern Region, Atlanta, Ga.

(6) The Director, Pacific Region, Honolulu, Hawaii.

(7) The Director, Central Region, Kansas City, Mo.

(8) The Director, Eastern Region, New York, N.Y.

(9) The Director, Southwest Region, Fort Worth, Tex.

(10) The Director, Aeronautical Center, Oklahoma City, Okla.

(11) The Director, National Aviation Facilities Experimental Center, Atlantic City, N.J.

(c) In the Coast Guard:

(1) Chief, Procurement Division, U.S. Coast Guard Headquarters, Washington, D.C.

(2) Commander, First Coast Guard District, Boston, Mass.

(3) Commander, Second Coast Guard District, St. Louis, Mo.

(4) Commander, Third Coast Guard District, New York, N.Y.

(5) Commander, Fifth Coast Guard District, Portsmouth, Va.

(6) Commander, Seventh Coast Guard District, Miami, Fla.

(7) Commander, Eighth Coast Guard District, New Orleans, La.

(8) Commander, Ninth Coast Guard District, Cleveland, Ohio.

(9) Commander, Eleventh Coast Guard District, Long Beach, Calif.

(10) Commander, Twelfth Coast Guard District, San Francisco, Calif.

(11) Commander, Thirteenth Coast Guard District, Seattle, Wash.

(12) Commander, Fourteenth Coast Guard District, Honolulu, Hawaii.

(13) Commander, Seventeenth Coast Guard District, Juneau, Alaska.

(14) Commanding Officer, U.S. Coast Guard Supply Center, Brooklyn, N.Y.

(15) Commanding Officer, U.S. Coast Guard Yard, Baltimore, Md.

(16) Commanding Officer, U.S. Coast Guard Reserve Training Center, Yorktown, Va.

(17) Commanding Officer, U.S. Coast Guard Aircraft Repair and Supply Center, Elizabeth City, N.C.

(18) Commanding Officer, U.S. Coast Guard Training Center, Cape May, N.J.

(19) Commanding Officer, U.S. Coast Guard Training/Supply Center, Alameda, Calif.

(20) Superintendent, U.S. Coast Guard Academy, New London, Conn.

(21) Commanding Officer, Aviation Center, Mobile, Ala.

(d) For the Federal Highway Administration: The Associate Administrator for Administration, Washington, D.C.

(e) For the National Highway Traffic Safety Administration: The Associate Director for Administration, Washington, D.C.

(f) For the Federal Railroad Administration: The Associate Director for Administration, Washington, D.C.

(g) For the St. Lawrence Seaway Development Corporation: The Director, Office of Procurement and Supply, Massena, N.Y.

§ 12–1.250 Administration.

"Administration" means the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, the Urban Mass Transportation Administration, the Coast Guard, the St. Lawrence Seaway Development Corporation, and the National Highway Traffic Safety Administration. The term "Administration" also includes the Office of Supersonic Transport Development, the National Transportation Safety Board, the Transportation Systems Center, and the Office of Administrative Operations of the Office of the Secretary. The term "Administration" as used, for example, in the phrase "in accordance with Administration procedures" would include the foregoing organizations, unless the paragraph states otherwise.

§ 12–1.251 Procurement office.

"Procurement office" means an office with a designated contracting officer with authority to enter into contracts over $2,500 in value.

§ 12–1.252 Change order.

"Change order" means a unilateral written order signed by the contracting officer, and issued to a contractor pursuant to the Changes clause of the contract.

§ 12–1.253 Supplemental agreement.

"Supplemental agreement" means any contract modification or contract amendment which is accomplished by mutual action of the parties.

§ 12–1.254 Shall.

"Shall" is imperative.

§ 12–1.255 May.

"May" is permissive. However, the words "no person may * * *" mean that no person is required, authorized, or permitted to do the act proscribed.

Subpart 12–1.3—General Policies

§ 12–1.301 Methods of procurement.

§ 12–1.301–1 Competition.

(a) Consideration shall be given to the breakout of component items (including services) of an end product for separate procurement whenever the possibility exists that such breakout would be both economical and practicable.

(b) Breakout decisions will be based largely on the degree and significance of the probable risks to quality, performance, reliability, timely delivery of the end item, and on the estimated overall cost savings. The following factors should be considered in determining whether to procure component items of an end product separately:

(1) In the case of sole source procurement of the end product, whether there

is another source capable of supplying the component.

(2) Whether breakout will result in significant net cost savings.

(3) Whether breakout would cause over-fragmentation of the end item, and thereby materially impede administration and performance of the end item contract and identification of the cause of any end item failure.

(4) Whether the design of the component (and the design of the end item insofar as it will affect the component) is sufficiently stable that further design or engineering effort by the end item contractor in respect to the component is unlikely to be required.

(5) Whether any problems of quality control and reliability of the component can be resolved without requiring effort by the end item contractor.

(6) Whether breakout can be accomplished without jeopardizing delivery requirements of the end item.

(c) Support parts which are to be stocked as separate items should be considered for separate procurement, as should such required services as installation services or contractor-conducted instruction courses. Component items of an equipment system (such as common test equipment) which are to be physically separate from the basic equipment and which will require no modification or installation as an integral part of a more complex system or component, shall be procured separately unless separate procurement is found to be not economical or practicable.

§ 12–1.302 Procurement sources.

§ 12–1.302–3 Contracts between the Government and Government employees or business concerns substantially owned or controlled by Government employees.

Unless a higher authority is specified within an Administration, heads of procuring activities are authorized to except individual contracts from the policy against awarding contracts to Government employees or business concerns substantially owned or controlled by Government employees. Each such exception shall be evidenced by a written determination signed by the head of the procuring activity, setting forth the facts in sufficient detail to demonstrate that the exception is being granted for the most compelling reasons, and attaching any supporting documentation. A copy of each such determination, with attachments, shall be forwarded to the Director of Installations and Logistics, OST.

§ 12–1.305 Specifications.

§ 12–1.305–3 Deviations from Federal specifications.

(a) Each Administration shall designate an official to carry out the responsibilities set forth in FPR 1–1.305–3. One copy of each such designation shall be forwarded to the Director of Installations and Logistics, OST.

(b) Whenever a notification or recommendation for a change in a Federal Specification is submitted to the General Services Administartion, as provided in FPR 1–1.305–3(b)(5), an information copy shall be forwarded to the Director of Installations and Logistics, OST. Similarly, the Director of Installations and Logistics shall be advised any time the General Services Administration disapproves a deviation from a Federal Specfication.

§ 12–1.305–50 Index to Federal and Department of Defense Specifications and Standards.

The "Index of Federal Specifications and Standards" and the "Department of Defense Index of Specifications and Standards" are issued annually with periodic supplements. These indexes contain general information pertaining to their use and the availability of other Government specifications.

§ 12–1.306 Standards.

§ 12–1.306–1 Mandatory use and application of Federal standards.

Whenever a request for an exception to the use of a Federal standard is submitted to the General Services Administration, an information copy of the submission and GSA's response shall be forwarded to the Director of Installations and Logistics, OST.

§ 12–1.307 Purchase descriptions.

§ 12–1.307–5 Limitations on use of "brand name or equal" purchase descriptions.

Purchase descriptions containing the phrase "or equal" shall not be used as a device to grant an advantage to particular manufacturers by favoring one product over other products, or to substantiate a determination that no other manufacturer's products are equal in quality and performance to the products specifically named. Where a proper determination has been made that only one supplier can furnish the required item or items, the procurement will be accomplished by negotiation in accordance with FPR Part 1–3.

§ 12–1.311 Priorities, allocations and allotments.

The programs of the Coast Guard and certain programs of the Federal Aviation Administration are defense-related programs to which the priorities and allocations regulations apply. Rateable contracts and purchase orders shall contain the clause set forth in DOTPR 12–7.150–3 and the appropriate DO or DX rating (and the appropriate allotment number if the order calls for authorized controlled materials) in accordance with the provisions of DMS (Defense Materials System) Regulation 1 and BDSA Regulation 2. These regulations are available from the Business and Defense Services Administration of the Department of Commerce.

§ 12–1.313 Records of contract actions.

(a) In compliance with the requirements of FPR 1–1.313, each procurement office shall maintain for each procurement exceeding $2,500 a contract file containing a comprehensive record of all preaward and postaward actions and other data. Adherence to this policy will require the assembly of either the original or a copy of all documents pertaining to the procurement in a file consisting of one or more folders. It will also require documentation for the record of all understandings, oral agreements, and any other facts or information pertinent to the transaction. It is left to the discretion of the procurement official to determine the manner in which unwritten matters are documented. However, it would be expected, for example, that those of a complex nature would be carefully documented by typewritten "memorandum for the record", while routine data might be recorded by a handwritten notation in the file. Photographs should be employed wherever they will serve to effectively document pertinent contract matters.

(b) Complete documentation will permit ready reconstruction of all stages of the transaction in order to:

(1) Support actions taken by various personnel in the procurement cycle.

(2) Provide information for internal management review and for reviews by the General Accounting Office.

(3) Supply data for use in preparing replies to legitimate inquiries.

(4) Furnish essential facts in the event of litigation.

(c) Small purchase records shall be maintained in accordance with FPR subpart 1–3.6 and DOTPR subpart 12–3.6.

§ 12–1.315 Use of liquidated damages provisions in procurement contracts.

§ 12–1.315–2 Policy.

(a) *Criteria for use.* (1) In proposed contracts involving an item where only a portion of the quantity ordered is for immediate programs, and liquidated damages provisions are considered to be necessary, care shall be taken to have the liquidated damages provisions apply only to the urgent quantity.

(2) The use of liquidated damages provisions should never be construed as relieving procurement officials of the obligation of establishing realistic delivery or performance schedules. Realistic delivery or performance schedules should be a prerequisite to the use of liquidated damages.

(3) Liquidated damages provisions generally should not be used:

(i) In contracts for supplies or services required for routine administrative purposes.

(ii) In contracts for standard commercial or "shelf items".

(iii) In any contract where time would permit the needs of the Department to be met by termination and reprocurement if the initial contractor defaults.

(iv) In small purchases.

(v) In study, experimental, development, or research contracts, including equipment contracts requiring developmental work.

(4) Liquidated damages provisions are generally appropriate in construction contracts in accordance with the provisions of FPR 1–1.315–2(a). However, inclusion of liquidated damages provisions may be inappropriate in situations such as a construction contract consist-

ing of repairs, alteration or improvements, where any delay in the completion would still permit the user to continue its normal function in an uninterrupted manner without resulting in added expense to the Government.

(b) *Rate of assessment.* (1) Contracting officers must assure that the rate of liquidated damages stipulated for a given contract is a reasonable forecast of the Government's anticipated damages. A fixed formula, based on percentage of value, shall not be used to establish the rate of damages. The minimum amount of liquidated damages should be based on the estimated cost of inspection and superintendence for each day of delay in completion. In addition, the following factors are examples of matters to be considered in establishing the rate of damages:

(i) The importance of the item in relation to the facility or project for which it is intended.

(ii) The relative importance of the item to the facility or project in the overall program of the Department.

(iii) Any rental of facilities necessitated by the delay in a construction completion date.

(iv) Cost of additional maintenance required on structures being replaced by contract items.

(v) Any unusual damages that can be anticipated.

(2) Unless it is clear that partial delivery will proportionately reduce the extent of probable damages, rates shall not be specified to be applicable to individual units of an item, but rather to quantities of an item or to groups of items which are required for delivery or completion at the same time. Rates should generally be expressed in terms of even dollars per day of delay.

(c) *Enforcement.* Where liquidated damages provisions are used, they shall be strictly enforced. In making partial or progress payments, deductions for damages should be made on the basis of the actual number of days of delay multiplied by the rate.

(d) *Termination.* If the contract is terminated, the contractor remains liable for liquidated damages that have accrued. Moreover, on a default termination, liquidated damages continue to accrue even after default, until the Department can reasonably obtain delivery of the supplies or performance of the service. This is in addition to any other rights of the Government to damages under default provisions for the excess costs of reprocuring the supplies or services of the terminated contract.

(e) *Remission.* An information copy of each submission to the Comptroller General of a recommendation for the remission of liquidated damages shall be forwarded to the Director of Installations and Logistics, OST.

§ 12–1.318 Disputes clause.

When a dispute cannot be settled by agreement and a decision under the Disputes clause is necessary, the contracting officer shall review the available facts pertinent to the dispute before making his final decision. When there is any doubt as to whether the issue in dispute is subject to the disputes procedure, a decision will be made pursuant to the Disputes clause. The disputes procedure shall not be invoked in cases when a dispute is clearly not subject to the procedure. The contracting officer shall obtain, from assigned legal and other advisors, such advice and assistance as is required to render a decision. However, the decision must be that of the contracting officer.

§ 12–1.318–50 Contracting officer's decision under the Disputes clause.

The final decision should include a statement of facts sufficient to enable the contractor to understand both the decision and the basis therefor. Normally, the decision should be in the form of a statement of the claim or other description of the nature of the dispute with necessary references to pertinent contract provisions; a statement of the facts relevant to the dispute on which the parties are in agreement and, as clearly as possible, the area of disagreement; and the contracting officer's statement of his decision and the basis therefor. The decision shall contain the following paragraphs:

This decision is made in accordance with the Disputes clause and shall be final and conclusive as provided therein, unless, within 30 days from the date of receipt of this decision, a written notice of appeal (in triplicate) addressed to the Secretary of Transportation is mailed or otherwise furnished to the Contracting Officer. The notice of appeal, which is to be signed by you as the contractor or by an attorney acting on your behalf, and which may be in letter form, should indicate that an appeal is intended, should refer to this decision, and should identify the contract by number. The notice of appeal may include a statement of the reasons why the decision is considered to be erroneous.

The Department of Transportation Contract Appeals Board is the authorized representative of the Secretary in hearing, considering, and deciding such appeals. The rules of the Department of Transportation Contract Appeals Board are set forth in the Code of Federal Regulations (41 CFR 12–60 et seq.).

§ 12–1.318–51 Agreement after appeal is filed.

After an appeal has been filed, contracting agencies are encouraged to seek agreement as to disposition of the controversy. However, such efforts to dispose of a controversy shall not be conducted in lieu of formal Board actions or hearings and shall not result in suspension of processing of an appeal, except as ordered or authorized by the Department of Transportation Contract Appeals Board.

§ 12–1.318–52 Payment after appeal is filed.

In the event of an appeal, the amount determined to be payable in the decision of the contracting officer, less any portion previously paid, normally should be paid in advance of any decision by the Board without prejudice to the rights of either party or the appeal.

§ 12–1.318–53 Implementation of decisions of the Contract Appeals Board.

(a) It is the policy of the Department of Transportation to take prompt action to effect payment in accordance with any decision of the Contract Appeals Board wholly or partially favorable to the appellant. If, however, an Administration believes such decision is not supportable under the standards of the Wunderlich Act, 41 U.S.C. §§ 321–322, it may recommend that action be taken to seek judicial review of the Board's decision. The recommendation shall be made to the DOT General Counsel who shall determine whether or not judicial review of the Board's decision will be sought. In the event that the DOT General Counsel determines that judicial review will be sought, the matter shall be referred to the Department of Justice and the appellant shall be promptly advised that payment in accordance with the Board's decision will not be made.

(b) In cases where the question of entitlement only has been decided by the Board and the matter of amount has been remanded to the parties for negotiation, if agreement is not reached the appellant will be afforded a prompt decision and an opportunity to appeal on the matter of amount.

§ 12–1.320 Subcontractor gifts and kickbacks.

Reports of suspected violations and action being taken shall be furnished the Director of Installations and Logistics, OST.

§ 12–1.350 Contract number prefixes.

All contracts, exclusive of purchase orders, issued by the Department will be identified by a number or combination of letters and numbers, in accordance with Department Order 4220.1A (set forth in DOTPR Part 12–99).

§ 12–1.351 Industrial security.

(a) Pursuant to Executive Order 10865 (3 CFR, 1959–63 Comp.) an agreement between the Department of Defense and the Department of Transportation was entered into on June 1, 1967, extending regulations prescribed by the Secretary of Defense under the Executive order to apply to protect releases of classified information relating to DOT contracts and releases of other classified information which DOT has the responsibility for safeguarding. The Office of Investigations and Security, OST, has been designated as the Department of Transportation liaison for industrial security matters. The Defense Supply Agency will perform all cognizant security office functions specified in, and will have the authority and responsibilities prescribed by, Department of Defense Industrial Security Regulations (ISR) (DOD 5220.-22R) and Department of Defense Industrial Security Manual (DOD 5220.22M).

(b) Any DOT contract or prospective contract which would require access to classified information by the contractor or any of his employees in the bid, negotiation, award, performance, or termination of the contract, including clearances

required for visit purposes, is considered to be a "classified contract" subject to the procedures of this section, even though the contract document itself is unclassified.

(c) All proposed procurements shall be reviewed specifically to determine if access to classified information will be required by prospective contractors during the solicitation period or by a contractor at any time in the performance of the contract. If access to classified information will be required during the solicitation period, the security staff of the headquarters of the Administration, as designated in DOT Order 1600.22, shall be advised immediately and furnished the list of firms to be solicited. Initiations for bid or requests for proposals shall not be issued until notification has been received from the appropriate security staff that the firms to be solicited have a valid facility security clearance. If access to classified information will not be required during the solicitation period but will be required during the performance of the contract, the invitation for bids or requests for proposals shall so state, and award shall only be made after the facility security clearance of the proposed contractor has been verified and approved by the appropriate security staff.

(d) Immediately upon the award of a classified contract, or in connection with precontract negotiations, if appropriate, the contracting officer shall furnish a copy of DD Form 254, Contract Security Classification Specification, to the prime contractor.

(e) Any DOT contract, the performance of which will require access to classified information by the contractor or any of his employees, shall contain a security requirements clause. For classified fixed-price supply contracts, the Military Security Requirements clause as set forth in the Armed Services Procurement Regulations, paragraph 7–104.12, shall be used. Other types of classified contracts shall contain the appropriate Military Security Requirements clause of section VII of ASPR.

(f) The Industrial Security Program encompassed by the publication cited in paragraph (a) of this section applies only to contracts involving access to classified information which are performed within the United States, its territories, Puerto Rico and Canada. Offices which may wish to let classified contracts for performance outside the United States, its territories, Puerto Rico or Canada shall consult with their appropriate security staff.

§ 12–1.352 Variation in quantity.

(a) To the extent that a variation in quantity is caused by any of the conditions specified in the Variation in Quantity clause at FPR 1–7.101–4, the varied quantity may be accepted only to the extent specified in the contract. The Extent of Quantity Variation clause in DOTPR 12–7.151–9, or a substantially similar clause, shall be used for this purpose. The acceptable variation stated in the Extent of Quantity Variation clause shall be stated as a percentage of the required quantity, and may be an increase, a decrease, or a combination of both. There should be no standard or usual percentage or variation. The variation in quantity pemitted in any procurement should be based upon the normal commercial practices of the particular industry for the particular items, and the permitted percentage should be no larger than is necessary to afford a contractor reasonable protection against the conditions specified in the Variation in Quantity clause. In no event may the acceptable variation exceed plus or minus 10 percent. The clause set forth in DOTPR 12–7.151–9 may be included in the contract only when one or more of the conditions specified in the Variation in Quantity clause is foreseeable at the time of solicitation in the case of an advertised procurement, or at the time of award in the case of a negotiated procurement.

(b) Consideration shall be given to the quantity to which the percentage variation applies. For example, when it is contemplated that delivery will be made to multiple destinations and it is desired that the quantity variation extend to the item quantity for each destination, this requirement must be set forth with particularity. Similarly, when it is desired that the quantity variation extend to the total quantity of each item and not to the quantity for each destination, it may be desirable to express a percentage limitation for each destination to prevent unrealistic distribution of any increase or decrease.

§ 12–1.353 Standards of conduct.

All governmental personnel engaged in procurement and related activities shall conduct business dealings with industry in a manner above reproach in every respect. Transactions relating to expenditure of public funds require the highest degree of public trust to protect the interests of the Government. While many Federal laws and regulations place restrictions on the actions of governmental personnel, the latter's official conduct must, in addition, be such that the individual would have no reticence about making a full public disclosure thereof. DOT regulations on Employee Responsibilities and Conduct are set forth in the Department of Transportation regulations (49 CFR Part 99).

§ 12–1.354 General procurement policy—Departmental orders.

DOT policy on selected subjects related to procurement matters is set forth in the Departmental orders contained in DOTPR Part 12–99.

Subpart 12–1.4—Procurement Responsibility and Authority

§ 12–1.402 Authority of contracting officers.

§ 12–1.402–50 Contracting officer's representatives.

(a) A contracting officer may designate Government personnel to act as his authorized representatives for such functions as inspection, approval of shop drawings, testing, approval of samples and other functions of a technical nature not involving a change in the scope, price, terms, or conditions of the contract or order. Such designation shall be in writing and shall contain specific instructions as to the extent to which the representative may take action for the contracting officer, but will not contain authority to sign contractual documents. The responsibilities and limitations of the contracting officer's representatives may be set forth in the contract or in a separate letter, a copy of which shall be furnished to the contractor.

(b) A person assigned to and performing his primary duty within a procurement office, and who is under the supervision of a contracting officer, does not require designation as a representative to perform his assigned duties. Such a person is considered to be an employee of the contracting officer, acting in his behalf and as such has the authority to perform acts as assigned by the contracting officer. The contracting officer cannot, without delegating contracting officer authority, authorize his employees to sign any contract document or letter where the signature of a contracting officer is required.

§ 12–1.450 Responsibility of procurement personnel to question requirements and reaffirm their validity.

(a) Procurement personnel have a responsibility to question any contemplated procurement action which appears inconsistent with their knowledge of commodities, markets, prices, and normal processes of doing business, or inconsistent with the authority of the requisitioner.

(b) When the award of a proposed procurement has been prolonged over an extended period of time or when during the processing of the procurement, matters are disclosed which give rise to questioning the magnitude of or necessity for the requirement, procurement personnel should reaffirm the validity of the requirement before award of contract.

Subpart 12–1.5—Contingent Fees

§ 12–1.508 Enforcement.

§ 12–1.508–3 Misrepresentation or violations of the covenant against contingent fees.

The views of the Office of the General Counsel, OST, shall be obtained prior to the referral of a case to the Department of Justice.

Subpart 12–1.6—Debarred, Suspended, and Ineligible Bidders

§ 12–1.602 Establishment and maintenance of a list of concerns or individuals debarred, suspended, or declared ineligible.

The Federal Aviation Administration is delegated authority to compile, print, and distribute on a Department-wide basis, the Department of Transportation Consolidated List of Debarred, Ineligible, and Suspended Contractors.

§ 12–1.604–1 Procedural requirements relating to the imposition of debarment.

(a) Administrative debarment by the Department shall be initiated within each Administration or OST in accordance with the procedures set forth in FPR 1–1.604–1. The written notice required by FPR 1–1.604–1 shall be signed by the head of the agency. Where no hearing on the basis of either oral testimony or a written statement is requested by the concern or individual sought to be debarred, debarment may be imposed by the head of the agency and shall be applicable to the entire Department. Where a hearing is properly requested, the debarment, if any, shall be imposed by the Secretary upon recommendation of the Chairman of the Department of Transportation Contract Appeals Board (DOTCAB), and shall be similarly applicable to the entire Department.

(b) The written notice of proposed debarment to be furnished in accordance with FPR 1–1.604–1 shall, in addition to the requirements specified therein, apprise the concern or individual that if such party desires to present information, either in person or in writing, in opposition to such action, at a hearing, (1) a request therefor is to made to the Chairman of the DOTCAB by that party within 20 days following receipt of the notice of the proposed debarment, and (2) the request for a hearing is to be accompanied by a statement setting forth the grounds upon which the proposed debarment will be contested. In addition, the notice shall include a notification that debarment, if imposed, shall be applicable throughout the Department. The notice shall be sent by registered or certified mail, return receipt requested, to the last known address of the concern or individual, but where actual or personal delivery is not effected by the Post Office, a debarment may be imposed by the head of the agency; but any such debarment shall, upon the submission of an appropriate application, be subject to reopening and in such event a hearing shall be accorded with respect to the debarment. A copy of each such notice shall be sent to TAD–60.

(c) Hearings requested in connection with debarment proceedings as provided in FPR 1–1.604–1(b) shall be conducted before the DOTCAB. An opportunity shall be afforded the concern or individual to appear with witnesses and counsel to show cause why such concern or individual should not be debarred. Where a concern or individual requests a hearing and fails to appear, the DOTCAB shall consider the case on the basis of the records and information made available to it. In any instance where a party has requested a hearing, he may elect to forego the submission of oral testimony and may submit a written statement (together with any information relating thereto) in opposition to the proposed action. Hearings shall be held by the DOTCAB within 30 days after receipt of the request for a hearing, unless the Chairman of the DOTCAB grants additional time. The Chairman shall include in his recommendation to the Secretary whether or not debarment is warranted under the particular circumstances and, where debarment is warranted, a recommended period thereof.

(d) When debarment is imposed by the head of the agency, or by the Secretary, the concern or individual shall be notified of the decision and of the period during which such debarment shall be effective. If a proposed debarment is not upheld by the Secretary, the concern or individual shall be so notified. Notice as to the imposition of a debarment shall be furnished to the concern or individual in the same manner as provided in DOTPR 12–1.604–1(b) for a notice of proposed debarment.

§ 12–1.605 Suspension of bidders.

Where a suspension is effected by the Department, it shall be invoked by the Secretary upon recommendation of the General Counsel, OST.

§ 12–1.606 Agency procedure.

(a) Each administration and OST, as applicable, shall furnish the notifications to GSA required by FPR 1–1.606(c), for debarments initiated by it, and shall concurrently forward a like copy to (1) Federal Aviation Administration, Logistics Service, Contracts Division, Management and Services Branch, LG–380 for inclusion on or removal from the Department list, and (2) the Director of Installations and Logistics, OST, for information.

(b) Requests for standard distribution and for individual copies of the Department Consolidated List shall be made to the Federal Aviation Administration, Logistics Service, Contracts Division, Management and Services Branch, LG–380, Washington, D.C. 25090.

Subpart 12–1.7—Small Business Concerns

§ 12–1.701 Definitions.

§ 12–1.701–1 Small business concern (for Government procurement).

(a) When the solicitation is for a manufactured product classified within an industry set forth in FPR 1–1.701–1 (h), and small business set-aside procedures are utilized, a size standard reading substantially as follows shall be included in the solicitation:

The small business employment size standard prescribed for this procurement is not more than _____[1] employees, except when the concern is a small business non-manufacturer in which case the employment size standard is not more than 500 employees.

(b) When the solicitation is for a manufactured product that is not classified within an industry set forth in FPR 1–1.701–1(h), and small business set-aside procedures are utilized, a size standard reading substantially as follows shall be included in the solicitation:

The small business employment size standard prescribed for this procurement is not more than 500 employees.

[1] Insert "750", "1,000", or "1,500", as appropriate.

(c) Similar language shall be used to prescribe other size standard criteria.

§ 12–1.704 Agency program direction and operation.

Each administration of the Department will establish and maintain a strong and viable small business program, designed to further the small business policies as set forth in FPR 1–1.702.

§ 12–1.704–1 Small business assistance officer.

Each administration, except NTSB, will designate an individual as the administration's small business assistance officer. The small business assistance officer will be responsible, either on a full time basis or as a collateral duty, for the establishment, implementation and execution of the small business program of his administration. He will be the central point of contact within his administration for inquiries concerning the small business program such as from industry, the Small Business Administration (SBA), the Congress, or the Office of the Secretary of Transportation. His duties shall include developing a plan of operation to increase the share of contracts awarded to small business by his administration.

§ 12–1.704–2 Small business specialists.

(a) A small business specialist shall be appointed by name, in writing, for each procurement office, to operate on either a full time or collateral duty basis. Only those individuals possessing the necessary business acumen, knowledge of the Department's procurement policies and procedures, training and background to accomplish effectively the objectives of the small business program shall be considered for appointment. In any instance where the duty of a small business specialist is on a part-time basis, the appointment shall clearly indicate that the part-time nature of the assignment shall in no way relieve the individual from full responsibility for effectively accomplishing the activity's small business program requirements.

(b) In larger offices, where practical, the small business specialist shall not be the contracting officer nor an individual under the supervision of a contracting officer. He shall be given the authority to exercise independent judgment in his areas of responsibility. In small offices the assignment of the small business specialist should promote maximum effectiveness within the capabilities of the office.

(c) The small business specialist appointed pursuant to paragraph (a) of this section shall perform such of the following duties as are determined by the administration to be appropriate for his procurement office:

(1) Maintain a program designed to locate capable small business sources for current and future procurements;

(2) Coordinate inquiries and requests for advice from small business concerns on procurement matters;

(3) Review proposed solicitations for supplies and services, assuring that small business concerns will be afforded an

equitable opportunity to compete, and as appropriate initiating recommendations for small business set-asides;

(4) Take action to assure the availability of adequate specifications and drawings, when necessary, to obtain small business participation in a procurement;

(5) Review proposed procurements for possible breakout of items suitable for procurement from small business concerns;

(6) Advise small business concerns with respect to the financial assistance available under existing laws and regulations and assist such concerns in applying for financial assistance;

(7) Participate in determinations concerning the responsibility of a prospective small business contractor;

(8) Participate in the evaluation of a prime contractor's small business subcontracting programs;

(9) Assure that adequate records are maintained, and accurate reports prepared, concerning small business participation in the procurement program;

(10) Make available to SBA copies of solicitations when so requested; and

(11) Act as liaison between the contracting officer and the appropriate SBA office in connection with set-asides, certificates of competency, size classification and any other matter in which the small business program may be involved.

§ 12–1.708 Certificate of competency program.

§ 12–1.708–2 Applicability and procedure.

No referrals shall be made to the SBA unless the contracting officer has determined that the bid or proposal of the small business concern is responsive. All referrals shall be in writing.

§ 12–1.708–50 Additional procedures—referrals to SBA for reasons of capacity or credit.

(a) Referrals made to SBA pursuant to FPR 1–1.708–2(a) shall include a request that the contracting officer be advised, by telephone, whether or not SBA looks favorably toward issuance of a COC. If the contracting officer does not hear from the cognizant SBA office within 5 working days after the matter has been referred, he shall contact the SBA office to which the matter was referred to determine whether a COC is being processed. SBA will ordinarily notify the contracting officer by the 13th workday after receipt whether or not it looks favorably toward issuance of a COC.

(b) It is the policy of the Department to endeavor to reach agreement with the SBA regarding the capacity or credit of a small business concern. If SBA looks favorably toward the issuance of a COC, SBA may be requested to advise the reasons for the proposed affirmative action. If the contracting officer has substantial basis for not agreeing with the proposed affirmative action, he shall request SBA to suspend further action on the case. The contracting officer should meet with SBA representatives, examine SBA case files, and take pertinent notes. SBA case files will not be released outside SBA. Every effort should be made to resolve any differences between the SBA and the contracting officer through a complete exchange of preaward information developed by each agency.

(c) One of the following courses of action shall be taken after the meeting described in paragraph (b) of this section:

(1) If the new and additional facts presented by the SBA field office representatives so warrant, the contracting officer shall (i) reverse the negative determination as to capacity and credit of the apparent low bidder or offeror, (ii) withdraw the referral to SBA, (iii) inform the SBA field office of his intention to make award and the anticipated date of award, and (iv) make the contract award without the necessity for issuance of a COC.

(2) If agreement cannot be reached between the contracting officer and the SBA field office, but the contracting officer concludes it is not necessary to request a final determination of the case by SBA Washington nor appropriate to withdraw the request for COC action, the contracting officer shall inform the SBA field office that a COC must be issued as a prerequisite to contract award.

(3) If agreement cannot be reached between the contracting officer and the SBA field office, and the contracting officer still has substantial basis for doubt as to the ability of the firm to perform, the contracting officer shall request the SBA field office to suspend action to permit referral of the case to higher authority for review. The contracting officer shall then refer the matter to higher authority within his activity. If it is felt that the case is one which may warrant consideration by SBA Washington, it shall next be referred, with recommendations, to the Washington official designated by the administration, for review and determination of additional action required. The case file shall include the data forwarded to SBA, a statement of SBA's reasons for proposing to issue a COC, and any pertinent data noted from the review of the SBA case files. No further procurement action will be taken by the contracting officer until he is informed of the final decision in the case.

(d) If an SBA field office issues a COC without first advising the contracting officer of its intention to do so, the contracting officer shall (1) determine from SBA the reasons for the failure to advise and the reasons why the COC was issued, and (2) advise the Washington official designated by his Administration of SBA's failure to advise and also whether an appeal of the COC action to SBA Washington is recommended.

§ 12–1.708–51 Additional procedures—referrals to SBA for reasons other than capacity or credit.

Referrals made to SBA for reasons other than capacity or credit, as described in FPR 1–1.708–2(a)(5), shall include a request that the contracting officer be advised, by telephone (and confirmed in writing), whether or not SBA desires to submit contrary views concerning the nonresponsible determination.

§ 12–1.750 Procurement set-asides for small business when an SBA representative is not available.

§ 12–1.750–1 General.

If no SBA representative is available, the small business specialist shall initiate recommendations to the contracting officer for a small business set-aside for an individual procurement or class of procurements or portion thereof.

§ 12–1.750–2 Review of set-aside recommendations initiated by small business specialists.

When a small business specialist has recommended that all, or a portion, of an individual procurement or class of procurements be set aside for small business, the contracting officer shall promptly either (a) concur in the recommendation or (b) disapprove the recommendation, stating in writing his reasons for disapproval. If the contracting officer disapproves the recommendation of a small business specialist, the small business specialist shall be afforded an opportunity to appeal to an official above the level of the contracting officer. The decision of this official shall be final.

§ 12–1.750–3 Withdrawal or modification of set-asides.

Withdrawal or modification of an individual or class set-aside which was originally established upon the recommendation of the small business specialist may be initiated by the contracting officer by giving notice containing the reason therefor, to the small business specialist. If the small business specialist does not agree to a withdrawal or modification, the action may be appealed to an official above the level of the contracting officer, whose decision shall be final.

§ 12–1.750–4 Contracting authority.

For purposes of determining the appropriate contract authority, set-sides initiated by the small business specialist and concurred in by the contracting officer shall be considered to be unilateral small business set-sides, and shall cite 41 U.S.C. 252(c)(1) or 10 U.S.C. 2304(a)(1), as applicable.

§ 12–1.751 Small business set-aside for proposed construction procurements.

(a) Each proposed procurement for construction services (excluding ship construction) estimated to cost between $2,500 and $500,000, shall be set aside for exclusive small business participation. Such set-asides shall be considered to be unilateral small business set-asides, and shall be withdrawn, in accordance with the procedures of FPR 1–1.706–3 and DOTPR 12–1.750–3, only if found not to serve the best interest of the Government.

(b) Small business set-aside preferences should be considered for construction procurements in excess of $500,000 on a case-by-case basis.

Subpart 12–1.8—Labor Surplus Area Concerns

§ 12–1.807 Report on preference procurement in labor surplus areas.

Reports required by FPR 1–1.807 will be forwarded to the Director of Installations and Logistics, OST, no later than February 5 and August 5. The Director of Installations and Logistics will prepare and submit to GSA the consolidated departmental report.

Subpart 12–1.9—Reporting Possible Antitrust Violations

§ 12–1.901 General.

The reports required by FPR Subpart 1–1.9 shall be prepared for the signature of the Secretary, and forwarded to the Director of Installations and Logistics.

Subpart 12–1.11—Qualified Products

§ 12–1.1150 General.

(a) It is sometimes necessary to test products in advance of any procurement action to determine if a product is available that will meet specification requirements. In such cases, the specification may require qualification of the product. Qualification is the entire process by which products are obtained from manufacturers or distributors, examined and tested for compliance with specification requirements, and then identified on a list of qualified products. Qualification is performed in advance and independent of any specific procurement action.

(b) A Qualified Products List (QPL) identifies the specification, manufacturer or distributor, item by part or model number or trade name, place of manufacture, and the test report involved. Suppliers whose products have successfully passed qualification and who furnish evidence thereof are eligible for award even though the product is not yet included in the QPL.

(c) Chapter IV of the Federal Standardization handbook (Federal Property Management Regulations 101–29) is the basic instruction concerning qualified products and qualifications procedures. Copies of this handbook may be purchased by the public from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(d) A specification is the only medium for establishing a requirement for qualification. The preparing activity identified in the specification is responsible for qualification.

§ 12–1.1151 Justification for inclusion of qualification requirements.

Subject to approval by the office as designated in Administration procedures, a qualification requirement may be included in a specification only when one or more of the following conditions exist:

(a) The time required for testing after award would unduly delay delivery of the supplies being purchased.

(b) The cost of repetitive testing would be excessive.

(c) The tests would require expensive or complicated testing apparatus not commonly available.

(d) The interest of the Government requires assurance, prior to award, that the product is satisfactory for its intended use.

(e) The determination of acceptability would require performance data to supplement technical requirements contained in the specification.

§ 12–1.1152 Prior determinations.

Prior to inclusion of qualification in a specification, the preparing activity shall determine that:

(a) There is no other practicable way to obtain evidence of availability of products meeting the requirements of the specification.

(b) Sources, sufficient in number to provide an adequate base of supply, insofar as practicable, are available and willing to submit their products for qualification.

(c) Test facilities and resources are available to establish and maintain the QPL adequately and without delay.

§ 12–1.1153 Availability of lists.

Qualified Products Lists are intended for the use of the Government and its contractors, subcontractors, prospective bidders, and suppliers. Lists may be obtained by prospective bidders or suppliers who require these Lists in furnishing supplies or services to the Government or its contractors. Lists are also available to the public upon request. When a person is provided with, or given access to, a QPL he should be advised as follows:

(a) The QPL has been prepared for use by or for the Government in the procurement of products covered by the specification and such listing of a product is not intended to and does not connote endorsement of the product by the Department of Transportation;

(b) All products listed have been qualified under the requirements for the product as specified in the latest effective issue of the applicable specification;

(c) The QPL may be revised or amended as necessary, and subject to change without notice;

(d) The listing of a product does not release the supplier from compliance with the specification requirements; and

(e) Use of the information for advertising or publicity purposes is permitted, provided that such publicity or advertising does not state or imply that the product is the only product of that type so qualified or that the Department of Transportation in any way recommends or endorses the manufacturer's product.

§ 12–1.1154 Opportunity for qualification.

(a) Upon determination that a product is to be covered by a QPL, manufacturers shall be urged to submit their products for qualification and where possible shall be given sufficient time to arrange for qualification testing prior to issuance of the initial invitation for bids or request for proposals for the item as a qualified product. Appropriate notice of such determination shall be furnished to the U.S. Department of Commerce, Commerce Business Daily, Room 1304, 433 West Van Buren Street, Chicago, IL 60607, requesting publication of five consecutive issues of the daily "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards". The publicity given to the requirement for qualification testing shall include the following:

(1) An intention to establish a QPL for a product;

(2) The specification number and nomenclature of the product, and the name and address of the office to which the request for qualification should be submitted; and

(3) Notice that in making future awards consideration shall be given only to such products as have been accepted for inclusion in a QPL.

(b) Lists shall always be kept open for inclusion of products from additional suppliers.

§ 12–1.1155 Clarification of qualification requirements.

When there is any question concerning qualification requirements in a specification, the activity that prepared the specification will furnish clarification when requested by the contracting activity.

§ 12–1.1156 Procurement of qualified products.

§ 12–1.1156–1 General.

(a) Whenever qualified products are to be procured by the Government as end items, only bids or proposals offering products which are qualified for listing on the applicable QPL at the time set for opening of bids or award of negotiated contracts shall be considered in making awards.

(b) Whenever a qualified product is to be procured by a prime contractor as a component of an end item, the prime contractor shall be required to furnish a component which has been tested and qualified for inclusion in the applicable QPL by the time of award of the subcontract. Delay resulting from the prime contractor's awaiting qualification approval by the Government of a component shall not constitute excusable delay when a previously qualified component could have been procured in time to meet the end item delivery schedule.

(c) Procurements involving qualified products shall be governed by subparagraphs (1) through (4) of this paragraph.

(1) Synopses of proposed procurements shall be published by purchasing activities, in accordance with FPR 1–1.1003, promptly upon receipt of procurement requests.

(2) The maximum time consistent with delivery requirements shall be allowed between issuance of the solicitation and the opening of bids or the award of a negotiated contract. As a minimum, however, contracting officers shall allow 30 calendar days between the dates of issuance and opening (award, in the case of negotiated contracts): *Provided*, That periods of less than 30 days may be set in cases of urgency

when the justification for a shorter period is set forth in writing and made a part of the procurement file. In appropriate cases, advance notice of procurement involving qualified products may be given suppliers through the use of preinvitation notices. Such notices shall identify the specification requiring qualification.

(3) In procuring qualified products by formal advertising, invitations for bids will be distributed to suppliers in the same manner as if a qualified product were not involved, and will not be restricted to suppliers whose products have been qualified.

(4) Contracting officers shall forward requests from suppliers concerning qualification of products to the specification preparing activity.

§ 12–1.1157 Contract provisions.

(a) When qualified end products are to be procured, the provision in FPR 1–1.1101(b) shall be inserted in the solicitation, supplemented by the following:ing:

"The offeror shall insert the item name and the test number (if known) of each qualified product in the blank spaces below. Item Name _____ Test No. _____

Any change in location or ownership of the plant at which a previously approved product is, or was, manufactured requires reevaluation of the qualification. Such reevaluation must be accomplished prior to the bid opening date in the case of advertised procurements and prior to the date of award in the case of negotiated procurements. Failure of offerors to arrange for such reevaluation shall preclude consideration of their offers.

If the procurement is formally advertised, the following statement shall also be included:

Any bid which does not identify the qualified product being offered, either above or elsewhere in the bid, will be rejected.

(b) When qualified products are to be procured as components of end items, insert the following provision in the solicitation:

QUALIFIED PRODUCTS—COMPONENTS

When any of the end items which are to be supplied to the Government by the Contractor will contain one or more components which are required by the applicable specification to be qualified products, such components shall have been tested and shall be qualified for inclusion in the Qualified Products List (whether or not actually included in the List) at the time of award of any subcontract by the Contractor for such components, or, in the event the Contractor plans to manufacture such components himself, shall have been so tested and have so qualified before the Contractor begins to manufacture such components for performance of this contract (not before manufacture of the prototype, preproduction model, or first article, for qualification testing). Unless required for interchangeability or compatibility, the Contractor shall not cite brand names from any Qualified Products List in any subcontract solicitation, but shall refer to the pertinent specification so that optimum competition may be obtained. Delay resulting from the Contractor's awaiting qualification approval by the Government of a component shall not constitute excusable delay when a previously qualified component could have been procured in time to meet the end item delivery schedule. Any change in location or ownership of the plant at which a previously approved product is, or was, manufactured requires re-evaluation of the qualification. Such re-evaluation must be accomplished prior to the award of any subcontract by the Contractor for such components or prior to the beginning of manufacture if the Contractor manufactures such components himself.

§ 12–1.1158 Effect of debarment or suspension.

The inclusion of a product on the QPLs may be denied, and the qualification of a listed product may be withdrawn, by the Administration concerned, without notification to the manufacturer, if the name of the manufacturer appears on the lists of debarred or ineligible bidders which are maintained pursuant to FPR Subpart 1–1.6.

§ 12–1.1159 Waiver of qualification requirement.

When procuring a product under a specification which includes qualification requirements either for the end item or for components of the end item, such qualification requirements can be waived only by the activity that prepared the specification. In appropriate cases, when requested by the contracting officer, the preparing activity may waive qualification requirements. A notice, issued by the preparing activity, directing a waiver of the qualification requirement, constitutes adequate authorization for waiver of product qualification requirements. Where waivers have been granted, solicitations shall specifically indicate that the qualification requirement is inapplicable. Such information shall also be included in any Synopsis of the procurement.

§ 12–1.1160 Inadequate competition.

(a) *Presolicitation.* In connection with procurement of a qualified product as an end item, the contracting officer shall review the applicable QPL prior to solicitation to ascertain whether the number of sources is adequate for competition. If, in the opinion of the contracting officer, the number of sources is inadequate, action shall be taken as prescribed below unless he already has the necessary information.

(1) The contracting officer shall request the activity that prepared the specification to provide information concerning the status of tests on additional products, including the anticipated dates when such tests will be completed so that opening of bids or submission of proposals may be so scheduled as to allow completion of the tests.

(2) If no tests are being conducted or contemplated, the contracting officer shall further request the preparing activity to advise whether a means of quality assurance other than qualification approval may be substituted in the procurement.

(b) *Postsolicitation.* The contracting officer shall advise the specification preparing activity of the name and address of any concern which requested copies of the solicitation but was not included on the QPL. The specification preparing activity may then attempt to interest such concerns in becoming qualified.

§ 12–1.1161 Reporting nonconformance with specification requirements.

If a supplier on the QPL repeatedly submits products not meeting specification requirements for inspection, resubmits products previously rejected without correcting the defects, or is otherwise unsatisfactory in the performance of contracts, he shall be reported to the activity that prepared the specification for a determination as to whether the supplier's product shall be removed from the list.

§ 12–1.1162 Misuse of QPL information.

Misuse of QPL information, such as for advertising or publicity purposes contrary to that permitted in DOTPR 12–1.1153(e), shall be reported promptly to the preparing activity.

Subpart 12–1.12—Responsible Prospective Contractors

§ 12–1.1204 Determination of responsibility or nonresponsibility.

§ 12–1.1204–1 Requirement.

(a) Except as provided in paragraph (c) of this section, the contracting officer shall, prior to award, prepare, sign, and place in the contract file, DOT Form F 4220.1 titled "Determination of Prospective Contractor Responsibility." Where a prospective contractor is determined to be nonresponsible, the form shall also be completed before notice of the rejection is furnished and the contract awarded to another.

(b) For each factor applicable to the procurement, the type of evaluation and the rating shall be checked. A completed form may include any combination of checks in the A, B, and C columns. Where the determination of responsibility is based on an SBA certificate of competency, a copy of the certificate shall be attached to the form and Block 6 of the form should not be completed except to reference the attachment.

(c) The form need not be completed in the case of:

(1) Procurements of the types listed in FPR 1–1.1201(b);

(2) Contracts of $10,000 or less, except that the form shall be prepared prior to the award of all contracts the primary purpose of which is research; or

(3) Contracts for perishable subsistence supplies available for immediate shipment.

(d) Pending a revision of DOT Form F 4220.1, the reference in Block 7 to "FPR 1–1.310–6" shall be changed to read "FPR 1–1.1202".

Subpart 12–1.16—Report of Identical Bids

§ 12–1.1603 Reporting requirement.

§ 12–1.1603–3 Submission of reports.

The report required by FPR 1–1.1603–3 (b) shall be sent by each Administration directly to the Attorney General. An information copy shall be sent to the Director of Installations and Logistics, OST.

Subpart 12–1.50—Options

§ 12–1.5000 Scope of subpart.

This subpart applies to contracts for supplies and services other than for construction and research and development. It does not preclude the use of appropriate option provisions in such construction and research and development contracts.

§ 12–1.5001 Definition.

As used in this subpart, an option clause is a provision in a contract under which, for a specified time, the Government may elect to purchase additional quantities of the supplies or services called for by the contract, or may elect to extend the period of performance of the contract.

§ 12–1.5002 Applicability.

(a) Option clauses may be included in contracts where increased requirements within the period of contract performance are foreseeable, or where continuing performance beyond the original period of contract performance may be in the best interest of the Government. Since options require offerors to guarantee prices for definite periods of time with no guarantee that orders will be placed, their improper use could result in prices which are unfair to either the Government or the contractor. When additional requirements are foreseeable and subsequent competition would be impracticable because of such factors as production lead time and delivery requirements, the use of options may be preferable to later negotiating a price with the contractor at a time when it is the only practical source.

(b) An option normally should not be used where it can reasonably be foreseen that (1) minimum economic production quantities will be procured at some future date, and (2) startup costs, production lead time, and probably delivery requirements would not preclude adequate future competition.

(c) Option provisions and clauses shall not be included in contracts when:

(1) The supplies or services being purchased are readily available on the open market.

(2) The contractor would be required to incur undue risks: E.g., the price or availability of necessary materials or labor is not reasonably foreseeable.

(3) An indefinite quantity contract or requirements contract is appropriate except that options for continuing performance may be used in such contracts.

(4) Market prices for the supplies or services involved are likely to change substantially.

(5) The option quantities represent known firm requirements for which procurement funds are available.

§ 12–1.5003 Procedures.

(a) When a contract is to contain an option quantity, the solicitation must contain an appropriate option provision and the contract file shall be documented with a justification for the inclusion of the option. If the contract is to be negotiated, the determination and findings shall set forth the approximate quantity to be awarded and the extent of the increase to be permitted by the option. The contract shall limit the additional quantities of supplies or services which may be procured, or the duration of the period for which performance of the contract may be extended, under the option and will fix the period within which the option may be exercised. In fixing the period within which the option may be exercised, consideration shall be given to (1) necessary lead time in order to assure continuous production and (2) the time required for additional funding and other necessary approval action. The period specified for exercising the option shall in all cases be kept to a minimum.

(b) Solicitations containing option provisions should cover five basic points: (1) Quantity of additional supplies or services which may be procured: Where the exercise of the option would result in increased quantities of supplies, the option quantity should be expressed in terms of a specified number of additional units rather than as a percentage of the base quantity. Where exercise of the option would result in an increase in the performance of services, the option may be similarly expressed in terms of the units of work contained in the contract (e.g., man hours). Where exercise of the option would result in an extension of the duration of the contract, the option may be expressed in terms of a specific date or dates or of an additional time period such as days, weeks, or months. Generally the quantity subject to the option should not exceed the basic quantity by more than 25 percent.

(2) The period within which the option may be exercised: The contract shall fix the period within which the option may be exercised. The period specified shall in all cases be kept to a minimum (generally no longer than 6 months).

(3) Delivery terms for the option quantities.

(4) Prices for the option quantities: The clause shall provide for firm unit prices for any additional quantity that may be ordered up to the maximum quantity of the option, or for any increase in the performance of services or extension of the duration of the contract.

(5) A statement on the evaluation of bids or proposals: Solicitations shall state that evaluation will be on the basis of the firm quantity set forth in the schedule and the option quantity, if any, exercised at time of award.

The option clause should not contain a price control feature on the option quantities, such as a requirement that the option quantities be offered at prices no higher than those of the basic quantity. The use of price controls to avoid unreasonable offers on option quantities can be disadvantageous to the Government because the contractor may spread the cost of bona fide risks of option quantities to the basic quantity.

§ 12–1.5004 Exercise of options.

(a) The exercise of an option by the Government requires the contracting officer's written notification to the contractor within the time period specified in the contract.

(b) Where the contract provides for price escalation and the contractor requests revision of price pursuant to such provision, or the provision applies only to the option quantity, the effect of escalation on prices under the option must be ascertained before the option is exercised.

(c) Options should be exercised only if it is determined that:

(1) Funds are available,

(2) The requirement covered by the option fulfills an existing need of the Government, and

(3) The exercise of the option is most advantageous to the Government, price and other factors considered.

(d) Insofar as price is concerned, the determination under paragraph (c)(3) of this section shall be made on the basis of one of the following:

(1) A new solicitation fails to produce a better price than that offered by the option. When the contracting officer anticipates that the option price will be the best price available, he should not use this method of testing the market but should use one of the methods in subparagraph (2), (3), or (4) of this paragraph.

(2) An informal investigation of prices, or other examination of the market, indicates clearly that a better price than that offered by the option cannot be obtained.

(3) The time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable, considering such factors as market stability and a comparison of the time since award with the usual duration of contracts for such supplies and services.

(4) Established prices are readily ascertainable and clearly indicate that formal advertising or informal solicitation can obviously serve no useful purpose.

(e) Insofar as the "other factors" mentioned in paragraph (c)(3) of this section are concerned, the determination should, among other things, take into account the Government's need for continuity of operations and potential costs to the Government of disrupting operations, including the cost of relocating necessary Government-furnished property (as, for example, in certain repair and overhaul contracts for aircraft or other complex equipment).

(f) When it has been determined that an option may properly be exercised, such determination shall be set forth in writing and included in the contract file. Written notification to the contractor of the exercise of the option and any contract modification resulting therefrom shall cite the option clause contained in the contract as authority for the procurement of the option quantity, and no citation under 41 U.S.C. 252(c) or 10 U.S.C. 2304(a) is required.

§ 12–1.5005 Examples of option provisions.

(a) A clause substantially as follows may be used where the contract expresses the option quantity as an additional quantity of a specific line item.

OPTION FOR INCREASED QUANTITY

The Government may increase the quantity of supplies called for herein by the amount stated in the Schedule and at the unit price specified therein. The Contracting Officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the Contractor. Delivery of the items added by the exercise of this option shall continue immediately after, and at the same rate as, delivery of like items called for under this contract unless the parties otherwise agree.

(b) A clause substantially as follows may be used where it is intended to extend the services described in the schedule.

OPTION TO EXTEND SERVICES

The Government may require the Contractor to continue to perform any or all items of services under this contract within the limits stated in the Schedule. The Contracting Officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the Contractor. The rates set forth in the Schedule shall apply to any extension made pursuant to this option provision.

(c) A clause substantially as follows may be used to provide for continuing performance of the contract beyond its original term.

OPTION TO EXTEND THE TERM OF THE CONTRACT

This contract is renewable, at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor within the period specified in the schedule: *Provided*, That the Contracting Officer shall have given preliminary notice of the Government's intention to renew at least 60 days before this contract is to expire. (Such a preliminary notice will not be deemed to commit the Government to renewals.) If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed _____.

Subpart 12–1.51—Novation Agreements and Change of Name Agreements

§ 12–1.5100 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 a name of a contractor, and (c) single Administration execution of novation agreements and change of name agreements affecting more than one Administration of the Department of Transportation. (See also FPR 1–30.710 on assignment of claims in the case of transfer of a business or corporate mergers.)

§ 12–1.5101 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 the Administration concerned, or the Office of the Secretary of Transportation (OST), if appropriate (see § 12–1.5103(b)), 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 orders which have not been finally settled between the Department of Transportation 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.

(c) When it is consistent with the Government's interest to recognize a successor in interest to a Government contract, the Administration concerned, or OST, if appropriate, shall execute a novation agreement with the transferor and the transferee, which shall ordinarily provide in part that:

(1) The transferee assumes all the transferor'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.

(d) All agreements, prior to execution, shall be reviewed by Government counsel for legal sufficiency. A format 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 format may be adapted to fit specific cases and may be used as a guide in preparing similar agreements for use in other situations.

NOVATION 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 Corp., 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 Corp. [add if appropriate] (formerly known as the LMN Corp.), 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 (insert appropriate administrations, and OST if appropriate) of the Department of Transportation, has entered into certain contracts and purchase orders with the Transferor [namely: _____] (or) [as set forth in the attached list marked "Exhiibt 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 within the Department of Transportation 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;

[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 the State of ----------, to the effect that the corporate name of LMN Corp. was changed to XYZ Corp. 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 ----------

ABC CORP.

[CORPORATE SEAL]

By ----------
Title ----------

XYZ CORP.

[CORPORATE SEAL]

By ----------
Title ----------

CERTIFICATE

I, ----------, certify that I am the Secretary of ABC Corp., 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 of XYZ Corp., 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 ----------

§ 12–1.5102 Agreement to recognize change of name of contractor.

(a) Where only a change of name is involved, so that the rights and obligations of the parties remain unaffected, an agreement between the Administration concerned, or OST, if appropriate (see § 12–1.5103), and the contractor shall be executed effecting the amendment of all existing contracts between the parties so as to reflect the contractor's change of name. Prior to the execution of such agreement, one copy of each of the following shall be furnished by the contractor to the Administration concerned:

(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 between the Department of Transportation 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.

CHANGE OF NAME 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 Corp., 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, represented by the Department of Transportation (hereinafter referred to as the "Government").

WITNESSETH

1. Whereas, the Government, represented by various contracting officers of (insert appropriate administrations, and OST if appropriate) of the Department of Transportation, has entered into certain contracts and purchase orders with the XYZ Corp., [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 within the Department of Transportation, 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 Corp., by an amendment to its certificate of incorporation, dated ----------, 19--, has changed its corporate name to ABC Corp.;

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 Corp." wherever it appears in the contracts and substituting therefor the name "ABC Corp.".

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 CORP.

By ----------
Title ----------

CERTIFICATE

I, _____, certify that I am the Secretary of ABC Corp., 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 _____

§ 12–1.5103 Processing novation agreements and change of name agreements.

(a) When only one Administration or the Office of the Secretary of Transportation has outstanding contracts with the contractor or contractors seeking a novation or change of name agreement, the documents pertaining thereto shall be forwarded to the appropriate addressee in paragraph (b) of this section. This addressee may authorize the procuring activity of its Administration (or OST) having the largest unsettled (unbilled plus billed but unpaid) dollar balance with the contractor or contractors to process and execute the agreement.

(b) When more than one Administration (including OST) has outstanding contracts with the contractor or contractors seeking a novation or change of name agreement, a single agreement covering all such contracts shall be executed by the Administration having the largest unsettled (unbilled plus billed but unpaid) dollar balance with the contractor or contractors. Such agreements shall be executed by a duly authorized official of the appropriate office listed herein.

Federal Aviation Administration, Director, Logistics Service, 800 Independence Avenue SW., Washington, DC 20590.

Federal Highway Administration, Director, Office of Administration, 400 7th Street SW., Washington, DC 20591.

U.S. Coast Guard, Commandant (F), 400 7th Street SW., Washington, DC 20591.

Federal Railroad Administrator, Director, Office of Administration, 400 7th Street SW., Washington, DC 20591.

St. Lawrence Seaway Development Corporation, Administrative Services Officer, 800 Independence Avenue SW., Washington, DC 20590.

Office of the Secretary of Transportation, Director of Administrative Operations, 400 7th Street SW., Washington, DC 20591.

Urban Mass Transportation Administration, Director of Administrative Operations, 400 7th Street SW., Washington, DC 20591.

National Highway Traffic Safety Administration, Director of Administration, 400 7th Street SW., Washington, DC 20591.

(c) The Administration processing a proposed novation agreement shall promptly provide notice of the proposed agreement, including the list of contracts as required by § 12–1.5101(b)(2) to the other Administrations (and OST, if applicable) having contracts with the contractor or contractors concerned. Such notice shall be transmitted to the appropriate addressee listed in paragraph (b) of this section. Within 30 days after receipt of such notice, the Administration(s) may submit comments to the processing Administration, which comments shall be considered prior to execution of the proposed agreement. The absence of comment from an Administration within 30 days after its receipt of notice of a proposed novation agreement shall be construed as approval by that Administration. When only a single Administration is concerned, the procuring activity processing a proposed novation agreement shall give similar notice of it to all other interested procuring activities in that Administration.

(d) Where substantial alterations or additions to the formats set forth in §§ 12–1.5101 and 12–1.5102 are considered appropriate by the Administration processing the proposed agreement, that Administration shall coordinate the agreement with the other Administrations prior to execution. Any objection shall be resolved before the agreement is executed.

(e) A signed copy of the executed novation agreement or change of name agreement shall be forwarded to the contractor, a signed copy shall be retained in the Administration executing the agreement, and where more than one Administration is involved, two copies of the agreement shall be distributed to the appropriate addressee listed in paragraph (b) of this section.

(f) After execution and distribution of an agreement, an administrative change (Standard Form 30) shall be prepared by the processing activity incorporating a summary of the agreement and attaching thereto a complete list of the contracts affected. For single Administration agreements, three copies of the Standard Form 30 shall be furnished for each contract to the procuring activities concerned, and for multi-Administration agreements, to the appropriate addressee listed in paragraph (b) of this section.

Subpart 12–1.52—Value Engineering

§ 12–1.5201 Policy.

(a) Value engineering is concerned with the elimination or modification of anything that contributes to the cost of a contract item or task but is not necessary for needed performance, quality, maintainability, reliability, or interchangeability. Specifically, value engineering as contemplated by this subpart constitutes a systematic and creative effort, not required by any other provision of the contract, directed toward analyzing each contract item or task to ensure that its essential function is provided at the lowest overall cost. Overall cost may include, but need not be limited to, the costs of acquiring, operating, and logistically supporting an item or system.

(b) In order to realize fully the cost reduction potential of value engineering, provisions which encourage or require value engineering shall be incorporated in all contracts, including letter contracts, of sufficient size and duration to offer reasonable likelihood for cost reduction. All such provisions shall offer the contractor a share in cost reductions ensuing from change proposals he submits under such contracts. To realize the cost reduction potential of value engineering, it is imperative that value engineering change proposals be processed by all parties as expeditiously as possible.

§ 12–1.5202 Value engineering incentives.

§ 12–1.5202–1 Description.

(a) A Value Engineering Incentive clause permits the contractor to share in cost reductions that ensue from change proposals he submits. Many types of contracts, when properly used, provide the contractor with an incentive to control and reduce costs while performing within the specifications and other contract requirements. However, the practice of reducing the contract price (or fee in the case of cost-reimbursement type contracts) under the Changes clause tends to discourage contractors from submitting cost reduction proposals requiring a change to the specification or other contract requirements even though such proposals could be beneficial to the Government. The objective of a value engineering incentive provision is to encourage the contractor to submit such cost reduction proposals. To be acceptable, a value engineering change proposal must involve some change in the contract specifications, purchase description, or statement of work; this may include the elimination or modification of any requirement found to be in excess of actual needs in the areas of, for example, design, components, materials, material processes, tolerances, packaging requirements, technical data requirements, or testing procedures and requirements, and consequent reduction in the contract cost. Furthermore, even when the contract cost may be increased, the incentive provisions encourage contractors to submit value engineering change proposals that are likely to lead to overall savings resulting from significant net reductions in collateral costs of Government-furnished property, operational requirements or logistic support requirements.

(b) Value engineering proposals which satisfy the above requirements shall not be rejected on the ground that they also involve a termination, in whole or in part, of contract line items; moreover, the cost savings resulting from such quantitative reductions shall be shared with the contractor. On the other hand, contractor proposals which concern the quantitative requirements of the Government but do not satisfy the above criteria are not within the intent of the value engineering provisions, and the contractor will not share, under the Value Engineering Incentive clause, in savings resulting solely from such quantitative proposals.

(c) In all cases, the contractor's share in over-all cost savings resulting from the Government's acceptance of a cost reduction proposal shall be determined as provided in the Value Engineering Incentive clause.

§ 12–1.5202–2 Use of value engineering incentive clause.

(a) Except as provided in paragraph (b) of this section, a value engineering incentive clause as specified in § 12–

1.5207, or a substantially similar clause, shall be included in all advertised and negotiated contracts in excess of $100,000, unless it is determined by the contracting officer that the value engineering offers no potential for cost reduction, as for example, where a particular contract or class of contracts is of insufficient duration to allow value engineering proposals to be processed, or where the item or class of items being procured is a commercial product whose design and cost are primarily controlled by the commercial market.

(b) Normally, a value engineering incentive clause shall not be included in contracts for architect-engineering, research, or exploratory development unless the contracting officer affirmatively determines that the contract has a clear potential for value engineering cost reductions and that a value engineering incentive clause will provide the effective stimulus to the contractor. In addition, with the exception of cost-plus-incentive fee contracts, value engineering incentive provisions shall not be included in cost-reimbursement type contracts.

§ 12–1.5202–3 Types of savings to be shared with the contractor.

(a) The value engineering incentive provisions discussed in this subpart provide for contractor participation in cost savings realized under the instant contract, i.e., the contract under which the value engineering change proposal was submitted, as a result of the contractor's value engineering change proposal and for his participation in ascertainable collateral savings. However, the greater the financial incentives afforded the contractor, the more effective his value engineering efforts are likely to be. When it is anticipated that additional requirements of an item will be procured in the future, consideration should be given for contractor participation in future acquisition savings, as described in the Armed Services Procurement Regulation 1–17.

(b) Instant contract savings:

(1) Every value engineering clause shall provide for contractor participation in cost savings realized under the instant contract as a result of the contractor's value engineering change proposal.

(2) For purposes of computing the contractor's share under the instant contract sharing provisions paragraph (d) of the basic clause (see § 12–1.5207–2), the "instant contract" shall not include any supplemental agreements to or other modifications of the instant contract, executed subsequent to the acceptance of the particular value engineering change proposal, by which the Government increases the quantity of any item or adds any item, nor shall it include any extension of the instant contract by exercise of an option subsequent to acceptance of the proposal.

(3) Where the contract involved is an estimated requirements or other indefinite quantity type contract, the "instant contract", for purposes of computing the contractor's share under the instant contract sharing provisions in paragraph (d) of the basic clause shall include only those orders actually placed by the Government up to the time the particular value engineering change proposal is accepted.

(4) With respect to orders placed by the Government pursuant to a basic ordering agreement, each order is a separate contract. Accordingly, for purposes of determining the contractor's share under the instant contract sharing provisions in paragraph (d) of the basic clause, the "instant contract" shall be the order under which the particular value engineering change proposal is submitted.

(5) Where the contract involved is a multiyear contract, the Government is contractually bound for the total multiyear quantity (subject to cancellation). Accordingly, for purposes of determining the contractor's share under the instant contract sharing provisions in paragraph (d) of the basic clause, the "instant contract" shall be the entire contract for the total multiyear quantity.

(6) The value engineering clauses provide that the contractor and the Government will share in the cost savings realized on the "instant contract" as a result of the contractor's value engineering change proposal. In general, the cost savings to be shared will be determined by subtracting from the total decrease in contract price (or target cost) the sum of (i) the contractor's costs of developing the value engineering proposal, insofar as such are properly direct charges under the contract involved and (ii) the contractor's cost of implementing the change. For purposes of the above determination, deductible development costs will normally include those incurred after the contractor has identified a specific value engineering project. Developmental costs shall not be deductible where they are otherwise reimbursable under the contract (i.e., directly pursuant to a Program Requirement clause or indirectly through overhead accounts). Implementation costs are considered to be those costs of incorporating a change which are incurred after the value engineering proposal has been accepted by the Government.

(7) Where the contract involved is a service contract, contractor proposals which eliminate, modify, or substitute new procedures for contractually required work procedures shall qualify for instant contract savings sharing. Where the service contract is a time and material or labor-hour contract, the "effect of the proposal on the contractor's cost of performance," for purposes of the instant contract sharing paragraph (d) of the basic clause, shall be determined by (i) multiplying the time per item saved by the elimination, modification, or substitution by the labor hour rate agreed upon for the workers involved, and then (ii) multiplying the result by the number of items over which the task has been deleted, and (iii) taking into account in the usual manner the contractor's cost of developing the proposal and of implementing the change.

(c) Collateral savings: In addition to contractor sharing in instant contract savings, the value engineering clause normally shall provide for contractor participation in any ascertainable net reduction in the Government's overall projected costs including but not limited to cost of operation, maintenance, logistic support, and Government-furnished property, where such collateral savings result from the change proposal submitted by the contractor. This additional incentive enables the contractor to share in collateral savings (less any increase in acquisition costs) whether or not there is any change in the acquisition cost of the item. However, when the contracting officer determines that the item or class of items being procured offers no reasonable potential for significant collateral savings, the collateral savings provision may be omitted from a contract or class of contracts.

§ 12–1.5203 Percentage of contractor sharing.

(a) The precise extent to which the contractor should share savings resulting from decreases in his cost of performance and in future acquisition costs must be tailored to the particular procurement. For advertised contracts, the percentages of contractor sharing shall be stated in the Value Engineering Incentive clause in the invitation for bids. For negotiated contracts, the percentage of contractor sharing shall be stated in the Value Engineering clause in the request for proposals, although the percentage may be a subject of negotiation prior to award. In two-step formal advertising, although discussion of the appropriate percentages of contractor sharing is permissible in connection with step one, the percentages shall be specified in the Value Engineering Incentive clause in the invitation for bids that is issued at the beginning of step two.

(b) In firm fixed-price contracts, fixed price contracts providing for escalation, and fixed-price contracts providing for prospective redetermination, the contractor's share in the cost reduction on the instant contract normally should be 50 percent and in no event shall be greater than 75 percent; however, if such contracts are not awarded on the basis of adequate price competition, a contractor's share of less than 50 percent may be appropriate. In an incentive-type contract, if it is determined that costs and savings can be estimated with reasonable accuracy, the contractor's share may be as much as 50 percent; if costs and savings cannot be estimated with reasonable accuracy, his share should be in accordance with the maximum overall cost incentive sharing rate of the contract.

(c) When a collateral savings provision is included in any contract, the contractor's percentage share of collateral savings in such areas as Government-furnished property (other than Government-furnished material under the instant contract), operations, and logistics support shall be 10 percent of projected savings which it is estimated will accrue to the Government during an average or typical year's use of the item incorporating the change. The contracting officer's determination of the amount of projected collateral savings shall be

final and shall not be subject to the Disputes clause. With respect to savings due to a reduction in the amount of Government-furnished material under the instant contract, the contractor's share shall be the same as his share in instant contract savings.

§ 12–1.5204 Other considerations.

§ 12–1.5204–1 Submission of identical value engineering change proposals under more than one contract.

Contractors should be encouraged to submit cost reduction proposals under any of their contracts where the likelihood of savings is present even though an identical proposal may have been accepted under another contract with the contractor or another contractor. When identical value engineering change proposals are submitted under more than one contract for substantially the same items, either with the same contractor or with different contractors, and both are accepted, the value engineering clauses provide that (a) instant contract savings shall be paid under each contract and (b) collateral savings will be paid only to the extent provided for by the contract under which the proposal is first received by the contracting officer and not pursuant to the other contract.

§ 12–1.5204–2 Revision of performance incentive provisions.

When a value engineering clause is to be included in a contract that will also include performance incentives, the contract shall include an appropriate provision to permit equitable revisions to the performance incentive provisions in the event that a cost reduction proposal is accepted and utilized which substantially affects the basis for computing the performance incentive.

§ 12–1.5204–3 Cost allowability.

(a) *General.* Since the Value Engineering Incentive clause does not require the contractor to perform value engineering, the inclusion of such a clause should not in itself increase costs to the Government.

(b) *Cost-type contracts.* In accordance with paragraph (a) of this section, value engineering shall not be allowed as a direct charge against cost-type contracts containing the Incentive clause. The cost of value engineering is an allowable indirect charge to the extent that, under FPR Part 1–15, it is reasonable in the conduct of the contractor's business as a whole and allocable to the particular contract.

(c) *Negotiated fixed-price type contract.* With respect to negotiated fixed-price type contracts, the normal price negotiation policies and techniques in FPR Subpart 1–3.8 shall be followed in determining whether and to what extent the cost of value engineering may be included in the contract price.

(d) *Developmental costs.* Notwithstanding the provisions of paragraphs (b) and (c) of this section, developmental costs of successful value engineering proposals shall be deductible from over-all cost savings in accordance with § 12–1.5202–3(b)(6) and the provisions of the applicable instant contract sharing provision in § 12–1.5207–2.

§ 12–1.5204–4 Effect of value engineering payments.

The sharing of cost savings with a contractor under a value engineering incentive constitutes payment for services rendered and does not constitute profit or fee for purposes of the statutory limitations imposed by 10 U.S.C. 2306(d) or 41 U.S.C. 254(b).

§ 12–1.5205 Evaluation and acceptance.

(a) The expeditious processing of, evaluation of, and determination as to the acceptability of any value engineering change proposal under a contract shall be the responsibility of the contracting officer, whose decision shall be final and shall not be subject to the Disputes clause of the contract.

(b) When it is determined that acceptance of a value engineering change proposal will result in overall cost reduction to the Government, the contracting officer shall accept the proposal by giving the contractor written notice thereof reciting acceptance pursuant to the value engineering clause. Where performance under the contract has not yet been completed and application of the proposed changes to the remaining performance is advisable and appropriate, the written notice of acceptance may be given by issuance of a change order.

(c) Before accepting a cost reduction proposal under a value engineering clause providing for contractor sharing in collateral savings, the contracting officer must make sure that sufficient funds are available for expenditure under the instant contract to cover any increase in the contract price which will result from such acceptance. When necessary, the contract under which the proposal was accepted shall be modified to provide funds sufficient to cover the savings sharing payments to the contractor.

§ 12–1.5206 Value engineering program requirement.

In selected instances, a Value Engineering Program Requirement clause may be considered more appropriate than a Value Engineering Incentive clause. A Value Engineering Program Requirement clause obligates the contractor to engage in value engineering of the scope and at the level of effort required by the Government as an item of work in the contract schedule. The principal reason for requiring a value engineering program is to get early results (i.e., in the initial stages of design, development, or production), so that specifications, drawings, and production methods will reflect the full benefit of value engineering. The value engineering program requirement is set forth in the contract schedule as a separately priced line item. Since under the value engineering program requirement, as contrasted to the value of engineering incentive clause, the Government is obligated to pay for value engineering effort whether or not acceptable value engineering proposals result, this method should be used with discretion. Detailed procedures and an appropriate clause may be found in Armed Service Procurement Regulation 1–17.

§ 12–1.5207 Value engineering incentive clause.

The appropriate form of the basic clause in § 12–1.5207–1 or a substantially similar clause shall be used, with the appropriate instant contract sharing provision from § 12–1.5207–2.

§ 12–1.5207–1 The basic clause.

VALUE ENGINEERING INCENTIVE

(a) (1) This clause applies to those cost reduction proposals initiated and developed by the Contractor for changing the drawings, designs, specifications, or other requirements of this contract. This clause does not, however, apply to any such proposal unless it is identified by the Contractor, at the time of its submission to the Contracting Officer, as a proposal submitted pursuant to this clause.

(2) The cost reduction proposals contemplated are those that:

(i) Would require, in order to be applied to this contract, a change to this contract; and

(ii) Would result in savings to the Government by providing:

(A) A decrease in the cost of performance of this contract, without impairing any of the items' essential functions and characteristics such as service of life, reliability, economy of operation, ease of maintenance, and necessary standardized features, or

(B) Items, regardless of the acquisition cost, producing a net reduction in the cost of Government-furnished property, operations, maintenance, or other areas which exceeds any increased acquisition cost, without impairing any of the items' essential functions and characteristics.

(b) As a minimum, the following information shall be submitted by the Contractor with each proposal:

(i) A description of the difference between the existing contract requirement and the proposed change, and the comparative advantages and disadvantages of each;

(ii) An itemization of the requirements of the contract which must be changed if the proposal is adopted, and a recommendation as to how to make each such change (e.g., a suggested revision);

(iii) An estimate of the reduction in performance costs, if any, that will result from adoption of the proposal, taking into account the costs of development and implementation by the Contractor (including any amount attributable to subcontracts in accordance with paragraph (e) below) and the basis for the estimate;

(iv) a prediction of any effects the proposed change would have on collateral costs to the Government such as Government-furnished property costs, costs of related items, and costs of maintenance and operation;

(v) a statement of the time by which a change order adopting the proposal must be issued so as to obtain the maximum cost reduction during the remainder of this contract, noting any effect on the contract completion time or delivery schedule; and

(vi) the dates of any previous submissions of the proposal, the numbers of the Government contracts under which submitted, and the previous actions by the Government, if known.

(c) (1) Cost reduction proposals shall be submitted to the Contracting Officer. Cost reduction proposals shall be processed expeditiously; however, the Government shall not be liable for any delay in acting upon any proposal submitted pursuant to this

clause. The Contractor does have the right to withdraw, in whole or in part, any value engineering change proposal not accepted by the Government within the period specified in the proposal. The decision of the Contracting Officer as to the acceptance of any such proposal under this contract shall be final and shall not be subject to the "Disputes" clause of this contract.

(2) The Contracting Officer may accept, in whole or in part, before performance has been completed under this contract, any cost reduction proposal submitted pursuant to this clause by giving the Contractor written notice thereof reciting acceptance under this clause. This written notice may be given by issuance of a change order to this contract. Unless and until a change order or other contract modification applies a value engineering change proposal to this contract, the Contractor shall remain obligated to perform in accordance with the terms of the existing contract.

(3) If a cost reduction proposal submitted pursuant to this clause is accepted by the Government, the Contractor is entitled to share in instant contract savings and collateral savings, not as alternatives, but rather to the full extent provided for in this clause.

(4) Contract modifications made as a result of this clause will state that they are made pursuant to it.

(d) [Insert the appropriate instant contract sharing provision from 12–1.5207–2.]

(e) The Contractor will use his best efforts to include appropriate value engineering arrangements in any subcontract which, in the judgment of the Contractor, is of such a size and nature as to offer reasonable likelihood of value engineering cost reductions. For the purpose of computing any equitable adjustment in the contract price under paragraph (d) above, the Contractor's cost of development and implementation of a cost deduction proposal which is accepted under this contract shall be deemed to include any development and implementation costs of a subcontractor and any value engineering incentive payments to a subcontractor, or cost reduction share accruing to a subcontactor, which clearly pertain to such proposal and which are incurred, paid, or accrued in the performance of a subcontract under this contract.

(f) (1) In the event that an accepted cost reduction proposal results in a projected net reduction in ascertainable costs in such areas as Government-furnished property (other than Government-furnished material under this contract), operations, or logistic support which exceeds any increase in acquisition cost, the contract price or fee, as applicable, shall be increased by ten percent (10%) of the projected net reduction in ascertainable collateral costs, i.e., collateral savings, estimated to accrue to the Government during an average or typical year of use of the item in which the change is incorporated. The determination of the amount of collateral savings, if any, will be made solely by the Government and shall not be subject to the "Disputes" clause of this contract.

(2) In the event that an accepted cost reduction proposal results in a net reduction in the amount of Government-furnished material under this contract, involving savings to the Government in excess of any increase in cost of performance of this contract, then in addition to any adjustment made pursuant to the "Changes" clause by reason of such increase, the contract price or fee, as applicable, shall be increased by _____ percent (_____%)[1] of the net savings estimated to accrue to the Government in the acquisition of the items under this contract. If the proposal results in a decrease in the cost of performance as well as a net reduction in the amount of Government-furnished material under this contract, an appropriate adjustment in the contract price shall be made pursuant to paragraph (d) in addition to the adjustment provided for by this paragraph (f).

(g) (1) A cost reduction proposal identical to one submitted under any other contract with the Contractor or another contractor may also be submitted under this contract.

(2) If the Contractor submits under this clause a proposal which is identical to one previously received by the Contracting Officer under a different contract with the Contractor or another Contractor for substantially the same items and both proposals are accepted by the Government, the Contractor shall share instant contract savings realized under this contract, pursuant to paragraph (d) of this clause.

(h) The Contractor may restrict the Government's right to use any sheet of a value engineering proposal or of the supporting data, submitted pursuant to this clause, in accordance with the terms of the following legend if it is marked on such sheet:

This data furnished pursuant to the Value Engineering clause of contract _____ shall not be disclosed outside the Government, or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering proposal submitted under said clause. This restriction does not limit the Government's right to use information contained in this data if it is or has been obtained, or is otherwise available, from the Contractor or another source, without limitations. If such a proposal is accepted by the Government under said contract after the use of this data in such an evaluation, the Government shall have the right to duplicate, use, and disclose any data reasonably necessary to the full utilization of such proposal as accepted, in any manner and for any purpose whatsoever, and have others so do.

In the event of acceptance of a value engineering proposal, the Contractor hereby grants to the Government all rights to use, duplicate or disclose, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so, any data reasonably necessary to fully utilize such proposal.

(i) (1) For purposes of sharing under paragraph (d) above, the term "instant contract" shall not include any supplemental agreements to or other modifications of the instant contract, executed subsequent to acceptance of the particular value engineering change proposal, by which the Government increases the quantity of any item or adds any item, nor shall it include any extension of the instant contract through exercise of an option (if any) provided under this contract after acceptance of the proposal.

(2) If this contract is an estimated requirement or other indefinite quantity type contract, the term "instant contract" for purposes of sharing under paragraph (d) above shall include only those orders actually placed by the Government up to the time the particular value engineering change proposal is accepted.

(3) If this clause is included in a basic ordering agreement, the "instant contract" for purposes of sharing under paragraph (d) above shall be the order under which the particular value engineering change proposal is submitted.

(4) If this contract is a multiyear contract, the "instant contract" shall be the entire contract for the total multiyear quantity.

[1] Insert the appropriate percentage, i.e., the Contractor's share, as determined for instant contract sharing under paragraph (d).

§ 12–1.5207–2 Instant contract sharing provisions (clause paragraph (d)).

The appropriate one of the instant contract sharing provisions in paragraphs (a) through (d) of this section shall be inserted as paragraph (d) of the Value Engineering Incentive clause.

(a) *Firm fixed-price contracts and fixed-price contracts providing for escalation.* Insert the following as paragraph (d) of the Value Engineering Incentive clause in § 12–1.5207–1.

(d) If a cost reduction proposal submitted pursuant to this clause is accepted and applied to this contract, an equitable adjustment in the contract price and in any other affected provisions of this contract shall be made in accordance with this clause and the "Termination for Convenience," "Changes," or other applicable clause of this contract. The equitable adjustment shall be established by determining the effect of the proposal on the Contractor's cost of performance, taking into account the Contractor's cost of developing the proposal, insofar as such is properly a direct charge not otherwise reimbursed under this contract, and the Contractor's cost of implementing the change (including any amount attributable to subcontracts in accordance with paragraph (e) below). When the cost of performance of this contract is decreased as a result of the change, the contract price shall be reduced by the following amount: the total estimated decrease in the Contractor's cost of performance less _____ percent (_____%)[1] of the difference between the amount of such total estimated decrease and any net increase in ascertainable collateral costs to the Government which must reasonably be incurred as a result of application of the cost reduction proposal to this contract. When the cost of performance of this contract is increased as a result of the change, the equitable adjustment increasing the contract price shall be in accordance with the "Changes" clause rather than under this clause, but the resulting contract modification shall state that it is made pursuant to this clause.

(b) *Fixed-price contracts providing for prospective price redetermination.* Insert the following as paragraph (d) of the Value Engineering Incentive clause in § 12–1.5207–1.

(d) If a cost reduction proposal submitted pursuant to this clause is accepted and applied to this contract, an equitable adjustment in the contract price and in any other affected provisions of this contract shall be made in accordance with this clause and the "Termination for Convenience", "Changes", or other applicable clause of this contract. The equitable adjustment shall be established by determining the effect of the proposal on the Contractor's cost of performance, taking into account the Contractor's cost of developing the proposal, insofar as such is properly a direct charge not otherwise reimbursed under this contract and the Contractor's cost of implementing the change (including any amount attributable to subcontracts in accordance with paragraph (e) below). When the cost of performance of this contract is decreased as a result of the change, the contract price shall be reduced by the following amount: the total estimated decrease in the Contractor's cost of performance attributable to the period for which the price has been established, less _____ percent (_____%)[1] of the difference between the amount of such total estimated decrease and any net increase in ascertainable collateral costs to the Government which must reasonably be incurred as

a result of application of the cost reduction proposal to this contract; then in any redetermination of price, under the "Price Redetermination" clause of this contract, having an effective date subsequent to the effective date of any change order or notice of partial termination issued pursuant to this clause, the redetermination price shall not be reduced as a consequence of such change order or notice of partial termination by more than _____ percent (_____%)[2] of the estimated decrease in that part of the Contractor's cost of performance which is attributable to the pertinent price redetermination period. When the cost of performance of this contract is increased as a result of the change, the equitable adjustment increasing the contract price shall be in accordance with the "Changes" clause rather than under this clause, but the resulting contract modification shall state that it is made pursuant to this clause.

(c) *Fixed-price incentive (firm target) contracts.* Insert the following as paragraph (d) of the Value Engineering Incentive clause in § 12–1.5207–1.

(d) If a cost reduction proposal submitted pursuant to this clause and affecting any of the items discribed in paragraph (a) of the "Incentive Price Revision (Firm Target)" clause of this contract is accepted and applied to this contract, an equitable adjustment in the total target price of such items and in any other affected provisions of this contract shall be made in accordance with this clause and the "Termination for Convenience," "Changes" or other applicable clause of this contract. The equitable adjustment in such total target price shall be established by determining the effect of the proposal on the Contractor's cost of performance taking into account the Contractor's cost of developing the proposal, insofar as such is properly a direct charge not otherwise reimbursed under this contract, and the Contractor's cost of implementing the change (including any amount attributable to subcontracts in accordance with paragraph (e) below). When the cost of performance of this contract is decreased as a result of the change, (i) the total target cost of the affected items shall be reduced by the full amount of the total estimated decrease in the Contractor's cost of performance, (ii) the total target profit relating to such items shall be increased by _____ percent (_____%)[1] of the difference between the total estimated decrease and any net increase in ascertainable collateral costs to the Government which must reasonably be incurred as a result of application of the cost reduction proposal to this contract, and (iii) the maximum dollar limit on the total final price of such items shall be decreased by _____ percent (_____%)[2] of the total estimated decrease. When the cost of performance of this contract is increased as a result of the change, the equitable adjustment increasing the contract price shall be in accordance with the "Changes" clause rather than under this clause, but the resulting contract modification will state that it is made pursuant to this clause.

(d) *Cost-plus-incentive-fee contracts.* Insert the following as paragraph (d) of the Value Engineering Incentive clause in § 12–1.5207–1.

(d) If a cost reduction proposal submitted pursuant to this clause is accepted and applied to this contract, an equitable adjustment in target cost and fee and in any other affected provisions of this contract shall be made in accordance with this clause and the "Termination," "Changes," or other applicable clause of this contract. The equitable adjustment shall be established by determining the effect of the proposal on the Contractor's cost of performance, taking into account the Contractor's cost of developing the proposal, insofar as such is properly a direct charge not otherwise reimbursed under this contract, and the Contractor's cost of implementing the change (including any amount attributable to subcontracts in accordance with paragraph (e) below). When the cost of performance of this contract is decreased as a result of the change, the target cost shall be reduced by the full amount of the total estimated decrease in the Contractor's cost of performance, and the minimum target, maximum fees shall be increased by _____ percent (_____ %)[2] of the difference between the total estimated decrease in the Contractor's cost of performance and any net increase in ascertainable collateral costs to the Government which must reasonably be incurred as a result of application of the cost reduction proposal to this contract. When the cost of performance of the contract is increased as a result of the change, the equitable adjustment shall be in accordance with the "Changes" clause rather than under this clause, but the resulting contract modification shall state that it is made pursuant to this clause.

§ 12–1.5207–3 Exclusion of collateral savings provisions.

Where the contracting officer has determined that the item or class of items being procured offers no reasonable potential for significant collateral savings, the Value Engineerng Incentive clause in § 12–1.5207–1 shall be modified by deleting subparagraph (a)(2)(ii)(B), (c)(3), and paragraph (f) thereof and the appropriate paragraph (d) thereof shall be modified by deleting the last sentence.

Subpart 12–1.53—Voluntary Refunds

§ 12–1.5301 General.

A voluntary refund is a payment or credit, not required by any contractual or other legal obligation, made to the Government by a contractor or subcontractor either as a payment or as an adjustment under one or more contracts or subcontracts. It may be unsolicited or it may be made in response to a request by the Government. Where it is desired to solicit a voluntary refund from a subcontractor, the prime contractor should be encouraged to facilitate the making of such refund. In deciding whether to solicit a voluntary refund or to accept an unsolicited refund, the contracting officer shall ask legal counsel to review the contract or contracts and all data relevant thereto to determine whether the Government's rights would be jeopardized or impaired by the contracting officer's proposed action.

§ 12–1.5302 Solicited refunds.

Voluntary refunds may be requested during or after contract performance. They shall be requested only when it is considered that the Government was overcharged under a contract or was inadequately compensated for the use of Government-owned property, or in the disposition of contractor inventory, and retention by the contractor or subcontractor of the amount in question would be contrary to good conscience and equity. Generally, retention by the contractor or subcontractor shall not be considered contrary to good conscience and equity, and thus a voluntary refund shall not be requested unless the overcharged or inadequate compensation was due, at least in part, to the fault of the contractor or subcontractor. The decision to solicit a voluntary refund shall be made by the head of the procuring activity.

§ 12–1.5303 Disposition of voluntary refunds.

(a) If a refund is offered prior to final payment, it is preferable that the contract price be appropriately modified to reflect the refund. In such a case, the amount of the refund shall be credited to the applicable appropriation cited in the contract.

(b) In cases where the refund is to be made by check rather than by an adjustment in the contract price, the check shall be made payable to the Treasurer of the United States, and shall be forwarded in accordance with the procedures of each Administration.

Subpart 12–1.54—Acquisition of Equipment by Lease, Purchase, or Lease With Option To Purchase

§ 12–1.5401 General.

This subpart prescribes DOT policy and procedures with respect to determination of whether to lease, purchase, or lease with option to purchase, when acquiring equipment for Department use, where these options are available.

§ 12–1.5402 Telewriting equipment and office copying machines.

Guidelines for making lease/purchase determinations in the acquisition of telewriting equipment and office copying machines are specified in the Federal Property Management Regulations (FPMR), Subpart 101–25.5.

§ 12–1.5403 Automatic data processing equipment.

See FPMR Part 101–32 (referred to in FPR Subpart 1–4.1).

§ 12–1.5404 Lease/purchase determinations.

(a) Whenever procurement is to be made of items of equipment normally available for both lease and purchase, a determination shall be made as to whether acquisition by lease, purchase, or lease with option to purchase is most advantageous to the Government. The determination shall be supported by comparisons of costs of the various acquisition alternatives. The extent of the cost comparison required to support the determination will be a matter of judgment, depending primarily on the estimated cost of the equipment.

(b) For equipments of relatively high dollar values, considerations shall be given to including the following cost elements in the cost comparison:

(1) Purchase price delivered to the point of installation.

[1] Insert the appropriate percentage, i.e., the contractor's share (see 12–1.5203).

[2] Insert the appropriate percentage, i.e., the Government's share (see 12–1.5203).

(2) Leasing cost including delivery charges to the Department and cost of return to the vendor.

(3) Interest cost on monies paid by the Government under purchase which would be deferred under lease.

(4) Maintenance costs to the Government under lease and under purchase. When maintenance is to be performed by the Government, these costs would include:

(i) Cost of direct labor.

(ii) Cost of parts and supplies, including investment costs and warehousing and distribution costs.

(iii) Cost of additional tools and repair equipment needed for maintenance of the equipment.

(iv) Cost of training maintenance personnel.

(v) Cost of repair manuals.

(vi) Cost of any applicable overhead.

(5) Installation and dismantling costs.

(6) Residual value of equipment after expected use period, including possible continued use by the Government in another application or program.

(7) Operating costs (exclusive of maintenance costs) in those instances where, under the lease method, the vendor would perform part or all of the labor incident to the operation of the equipment.

(c) For equipments of small dollar value, the cost comparison can be limited to the cost of purchase and an estimate of installation and maintenance cost versus the cost of lease, as described in FPMR Subpart 101–25.5.

§ 12–1.5405 Selecting the method of acquisition.

§ 12–1.5405–1 Purchase method.

(a) The purchase method is preferred when all of the following conditions exist:

(1) There is little or no doubt that the equipment to be procured can be efficiently and effectively utilized, cost and other factors considered.

(2) A comparative cost analysis of the alternative methods of acquisition indicates that a cost advantage will accrue over the anticipated useful life of the equipment by using the purchase method.

(3) The capabilities of the equipment will continue to be needed and will be sufficient to satisfy the requirements of the Government, current and projected, for a period beyond the point in time at which the purchase method begins to provide a cost advantage. The possibility that future technological advances would make the selected equipment comparatively less desirable before the cost advantage point is reached should not rule out purchase if the selected equipment is expected to be able to satisfy the Government's requirements economically.

§ 12–1.5405–2 Lease-with-option-to-purchase method.

The lease-with-option-to-purchase method is preferred when it is reasonably anticipated that purchase may be justified, but it is desirable to defer this decision temporarily because the conditions necessary to indicate purchase are not fully satisfied. This situation might arise when it is determined that a short period of operational experience is desirable to prove the effectiveness of an equipment for which there is no previous experience, or where technical changes might substantially alter the requirements for the equipment.

§ 12–1.5405–3 Lease method.

The lease method, without option to purchase, is indicated when it has been established that neither the conditions in § 12–1.5405–1 nor § 12–1.5405–2 prevail.

§ 12–1.5406 Periodic cost comparisons on leased equipment.

For equipment under lease, the contracting officer shall compute cost comparisons periodically (at least once a year) to revalidate the original determination that the lease method is most advantageous to the Government.

Subpart 12–1.55—Multiyear Procurement

§ 12–1.5500 Scope of subpart.

This subpart contains the multiyear method of procurement for supplies. The contracting officer may alter the procedures or contract clauses set forth in this subpart to fit a particular situation.

§ 12–1.5501 Description of multiyear procedure.

Multiyear procurement is a method for competitive contracting for known requirements for supplies, in quantities and total cost not in excess of planned requirements for 5 years set forth in approved programs, even though the total funds ultimately to be obligated by the contract are not available to the contracting officer at the time of entering into the contract. Under this method, contract quantities are budgeted for and financed in accordance with the program year for which each quantity is authorized. This procedure provides for solicitation of prices based either on award of the current 1-year program quantity only, or, in the alternative, on the total multiyear quantities. Award is made on whichever of these two alternative bases reflects the lowest unit prices to the Government. If award is made on the multiyear basis, funds are obligated only for the first year's quantity, with succeeding years' contract quantities funded annually thereafter. In the event funds are not made available to support one or more succeeding year's quantities, cancellation is effected. The contractor is protected against loss resulting from cancellation by contract provisions allowing reimbursement of unrecovered nonrecurring costs included in prices for canceled items.

§ 12–1.5502 Policy.

§ 12–1.5502–1 Principal advantages.

Multiyear procurement shall be used to the maximum extent consistent with §§ 12–1.5502–4, 12–1.5503, and 12–1.5511. Advantages of this method include, for example:

(a) Lower costs;

(b) Enhancement of standardization;

(c) Reduction of administrative burden in the placement and administration of contracts;

(d) Substantial continuity of production;

(e) Stabilization of work forces; and

(f) Broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs.

§ 12–1.5502–2 Principal objective.

The principal objective of the multiyear procedure is to generate realistic competition by minimizing competitive disadvantage and by increasing contractor interest in participating in procurements which involve high startup costs and make-ready expense and which also may require substantial capital investment by contractors for expansion of their facilities. Under this procedure:

(a) Nonrecurring costs are distributed over a larger number of units, thus narrowing any price advantage of a firm already in production;

(b) There is greater assurance of depreciation recovery for capital investment; and

(c) The competitive base is broadened with better prospects for lower prices, where firms otherwise might be unwilling or unable to compete.

§ 12–1.5502–3 Cost savings factors to consider.

Another major objective is to obtain lower prices in those procurements which do not necessarily involve high startup cost but which do provide opportunity for substantial cost savings and other advantages through assurance of continuity of production over longer periods of time. In determining whether substantial cost savings and related advantages can be realized, consideration may be given to whether:

(a) Production or performance closeout or shut-down costs, including employee severance pay, represent a substantial cost contingency in prices quoted on only 1 year's program;

(b) Stabilization of work forces will provide greater assurance of sustaining and improving production efficiency and quality;

(c) Substantial cost and quality advantage will accrue through avoidance of the possible need for establishing and "proving out" quality control techniques and procedures for a new contract each year;

(d) Costly preproduction or pilot testing will be avoided;

(e) The ability to recruit and retain highly skilled personnel will be enhanced through assurance to employees of longer periods of employment than would be the case in single-year procurement, thereby avoiding costs of repeated training of new personnel;

(f) The ability to vary production rates during peak and off-peak periods in each program year will result in economies; and

(g) Substantial in-house savings in maintenance and supply operations will accrue from standardization of supplies accomplished by procurement from a single source throughout the multiyear period.

§ 12–1.5502–4 Set-asides.

Total small business set-asides are compatible with the multiyear method of procurement and may be used when both procedures are appropriate. Partial set-aside procedures (both small business and labor surplus area) generally are not compatible with the multiyear procedure when high startup costs are involved because of the potential duplication of such costs by the set-aside contractor and the non-set-aside contractor. However, when the multiyear procedure is based not on high startup costs but on the opportunity for cost savings through assurance of continuity of production over longer periods of time, partial set-aside procedures are compatible with the multiyear procedure. Furthermore, even where high startup costs are involved, use of partial set-aside procedures together with the multiyear procedure may be appropriate in exceptional circumstances, such as where criteria for partial set-asides are met under FPR 1–1.7 or 1–1.8, and it is likely that broader or more realistic competition will result from a combination of both procedures, and this broader competition is likely to more than offset any duplication of startup costs. When reviewing a proposed procurement involving possible use of this procedure, in addition to consideration of the criteria established in this subpart, the contracting officer shall invite the advice and counsel of the activity's small business specialist and the SBA representative, if one is assigned to that activity, permitting either or both to review all pertinent facts and make recommendations thereon.

§ 12–1.5502–5 Multiyear subcontracts.

The same benefits and advantages that are derived from multiyear prime contracts may frequently be increased by multiyear subcontracts thereunder. The prime contractor in the exercise of his management responsibilities must freely choose the subcontract types that best satisfy his needs. However, multiyear prime contractors should be encouraged to employ multiyear subcontracts selectively and only when:

(a) The subcontract item is of stable design and specification;

(b) The quantity required is known and firm;

(c) Effective competition is assured; and

(d) The use of multiyear subcontracts can reasonably be expected to result in reduced prices.

In such cases, the prime contractor is adequately protected against cancellation since appropriate cancellation charges for such multiyear subcontractors are included within the cancellation charge of the multiyear prime contract. Multiyear subcontracts may be particularly desirable under a sole source multiyear prime contract since effective competition at the subcontract level may thereby be enhanced and the attendant cost reductions realized by the prime contractor and the Government.

§ 12–1.5503 Application—criteria.

Except as provided in DOTPR 12–1.5511, the multi-year procurement method should be used when all of the following criteria are present:

(a) Reduced unit prices can reasonably be anticipated over annual buys by reason of continuity of production or elimination of repetitive substantial startup costs, including such costs as preproduction engineering, special tooling, plant rearrangement, initial rework, initial spoilage, and pilot runs;

(b) There is reasonable expectation that effective competition can be obtained;

(c) There are known requirements for the quantities to be purchased under the multiyear contract;

(d) The design and specifications of the item are not expected to change to an extent that would involve a major impact on contract price; and

(e) The items being procured are not regularly manufactured and offered for sale in substantial quantities in the commercial market, except that (1) when quantities to be procured by the Government represent a substantial portion of the total market and would require special manufacturing runs for all or substantially all of the Government's requirements and (2) significant cost savings would result from multiyear procurement, this procedure may be authorized by the head of the procuring activity or his designee with the procurement file fully documented as to reasons why the expected substantial savings are not obtainable under annual procurements.

§ 12–1.5504 Method of solicitation.

Formal advertising, including two-step formal advertising, is the preferred method for use in multiyear procurement. In cases where the period of production is such that a contingency for labor and material costs is likely otherwise to be included in the multiyear contract price, the contracting officer should normally use a provision for price escalation.

§ 12–1.5505 Procedures.

Solicitations shall include the information described in §§ 12–1.5505–1 through 12–1.5505–9, as appropriate.

§ 12–1.5505–1 Requirements.

State the requirements, separately identified by a bid or proposal item in the schedule, for (a) the first program year; and (b) the multiyear procurement including the quantities for each program year thereunder.

§ 12–1.5505–2 Previous competition.

When previous production procurements of the item have been made with competition—

(a) Include a provision that a price may be submitted for the total requirements of the first program year, or for the total multiyear requirements, or both, or

(b) When competition in future procurements of the items would be impracticable after award of a contract covering the first program year quantity alone and the head of the procuring activity determines that, in order to eliminate the possibility of a first program year "buy-in," these provisions will be in the best interests of the Government—include provisions that a price may be submitted only for the total multiyear quantity and that prices on a single-year basis will not be considered for any purpose.

§ 12–1.5505–3 No previous competition.

When there has been no previous competition for the production of the item—

(a) Include provisions that a price must be submitted for the total requirements of the first program year, that a price may be submitted for the total multiyear quantity, and that a bid or offer on the multiyear quantity only will be considered nonresponsive; and a provision that if only one responsive bid or offer on the multiyear requirements is received from a responsible bidder or offeror, the Government reserves the right to disregard the bid or offer on the multiyear quantity and to make an award only for the first program year requirements; or

(b) When competition in future procurements of the items would be impractical after award of a contract covering the first program year quantity alone and the head of the procuring activity determines that, in order to eliminate the possibility of a first program year "buy-in," these provisions will be in the best interest of the Government—

(1) Include provisions that a price may be submitted only for the total multiyear quantity and that prices on a single-year basis will not be considered for any purpose, and

(2) A provision that if only one responsive bid or offer on the multiyear requirements is received from a responsible bidder or offeror, the Government reserves the right to cancel the solicitation and resolicit on a single-year basis by whatever procedures are then appropriate.

§ 12–1.5505–4 Pricing—unit price.

Include a provision that the unit price of each item in the multiyear requirement shall be the same for all program years included therein.

§ 12–1.5505–5 Comparison criteria.

Provide criteria for comparing the lowest evaluated submission on the first program year's requirement against the lowest evaluated submission on the multiyear requirements.

§ 12–1.5505–6 Single-year and/or multiyear award.

When the solicitation permits bids or offers on either the first program year requirements or the multiyear requirements or both, include a provision that in

the event the Government determines prior to award that only the first program year quantities are actually required, the Government may evaluate bids or offers and make award solely on the basis of prices bid or offered on the first program year requirements.

§ 12–1.5505–7 Cancellation ceiling.

Include a provision setting forth a separate cancellation ceiling (on a percentage basis) applicable to each program year subject to cancellation (see § 12–1.5506).

§ 12–1.5505–8 Schedule provision.

Include a prominently placed provision directing attention to the multiyear features of the solicitation, and to—

(a) The Limitation of Price and Contractor Obligations clause (see § 12–1.5514–1) which limits the payment obligation of the Government to the requirements of the first program year and to those of such succeeding program years as may be funded by the Government;

(b) The Cancellation of Items clause (see § 12–1.5514–2) which allows the Government to cancel, by a specified date or within a specified period, all remaining program years; and

(c) The cancellation ceiling set forth in the schedule.

§ 12–1.5505–9 Quantity obligation.

Include a statement that award will not be made on less than the quantity stated as the first program year requirements.

§ 12–1.5506 Establishment and revision of cancellation ceilings.

(a) The term "cancellation" as used in multiyear procurement refers only to the cancellation of the total requirements of all remaining program years. Such cancellation results from (1) notification from the contracting officer to the contractor of nonavailability of funds for contract performance for any subsequent program year, or (2) failure of the contracting officer to notify the contractor that funds have been made available for performance of the succeeding program year requirement. For each program year except the last, the contracting officer shall establish a cancellation ceiling applicable to the remaining program years which are subject to cancellation. Cancellation ceilings will be lower for each succeeding program year in that such ceilings must exclude all amounts allocable to items included in prior program years. Such ceilings shall be expressed in the schedule and shall apply to all bidders alike. The reduction in the cancellation ceilings percentage for each program year shall be in direct proportion to the reduction in the quantity remaining subject to cancellation. For example, if the total nonrecurring costs are estimated at 10 percent of the total multiyear price and program year quantities for 5 years are 30, 30, 20, 10, and 10; the cancellation percentage after deducting 3 percent for the first program year would be 7 percent, 4 percent, 2 percent, and 1 percent of the total multi-year price applicable to the 2d, 3d, 4th, and 5th program years respectively. In determining cancellation ceilings, the contracting officer must estimate reasonable preproduction, labor learning and other nonrecurring costs, to be incurred by an "average" prime or subcontractor which would be applicable to and which normally would be amortized in all items to be furnished under the multiyear requirements. They include such costs as plant rearrangement, special tooling, preproduction engineering, initial rework, initial spoilage, pilot runs, and unrealized labor learning. They shall not include any costs of labor or materials, or other expenses (except as indicated above) which might be incurred for production of the items subject to cancellation for each program year. The total estimate must then be compared with the best estimate of the procurement cost to arrive at a reasonable percentage figure. To perform this calculation, it is essential that the contracting officer obtain in-house engineering cost estimates which will identify the detailed recurring and nonrecurring costs, and indicate labor learning implications. Cancellation dates for each program year's requirements shall be established with due regard for production lead time and the date by which funding therefor can reasonably be accomplished.

(b) Original cancellation ceilings may be revised from information developed after issuance of a solicitation discloses that such ceilings are not realistic. In the case of formal advertising, such changes shall be by amendment of the invitation for bids prior to bid opening. In two-step formal advertising, discussion conducted during the first step may indicate the need for revised ceilings in step two. Negotiations with offerors in a negotiated procurement may provide information requiring a change in cancellation ceilings for all offerors, prior to final negotiation and contract award. In order to assure that all interested sources of supply are thoroughly aware of how multiyear procurement is accomplished, use of presolicitation or prebid conferences may be advisable. During such conferences the contracting officer should ascertain whether escalation provisions are appropriate (see FPR 1–2.104–3) and whether the proposed cancellation ceiling is adequate.

§ 12–1.5507 Funds obligation—contingent liabilities.

For each program year requirement, funds shall be obligated to cover the quantities to be delivered thereunder. In addition, contingent liabilities for cancellation charges shall be carried as outstanding commitments.

§ 12–1.5508 Payment for cancellation.

In the event of a cancellation the contractor is entitled to payment as consideration therefor in accordance with the terms of the Cancellation of Items clause below in an amount not to exceed the cancellation ceiling.

§ 12–1.5509 Schedule provision limiting payment obligation.

The schedule shall contain a provision limiting the payment obligation of the Government to a monetary amount there described as being available for contract performance. Such amount for the first program year requirements shall be inserted by the contracting officer upon award of the contract and shall be modified for successive program years upon availability of funds for such years.

§ 12–1.5510 Termination for convenience.

In the event of a total termination for the convenience of the Government, including items subject to cancellation, the Government's obligation shall not exceed the amount set forth in the schedule as available for contract performance, plus the applicable amount established as the cancellation ceiling.

§ 12–1.5511 Limitations.

Multiyear procurement shall not be used:

(a) When funds covering the procurement are limited by statute for obligation during the fiscal year in which the contract is executed;

(b) For quantities or total costs in excess of the planned requirements for 5 years set forth in approved programs; or

(c) When any one of the criteria set forth in § 12–1.5503 is not present.

§ 12–1.5512 Evaluation.

(a) Evaluation of offers in a multiyear procurement involves not only the determination of the lowest overall evaluated cost to the Government for both alternatives, the multiyear procurement and the first program year procurement; it also involves the comparison of the cost of buying the total requirement under a multiyear procurement with cost of buying the total requirement in successive independent procurements. All the factors to be considered for the various evaluations involved shall be set forth in the solicitation.

(b) In the event the Government determines prior to award that only the first program year quantities are actually required, the procurement will no longer be evaluated on a multiyear basis:

(1) When the solicitation permits bids or offers on either the first program year requirements or the multiyear requirements or both, only bids or offers on the first program year requirements will be evaluated; and

(2) When the solicitation does not permit the submission of prices on a single-year basis, the single-year requirement will be resolicited.

(c) The cancellation ceiling shall not be a factor for evaluation. Unless Government administrative costs incident to annual procurement methods and contract administration can be reasonably established and supported, they shall not be used as a factor for evaluation. When administrative costs are to be used in evaluation, the dollar amount to be used shall be stated in the solicitation.

(d) Delivery destinations may be unknown for certain quantities due to the extended duration of contract performance. In such cases, destinations shall be developed on the basis of best estimates; a definite place or places shall be designated in the solicitation as the point to which transportation costs will be computed (but only for the purpose of evaluating bids or proposals); and the solicitation shall contain the notice required by FPR 1-19.202-7.

(e) When Government production and research property is provided, the use of such property may be on a rent-free basis. In this event, the solicitation shall set forth a detailed description of the procedure to be followed and the factors to be considered for the elimination of competitive advantage. The amount added for evaluation to each offeror's unit price for the first program year requirement shall also be added to his unit price for the multiyear requirements.

(f) When the solicitation requires the submission of prices on the first program year requirements in accordance with § 12-1.5505-3(a), bids or offers which submit prices on the multiyear requirements only shall be rejected as nonresponsive.

(g) When the solicitation provides for submission of prices only for the total multiyear quantity, submission of prices for the single-year quantity will be disregarded for any purpose but will not render the bid or offer nonresponsive as to any alternate multiyear submission by the same bidder or offeror.

(h) To determine the lowest evaluated unit price, compare the lowest evaluated bid or offer on the first program year alternative against the lowest evaluated bid or offer on the multiyear alternative as follows:

(1) Multiply the evaluated unit price for each item of the lowest evaluated bid or offer on the first program year alternative times the total number of units of that item required by the multiyear alternative, and then

(2) Take the sum of these products for all the items, plus the dollar amount of any administrative costs of the Government which are to be used in the evaluation, and finally

(3) Compare this result against the total evaluated price of the lowest bid or offer on the multiyear alternative.

§ 12-1.5513 Award.

(a) Except as provided in paragraphs (b) and (c) of this section, award shall be made on the basis of the lowest evaluated unit price determined in accordance with § 12-1.5512, whether that price is on a single-year basis or a multiyear basis.

(b) If only one responsive bid or offer is received on the multiyear requirements from a responsible bidder or offeror, then award shall be made as follows:

(1) If the solicitation gave the bidder or offeror the choice of submitting prices on a single-year basis or multiyear basis or both, then award shall be made in accordance with paragraph (a) of this section;

(2) If the solicitation required the submission of prices on the first program year requirements in accordance with § 12-1.5505-3(a) award shall be made to the lowest evaluated bidder or offeror on the single-year basis, even though the multiyear price submission may represent the lowest evaluated price submission, except that if the multiyear price offers distinct advantages to the Government a multiyear award may be made with the advance approval of the head of the procuring activity;

(3) If the solicitation restricted the submission of prices to the multiyear basis only, the solicitation shall be cancelled and a new solicitation issued by whatever procedures are then appropriate, except that if the multiyear price offers distinct advantage to the Government a multiyear award may be made with the advance approval of the head of the procuring activity.

(c) In no event shall award be made at an unreasonable price.

§ 12-1.5514 Contract clauses.

The following clauses shall be included in all contracts under the multiyear procurement method.

§ 12-1.5514-1 Limitation of price and contractor obligations.

LIMITATION OF PRICE AND CONTRACTOR OBLIGATIONS

(a) This clause applies only in the event this contract is awarded on the alternative basis for award described in the Schedule as "Multi-Year Procurement."

(b) Funds are available for performance of this contract in the amount specifically described in the Schedule, as available for contract performance. The amount of funds so described at the time of award is not considered sufficient for the contract performance required by and described in the Schedule for any Program Year other than the First Program Year. Upon availability to the Contracting Officer of additional funds sufficient for performance of the full requirements for the next succeeding Program Year, the Contracting Officer shall, not later than the date specified in the Schedule, unless a later date is agreed to by the parties, so notify the Contractor in writing and the amount of funds described in the Schedule as available for contract performance shall be modified accordingly. This procedure shall apply for each successive Program Year.

(c) The Government is not obligated to the Contractor for contract performance in any monetary amount in excess of that described in the Schedule or modifications thereto, as available for contract performance.

(d) The Contractor is not obligated to incur costs for the performance required for any Program Year after the first and until he has been notified in writing by the Contracting Officer of an increase in availability of funds in accordance with paragraph (b) of this clause. If so notified, the Contractor's obligation shall be increased only to the extent contract performance is required for the additional Program Year for which funds have been made available.

(e) In the event of termination pursuant to the "Termination for Convenience of the Government" clause of this contract, the term "total contract price" as used in that clause refers to the amount available for performance of this contract, as provided for in this clause, plus the applicable amount established as the cancellation ceiling, and the term "work under the contract" as used in that clause refers to the work under Program Year requirements for which funds have been made available. In the event of termination for default, the Government's rights under this contract shall apply to the entire multiyear requirements.

(f) Notification to the Contractor of an increase or decrease in the funds available for performance of this contract as a result of a clause other than this clause (e.g., exercise of an option for increased quantities or the "Changes" clause) shall not constitute the notification contemplated by paragraph (b) of this clause.

§ 12-1.5514-2 Cancellation of items.

CANCELLATION OF ITEMS

(a) This clause applies only in the event this contract is awarded on the alternative basis for award described in the Schedule as "Multiyear Procurement."

(b) As used herein, the term "cancellation" means that the Government is cancelling, pursuant to this clause, its Program Year requirements for items set forth in the Schedule for all Program Years subsequent to that in which notice of cancellation is provided. Such cancellation shall occur only if, by the date or within the time period specified in the Schedule, or such further time as may be agreed to, the Contracting Officer (i) notifies the Contractor that funds will not be available for contract performance for any subsequent Program Year; or (ii) fails to notify the Contractor that funds have been made available for performance of the Program Year requirement for the succeeding Program Year.

(c) Except for cancellation pursuant to this clause or for termination pursuant to the "Default" clause, any reduction by the Contracting Officer in the quantities called for under this contract shall be considered a termination in accordance with the "Termination for Convenience of the Government" clause of this contract.

(d) In the event of cancellation pursuant to this clause, the Contractor will be paid, as consideration therefor, a cancellation charge not to exceed the cancellation ceiling described and separately set forth in the Schedule as being applicable at the time of cancellation.

(e) The cancellation charge is intended to cover (i) only costs reasonably necessary for production which would have been equitably amortized in the unit prices for the entire multiyear contract period, but which, because of the cancellation, are not so amortized and (ii) a reasonable profit on such costs. The cancellation charge shall be computed and claim therefor made as would be applicable under the "Termination for Convenience of the Government" clause of this contract. The Contractor shall submit the claim promptly but in no event later than 1 year (i) from the date of notification of the nonavailability of funds, if issued pursuant to paragraph (b) (i), or (ii) from the date specified in the Schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, 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. The claim may include reasonable preproduction and other nonrecurring costs, incurred by the prime contractor or his subcontractor, applicable to and which normally would be amortized in all items to be furnished under the multiyear requirements, such as plant rearrangement, special tooling, preproduction engineering, initial rework, initial spoilage and pilot runs, as well as costs not amortized by the level con-

tract unit price solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning. The claim shall not include any amount for:

(1) Labor, materials, or other expenses incurred by the Contractor or its subcontractors for production of canceled items;

(2) Any item or cost for which payment has already been made to the Contractor; or

(3) Anticipated profit on the canceled items.

(End of contract clause. Where options are otherwise authorized, multiyear contracts may include an appropriate "Option to Increase Quantities" clause in which the period for exercise of the option is limited to the date set forth in the contract Schedule for notifying the contractor that funds are available for the requirements of the next succeeding program year. If such an option is included, the following paragraph (f) should be added to the clause set forth above.)

(f) The Contractor agrees not to include in the price for option quantities any costs of a startup or nonrecurring nature, which costs have been fully provided for in the unit prices of the firm quantities of the Program Years, and further agrees that the prices offered for option quantities will reflect only those recurring costs, and a reasonable profit thereon, which are necessary to further the additional option quantities. Therefore, any quantities added to the original contract quantities through exercise of the Government option in the "Option to Increase Quantities" clause of this contract shall not be subtracted from what would otherwise be considered the quantity canceled for the purpose of computing allowable cancellation charges.

PART 12–2—PROCUREMENT BY FORMAL ADVERTISING

Subpart 12–2.1—Use of Formal Advertising

Sec.

12–2.102 Policy.

Subpart 12–2.2—Solicitation of Bids

12–2.201 Preparation of invitations for bids.
12–2.202 Miscellaneous rules for solicitation of bids.
12–2.202–1 Bidding time.
12–2.202–2 Telegraphic bids.
12–2.202–5 Descriptive literature.
12–2.203 Methods of soliciting bids.
12–2.203–1 Mailing or delivery to prospective bidders.
12–2.203–3 Publicity in newspapers and trade journals.
12–2.205 Bidders mailing list.
12–2.205–5 Release of bidders mailing lists.

Subpart 12–2.4—Opening of Bids and Award of Contract

12–2.402 Opening of bids.
12–2.402–50 Classified bids.
12–2.406 Mistakes in bids.
12–2.406–3 Other mistakes disclosed before award.
12–2.406–4 Disclosure of mistakes after award.
12–2.407 Award.
12–2.407–7 Statement and certificate of award.
12–2.407–8 Protests against award.
12–2.408 Information to bidders.

Subpart 12–2.5—Two-Step Formal Advertising

12–2.503 Procedures.
12–2.503–1 Step one.
12–2.503–50 Determination of size status.

AUTHORITY: The provisions of this Part 12–2 issued under sec. 205(c), 63 Stat. 389; 40 U.S.C. 486(c), 10 U.S.C. 2301–2314.

Subpart 12–2.1—Use of Formal Advertising

§ 12–2.102 Policy.

Chapter 137 of Title 10 of the United States Code (see 10 U.S.C. 2304(a)), is applicable to procurements by Coast Guard. Negotiation of contracts is authorized under certain circumstances enumerated therein. The circumstances are set forth in DOTPR Subpart 12–3.2.

Subpart 12–2.2—Solicitation of Bids

§ 12–2.201 Preparation of invitations for bids.

In addition to the applicable information contained in FPR 1–2.201, the following shall be included in the invitation for bid if applicable to the procurement:

(a) *For supply and service contracts including construction.*

(50) In all cases where multiple awards are to be considered, the following provision:

EVALUATION OF BIDS FOR MULTIPLE AWARDS

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 amount of $100 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.

§ 12–2.202 Miscellaneous rules for solicitation of bids.

§ 12–2.202–1 Bidding time.

The minimum bidding times set forth in FPR 1–2.202–1 and 1–1.307–4(a) should not be construed to be maximum or automatic bidding times. The bidding time permitted under each procurement should reflect the considered judgment of the contracting officer taking into account all of the facts surrounding the procurement, and recognizing that doubts should be resolved in favor of a longer rather than a shorter bidding time. If the bidding time for any procurement is reduced below the minimum, the reduction shall be fully justified and documented in the contract file by the contracting officer.

§ 12–2.202–2 Telegraphic bids.

When telegraphic bids are authorized, include the following provision in the Schedule of the invitation:

TELEGRAPHIC BIDS

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

§ 12–2.202–5 Descriptive literature.

(a) Descriptive literature shall not be required of the bidder unless all requirements of FPR 1–2.202–5 and this § 12–2.202–5 have been met.

(b) The justification required by FPR 1–2.202–5(c) must state, in sufficient detail, the reasons why acceptable products cannot be procured without the submission of descriptive literature. A justification that states little more than the conclusion that descriptive literature is required is not acceptable. Bidders shall not, except in the most unusual circumstances which can be clearly justified, be required to furnish descriptive literature when the specifications are stated in such detail that they leave nothing for the bidder to describe.

(c) Among other things, FPR 1–2.202–5(d) requires "* * * the invitation for bids shall clearly state what descriptive literature is to be furnished, the purpose for which it is required, the extent to which it will be considered in the evaluation of bids, and the rules which will apply if a bidder fails to furnish it before bid opening * * *." The asterisked note in FPR 1–2.202–5(d)(1) lists categories of general subjects which may be appropriate for inclusion in the Requirement for Descriptive Literature clause. A mere repetition of these subjects in the clause is not sufficient to establish a common basis for evaluation of bids.

(d) An invitation for bids must contain sufficient particularity to put bidders on notice (1) as to why the descriptive data is necessary, and (2) as to how much detail the bidder must furnish in his descriptive data for his bid to be considered responsive.

§ 12–2.203 Methods of soliciting bids.

§ 12–2.203–1 Mailing or delivery to prospective bidders.

(a) Copies of invitations may be furnished for informational purposes to nongovernmental organizations such as trade associations and bidding informational services, provided they lend some assistance in advertising the requirements. The extent to which supporting papers (drawings, specifications and general provisions) are furnished will depend on how the organizations intend to use the material. If they merely prepare a synopsis of bid solicitations for distribution to their members or subscribers, the invitation itself should suffice. If, however, they provide a reading room service (such as various trade associations do for construction projects), a complete set of all papers should be furnished without cost.

(b) In connection with invitations for construction, where the cost of reproduction and distribution of plans or drawings is a substantial cost item, the extent of distribution of bidding papers may be controlled by charging prospective contractors and subcontractors a flat, nonrefundable deposit fee. This method is preferred over the use of a re-

fundable deposit system. When the plan fee method is used, arrangements should be made for plans and other bidding papers to be readily available for free inspection at the originating procurement office and other appropriate procurement offices, trade association reading rooms, and similar locations. The nonrefundable plan fee should be $5, $10, or $15 per set, or more as may be appropriate. The value of the project and the cost of reproduction and distribution of the plan should be considered in determining the fee to be charged. No additional charge should be made for plans which are revised or added after the invitation is issued, or for additional plans required by the successful bidder. Plan fees collected are for deposit in the "Miscellaneous Receipts" account.

§ 12–2.203–3 Publicity in newspapers and trade journals.

(a) Section 322 of title 44 of the United States Code provides that "All advertisements, notices, proposals for contracts, and all forms of advertising required by law for the several departments of the Government may be paid for at a price not to exceed the commercial rates charged to private individuals, with the usual discounts." Section 321 of the same title prohibits advertising in any newspaper published and printed in the District of Columbia unless the supplies or labor to be secured are to be furnished or performed in the District of Columbia or in the adjoining counties in Maryland and Virginia.

(b) The head of the agency may authorize the publication of advertisements, notices, or proposals relating to the procurement and disposal of real and personal property and services. This authority may be delegated, but without power to further delegate, to subordinate officials.

(c) Standard Forms 1143 and 1143a shall be used to place orders for paid advertising.

§ 12–2.205 Bidders mailing list.

§ 12–2.205–5 Release of bidders mailing lists.

(a) Except as provided in FPR 1–1.1003–4 and 1–2.205–5(b), no information concerning the use of bidders mailing lists in a particular procurement, or identification of sources solicited, shall be made available to the public prior to award. 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.

(b) 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 from knowing the names of others solicited.

Subpart 12–2.4—Opening of Bids and Award of Contract

§ 12–2.402 Opening of bids.

§ 12–2.402–50 Classified bids.

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

§ 12–2.406 Mistakes in bids.

§ 12–2.406–3 Other mistakes disclosed before award.

The authority to make the determinations under FPR 1–2.406–3 has been delegated by the Secretary:

(a) To the Assistant Secretary for Administration, without power of further redelegation; and

(b) For procurements processed within their administrations, to the Federal Aviation Administrator, Federal Highway Administrator, Federal Railroad Administrator, the Commandant of the U.S. Coast Guard, and the Administrator of the St. Lawrence Seaway Development Corporation, each with the power to redelegate to a central authority within his administration but without power of further redelegation.

§ 12–2.406–4 Disclosure of mistakes after award.

The authority to make the determinations under FPR 1–2.406–4 has been delegated by the Secretary as set forth in DOTPR 12–2.406–3 (a) and (b).

§ 12–2.407 Award.

§ 12–2.407–7 Statement and certificate of award.

Standard Form 1036 (Statement and Certificate of Award) shall be prepared in accordance with FPR 1–2.407–7 for each contract. The original SF–1036 shall be forwarded with the original contract to the cognizant accounting office and a copy retained with the file copy in the procurement office.

§ 12–2.407–8 Protests against award.

When a protest is received after award of contract, the contracting officer shall obtain the views and advice of legal counsel and the head of the procuring activity. If it appears that the award may be held invalid and a delay in receiving the supplies or services is not prejudicial to the Government's interest, the contracting officer should seek a mutual agreement with the contractor to suspend performance on a no-cost basis.

§ 12–2.408 Information to bidders.

Unsuccessful bidders shall be given a written notification of award. It shall contain the name of the successful contractor(s), and the unit price(s) or the total amount of the contract, whichever is appropriate. However, when numerous unit prices apply, thereby creating an extensive workload in furnishing this information, or where the total amount of the contract would not be meaningful, price information may be omitted. In the latter instance, the location where the abstract of bids is available for inspection shall be stated.

Subpart 12–2.5—Two-Step Formal Advertising

§ 12–2.503 Procedures.

§ 12–2.503–1 Step one.

(a) In addition to the information required by FPR 1–2.503–1(a), the Late Offers and Modifications provision in DOTPR 12–3.5008(b) shall be included in the request.

(b) Although the Government's delivery or performance requirements are not evaluation factors under Step One, information about those requirements may be of assistance to potential bidders in determining whether or not to submit a technical proposal. Accordingly, a request for technical proposals may contain a statement indicating what the Government's probable contract delivery or performance requirements will be. The statement shall also advise that such information is not binding on the Government and that the Government's actual delivery or performance requirements will be contained in the invitation for bid issued under Step Two.

§ 12–2.503–50 Determination of size status.

Where a two-step procurement is set aside for small business firms, the controlling point in time for determining the size status of a concern is, as prescribed in FPR 1.1.703–1(b), the date of award of contract. The fact that the size status of an offeror submitting a proposal in good faith changed from a "small" to a "large" business during the interval between Step One and Step Two is not sufficient to justify an exception to the rule that size status is for determination at time of award.

PART 12–3—PROCUREMENT BY NEGOTIATION

Subpart 12–3.2—Circumstances Permitting Negotiation

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12–3.201 National emergency.
12–3.202 Public exigency.
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12-3.211 Experimental, development, or research work.
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12-3.251 Purchases in the interest of national defense or industrial mobilization.
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Subpart 12-3.3—Determinations, Findings and Authorities

12-3.301 General.
12-3.305 Format for determinations and findings.
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12-3.305-51 Format for D&F for use of cost reimbursable or fixed-price incentive type contracts.

Subpart 12-3.4—Types of Contracts

12-3.405-5 Cost-plus-a-fixed-fee contract.
12-3.408 Letter Contract.
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AUTHORITY: The provisions of this Part 12-3 issued under sec. 205(c), 63 Stat. 389; 40 U.S.C. 486(c), 10 U.S.C. 2301-2314.

Subpart 12-3.2—Circumstances Permitting Negotiation

§ 12-3.200 Scope of subpart.

(a) This subpart is applicable only to the Coast Guard.

(b) Procurements by the Coast Guard may be effected by negotiation under any one of the 17 exceptions contained in 10 U.S.C. 2304(a). Except as modified in this Subpart 12-3.2, the regulations set out in FPR Subpart 1-3.2 shall apply to Coast Guard negotiated procurement.

§ 12-3.201 National emergency.

Section 2304(a)(1) of 10 U.S.C. shall be cited as the authority for Coast Guard procurement under this section.

§ 12-3.202 Public exigency.

Section 2304(a)(2) of 10 U.S.C. shall be cited as the authority for Coast Guard procurement under this section.

§ 12-3.203 Purchases not in excess of $2,500.

Section 2304(a)(3) of 10 U.S.C. shall be cited as the authority for Coast Guard procurement under this section.

§ 12-3.204 Personal and professional services.

Section 2304(a)(4) of 10 U.S.C. shall be cited as the authority for Coast Guard procurement under this section.

§ 12-3.205 Services of educational institutions.

Section 2304(a)(5) of 10 U.S.C. shall be cited as the authority for Coast Guard procurement under this section.

§ 12-3.206 Purchases outside the United States.

(a) *Authority.* Section 2304(a)(6) of 10 U.S.C. shall be cited as the authority for Coast Guard procurement under this section "for property or services to be procured and used outside the United States, and its territories, possessions and Puerto Rico."

(b) *Application.* This authority shall be used only for the procurement of—

(1) Supplies to be (i) shipped from, (ii) delivered, and (iii) used, or

(2) Services to be performed outside of the United States, its possessions and Puerto Rico, irrespective of the place of negotiation or execution of the contract.

§ 12-3.207 Medicines or medical supplies.

Section 2304(a)(7) of 10 U.S.C. shall be cited as the authority for Coast Guard procurement under this section.

§ 12-3.208 Property purchased for authorized resale.

Section 2304(a)(8) of 10 U.S.C. shall be cited as authority for Coast Guard procurement under this section.

§ 12-3.209 Subsistence supplies.

Section 2304(a)(9) of 10 U.S.C. shall be cited as authority for Coast Guard procurement under this section.

§ 12-3.210 Impracticable to secure competition by formal advertising.

Section 2304(a)(10) of 10 U.S.C. shall be cited as authority for Coast Guard procurement under this section.

§ 12-3.211 Experimental, development, or research work.

(a) *Authority.* Section 2304(a)(11) of 10 U.S.C. shall be cited as authority for Coast Guard procurement under this section.

(b) *Limitations.* In addition to the limitations set forth in FPR 1-3.211(b), determinations and findings for contracts negotiated under this section requiring expenditures of not more than $100,000, shall be made by the Comptroller, Coast Guard Headquarters (Commandant (F)); those in excess of $100,000 shall be made by the Commandant of the Coast Guard.

(c) *Reporting requirement.* (1) Reports required by section 2304(e), of 10 U.S.C. to be made to the Congress on May 19 and November 19 of each year shall be made by Chief, Procurement Division (Commandant (FSP)), to the Department of Transportation, Office of Installations and Logistics, TAD-60, by May 1 and November 1 of each year of the purchases and contracts made under this § 12-3.211 since the date of last report.

(2) Reports shall contain the following information:

(i) Name of contractor;

(ii) Dollar amount of contract (including amendments); and

(iii) Brief description of the work required to be performed under the contract (when necessary, because of the national security, the word "Classified" may be used in lieu of the description.)

§ 12-3.212 Purchases not to be publicly disclosed.

(a) *Authority.* Section 2304(a)(12) of 10 U.S.C. shall be cited as the authority for Coast Guard procurement under this section.

(b) *Limitations.* Determinations and findings for negotiation under this section shall be made by the Commandant.

§ 12–3.213 Technical equipment requiring standardization and interchangeability of parts.

(a) *Authority.* Section 2304(a)(13) of 10 U.S.C. shall be cited as authority for Coast Guard procurement under this section.

(b) *Limitations.* Determinations and findings for negotiation under this section shall be made by the Commandant.

§ 12–3.214 Negotiation after advertising.

(a) *Authority.* Section 2304(a)(15) of 10 U.S.C. shall be cited as authority for Coast Guard procurement under this section. Determinations and findings for negotiation under this section shall be made by the Commandant.

(b) *Limitations.* In addition to the limitations imposed in FPR 1–3.214(b), the negotiated price must be less than the lowest rejected bid of any responsible bidder, as determined by the Commandant.

§ 12–3.215 Otherwise authorized by law.

(a) *Authority.* Section 2304(a)(17) of 10 U.S.C. shall be cited as authority for Coast Guard procurement under this section.

(b) *Application.* The contract shall cite as authority to negotiate, in addition to 10 U.S.C. 2304(a)(17), the applicable statute or United States Code reference.

§ 12–3.250 Technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture.

(a) *Authority.* Pursuant to 10 U.S.C. 2304(a)(14), purchases and contracts may be negotiated if "for technical or special property that he [the Commandant] determines to require a substantial initial investment or an extended period of preparation for manufacture and for which he determines that formal advertising would be likely to result in additional cost to the Government by reason of duplication of investment or would result in duplication of necessary preparation which would unduly delay the procurement of the property."

(b) *Application.* The authority of this section may be used for the procurement of technical or specialized supplies; for example, aircraft, radar, guided missiles, rockets, and similar items of equipment; major components of any of the foregoing, and any supplies of a technical or specialized nature which may be necessary for the use or operation of any of the foregoing. Such procurement generally involves:

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

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

(3) Elaborate special tooling already acquired;

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

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

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

(c) *Limitations.* The authority of this section requires a determination and findings by the Commandant which states:

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

(2) Procurement by formal advertising either—

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

(ii) Would result in duplication of necssary prepartion which would unduly delay the procurement.

§ 12–3.251 Purchases in the interest of national defense or industrial mobilization.

(a) *Authority.* Pursuant to 10 U.S.C. 2304(a)(16), purchases and contracts may be negotiated if "he (the Commandant) determines that (1) it is in the interest of national defense to have a plant, mine, or other facility, or a producer, manufacturer or other supplier, available for furnishing property or services in case of a national emergency; or (2) the interests of industrial mobilization, in the case of such an emergency, or the interests of national defense in maintaining active engineering, research, and development, would otherwise be subserved."

(b) *Application.* The authority cited in this section may be used to effectuate such plans and programs as may be evolved under the direction of the Commandant to provide incentives to manufacturers to maintain and keep active, engineering and design staffs and manufacturing facilities available for maximum production. The following are illustrative of circumstances with respect to which this authority may be used:

(1) When procurement by negotiation is necessary to keep vital facilities or suppliers in business or to make them available in the event of national emergency.

(2) When procurement by negotiation with selected suppliers is necessary in order to train them in the furnishing of critical supplies to prevent the loss of their ability and employee skills, or to maintain active engineering, research, and development work.

(3) When procurement by negotiation is necessary to maintain properly balanced sources of supply for meeting the requirements of procurement programs in the interest of industrial mobilization. (When the quantity required is substantially larger than the quantity which must be awarded in order to meet the objectives of this authority, that portion not required to meet such objectives will ordinarily be procured by formal advertising or by negotiation under another appropriate negotiation exception.)

(c) *Limitations.* The authority cited in this section shall not be used unless and until the Commandant has determined that—

(1) It is in the interest of national defense to have a particular plant, mine, or other facility or a particular producer, manufacturer, or other supplier available for furnishing supplies or services in case of national emergency and negotiation is necessary to that end; or

(2) The interests of industrial mobilization in the case of a national emergency would be subserved by negotiation with a particular supplier; or

(3) The interest of national defense in maintaining active engineering, research and development would be subserved by negotiation with a particular supplier.

(d) *Reporting requirements.* Reports required by section 2304(e) of 10 U.S.C. to be made to the Congress on May 19 and November 19 of each year will be made by the Chief, Procurement Division (Commandant (FSP)), by May 1 and November 1 of each year to the Department of Transportation, Director of Installations and Logistics, TAD–60, of the purchases and contracts made under 10 U.S.C. 2304(a)(16) since the date of last reporting.

(1) Reports shall contain the following information:

(i) Name of contractor.

(ii) Dollar amount of contract (including amendments).

(iii) Brief description of the work required to be performed under the contract. (When necessary, because of the national security, the word "classified" may be used in lieu of description.)

(2) Negative reports are not required.

§ 12–3.252 Negotiation of construction contracts.

See DOTPR 12–18.301–50.

Subpart 12–3.3—Determinations, Findings and Authorities

§ 12–3.301 General.

The determinations and findings required to be made under FPR Part 1–3 by the Coast Guard shall cite the appropriate section of chapter 137 of title 10 of the United States Code. Determinations and findings of all other Administrations shall cite the appropriate section of title 41 of the United States Code.

§ 12–3.305 Format for determinations and findings.

§ 12–3.305–50 Format for D&F for authority to negotiate a contract.

DEPARTMENT OF TRANSPORTATION

(Name of administration)

DETERMINATION AND FINDINGS

Authority to negotiate a contract under (insert authority)

FINDINGS

1. The proposed contract provides for the procurement of (describe here the nature and scope of the work to be performed, including estimated cost).

2. (In this and any subsequent paragraphs, set forth the facts and circumstances that clearly and convincingly establish that formal advertising would not be feasible and practicable for the procurement.)

DETERMINATION

Upon the basis of these findings, I hereby determine that the proposed contract may be negotiated without formal advertising pursuant to (insert authority).

Date _____ _____

§ 12–3.305–51 Format for D&F for use of cost reimbursable or fixed-price incentive type contracts.

DEPARTMENT OF TRANSPORTATION

(Name of Administration)

DETERMINATION AND FINDINGS

Authority to use a (insert type) contract

FINDINGS

1. The proposed contract provides for the procurement of (brief description of supplies or services) at an estimated cost of $_____.

2. (In this and any subsequent paragraphs set forth the facts that show why it is impracticable to secure supplies or services of the kind or quality required without the use of such type of contract, or that such method of contracting is likely to be less costly than other methods.)

DETERMINATION

Upon the basis of these findings, I hereby determine that it is impracticable to secure supplies or services of the kind or quality required without the use of (insert type of contract). [Alternate: * * * I hereby determine that the use of (insert type of contract) is likely to be less costly than other methods.]

(When a cost-plus-a-fixed fee is involved, the following finding is also to be made:)

Pursuant to (insert "41 U.S.C. 254(b)" or "10 U.S.C. 2306(d)," as applicable), I hereby determine that the estimated cost of the contract, exclusive of the fee, is $_____, that the fee in the amount of $_____ is _____% of the estimated cost, exclusive of fee, and that the fee is within statutory and administrative limitations.

Date _____ _____

Subpart 12–3.4—Types of Contracts

§ 12–3.405–5 Cost-plus-a-fixed-fee contract.

In the case of a cost-plus-a-fixed-fee contract with a non-profit or not-for-profit organization, the fee shall not exceed 5 percent of the estimated cost of the contract, exclusive of fee, unless approved in writing by the Director, Office of Installations and Logistics, OST.

§ 12–3.408 Letter Contract.

(a) *Request for approval.* The use of letter contracts must be approved in advance on a case-by-case basis by the head of the procuring activity, and variations from the limitations set forth in paragraph (b) of this section must be approved by the head of the procuring activity. The request for approval must state: The necessity and advantage to the Government in issuing the letter contract; why no other type of contract is suitable; name and address of the proposed contractor; duration of proposed letter contract in number of days from date of execution; amount of letter contract and estimated amount of definitive contract showing source and citation of funds with statement that funds are available; the estimated delivery date or dates and the proposed type of definitive contract.

(b) *Limitations.* In addition to the limitations prescribed in FPR 1–3.408(c), the following apply to, and shall be expressly stated in, each letter contract:

(1) The period of effectiveness for the letter contract, including a specific date when definitization will be completed. This date shall not be later than the first to occur of the following:

(i) The expiration of 120 days from the date of the letter contract; or

(ii) The date by which 40 percent of the performance of the work will be completed.

(2) The maximum liability of the Government stated in the letter contract shall not exceed 50 percent of the total estimated cost of the procurement.

Amendments to letter contracts to accomplish new procurement are subject to the same limitations as new letter contracts.

(c) *Content.* In addition to the requirements in FPR 1–3.408(d), the letter contract shall also:

(1) Incorporate, by reference or otherwise, all clauses required by statute, FPR, DOTPR, and optional standard and special clauses determined to be applicable.

(2) State that the definitive contract shall contain all provisions under subparagraph (1) of this paragraph.

(3) Contain an overall price ceiling or a maximum ceiling on fee, where a quoted price has been received and it is considered appropriate to limit the Government's ultimate liability.

§ 12–3.450 Letters of intent.

Letters of intent shall not be used.

Subpart 12–3.6—Small Purchases

§ 12–3.603 Competition.

§ 12–3.603–1 Solicitation.

(a) *Purchases not in excess of $250.* Small purchases not exceeding $250 may be accomplished without securing competitive quotations whenever there exists a basis for determining that the price to be paid is reasonable. However, such purchases shall be distributed equitably among qualified suppliers.

(b) *Purchases in excess of $250 but not in excess of $2,500.* Where the estimated dollar amount of the procurement exceeds $250, the solicitation shall normally be made of at least three sources of supply. Where there are more than three names on the list of vendors for an item, the mailing list for a particular solicitation should include the vendor who received the award on the previous solicitation, if he performed satisfactorily and two other vendors (on a rotated basis) from the list of vendors. While there may be instances where quotations should be solicited from additional sources, soliciting quotations from at least three suppliers ordinarily is sufficient. Care should be taken to prevent administrative costs from being disproportionate to the amount of the purchase. The number of quotations obtained and considered or the number of sources of supply utilized when making small purchases will depend to a large extent on what knowledge the purchasing officer has of the current availability and price of the desired item in commercial markets.

§ 12–3.603–2 Data to support small purchases.

Small purchase transactions over $250 with commercial sources shall be documented to show (a) the basis for determining that the price is reasonable, (b) names of firms contacted and prices quoted, and (c) the reason why competition was not obtained when only one source of supply was solicited. DOT Form F 4230.1 titled "Small Purchase Summary" may be used to satisfy the foregoing documentation requirements.

§ 12–3.650 Purchase orders.

§ 12–3.650–1 "Minimum billing" quotations.

Occasionally an item can be obtained only from a supplier who quotes a minimum order price or a minimum order quantity, which either unreasonably exceeds the agency's needs or results in an unreasonable price for the quantity required. If practicable before placing the order the requiring activity should be informed in such cases of all facts regarding the quotation and consideration should be given to increasing the quantity, consolidation of orders, or other appropriate action. The file shall be documented to show the final action taken in such cases.

§ 12–3.650–2 Unpriced purchase orders.

(a) *General.* An unpriced purchase order is an order for supplies or services the price of which is not firmly established at the time of issuance of the order. Such orders shall contain a "Not To Exceed" provision. The contracting officer shall assure that suppliers receiving unpriced purchase orders are carefully selected.

(b) *Conditions for use.* An unpriced purchase order may be used only when all of the following conditions are present:

(1) The purchase will not exceed $2,500, and

(2) It is impractical to obtain pricing in advance of issuance of the purchase order, and

(3) The procurement is for (i) repairs to equipment requiring disassembly to determine the nature and extent of such repairs, (ii) sole source material for which cost cannot be readily established, or (iii) supplies or services where prices are known to be competitive but exact prices are not known.

(c) *Procedures.* A realistic "Not To Exceed" limitation shall be placed on the order which shall be stated in the notice to supplier provision in the blank space provided. This amount shall be obligated subject to adjustment when the firm price is established. Each unpriced purchase order shall contain the following provision:

Notice to supplier: This is a firm order if the total price does not exceed the amount of $_____. If the amount to be invoiced will exceed the amount stated below, or if you cannot furnish the work described in exact accordance with the description and delivery schedule set forth herein, Withhold Performance and immediately notify the Contracting Officer giving your quotation or proposed substitution or changes. In no event will the total amount paid under this order exceed the amount stated unless and until the order has been amended in writing and signed by the Contracting Officer.

The contracting officer or his designated representative shall certify that the invoiced price is fair and reasonable and process the invoice for payment. Suitable local records and controls of outstanding unpriced purchase orders shall be maintained to assure regular followup with suppliers until the order is firmly priced. These records should include any information available to support the fairness and reasonableness of the proposed monetary limitation. If the firm price exceeds the "not to exceed" price and the contracting officer determines, nevertheless, that such purchase be made from the supplier, the order shall be amended accordingly: *Provided,* That in no event may the amount of the order exceed $2,500. If the firm price does not exceed the "not to exceed" price, the order should not be amended for the sole purpose of changing the estimated price to a firm price.

§ 12–3.650–3 Estimated purchase orders.

(a) *General.* An estimated purchase order is an order of $50 or less for supplies or services the price of which is not firmly established at the time of issuance of the order but which, unlike the unpriced purchase order, provides for approval and payment of billed prices without referral to the contracting officer. Such orders may be issued when it is not practical to obtain a firm price as when, for example, the need is urgent or the vendor is other than a local source and the administrative cost to secure a firm offer would be disproportionate to the value of the order.

(b) *Preparation of order.* The word Estimated, the total price, and a provision reading substantially as follows shall be included on the order:

Notice to supplier: This is a firm order if the amount to be invoiced does not exceed the estimated amount stated by $5 or 25 percent, whichever is greater. In such cases, submit your invoice to the Paying Office. If the amount to be invoiced will exceed the stated limitations, Withhold Performance and immediately notify the Contracting Officer. In no event will the total amount paid under this order exceed the stated amount (plus $5 or 25 percent, whichever is greater) unless and until the order has been amended in writing and signed by the Contracting Officer.

§ 12–3.650–4 Purchase order case file.

(a) Except as provided in paragraph (b) of this section, a case file shall be established and maintained for each purchase order. The file jacket may be a manila, kraft, or any other type folder which will best serve local needs. The folder shall be tabbed with the purchase order number and may include the supplier's name or any other appropriate data. At time of issuance of the order, the folder shall contain, as a minimum, the procurement request or other requisitioning document (or a cross-reference to it), the order, and, if the order exceeds $250, the documentation required by § 12–3.603–2.

(b) At locations other than procurement offices, several transactions and the supporting documents for each (where required) may be filed in one folder.

§ 12–3.650–5 List of vendors.

Each procurement office shall establish such lists of vendors as are necessary for recurring requirements to assure access to adequate sources of supply. Where the number of firms on a list is considered excessive, the list may be reduced by any method which will promote competition commensurate with the dollar value of the purchase to be made. If a rotation method is used, the vendors known to regularly submit the lowest price shall be solicited.

§ 12–3.650–6 Followup.

Each procurement office shall establish and maintain a simple and effective followup system. It should permit maximum latitude for the exercise of initiative and judgment in the administration process and be designed to assure that, to the maximum practicable extent, purchase orders are completed in accordance with their terms. The system may use copies of purchase orders, one or more cards, or the like.

§ 12–3.650–7 Inspection and acceptance.

When inspection and acceptance are to be performed at destination, advance copies of the purchase order shall be furnished to consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of material to assure expeditious payment of orders and to obtain prompt payment discounts.

§ 12–3.651 Delivery orders.

(a) Except as to specialized procurements for which other instructions have been issued, delivery orders shall be used without monetary limitation for ordering supplies and services (1) under an established contract: *Provided,* The order is issued in accordance with the terms and conditions of the contract and the order refers to the particular contract involved, (2) from another Government agency whether or not a contract number has been assigned.

(b) When the delivery order is issued to another Government agency and the precise extent of the work to be done is not known at time of issuance, an estimated delivery order may be issued. Each estimated delivery order shall contain a provision reading substantially as follows:

NOTICE: Funds are available in the estimated amount stated below. If at any time the amount to be vouchered under this order is expected to exceed the estimated amount, Withhold performance and immediately notify the Contracting Officer.

§ 12–3.652 Service Contract Act of 1965.

§ 12–3.652–1 General.

The Service Contract Act of 1965 applies, with certain exceptions, to Federal contracts whose principal purpose is to furnish services through the use of service employees. The Act applies without dollar limitation, but different contract clauses are required depending upon whether the contract price exceeds $2,500.

§ 12–3.652–2 Purchase order transactions.

The Act applies to contracts made through use of purchase order forms if such contracts have as their principal purpose the furnishing of services through the use of service employees and if such contracts are not otherwise exempt. The clause prescribed in FPR 1–12.904–2 shall be included in purchase orders subject to the Act's coverage.

§ 12–3.652–3 Standard Form 44 transactions.

Since the use of Standard Form 44 involves, for all practical purposes, simultaneous placing of purchase orders and delivery of the items ordered, no written terms and conditions are included on the SF–44. Therefore, the Service Contract Act clause need not be incorporated in SF–44.

§ 12–3.653 Fast payment procedures.

§ 12–3.653–1 General.

The procedure is designed to simplify the handling and payment of small purchases. It provides for payment for supplies based on the vendor's submission of an invoice which constitutes a representation that ordered supplies have been delivered in accordance with the provisions of the purchase order. The vendor agrees, by acceptance of the order, to replace, repair, or correct supplies not received by the consignee at destination, damaged in transit, or not conforming to the order.

§ 12–3.653–2 Conditions for use.

(a) Except as set forth in paragraph (b) of this section, the fast payment procedure should be used to the maxi-

mum extent practicable, provided its use is consistent with the other conditions of the procurement, when all of the conditions set forth below are present:

(1) Each order does not exceed $2,500;

(2) Title to the supplies will vest in the Government (i) upon delivery to a post office or common carrier for mailing or shipment to destination, or (ii) upon receipt by the Government when the shipment is by means other than post office or common carrier;

(3) The vendor agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to the order; and

(4) The supplies will be shipped transportation or postage prepaid. Therefore, no Government Bill of Lading (GBL) will ever be issued.

(b) Use of the fast payment procedure would not be indicated, for example, in small purchases by offices, vessels, air stations, bases, and other locations when material being purchased is destined for use at such activities and contract administration will be performed by the procurement office of such activities.

§ 12–3.653–3 Preparation of orders.

(a) Orders shall be issued on the appropriate purchase order form except that calls against blanket purchase agreements shall be issued in accordance with Administration procedures. Orders may be either priced or unpriced.

(b) Special data to be included on purchase orders or in blanket purchase agreements using fast payment procedures are:

(1) A requirement for the supplies to be shipped transportation or postage prepaid; and

(2) A requirement that invoices be submitted directly to the paying office designated in the order, or in the case of unpriced purchase orders, to the contracting officer.

§ 12–3.653–4 Fast payment clause.

The following clause shall be included in all fast payment orders:

FAST PAYMENT PROCEDURE

(a) *General.* This is a fast payment order. Invoices will be paid on the basis of the Contractor's delivery to a post office, common carrier, or, in shipment by other means, to the point of first receipt by the Government.

(b) *Responsibility for supplies.* Title to the supplies shall vest in the Government upon delivery to a post office or common carrier for shipment to the specific destination. If shipment is by means other than post office or common carrier, title to the supplies shall vest in the Government upon delivery to the point of first receipt by the Government. Notwithstanding any other provision of the purchase order, the Contractor shall assume all responsibility and risk of loss for supplies (i) not received at destination, (ii) damaged in transit, or (iii) not conforming to purchase requirements. The Contractor shall either replace, repair, or correct such supplies promptly at his expense: *Provided,* Instructions to do so are furnished by the Contracting Officer within ninety (90) days from the date title to the supplies vests in the Government.

(c) *Preparation of invoice.*

(1) Upon delivery of supplies to a post office, common carrier, or in shipments by other means, the point of first receipt by the Government, the Contractor shall prepare an invoice in accordance with the instructions in this order, except that invoices under a blanket purchase agreement shall be prepared in accordance with the provisions of the agreement. In shipments by either post office or common carrier, the Contractor shall either (A) cite on his invoice the date of shipment, name and address of carrier, bill of lading number or other shipment document number, or (B) attach copies of such documents to his invoice as evidence of shipment. In addition the invoice shall be prominently marked "Fast Pay." In case of delivery by other than post office or common carrier, a receipted copy of the Contractor's delivery document shall be attached to the invoice as evidence of delivery.

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The cost of parcel post insurance will not be paid by the Government. If transportation charges are separately stated on the invoice, the Contractor agrees to retain related paid freight bills or other transportation billings paid separately for a period of three years and to furnish such bills to the Government when requested for audit purposes.

(d) *Certification of invoice.* The Contractor agrees that the submission of an invoice to the Government for payment is a certification that the supplies for which the Government is being billed have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that such supplies are in the quantity and of the quality designated by the cited purchase order.

§ 12–3.653–5 Consignee notification of nonreceipt, damage, or nonconformance.

The consignee shall be instructed to notify the procurement office within 30 days after the specified date of delivery in the purchase order, of supplies not received or damaged in transit, or not conforming to purchase description.

§ 12–3.653–6 Responsibility for collection of debts.

The contracting officer shall be primarily responsible for collecting debts resulting from failures of contractors to properly replace, repair, or correct supplies lost, damaged, or not conforming to purchase requirements.

Subpart 12–3.7—Negotiated Overhead Rates

§ 12–3.700 Scope of subpart.

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

§ 12–3.703 Applicability.

Negotiated final overhead rates are authorized for use primarily in cost-reimbursement type contracts for research and development with commercial organizations and nonprofit or educational institutions. They may also be used in other cost-reimbursement type contracts, after a determination is made by the contracting officer that their use is advantageous to the Government. Where it is not apparent that any one of the major purposes enumerated in FPR 1–3.702 results or will result by the use of neogtiated final overhead rates, the contracting officer will provide for settlement of overhead by audit determination.

§ 12–3.704 Contract clauses.

§ 12–3.704–1 Contracts with concerns other than educational institutions.

When the "Negotiated Overhead Rates" clause set forth in FPR 1–3.704–1 is included in the contract, the appropriate "Indirect Cost" clause set forth in DOTPR 12–3.704–50 shall also be included in the contract. When the contract is a cost-plus-incentive-fee type, delete "Allowable Cost, Fixed Fee, and Payment" from paragraph (a) of the clause in FPR 1–3.704–1 and substitute "Allowable Cost, Incentive Fee, and Payment."

§ 12–3.704–2 Contracts with educational institutions.

When either the "Postdetermined" or "Predetermined" negotiated overhead rates clauses in FPR 1–3.704–2 is included in the contract, the appropriate "Indirect Costs" clause set forth in DOTPR 12–3.704–50 shall also be included in the contract.

§ 12–3.704–50 Interim payment of indirect costs.

(a) When the contract includes a "Negotiated Overhead Rate" clause as set forth in FPR 1–3.704–1 or 1–3.704–2, one of the clauses listed below (whichever is consistent with the contractor's normal method of interim and final overhead reimbursement) shall be inserted in the contract schedule.

(1) The following clause shall be used when the contractor's normal method of interim overhead reimbursement is based on billing rates approved by the contracting officer (normally through an exchange of correspondence) rather than on formally negotiated provisional rates:

INDIRECT COSTS (BILLING RATES)

Pending the establishment of final overhead rates as provided for in the clause entitled "Negotiated Overhead Rates", the Contractor shall be reimbursed for indirect costs on the basis of billing rates mutually agreed upon by the Contracting Officer and the Contractor.

Prior to establishing or changing the billing rates, the contracting officer should seek the advice of the cognizant audit activity as to the acceptability of the billing rates proposed by the contractor.

(2) The following clause shall be used when the contractor's normal method of interim overhead reimbursement is based on negotiated provisional rates. The provisional rates will remain in effect until such time as the contract is amended. The rates shall be listed immediately below the clause along with the base of applications for each rate listed:

INDIRECT COSTS (PROVISIONAL RATES)

Pending establishment of final overhead rates as provided for in the clause entitled "Negotiated Overhead Rates", the Contractor shall be reimbursed for indirect

costs on the basis of the negotiated provisional rates set forth below, which rates shall remain in effect until the contract is amended to incorporate either (a) final overhead rates for a specific period or periods or (b) revised negotiated provisional overhead rates as provided for in paragraph (e) of the clause of this contract entitled "Negotiated Overhead Rates".

Prior to establishing or revising the negotiated provisional rates, the contracting officer should request the contractor to submit for review his proposed overhead rates with supporting cost data, with a copy to the cognizant audit activity.

(b) Provisional overhead rates may be revised after the contracting officer has received advice that the Department of Defense or other Government office sponsoring overhead negotiations with the contractor has negotiated acceptable overhead rates.

§ 12–3.704–51 Audit determination—(actual).

Where it is not apparent that any of the major purposes enumerated in FPR 1–3.702 results or will result by the use of negotiated final overhead rates, the contracting officer will provide for settlement of overhead by audit determination. In these cases the following clause shall be used in lieu of the "Negotiated Overhead Rate" clause prescribed in FPR 1–3.704–1 or 1–3.704–2:

INDIRECT COSTS (ACTUAL)

In accordance with the "Allowable Cost, Fixed Fee, and Payment" clause of the contract, the contractor shall be paid his actual overhead cost. Allowable overhead cost will be determined in accordance with the principles set forth in Subpart 1–15.2 of the Federal Procurement Regulations. Any failure of the parties hereto to agree as to what constitutes actual overhead costs shall be considered a dispute covering a question of fact within the meaning of the clause of this contract entitled "Disputes".

Subpart 12–3.8—Price Negotiation Policies and Techniques

§ 12–3.801 Basic policy.

§ 12–3.801–2 Responsibility of contracting officers.

In the event a contractor insists on a price or demands a profit or fee which the contracting officer considers unreasonable, and if the contracting officer is unable to obtain a satisfactory solution after exhausting the courses of action set forth in FPR 1–3.801–2(c), the matter shall be referred for resolution to the head of the procuring activity with a statement of facts and the contracting officer's recommendations.

§ 12–3.807 Pricing techniques.

§ 12–3.807–6 Refusal to provide cost or pricing data.

(a) In addition to the data required by FPR 1–3.807–6, a referral to higher authority should indicate the impact on the affected procurement program if an award is not made to the refusing offeror, and include a recommended course of action.

(b) When a waiver has been issued all offerors shall be notified that cost or pricing data furnished with the proposals will not be used to determine the reasonableness of the proposed contract price.

§ 12–3.808 Profit or fee.

§ 12–3.808–2 Factors for determining fee or profit.

In determining the fee or profit, consideration must be given to the tax posture of the organization. A fair and reasonable fee to a nonprofit or not-for-profit organization, with tax exemptions, would be considerably lower than a fee to a commercial enterprise with no tax exempt status. DOTPR 12–3.405–5 requires the approval of the Director, Office of Installations and Logistics, OST, for any proposed fee to a nonprofit or not-for-profit organization which exceeds 5 percent of the estimated cost of the contract exclusive of fee. Each request for approval of such a fee shall include a detailed analysis of the factors by which the proposed fee was determined to be fair and reasonable.

§ 12–3.809 Contract audit as a pricing aid.

(a) In establishing the due date for receipt of the auditor's report, the minimum time which will be allowed by DOT contracting officers shall normally be 30 days. Exceptions to this 30-day minimum period may be made only when program considerations require a shorter time. Urgency caused by end of year funding considerations will not be a justification for requiring a shorter period for advisory audit review.

(b) When DCAA is assigned post-award audit responsibility under cost reimbursable contracts, the contractor shall be instructed to forward the first and final vouchers to the cognizant auditor for audit review. The cognizant DCAA auditor shall also be furnished a paid copy of each voucher furnished under the contract.

Subpart 12–3.50—Solicitation of Proposals

§ 12–3.5000 Scope of subpart.

This subpart applies to all negotiated procurement except small purchases.

§ 12–3.5001 Competition.

Competitive proposals shall be solicited from the maximum practicable number of qualified and eligible suppliers.

§ 12–3.5002 Preparation of request for proposals.

(a) Generally, requests for proposals shall be in writing. However, in appropriate cases, such as the procurement of perishable subsistence, proposals may be solicited orally. When the request is to be in writing, the following forms shall be used:

(1) For negotiated construction contracts, the standard forms in FPR 1–16.401.

(2) For other than construction, Standard Form 33 (Solicitation, Offer, and Award) and Standard Form 33A (Solicitation Instructions and Conditions).

(b) Requests for proposals shall indicate the type of contract contemplated by the Government. When technical proposals are required, requests for proposals shall indicate the factors on which the Government will evaluate the proposals and list them in their relative order of importance. Any other factors, excluding price, which will be given paramount consideration in making an award shall also be indicated.

(c) The guidelines established in DOTPR 12–2.202–1 for minimum bidding times are applicable to requests for proposals.

§ 12–3.5003 Receipt and safeguarding of offers.

The instructions for the receipt and safeguarding of bids in FPR 1–2.401 shall also apply to the receipt and safeguarding of proposals.

§ 12–3.5004 Solicitation for informational or planning purposes.

See FPR 1–1.314 and DOTPR 12–16.201–3.

§ 12–3.5005 Bidders mailing lists.

Bidders mailing lists for negotiated procurements shall be established, maintained, and utilized in accordance with FPR 1–2.205 and DOTPR 12–2.205–5.

§ 12–3.5006 Preproposal conferences.

§ 12–3.5006–1 General.

(a) The preproposal conference is a procedure which may be used, generally in complex negotiated procurement, as a means of briefing prospective offerors after a solicitation has been issued but before offers or proposals are prepared.

(b) Such a conference permits the Government to explain or clarify complicated specifications and requirements to interested firms. It may also be used to provide an opportunity for interested firms to examine a model of the equipment being procured, where for reasons such as security or limited quantities, such model can only be shown at a specific time and location.

§ 12–3.5006–2 Procedure.

(a) Where it is determined to be in the best interests of the Government to hold a preproposal conference, the contracting officer shall make the necessary arrangements and notify all those to whom solicitations have been issued as to the time, place, and general nature of the proposed conference. If time permits, prospective offerors should be asked to submit, in advance, any questions they may have.

(b) The preproposal conference shall be conducted by the contracting officer or his representative, with participation by technical and legal personnel as appropriate.

(c) All prospective offerors shall be furnished identical information in connection with the proposed procurement. All conferees shall be advised that remarks and explanations at the conference shall not qualify the terms of the solicitation and specifications unless the solicitation is amended in writing. A

summary shall be made of the conference and copies furnished prospective offerors.

§ 12–3.5007 Amendment of request for proposals—prior to closing date.

(a) If after issuance of a request for proposals, but before the closing date of its receipt, it becomes necessary to make changes in quantity, specifications, delivery schedules, or closing dates, or to correct a defect or ambiguity, such changes shall be accomplished by issuance of an amendment to the request, whether or not a preproposal conference is held. SF–30 shall be used for amending requests for proposals.

(b) When it is considered necessary to issue an amendment to a request for proposals, the period of time remaining before closing and the need for extending this period by postponing the time set for closing must be considered. Where only a short time remains before the time set for closing, consideration should be given to notifying offerors of an extension of time by telegram or telephone. Such notification should be confirmed in the amendment.

(c) Any information given to a prospective offeror concerning a request for proposals shall be furnished promptly to all other prospective offerors as an amendment to the request if the lack of such information would be prejudicial to uniformed offers. No award shall be made on request for proposals unless such amendment thereto has been issued in sufficient time to permit prospective offerors to consider such information in submitting or modifying their proposals.

§ 12–3.5008 Late proposals and modifications.

(a) Proposals which are received in the office designated in the request for proposals after the time specified for their submission are "Late Proposals." (Unless a specific time for receipt of proposals is stated in the request for proposals, the time for such receipt shall be deemed to be the time for close of business of the office designated for receipt of proposals on the date stated in the request for proposals.) Late proposals shall not be considered for award, except:

(1) Where the late proposal is the only proposal received.

(2) Where the head of the procuring activity determines that consideration of a late proposal is of extreme importance to the Government, as for example where it offers some important technical or scientific breakthrough or a substantially lower price.

(3) Under the circumstances set forth in FPR 1–2.303 permitting considerations of late bids.

To determine whether subparagraph (2) of this paragraph applies, all late proposals received prior to award shall be opened and evaluated, and the procedures in FPR 1–2.303–7 shall not apply.

(b) Each request for proposals shall include the following provision:

LATE OFFERS AND MODIFICATIONS

The following changes are made in Paragraph 8 of Standard Form 33A:

(1) The parenthetical introduction preceding subparagraph (a) is deleted.

(2) In subparagraph (a), the words "Offers and modifications of offers (or withdrawals thereof, if this solicitation is advertised)" are deleted and the following substituted therefor: "Except as provided in § 12–3.5008 of the Department of Transportation Procurement Regulations (41 CFR 12–3.5008), offers and modifications of offers".

(c) Except where only one proposal is received, each late offeror shall be promptly notified that his proposal was received late and that his proposal will be evaluated but not considered for award unless found to qualify under exception paragraph (a) (2) or (3) of this section. Where it is not clear from available information whether the exception in paragraph (a) (3) of this section applies, the notification shall include the substance of the notice in FPR 1–2.303–6, appropriately modified to relate to proposals and, if necessary, to telegraphic proposals.

(d) In the exceptional circumstances where the head of the procuring activity determines that paragraph (a) (2) of this section applies, the contracting officer shall resolicit all firms (including late offerors) which have submitted proposals and are determined to be capable of meeting current requirements. Such resolicitation shall specify a date for submission of new proposals and include the provision set forth in DOTPR 12–3.5008 (b).

(e) Modifications of proposals (other than revisions of proposals by offerors with whom negotiations are being conducted, made in accordance with the terms and conditions specified by the Government's negotiator) which are received in the office designated in the request for proposals after the time specified for submission of proposals are "Late Proposals." Late modifications shall be subject to the rules applicable to late proposals set forth in this section. However, a modification received from an otherwise successful offeror which is favorable to the Government shall be considered at any time that such modification is received.

§ 12–3.5009 Treatment of procurement information.

§ 12–3.5009–1 Restrictions on disclosure and use of data in proposals.

(a) Requests for proposals may require the offeror to submit data with his proposal which may include a design or plan for accomplishing the objectives of the procurement. Such data may include information which the offeror does not want disclosed to the public or used by the Government for any purpose other than evaluation of the proposals.

(b) Contracting officers and other Government personnel shall not refuse to consider any proposal merely because it or the data submitted with it is so marked with a restrictive legend. Those portions of the proposal and data which are so marked (except for information which is also obtained from another source without restriction), shall be used only to evaluate the proposal and shall not be disclosed outside the Government without the written permission of the offeror. If it is desired to duplicate, use, or disclose the data of the offeror to whom the contract is to be awarded, for purposes other than to evaluate the proposal, the contract should so provide.

§ 12–3.5009–2 Disclosure of information during the preaward or preacceptance period.

(a) *General.* See FPR 1–3.805–1(b) for restrictions regarding the disclosure of information.

(b) *Equal consideration and information to all prospective contractors.* During the interval between mailing of requests for proposals and the making of awards, discussion of the procurement with prospective contractors and the transmission of technical or other information shall be conducted only by or with the knowledge of the contracting officer; except that necessary technical or other information during such period may be transmitted to prospective contractors by other personnel via contracting personnel, at meetings arranged by contracting personnel, or by official correspondence from the contracting officer to the originating activity or technical office seeking clarification of the matter in question. In the conduct of necessary discussion of a request for proposals with suppliers, no personnel shall furnish any information to a supplier which may afford him any advantage over others. However, general information which would not be prejudicial to others may be furnished upon request, e.g., explanations of a particular contract clause or a particular condition of the schedule. When necessary to clarify ambiguities, or correct mistakes or omissions, an appropriate amendment to the solicitation shall be issued.

§ 12–3.5009–3 Preaward notice of unacceptable offers.

In any procurement in excess of $10,000 in which it appears that the period of evaluation of proposals is likely to exceed 60 days or in which a limited number of suppliers have been selected for additional negotiation, the contracting officer, upon determination that a proposal is unacceptable, shall provide prompt notice of that fact to the source submitting the proposal. Such notice need not be given where the proposed contract is to be awarded within a few days and notice pursuant to FPR 1–3.103 would suffice. In addition to stating that the proposal has been determined unacceptable, notice to the offeror shall indicate, in general terms, the basis for such determination and shall advise that, since further negotiation with him concerning this procurement is not contemplated, a revision of his proposal will not be considered.

§ 12–3.5010 Protests against award.

Protests against awards of negotiated procurements shall be processed in the same manner as prescribed in FPR 1–2.407–8.

§ 12–3.5011 Notice of award technique.

When time is of the essence, the notice of award technique may be used as an ac-

ceptance of a proposal. To assure that the notice of award will constitute a valid acceptance of the offeror's proposal, the contracting officer will insure that the proposal fully embodies the terms of the agreement between the parties. If the proposal is changed, for any reason, the contractor must set forth his understanding of any modifications or additions in a letter to the contracting officer. The notice of award shall reference the contractor's proposal and any other document modifying the proposal. The following is a sample notice of award:

NOTICE OF AWARD

GENTLEMEN: The United States of America, acting through the undersigned contracting officer, hereby accepts your proposal No. ____, dated _____, as modified by your letter(s) of _____, to furnish (supplies, services, work) in accordance with RFP No. _____, dated _____, for a total price of $_____. This notice of award constitutes a binding contract obligation from time of mailing. All delivery dates will be computed from the date of this notice unless otherwise provided.

A document formalizing this contract will be sent to you for signature as soon as possible. This formal contract will be dated and numbered as above.

You are directed to proceed with the performance of this contract in accordance with the terms of your proposal and this acceptance.

Sincerely,
(Written Signature)
(Typed Name)
Contracting Officer _____
[on copies only]
(Date)
Funds Citation: _____
Negotiation Authority: _____

§ 12–3.5012 Unsolicited contract proposals.

Department Order 4200.4 (set forth in DOTPR Part 99) establishes the policies and procedures for processing unsolicited contract proposals.

PART 12–4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart 12–4.50—Utilization and Disposal of Personal Property Pursuant to Exchange/Sale Authority

Sec.
12–4.5001 General.

Subpart 12–4.51—Procurement of Tax-Free Spirits

12–4.5100 Scope of subpart.
12–4.5101 Delegation of authority.
12–4.5102 Procedure.

AUTHORITY: The provisions of this Part 12–4 issued under sec. 205(c), 63 Stat. 389; 40 U.S.C. 486(c), 10 U.S.C. 2301–2314.

Subpart 12–4.50—Utilization and Disposal of Personal Property Pursuant to Exchange/Sale Authority

§ 12–4.5001 General.

The procedures governing the exchange or sale of personal property are set forth in the Federal Property Management Regulations (FPMR) Part 101–46. Prior to any disposal action, Federal agencies shall be solicited to the extent required by FPMR 101–46.301. See also FPMR 101–46.202 for restrictions and limitations, and FPMR 101–46.402 for cash and exchange (trade-in) bids.

Subpart 12–4.51—Procurement of Tax-Free Spirits

§ 12–4.5100 Scope of subpart.

This subpart covers the procurement of tax-free spirits and specially denatured spirits.

§ 12–4.5101 Delegation of authority.

The Assistant Secretary for Administration and the Administrators of the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Urban Mass Transportation Administration and the Commandant, U.S. Coast Guard have been delegated authority to execute Internal Revenue Service (IRS) Application Forms 1486 and 1444 to procure specially denatured spirits and tax-free spirits in accordance with §§ 211.231 and 213.142 respectively, of Title 26 of the Code of Federal Regulations. The foregoing officials may redelegate this authority to one or more officials within their organizations but without power to further redelegate. Any redelegation of this authority shall be in the form of a letter addressed to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D.C. 20224.

§ 12–4.5102 Procedure.

(a) See § 211.233 of Title 26 for procurement of specially denatured spirits, and § 213.143 of Title 26 for procurement of tax-free spirits.

(b) If the application is to cover more than one geographical location, insert in Item 2, Form 1486 or 1444: "Various locations of the (insert name of Administration) as indicated by purchase order." IRS processes the application and, on the same form, issues the permit to procure. The application form may be signed only by an official named in § 12–4.5101 or his designee. The permit remains valid until surrendered by the Administration or cancelled by IRS.

(c) The permit issued on Form 1444 authorizes procurement from any qualified distilled spirits plant. A listing of such plants is provided on IRS Document No. 5237. The list and revision service may be obtained upon request to IRS, Alcohol and Tobacco Tax Division, 1111 Constitution Avenue NW., Washington, DC 20224.

PART 12–5—SPECIAL AND DIRECTED SOURCES OF SUPPLY

Subpart 12–5.50—Procurement Under Federal Supply Schedule Contracts

Sec.
12–5.5000 General.
12–5.5001 Use of schedules.
12–5.5002 Policy and procedures.

Subpart 12–5.51—Procurement From GSA Supply Depots

12–5.5100 General.

Subpart 12–5.52—Procurement of Prison-Made Supplies

Sec.
12–5.5200 Policy.
12–5.5201 Requests for the Schedule of Products made in Federal Penal and Correctional Institutons.

Subpart 12–5.53—Procurement of Blind-Made Supplies

12–5.5300 Policy.
12–5.5301 Requests for the Schedule of Blind-Made Products.

Subpart 12–5.54—Procurement Under the Economy Act From or Through Another Federal Agency

12–5.5400 Scope of subpart.
12–5.5401 Authorization and policy relating to placing and filling orders.
12–5.5402 Execution of agreements with agency heads.

Subpart 12–5.55—Procurement of Printing and Related Supplies

12–5.5501 Printing and related supplies.

AUTHORITY: The provisions of this Part 12–5 issued under sec. 205(c), 63 Stat. 389; 40 U.S.C. 486(c), 10 U.S.C. 2301–2314.

Subpart 12–5.50—Procurement Under Federal Supply Schedule Contracts

§ 12–5.5000 General.

The Federal Supply Service, General Services Administration, establishes contracts for common use classes of supplies and services. These contracts are summarized in Federal Supply Schedules which list the contractors and the supplies and services which may be purchased from them.

§ 12–5.5001 Use of schedules.

Federal Supply Schedules are mandatory to the extent specified in each Schedule. Agencies required to use Federal Supply Schedule contracts shall obtain needed items from this source in lieu of procuring similar items from other sources when the Federal Supply Schedule item will adequately serve the required functional purpose.

§ 12–5.5002 Policy and procedures.

The policy and procedures applicable to the purchase of items from Federal Supply Schedule contracts are set forth in Subpart 101–26.4 of the Federal Property Management Regulations.

Subpart 12–5.51—Procurement From GSA Supply Depots

§ 12–5.5100 General.

Stock items available from General Services Administration shall be made in accordance with Subpart 101–26.3 of the Federal Property Management Regulations. That subpart "prescribes policy and procedures governing the procurement of items of supply stocked by GSA, including reporting and obtaining adjustments for overages, shortages, and damages; the return of GSA items for credit; and the issue of used, repaired, and rehabilitated items in serviceable condition."

Subpart 12–5.52—Procurement of Prison-Made Supplies

§ 12–5.5200 Policy.

Under 18 U.S.C. 4124, Federal departments and agencies are required to purchase at not-to-exceed current market prices, those products of the Federal Prison Industries, Inc., which are available and which meet the procurement agencies' requirements (also see FPMR 101–26.601).

§ 12–5.5201 Requests for the Schedule of Products made in Federal Penal and Correctional Institutions.

Copies of the Schedule of Products made in Federal Penal and Correctional Institutions may be obtained from the U.S. Department of Justice, Federal Prison Industries, Inc., Washington, D.C. 20537.

Subpart 12–5.53—Procurement of Blind-Made Supplies

§ 12–5.5300 Policy.

By the Wagner-O'Day Act of June 25, 1938 (41 U.S.C. 46–48), all Federal departments and agencies are required to purchase their requirement of brooms, mops, ballpoint pens, and other suitable commodities from non-profit-making agencies for the blind unless such commodities are available for procurement from Federal Prison Industries, Inc. The Federal Supply Service, under the direction of the Committee on Purchase of Blind-Made-Products, issues semiannually, on January 1 and July 1, a new schedule (amendments are issued on April 1, and October 1 for interim changes) of Blind-Made-Products, listing commodities which must be procured through the National Industries for the Blind or workshops (see 41 CFR 51–1.4). This schedule includes item description, price and purchase procedures mandatory on Federal agencies. (Also see FPMR 101–26.601.)

§ 12–5.5301 Requests for the Schedule of Blind-Made-Products.

Copies of the Schedule of Blind-Made-Products may be obtained from any GSA regional office. Offices not on the mailing list to obtain this Schedule regularly should submit GSA Form 457, Request for Federal Supply Schedules and Contractor's Catalogs, which is also available from any GSA regional office.

Subpart 12–5.54—Procurement Under the Economy Act From or Through Another Federal Agency

§ 12–5.5400 Scope of subpart.

This subpart deals with orders for supplies or services placed with another Government department or agency pursuant to the authority of the Economy Act of June 30, 1932, as amended (31 U.S.C. 686), except that it does not apply to any procurement covered by other subparts of this Part 12–5.

§ 12–5.5401 Authorization and policy relating to placing and filling orders.

(a) It is the policy of the Department of Transportation not to place Government agencies in direct competition with commercial sources. Accordingly, prior to soliciting bids or proposals from commercial sources, it shall be decided whether to obtain supplies or services from Government agencies. Invitations for bids and requests for proposals shall not be sent to Government agencies. Current market prices, recent procurement prices, or prices obtained by informational bids as provided in FPR 1–1.314 may be used to ascertain whether procurement can be effected more cheaply from commercial sources.

(b) Each procuring activity, when it is in the interest of the Government to do so, may place orders with any other Government department or agency for supplies or services that any such requisitioned department or agency may be in a position to furnish or perform or to obtain by contract.

(c) Where the Department procures commercial or industrial products or services from another Government agency, any authorization required for the furnishing of such products or services, in accordance with BOB Circular No. A–76, dated August 30, 1967, shall be accomplished by the furnishing Government agency.

§ 12–5.5402 Execution of agreements with agency heads.

Execution of any interdepartmental or interagency agreement which is to be signed by the head of the other department or agency is reserved to the Secretary, as provided in section 1.44(i) of the DOT Organization Manual (DOT 1100.23).

Subpart 12–5.55—Procurement of Printing and Related Supplies

§ 12–5.5501 Printing and related supplies.

The Government Printing and Binding Regulations of the Congressional Joint Committee on Printing set forth specific prohibitions and regulations for the acquisition of printing, binding, blankwork, envelopes, paper, and related supplies.

PART 12–6—FOREIGN PURCHASES

Sec.

12–6.000 Scope.

Subpart 12–6.1—Buy American Act—Supply and Service Contracts

12–6.103 Exceptions.
12–6.103–2 Nonavailability in the United States.
12–6.104 Procedures.
12–6.104–4 Evaluation of bids and proposals.
12–6.105 Excepted articles, materials, and supplies.

Subpart 12–6.8—Balance of Payments Program

12–6.801 General.
12–6.801–50 Use of excess and near-excess foreign currencies.
12–6.806 Procedures.
12–6.806–2 Method of purchase.

Subpart 12–6.10—Omission of the Examination of Records Clause From Contracts With Foreign Contractors

12–6.1004 Determinations and findings.

Subpart 12–6.50—Purchases From Certain Communist Areas

12–6.5001 Restrictions.
12–6.5002 Contract provision.
12–6.5003 Exceptions.

AUTHORITY: The provisions of this Part 12–6 issued under sec. 205, 63 Stat. 389; 40 U.S.C. 486(c), 10 U.S.C. 2301–2314.

§ 12–6.000 Scope.

This part includes restrictions and purchases from Communist countries or foreign-made items; and restrictions on purchases from communist countries or areas.

Subpart 12–6.1—Buy American Act—Supply and Service Contracts

§ 12–6.103 Exceptions.

§ 12–6.103–2 Nonavailability in the United States.

(a) Certain items determined to be exempt under the exception in FPR 1–6.103–2 are set forth in DOTPR 12–6.105. Supplies not listed may be excepted only after a written determination has been made by the contracting officer. Each determination shall include the following information:

(1) Description of the item(s) to be procured with specific information pertaining to special features, performance, versatility, etc.

(2) Unit, quantity, estimated cost (including duty, if any, separately shown).

(3) Country of origin, and name and address of prospective contractor, if available.

(4) Brief statement as to the necessity for the procurement.

(5) Statement of effort made to procure a similar item of domestic origin or statement that there is no domestic item which can be used as a reasonable substitute.

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.

(b) Notwithstanding the foregoing, procurement of foreign end products on the basis of "nonavailability," whether or not listed in DOTPR 12–6.105, shall be made only after a written determination has been made by the contracting officer and approved at a higher level in accordance with Administration procedures. Before granting such approval, or making such determination, the feasibility of foregoing the requirement or providing a United States substitute shall be considered.

(c) Notwithstanding paragraph (b) of this section, approvals and determinations may be made by the contracting officer covering individual procurements of spare and replacement parts for foreign manufactured items, if the procurement must be restricted to the original manufacturer or his supplier in accordance with FPR 1–3.313.

(d) Notwithstanding paragraph (b) of this section, approval is not required for:

(1) 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.

(2) Procurement of swords and scabbards.

(3) 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.

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

(e) The following is a format for the determination and findings of nonavailability:

DEPARTMENT OF TRANSPORTATION — DETERMINATION AND FINDINGS OF NONAVAILABILITY UNDER THE BUY AMERICAN ACT REGARDING PURCHASE OF (ITEM DESCRIPTION)

FINDINGS

(Set forth the information required by DOTPR 12-6.103-2(a)).

DETERMINATION

Upon the basis of these findings, I hereby determine that the above supplies are not mined, produced, or manufactured at the present time in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; and that the provisions of the Buy American Act (41 U.S.C. 10 a-d) are inapplicable.

(Contracting Officer)

(Date)

(Add appropriate approval when required by Administration procedures.)

§ 12-6.104 Procedures.

§ 12-6.104-4 Evaluation of bids and proposals.

When a proposed award is required to be submitted to the head of the agency for decision pursuant to FPR 1-6.104-4 (b) or FPR 1-6.104-4 (c)(1) or (c)(2), the submission shall include a copy of each bid or offer being considered for award, the date the bids or offers expire, a copy of the abstract of bids or offers, and a statement justifying the proposed award.

§ 12-6.105 Excepted articles, materials, and supplies.

Pursuant to the Buy American Act, the Government has 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 or construction material. 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 by the Administration pursuant to DOTPR 12-6.103-2(b).

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, agave, coir, flax, 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.
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: Angelique, 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:

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

(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 semisolid 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.

[1] Petroleum definitions, as used in this subpart.

Subpart 12-6.8—Balance of Payments Program

§ 12-6.801 General.

§ 12-6.801-50 Use of excess and near-excess foreign currencies.

Where practicable, contracts and other obligations incurred in excess and near-excess currency countries should provide for payment in foreign currencies rather than U.S. dollars notwithstanding the appropriation or fund that will be used for payment. This should include contracts with U.S. contractors to the extent that the contractor may be expected to require such currencies for necessary expenses in the country involved.

§ 12-6.806 Procedures.

§ 12-6.806-2 Method of purchase.

In lieu of the authority cited in FPR 1-6.806-2, the following is applicable to Coast Guard procurement: Contracts en-

tered into pursuant to conventional negotiation shall cite exceptions (2) through (17) of 10 U.S.C. 2304(a), as appropriate. Where such negotiation authority is not applicable or where contracts are entered into pursuant to the Balance of Payments Restricted Advertising method of procurement, 10 U.S.C. 2304(a)(1) shall be cited as negotiation authority.

Subpart 12–6.10—Omission of the Examination of Records Clause From Contracts With Foreign Contractors

§ 12–6.1004 Determinations and findings.

A determination and finding made by the Coast Guard shall cite 10 U.S.C. 2313(c) as authority for omission of the Examination of Records clause. Determinations and findings made by other Administrations shall cite 41 U.S.C. 254(c).

Subpart 12–6.50—Purchases From Certain Communist Areas

§ 12–6.5001 Restrictions.

Supplies originating from the following countries shall not be acquired for public use except as authorized by the Secretary of the Treasury or his designee:

(a) From China (except Formosa), North Korea, and North Vietnam, the items set forth in § 500.204 of Part 500 of Title 31 of the Code of Federal Regulations.

(b) From Cuba, any merchandise that is of Cuban origin, or is or has been located in or transported from or through Cuba, or is made or derived in whole or in part of any article which is the growth, produce, or manufacture of Cuba (§ 515.204 of Part 515 of Title 31 of the Code of Federal Regulations).

§ 12–6.5002 Contract provision.

(a) Instructions: The following clause shall be included in all contracts for supplies, services, or construction, where acceptance is to take place outside the United States, its possessions, or Puerto Rico. The clause need not be included in purchase orders for small purchases where there is reasonable assurance of compliance with § 12–6.5001.

(b) Clause:

PROCUREMENT FROM CERTAIN COMMUNIST AREAS

Unless he first obtains the written approval of the Contracting Officer, the Contractor shall not acquire for use in the performance of this contract any supplies, however processed, which are or were located in or transported from or through China (excluding Formosa), North Korea, North Vietnam, or Cuba, or any services originating from sources within such countries. The Contractor agrees to insert the substance of this clause in all subcontracts hereunder.

§ 12–6.5003 Exceptions.

Requests for exceptions to this subpart shall be forwarded through Administration channels to the Director of Installations and Logistics, TAD–60.

PART 12–7—CONTRACT CLAUSES

Sec.
12–7.000 Scope of part.

Subpart 12–7.1—Clauses for Fixed-Price Supply Contracts

12–7.100 Scope of subpart.
12–7.101 Clauses.
12–7.101–33 Progress payments.
12–7.150 Required clauses.
12–7.150–1 Gratuities.
12–7.150–2 New materials.
12–7.150–3 Priorities, allocations, and allotments.
12–7.150–4 Interpretation or modification.
12–7.150–5 Notice of readiness for inspection.
12–7.150–6 Definition of delivery terms.
12–7.150–7 Evidence of delivery.
12–7.150–8 Withholding payment for nondelivery of data.
12–7.150–9 Notice of delays.
12–7.150–10 Termination for convenience of the Government.
12–7.150–11 Dissemination of contract information.
12–7.150–12 Authorization and consent.
12–7.151 Clauses to be used when applicable.
12–7.151–1 Patent Indemnity.
12–7.151–2 Government-furnished property.
12–7.151–3 Military security requirements.
12–7.151–4 Price redetermination (prospective).
12–7.151–5 Price redetermination (retroactive).
12–7.151–6 Required sources for jewel bearings.
12–7.151–7 Required source for aluminum ingot.
12–7.151–8 Stop work order.
12–7.151–9 Extent of quantity variation.
12–7.151–10 Value engineering.
12–7.151–11 Multiyear procurement.
12–7.151–12 Renegotiation.
12–7.151–13 Filing of patent applications.
12–7.151–14 Reporting and refund of royalties.
12–7.151–15 Rights in data.
12–7.151–16 Lease of aircraft.
12–7.151–17 Options.
12–7.151–18 Procurement from certain Communist areas.
12–7.151–19 Background patents (license).
12–7.151–20 Mortuary services.

Subpart 12–7.6—Clauses for Fixed-Price Construction Contracts

12–7.600 Scope.
12–7.601 Required clauses.
12–7.601–50 Gratuities (use with SF–19 or SF–23A).
12–7.601–51 Protection of existing vegetation, structures, utilities, and improvements (use with SF–19 or SF–23A).
12–7.601–52 Operations and storage areas (use with SF–23A).
12–7.601–53 Modification proposals—price breakdown (use with SF–23A).
12–7.601–54 Work schedule (use with SF–19).
12–7.601–55 Cleaning up (use with SF–23A).
12–7.601–56 Additional definitions (use with SF–23A).
12–7.601–57 Safety requirements (use with SF–23A).
12–7.601–58 Contracting officer's representative (use with SF–19 or SF–23A).
12–7.601–59 Contract time—notice to proceed (use with SF–23A).
12–7.601–60 Rights in shop drawings (use with SF–23A).
12–7.601–61 Notice of delays (use with SF–19 or SF–23A).
12–7.601–62 Priorities, allocations, and allotments (use with SF–23A).
12–7.601–63 Dissemination of contract information (use with SF–23A).
12–7.601–64 Guarantee (use with SF–19 or SF–23A).
12–7.601–65 General conduct of work (use with SF–19).
12–7.601–66 Contractor inspection system (use with SF–23A).
12–7.601–67 Information regarding Buy American Act (use with SF–23A).
12–7.601–68 Use and possession prior to completion (use with SF–19 or SF–23A).
12–7.601–69 Subcontract data (use with SF–19 or SF–23A).
12–7.650 Clauses to be used when applicable.
12–7.650–1 Small business subcontracting program.
12–7.650–2 Notice and assistance regarding patent and copyright infringement.
12–7.650–3 Authorization and consent.
12–7.650–4 Aluminum.
12–7.650–5 Military security requirements.
12–7.650–6 Performance of work by contractor.
12–7.650–7 Government-furnished property.
12–7.650–8 Shop drawings.
12–7.650–9 Physical data.
12–7.650–10 Disputes concerning labor standards.
12–7.650–11 Variations in estimated quantities contracts.
12–7.650–12 Availability and use of utility services.
12–7.650–13 Misplaced material.
12–7.650–14 Signal lights.
12–7.650–15 Time extensions for delays to elements of the work.
12–7.650–16 Progress charts and requirements for overtime work.
12–7.650–17 Special precautions for work at operating airports.
12–7.650–18 Quantity surveys.
12–7.650–19 Layout of work.
12–7.650–20 Value engineering incentive.

Subpart 12–7.50—Clauses for Cost-Reimbursement Type Supply Contracts

12–7.5000 Scope.
12–7.5001 Required clauses.
12–7.5001–1 Definitions.
12–7.5001–2 Changes.
12–7.5001–3 Limitation of cost or funds.
12–7.5001–4 Allowable cost, fee, and payment.
12–7.5001–5 Inspection of supplies and correction of defects.
12–7.5001–6 Assignment of claims.
12–7.5001–7 Examination of records by Comptroller General.
12–7.5001–8 Subcontracts.
12–7.5001–9 Utilization of small business concerns.
12–7.5001–10 Termination.
12–7.5001–11 Excusable delays.
12–7.5001–12 Disputes.
12–7.5001–13 Convict labor.
12–7.5001–14 Contract Work Hours Standards Act—overtime compensation.
12–7.5001–15 Walsh-Healey Public Contracts Act.
12–7.5001–16 Equal opportunity.
12–7.5001–17 Officials not to benefit.
12–7.5001–18 Covenant against contingent fees.

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12–7.5001–19 [Reserved].
12–7.5001–20 Insurance—liability to third persons.
12–7.5001–21 Authorization and consent.
12–7.5001–22 Notice and assistance regarding patent and copyright infringement.
12–7.5001–23 Utilization of concerns in labor surplus areas.
12–7.5001–24 Payment for overtime premiums.
12–7.5001–25 Dissemination of contract information.
12–7.5001–26 Notice of delays.
12–7.5001–27 [Reserved].
12–7.5001–28 Gratuities.
12–7.5001–29 Priorities, allocations, and allotments.
12–7.5001–30 New material.
12–7.5001–31 Interpretation or modification.
12–7.5002 Clauses to be used when applicable.
12–7.5002–1 Buy American Act.
12–7.5002–2 Renegotiation.
12–7.5002–3 Military security requirements.
12–7.5002–4 Negotiated overhead rates.
12–7.5002–5 Changes to make-or-buy program.
12–7.5002–6 Required source for jewel bearings.
12–7.5002–7 Value engineering.
12–7.5002–8 Multiyear procurement.
12–7.5002–9 Patent indemnity.
12–7.5002–10 Aluminum.
12–7.5002–11 Stop work orders.
12–7.5002–12 Competition in subcontracting.
12–7.5002–13 Audit and records.
12–7.5002–14 Price reduction for defective cost or pricing data.
12–7.5002–15 Subcontractor cost and pricing data.
12–7.5002–16 Government property.
12–7.5002–17 Filing of patent applications.
12–7.5002–18 Patents rights.
12–7.5002–19 Rights in data.
12–7.5002–20 Background patents (license).
12–7.5002–21 Reporting and refund of royalties.

Subpart 12–7.51—Clauses for Fixed-Price Research and Development Contracts

12–7.5100 Scope.
12–7.5101 Required clauses.
12–7.5101–1 Definitions.
12–7.5101–2 Changes.
12–7.5101–3 Payments.
12–7.5101–4 Standards of work.
12–7.5101–5 Inspection.
12–7.5101–6 Assignment of claims.
12–7.5101–7 Examination of records by Comptroller General.
12–7.5101–8 Federal, State, and local taxes.
12–7.5101–9 Utilization of small business concerns.
12–7.5101–10 Default.
12–7.5101–11 Termination for convenience of the Government.
12–7.5101–12 Disputes.
12–7.5101–13 Convict labor.
12–7.5101–14 Walsh-Healey Public Contracts Act.
12–7.5101–15 Contract Work Hours Standards Act—overtime compensation.
12–7.5101–16 Equal opportunity.
12–7.5101–17 Officials not to benefit.
12–7.5101–18 Covenant against contingent fees.
12–7.5101–19 Gratuities.
12–7.5101–20 Authorization and consent.
12–7.5101–21 Notice and assistance regarding patent and copyright infringement.
12–7.5101–22 Withholding payment for nondelivery of data.
12–7.5101–23 Utilization of concerns in labor surplus areas.
12–7.5101–24 Dissemination of contract information.
12–7.5101–25 Priorities, allocations, and allotments.
12–7.5101–26 Notice of delays.
12–7.5101–27 New material.
12–7.5101–28 Interpretation or modification.
12–7.5101–29 Patent rights.
12–7.5101–30 Rights in data.
12–7.5102 Clauses to be used when applicable.
12–7.5102–1 Buy American Act.
12–7.5102–2 Government-furnished property.
12–7.5102–3 Price reduction for defective cost or pricing data.
12–7.5102–4 Required source for jewel bearings.
12–7.5102–5 Competition in subcontracting.
12–7.5102–6 Audit and records.
12–7.5102–7 Subcontractor cost and pricing data.
12–7.5102–8 Value engineering.
12–7.5102–9 Aluminum.
12–7.5102–10 Military security requirements.
12–7.5102–11 Stop work orders.
12–7.5102–12 Renegotiation.
12–7.5102–13 Background patents (license).
12–7.5102–14 Filing of patent applications.
12–7.5102–15 Reporting and refund of of royalties.
12–7.5102–16 Recovery of developmental costs.
12–7.5102–17 Progress payments.

Subpart 12–7.52—Clauses for Cost-Reimbursement Type Research and Development Contracts

12–7.5200 Scope.
12–7.5201 Required clauses.
12–7.5201–1 Definitions.
12–7.5201–2 Changes.
12–7.5201–3 Limitation of cost or funds.
12–7.5201–4 Allowable cost, fee, and payment.
12–7.5201–5 Patent rights.
12–7.5201–6 Inspection and correction of defects.
12–7.5201–7 Assignment of claims.
12–7.5201–8 Examination of records by Comptroller General.
12–7.5201–9 Subcontracts.
12–7.5201–10 Utilization of small business concerns.
12–7.5201–11 Termination.
12–7.5201–12 Disputes.
12–7.5201–13 Convict labor.
12–7.5201–14 Walsh-Healey Public Contracts Act.
12–7.5201–15 Contract Work Hours Standards Act—overtime compensation.
12–7.5201–16 Equal opportunity.
12–7.5201–17 Officials not to benefit.
12–7.5201–18 Covenant against contingent fees.
12–7.5201–19 Authorization and consent.
12–7.5201–20 Notice and assistance regarding patent infringement.
12–7.5201–21 Rights in data.
12–7.5201–22 Insurance—liability to third persons.
12–7.5201–23 Utilization of concerns in labor surplus areas.
12–7.5201–24 Payment for overtime premiums.
12–7.5201–25 Dissemination of contract information.
12–7.5201–26 Notice of delays.
12–7.5201–27 Gratuities.
12–7.5201–28 Priorities, allocation, and allotments.
12–7.5201–29 New material.
12–7.5201–30 Interpretation or modification.
12–7.5202 Clauses to be used when applicable.
12–7.5202–1 Buy American Act.
12–7.5202–2 Military security requirements.
12–7.5202–3 Negotiated overhead rates.
12–7.5202–4 Changes to make-or-buy program.
12–7.5202–5 Required source for jewel bearings.
12–7.5202–6 Value engineering.
12–7.5202–7 Recovery of developmental costs.
12–7.5202–8 Renegotiation.
12–7.5202–9 Aluminum.
12–7.5202–10 Stop work orders.
12–7.5202–11 Competition in subcontracting.
12–7.5202–12 Audit and records.
12–7.5202–13 Price reduction for defective cost or pricing data.
12–7.5202–14 Subcontractor cost and pricing data.
12–7.5202–15 Government property.
12–7.5202–16 Excusable delays.
12–7.5202–17 General Services Administration supply sources.
12–7.5202–18 Filing of patent applications.
12–7.5202–19 Background patents (license).
12–7.5202–20 Reporting and refund royalties.

Subpart 12–7.53 [Reserved]

Subpart 12–7.54—Clauses for Architect-Engineer Contracts

12–7.5400 Scope.
12–7.5400–1 Amendment of Standard Form 253.
12–7.5401 Required clauses.
12–7.5401–1 Composition of contractor.
12–7.5401–2 Interpretation or modification.
12–7.5401–3 Dissemination of contract information.
12–7.5401–4 Inspection.
12–7.5401–5 Notice of delays.
12–7.5401–6 Certification of drawings and other documents.
12–7.5401–7 Gratuities.
12–7.5402 Clauses to be used when applicable.
12–7.5402–1 Military security requirements.
12–7.5402–2 Audit and records.
12–7.5402–3 Price reduction for defective cost of pricing data.
12–7.5402–4 Subcontractor cost or pricing data.
12–7.5402–5 Architectural designs and data—Government rights (sole property).
12–7.5402–6 Renegotiation.
12–7.5403 Additional clauses.
12–7.5403–1 Method of payment.
12–7.5403–2 Preparation of specifications.
12–7.5403–3 Construction cost limitations.
12–7.5403–4 Building codes.

Subpart 12–7.55 [Reserved]

Subpart 12–7.56—Clauses for Fixed-Price Vessel Repair, Alteration or Conversion Contracts

12–7.5600 Scope of subpart.
12–7.5601 Required clauses.
12–7.5601–1 Delivery and shifting of vessel.
12–7.5602–2 Performance.
12–7.5601–3 Inspection and manner of doing work.
12–7.5601–4 Subcontracts.
12–7.5601–5 Lay days.
12–7.5601–6 Changes.
12–7.5601–7 Extras.
12–7.5601–8 Payments.
12–7.5601–9 Government-furnished property.
12–7.5601–10 Liability and insurance.
12–7.5601–11 Title.
12–7.5601–12 Discharge of liens.

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12-7.5601-13 Federal, State, and local taxes.
12-7.5601-14 Default.
12-7.5601-15 Delays.
12-7.5601-16 Termination for convenience of the Government.
12-7.5601-17 Disputes.
12-7.5601-18 Patent indemnity.
12-7.5601-19 Authorization and consent.
12-7.5601-20 Notice and assistance regarding patent and copyright infringement.
12-7.5601-21 Buy American Act.
12-7.5601-22 Convict labor.
12-7.5601-23 Contract Work Hours and Safety Standards Act—overtime compensation.
12-7.5601-24 Walsh-Healey Public Contracts Act.
12-7.5601-25 Department of Labor Safety and Health Regulations for Ship Repairing.
12-7.5601-26 Equal opportunity.
12-7.5601-27 Officials not to benefit.
12-7.5601-28 Covenant against contingent fees.
12-7.5601-29 Additional bond security.
12-7.5601-30 Interpretation or modification.
12-7.5601-31 Notice of delays.
12-7.5601-32 Gratuities.
12-7.5601-33 Examination of records by Comptroller General.
12-7.5601-34 Utilization of small business concerns.
12-7.5601-35 Utilization of labor surplus area concerns.
12-7.5601-36 Assignment of claims.
12-7.5601-37 Definitions.
12-7.5602 Clauses to be used when applicable.
12-7.5602-1 Price reduction for defective cost or pricing data.
12-7.5602-2 Audit and records.
12-7.5602-3 Subcontractor cost and pricing data.
12-7.5602-4 Military security requirements.
12-7.5602-5 Guaranty.
12-7.5602-6 Priorities, allocations, and allotments.

12-7 issued under sec. 205(c), 63 Stat. 389;

AUTHORITY: The provisions of this Part 12-7 issued under sec. 205(c), 63 Stat. 389; 40 U.S.C. 486(c), 10 U.S.C. 2301-2314.

§ 12-7.000 Scope of part.

This part sets forth contract clauses for use in connection with the procurement of supplies and services.

Subpart 12-7.1—Clauses for Fixed-Price Supply Contracts

§ 12-7.100 Scope of subpart.

This subpart sets forth uniform contract clauses for use in fixed-price supply contracts in addition to those prescribed in FPR Subpart 1-7.1.

§ 12-7.101 Clauses.

See FPR 1-7.101.

§ 12-7.101-33 Progress payments.

When the progress payments clause in FPR 1-30.510-1 is to be included in the contract, the clause may be modified in accordance with the instructions set forth in DOTPR 12-30.502.

§ 12-7.150 Required clauses.

The following clauses shall be inserted in all fixed-price supply contracts exceeding $2,500, except where they are clearly inappropriate for use (e.g., contracts for subsistence supplies). Additional clauses may be used which are considered by each Administration to be essential to its operations.

§ 12-7.150-1 Gratuities.

GRATUITIES

(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the agency head or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract: *Provided*, That the existence of the facts upon which the agency head or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this contract is terminated as provided in paragraph (a), hereof, the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the agency head or his duly authorized representative) which shall be not less than three or more than ten times the cost incurred by the Contractor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

§ 12-7.150-2 New materials.

NEW MATERIALS

Except as to any supplies or components which the contract specifically provides need not be new, all supplies and components to be provided under this contract shall be new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety), of current production, and of the most suitable grade for the purpose intended. If at any time during the performance of this contract the Contractor believes that the furnishing of supplies or components which are not new is necessary or desirable, he shall notify the Contracting Officer immediately, in writing, including the reasons therefor and proposing any consideration which will flow to the Government if authorization to use such supplies is granted.

§ 12-7.150-3 Priorities, allocations, and allotments.

PRIORITIES, ALLOCATIONS, AND ALLOTMENTS

The Contractor shall follow the provisions of DMS Reg. 1 and all other applicable regulations and orders of the Business and Defense Services Administration in obtaining controlled materials and other products and materials required for the performance of this contract.

§ 12-7.150-4 Interpretation or modification.

INTERPRETATION OR MODIFICATION

No oral statement of any person, and no written statement of anyone other than the Contracting Officer, or his authorized representative designated in accordance with § 12-1.402-50 of the DOT Procurement Regulations (41 CFR 12-1.402-50), acting within the limits of his authority specified in such designation, shall modify or otherwise affect any provision of the contract.

§ 12-7.150-5 Notice of readiness for inspection.

NOTICE OF READINESS FOR INSPECTION

(a) If the contract provides for inspection at the Contractor's plant, the Contractor shall give the Contracting Officer at least 5 days' (unless a longer period is specified in the Schedule) written or telegraphic notice of readiness for inspection in cases where no security clearance is required for the Government Inspector. In cases where security clearance is required for the Government Inspector to obtain access to the Contractor's plant, the Contractor shall so advise the Contracting Officer and give at least 8 days' notice of readiness for inspection.

(b) In those cases where a Government Inspector is assigned to the plant for the purpose of conducting continuous inspections of production on the contract, and he is otherwise kept informed of the progress of production, the written notices specified in (a) above need not be given.

§ 12-7.150-6 Definition of delivery terms.

DEFINITION OF DELIVERY TERMS

The meaning of delivery terms used in this contract such as "f.o.b. origin", "f.o.b. destination", "f.a.s. vessel, port of shipment", and other delivery terms shall be as those terms are defined in subpart 1-19.3 of the Federal Procurement Regulations (41 CFR 1-19.3).

§ 12-7.150-7 Evidence of delivery.

EVIDENCE OF DELIVERY

When the contract delivery point is "f.o.b. origin", evidence of delivery shall be submitted with invoices. In the case of freight or express shipment, this evidence shall be in the form of memorandum copies of Bills of Lading duly receipted by the carrier. In the case of parcel post shipments this evidence shall be by Post Office Certificate of Mailing, Form 3817. If the invoice submitted for payment is not accompanied by evidence of delivery, discounts for prompt payment will be computed from date of receipt of such evidence of delivery. When the contract delivery point is other than "f.o.b. origin", evidence of delivery will be obtained from the consignee.

§ 12-7.150-8 Withholding payment for nondelivery of data.

(a) General: When the contract requires data to be furnished, its timely delivery is important. The clause set forth in paragraph (b) of this section is designed to insure timely delivery of complete and current data. The clause provides for a withholding of a certain percentage of the contract price, but the contracting officer may specify a lesser amount in the schedule if circumstances warrant.

(b) Clause:

WITHHOLDING PAYMENT FOR NONDELIVERY OF DATA

(a) If technical data such as plans, drawings, reports, spare parts lists, repair parts lists, or the like, or instruction books (including manuscript or printer's copy), or any part thereof, are not delivered within the time specified by this contract or are deficient upon delivery, the Contracting Officer

shall, at his discretion, withhold from each invoice a percentage of the contract price in accordance with the following table:

When total contract price is:	*Percentage to be withheld is—*
Less than $250,000	10
$250,000 to $1,000,000	5
Over $1,000,000	2

(b) The withholding of any sums pursuant to this clause shall not be construed as, or constitute in any manner, a waiver by the Government of the Contractor's obligation to furnish the data required under this contract. In the event the Contractor fails to furnish these items, the Government shall have those rights and remedies provided by law and pursuant to this contract in addition to, and not in lieu of, the sums withheld in accordance with this clause.

§ 12–7.150–9 Notice of delays.

NOTICE OF DELAYS

(a) Whenever the Contractor encounters any difficulty which is delaying or threatens to delay the timely performance of this contract (including actual or potential labor disputes), the Contractor shall immediately give notice thereof in writing to the Contracting Officer, stating all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the Government of any rights or remedies to which it is entitled by law or pursuant to provisions of this contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay, the subcontractor shall immediately notify his next higher tier subcontractor, or the prime contractor, as the case may be, of all relevant information with respect thereto.

§ 12–7.150–10 Termination for convenience of the Government.

The short-form termination for convenience clause set forth in FPR 1–8.705–1 shall be inserted in contracts not exceeding $100,000. The long-form termination for convenience clause set forth in FPR 1–8.701 shall be inserted in contracts exceeding $100,000.

§ 12–7.150–11 Dissemination of contract information.

DISSEMINATION OF CONTRACT INFORMATION

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to performance of this contract, without the prior written consent of the Contracting Officer. (Two copies of any material proposed to be published or distributed shall be submitted to the Contracting Officer.)

§ 12–7.150–12 Authorization and consent.

Insert the clause set forth in DOTPR 12–9.6106–1.

§ 12–7.151 Clauses to be used when applicable.

The following clauses shall be included in the contract when their use is appropriate.

§ 12–7.151–1 Patent indemnity.

In accordance with DOTPR 12–9.6107, insert the clause or clauses set forth therein.

§ 12–7.151–2 Government-furnished property.

(a) Except as provided in paragraphs (b) and (c) of this section, insert the following clause in the contract when property will be furnished by the Government in the performance of this contract:

GOVERNMENT-FURNISHED PROPERTY

(a) *Property administration.* The Contractor shall establish and administer a system to control, protect, preserve and maintain Government property in his possession or under his control or that of his subcontractors. Such a system must be satisfactory to the Contracting Officer, and in accordance with this clause and any other requirements of the contract.

(b) *Government-furnished property.* (1) 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").

(2) 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 time stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates.

(3) If the Schedule does not state a date when Government-furnished property will be delivered, the Contractor shall notify the Contracting Officer in writing of the date by which he requires such property to meet the contract delivery or performance dates. The Contractor shall allow a minimum of 30 days for delivery of Government-furnished property, unless a different time is specified in the Schedule. If not received 5 days before the date it is required by the Contractor, the Contracting Officer shall be so notified.

(4) If Government-furnished property is specified in the Schedule, or by the date specified by the Contractor pursuant to (3) above, the Contracting Officer shall, upon timely request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor 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 of the "Changes" clause of this contract.

(5) In the event that Government-furnished property is received by the Contractor in a condition not suitable for intended use (except for such property furnished "as is" or otherwise specified), 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 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 return or disposition, or the repair or modification, in accordance with the procedures of the "Changes" clause of this contract.

(6) 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.

(c) *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 on his own initiative (if the substitution of property causes a decrease in the cost of performance), shall equitably adjust such contractual provisions as may be affected by the decrease substitution, or withdrawal, in accordance with the procedure provided for in the "Changes" clause of this contract.

(d) *Title to property.* Title to all property furnished by the Government shall remain in the Government. 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.

(e) *Use of Government-furnished property.* The Government-furnished property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) *Maintenance and repair of Government property.* The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the maintenance, repair, protection, and preservation of Government property, while in custody of the Contractor. 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. Where replacement parts are provided at the expense of the Government, the parts which are displaced remain the property of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at his own expense.

(g) *Risk of loss.* Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or damage to Government property provided under this contract upon its delivery to him or any of his subcontractors or upon passage of title thereto to the Government as provided in paragraph (d) hereof, except for reasonable wear and tear and except to the extent that such property is justifiably consumed in the performance of this contract. The Contractor shall not be liable for loss or destruction of a damage to Government property if such loss, destruction or damage is due to causes beyond the control and without the fault or negligence of the Contractor or any of his subcontractors.

(h) *Access.* The Government, and any persons designated by it, shall at all reasonable times have excess of the premises wherein any Government property is located, for the purpose of inspecting the Government property, or inventorying the same, or removing any part or all of the same, or for determining compliance with terms of the contract.

(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 justifiably 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 (unless otherwise provided in the contract) 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) *Notification.* The Contractor shall notify the Contracting Officer as soon as Government-furnished property is no longer required for performance of the contract. All shipments of Government-furnished property not delivered as an end item of the contract shall be effected only upon receipt of shipping instructions signed by the Contracting Officer or his duly authorized representative.

(k) *Restoration of Contractor's premises.* 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; (2) shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of, the Contractor's plant or any portion thereof which is affected by the abandonment or removal of any Government property; (3) shall be indemnified against all suits or claims arising out of the Government's failure to restore or rehabilitate the Contractor's property or the property of subcontractors, except for such damage as may be occasioned by the negligence of the Government, its agents, its employees, or independent contractors.

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

NOTE: If this contract is with other than a United States firm or individual, the terms "Government" or "Government-furnished", wherever they appear in the text, are defined as meaning "United States Government."

(b) In negotiated fixed price contracts, when the contracting officer determines it inappropriate to place liability on the contractor for loss, destruction, or damage to Government-furnished property (e.g., where the cost of insurance against the potential liability is so high as to be unjustified when the value of the property is compared to the contract price), paragraph (g) of the clause shall be deleted and the paragraph (g) set forth in ASPR 7-104.24(c) substituted therefor.

(c) When the contractor is to procure or provide property for the performance of the contract, title to which will vest in the Government, and the cost of which is to be reimbursable, insert the clause set forth in DOTPR 12-7.5002-16 entitled "Government Property", in lieu of the clause set forth in paragraph (a) of this section.

§ 12-7.151-3 Military security requirements.

Insert the Military Security Requirements clause in ASPR 7-104.12 in the contract in accordance with the instructions for its use in DOTPR 12-1.351.

§ 12-7.151-4 Price redetermination (prospective).

When it is determined, in accordance with FPR 1-3.404-5, to use a fixed-price contract providing for prospective redetermination of price, insert the clause set forth in ASPR 7-109.2.

§ 12-7.151-5 Price redetermination (retroactive).

When it is determined, in accordance with FPR 1-3.404-7, to use a fixed-price contract providing for retroactive redetermination of price, insert the clause set forth in ASPR 7-109.3.

§ 12-7.151-6 Required sources for jewel bearings.

In accordance with FPR 1-1.319, insert the clause contained therein.

§ 12-7.151-7 Required source for aluminum ingot.

In accordance with FPR 1-5.1001-1, insert the clause set forth in FPR 1-5.1001-2.

§ 12-7.151-8 Stop work order.

The following clause may be included in negotiated contracts when the contracting officer determines its use appropriate. Examples might include contracts under which work stoppage may be required for reasons such as advancements in the state of the art, production or engineering breakthroughs, or realinement of programs. In no event shall the clause be used routinely.

STOP WORK ORDER

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of no longer than ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Prior to the expiration of the period of the stop work order, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

(1) Cancel the stop work order, or

(2) Terminate the work covered by such order as provided in the "Termination for Convenience" clause of this contract.

(b) If a stop work order issued under this clause is canceled, or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if—

(1) The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract, and

(2) The Contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage: *Provided,* That without prejudicing the right to reject any claim asserted after this time, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this contract.

(c) Failure to agree to any adjustment under paragraph (b) of this clause shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(d) If a stop work order is not canceled and the work covered by such order is terminated for the convenience of the Government, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

§ 12-7.151-9 Extent of quantity variation.

The following clause is prescribed for use in accordance with DOTPR 12-1.352.

EXTENT OF QUANTITY VARIATION

The permissible variation under the clause of the General Provisions entitled "Variation in Quantity" shall be limited to:

Increase (insert: _____ percent or none).
Decrease (insert: _____ percent or none).

This increase or decrease shall apply to _____.

(Insert in the blank the designation(s) to which the percentages apply, such as (1) the total contract quantity; (2) item 1 only; (3) each quantity specified in the delivery schedule of the "time or Delivery" clause; (4) the total item quantity for each destination; (5) the total quantity of each item without regard to destination.)

§ 12-7.151-10 Value engineering.

A value engineering incentive clause shall be included in the contract in accordance with the instructions for its use in DOTPR 12-1.5202-2.

§ 12-7.151-11 Multiyear procurement.

The clauses set forth in DOTPR Subpart 12-1.55 shall be included in all contracts under the multiyear procurement method in accordance with the instructions contained therein.

§ 12-7.151-12 Renegotiation.

Except where it has been determined that the contract is exempt from the Renegotiation Act of 1951, as amended, insert the following clause in contracts awarded by the Federal Aviation Administration:

RENEGOTIATION

(a) To the extent required by law, this contract is subject to the Renegotiation Act

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

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

§ 12–7.151–13 Filing of patent applications.

In accordance with DOTPR 12–9.6109, insert the clause set forth therein.

§ 12–7.151–14 Reporting and refund of royalties.

In accordance with DOTPR 12–9.6111 and 12–9.6112, insert the clause or clauses set forth therein.

§ 12–7.151–15 Rights in data.

In accordance with DOTPR 12–9.6301–1, insert the clause set forth in DOTPR 12–9.6302 or 12–9.6303.

§ 12–7.151–16 Lease of aircraft.

In accordance with DOTPR 12–10.450, insert the clause or clauses set forth therein.

§ 12–7.151–17 Options.

In accordance with DOTPR 12–1.5003, insert a clause reading substantially as set forth in DOTPR 12–1.5005.

§ 12–7.151–18 Procurement from certain Communist areas.

Insert the clause set forth in DOTPR 12–6.5002 under the conditions described therein.

§ 12–7.151–19 Background patents (license).

Insert the clause set forth in DOTPR 12–9.6105–1 if required by the instructions for its use in DOTPR 12–9.6105.

§ 12–7.151–20 Mortuary services.

Contracts for mortuary services shall contain the appropriate clauses contained in DOTPR Subpart 12–50.4.

Subpart 12–7.6—Clauses for Fixed-Price Construction Contracts

§ 12–7.600 Scope.

(a) This subpart sets forth additional contract clauses for use in fixed-price construction contracts.

(b) This subpart does not apply to highway construction contracts of the Federal Highway Administration.

§ 12–7.601 Required clauses.

In addition to the clauses included in the standard forms referenced in FPR Subpart 1–16.4 and the clauses set forth or referenced in FPR Subpart 1–7.6, the following clauses shall be included in short form construction contracts (Standard Form 19) or long form construction contracts (Standard Form 23A), as indicated by the instructions for their use.

§ 12–7.601–50 Gratuities (use with SF–19 or SF–23A).

Insert the clause set forth in DOTPR 12–7.150–1.

§ 12–7.601–51 Protection of existing vegetation, structures, utilities, and improvements (use with SF–19 or SF–23A).

PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES, AND IMPROVEMENTS

(a) The Contractor will preserve and protect all existing vegetation (such as trees, shrubs, and grass) on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the construction work. Care will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment or by workmen, shall be trimmed with a clean cut and painted with an approved tree pruning compound, as directed by the Contracting Officer.

(b) All existing utilities, communications facilities, and other improvements, including but not limited to conduit, pipe, wiring, or cable (hereinafter referred to as "improvements"), whether above or below ground, shall be protected by the Contractor from damage or destruction. The Contractor shall ascertain from the drawings and specifications the location of any concealed improvements, at or near the site of the work. Any destruction of or damage to existing improvements, above or below ground, shall be promptly repaired, restored, or replaced at the direction of the Contracting Officer. The directions of the Contracting Officer may require complete replacement of conduits, pipes, wiring, cables, or similar improvements where original installation was made under a requirement for continuous, unspliced lengths. The Contracting Officer has the right to have the necessary corrective work performed by the Contractor at his expense, or by others and charge the cost thereof to the Contractor. If concealed improvements are encountered and they are not shown on the drawings or specifications, the provisions of the "Differing Site Conditions" clause of this contract shall apply.

§ 12–7.601–52 Operations and storage areas (use with SF–23A).

OPERATIONS AND STORAGE AREAS

(a) All operations of the Contractor (including storage of materials) upon Government premises shall be confined to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by his operations.

(b) Temporary buildings (storage sheds, shops, offices, etc.) may be erected by the Contractor only with the approval of the Contracting Officer, and shall be built with labor and materials furnished by the Contractor without expense to the Government. Such temporary buildings and utilities shall remain the property of the Contractor and shall be removed by him at his expense upon the completion of the work. With the written consent of the Contracting Officer, such buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways or construct and use such temporary roadways as may be authorized by the Contracting Officer. Where materials are transported in the prosecution of the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbing or sidewalks, protection against damage shall be provided by the Contractor and any damaged, roads, curbings, or sidewalks shall be repaired by, or at the expense of the Contractor.

§ 12–7.601–53 Modification proposals—price breakdown (use with SF–23A).

MODIFICATION PROPOSALS—PRICE BREAKDOWN

The Contractor, in connection with any proposal he makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefor shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer.

§ 12–7.601–54 Work schedule (use with SF–19).

WORK SCHEDULE

The Contractor shall, within 10 days from date of award of contract (unless a different time is specified in the contract), furnish to the Contracting Officer, in triplicate, a schedule showing the proposed dates on which the major phases of the work will be started and completed. Acceptance of the schedule by the Contracting Officer shall not excuse the Contractor for any delay in completing the work.

§ 12–7.601–55 Cleaning up (use with SF–23A).

CLEANING UP

The Contractor shall at all times keep the construction area, including storage areas used by him, free from accumulations of waste material or rubbish and prior to completion of the work remove from the premises any rubbish and all tools, scaffolding, equipment, and material not the property of the Government. Upon completion of the construction the Contractor shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to the Contracting Officer.

§ 12–7.601–56 Additional definitions (use with SF–23A).

ADDITIONAL DEFINITIONS

(a) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory" or words of like import shall mean "approved by" or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(b) Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood

to mean "provided complete in place", that is "furnished and installed".

§ 12–7.601–57 Safety requirements (use with SF–23A).

SAFETY REQUIREMENTS

(a) The Contractor shall provide safety controls for protection to the life and health of employees and other persons; for prevention of damage to property, materials, supplies, and equipment; and for avoidance of work interruptions in the performance of this contract; and the Contractor shall comply with any accident prevention or safety requirements included or referenced in this contract.

(b) The Contractor will maintain an accurate record of, and will report to the Contracting Officer in the manner and on the forms prescribed by the Contracting Officer, exposure data and all accidents resulting in death, traumatic injury, occupational disease, and damage to property, materials, supplies and equipment incident to work performed under this contract.

(c) The Contracting Officer will notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

(d) Compliance with the provisions of this clause by subcontractors will be the responsibility of the Contractor.

§ 12–7.601–58 Contracting officer's representative (use with SF–19 or SF–23A).

CONTRACTING OFFICER'S REPRESENTATIVE

The Contracting Officer may designate Government personnel to act as his authorized representatives for one or more contract administration functions not involving a change in the scope, price, terms, or conditions of the contract. Such designation will be in writing, set forth elsewhere in the contract or by separate letter signed by the Contracting Officer, and will contain specific instructions as to the extent to which the representative may take action for the Contracting Officer. Such designation will not contain authority to sign contractual documents, nor will it authorize the designee to order contract changes, modify contract terms, or create any liability on the part of the Government different from that set forth in the contract.

§ 12–7.601–59 Contract time—notice to proceed (use with SF–23A).

CONTRACT TIME—NOTICE TO PROCEED

(a) Provided the contract is not terminated pursuant to paragraph 4, Standard Form 22, "Instructions to Bidders", if, in the opinion of the Contracting Officer, the Contractor's delay in executing formal contract documents or furnishing performance or payment bonds causes a delay in the issuance of the notice to proceed, the time to complete the work as specified in the contract, may be reduced to reflect such delay.

(b) The Contractor shall perform no work under this contract until the required contract documents and bonds have been furnished. Thereafter, work at other than the contract site may be undertaken. The Contractor shall perform no work at the contract site except pursuant to a notice to proceed given by the Contracting Officer.

(c) Notice to proceed may be issued by the Government at its convenience. Any right of the Contractor to a price adjustment because of unreasonable delay on the part of the Government in issuing notice to proceed shall be determined in accordance with the clause titled "Suspension of Work".

§ 12–7.601–60 Rights in shop drawings (use with SF–23A).

RIGHTS IN SHOP DRAWINGS

(a) Shop drawings for construction means drawings submitted to the Government by the Construction Contractor, subcontractor or any lower tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

§ 12–7.601–61 Notice of delays (use with SF–19 or SF–23A).

Insert the clause set forth in DOTPR 12–7.150–9.

§ 12–7.601–62 Priorities, allocations, and allotments (use with SF–23A).

Insert the clause set forth in DOTPR 12–7.150–3.

§ 12–7.601–63 Dissemination of contract information (use with SF–23A).

Insert the clause set forth in DOTPR 12–7.150–11.

§ 12–7.601–64 Guarantee (use with SF–19 or SF–23A).

GUARANTEE

(a) Unless otherwise provided in the contract, the Contractor guarantees all work performed and materials and equipment delivered to be in accordance with contract requirements and free from defective or inferior materials, equipment and workmanship for 1 year from the date of final acceptance of the contract work by the Government. The guarantee provided for in this clause shall not extend to or apply to Government-furnished material or equipment except as to such work as may be performed thereon by the Contractor.

(b) Upon receipt of notice from the Contracting Officer that work, material, or equipment furnished under this contract has failed to meet the contract guarantee, the contractor shall promptly return to the site of the work and at his expense (1) place in saisfactory condition in every particular all such guaranteed work, correcting all defects therein, (2) restore to a satisfactory condition the building or site or any equipment or contents thereof which, in the opinion of the Contracting Officer, are affected or damaged as a result of the use of material, equipment or workmanship which are inferior, defective or not in accordance with the terms of the contract, and (3) restore to a satisfactory condition any work, materials and equipment disturbed in fulfilling the guarantee.

(c) In any case where in fulfilling the requirements of the contract or of any guarantee, embraced in or required thereby, the Contractor disturbs any work guaranteed under another contract, he shall restore such disturbed work to a condition satisfactory to the Contracting Officer and guarantees such restored work to the same extent as it was guaranteed under such other contract.

(d) Should the Contractor fail to proceed promptly to comply with the terms of a guarantee under this contract, the Contracting Officer may cause corrective action to be taken by others and the Contractor shall promptly reimburse the Government its cost incurred thereby, or in lieu of taking corrective action, the Contracting Officer may cause the Contractor to pay to the Government an amount of money commensurate with what the corrective action would cost.

§ 12–7.601–65 General conduct of work (use with SF–19).

GENERAL CONDUCT OF WORK

(a) The Contractor shall comply with any accident prevention or safety requirements included or referenced in this contract, and shall take any additional protective measures deemed necessary by the Contracting Officer.

(b) All operations of the Contractor (including storage of materials) shall be confined to areas authorized by the Contracting Officer. If the use of temporary buildings is authorized by the Contracting Officer, such buildings shall be removed by the Contractor at his expense upon completion of the work.

(c) The Contractor shall keep the construction area free from waste material or rubbish. Upon completion of the work, he shall remove his equipment, tools, and material, and leave the premises in a clean, neat, and orderly condition.

(d) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways or construct and use such temporary roadways as may be authorized by the Contracting Officer.

§ 12–7.601–66 Contractor inspection system (use with SF–23A).

CONTRACTOR INSPECTION SYSTEM

The Contractor shall (i) maintain an adequate inspection system and perform such inspections as will assure that the work performed under the contract conforms to contract requirements, and (ii) maintain and make available to the Government adequate records of such inspection.

§ 12–7.601–67 Information regarding Buy American Act (use with SF–23A).

INFORMATION REGARDING BUY AMERICAN ACT

(a) 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. (See the clause entitled "Buy American" in Standard Form 23A, General Provisions, Construction Contract.) This requirement does not apply to the following construction material or components:

Acetylene black.
Asbestos, amosite.
Bismuth.
Cadmium, ores and flue dust.
Chrome ore or chromite.
Cork, wood or bark and waste.
Graphite, natural.
Mica.
Rubber, crude and latex.
Wax, carnauba.
Woods of the following species: Angelique, balsa, ekki, greenheart, lignum vitae, mahogany and teak.

(b) (1) Furthermore, bids or proposals offering use of additional nondomestic construction material may be acceptable for award if the Government determines that use of comparable domestic construction material is impracticable or would unreason-

ably increase the cost or that domestic construction material (in sufficient and reasonably available commercial quantities and of a satisfactory quality) is unavailable. Reliable evidence shall be furnished justifying such use of additional nondomestic construction material.

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

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

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

(3) When offering additional nondomestic construction material, 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 (1), above, will cause rejection of the entire bid.

§ 12–7.601–68 Use and possession prior to completion (use with SF–19 or SF–23A).

USE AND POSSESSION PRIOR TO COMPLETION

The Government shall have the right to take possession of or use any completed or partially completed part of the work. Such possession or use shall not be deemed an acceptance of any work not completed in accordance with the contract. While the Government is in such possession, the Contractor, notwithstanding the provisions of the clause of this contract entitled "Permits and Responsibilities," shall be relieved of the responsibility for loss or damage to the work other than that resulting from the Contractor's fault or negligence. If such prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment in the contract price or the time of completion will be made and the contract shall be modified in writing accordingly.

§ 12–7.601–69 Subcontract data (use with SF–19 or SF–23A).

SUBCONTRACT DATA

Within 10 days after award, either by the Contractor or Subcontractor, of any subcontract for performance of work at the construction site, the Contractor shall deliver to the Contracting Officer an executed DOT Form F 4220.9, by which the Contractor states that the subcontract has been awarded and indicates the dollar range of the subcontract price, and by which the subcontractor acknowledges that the labor standards and equal opportunity clauses of this contract have been included in the subcontract and further acknowledges his responsibility for including such clauses in any lower tier subcontract awarded by him for work at the site under this contract. The Contracting Officer shall furnish copies of the form to the Contractor. Nothing contained in this contract shall create any contractual relation between a subcontractor and the Government.

§ 12–7.650 Clauses to be used when applicable.

§ 12–7.650–1 Small business subcontracting program.

Insert the clause set forth in FPR 1–1.710–3(b) in accordance with the instructions for its use.

§ 12–7.650–2 Notice and assistance regarding patent and copyright infringement.

In accordance with DOTPR 12–9.6108, insert the clause set forth in FPR 1–7.101–13.

§ 12–7.650–3 Authorization and consent.

Insert the clause set forth in DOTPR 12–9.6106–1 in accordance with the instructions for its use.

§ 12–7.650–4 Aluminum.

In accordance with FPR 1–5.1001–1, insert the clause set forth in FPR 1–5.1001–2, modified in accordance with FPR 1–5.1001–3.

§ 12–7.650–5 Military security requirements.

Insert the Military Security Requirements clause in ASPR 7–104.12 in accordance with the instructions for its use in DOTPR 12–1.351.

§ 12–7.650–6 Performance of work by contractor.

Insert the clause set forth in FPR 1–18.104 in accordance with the instructions for its use.

§ 12–7.650–7 Government-furnished property.

When property will be furnished by the Government, insert the following clause in the contract:

GOVERNMENT-FURNISHED PROPERTY

(a) *Title, use, and quantities.* Any property to be furnished by the Government (as listed elsewhere in this contract under the heading "Government-Furnished Property List" hereafter referred to as "GFPL") is for use only in connection with the performance of the work hereunder. Title to all such property shall remain vested in the Government. The property shall be furnished in the quantities shown, with the exception of items marked "as required" which will be furnished in whatever quantities are required to complete the work. All additional quantities of the items on this list and any other property required to complete the work will be furnished by the Contractor.

(b) *Point of delivery.* The Government shall deliver this property to the Contractor at the point(s) specified in the GFPL. The Contractor shall at no expense to the Government inspect, unload, load and make further delivery of the property at the jobsite. The Contractor shall be responsible for payment of any demurrage and storage charges accruing more than 5 days after his receipt of notice to proceed.

(c) *Time of delivery.* Any property to be furnished by the Government shall be delivered to the Contractor in sufficient time to enable him to perform the work without delay. The Contractor will be given advance notice of expected delivery dates if they are not already shown on the GFPL. If the property is not delivered to the Contractor by the fifth day subsequent to the expected delivery date, he shall notify the Contracting Officer within 3 days thereafter. The Contractor shall acknowledge receipt thereof in writing to the Contracting Officer and if there are shortages or defective property in any shipment, the contractor shall notify the Contracting Officer within 24 hours after delivery of shipment, or in case of concealed defects and shortages, within 3 days after they are discovered. In either event, the Contracting Officer will take appropriate action to rectify the matter. In the absence of information from the Contractor to the contrary within the periods specified above, the Government will consider that all property has been delivered to the Contractor on time and in good condition and he will be held responsible thereafter for any shortages and defective property that may later be discovered, or for any damages incurred through inadequate protection. No claim for adjustments in the time and price for performance of the contract pursuant to appropriate clauses of this contract ("Suspension of Work" and the "Termination For Default-Damages For Delay-Time Extensions" clause) shall be allowed for failure of the Government to furnish property unless the Contractor reports the delinquent deliveries within the periods specified above. Notifications to the Contracting Officer are in addition to the requirements under the above-cited clauses for making timely notifications to the Contracting Officer if time and price adjustments are desired.

(d) *Surplus.* In accordance with instructions furnished by the Contracting Officer, upon completion of the work, any unused property shall be prepared for shipment and be delivered by the Contractor to the nearest appropriate common carrier or Government storage point in the locality of the work.

§ 12–7.650–8 Shop drawings.

(a) Insert the following clause, with the appropriate addition in paragraph (b) of this section, in contracts requiring the submission of shop drawings for review prior to construction:

SHOP DRAWINGS

The Contractor shall submit to the Contracting Officer for approval _____ copies (four unless otherwise indicated herein) of all shop drawings as called for under the various headings of these specifications. These drawings shall be complete and detailed. If approved by the Contracting Officer, each copy of the drawings will be identified as having received such approval by being so stamped and dated. The Contractor shall make any corrections required by the Contracting Officer. If the Contractor considers any correction indicated on the drawings as constituting a change to the contract drawings or specifications, notice as required under the clause entitled "Changes will be given to the Contracting Officer. _____ sets (three unless otherwise indicated herein) of all shop drawings will be retained by the Contracting Officer and one set will be returned to the Contractor. The approval of the drawings by the Contracting Officer shall not be construed as a complete check, but will indicate only that the general method of construction and detailing is satisfactory. Approval of such drawings will not relieve the Contractor of the responsibility for any error which may exist as the Contractor shall be responsible for the dimensions and design of adequate connections, details, and satisfactory construction of all work.

(b) "As built" shop drawings may be required for the permanent record of the using activity. When reproducible drawings are required, the following provision shall be added to the clause in paragraph (a) of this section:

Upon the completion of the work under this contract, the Contractor shall furnish a complete set of reproducibles of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

If reproducible shop drawings are not required, the following provision shall be added to the clause in paragraph (a) of this section:

Upon the completion of the work under this contract, the Contractor shall furnish ------ complete sets of prints of all shop drawings as finally approved. These drawings shall show changes and revisions made up to the time the equipment is completed and accepted.

§ 12–7.650–9 Physical data.

(a) All the information concerning local conditions pertaining to the performance of the contract work, which has been made available to the contractor should be referenced into the contract by completing the clause set forth in paragraph (b) of this section. Wherever test borings, analyses, or hydrographic data are to be made available to the contractor, the wording of this special clause should be such as only to inform the contractor as to the source of the data and where it may be examined.

(b) Contract clause:

PHYSICAL DATE

Information and data furnished or referred to below are furnished for the Contractor's information. However, it is expressly understood that the Government will not be responsible for any interpretation or conclusion drawn therefrom by the Contractor.

(a) The physical conditions indicated on the drawings and in the specifications are the result of site investigations by (insert investigational methods used, such as surveys, auger borings, core borings, test pits, probings, test tunnels, etc.).

(b) *Weather Conditions.* (Insert summary of weather records and warnings.)

(c) *Transportation facilities.* (Insert the summary of transportation facilities accessible to project, availability, and limitations.)

(d) ---------- (Insert other pertinent information.)

§ 12–7.650–10 Disputes concerning labor standards.

Insert the following clause in all contracts subject to the Davis-Bacon Act.

DISPUTES CONCERNING LABOR STANDARDS

Disputes arising out of the labor standards provisions of this contract shall be subject to the Disputes clause except to the extent such disputes involve the meaning of classifications or wage rates contained in the wage determination decision of the Secretary of Labor or the applicability of the labor provisions of the contract, which questions shall be referred to the Secretary of Labor in accordance with the procedures of the Department of Labor.

§ 12–7.650–11 Variations in estimated quantities contracts.

Insert the following clause in contracts containing estimated quantity items:

VARIATION IN ESTIMATED QUANTITIES CONTRACTS

Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than fifteen percent (15%) above or below the estimated quantity stated in this contract, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contracting Officer shall, upon receipt of a written request for an extension of time within (10) days from the beginning of such delay, or within such further period of time which may be granted by the Contracting Officer prior to the date of final payment of the contract, ascertain the facts and make such adjustment for extending the completion date as in his judgment the findings justify.

§ 12–7.650–12 Availability and use of utility services.

Insert the following clause in contracts for performance at Government installations when it is determined that one or more utility systems and supplies are adequate for the needs and use of both the Government and the contractor and it is advantageous to the Government to furnish such utility services.

AVAILABILITY AND USE OF UTILITY SERVICES

(a) The Government will make available to the Contractor, from existing outlets and supplies, all reasonably required amounts of utilities as specified in the Schedule or specifications. Except as otherwise provided in the Schedule or specifications, each utility shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates as determined by the Contracting Officer.

(b) Utilities furnished the Contractor without charge shall be carefully conserved. The Contractor, at his own expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines and, if necessary to determine charges, all meters required to measure the amount of each utility used; and he shall remove the same prior to final acceptance of the construction.

§ 12–7.650–13 Misplaced material.

Insert the following clause in all contracts involving work near or on navigable waterways.

MISPLACED MATERIAL

Should the Contractor, during the progress of the work, lose, dump, throw overboard, sink, or misplace any material, plant, machinery, or appliance, which in the opinion of the Contracting Officer may be dangerous to or obstruct navigation, the Contractor shall recover and remove the same with the utmost dispatch. The Contractor shall give immediate notice, with description and location of such obstructions, to the Contracting Officer or inspector, and when required shall mark or buoy such obstructions until the same are removed. Should he refuse, neglect, or delay compliance with the above requirements, such obstructions may be removed by the Contracting Officer, and the cost of such removal may be deducted from any money due or to become due the Contractor, or may be recovered under his bond. The liability of the Contractor for the removal of a vessel wrecked or sunk without fault or negligence shall be limited to that provided in sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899. (33 U.S.C. 410 et seq.)

§ 12–7.650–14 Signal lights.

Insert the following clause in all contracts requiring the use of marine equipment.

SIGNAL LIGHTS

The Contractor shall display signal lights and conduct his operations in accordance with the General Regulations of the Department of the Army and of the Coast Guard governing lights and day signals to be displayed by towing vessels with tows on which no signals can be displayed, vessels working on wrecks, dredges, and vessels engaged in laying cables or pipe or in submarine or bank protection operations, lights to be displayed on dredge pipe lines, and day signals to be displayed by vessels of more than 65 feet in length moored or anchored in a fairway or channel, and the passing by other vessels of floating plant working in navigable channels, as approved by the Secretary of the Army (33 CFR 201.1–201.16) and the Commandant, U.S. Coast Guard (33 CFR 80.18–80.31a and 33 CFR 95.51–95.70).

§ 12–7.650–15 Time extensions for delays to elements of the work.

The following clause shall be inserted in contracts in which there are separate completion dates for various items of work and liquidated damages are provided for:

TIME EXTENSIONS

Notwithstanding any other provisions of this contract, any time extensions for changes in the work depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The contract modification making such time extension will provide for an extension of contract completion date only for those specific elements so delayed and will not alter the contract completion dates for other portions of the work. This contract modification may further provide for an equitable readjustment of liquidated damages pursuant to the new completion schedule.

§ 12–7.650–16 Progress charts and requirements for overtime work.

Insert the following clause in contracts having a performance time of 4 weeks or more.

PROGRESS CHARTS AND REQUIREMENTS FOR OVERTIME WORK

(a) The Contractor shall, within 10 days from date of award of contract (unless a different time is specified in the contract), submit to the Contracting Officer for approval a practicable schedule, showing the order in which the Contractor proposes to carry on the work, the date on which he will start the several salient features (including procurement of materials, plant and equipment) and the contemplated dates for completing the same. The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion at any time. The Contractor shall enter on the chart the actual progress at such intervals as directed by the Contracting Officer, and shall immediately deliver to the Contracting Officer three copies thereof. If the Contractor fails to submit a progress schedule within the time herein prescribed, the Contracting Officer may withhold approval of progress payment estimates until such time as the Contractor submits the required progress schedule.

(b) If, in the opinion of the Contracting Officer, the Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to improve his progress and the Contracting Officer may require him to increase the number of shifts, or overtime operations, days of work, or the amount of construction plant, or all of them, and to submit for approval such supplementary schedule or schedules in chart form as may be deemed necessary to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to the Government.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this provision shall be grounds for determination by the Contracting Officer that the Contractor is not prosecuting the work with such diligence as will insure completion within the time specified. Upon such determination the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part thereof, in accordance with the clause of the contract entitled "Termination for Default-Damages for Delay-Time Extensions."

§ 12–7.650–17 Special precautions for work at operating airports.

Insert the following clause in contracts when work is to be performed at an operating airport:

SPECIAL PRECAUTIONS FOR WORK AT OPERATING AIRPORTS

(a) When work is to be performed at an operating airport the Contractor must arrange his work schedule so as not to interfere with flight operations. Such operations will take precedence over construction convenience. Any operations of the Contractor which would otherwise interfere with or endanger the operations of aircraft shall be performed only at times and in the manner directed by the Contracting Officer. The Government will make every effort to reduce the disruption of the Contractor's operation.

(b) Unless otherwise specified by local regulations, all areas in which construction operations are underway shall be marked by yellow flags during daylight hours and by red lights at other times. The red lights along the edge of the construction areas within the existing aprons shall be the electric type of not less than 100 watts intensity placed and supported as required. All other construction markings on roads and adjacent parking lots may be either electric or battery type lights. These lights and flags shall be placed so as to outline the construction areas and the distance between any two flags or lights shall not be greater than 25 feet. The Contractor shall provide adequate watch to maintain the lights in working condition at all times other than daylight hours. The hour of beginning and the hour of ending of daylight will be determined by the Contracting Officer.

(c) All equipment and materials in the construction areas or when moved outside the construction area shall be marked with airport safety flags during the day, and when directed by the Contracting Officer, with red obstruction lights at night. All equipment operating on the apron, taxiway, runway and intermediate areas after darkness hours shall have clearance lights in conformance with instructions from the Contracting Officer. No construction equipment shall operate within 50 feet of aircraft undergoing fuel operations. Open flames are not allowed on the ramp except at times authorized by the Contracting Officer.

(d) Trucks and other motorized equipment entering the airport or construction area shall do so only over routes determined by the Contracting Officer. Use of runways, aprons, taxiways or parking areas as truck or equipment routes will not be permitted unless specifically authorized for such use. Flagmen shall be furnished by the Contractor at points on apron and taxiway for safe guidance of his equipment over these areas to assure right of way to aircraft. Areas and routes used during the contract must be returned to their original condition by the Contractor. The maximum speed allowed on the Airport shall be as established by the airport management. Vehicles shall be operated so as to be under safe control at all times, weather and traffic conditions considered. Vehicles must be equipped with head and tail lights during the hours of darkness.

§ 12–7.650–18 Quantity surveys.

(a) Except as provided in paragraph (b) of this section, insert the following clause in contracts containing unit price items where the specifications provide for payment based on surveys.

QUANTITY SURVEYS

(a) The Government shall make original and final surveys and make computations to determine the quantities of work performed or finally in place.

(b) The Contractor shall make such surveys and computations as are necessary to determine the quantities of work performed or placed during each period for which a progress payment is to be made. All original field notes, computations and other records for the purpose of layout and progress surveys shall be recorded in duplicating field books, the original pages of which shall be furnished promptly in ring binders to the representatives of the Contracting Officer at the site of the work and shall be used by the Contracting Officer to the extent necessary in determining the proper amount of progress payments due the Contractor. Unless waived by the Contracting Officer in each specific case, quantity surveys made by the Contractor shall be made under the direction of a representative of the Contracting Officer.

(b) When Government personnel may not be available, it may be advisable to require the contractor to make original and final quantity surveys as well as progress surveys. In this case, the following clause may be used in place of the clause in paragraph (a) of this section, with the approval of the head of the procuring activity or his designee.

QUANTITY SURVEYS

(a) The Contractor shall make such surveys and computations as are necessary to determine the quantities of work performed or placed during each period for which a progress payment is to be made. The Contractor shall also make original and final surveys. The Government will make such computations as are necessary to determine the quantities of work performed or finally in place. Unless waived by the Contracting Officer in each specific case, quantity surveys made by the Contractor shall be made under the direction of a representative of the Contracting Office.

(b) All original field notes, computations and other records of the Contractor for the purposes of layout, original, progress and final surveys shall be recorded in duplicating field books, the original pages of which shall be furnished promptly in ring binders to the representative of the Contracting Officer at the site of the work and shall be used by the Contracting Officer to the extent necessary in determining the proper amounts of progress and final payments.

§ 12–7.650–19 Layout of work.

The following clause is authorized for use in construction contracts where appropriate.

LAYOUT OF WORK

The Contractor shall lay out his work from Government established base lines and bench marks indicated on the drawings and shall be responsible for all measurements in connection therewith. The Contractor shall furnish, at his own expense, all stakes, templates, platforms, equipment, tools, and materials and labor as may be required in laying out any part of the work from the base lines and bench marks established by the Government. The Contractor will be held responsible for the execution of the work to such lines and grades as may be established or indicated by the Contracting Officer. It shall be the responsibility of the Contractor to maintain and preserve all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed, by the Contractor or through his negligence, prior to their authorized removal, they may be replaced by the Contracting Officer at his discretion. The expense of replacement will be deducted from any amounts due or to become due the Contractor.

§ 12–7.650–20 Value engineering incentive.

When required by the instructions for its use in DOTPR 12–1.5202–2, insert the value engineering incentive clause set forth in DOTPR 12–1.5207–1.

Subpart 12–7.50—Clauses for Cost-Reimbursement Type Supply Contracts

§ 12–7.5000 Scope.

This subpart sets forth uniform contract clauses for use in cost-reimbursement type supply contracts.

§ 12–7.5001 Required clauses.

The following clauses shall be inserted in all cost-reimbursement type supply contracts.

§ 12–7.5001–1 Definitions.

Insert the clause set forth in FPR 1–7.101–1.

§ 12–7.5001–2 Changes.

CHANGES

(a) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following:

(i) Drawings, designs, or specifications, where supplies to be furnished are to be specially manufactured for the Government in accordance therewith;

(ii) Method of shipment or packing; and

(iii) Place of delivery.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made:

(i) In the estimated cost or delivery schedule, or both;

(ii) In the amount of any fixed fee to be paid to the contractor; and

(iii) In such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly.

Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; provided, however, without prejudicing the right to reject any claim asserted after this time, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, except as provided in paragraph (c) below, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(c) Notwithstanding the provisions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance thereof, shall not be increased or deemed to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until such modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the clause of this contract entitled "Limitation of Cost" or "Limitation of Funds."

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted may be varied in accordance with Administration procedures.

§ 12–7.5001–3 Limitation of cost or funds.

(a) The following clause shall be inserted in all fully funded cost-reimbursement type supply contracts.

LIMITATION OF COST

(a) It is estimated that the total cost to the Government for the performance of this contract, exclusive of any fee, will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If, at any time, the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost then set forth in the Schedule, or if, at any time, the Contractor has reason to believe that the total cost to the Government for the performance of this contract, exclusive of any fee, will be greater or substantially less than the then estimated cost hereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving his revised estimate of such total cost for the performance of this contract.

(b) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. No notice, communication or representation in any other form or from any person other than the Contracting Officer shall affect the estimated cost of this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the estimated cost set forth in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of the estimated cost prior to such increase shall be allowable to the same extent as if such costs had been incurred after the increase; unless the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(c) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost set forth in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the estimated cost.

(d) In the event this contract is terminated or the estimated cost not increased, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of costs incurred by each.

(b) The following clause shall be used in all cost-reimbursement type supply contracts which are to be incrementally funded.

LIMITATION OF FUNDS

(a) It is estimated that the cost to the Government for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost.

(b) The amount presently available for payment and allotted to this contract, the items covered thereby, and the period of performance which it is estimated the allotted amount will cover, are specified in the Schedule. It is contemplated that from time to time additional funds will be allotted to this contract up to the full estimated cost set forth in the Schedule, exclusive of any fee. The Contractor agrees to perform or have performed work on this contract up to the point at which the total amount paid and payable by the Government pursuant to the terms of this contract approximates but does not exceed the total actually allotted to the contract.

(c) If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the total amount then allotted to the contract, the Contractor shall notify the Contracting Officer in writing to that effect. The notice shall state the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. Sixty (60) days prior to the end of the period specified in the Schedule, the Contractor will advise the Contracting Officer in writing as to the estimated amount of additional funds, if any, that will be required for the timely performance of the work under the contract or for such further period as may be specified in the Schedule or otherwise agreed to by the parties. If, after such notification additional funds are not allotted by the end of the period set forth in the Schedule or an agreed date substituted therefor, the Contracting Officer will, upon written request by the Contractor, terminate this contract pursuant to the provisions of the Termination clause on such date. If the Contractor, in the exercise of his reasonable judgment, estimates that the funds available will allow him to continue to discharge his obligations hereunder for a period extending beyond such date, he shall specify the later date in his request, and the Contracting Officer, in his discretion, may terminate this contract on that later date.

(d) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the total amount from time to time allotted to the contract, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the amount allotted to the contract, unless and until the Contracting Officer has notified the Contractor in writing that such allotment amount has been increased and has specified in such notice an increased amount constituting the total amount then allotted to the contract. To the extent the amount allotted exceeds the estimated cost set forth in the Schedule, such estimated cost shall be correspondingly increased. No notice, communication or representation in any other form or from any person other than the Contracting Officer shall affect the amount allotted to this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the total amount then allotted to the contract, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the amount allotted to the contract has been increased, any costs incurred by the Contractor in excess of the amount previously allotted shall be allowable to the same extent as if such costs had been incurred after such increase in the amount allotted; unless the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(e) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the amount allotted in the Schedule in the absence of a statement in the change order, or other contractual modification, increasing the amount allotted.

(f) Nothing in this clause shall affect the right of the Government to terminate this contract. In the event this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of costs incurred by each.

(g) In the event that sufficient funds are not allotted to this contract to allow completion of the work contemplated by this contract, the Contractor shall be entitled to that percentage of the fee set forth in the Schedule equivalent to the percentage of completion of the work contemplated by this contract.

(c) In the foregoing clauses, the period of "sixty (60) days" may be varied from 30 to 90 days and the percentage of "seventy-five percent (75%)" may be varied from 75 percent to 85 percent.

§ 12–7.5001–4 Allowable cost, fee, and payment.

(a) Except as provided in paragraph (b) of this section, insert the following clause.

ALLOWABLE COST, FIXED FEE, AND PAYMENT

(a) For the performance of this contract, the Government shall pay to the Contractor—

(i) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with—

(A) Subpart 1–15.2 of Part 1–15 of the Federal Procurement Regulations as in effect on the date of this contract; and

(B) The terms of this contract; and

(ii) Such fixed fee, if any, as may be provided for in the Schedule.

(b) Once each month (or at more frequent intervals, if approved by the Contracting Officer), the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer. Payment of the fixed fee, if any, shall be made to the Contractor as specified in the Schedule; provided, however, that after payment of eighty-five percent (85%) of the fixed fee set forth in the Schedule, the Contracting Officer may withhold further payment of fee until a reserve shall have been set aside in an amount which he considers necessary to protect the interest of the Government, but such reserve shall not exceed fifteen percent (15%) of the total fixed fee or one hundred thousand dollars ($100,000), whichever is less.

(d) At any time or times prior to final payment under this contract, the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice", or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (f) below), the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fixed fee, which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assigneee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver—

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions—

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

(b) When, in accordance with FPR 1–3.405–4, incentive revision of the fee in a cost-reimbursement type supply contract is to be provided, insert the following clause. Additional instructions for use of the clause are in paragraph (c) of this section.

ALLOWABLE COST, INCENTIVE FEE, AND PAYMENT

(a) (1) For the performance of this contract, the Government shall pay to the Contractor—

(i) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with—

(A) Subpart 1–15.2 of Part 1–15 of the Federal Procurement Regulations as in effect on the date of this contract; and

(B) The terms of this contract; and

(ii) A fee determined as provided in this contract.

(2) The target cost and target fee of this contract are set forth in the Schedule and shall be subject to adjustment in accordance with (h) and (i) below. As used throughout this contract the term—

(i) "Target cost" means the estimated cost of this contract initially negotiated, adjusted in accordance with (h) below; and

(ii) "Target fee" means the fee which was initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost of this contract initially negotiated, adjusted in accordance with (h) below.

(b) Once each month (or at more frequent intervals, if approved by the Contracting Officer), the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer. Normally, payment of fee shall be made to the Contractor as specified in the Schedule. However, when in the opinion of the Contracting Officer, the Contractor's performance or cost indicates that target will not be achieved, the Government shall pay on the basis of such lesser fee as is appropriate. Further, when the Contractor demonstrates that his performance or cost clearly indicates that he will earn a fee significantly in excess of target fee, the Government may, in the sole discretion of the Contracting Officer, pay on the basis of such higher fee as is appropriate. After payment of eighty-five percent (85%) of the applicable fee, the Contracting Officer may withhold further payment of fee until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed fifteen percent (15%) of the total applicable fee or one hundred thousand dollars ($100,000) whichever is less.

(d) At any time or times prior to final payment under this contract, the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including without limitation, the provisions relating to patents and the provisions of (f) below), the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fee, which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver—

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising

out of or under this contract, subject only to the following exceptions—

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: *Provided*, That such claims are not known to the Contractor on the date of the execution of the release: *And provided further*, That the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

Except as provided in (j) below, payments under the assignment and claims excepted from the release shall be subject to adjustment by reason of the adjustment of fee in accordance with (i) below.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

(h) When the work under this contract (including any supplies or services which are ordered separately under, or otherwise added to, this contract) is increased or decreased by contract modification or when any equitable adjustment in the target cost is authorized under any other clause of this contract, equitable adjustments in the target cost, target fee, minimum fee, maximum fee, or any or all of them, as appropriate, shall be set forth in an amendment or supplemental agreement to this contract.

(i) The fee payable hereunder shall be the target fee increased by (insert Contractor's participation) cents for every dollar by which the total allowable cost is less than the target cost or decreased by (insert Contractor's participation) cents for every dollar by which the total allowable cost exceeds the target cost. In no event shall the fee be greater than _____ percent, nor less than _____ percent, of the target cost; and, except as provided in (j) below, within these limits such fee shall be subject to adjustment, by reason of increase or decrease of total allowable cost, on account of payments under the assignment required by (f)(i) above, and claims excepted from the release required by (f)(ii) above. If this contract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The terminations shall be otherwise accomplished pursuant to other applicable provisions of this contract.

(j) For the purpose of the adjustment of the fee in accordance with (i) above, the term "total allowable cost" shall not include allowable costs arising out of:

(i) Any of the causes covered by the clause hereof entitled "Excusable Delays" to the extent they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;

(ii) The taking effect, after the negotiation of the target cost of this contract, of a statute, court decision, written ruling or regulation which results in the Contractor's being required to pay or bear the burden of any tax or duty, or increase in the rate thereof;

(iii) Any direct cost attributed to the Contractor's assistance or participation in litigation as required by the Contracting Officer pursuant to a provision of this contract, including the furnishing of evidence and information requested pursuant to the clause hereof entitled "Notice and Assistance Regarding Patent and Copyright Infringement";

(iv) The procurement and maintenance of additional insurance not included in the target cost and required by the Contracting Officer or claims for reimbursement for liabilities to third persons pursuant to the clause hereof entitled "Insurance-Liability to Third Persons";

(v) Any claim, loss or damage resulting from a risk for which the Contractor has been relieved of liability pursuant to the clause hereof entitled "Government Property".

Except as otherwise specifically provided in this contract, all other allowable costs shall be included in the term "total allowable cost" for the purpose of the adjustment of the fee in accordance with (i) above.

(In the event the contract calls for spare parts or other supplies and services which are to be ordered under a provisioning document or Government option, the following provision (k) shall be included.)

(k) Compensation for supplies (including spare parts) and services which are to be furnished under this contract pursuant to a provisioning document or Government option shall be determined in accordance with the provisions of this clause notwithstanding any inconsistent provision in such provisioning document or Government option.

(c) (1) In paragraph (f)(ii)(B) of the foregoing clauses, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor: *Provided*, That a corresponding increase is made in the period of retention of records required in paragraph (d) of the clause set forth in FPR 1–1.701–10.

(2) With respect to paragraph (c) of the clause set forth in paragraph (b) of this section generally, the payment of fee provisions in the Schedule should be based on target fee.

(3) In the case of cost-sharing contracts and cost-reimbursement type supply contracts without fee—

(i) Insert the following sentence in lieu of the second sentence of paragraph (c) of the clause set forth above, except that, if the contract does not provide for cost-sharing, delete the parenthetical references to the Government's share:

After payment of an amount equal to eighty percent (80%) of (the Government's share of) the total estimated cost of performance of this contract set forth in the Schedule, the Contracting Officer may withhold further payment on account of allowable cost 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 one percent (1%) of (the Government's share of) such total estimated cost or one hundred thousand dollars ($100,000), whichever is less.

(ii) Delete the words "and any part of the fixed fee" from paragraph (e) of the clause set forth in paragraph (a) of this section;

(iii) In contracts which provide for cost-sharing change paragraph (a) of the clause set forth in paragraph (a) of this section as follows:

(*a*) The allowability of costs incurred in the performance of this contract shall be determined by the Contracting Officer in accordance with—

(*1*) Subpart 1–15.2 of Part 1–15 of the Federal Procurement Regulations as in effect on the date of this contract; and

(2) The terms of this contract.

and

(iv) Change the title of the clause set forth in paragraph (a) of this section to "Allowable Cost and Payment".

(4) The Contracting Officer shall determine to his satisfaction that the estimated cost of the contract initially negotiated does not include amounts for the contingencies identified in paragraph (j) of the clause set forth in paragraph (b) of this section.

(5) The amount to be withheld under paragraph (c) of the clauses shall normally be the maximum authorized by the clause except that the Contracting Officer may, if he believes that such amount exceeds the amount necessary to protect the interests of the Government, review the status of all funds being withheld from the Contractor under the particular contract concerned and under any other contract with the Contractor. The Contracting Officer shall decide whether to reduce the rate of withholding or whether to release a portion of the amount already reserved under the contract, as appropriate.

§ 12–7.5001–5 Inspection of supplies and correction of defects.

INSPECTION OF SUPPLIES AND CORRECTION OF DEFECTS

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies, fabricating methods, and special tooling hereunder. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, acceptance of any supplies or lots of supplies shall be made as promptly as practicable after delivery

thereof and shall be deemed to have been made no later than sixty (60) days after the date of such delivery, if acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the Schedule) after acceptance of the supplies or lots of supplies last delivered in accordance with the requirements of this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any supplies or lots of supplies which at the time of delivery thereof are defective in material or workmanship or otherwise not in conformity with the requirements of this contract. Except as otherwise provided in paragraph (c) hereof, the cost of any such replacement or correction shall be included in Allowable Cost determined as provided in the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment," but no additional fee shall be payable with respect thereto. Such supplies or lots of supplies shall not be tendered thereafter for acceptance unless the former requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to replace or correct such supplies or lots of supplies, the Government (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under this contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (ii) in the case of supplies not delivered, may require the delivery of such supplies, and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (iii) may terminate this contract for default as provided in the clause of this contract entitled "Termination". Failure to agree to the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) Notwithstanding the provisions of paragraph (b) hereof, the Government may at any time require the correction or replacement by the Contractor, without cost to the Government, of supplies or lots of supplies which are defective in material or workmanship, or otherwise not in conformity with the requirements of this contract, if such defects or failures are due to fraud, lack of good faith or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (iii) a separate and complete major industrial operation in connection with the performance of this contract. The Government may at any time also require correction or replacement by the Contractor, without cost to the Government, of any such defective supplies or lots of supplies if the defects or failures are caused by one or more individual employees selected or retained by the Contractor after any such supervisory personnel has reasonable grounds to believe that such employee is habitually careless or otherwise unqualified.

(d) Corrected supplies or replaced supplies shall be subject to the provisions of this clause in the same manner and to the same extent as supplies originally delivered under this contract.

(e) The Contractor shall make his records of all inspection work available to the Government during the performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace supplies or lots of supplies which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the clause of this contract entitled "Government Property".

§ 12–7.5001–6 Assignment of claims.

Insert the clause set forth in FPR 1–30.703 under the conditions contained therein.

§ 12–7.5001–7 Examination of records by Comptroller General.

Insert the clause set forth in FPR 1–7.101–10.

§ 12–7.5001–8 Subcontracts.

SUBCONTRACTS

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is cost-reimbursement type, time and materials or labor-hour, or (ii) is fixed-price type and exceeds in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment having a value in excess of $1,000 or of any items of industrial facilities.

(b) In the case of a proposed subcontract which (i) is cost-reimbursement type, time and materials or labor-hour, and would involve an estimated amount in excess of $10,000, including any fee, or (ii) is proposed to exceed $100,000, or (iii) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate are expected to exceed $100,000; the advance notification required by (a) above shall include:

(1) A description of the supplies or services to be called for by the subcontract;

(2) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(3) The proposed subcontract price, together with the Contractor's cost or price analysis thereof;

(4) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, when such data and certificate are required, by other provisions of this contract, to be obtained from the subcontractor; and

(5) Identification of the type of subcontract to be used.

(c) The Contractor shall obtain the written consent of the Contracting Officer prior to placing any subcontract for which advance notification is required under (a) above. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(f) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(g) Notwithstanding (c) above, the Contractor may enter into subcontracts within (i) and (ii) of (a) above without the consent of the Contracting Officer if the Contracting Officer has approved in writing the Contractor's procurement system and the subcontract is within the scope of the approval.

§ 12–7.5001–9 Utilization of small business concerns.

In accordance with FPR 1–1.710–3 (a) and (b), insert one or both of the clauses.

§ 12–7.5001–10 Termination.

Insert the clause set forth in FPR 1–8.702.

§ 12–7.5001–11 Excusable delays.

Insert the clause set forth in FPR 1–8.702.

§ 12–7.5001–12 Disputes.

Insert the clause set forth in FPR 1–7.101–12.

§ 12–7.5001–13 Convict labor.

In accordance with FPR 1–12.202, insert the clause in FPR 1–12.203.

§ 12–7.5001–14 Contract Work Hours Standards Act—overtime compensation.

In accordance with FPR 1–12.302, insert the clause set forth in FPR 1–12.303.

§ 12–7.5001–15 Walsh-Healey Public Contracts Act.

In accordance with FPR 1–12.602, insert the clause set forth in FPR 1–12.605.

§ 12–7.5001–16 Equal opportunity.

In accordance with FPR 1–12.803–1, insert the clause set forth in FPR 1–12.803–2.

§ 12–7.5001–17 Officials not to benefit.

Insert the clause set forth in FPR 1–7.101–19.

§ 12–7.5001–18 Covenant against contingent fees.

In accordance with FPR 1–1.501, insert the clause set forth in FPR 1–1.503.

§ 12–7.5001–19 [Reserved]

§ 12–7.5001–20 Insurance—liability to third persons.

INSURANCE—LIABILITY TO THIRD PERSONS

(a) The Contractor shall procure and thereafter maintain workmen's compensation, employer's liability, comprehensive general liability (bodily injury) and comprehensive automobile liability (bodily injury and property damage) insurance, with respect to performance under this contract, and such other insurance as the Contracting Officer may from time to time require with respect to performance under this contract: Provided, That the Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program: And provided further, That with respect to workmen's compensation the Contractor is qualified pursuant to statutory authority. All insurance required pursuant to the provisions of this paragraph shall be in such form, in such amount, and for such periods of time, as the Contracting Officer may from time to time require or approve, and with insurers approved by the Contracting Officer.

(b) The Contractor agrees, to the extent and in the manner required by the Contracting Officer, to submit for the approval of the Contracting Officer any other insurance maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement hereunder.

(c) The Contractor shall be reimbursed: (1) For the portion allocable to this contract of the reasonable cost of insurance as required or approved pursuant to the provisions of this clause, and (2) for liabilities to third persons for loss of or damage to property (other than property (i) owned, occupied or used by the Contractor or rented to the Contractor or (ii) in the care, custody, or control of the Contractor), or for death or bodily injury, not compensated by insurance or otherwise, arising out of the performance of this contract, whether or not caused by the negligence of the Contractor, his agents, servants or employees: *Provided*, Such liabilities are represented by final judgments or by settlements approved in writing by the Government and expenses incidental to such liabilities, except liabilities (a) for which the Contractor is otherwise responsible under the express terms of the clause or clauses, if any, specified in the Schedule, or (b) with respect to which the Contractor has failed to insure as required or maintain insurance as approved by the Contracting Officer or (c) 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 its managers, superintendents, or other equivalent representatives, who has supervision or direction of (1) all or substantially all of the Contractor's business, or (2) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (3) a separate and complete major industrial operation in connection with the performance of this contract. The foregoing shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required to be submitted for approval or required to be procured and maintained pursuant to the provisions of this clause: *Provided*, Such cost would constitute allowable cost under the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment."

(d) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, and prompt notice of any claim made, against the Contractor arising out of the performance of this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract, and the risk of which is then uninsured or in which the amount claimed exceeds the amount of coverage. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. If the amount of the liability claimed exceeds the amount of coverage, the Contractor shall authorize representatives of the Government to collaborate with counsel for the insurance carrier, if any, in settling or defending such claim. If the liability is not insured or covered by bond, the Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith; *Provided*, That the Contractor may, at his own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

§ 12–7.5001–21 Authorization and consent.

Insert the clause set forth in DOTPR 12–9.6106–1.

§ 12–7.5001–22 Notice and assistance regarding patent and copyright infringement.

In accordance with DOTPR 12–9.6108, insert the clause set forth in FPR 1–7.-101–13.

§ 12–7.5001–23 Utilization of concerns in labor surplus areas.

In accordance with FPR 1–1.805, insert one or both of the clauses set forth in FPR 1–1.805–3.

§ 12–7.5001–24 Payment for overtime premiums.

(a) Insert the following clause. Additional instructions for its use are contained in paragraph (b) of this section.

PAYMENT FOR OVERTIME PREMIUMS

(a) Allowable cost shall not include any amount on account of overtime premiums except when paid for work:

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

(2) By indirect labor employees such as those perform protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

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

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

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

(c) Any request for overtime will be for all overtime which can be estimated with reasonable certainty shall be used for the remainder of the contract, and shall contain the following:

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

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

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

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

(b) If a specific dollar amount was agreed to during negotiations as representing the overtime premiums applicable to overtime not reimbursable under the exceptions contained in paragraph (a) of the clause, the following paragraph (d) shall be added to the clause:

(d) The Contractor is authorized to perform overtime, in addition to that performed under paragraph (a) above, to the extent that the overtime premium does not exceed $_____.

§ 12–7.5001–25 Dissemination of contract information.

Insert the clause set forth in DOTPR 12–7.150–11.

§ 12–7.5001–26 Notice of delays.

Insert the clause set forth in DOTPR 12–7.150–9.

§ 12–7.5001–27 [Reserved]

§ 12–7.5001–28 Gratuities.

Insert the clause set forth in DOTPR 12–7.150–1.

§ 12–7.5001–29 Priorities, allocations, and allotments.

Insert the clause set forth in DOTPR 12–7.150–3.

§ 12–7.5001–30 New material.

Insert the clause set forth in DOTPR 12–7.150–2.

§ 12–7.5001–31 Interpretation or modification.

Insert the clause set forth in DOTPR 12–7.150–4.

§ 12–7.5002 Clauses to be used when applicable.

The following clauses shall be included in the contract when their use is appropriate.

§ 12–7.5002–1 Buy American Act.

Insert the clause set forth in FPR 1–6.104–5 in accordance with the instructions for its use.

§ 12–7.5002–2 Renegotiation.

Insert the clause set forth in DOTPR 12–7.151–12 in accordance with the instructions contained therein.

§ 12–7.5002–3 Military security requirements.

When required by DOTPR 12–1.351, insert the Military Security Requirements clause in ASPR 7–104.12 as modified by ASPR 7–204.12.

§ 12–7.5002–4 Negotiated overhead rates.

Insert the clause set forth in FPR 1–3.704–1 or the appropriate clause set forth in FPR 1–3.704–2.

§ 12–7.5002–5 Changes to make-or-buy program.

In accordance with FPR 1–3.902–3, insert the clause set forth therein.

§ 12–7.5002–6 Required source for jewel bearings.

In accordance with FPR 1–1.319, insert the clause contained therein.

§ 12–7.5002–7 Value engineering.

A value engineering incentive clause shall be included in the contract in accordance with the instructions for its use in DOTPR 12–1.5202–2.

§ 12–7.5002–8 Multiyear procurement.

The clauses set forth in DOTPR subpart 12–1.55 shall be included in all contracts under the multiyear procurement method in accordance with the instructions contained therein.

§ 12–7.5002–9 Patent indemnity.

In accordance with DOTPR 12–9.6107, insert the clause or clauses contained therein.

§ 12–7.5002–10 Aluminum.

In accordance with FPR 1–5.1001–1, insert the clause set forth in FPR 1–5.1001–2.

§ 12–7.5002–11 Stop work orders.

The clause set forth in DOTPR 12–7.151–8 may be included in any cost-reimbursement type contract under the conditions described therein: *Provided,* The clause is modified as follows:

(a) The words "the 'Termination for Convenience' clause of this contract" shall be changed to read "the 'Termination' clause of the contract"; and

(b) The words "an equitable adjustment shall be made in the delivery schedule or contract price, or both" shall be changed to read "an equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other provisions of the contract that may be affected."

§ 12–7.5002–12 Competition in subcontracting.

Insert the following clause in all negotiated contracts over $10,000:

COMPETITION IN SUBCONTRACTING

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

§ 12–7.5002–13 Audit and records.

Insert the clause set forth in FPR 1–3.814–2(c) in accordance with the instructions for its use.

§ 12–7.5002–14 Price reduction for defective cost or pricing data.

Insert the clause set forth in FPR 1–3.814–1(a) in accordance with the instructions for its use.

§ 12–7.5002–15 Subcontractor cost and pricing data.

Where the clause in FPR 1–3.814–1(a) is included in the contract, the clause in FPR 1–3.814–3(a) also shall be included.

§ 12–7.5002–16 Government property.

Insert the following clause in the contract when the Contractor is to be furnished, or the contractor is to acquire, Government property:

GOVERNMENT PROPERTY

(a) *Property administration.* The Contractor shall establish and administer a system to control, protect, preserve, and maintain Government property in his possession or under his control or that of his subcontractors. Such a system must be satisfactory to the Contracting Officer, and in accordance with this clause and any other requirements of the contract.

(b) *Government-furnished property.* (1) 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").

(2) 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 time stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates.

(3) If the Schedule does not state a date when Government-furnished property will be delivered, the Contractor shall notify the Contracting Officer in writing of the date by which he requires such property to meet the contract delivery or performance dates. The Contractor shall allow a minimum of 30 days for delivery of Government-furnished property, unless a different time is specified in the Schedule. If not received 5 days before the date it is required by the Contractor, the Contracting Officer shall be so notified.

(4) If Government-furnished property is not delivered to the Contractor by the date specified in the Schedule, or by the date specified by the Contractor pursuant to (3) above, the Contracting Officer shall, upon timely request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by any such delay, in accordance with the procedures of the "Changes" clause of this contract.

(5) In the event that Government-furnished property is received by the Contractor in a condition not suitable for intended use (except for such property furnished "as is" or otherwise specified), 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 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 provisions affected by the return or disposition, or the repair or modification in accordance with the procedures of the "Changes" clause of this contract.

(6) 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.

(c) *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 on his own initiative if the substitution of property causes a decrease in the cost of performance), 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.

(d) *Title to property.* Title to the Government-furnished property 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, 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 personality by reason of affixation to any realty.

(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) *Maintenance and repair of Government property.* The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the maintenance, repair, protection, and preservation of Government property, while in custody of the Contractor. 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. Where replacement parts are provided at the expense of the Government, the parts which are displaced remain the property of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at his own expense.

(g) *Risk of loss, damage.* (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 maintenance, repair, protection and preservation of Government property as required by paragraph (f) hereof, or

(B) To establish, maintain and administer, in accordance with (a) 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) Except to the extent that the Contractor is relieved of liability for the loss, destruction, or damage to the property, the property shall be returned to the Government or otherwise disposed of as directed by the Government, in as good condition as when received, less ordinary wear and deterioration.

(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, or inventorying the same, or removing any part or all of the same, or for determining complaints with terms of the contract.

(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 justifiably 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 (unless otherwise provided in the contract) 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 cost of the work covered by the contract or shall be paid in such other manner as the Contracting Officer may direct.

(j) *Notification.* The Contractor shall notify the Contracting Officer as soon as Government property is no longer required for performance of the contract. All shipments of Government-furnished property not delivered as an item of the contract, and residual contractor-acquired property, shall be effected only upon receipt of shipping instructions signed by the Contracting Officer, or his duly authorized representative.

(k) *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;

(ii) Shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of, the Contractor's plant or any portion thereof which is affected by the abandonment or removal of any Government property.

(iii) Shall be indemnified against all suits or claims arising out of the Government's failure to restore or rehabilitate the Contractor's property or the property of subcontractors, except for such damage as may be occasioned by the negligence of the Government, its agents, its employees, or independent contractors.

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

(NOTE: If this contract is with other than United States firms or individuals the term "Government", or "Government-furnished", wherever it appears in the text, is defined as "United States Government".)

§ 12–7.5002–17 Filing of patent applications.

In accordance with DOTPR 12–9.6109, insert the clause set forth therein.

§ 12–7.5002–18 Patent rights.

When experimental, developmental, or research work may be performed under the contract, insert the appropriate patent rights clause set forth in DOTPR subpart 12–9.61.

§ 12–7.5002–19 Rights in data.

§ 12–7.5002–20 Background patents (license).

In accordance with DOTPR 12–9.6301–1, insert the clause set forth in DOTPR 12–9.6302 or 12–9.6303.

Insert the clause set forth in DOTPR 12–9.6105–1 in accordance with the instructions contained in DOTPR 12–9.6105.

§ 12–7.5002–21 Reporting and refund of royalties.

In accordance with DOTPR 12–9.6111 and 12–9.6112, insert the clause or clauses set forth therein.

Subpart 12–7.51—Clauses for Fixed-Price Research and Development Contracts

§ 12–7.5100 Scope.

This subpart sets forth uniform contract clauses for use in fixed-price research and development contract. The clauses are also appropriate for use in fixed-price contracts for studies, tests, and reports.

§ 12–7.5101 Required clauses.

The following clauses shall be inserted in all fixed-price research and development contracts.

§ 12–7.5101–1 Definitions.

Insert the clause set forth in FPR 1–7.101–1.

§ 12–7.5101–2 Changes.

CHANGES

The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs, or specifications; (ii) method of shipment or packing; and (iii) place of inspection, delivery, or acceptance. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; provided, however, without prejudicing the right to reject any claim asserted after this time, that the Contracting Officer, if he decides that the facts jutify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

§ 12–7.5101–3 Payments.

PAYMENTS

The Contractor shall be paid, upon submission of proper invoices or vouchers, the prices stipulated herein for work delivered or rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

§ 12–7.5101–4 Standards of work.

STANDARDS OF WORK

The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards.

§ 12–7.5101–5 Inspection.

(a) The following clause shall be used where the primary contract objective is delivery of end items other than designs, drawings, or reports, except where the contracting officer determines that the use of such clause is impracticable. Where this clause is not used, the clause in paragraph (b) of this section shall be used.

INSPECTION

(a) All work under this contract shall be subject to inspection and test by the Government, to the extent practicable, at all times (including the period of performance) and places, and in any event prior to acceptance. The Government through any authorized representative may inspect the premises of the Contractor or any subcontractor engaged in the performance of this contract.

(b) The Government may reject any work that is defective or otherwise not in conformity with the requirements of this contract. If the Contractor fails or is unable to correct or to replace such work, the Contracting Officer may accept such work at a reduction in price which is equitable under the circumstances. Failure to agree on the reduction in price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide, without additional charge, all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If the Government inspection or test is made at a point other than the premises of the Contractor or subcontractor, it shall be at the expense of the Government. All inspections and tests by the Government shall be performed in such a manner as not unduly to delay the work. Final inspection and acceptance or rejection of the work shall be made as promptly as practicable after delivery except as otherwise provided in this contract; but failure to inspect and accept, or reject the work shall neither relieve the Contractor from responsibility for such of the work as is not in accordance with the contract requirements nor impose liability on the Government therefor.

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

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

(b) The following clause shall be used where the clause in paragraph (a) of this section is not used.

INSPECTION

The Government, through any authorized representatives, has the right, at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

§ 12–7.5101–6 Assignment of claims.

Insert the clause set forth in FPR 1–30.703 under the conditions contained therein.

§ 12–7.5101–7 Examination of records by Comptroller General.

Insert the clause set forth in FPR 1–7.101–10.

§ 12–7.5101–8 Federal, State, and local taxes.

In accordance with FPR 1–11.401, insert the appropriate clause set forth therein.

§ 12–7.5101–9 Utilization of small business concerns.

In accordance with FPR 1–1.710–3 (a) and (b), insert one or both of the clauses.

§ 12–7.5101–10 Default.

In accordance with FPR 1–8.700–2(b)(3), insert the clause set forth in FPR 1–8.710.

§ 12–7.5101–11 Termination for convenience of the Government.

Insert the clause set forth in FPR 1–8.701 or FPR 1–8.704–1, as appropriate.

§ 12–7.5101–12 Disputes.

Insert the clause set forth in FPR 1–7.101–12.

§ 12–7.5101–13 Convict labor.

In accordance with FPR 1–12.202, insert the clause in FPR 1–12.203.

§ 12–7.5101–14 Walsh-Healey Public Contracts Act.

In accordance with FPR 1–12.602, insert the clause set forth in FPR 1–12.605.

§ 12–7.5101–15 Contract Work Hours Standards Act—overtime compensation.

In accordance with FPR 1–12.302, insert the clause set forth in FPR 1–12303.

§ 12–7.5101–16 Equal opportunity.

In accordance with FPR 1–12.803–1, insert the clause set forth in FPR 1–12.803–2.

§ 12–7.5101–17 Officials not to benefit.

Insert the clause set forth in FPR 1–7.101–19.

§ 12–7.5101–18 Covenant against contingent fees.

In accordance with FPR 1–1.501, insert the clause set forth in FPR 1–1.503.

§ 12–7.5101–19 Gratuities.

Insert the clause set forth in DOTPR 12–7.150–1.

§ 12–7.5101–20 Authorization and consent.

Insert the clause set forth in DOTPR 12–9.6106–2.

§ 12–7.5101–21 Notice and assistance regarding patent and copyright infringement.

In accordance with DOTPR 12–9.6108 insert the clause set forth in FPR 1–7.101–13.

§ 12–7.5101–22 Withholding payment for nondelivery of data.

Insert the clause set forth in DOTPR 12–7.150–8.

§ 12–7.5101–23 Utilization of concerns in labor surplus areas.

In accordance with FPR 1–1.805, insert one or both of the clauses set forth in FPR 1–1.805–3.

§ 12–7.5101–24 Dissemination of contract information.

Insert the clause set forth in DOTPR 12–7.150–11.

§ 12–7.5101–25 Priorities, allocations, and allotments.

Insert the clause set forth in DOTPR 12–7.150–3.

§ 12–7.5101–26 Notice of delays.

Insert the clause set forth in DOTPR 12–7.150–9.

§ 12–7.5101–27 New material.

Insert the clause set forth in DOTPR 12–7.150–2.

§ 12–7.5101–28 Interpretation or modification.

Insert the clause set forth in DOTPR 12–7.150–4.

§ 12–7.5101–29 Patent rights.

Insert the appropriate clause in DOTPR subpart 12–9.61 in accordance with the instructions contained therein.

§ 12–7.5101–30 Rights in data.

In accordance with DOTPR 12–9.6301–1, insert the clause set forth in DOTPR 12–9.6302 or 12–9.6303.

§ 12–7.5102 Clauses to be used when applicable.

The following clauses shall be included in the contract when their use is appropriate.

§ 12–7.5102–1 Buy American Act.

Insert the clause set forth in FPR 1–6.104–5 in accordance with the instructions for its use.

§ 12–7.5102–2 Government - furnished property.

Insert the clause set forth in DOTPR 12–7.151–2 in accordance with the instructions for its use.

§ 12–7.5102–3 Price reduction for defective cost or pricing data.

Insert the clause set forth in FPR 1–3.814–1(a) in accordance with the instructions for its use.

§ 12–7.5102–4 Required source for jewel bearings.

In accordance with FPR 1–1.319, insert the clause contained therein.

§ 12–7.5102–5 Competition in subcontracting.

Insert the clause set forth in DOTPR 12–7.5002–12 in accordance with the instructions for its use.

§ 12–7.5102–6 Audit and records.

Insert the clause set forth in FPR 1–3.814–2(a) in accordance with the instructions for its use.

§ 12–7.5102–7 Subcontractor cost and pricing data.

Where the clause in FPR 1–3.814–1(a) is included in the contract, the clause in FPR 1–3.814–3(a) also shall be included.

§ 12–7.5102–8 Value engineering.

A value engineering incentive clause shall be included in the contract in accordance with the instructions for its use in DOTPR 12–1.5202–2.

§ 12–7.5102–9 Aluminum.

In accordance with FPR 1–5.1001–1, insert the clause set forth in FPR 1–5.1001–2.

§ 12–7.5102–10 Military security requirements.

Insert the Military Security Requirements clause in ASPR 7–104.12 in accordance with the instructions for its use in DOTPR 12–1.351.

§ 12–7.5102–11 Stop work orders.

In accordance with DOTPR 12–7.151–8, insert the clause set forth therein.

§ 12–7.5102–12 Renegotiation.

Insert the clause set forth in DOTPR 12–7.151–12 in accordance with the instructions contained therein.

§ 12–7.5102–13 Background patents (license).

Insert the clause set forth in DOTPR 12–9.6105–1 in accordance with the instructions contained in DOTPR 12–9.6105.

§ 12–7.5102–14 Filing of patent applications.

In accordance with DOTPR 12–9.6109, insert the clause set forth therein.

§ 12–7.5102–15 Reporting and refund of royalties.

In accordance with DOTPR 12–9.6111 and 12–9.6112, insert the clause or clauses set forth therein.

§ 12–7.5102–16 Recovery of developmental costs.

Insert the clause set forth in DOTPR 12–9.6202 in accordance with the instructions contained therein.

§ 12–7.5102–17 Progress payments.

When progress payments are to be made in accordance with FPR subpart 1–30.5, insert the appropriate clause set forth in FPR 1–30.510 under the conditions described.

Subpart 12–7.52—Clauses for Cost-Reimbursement Type Research and Development Contracts

§ 12–7.5200 Scope.

This subpart sets forth uniform contract clauses for use in cost-reimbursement type research and development contracts.

§ 12–7.5201 Required clauses.

The following clauses shall be inserted in all cost-reimbursement type research and development contracts.

§ 12–7.5201–1 Definitions.

Insert the clause set forth in FPR 1–7.101–1.

§ 12–7.5201–2 Changes.

CHANGES

(a) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following:

(i) Drawings, designs, or specifications;

(ii) Method of shipment or packing; and

(iii) Place of inspection, delivery, or acceptance.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made:

(i) In the estimated cost or delivery schedule, or both;

(ii) In the amount of any fixed fee to be paid to the Contractor;

(iii) In such other provisions of the contract as may be affected, and the contract shall be modified in writing accordingly.

Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; provided that, without prejudicing the right to reject any claim asserted after this time, if the Contracting Officer decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, except as provided in paragraph (c) below, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(c) Notwithstanding the provisions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance thereof, shall not be increased or deemed to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until such modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the clause of this contract entitled "Limitation of Cost" or "Limitation of Funds."

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted may be varied in accordance with Administration procedures.

§ 12–7.5201–3 Limitation of cost or funds.

The following clause shall be used in fully funded cost-reimbursement type research and development contracts which do not provide for cost-sharing. The words "exclusive of any fee", occurring twice in paragraph (a) of the clause, may be deleted in any contract not providing for the payment of a fee.

LIMITATION OF COST

(a) It is estimated that the total cost to the Government for the performance of this contract, exclusive of any fee, will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If, at any time, the Contractor has reason to believe that the cost which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost set forth in the Schedule, or if, at any time, the Contractor has reason to believe that the total cost to the Government for the performance of this contract, exclusive of any fee, will be greater or substantially less than the then estimated cost hereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.

(b) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. No notice, communication or representation in any other form or from any person other than the Contracting Officer shall affect the estimated cost of this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the estimated cost set forth in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of the estimated cost prior to such increase shall be allowable to the same extent as if such costs had been incurred after the increase; unless the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(c) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost set forth in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the estimated cost.

(d) In the event this contract is terminated or the estimated cost not increased the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of costs incurred by each.

(b) The following clause shall be used in fully funded cost-reimbursement type research and development contracts which provide for cost-sharing. The contract schedule shall include a cost-sharing formula agreed upon by the parties prior to execution of the contract. This formula shall provide the ratio of cost-sharing with regard to both the originally established total estimated cost and any increase thereto, pursuant to (b) of the clause.

LIMITATION OF COST (COST-SHARING)

(a) It is estimated that the cost to the Government for the performance of this contract will not exceed the estimated cost to the Government set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost to the Government plus the share of the cost of performance agreed to be borne by the Contractor, as set forth in the Schedule. If, at any time, the Contractor has reason to believe that the costs which he expects to be incurred in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated total cost to the Government and to the Contractor then set forth in the Schedule, or if, at any time, the Contractor has reason to believe that the total cost for the performance of this contract will be greater or substantially less than the then estimated total cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving his revised estimate of such total cost for the performance of this contract.

(b) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost to the Government set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the estimated total cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated total cost has been increased and shall have specified in such notice a revised estimated total cost which shall thereupon constitute the estimated total cost of performance of this contract. The increase in such estimated total cost shall be allocated in accordance with the formula set forth in the Schedule governing such increases. No notice, communication or representation in any other form or from any person other than the Contracting Officer shall affect the estimated cost to the Government of this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the estimated cost to the Government set forth in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the estimated total cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of the estimated total cost prior to such increase shall be allowable to the same extent and in the same percentage as if such costs had been incurred after the increase; unless the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(c) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost to the Government set forth in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the estimated cost.

(d) In the event this contract is terminated or the estimated cost not increased, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of costs incurred by each.

(c) The following clause shall be used in incrementally funded cost-reimbursement type research and development contracts which do not provide for cost sharing.

LIMITATION OF FUNDS

(a) It is estimated that the cost to the Government for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost.

(b) The amount presently available for payment and allotted to this contract, the items covered thereby, and the period of performance which it is estimated the allotted amount will cover, are specified in the Schedule. It is contemplated that from time to time additional funds will be allotted to this contract up to the full estimated cost set forth in the Schedule, exclusive of any fee. The Contractor agrees to perform or have performed work on this contract up to the point at which the total amount paid and payable by the Government pursuant to the terms of this contract approximates but does not exceed the total amount actually allotted to the contract.

(c) If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the total amount then allotted to the contract, the Contractor shall notify the Contracting Officer in writing to that effect. The notice shall state the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. Sixty (60) days prior to the end of the period specified in the Schedule the Contractor will advise the Contracting Officer in writing as to the estimated amount of additional funds, if any, that will be required for the timely performance of the work under the contract or for such further period as may be specified in the Schedule or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the end of the period set forth in the Schedule or an agreed date substituted therefor, the Contracting Officer will, upon written request by the Contractor, terminate this contract pursuant to the provisions of the Termination clause on such date. If the Contractor, in the exercise of his reasonable judgment, estimates that the funds available will allow him to continue to discharge his obligations hereunder for a period extending beyond such date, he shall specify the later date in his request and the Contracting Officer, in his discretion, may terminate this contract on that later date.

(d) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the total amount from time to time allotted to the contract, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the amount allotted to the contract, unless and until the Contracting Officer has notified the Contractor in writing that such allotted amount has been increased and has specified in such notice an increased amount constituting the total amount then allotted to the contract. To the extent the amount allotted exceeds the estimated cost set forth in the Schedule, such estimated cost shall be correspondingly increased. No notice, communication or representation in any other form or from any person other than the Contracting Officer shall affect the amount allotted to this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the total amount then allotted to the contract, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the amount allotted to the contract has been increased, any costs incurred by the Contractor in excess of the amount previously allotted shall be allowable to the same extent as if such costs had been incurred after such increase in the amount allotted; unless the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(e) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the amount allotted in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the amount allotted.

(f) Nothing in this clause shall affect the right of the Government to terminate this contract. In the event this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of costs incurred by each.

(g) In the event that sufficient funds are not allotted to this contract to allow completion of the work contemplated by this contract, the Contractor shall be entitled to that percentage of the fee set forth in the Schedule equivalent to the percentage of completion of the work contemplated by this contract.

(d) The following clause shall be used in incrementally funded cost-reimbursement type research and development contracts which provide for cost-sharing.

LIMITATION OF FUNDS (COST-SHARING)

(a) It is estimated that the cost to the Government for the performance of this contract will not exceed the estimated costs to the Government set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost to the Government plus the share of the cost of performance agreed to be borne by the Contractor, as set forth in the Schedule.

(b) The amount presently available for payment by the Government and allotted to this contract, the items covered thereby, the Government's share of the cost thereof, and the period of performance which it is estimated the allotted amount will cover, are specified in the Schedule. It is contemplated that from time to time additional funds will be allotted to this contract up to the full estimated cost to the Government set forth in the Schedule, exclusive of any fixed fee. The Contractor agrees to perform or have performed work on this contract up to the point at which the total amount paid and payable by the Government pursuant to the terms of this contract approximates but does not exceed the total amount actually allotted by the Government to the contract.

(c) If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the total of the amount then allotted to the contract by the Government plus the Contractor's corresponding share, the Contractor shall notify the Contracting Officer in writing to that effect. The notice shall state the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. Sixty (60) days prior to the end of the period specified in the Schedule the Contractor will advise the Contracting Officer in writing as to the estimated amount of additional funds, if any, that will be required for the timely performance of the work under the contract or for such further period as may be specified in the Schedule or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the end of the period set forth in the Schedule or an agreed date substituted therefor, the Contracting Officer will, upon written request by the Contractor, terminate this contract pursuant to the provisions of the Termination clause on such date. If the Contractor, in the exercise of his reasonable judgment, estimates that the funds available will allow him to continue to discharge his obligations hereunder for a period extending beyond such date, he shall specify the later date in his request, and the Contracting Officer, in his discretion, may terminate on that later date.

(d) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the amount from time to time allotted by the Government to the contract, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the total of the amount then allotted to the contract by the Government plus the Contractor's corresponding share, unless and until the Contracting Officer has notified the Contractor in writing that the amount allotted by the Government has been increased and has specified in such notice an increased amount constituting the total amount then allotted by the Government to the contract. To the extent the total of the amount allotted by the Government plus the Contractor's corresponding share exceeds the estimated cost set forth in the Schedule, such estimated cost shall be correspondingly increased. Any increase in such estimated cost shall be allocated in accordance with the formula set forth in the Schedule governing such increases. No notice, communication or representation in any other form or from any person other than the Contracting Officer shall affect the amount allotted by the Government to this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the total amount then allotted by the Government to the contract, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the amount allotted by the Government to the contract has been increased, any costs incurred by the Contractor in excess of the total of the amount previously allotted by the Government plus the Contractor's corresponding share shall be allowable to the same extent and in the same percentage as if such costs had been incurred after such increase in the amount allotted; unless the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(e) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the amount allotted by the Government in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the amount allotted.

(f) Nothing in this clause shall affect the right of the Government to terminate this contract. In the event this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of cost incurred by each.

(g) In the event that sufficient funds are not allotted to this contract by the Government to allow completion of the work contemplated by this contract, the Contractor shall be entitled to that percentage of the fee set forth in the Schedule equivalent to the percentage of completion of the work contemplated by this contract.

(e) In the foregoing clauses, the period of "sixty (60) days" may be varied from 30 to 90 days and the percentage of "seventy-five percent (75%)" may be varied from 75 percent to 85 percent. Where a contract is of the installment type, the clauses may be appropriately modified.

§ 12–7.5201–4 Allowable cost, fee, and payment.

(a) Except as provided in paragraph (b) of this section, the clause set forth in DOTPR 12–7.5001–4(a) shall be inserted in all cost-reimbursement type research and development contracts. Additional instructions for use are in paragraph (c) of this section.

(b) When, pursuant to FPR 1–3.405–4, incentive revision of the fee in a cost-reimbursement type research and development contract is to be provided, the clause set forth in DOTPR 12–7.5001–4 (b) shall be included in the contract. Additional instructions for use of the clause are in paragraph (c) of this section.

(c) In the clauses prescribed in paragraphs (a) and (b) of this section, the following changes shall be made.

(1) In subparagraph (f)(ii)(B), the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor: *Provided*, That a corresponding increase is made in the period for retention of records required in paragraph (d) of the clause set forth in FPR 1–1.701–10.

(2) In respect to paragraph (c) of the clause prescribed in paragraph (b) of this section, generally the payment of

fee provisions in the Schedule should be based on target fee.

(3) Under some circumstances the use of a sliding scale may be appropriate in paragraph (i) of the clause prescribed in paragraph (b) of this section (for example, $0.01 for the first $100, $0.02 for the next $100, etc.), in which case necessary changes in the wording of such paragraph (i) of the clause prescribed in paragraph (b) of this section are authorized.

(4) In the case of contracts, including cost-sharing contracts, without fee—

(i) Change the title of the clause prescribed in paragraph (a) of this section to "Allowable Cost and Payment";

(ii) Insert the following sentence in lieu of the second sentence of paragraph (c) of the clause prescribed in paragraph (a) of this section except that in contracts not providing for cost-sharing, the parenthetical references to the Government's share shall be deleted—

After payment of an amount equal to eighty percent (80%) of (the Government's share of) the total estimated cost of performance of this contract set forth in the Schedule, the Contracting Officer may withhold further payment on account of allowable cost 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 one percent (1%) of (the Government's share of) such total estimated cost or one hundred thousand dollars ($100,000), whichever is less.

(iii) Delete "and any part of the fixed fee" from paragraph (e) of the clause prescribed in paragraph (a) of this section.

(5) In contracts without fee with nonprofit institutions, "ten thousand dollars ($10,000)" may be substituted for "one hundred thousand dollars ($100,000)" in the sentence set forth in subparagraph (4)(ii) of this paragraph.

(6) In contracts with educational institutions substitute Subpart 1–15.3 of Part 1–15 of the Federal Procurement Regulations in paragraph (a)(i)(A) of the clause prescribed in paragraph (a) of this section and in paragraph (a)(i)(A) of the clause prescribed in paragraph (b) of this section.

(7) In contracts without fee with educational institutions, the second sentence of paragrah (c) of the clause prescribed in paragraph (a) of this section and the provision of subparagraph (4)(ii) of these additional instructions, which pertain to withholding of fee and costs, may be omitted. If the second sentence of paragraph (c) is so omitted, in the first sentence of paragraph (e) delete "and any part of the fixed fee which has been withheld pursuant to (c) above or otherwise."

(8) In the clauses prescribed above, "Task Order" or other appropriate designation may be substituted for "Schedule."

(9) In the clause prescribed in paragraph (b) of this section, "provisioning document or" may be deleted from paragraph (k) thereof if inappropriate to the procurement.

(10) When clause paragraph (c) provides for withholding, the amount to be withheld shall normally be the maximum authorized by the clause except that the contracting officer may, if he believes that such amount exceeds the amount necessary to protect the interests of the Government, review the status of all funds being withheld from the contractor under the particular contract concerned and under any other contracts with the contractor. The contracting officer shall decide whether to reduce the rate of withholding or whether to release a portion of the amount already reserved under the contract, as appropriate.

§ 12–7.5201–5 Patent rights.

Insert the appropriate patent rights clause set forth in DOTPR subpart 12–9.61.

§ 12–7.5201–6 Inspection and correction of defects.

(a) (1) The following clause shall be used where the primary contract objective is the delivery of end items other than designs, drawings, or reports, except where the contracting officer determines that the use of such clause is impracticable. Where this clause, or this clause as modified by subparagraph (2) or (3) of this paragraph, is not used, the clause in paragraph (b) of this section shall be used.

INSPECTION AND CORRECTION OF DEFECTS

(a) All work under this contract shall be subject to inspection and test by the Government (to the extent practicable) at all times (including the period of performance) and places, and in any event prior to acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, final inspection and acceptance shall be made at the place of delivery as promptly as practicable after delivery and shall be deemed to have been made no later than ninety (90) days after the date of such delivery, if acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other time as may be provided in the Schedule) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any failure by the Contractor to comply with the requirements of this contract. Any time devoted to such correction or replacement shall not be included in the computation of the period of time specified in the preceding sentence, except as provided in (d) below. Except as otherwise provided in paragraph (c) below, the allowability of the cost of any such replacement or correction shall be determined as provided in the clause of this contract entitled "Allowable Cost, Fixed Fee, and Payment," but no additional fee shall be payable with respect thereto. Corrected articles shall not be tendered again for acceptance unless the former tender and the requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to perform such replacement or correction, the Government (i) may by contract or otherwise perform such replacement or correction and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under the contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (ii) in the case of articles not delivered, may require the delivery of such articles, and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (iii) may terminate this contract for default. Failure to agree to the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) Notwithstanding the provisions of paragraph (b) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if such failure is due to fraud, lack of good faith or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (iii) a separate and complete major industrial operation in connection with the performance of this contract. The Government may at any time also require the Contractor to remedy by correction or replacement, without cost to the Government, any such failure caused by one or more individual employees selected or retained by the Contractor after any such supervisory personnel have reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) The provisions of paragraph (b) above shall apply to any corrected or replacement end item or component until six months after its acceptance.

(e) The Contractor shall make his records of all inspection work available to the Government during the performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace articles which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the clause of this contract entitled "Government Property."

(2) In the foregoing clause, the words "Task Order" or other appropriate desig-

nation may be substituted for the word "Schedule," as appropriate.

(3) In contracts not providing for payment of a fee, insert the following in lieu of paragraph (b) of the clause set forth in subparagraph (1) of this paragraph.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the Schedule) after acceptance of all of the end items (other than designs, drawings or reports) to be delivered under this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any failure by the Contractor to comply with the requirements of this contract. Any time devoted to such correction or replacement shall not be included in the computation of the period of time specified in the preceding sentence except as provided in paragraph (d) of this section. Except as provided in paragraph (c) of this section, the allowability of the cost of any such replacement or correction shall be as provided in the clause of this contract entitled "Allowable Cost and Payment." Corrected articles shall not be tendered again for acceptance unless the former tender and the requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to perform such replacement or correction, the Government (1) may by contract or otherwise perform such replacement or correction and charge to the Contractor any increased cost occasioned the Government thereby, or (2) in the case of articles not delivered, may require the delivery of such articles, or (3) may terminate this contract for default. Failure to agree to the amount of any such increased cost to be charged to the Contractor shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) The following clause shall be inserted in all contracts where the clause set forth in paragraph (a) (1) of this section is not used.

INSPECTION

The Government, through any authorized representatives, has the right at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

§ 12–7.5201–7 Assignment of claims.

Insert the clause set forth in FPR 1–30.703 under the conditions contained therein.

§ 12–7.5201–8 Examination of records by Comptroller General.

Insert the clause set forth in FPR 1–7.101–10. In the case of research and development contracts with nonprofit institutions and subcontracts thereunder, and pursuant to procedures approved by the Comptroller General, original documentary evidence in support of costs of the transportation of things will not be required pursuant to said clause.

§ 12–7.5201–9 Subcontracts.

(a) Subject to the instructions in paragraph (b) of this section, insert the following clause.

SUBCONTRACTS

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is cost-reimbursement, time and materials, or labor-hour, or (ii) is fixed-price type and exceeds in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract, (iii) provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment having a value in excess of $1,000 or of any items of industrial facilities; or (iv) has experimental, developmental, or research work as one of its purposes.

(b) In the case of a proposed subcontract which (i) is cost-reimbursement, time and materials, or labor-hour which would involve an estimated amount in excess of $10,000, including any fee, (ii) is proposed to exceed $100,000, or (iii) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate are expected to exceed $100,000, the advance notification required by (a) above shall include:

(1) A description of the supplies or services to be called for by the subcontract;

(2) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(3) The proposed subcontract price, together with the contractor's cost or price analysis thereof;

(4) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data when such data and certificate are required by other provisions of this contract to be obtained from the subcontractor; and

(5) Identification of the type of subcontract to be used.

(c) The Contractor shall obtain the written consent of the Contracting Officer prior to placing any subcontract for which advance notification is required under (a) above. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(f) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(g) Notwithstanding (c) above, the Contractor may enter into subcontracts within (i) and (ii) of (a) above, without the consent of the Contracting Officer, if the Contracting Officer has approved in writing the Contractor's procurement system and the subcontract is within the scope of such approval.

(b) In contracts without fee with educational institutions, change "(iii)" in paragraph (a) of the clause in paragraph (a) of this section to read:

(iii) Provides for (A) the construction, purchase, rental, installation, or other acquisition of nonseverable industrial facilities, or (B) the fabrication, purchase, rental, installation, or other acquisition, of any item of either (1) severable industrial facilities having a value in excess of $1,000 or the amount, if any, specified in the Schedule or Task Order, whichever is the lesser, or (2) special test equipment having a value in excess of $1,000.

In (iii)(B)(1) thereof, the $1,000 limit may, at the discretion of the contracting officer, be decreased where it is determined to be in the interest of the Government, in view of the circumstances of each particular contract, as, for example, the nature of the contractor's operations, previous experience with the contractor on comparable procurements, the contractor's accounting and procurement systems, accounting and supply systems of the procurement activity, and the capability of the procuring activity to effect close surveillance of the contractor's procurement and accounting practices. Also, in the discretion of the contracting officer, the cumulative total of acquisitions of severable industrial facilities may be limited to a stated dollar amount or an amount equal to a stated percentage of the estimated cost, beyond which amount the contractor will be required to obtain written consent of the contracting officer for any additional acquisitions of such facilities.

§ 12–7.5201–10 Utilization of small business concerns.

In accordance with FPR 1–1.710–3 (a) and (b), insert one or both of the clauses.

§ 12–7.5201–11 Termination.

Insert the appropriate clause set forth in either FPR 1–8.702 or FPR 1–8.704–1.

§ 12–7.5201–12 Disputes.

Insert the clause set forth in FPR 1–7.101–12.

§ 12–7.5201–13 Convict labor.

In accordance with FPR 1–12.202, insert the clause in FPR 1–12.203.

§ 12–7.5201–14 Walsh-Healey Public Contracts Act.

In accordance with FPR 1–12.602, insert the clause set forth in FPR 1–12.-605.

§ 12–7.5201–15 Contract Work Hours Standards Act—overtime compensation.

In accordance with FPR 1–12.302, insert the clause set forth in FPR 1–12.303.

§ 12–7.5201–16 Equal opportunity.

In accordance with FPR 1–12.803–1, insert the clause set forth in FPR 1–12.803–2.

§ 12–7.5201–17 Officials not to benefit.

Insert the clause set forth in FPR 1–7.101–19.

§ 12–7.5201–18 Covenant against contingent fees.

In accordance with FPR 1–1.501, insert the clause set forth in FPR 1–1.503.

§ 12–7.5201–19 Authorization and consent.

Insert the clause set forth in DOTPR 12–9.6106–2.

§ 12–7.5201–20 Notice and assistance regarding patent infringement.

In accordance with DOTPR 12–9.6108, insert the clause set forth in FPR 1–7.101–13.

§ 12–7.5201–21 Rights in data.

In accordance with DOTPR 12–9.6301–1, insert the clause set forth in DOTPR 12–9.6302 or 12–9.6303.

§ 12–7.5201–22 Insurance—liability to third persons.

(a) Except as provided in paragraph (b) of this section, insert the clause set forth in DOTPR 12–7.5001–20. If the contractor claims partial immunity from tort liability as a State agency or as a charitable institution (as where work may be performed under the contract in a place or under conditions where the contractor is not immune from tort liability), the following may be added to the clause in DOTPR 12–7.5001–20:

(e) Notwithstanding paragraphs (a) and (c) of this clause, (i) the Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for his liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract hereunder; and (ii) the Contractor need not procure or maintain insurance coverage as provided in paragraph (a) of this clause; provided, the Contractor may obtain any insurance coverage he deems necessary subject to approval by the Contracting Officer as to form, amount, and duration, in which event the Contractor shall be reimbursed (A) for the cost of such insurance and (B) to the extent provided in paragraph (c) above, for liabilities to third persons for which the Contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.

(b) If the contractor claims total immunity from tort liability as a State agency or as a charitable institution, the following clause may be used in lieu of the clause in DOTPR 12–7.5001–20:

LIABILITY TO THIRD PERSONS

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for his liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract hereunder.

(b) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. The Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith. The Contractor may, at his own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

§ 12–7.5201–23 Utilization of concerns in labor surplus areas.

In accordance with FPR 1–1.805, insert one or both of the clauses set forth in FPR 1–1.805–3.

§ 12–7.5201–24 Payment for overtime premiums.

Insert the clause set forth in DOTPR 12–7.5001–24.

§ 12–7.5201–25 Dissemination of contract information.

Insert the clause set forth in DOTPR 12–7.150–11.

§ 12–7.5201–26 Notice of delays.

Insert the clause set forth in DOTPR 12–7.150–9.

§ 12–7.5201–27 Gratuities.

Insert the clause set forth in DOTPR 12–7.150–1.

§ 12–7.5201–28 Priorities, allocation, and allotments.

Insert the clause set forth in DOTPR 12–7.150–3.

§ 12–7.5201–29 New material.

Insert the clause set forth in DOTPR 12–7.150–2.

§ 12–7.5201–30 Interpretation or modification.

Insert the clause set forth in DOTPR 12–7.150–4.

§ 12–7.5202 Clauses to be used when applicable.

The following clauses shall be included in the contract when their use is appropriate.

§ 12–7.5202–1 Buy American Act.

Insert the clause set forth in FPR 1–6.104–5 in accordance with the instructions for its use.

§ 12–7.5202–2 Military security requirements.

When required by DOTPR 12–1.351, insert the clause set forth in ASPR 7–104.12, as modified by ASPR 7–204.12.

§ 12–7.5202–3 Negotiated overhead rates.

Insert the clause set forth in FPR 1–3.704–1 or the appropriate clause set forth in FPR 1–3.704–2.

§ 12–7.5202–4 Changes to make-or-buy program.

In accordance with FPR 1–3.902–3, insert the clause set forth therein.

§ 12–7.5202–5 Required source for jewel bearings.

In accordance with FPR 1–1.319, insert the clause contained therein.

§ 12–7.5202–6 Value engineering.

A value engineering incentive clause shall be included in the contract in accordance with the instructions for its use in DOTPR 12–1.5202–2.

§ 12–7.5202–7 Recovery of developmental costs.

Insert the clause set forth in DOTPR 12–9.6202 in accordance with the instructions contained therein.

§ 12–7.5202–8 Renegotiation.

Insert the clause set forth in DOTPR 12–7.151–12 in accordance with the instructions contained therein.

§ 12–7.5202–9 Aluminum.

In accordance with FPR 1–5.1001–1, insert the clause set forth in FPR 1–5.1001–2.

§ 12–7.5202–10 Stop work orders.

The clause set forth in DOTPR 12–7.151–8 may be included under the conditions described therein, provided the clause is modified in accordance with DOTPR 12–7.5002–11.

§ 12–7.5202–11 Competition in subcontracting.

Insert the clause set forth in DOTPR 12–7.5002–12 in accordance with the instructions for its use.

§ 12–7.5202–12 Audit and records.

Insert the clause set forth in FPR 1–3.814–2(c) in accordance with the instructions for its use.

§ 12–7.5202–13 Price reduction for defective cost or pricing data.

Insert the clause set forth in FPR 1–3.814–1(a) in accordance with the instructions for its use.

§ 12–7.5202–14 Subcontractor cost and pricing data.

Where the clause in FPR 1–3.814–1(a) is included in the contract, the clause in FPR 1–3.814–3(a) also shall be included.

§ 12–7.5202–15 Government property.

Insert the clause set forth in DOTPR 12–7.5002–16 in accordance with the instructions for its use.

§ 12–7.5202–16 Excusable delays.

Insert the clause set forth in FPR 1–8.708 when the termination clause set forth in FPR 1–8.702 is used.

§ 12–7.5202–17 General Services Administration supply sources.

When it is determined appropriate in accordance with Administration procedures to authorize the contractor to utilize General Services Administration

supply sources in performing a cost-reimbursement type contract pursuant to FPR Subpart 1–5.9, the following clause shall be inserted in the contract:

GENERAL SERVICES ADMINISTRATION SUPPLY SOURCES

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

§ 12–7.5202–18 Filing of patent applications.

In accordance with DOTPR 12–9.6109, insert the clause set forth therein.

§ 12–7.5202–19 Background patents (license).

Insert the clause set forth in DOTPR 12–9.6105–1 in accordance with the instructions contained in DOTPR 12–9.6105.

§ 12–7.5202–20 Reporting and refund of royalties.

In accordance with DOTPR 12–9.6111 and 12–9.6112, insert the clause or clauses set forth therein.

Subpart 12–7.53 [Reserved]

Subpart 12–7.54—Clauses for Architect-Engineer Contracts

§ 12–7.5400 Scope.

This subpart sets forth contract clauses for use in fixed-price architect-engineer contracts in addition to those prescribed in the August 1970 edition of Standard Form 253 (see FPR 1–16.702).

§ 12–7.5400–1 Amendment of Standard Form 253.

Pending the publication of a new edition of Standard Form 253, the "Examination of Records" clause contained therein shall be deleted, and the clause set forth in FPR 1–7.101–10 entitled "Examination of Records by Comptroller General" shall be substituted therefor. The term "Architect-Engineer" shall be substituted for "Contractor" wherever it appears in the clause.

§ 12–7.5401 Required clauses.

§ 12–7.5401–1 Composition of contractor.

COMPOSITION OF CONTRACTOR

If the Contractor hereunder is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.

§ 12–7.5401–2 Interpretation or modification.

Insert the clause set forth in DOTPR 12–7.150–4.

§ 12–7.5401–3 Dissemination of contract information.

Insert the clause set forth in DOTPR 12–7.150–11, substituting "Architect-Engineer" for "Contractor."

§ 12–7.5401–4 Inspection.

INSPECTION

The Government, through any authorized representative, may at all reasonable times, inspect or otherwise evaluate the work being performed hereunder and the premises in which it is being performed. If any inspection or evaluation is made by the Government on the premises of the Architect-Engineer or subcontractor, the Architect-Engineer shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

§ 12–7.5401–5 Notice of delays.

Insert the clause set forth in DOTPR 12–7.150–9, substituting "Architect-Engineer" for "Contractor".

§ 12–7.5401–6 Certification of drawings and other documents.

CERTIFICATION OF DRAWINGS AND OTHER DOCUMENTS

The Architect-Engineer or his authorized representative shall sign the original tracings of all drawings and the first page of all specifications, estimates, or similar documents under the Architect-Engineer's printed name and over the affixed replica of his professional seal or his registration certificate number, including the State or jurisdiction of issuance.

§ 12–7.5401–7 Gratuities.

Insert the clause set forth in DOTPR 12–7.150–1, substituting "Architect-Engineer" for "Contractor".

§ 12–7.5402 Clauses to be used when applicable.

The following clauses shall be included in the contract when their use is appropriate.

§ 12–7.5402–1 Military security requirements.

Insert the Military Security Requirements clause in ASPR 7–104.12 in accordance with the instructions for its use in DOTPR 12–1.351.

§ 12–7.5402–2 Audit and records.

Insert the clause set forth in FPR 1–3.814–2(a) in accordance with the instructions for its use.

§ 12–7.5402–3 Price reduction for defective cost or pricing data.

Insert the clause set forth in FPR 1–3.814–1(a) in accordance with the instructions for its use.

§ 12–7.5402–4 Subcontractor cost or pricing data.

Insert the clause set forth in FPR 1–3.814–3(a) in accordance with the instructions for its use.

§ 12–7.5402–5 Architectural designs and data—Government rights (sole property).

Where the purpose of a contract for architect-engineer services is to obtain a unique architectural design of a building, a monument, or construction of a similar nature, which for artistic, esthetic, or other special reasons the Government does not want duplicated by anyone else, the Government may desire to acquire exclusive control of the data pertaining to such design. The clause set forth in FPR 1–16.703(d) shall be used only in those cases where the contracting officer determines for the foregoing reasons that it is desirable to maintain exclusive control over the design and data.

§ 12–7.5402–6 Renegotiation.

Insert the clause set forth in DOTPR 12–7.151–12 in accordance with the instructions for its use.

§ 12–7.5403 Additional clauses.

The following clauses shall be included in the contract when it is deemed necessary or desirable to cover the subject matter thereof. The clauses may be modified, when necessary, to adapt to special situations.

§ 12–7.5403–1 Method of payment.

METHOD OF PAYMENT

(a) Estimates shall be made monthly of the amount and value of the work and services performed by the Architect-Engineer under this contract, such estimates to be prepared by the Architect-Engineer and accompanied by such supporting data as may be required by the Contracting Officer.

(b) Upon approval of such estimate by the Contracting Officer payment upon properly certified vouchers shall be made to the Architect-Engineer as soon as practicable of 90% of the amount as determined above, less all previous payments: *Provided, however,* That if the Contracting Officer determines that the work is substantially complete and that the amount of retained percentages is in excess of the amount considered by him to be adequate for the protection of the Government, he may at his discretion release to the Architect-Engineer such excess amount.

(c) Upon satisfactory completion by the Architect-Engineer and acceptance by the Contracting Officer of the work required by the contract, the Architect-Engineer will be paid the unpaid balance of any money due under the contract.

(d) As a precedent to final payment under the contract, the Architect-Engineer shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Architect-Engineer from the operation of the release in stated amounts to be set forth therein.

§ 12–7.5403–2 Preparation of specifications.

PREPARATION OF SPECIFICATIONS

The Architect-Engineer shall make reference to applicable Federal specifications, if available, for items and materials used. If Federal specifications are not available, the Architect-Engineer shall reference specifications prepared by recognized professional manufacturer or construction societies, or furnish descriptions of the items or materials containing all the fundamental properties and all the essential requirements to be met by the items or materials. When an item or material cannot be described because of its technical construction or composition or because it is a proprietary item, the name of one, and if available, several, suitable commercial products shall be included as part of the required description, followed by the words "or equal." If it is determined that one and only one brand of item or material will meet the requirement, the Architect-Engineer shall so state and shall give full justification for that determination. Specifi-

cations will not duplicate, contradict or cover the same subject matter contained in the general and special provisions to be used with the construction contract. A complete set of construction contract general and special provisions will be furnished to the Architect-Engineer by the Contracting Officer.

§ 12–7.5403–3 Construction cost limitations.

CONSTRUCTION COST LIMITATIONS

(a) The Architect-Engineer shall accomplish the design services required under this contract so as to permit the award of a construction contract in an amount not to exceed the estimated construction contract price set forth in this contract.

(b) After bids or offers on the construction contract for this project are opened, the estimated construction contract price shall be increased by a percentage representing the increase in the level of building construction costs during the period between the date of award of this contract and the date bids or offers were opened. The percentage of increase shall be determined by averaging the building construction cost indices for that period as published by the Engineering News-Record Building Cost Index, the Associated General Contractors of America Construction Cost Index, and E. H. Boeckh & Associates.

(c) If the lowest acceptable bid or offer exceeds by more than five percent the estimated construction contract price, adjusted in accordance with paragraph (b) above, the Architect-Engineer shall, at no cost to the Government, redesign or make such revisions in the drawings and specifications as are required to meet the requirements of (a) above. The Architect-Engineer shall commence such revisions promptly upon receipt of notice and directions from the Contracting Officer and shall complete the revisions within the time determined by the Contracting Officer to be commensurate with the extent of the revisions required.

(d) In the event the Architect-Engineer fails or refuses to furnish revisions as may be required in accordance with this clause, he shall be deemed to have failed to perform the contract. At the sole option of the Government, he shall either reimburse the Government all payments received to date under this contract or reimburse the Government the cost of having the revisions accomplished by other means.

NOTE: Whenever the above clause is included in a contract, the statement below shall be inserted in the description of the work to be performed by the Architect-Engineer:

"The estimated construction contract price for the project described herein is $_____."

The figure to be inserted in this statement is to be established by agreement between the Architect-Engineer and the Government.

§ 12–7.5403–4 Building codes.

BUILDING CODES

The Architect-Engineer shall plan and design this project in accordance with the building ordinances, codes, and regulations of the county and political subdivision in which the project is to be constructed insofar as they are binding upon the United States Government. The project shall also be planned and designed in compliance with the latest edition of the American National Building Code as recommended by the Board of Fire Underwriters.

Subpart 12–7.56—Clauses for Fixed-Price Vessel Repair, Alteration or Conversion Contracts

§ 12–7.5600 Scope of subpart.

This subpart is applicable only to the Coast Guard. It sets forth or cites contract clauses to be used for fixed-price vessel repair, alteration or conversion contracts and where necessary provides instructions for their use.

§ 12–7.5601 Required clauses.

The clauses set forth or cited in this section shall be included in fixed-price vessel repair, alteration or conversion contracts which are formally advertised and to be performed within the United States, its possessions, or Puerto Rico. Unless inappropriate, the clauses should also be included in negotiated contracts and contracts to be performed outside the United States.

§ 12–7.5601–1 Delivery and shifting of vessel.

DELIVERY AND SHIFTING OF VESSEL

The Government shall deliver the vessel to the Contractor at his place of business. Upon completion of the work the Government shall accept delivery of the vessel at the Contractor's place of business. The Contractor shall provide, at no additional charge, upon 24 hours' advance notice, a tug or tugs and docking pilot, acceptable to the Contracting Officer, to assist in handling the vessel between (to and from) the Contractor's plant and the nearest point in a waterway regularly navigated by vessels of equal or greater draft and length. While the vessel is in the hands of the Contractor, any necessary towage, cartage, or other transportation between ship and shop or elsewhere, which may be incident to the work herein specified, shall be furnished by the Contractor without additional charge to the Government.

§ 12–7.5601–2 Performance.

PERFORMANCE

(a) The Contractor shall make the necessary arrangements for receiving the vessel on the specified date, such arrangements to be satisfactory to the Contracting Officer or his duly authorized representative.

(b) The Contractor shall promptly commence the work required by the contract and shall diligently prosecute same to completion to the satisfaction of the Contracting Officer.

(c) Except as otherwise provided in this contract, the Contractor shall furnish all necessary material, labor, services, equipment, supplies, power, accessories, facilities and such other things and services as are necessary for accomplishing the work specified in this contract subject to the right reserved in the Government under the "Government-furnished Property" clause of the contract.

(d) The Contractor shall without charge and without specific requirement therefor:

(1) Make available at the plant to personnel of the vessel, while in drydock or on a marine railway, toilet and similar facilities acceptable to the Contracting Officer as adequate in number and sanitary standards.

(2) Supply and maintain, in such condition as the Contracting Officer may reasonably require, suitable brows and gangways from the pier, drydock or marine railway to the vessel (access to vessel shall be lighted by the Contractor during all periods of darkness).

(3) Treat salvage, scrap, or other ship's material of the Government resulting from performance of work as though they were items of Government-furnished property in accordance with provisions of the "Government-furnished Property" clause of this contract.

(4) Perform, or pay the cost of, any repairs, reconditioning or replacements necessary as a result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipelines.

(e) The Contractor shall conduct dock and sea trials of the vessel as required by the specifications. During such trials the vessel shall be under the control of the vessel's commander and crew with representatives of the Contractor and the Government on board to determine whether or not the work done by the Contractor has been satisfactorily performed. Dock and sea trials not specified herein which the Contractor requires for his own benefit shall not be undertaken by the Contractor without prior notice to and approval of the Contracting Officer; any such dock trials shall be conducted at the expense of the Contractor, and any such sea trials shall be conducted at the risk and expense of the Contractor.

§ 12–7.5601–3 Inspection and manner of doing work.

INSPECTION AND MANNER OF DOING WORK

(a) All work and material shall be subject to the approval of the Contracting Officer or his duly authorized representative. Work shall be performed in accordance with the plans and specifications of this contract as modified by any change order issued under the "Changes" clause in this contract.

(b) Unless otherwise specifically provided for herein, all operational practices of the Contractor and all workmanship and material, equipment and articles used in the performance of work thereunder shall be in accordance with American Bureau of Shipping Rules for Building and Classing Steel Vessels, U.S. Coast Guard Marine Engineering Regulations and Material Specifications (Subchapter J, 46 CFR), U.S. Coast Guard Electrical Engineering Regulations (Subchapter J, 46 CFR), U.S. Coast Guard Navigation and Vessel Inspection Circular No. 4–60 (Part IV—Notes on Repair), and U.S.P.H.S., Handbook on Sanitation in Vessel Construction, in effect at the time of the Contractor's submission of bid (or acceptance of the contract, if negotiated), and the best commercial maritime practices except where Navy specifications are specified, in which case such standards of material and workmanship shall be followed. Where the detailed specifications do not require a Navy standard, and the requirements are not clearly or specifically covered by one of the aforementioned standards, the Contracting Officer or his designated representative shall prescribe a Navy or industrial standard for the work wherever applicable, and the decision shall be final: *Provided, however,* That where the requirements of the representative for development of detailed drawings, selection of materials and equipment, standards of workmanship, which are not specifically required in the specifications result in a change in unit price, total contract price, quantity, quality, or delivery schedule, the Contracting Officer will be advised accordingly and the Contractor will not proceed with the work until specifically directed to do so by the Contracting Officer.

(c) All material and workmanship shall be subject to inspection and test at all times during the Contractor's performance of the work to determine their quality and suitability for the purpose intended and compliance with the contract. In case any material or workmanship furnished by the Contractor is found prior to redelivery of the vessel to be defective, or not in accordance with the requirements of the contract, the Government, in addition to its rights under any "Guaranty" clause which may be contained in this contract, shall have the right prior to redelivery of the vessel to reject such material or workmanship, and to require its correction or replacement by the Contractor at the Contractor's cost and expense. If the Contractor fails to proceed promptly with the replacement or correction of such material or workmanship, as required by the Contracting Officer, the Government may, by contract or otherwise, replace or correct such material or workmanship and charge to the Contractor the excess cost occasioned the Government thereby. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work specified in the contract. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of the contract and for a period of 60 days after completion of all work required by the contract.

(d) No welding, including tack welding and brazing, shall be permitted in connection with repairs, completions, alterations, or addition to hulls, machinery or components of vessels, unless the welder at the time has a valid qualification record, certified by the U.S. Coast Guard, the American Bureau of Shipping, or the Department of the Navy. The welder's qualifications shall be appropriate for the particular service application, filler material type, position of welding, and welding process involved in the work being undertaken. A welder who for a period of three (3) months or more has not used the process for which he was qualified, or at any time deemed necessary by the Contracting Officer because of a reasonable doubt of the welder's ability, may be required to requalify. Welder's qualification for this purpose shall be as outlined in "Marine Engineering Regulations" of the U.S. Coast Guard. Contractors or fabricators desiring, or where required by the detailed specifications or job order, to weld with a process other than manual shielded arc shall submit procedure qualification tests for approval prior to production welding. Procedure qualification tests shall be conducted in accordance with the requirements of the "Marine Engineering Regulations" of the U.S. Coast Guard.

(e) The Contractor shall exercise reasonable care to protect the vessel from fire, and the Contractor shall maintain a reasonable system of inspection over the activities of welders, burners, riveters, painters, plumbers and similar workers, particularly where such activities are undertaken in the vicinity of the vessel's magazines, fuel oil tanks or storerooms containing flammable materials. A reasonable number of hose lines shall be maintained by the Contractor ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in drydock or on a marine railway. All tanks under alteration or repair shall be cleaned, washed and steamed out or otherwise made safe by the Contractor if and to the extent necessary, and the Contracting Officer shall be furnished with a "gas-free" or "safe-for-hot-work" certificate before any hot-work is done on a tank. Unless otherwise provided in this contract, the Contractor shall at all times maintain a reasonable fire watch about the vessel, including a fire watch on the vessel while work is being performed thereon.

(f) The Contractor shall place proper safeguards and/or effect such safety precautions as necessary, including suitable and sufficient lighting, for the prevention of accidents or injury to persons or property during the prosecution of work under this contract and/or from time of receipt of the vessel until acceptance of work performed by the Government.

(g) Except as otherwise provided in this contract, when the vessel is in the custody of the Contractor or in drydock or on a marine railway and the temperature becomes as low as 35° F., the Contractor shall keep all pipe-lines, fixtures, traps, tanks, and other receptacles on the vessel drained to avoid damage from freezing, or if this is not practicable, the vessels shall be kept heated to prevent such damage. The vessel's stern tube and propeller hubs shall be protected from frost damage by applied heat through the use of a salamander or other proper means.

(h) The work shall, whenever practicable, be performed in such manner as not to interfere with the berthing and messing of civilian or military personnel attached to the vessel, and provisions shall be made so that personnel assigned shall have access to the vessel at all times, it being understood that such personnel will not interfere with the work or the Contractor's workmen.

(i) The Government does not guarantee the correctness of the dimensions, sizes and shapes given in any sketches, drawings, plans or specifications prepared or furnished by the Government. The Contractor shall be responsible for the correctness of the shape, sizes and dimensions of parts to be furnished hereunder, other than those furnished by the Government.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by his employees or the work, and at the completion of the work shall remove all rubbish from and about the site of the work and shall leave the work in its immediate vicinity "broom clean," unless more exactly specified in this contract.

(k) Any question regarding or rising out of the interpretations of plans and specifications of this contract or any discrepancies between the plans and specifications shall be determined by the Contracting Officer or his duly authorized representative: *Provided, however,* That any interpretations or determinations by the authorized representative which affect the price or delivery time specified in this contract must be approved in writing by the Contracting Officer prior to proceeding with the requirements of such interpretations or determinations.

(l) While in drydock or on a marine railway, the commanding officer of the vessel, if then in commission, shall be responsible for the proper closings of openings to the ship's bottom upon which no work is being done by the Contractor. The Contractor shall be responsible for the closing before the end of working hours, of all valves and openings upon which work is being done by its workmen when such closing is practicable. The Contractor shall keep the commanding officer cognizant of the closure status of all valves and openings upon which the Contractor's workmen have been working.

§ 12–7.5601–4 Subcontracts.

SUBCONTRACTS

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of his own employees, and of subcontractors and their employees. He shall also be responsible for the coordination of the work of the trades, subcontractors, and material men.

(c) The Contractor shall, without additional expense to the Government, employ specialty subcontractors where required by the specifications.

(d) The Government or its representatives will not undertake to settle any differences between the Contractor and his subcontractors or between subcontractors.

§ 12–7.5601–5 Lay days.

LAY DAYS

(a) Lay day time will be paid for by the Government at the Contractor's stipulated bid price for this item of the contract when the vessel remains on the dry dock or Marine Railway as a result of any change that involves work in addition to that required under the basic contract.

(b) No cost for lay day time shall be paid until all accepted items of the basic contract for which a price was established by the Contractor and for which docking of the vessel was required have been satisfactorily completed.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the Contractor shall not be paid as lay day time.

(d) Payment of lay day time shall constitute complete compensation for all cost except for the direct cost of performing the changed work.

§ 12–7.5601–6 Changes.

CHANGES

The Contracting Officer may at any time, by written change order, and without notice to the sureties, make changes within the general scope of this contract in (i) drawings, designs, plans and specifications, (ii) work to be performed under the contract, (iii) place of performance of the work, and (iv) time of commencement or completion of the work, and may otherwise vary the requirements of the contract within the general scope thereof. If any such change causes an increase or decrease in the cost of, or the time required for, performance of the contract, whether changed or not changed by any such change order, an equitable adjustment shall be made in the price or in the date of completion, or both, and the contract shall be modified in writing accordingly. The price adjustment for the change order and the adjustment in the date of completion shall be agreed upon and reduced to writing at the time the change is ordered or as soon thereafter as practicable. A request for price adjustment, together with the Contractor's written estimate of the increased cost, must be asserted within 10 days from the date of receipt by the Contractor of the notification of change or within such further time as the Contracting Officer may allow on request made by the Contractor during such period: *Provided,* That, without prejudicing the right to reject any claim asserted after this time, if the Contracting Officer decides that the facts justify such action, may receive and act upon any such request asserted at any later time prior to final payment under the contract, except that in such event no profit shall be allowed to the Contractor. Where the cost of property made obsolete or excess as result of a change is included in the Contractor's claim

for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

§ 12–7.5601–7 Extras.

Insert the clause set forth in FPR 1–7.101–3.

§ 12–7.5601–8 Payments.

PAYMENTS

Unless otherwise specified, the Contractor shall be paid, upon the submission of proper invoice or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided.

§ 12–7.5601–9 Government-furnished property.

GOVERNMENT-FURNISHED PROPERTY

(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 contract 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"): *Provided, however,* That the vessel, its equipment, moveable stores, cargo, or other ship's material shall not be Government-furnished property. The delivery or performance dates for the supplies or services to be furnished by the Contractor under the 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 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 such delay, in accordance with the procedures provided for under the "Changes" clause of this contract. 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 "Changes" clause of this contract. 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 the 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 the contract shall pass to and vest in the Government when its use in the performance of the contract commences, or upon payment therefor by the Government, whichever is earlier, whether or not title previously vested. All Government-furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government property." Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reasons of affixation to any realty.

(d) *Property administration.* The contractor shall comply with the provisions of the "Manual for Control of Government Property in Possession of Contractors" (Appendix B, Armed Services Procurement Regulations) 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) *Maintenance and repair of Government property.* The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the 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 the 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) to the extent and as provided in the "Liability and Insurance" clause of this contract, 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 work in this contract (including any resulting scrap) or not theretofore delivered to the Government, and shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as the Contracting Officer may direct.

(j) *Restoration of contractor's premises.* Unless otherwise provided herein, the Government:

(1) May abandon any Government property in place, and thereupon all obligations of the Government regarding such abandoned property shall cease; and

(2) Shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of, the Contractor's plant or any portion thereof which is affected by the abandonment or removal of any Government property.

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

§ 12–7.5601–10 Liability and insurance.

LIABILITY AND INSURANCE

(a) The Contractor shall exercise reasonable care and use his best efforts to prevent accidents, injury or damage to all employees, persons, and property, in and about the work, and to the vessel or part thereof upon which work is done.

(b) The Contractor shall be responsible for and make good at his own cost and expense any and all loss of or damage of whatsoever nature to the vessel (or part thereof), its equipment, moveable stores and cargo, and Government-owned material and equipment for the repair, completion, alteration of or addition to the vessel in the possession of the Contractor, whether at the plant or elsewhere, arising or growing out of the performance of the work, except where the Contractor can affirmatively show that such loss or damage was due to causes beyond the

Contractor's control, was proximately caused by the fault or negligence of agents or employees of the Government acting within the scope of their authority, or which loss or damage the Contractor by exercise of reasonable care was unable to prevent: *Provided*, That the Contractor shall not be responsible for any such loss or damage discovered after redelivery of the vessel unless (i) such loss or damage is discovered within sixty (60) days after redelivery of the vessel and (ii) such loss or damage is affirmatively shown to have been the result of the fault or negligence of the Contractor. To induce the Contractor to perform the work for the compensation provided, it is specifically agreed that the Contractor's aggregate liability on account of loss of or damage to the vessel (or part thereof), its equipment, movable stores and cargo and said Government-owned materials and equipment shall in no event exceed the sum of $300,000, and the Government assumes as to the Contractor the risk of loss or damage (including, but not limited to, loss or damage from negligence of whatsoever degree of the Contractor's servants, employees, agents or subcontractors but specifically excluding loss or damage from willful misconduct or lack of good faith on the part of any of 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 or (ii) all or substantially all of the Contractor's operation at any one plant) to the vessel (or part thereof), its equipment, movable stores and cargo and said Government-owned materials and equipment in excess of $300,000: *Provided, however*, That as to such risk assumed and borne by the Government, the Government shall be subrogated to any claim, demand or cause of action against third persons which exists in favor of the Contractor, and the Contractor shall, if required, execute a formal assignment or transfer of claims, demands or causes of action: *Provided, further*, That nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the Contractor, nor shall any person (except the Contractor) be or become entitled thereby to proceed directly against the Government, or join the Government as a codefendant in any action against the Contractor brought to determine the Contractor's liability or for any other purpose.

(c) The Contractor indemnifies and holds harmless the Government, its agencies and instrumentalities, the vessel and its owners, against all suits, actions, claims, costs or demands (including, without limitation, suits, actions, claims, costs or demands resulting from death, personal injury and property damage) to which the Government, its agencies and instrumentalities, the vessel or its owner may be subject or put by reason of damage or injury (including death) to the property or person of any one other than the Government, its agencies, instrumentalities and personnel, the vessel or its owner, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the Contractor, or any subcontractor, his or their servants, agents or employees: *Provided*, That the Contractor's obligation to indemnify under this paragraph (c) shall not exceed the sum of $300,000 on account of any one accident or occurrence in respect of any one vessel. Such indemnity shall include, without limitation, suits, actions, claims, costs or demands of any kind whatsoever, resulting from death, personal injury or property damage occurring during the period of performance of work on the vessel or within 60 days after redelivery of the vessel; and with respect to any such suits, actions, claims, costs or demands resulting from death, personal injury or property damage occurring after the expiration of such period, the rights and liabilities of the Government and the Contractor shall be as determined by other provisions of this contract and by law: *Provided, however*, That such indemnity shall apply to death occurring after such period which results from any personal injury received during the period covered by the Contractor's indemnity as provided herein.

(d) The Contractor shall, at his own expense, procure, and thereafter maintain such casualty, accident and liability insurance, in such forms and amounts as may be approved by the Contracting Officer, insuring the performance of his obligations under paragraph (c) of this clause. In addition, the Contractor shall at his own expense procure and thereafter maintain such ship repairer's legal liability insurance as may be necessary to insure the Contractor against his liability as ship repairer in the amount of $300,000 or the value of the vessel as determined by the Contracting Officer, whichever is the lesser, with respect to each vessel on which work is performed: *Provided*, That, in the discretion of the Contracting Officer, no such insurance need be procured whenever the contract requires work on parts of a vessel only and such work is to be performed at a plant other than the site of the vessel. Further, the Contractor shall procure and maintain in force Workmen's Compensation Insurance (or its equivalent) covering his employees engaged on the work and shall insure the procurement and maintenance of such insurance by all subcontractors engaged on the work. The Contractor shall provide such evidence of such insurance as may be, from time to time, required by the Contracting Officer.

(e) No allowance shall be made the Contractor in the contract price for the inclusion of any premium expense or charge for any reserve made on account of self insurance for coverage against any risk assumed by the Government under this clause.

(f) As soon as practicable after the occurrence of any loss or damage the risk of which the Government has assumed, written notice of such loss or damage shall be given by the Contractor to the Contracting Officer, which notice shall contain full particulars of such loss or damage. If claim is made or suit is brought thereafter against the Contractor as the result or because of such event, the Contractor shall immediately deliver to the Government every demand, notice, summons or other process received by him or his representatives. The Contractor shall cooperate with the Government and, upon the Government's request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits; and the Government shall pay to the Contractor the expense, other than the cost of maintaining the Contractor's usual organization, incurred in so doing. The Contractor shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than shall be imperative for the protection of the vessel or vessels at the time of said occurrence of such event.

§ 12–7.5601–11 Title.

TITLE

Unless title to materials and equipment acquired or produced for, or allocated to, the performance of this contract shall have vested previously in the Government by virtue of other provisions of this contract, title to all materials and equipment to be incorporated in any vessel or part thereof, or to be placed upon any vessel or part thereof in accordance with the requirements of the contract, shall vest in the Government upon delivery thereof at the plant or such other location as may be specified in the contract for the performance of the work; provided, however, that the provisions of this clause or other provisions of this contract shall not be construed as relieving the Contractor from the full responsibility for all such Contractor-furnished materials and equipment or the restoration of any damaged work or as a waiver of the right of the Government to require the fulfillment of all the terms of this contract, it being expressly understood and agreed that the Contractor shall assume without limitation the risk of loss for any such materials and equipment until such time as all work is completed and accepted by the Government and the vessel is redelivered to the Government. Upon completion of the contract, or with the approval of the Contracting Officer at any time during the performance of the contract, all such Contractor-furnished materials and equipment not incorporated in any vessel or part theerof, or not placed upon any vessel or part thereof, in accordance with the requirements of the contract, shall become the property of the Contractor, except those materials and equipment the cost of which has been reimbursed by the Government to the Contractor.

§ 12–7.5601–12 Discharge of liens.

DISCHARGE OF LIENS

The Contractor shall immediately discharge or cause to be discharged any lien or right in rem of any kind, other than in favor of the Government, which at any time exists or arises in connection with work done or materials furnished under this contract with respect to the machinery, fittings, equipment or materials for any vessel. If any such lien or right in rem is not immediately discharged, the Government may discharge or cause to be discharged such lien or right at the expense of the Contractor.

§ 12–7.5601–13 Federal, State, and local taxes.

Insert the clause set forth in FPR 1–11.401–1(c).

§ 12–7.5601–14 Default.

DEFAULT

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

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

(2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of the contract in accordance with its terms.

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

to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to perform the contract within the time specified therein.

(c) In the event the Government terminates the contract in whole or in part as provided in paragraph (a) of this clause, the Government may, upon such terms and in such manner as the Contracting Officer may deem appropriate, arrange for the completion of the work so terminated, at such plant or plants, including that of the Contractor, as may be designated by the Contracting Officer: *Provided*, That the Contractor shall continue the performance of the contract to the extent not terminated under the provisions of this clause. If the work is to be completed at the plant, the Government may use all tools, machinery, facilities and equipment of the Contractor determined by the Contracting Officer to be necessary for that purpose. If the cost to the Government of the work procured or completed (after adjusting such cost to exclude the effect of change in the plans and specifications made subsequent to the date of termination) exceeds the price fixed for work under the contract (after adjusting such price on account of changes in the plans and specifications made prior to the date of termination), the Contractor, or his surety, if any, shall be liable for such excess.

(d) If the contract is terminated in whole or in part as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (1) any completed supplies and (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of the contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. The Government shall pay to the Contractor the contract price for completed items of work delivered to and accepted by the Government, and the amount agreed upon by the Contractor and the Contracting Officer for manufacturing materials delivered to and accepted by the Government, and for the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(e) If, after notice of termination of the contract under the provisions of paragraph (a) of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination has been issued pursuant to the clause of this contract entitled "Termination for Convenience of the Government".

(f) If the Contractor fails to complete the performance of the contract within the time specified therein, or any extension thereof, the actual damage to the Government for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, the Contractor shall pay to the Government as fixed, agreed, and liquidated damages for each calendar day of delay the amount, if any, set forth in the contract (prorated to the nearest hour for fractional days). Alternatively, the Government may terminate the contract in whole or in part as provided in paragraph (a) of this clause, and in that event the Contractor shall be liable, in addition to the excess costs provided in paragraph (c) above, for such liquated damages accruing until such time as the Government may reasonably obtain completion of the work described in the contract. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor, as defined in paragraph (b) above, and in such event, subject to the provisions of the Disputes clause of this contract, the Contracting Officer shall ascertain the facts and the extent of the delay and shall extend the time for performance when in his judgment the findings of fact justify an extension.

(g) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

§ 12–7.5601–15 Delays.

DELAYS

When during the performance of this contract, the Contractor is required to delay work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid the incurring of additional costs on account thereof, an equitable adjustment shall be made in the price of the contract pursuant to the "Changes" clause.

§ 12–7.5601–16 Termination for convenience of the Government.

(a) Insert the clause set forth in FPR 1–8.705–2 in contracts not exceeding $10,000.

(b) Insert the clause set forth in FPR 1–8.703 in contracts exceeding $10,000.

§ 12–7.5601–17 Disputes.

Insert the clause set forth in FPR 1–7.101–12.

§ 12–7.5601–18 Patent indemnity.

In accordance with DOTPR 12–9.6107, insert the clause or clauses set forth therein.

§ 12–7.5601–19 Authorization and consent.

Insert the clause set forth in DOTPR 12–9.6106–1.

§ 12–7.5601–20 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in FPR 1–7.101–13 under the condition described therein.

§ 12–7.5601–21 Buy American Act.

Insert the clause set forth in FPR 1–6.104–5.

§ 12–7.5601–22 Convict labor.

Insert the clause set forth in FPR 1–12.203.

§ 12–7.5601–23 Contract Work Hours and Safety Standards Act—overtime compensation.

Insert the clause set forth in FPR 1–12.303, modified as follows:

(a) In the title and wherever it appears in the text of the clause, change "Contract Work Hours Standards Act" to read "Contract Work Hours and Safety Standards Act."

(b) In the preamble, change "(40 U.S.C. 327–330)" to read "(40 U.S.C. 327–333)."

§ 12–7.5601–24 Walsh-Healey Public Contracts Act.

Insert the clause set forth in FPR 1–12.605.

§ 12–7.5601–25 Department of Labor Safety and Health Regulations for Ship Repairing.

DEPARTMENT OF LABOR SAFETY AND HEALTH REGULATIONS FOR SHIP REPAIRING

Attention of the Contractor is directed to Public Law 85–742, approved August 23, 1958 (72 Stat. 835, 33 U.S.C. 941), amending section 41 of the Longshoremen's and Harbor Worker's Compensation Act and to the Safety and Health Regulations for Ship Repairing promulgated thereunder by the Secretary of Labor (29 CFR Subtitle A, Part 8). These regulations apply to all ship repair and related work, as defined in the regulations, performed under this contract on the navigable waters of the United States including any drydock or marine railway. Nothing contained in this conrtact shall be construed as relieving the Contractor from any obligations which it may have for compliance with the aforesaid regulations.

§ 12–7.5601–26 Equal opportunity.

Insert the clause set forth in FPR 1–12.803–2.

§ 12–7.5601–27 Officials not to benefit.

Insert the clause set forth in FPR 1–7.101–19.

§ 12–7.5601–28 Covenant against contingent fees.

Insert the clause set forth in FPR 1–1.503.

§ 12–7.5601–29 Additional bond security.

Insert the clause set forth in FPR 1–7.101–9.

§ 12–7.5601–30 Interpretation or modification.

Insert the clause set forth in DOTPR 12–7.150–4.

§ 12–7.5601–31 Notice of delays.

Insert the clause set forth in DOTPR 12–7.150–9.

§ 12–7.5601–32 Gratuities.

Insert the clause set forth in DOTPR 12–7.150–1.

§ 12–7.5601–33 Examination of records by Comptroller General.

Insert the clause set forth in FPR 1–7.101–10.

§ 12–7.5601–34 Utilization of small business concerns.

Insert the clause set forth in FPR 1–1.710–3(a).

§ 12–7.5601–35 Utilization of labor surplus area concerns.

Insert the clause set forth in FPR 1–1.805–3(a) under the conditions described therein.

§ 12–7.5601–36 Assignment of claims.

Insert the clause set forth in FPR 1–30.703.

§ 12–7.5601–37 Definitions.

Insert the clause set forth in FPR 1–7.101–1.

§ 12–7.5602 Clauses to be used when applicable.

The following clauses shall be included in the contract when their use is appropriate. Other clauses may be used if considered essential and not inconsistent with or in limitation of clauses in this subpart.

§ 12–7.5602–1 Price reduction for defective cost or pricing data.

Insert the appropriate clause set forth in FPR 1–3.814–1 under the conditions described therein.

§ 12–7.5602–2 Audit and records.

Insert the appropriate clause set forth in FPR 1–3.814–2 under the conditions described therein.

§ 12–7.5602–3 Subcontractor cost and pricing data.

Insert the appropriate clause set forth in FPR 1–3.814–3 under the conditions described therein.

§ 12–7.5602–4 Military security requirements.

Insert the clause set forth in ASPR 7–104.12 under the conditions and in the manner prescribed in DOTPR 12–1.351.

§ 12–7.5602–5 Guaranty.

(a) The clause set forth below shall be used where general guaranty provisions are deemed desirable by the contracting officer (for modifications see paragraph (b) of this section).

GUARANTY

In case any work done or materials furnished by the Contractor under this contract on or for any vessel or the equipment thereof shall, within 60 days from date of delivery of the vessel by the Contractor, prove defective or deficient, such defects or deficiencies shall, as required by the Government, be corrected and repaired by the Contractor or at his expense to the satisfaction of the Contracting Officer: *Provided, however,* That with respect to any individual work item incomplete at the delivery of the vessel the guarantee period shall run from the date of completion of such item. The Government shall, if and when practicable, afford the Contractor an opportunity to effect such corrections and repairs himself, but when, because of conditions or the location of the vessel or for any other reason, it is impracticable or undesirable to return it to the Contractor, or the Contractor fails to proceed promptly with any such repairs as directed by the Contracting Officer, such corrections and repairs shall be effected at the Contractor's expense at such other locations as the Government may determine. Where corrections and repairs are to be effected by other than the Contractor, due to nonreturn of the vessel to him, the Contractor's liability may be discharged by an equitable deduction in the price of the job. The Contractor's liability under this clause shall, however, in no event extend beyond the correction of such defects or deficiencies or payment for the cost thereof: *Provided, however,* That nothing in this clause shall be deemed to limit or relieve the Contractor of his responsibilities as set forth in the clause entitled "Liability and Insurance" and the clause entitled "Inspection" of this contract. At the option of the Contracting Officer, defects and deficiencies may be left in their then condition, and an equitable deduction from the contract price, as agreed by the Contractor and Contracting Officer, shall be made therefore. If the Contractor and Contracting Officer fail to agree upon the equitable deduction from the contract price to be made, the dispute shall be determined as provided in the "Disputes" clause of this contract.

(b) When inspection and acceptance tests will afford full protection to the Government in ascertaining conformance to specification and the absence of defects and deficiencies, no guaranty provision for that purpose shall be included in the contract. In certain instances, the contracting officer may desire to include a provision in a contract for a guaranty period of more than 60 days. In such instances, where after full inquiry, it has been determined that such longer guaranty period will not involve increased costs, the longer guaranty period may be substituted for the 60 days specified in the guaranty clause. Where the full inquiry discloses that such longer guaranty period will involve, or is reasonably expected to involve, increased costs, such fact, and the reason for the need of such longer period shall be set forth in letter form to the Commandant (F), requesting approval for use of a guaranty period in excess of 60 days.

§ 12–7.5602–6 Priorities, allocations and allotments.

Insert the clause set forth in DOTPR 12–7.150–3.

§ 12–7.5602–7 Index for specifications.

Insert the following clause, when appropriate.

INDEX FOR SPECIFICATIONS

If an index or table of contents is furnished in connection with specifications, it is understood that such index or table of contents is for convenience only. Its accuracy and completeness is not guaranteed, and it is not to be considered as part of the specifications. In case of discrepancy between the index or table of contents and the specifications, the specifications shall govern.

PART 12–9—PATENTS, DATA, COPYRIGHTS, AND RECOVERY OF DEVELOPMENTAL COSTS

Sec.

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AUTHORITY: The provisions of this Part 12–9 issued under sec. 205(c), 63 Stat. 389; 40 U.S.C. 486(c), 10 U.S.C. 2301–2314.

§ 12–9.6000 Scope of part.

This part sets forth policies, instructions, and contract clauses pertaining to patents, data, copyrights, and the recovery of developmental costs, in connection with the procurement of supplies and services.

§ 12–9.6001 Descriptions of terms.

§ 12–9.6001–1 Patents.

Patents are rights in inventions, protected by Federal law in the case of those issued in the United States. A patent is a Government grant that lasts for 17 years. During that time it gives the inventor, or his assignee, the right to exclude anyone else from making, using, or selling the patented invention. The patent holder thus has a property right, which is, in effect, a monopoly. He may sell or assign the patent; he may grant licenses to practice the invention; and, if his patent is infringed, he is protected by law. He may obtain an injunction restraining the infringement, against anyone but the Government or persons acting on behalf of the Government, and he may also receive damages from anyone (including the Government under 28 U.S.C. 1498(a)) for the economic injury already sustained.

§ 12–9.6001–2 Data.

(a) The term "data" means recorded information, whether or not copyrighted,

that may be acquired with a procurement. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, computer memory printouts; and information retained in computer memory. Examples of recorded information include, but are not limited to, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information.

(b) The owner of "data" may have an economic interest in intellectual property rights such as a copyright or a trade secret. If the data is copyrighted, it is protected by law. The owner may restrain copyright infringement by obtaining an injunction against anyone but the Government or persons acting on behalf of the Government, and he may also receive damages from anyone (including the Government under 28 U.S.C. 1498(b)) for the economic injury already sustained. In the case of trade secrets, the owner's rights are governed by the contractual relationship between him and the person to whom he discloses it (28 U.S.C. 1498 does not apply to trade secrets).

§ 12–9.6002 DOT policy on data, patent rights, and recovery of developmental costs.

It is DOT policy in negotiating contracts under which the Government pays a part or all of the costs of research or development, to acquire for the benefit of the United States, rights to data and patent rights, based on the criteria set forth in the Presidential Memorandum and Statement of Government Patent Policy, and to recover the Government's contribution toward such research and development through royalties to the Government upon commercial exploitation of the products developed.

Subpart 12–9.61—Patents

§ 12–9.6100 Scope of subpart.

This subpart prescribes contract clauses and instructions for their use.

§ 12–9.6101 Introduction.

On August 23, 1971, the President promulgated a Statement of Government Patent Policy applicable to all Executive Departments and Agencies (36 F.R. 16887–16892, August 26, 1971).[1] This regulation implements the criteria set forth in the Presidential statement. Essentially, the goal of the Statement of Government Patent Policy is to promote the development of inventions resulting from federally sponsored research, so that the public can benefit from early use of such inventions. The statement identifies three basic categories of procurement situations in which the use of three different patent rights clauses will best serve this goal. In a first category of procurement situations, the goal of the policy will be best served by the Government's acquiring title to the inventions. In such situations, the free availability of the patent to the public is considered the best way to promote its development and use. In the second category, the policy statement calls for the contractor or grantee to obtain title to the resulting patent, subject to a license in the Government. In such a situation, the normal incentives provided by the patent system are considered to be necessary to insure that the inventions will be exploited and developed. In the third category, the decision on patent rights is deferred until the invention is disclosed. This may be necessary where the proper action is not clear at the time of contracting. The statement also provides for situations where the contractor can obtain greater rights than a nonexclusive license at the time of contracting if there are exceptional circumstances or after an invention has been identified if certain criteria are satisfied.

[1] Statement filed as part of the original document.

§ 12–9.6102 Patent rights (title).

(a) The Government shall normally acquire or reserve the right to acquire the principal or exclusive rights throughout the world in and to any inventions made in the course of or under a contract where:

(1) A principal purpose of the contract is to create, develop or improve products, processes, or methods which are intended for commercial use (or which are otherwise intended to be made available for use) by the general public at home or abroad, or which will be required for such use by governmental regulations; or

(2) A principal purpose of the contract is for exploration into fields which directly concern the public health, public safety, or public welfare; (e.g., weather modification or control), or

(3) The contract is in a field of science or technology in which there has been little significant experience outside of work funded by the Government, or where the Government has been the principal developer of the field, and the acquisition of exclusive rights at the time of contracting might confer on the contractor a preferred or dominant position; or

(4) The services of the contractor are—

(i) For the operation of a Government-owned research or production facility; or

(ii) For coordinating and directing the work of others.

(b) The "Preaward Patent Rights Documentation Checklist" set forth below shall be used in determining the appropriate Patent Rights clause to be incorporated in a request for proposals in procurements involving experimental, developmental, or research work. The Checklist shall be made a part of the contract file.

(Authorized for Local Reproduction)

PREAWARD PATENT RIGHTS DOCUMENTATION CHECKLIST

Procurement Identification: _____
Purpose of Proposed Procurement: _____

1. Is a principal purpose of the proposed contract, either by itself or as one of a series of directly related contracts, to create, develop or improve an end item intended for use in the civilian economy?[1] (See DOTPR 12–9.6102(a)(1).) Yes _____ No _____

If "Yes", identify the end item and briefly describe its intended use in the civilian economy.

2. Is a principal purpose of the proposed contract, either by itself, or as one of a series of directly related contracts to create, develop or improve an end item which will be required for use by the general public by a Government regulation? Yes _____ No _____

If "Yes", identify the end item and cite applicable regulation. (See DOTPR 12–9.6102(a)(1).)

3. Is a principal purpose of the contract exploration into a field directly concerned with public health, public safety, or public welfare (as distinguished from items predominantly of military concern)?[2] (See DOTPR 12–9.6102(a)(2).) Yes _____ No _____

If "Yes", identify such principal purpose of the contract and briefly describe its relationship to the public health, or public safety, or public welfare.

4. Is the contract for procurement in a field of science or technology in which there has been little significant experience outside of work funded by the Government?[3] (See DOTPR 12–9.6102(a)(3).) Yes _____ No _____

If "Yes", briefly describe such field.

5. Is the contract for procurement in a field of science or technology in which the Government has been the principal developer of the field?[3] (See DOTPR 12–9.6102(a)(3).) Yes _____ No _____

If "Yes", briefly describe such field.

6. If the answer to either 4 or 5 is "Yes", would the contractor be likely to get a preferred or dominant commercial position in that field if he were permitted to acquire title to inventions made under the contract? (See DOTPR 12–9.6102(a)(3).) Yes _____ No _____

Explain the answer.

7. Does the contract require that the contractor both (i) provide services for operation of a Government-owned research or production facility and (ii) perform experimental, developmental or research work at that facility? (See DOTPR 12–9.610 2(a)(4)(A). Yes _____ No _____

8. Does the contract require the contractor to coordinate and direct the work of others (as distinguished from the normal contractor-subcontractor relationship) which might result in a potential organizational conflict of interest? (See DOTPR 12–9.6102(a)(4)(B).) Yes _____ No _____

If "Yes", explain briefly why such a potential conflict of interest is considered to exist.

_____
(Typed Name, Office and Signature of Person Completing This Form)

The Patent Rights (Title) Clause, DOTPR 12–9.6102(c), will _____ will not _____ be

[1] The contract or series of contracts need not necessarily require delivery of the end item. The end item may be a product, a process or data.

[2] Examples in the public welfare category would include weather modification or control.

[3] The mere fact that the Government has been or is the principal funder or developer of a specific piece of hardware does not necessarily make the Government the principal funder or developer in a field of science or technology which encompasses the piece of hardware.

used in the solicitation. (Give reasons for determination.)

(Typed Name and Signature of Contracting Officer or Representative)

(c) Insert the following clause in contracts involving design, research, development, test or experimental work if any one of the criteria in paragraph (a) of this section is present. It may be included in other contracts where appropriate. The contracting officer may alter the clause to fit a particular situation. Any alteration must be reviewed by cognizant patent counsel. There is no exemption from patent rights requirements for research or development contracts to be performed overseas. However, the clause shall be reviewed with patent counsel to determine whether modifications are required to meet any differences in foreign procurement.

PATENT RIGHTS (TITLE)

(a) Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived or for the first time actually reduced to practice, by the Contractor or his employees, in the course of, in connection with, or under the terms of this contract, the Contractor shall immediately give the Contracting Officer written notice thereof; and shall promptly thereafter furnish the Contracting Officer with complete information thereon; and the Secretary shall have the sole and exclusive power to determine whether or not and where a patent application shall be filed, and to determine the disposition of all rights in such invention, improvement, or discovery, including title to and rights under any patent application or patent that may issue thereon. The determination of the Secretary on all these matters shall be accepted as final and the provisions of the clause of this contract entitled "Disputes" shall not apply; and the Contractor agrees that he will, and warrants that all of his employees who may be the inventors will, execute all documents and do all things necessary or proper to the effectuation of such determination.

(b) Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of this clause from all persons who perform any part of the work under this contract, except such clerical and manual labor personnel as will have no access to technical data.

(c) Except as otherwise authorized in writing by the Contracting Officer, the Contractor will insert in each subcontract having design, test, experimental, developmental, or research work as one of its purposes, provisions making this clause applicable to the subcontractor and his employees.

(d) If the Government obtains patent rights pursuant to this clause of this contract, the Contractor shall be offered license rights thereto on terms at least as favorable as those offered to any other firm. However, in the event no effective steps have been taken by the Contractor or any other party within 3 years after issuance of a patent under which the Government acquires rights pursuant to this clause to bring the claimed invention to the point of practical application, the Government's obligation to offer a license pursuant to this clause shall terminate, and any license already granted to the Contractor pursuant to this clause shall be revoked unless the Contractor can show cause as to why such license shall not be revoked.

(e) Whenever any invention, improvement, or discovery relating to the work called for or required under this contract is constructively reduced to practice by the Contractor or his employees, during the period of performance of this contract, there shall be a prima facie presumption that such invention, improvement, or discovery was conceived or first actually reduced to practice in the course of, in connection with, or under the terms of this contract, and the Contractor shall immediately notify the Contracting Officer and submit the information required in paragraph (a) above. The Contractor shall have the burden of proving to the Contracting Officer that any such invention was not conceived or first actually reduced to practice in the course of, in connection with, or under the terms of this contract. If the Contractor fails to meet this burden, such inventions will be subject to all of the provisions of this clause.

(f) In the event no inventions, improvements, or discoveries (whether or not patentable) are made or conceived, or for the first time actually reduced to practice, by the Contractor, its employees, its subcontractors, or their employees, in the course of, in connection with, or under the terms of this contract, the Contractor shall so certify to the Contracting Officer, no later than the date on which the final report of work done, is due.

(g) (1) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all the documents required by (a) or the certification required by (f), whichever applies.

(2) If at any time before final payment under this contract, the Contractor fails to deliver the documents required by (a) or the certification required by (f), the Contracting Officer shall withhold from payment $50,000 or five percent (5%) of the amount of this contract, whichever is less (or whatever lesser sum is available if payments have exceeded ninety-five percent (95%) of the amount of this contract) until the Contractor corrects all such failures.

(3) After payments total eighty percent (80%) of the amount of this contract, and if no amount is required to be withheld under (2) above, the Contracting Officer may, if he deems such action warranted because of the Contractor's performance under the Patent Rights clause of this contract or other known Government contracts, withhold from payment such sum as he considers appropriate not exceeding $50,000 or five percent (5%), of the amount of this contract, whichever is less, to be held as a reserve until the Contractor delivers the documents or certification specified in (1) above. Subject to the five percent (5%) or $50,000 limitation, the sum withheld under this subparagraph (3) may be increased or decreased from time to time at the discretion of the Contracting Officer.

(4) No amount shall be withheld under this paragraph (g) while the amount specified by this paragraph is being withheld under other provisions of this contract. The total amount withheld under (1), (2), and (3) above shall not exceed $50,000 or five percent (5%), of the amount of this contract whichever is less. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. This paragraph shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provision of a subcontract. As used in this paragraph (g), "this contract" means "this contract as from time to time amended." In cost-type contracts, "amounts of contract" means "estimated cost of this contract."

(h) If the Contractor is permitted to file patent applications pursuant to this clause of this contract, the following statement shall be included within the first paragraph of the specification of any such patent application or patent:

"The invention described herein was made in the course of, or under, a contract (or grant) with the Department of Transportation."

(i) In the event the Contractor is permitted to acquire principal rights pursuant to this clause and fails to take effective steps within 3 years after issuance of a patent on any patent applications permitted to be filed pursuant to this clause, to bring the claimed invention to the point of practical application, the Contracting Officer may revoke such rights, or require the assignment of such rights, to the Government.

(j) Examination of records relating to inventions. The Contracting Officer or his authorized representative shall, until the expiration of three (3) years after final payment under this contract, have the right to examine any books, records, documents, and other supporting data of the Contractor which the Contracting Officer or his authorized representative shall reasonably deem directly pertinent to the discovery or identification of subject invention or to compliance by the Contractor with the requirements of this clause.

§ 12–9.6103 Patents rights (license).

(a) The contractor shall normally acquire the principal or exclusive rights throughout the world in and to any resulting inventions, subject to the Government's acquiring at least an irrevocable nonexclusive royalty-free license throughout the world for Government purposes, where all three of the following conditions exist:

(1) The contract does not fall into any of the categories specified in § 12–9.6102;

(2) The purpose of the contract is to build upon existing knowledge or technology to develop information, products, processes, or methods for use by the Government, and

(3) The work called for by the contract is in a field of technology in which the contractor has acquired technical competence (demonstrated by factors such as know-how, experience, and patent position) directly related to an area in which the contractor has an established nongovernmental commercial position.

(b) Where the contracting officer has determined that the proposed contract does not come within any of the criteria of § 12–9.6102(a), but does come within paragraph (a) of this section, he shall include the following clause in the contract. This clause provides for the Contractor to retain title to "subject inventions" and for the Government to acquire a royalty-free license and the additional right to grant sublicenses. The contracting officer may alter the clause to fit a particular situation. Any alteration must be reviewed by cognizant patent counsel.

PATENT RIGHTS (LICENSE)

(a) *Definitions used in this clause.* (1) "Subject invention" means any invention or discovery, whether or not patentable, conceived or first actually reduced to practice in the course of or under this contract. The term "subject invention" includes, but is not limited to, any art, method, process, machine, manufacture, design or composition

of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States of America or any foreign country.

(2) "States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust territories of the Pacific Islands.

(3) "Contract" means any contract, agreement, grant, or other arrangement, or subcontract entered into with or for the benefit of the Government where a purpose of the contract is the conduct of experimental, developmental, or research work.

(4) "Subcontract and subcontractor" mean any subcontract or subcontractor of the Contractor, any lower-tier subcontract or subcontractor under this contract.

(5) "To bring to the point of practical application" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine or system and, in each case, under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(6) "Government agency" includes any executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment, of the executive branch of the Government of the United States of America.

(b) *Rights granted to the Government.* (1) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid up license to make, use and sell each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency) and States and domestic municipal Government and including the right to sublicense foreign governments pursuant to any existing or future treaties or agreements.

(2) The Contractor further agrees to grant, upon the request of the Government, a license under any subject invention (made by the Contractor) to:

(i) Any applicant on an exclusive (even as against the Contractor) basis, unless the Contractor, his licensee, or his assignee demonstrates to the Government, at its request, that effective steps have been taken within 3 years after a patent issues on such invention, to bring the invention to the point of practical application or that the invention has been made available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why the principal or exclusive rights should be retained for a further period of time;

(ii) Any applicant exclusively or nonexclusively royalty-free or on terms that are reasonable in the circumstances to the extent that the invention is required for public use by Governmental regulations or as may be necessary to fulfill health or safety needs, or for other public purposes stipulated in the Schedule of this contract.

Nothing contained in this Patent Rights clause shall be deemed to grant any rights with respect to any invention other than a subject invention.

(c) *Invention disclosures and reports.* With respect to subject inventions (made by the Contractor), except those which are obviously unpatentable under the patent laws of the United States, the Contractor shall furnish to the Contracting Officer:

(i) A written disclosure of each such invention within six (6) months after conception or first actual reduction to practice, whichever occurs first under this contract, sufficiently complete in technical detail to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, or electrical characteristics of the invention, together with a written statement making an election as to whether a U.S. patent application claiming the invention will be filed by or on behalf of the Contractor: *Provided,* Where the Contractor elects to file but is unable to submit a complete disclosure, the Contractor shall within said six (6) months' period submit a disclosure which includes all such technical detail then known to him and shall, within six (6) months after his election to file (or such longer period as may be authorized by the Contracting Officer under (d)(1) below), submit all other technical detail necessary to complete the disclosure or a copy of the patent application;

(ii) Interim reports at least every twelve (12) months, the initial period of which shall commence with the date of this contract, each report listing all such inventions conceived or first actually reduced to practice more than six (6) months prior to date of the report and not listed on a prior interim report, or certifying that there are no such unreported inventions;

(iii) Prior to final settlement of this contract, a final report listing all such inventions including all those previously listed in interim reports, or certifying that there are no such unreported inventions (This Final Report and any Interim Report under (ii) above shall be submitted in a format acceptable to the Contracting Officer.); and

(iv) Written reports at reasonable intervals, prior to and after final settlement, when requested by the Government as to:

(A) The commercial use that is being made or is intended to be made of such invention;

(B) The steps taken by the Contractor to bring the invention to the point of practical application, or to make the invention available for licensing.

(d) *Domestic filing.* In connection with each subject invention referred to in (c)(i) above:

(i) If the Contractor has elected to file a U.S. patent application claiming such invention, the Contractor shall, within six (6) months after the election (or such longer period, not to exceed one (1) year after such election, as may be authorized by the Contracting Officer), file or cause to be filed such application in due form, shall notify the Contracting Officer of such filing, and shall deliver to the Contracting Officer, within two (2) months after such filing or within two (2) months of the first written disclosure of such invention if a patent application previously has been filed, a duly executed license, in triplicate, fully confirmatory of all rights to which the Government is entitled under this clause; if the Contractor does not file or cause to be filed such application, he shall so notify the Contracting Officer within the six (6) month period or such longer period as may be authorized above.

(ii) The following statement shall be included within the first paragraph of the specification of any patent application filed and any patent issued on an invention which was made under a Government contract or subcontract thereunder: "The invention described herein was made in the course of, or under, a contract (or grant) with the Department of Transportation."

(iii) If the Contractor has elected not to file or to cause to be filed a U.S. patent application claiming such invention, or has made the contrary election but has not filed or caused to be filed such application within six (6) months after the election, or such longer period as may be authorized above, the Contractor shall:

(A) Inform the Contracting Officer in writing, as soon as practicable, of the date and identity of any public use, or publication of such invention made by or known to the Contractor or of any contemplated publication by the Contractor;

(B) Upon written request, convey to the Government the Contractor's entire right, title and interest in such invention by delivering to the Contracting Officer such duly executed instruments (prepared by the Government) of assignment and application, and such other papers as are deemed necessary to vest in the Government the entire right, title, and interest aforesaid, and the right to apply for and prosecute patent applications covering such invention throughout the world, subject to the reservation of a nonexclusive and royalty-free license to the Contractor (and to his existing and future associated and affiliated companies, if any, within the corporate structure of which the Contractor is a part), which license shall be assignable to the successor of that part of the Contractor's business to which such invention pertains;

(iv) The Contractor shall furnish promptly to the Contracting Officer on request an irrevocable power of attorney to inspect and make copies of each U.S. patent application filed by or on behalf of the Contractor covering any such invention; and

(v) In the event the Contractor, or those other than the Government deriving rights from the Contractor, elects not to continue prosecution of any such U.S. Patent application filed by or on behalf of the Contractor, the Contractor shall so notify the Contracting Officer not less than sixty (60) days before the expiration of the response period and, upon written request, deliver to the Contracting Officer such duly executed instruments (prepared by the Government) as are deemed necessary to vest in the Government the entire right, title, and interest in such invention and the application, subject to the reservation as specified in paragraph (d)(iii)(B) of this clause.

(e) *Foreign filing.* The Contractor, or those other than the Government deriving rights from the Contractor, shall as between the parties hereto, have the exclusive right, subject to the rights of the Government under paragraph (b) of this clause, to file application on subject inventions (made by the Contractor) in each foreign country within:

(i) Nine (9) months from the date a corresponding United States application is filed, or nine (9) months from the date the Contractor discloses a subject invention under paragraph (c)(i) above with an election not to file a U.S. application;

(ii) Six (6) months from the date permission is granted to file foreign applications where such filing had been prohibited for security reasons; or

(iii) Such longer period as may be approved by the Contracting Officer.

The Contractor shall notify the Contracting Officer of each foreign application filed and, upon written request of the Contracting Officer, furnish an English translation of such foreign application, and convey to the Government the entire right, title, and interest in each such subject invention in each foreign country in which an application has not been filed within the time above specified, subject to the reservation as specified in paragraph (d)(iii)(B) of this clause.

(f) *Withholding of payment.* (1) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer the final report required by (c)(iii), all written invention disclosures required by (c)(i), all confirmatory licenses required by (d)(i), and all information as to subcontracts required by (g).

(2) If at any time before final payment under this contract the Contractor fails to deliver an interim report required by (c)(ii), a written invention disclosure required by (c)(i), or a confirmatory license required by (d)(i), the Contracting Officer shall withhold from payment $50,000 or five percent (5%) of the amount of this contract whichever is less (or whatever lesser sum is available if payments have exceeded ninety-five percent (95%) of the amount of this contract) until the Contractor corrects all such failures.

(3) After payments total eighty percent (80%) of the amount of this contract, and if no amount is required to be withheld under (2) above, the Contracting Officer may, if he deems such action warranted because of the Contractor's performance under the Patent Rights clause of this contract or other known Government contracts, withhold from payment such sum as he considers appropriate, not exceeding $50,000 or five percent (5%), of the amount of this contract, whichever is less, to be held as a reserve until the Contractor delivers all the reports, disclosures, licenses, and information specified in (1) above. Subject to the five percent (5%) or $50,000 limitation, the sum withheld under this subparagraph (3) may be increased or decreased from time to time at the discretion of the Contracting Officer.

(4) No amount shall be withheld under this paragraph (f) while the amount specified by this paragraph is being withheld under other provisions of this contract. The total amount withheld under (1), (2), and (3) above shall not exceed $50,000 or five percent (5%) of the amount of this contract whichever is less. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. This paragraph shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provision of a subcontract. As used in this paragraph (f), "this contract" means "this contract as from time to time amended." In cost-type contracts, "amount of this contract" means "estimated cost of this contract".

(g) *Subcontracts.* (1) The Contractor shall, unless otherwise authorized or directed by the Contracting Officer, include a patent rights clause containing all of the provisions of this Patent Rights clause except provision (f) in any subcontract hereunder where a purpose of the subcontract is the conduct of experimental, developmental, or research work. In the event of refusal by a subcontractor to accept this Patent Rights clause, the Contractor:

(i) Shall promptly submit a written report to the Contracting Officer setting forth the subcontractor's reason for such refusal or the reasons the Contractor is of the opinion that the inclusion of this clause would be so inconsistent, and other pertinent information which may expedite disposition of the matter; and

(ii) Shall not proceed with the subcontract without the written authorization of the Contracting Officer.

The Contractor shall not, in any subcontract or by using such a subcontract as consideration therefor, acquire any rights to subject inventions for his own use (as distinguished from such rights as may be required solely to fulfill his contract obligations to the Government in the performance of this contract). Reports, instruments, and other information required to be furnished by a subcontractor to the Contracting Officer under the provisions of such a patent rights clause in a subcontract hereunder may, upon mutual consent of the Contractor and the subcontractor (or by direction of the Contracting Officer) be furnished to the Contractor for transmission to the Contracting Officer.

(2) The Contractor, at the earliest practicable date, shall also notify the Contracting Officer in writing of any subcontract containing a patent rights clause, furnish to the Contracting Officer a copy of such subcontract, and notify him when such subcontract is completed. It is understood that the Government is a third party beneficiary of any subcontract clause granting rights to the Government in subject inventions, and the Contractor hereby assigns to the Government all the rights that he would have to enforce the subcontractor's obligations for the benefit of the Government with respect to subject inventions. If there are no subcontracts containing patent rights clauses, a negative report is required. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Govenment in regard to subject inventions.

(h) *Licenses granted by Contractor to others subject to Government's rights.* The Contractor recognizes that the Government, or a foreign government with funds derived through the Military Assistance Program or otherwise through the U.S. Govenment, may contract for property or services with respect to which the vendor may be liable to the Contractor for royalties for the use of a subject invention on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the U.S. Government, charges for use of patents in which the Government holds a royalty-free license. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(i) *Rights to disclose subject inventions.* The Government may duplicate and disclose reports and disclosures of subject inventions required to be furnished by the Contractor or a subcontractor pursuant to this Patent Rights clause.

(j) *Forfeiture of rights in unreported subject inventions.* The Contractor shall forfeit to the Government all rights in any subject invention which he fails to report to the Contracting Officer at or prior to the time he (i) files or causes to be filed a United States or foreign application thereon, or (ii) submits the final report required by (c)(iii) of this clause, whichever is later: *Provided,* That the Contractor shall not forfeit rights in a subject invention if (A) contending that the invention is not a subject invention, he nevertheless reports the invention and all facts pertinent to his contention to the Contracting Officer within the time specified in (i) or (ii) above, or (B) he establishes that the failure to report was due entirely to causes beyond his control and without his fault or negligence. The Contactor shall be deemed to hold any such forfeited subject invention, and the patent applications and patents pertaining thereto, in trust for the Government pending written assignment of the invention. The rights accruing to the Government under this paragraph shall be in addition to and shall not supersede any other rights which the Government may have in relation to unreported subject inventions. Nothing contained herein shall be construed to require the Contractor to report any invention which is not in fact a subject invention.

(k) *Examination of records relating to inventions.* The Contracting Officer or his authorized representative shall, until the expiration of three (3) years after final payment under this contract, have the right to examine any books, records, documents, and other supporting data of the Contractor which the Contracting Officer or his authorized representative shall reasonably deem directly pertinent to the discovery or identification of subject invention or to compliance by the Contractor with the requirements of this clause.

§ 12–9.6104 Patent rights (deferred).

(a) *General.* Where the commercial interests of the contractor are not sufficiently established to be covered by the criteria specified in § 12–9.6103, the final determination of rights shall be made by the contracting officer after the invention has been identified, in a manner deemed most likely to serve the public interest, taking particularly into account the intentions of the contractor to bring the invention to a point of commercial application and the guidelines of § 12–9.6102.

(b) *Patent Rights (Deferred) clause.* Where the contracting officer has determined that the proposed contract comes within this § 12–9.6104, he shall include in the contract the Patent Rights (Title) clause set forth in § 12–9.6102, except that the name of the clause shall be changed to "Patent Rights (Deferred)" and the following paragraph (i) shall be added. This paragraph prescribes the manner in which the Contractor can request greater rights than a nonexclusive license.

(i) *Contractor's request for greater rights.* The Contractor at the time of disclosing a subject invention pursuant to paragraph (a) of this clause, but not later than three (3) months thereafter, may submit in writing to the Contracting Officer, a request for greater rights in such invention that the license provided for in paragraph (d) of this clause. Each such request shall include, but not be limited to, information concerning the Contractor's intention and plan to bring the invention to the point of commercial application. The Contracting Officer shall review the request for greater rights, and shall forward it with such comments or additional information as he believes necessary fully to present the request, to cognizant patent counsel. Patent counsel will review the request and the Contracting Officer's comments, and forward them with a recommendation covering whether and to what extent the request should be granted, to the Secretary or his designee. The Contracting Officer shall notify the Contractor of the Secretary's decision.

§ 12–9.6105 Background patents (license).

(a) Insert the clause in § 12–9.6105–1 in all contracts requiring the Patent Rights clause in § 12–9.6102 or § 12–9.6104.

(b) Insert the clause in supply contracts when the Department buys the product for test or evaluation purposes and where, as a result of the government's efforts, a commercial market for the product may be created or enhanced.

(c) The clause need not be used in supply contracts:

(1) Where the product to be tested (or evaluated) is substantially com-

plete for the commercial purpose for which it is being tested (or evaluated), or

(2) Where the prospective contractor's monetary contribution to the program resulting in the development of the hardware is substantially greater than the Government's monetary contribution, or

(3) Where the commercial market for the product existed prior to, or will not be created primarily as a result of, the Government's test or evaluation.

(d) The contracting officer may alter the clause to suit a particular situation. However, any such alteration must accord with DOT policy requiring, whenever investment of public funds in a program which may create or enhance the market for a product required in the interest of public health, safety, or welfare, that the Government receive assurance that the product will be available at reasonable prices, and in sufficient quantity and quality to meet the public needs. To this end, the contractor must agree to license the manufacture and sale of any such product under any patents under which he has the right to grant such licenses, such license to be restricted to use on products to which the contract relates.

§ 12–9.6105–1 Contract clause.

BACKGROUND PATENTS (LICENSE)

(a) "Product" as used herein means a process, machine, article of manufacture, or composition of matter the same as, or substantially the same as, that worked on under the contract.

(b) "Background patent" as used herein means any U.S. patent, under which the Contractor has the right to license others, and which covers the manufacture, use or sale of any product.

(c) When the Secretary determines:

(1) That a product is required by members of the public in the interest of the public health, safety, or welfare; and,

(2) That neither the Contractor, nor any other person deriving rights from his patents, has produced the product at a reasonable price, in sufficient quantity, and at a level of quality to meet public needs;

the Contractor shall, on written application, issue appropriate licenses to others under any Background Patent on reasonable terms, such licenses to be restricted to the production, sale, and use of the product.

(d) When the Secretary has made the determination set forth in (c) above, the Contractor (or those deriving rights from the Contractor) shall not seek injunctive relief to enforce a Background Patent without:

(1) Previously advising the General Counsel, Office of the Secretary, Department of Transportation;

(2) Granting the Government the right to intervene in the injunction proceeding; and

(3) Disclosing the commitment set out in this clause to the court from which the injunction is sought.

§ 12–9.6106 Authorization and consent.

(a) Under 28 U.S.C. 1498, any suit for infringement of a U.S. patent based on the manufacture or use by or for the United States of an invention described in and covered by a patent of the United States by a contractor or by a subcontractor (including lower-tier subcontractors) can be maintained only against the Government in the Court of Claims and not against the contractor or subcontractor, in those cases where the Government has authorized or consented to the manufacture or use of the patented invention. Accordingly, to insure that work by a contractor or subcontractor under a Government contract may not be enjoined by reason of patent infringement, authorization and consent shall be given as herein provided. The liability of the Government for damages in any such suit against it may, however, ultimately be borne by the contractor or subcontractor in accordance with the terms of any patent indemnity clause also included in the contract, and an authorization and consent clause does not detract from any patent indemnification commitment by the contractor or subcontractor. Therefore, both a patent indemnity clause and an authorization and consent clause may be included in the same contract.

(b) Contracts shall not include any provision whereby the Government expressly agrees to indemnify the contractor against liability for patent infringement.

(c) An authorization and consent clause shall not be used in contracts where both complete performance and delivery are to be used outside the United States, its possessions, or Puerto Rico.

§ 12–9.6106–1 Authorization and consent in contracts for supplies or services.

The contract clause set forth below may be included in all contracts for supplies or services (including construction or architect-engineering work), except:

(a) When prohibited by § 12–9.6106 (c); or

(b) In contracts for experimental, developmental, or research work in which the clause of § 12–9.6106–(2) is required.

AUTHORIZATION AND CONSENT

The Government hereby gives its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance.

§ 12–9.6106–2 Authorization and consent in contracts for research and development.

Greater latitude in the use of patented inventions may be necessary in a contract for experimental, developmental, or research work than in a contract for supplies. Unless prohibited by § 12–9.6106(c), the clause set forth below shall be included in all contracts calling exclusively for experimental, developmental, or research work, and may be included in contracts calling for both supplies and experimental, developmental, or research work where the latter work is a primary purpose of the contract. In all other contracts for both supplies and experimental, developmental, or research work, the Authorization and Consent clause of § 12–9.6106–1 shall be used. If the clause set forth below is included in a contract, the clause in § 12–9.6106–1 shall not be included.

AUTHORIZATION AND CONSENT

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract).

§ 12–9.6107 Patent indemnification of Government by contractor.

In order that the Government may be reimbursed for liability for patent infringement arising out of or resulting from the performance of construction contracts or contracts for supplies which normally are or have been sold or offered for sale to the public in the commercial open market or which are the same as such supplies with a relatively minor modification thereof, a clause providing for indemnification of the Government is to be included in such contracts in accordance with the instructions set forth below. A patent indemnity clause shall not be used in contracts:

(a) Where the Authorization and Consent clause of § 12–9.6106–2 applicable to research and development contracts is authorized, except that in contracts calling also for supplies of the kind described above, a patent indemnity clause may be used with respect to such supplies;

(b) Where the contract is for supplies which clearly are not or have not been sold or offered for sale to the public in the commercial open market. However, even in the foregoing instance, a patent indemnity clause may be included where (1) in the case of contracts to be awarded by formal advertising it is desired to obtain an indemnity as to specific components or spare parts so sold or offered for sale, in which case the clause shall be modified pursuant to § 12–9.6107–1(b); or (2) in the case of contracts to be awarded either by formal advertising or negotiation, a patent owner contends that the prospective procurement would infringe his patent and the low bidder or offeror is willing to indemnify the Government as to such patent either (i) without increase in price on the basis that the patent is invalid or not infringed, or (ii) for other good reasons;

(c) Where both performance and delivery are to be outside the United States, its possessions, or Puerto Rico, unless the contract indicates that the supplies are ultimately to be shipped into the United States, its possessions, or Puerto Rico, in which case the instructions of § 12–9.6107–1 or § 12–9.6107–3 are applicable; or

(d) Where the contract is for an amount of $5,000 or less, except that, as a matter of administrative convenience, the clause need not be deleted where it is a part of a standard form being used for contracts of $5,000 or less, since it is self-deleting as to such contracts.

§ 12–9.6107–1 Patent indemnification in formally advertised contracts—commercial status predetermined.

(a) Except as prohibited by § 12–9.6107, the clause set forth below is appropriate in formally advertised construction contracts and shall be included in formally advertised contracts for supplies when it has been determined in advance of issuing the invitation for bids that the supplies (or such supplies apart from relatively minor modifications to be made thereto) normally are or have been sold or offered for sale by any supplier to the public in the commercial open market.

PATENT INDEMNITY

If the amount of this contract is in excess of $5,000, the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any U.S. letters patent (except letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as it is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to: (i) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor; (ii) an infringement resulting from addition to, or change in, such supplies or components furnished or construction work performed which addition or change was made subsequent to delivery or performance by the Contractor; or (iii) a claimed infringement which is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(b) Where a supply contract calls in part for specific components or spare parts which normally are or have been sold or offered for sale by any supplier to the public in the commercial open market, or such items with relatively minor modifications, the Patent Indemnity clause of paragraph (a) of this section shall be modified by adding to the end of the clause either of the following sentences:

The foregoing shall not apply to the following: (Specifically identify the items to be excluded from the Patent Indemnity clause.)

or

The foregoing shall apply only to the following: (Specifically identify the items to which the Patent Indemnity clause applies.)

§ 12–9.6107–2 Patent indemnification in negotiated contracts.

(a) A patent indemnity clause is not required to be included in negotiated contracts, but may be included (1) in negotiated construction contracts, (2) as authorized in § 12–9.6107(b)(2), and (3) in negotiated contracts for supplies where such supplies normally are or have been sold or offered for sale to the public in the commercial open market, or are such supplies with relatively minor modifications made thereto. Ordinarily, the contracting officer, in consultation with the contractor, should be able to determine whether the supplies being purchased normally are on sale or have been sold or offered for sale to the public in the commercial open market.

(b) Subject to the foregoing and to the prohibitions in § 12–9.6107, the clause set forth in § 12–9.6017–1(a) is approved for use in negotiated contracts for construction work or supplies.

(c) Where a supply contract calls in part for specific components or spare parts which normally are or have been sold or offered for sale to the public in the commercial open market, or such items with relatively minor modifications, the patent indemnity clause of § 12–9.6107–1(a) shall be modified by adding to the end of the clause either of the following sentences:

The foregoing shall not apply to the following: (Specifically identify the items to be excluded from the Patent Indemnity clause.)

or

The foregoing shall apply only to the following: (Specifically identify the items to which the Patent Indemnity clause applies.)

§ 12–9.6107–3 Waiver of indemnity by the Government.

In the event that it is desired to exempt one or more specified U.S. patents from the patent indemnity clause of § 12–9.6107–1, authority shall first be obtained from the head of the agency and the following clause shall be included in the contract, in addition to the patent indemnity clause.

WAIVER OF INDEMNITY

Any provision of this contract to the contrary notwithstanding, the Government hereby authorizes and consents to the use and manufacture, solely in the performance of this contract, of any invention covered by the U.S. patents identified and listed below, and waives indemnification by the Contractor with respect to such patents: (Identify the patents by number or by other means if more appropriate.)

§ 12–9.6108 Notice and assistance.

The Government should be notified by the contractor of all claims of infringement in connection with the performance of a Government contract which come to the contractor's attention. The contractor should also assist the Government, to the extent of evidence and information in the possession of the contractor, in connection with any suit against the Government, or any claims against the Government made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of or resulting from the performance of the contract. Accordingly, the clause set forth in FPR 1–7.101–13 shall be included in all contracts in excess of $10,000 for supplies, construction, or experimental, developmental, or research work: *Provided*, That the clause shall not be included in contracts:

(a) Where both performance and delivery are to be outside the United States, its possessions, or Puerto Rico, unless the contract indicates that the supplies are ultimately to be shipped into the United States, its possessions, or Puerto Rico; or

(b) Of $10,000 or less, except that as a matter of administrative convenience, the clause need not be deleted when it is a part of a standard form being used for such contracts, since it is self-deleting.

§ 12–9.6109 Classified contracts.

Unauthorized disclosure of classified subject matter, whether in patent applications or resulting from the issuance of a patent, may be a violation of 18 U.S.C. 791 et seq. (Espionage and Censorship) and related statutes and may be contrary to the interests of national security. Accordingly, the following clause shall be included in every classified contract and every contract which covers or is likely to cover classified subject matter.

FILING OF PATENT APPLICATIONS

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract, which subject matter is classified "Secret" or higher, the Contractor shall, citing the thirty (30) day provision below, transmit the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be placed under an order of secrecy or sealed in accordance with the provisions of 35 U.S.C. 181–188 or the issuance of a patent should be otherwise delayed under pertinent U.S. statutes or regulations; and the Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the U.S. Patent Office for filing, but the Contractor shall not be denied the right to file such patent application. If the Contracting Officer shall not have given any such instructions within thirty (30) days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) The Contractor shall furnish to the Contracting Officer, at the time of or prior to the time when the Contractor files or causes to be filed a patent application in the United States disclosing any subject matter of this contract, which subject matter is classified "Confidential", a copy of such application for determination whether, for reasons of national security, such application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent U.S. statutes or regulations.

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed

in any country, other than in the United States as provided in (a) and (b) of this clause, an application or registration for a patent containing any of said subject matter without first obtaining written approval of the Contracting Officer.

(d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter, and shall also promptly furnish to the Contracting Officer the serial number, filing date, and name of country of any such patent application. When transmitting the application to the U.S. Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts which require security classification markings to be placed on the application.

(e) The substance of this clause shall be included in all subcontracts which cover or are likely to cover classified subject matter.

§ 12–9.6109–1 Classified contracts — contracting officer's duties.

(a) Upon receipt from the contractor of a patent application, not yet filed, which has been submitted by the contractor in compliance with paragraphs (a) or (b) of the clause in § 12–9.6109, the contracting officer shall ascertain the proper security classification of the patent application. Upon a determination that the application contains classified material, the contracting officer shall inform the contractor of any instructions deemed necessary or advisable relating to transmittal of the application to the U.S. Patent Office in accordance with procedures in the Department of Defense Industrial Security Manual for Safeguarding Classified Information. If the material is classified "Secret" or higher, the contracting officer shall make every effort to notify the contractor of the determination within 30 days pursuant to paragraph (a) of the clause.

(b) In the case of all applications filed under the provisions of this paragraph, the contracting officer, upon receiving the application serial number, the filing date, and the information furnished by the contractor under paragraph (d) of the clause, shall promptly submit that information to personnel having cognizance of patent matters in order that necessary steps may be taken to insure the security of the application.

(c) A request for the approval referred to in paragraph (c) of the clause in § 12–9.6109 must be considered and acted upon promptly in order to avoid the loss of valuable patent rights of the Government or the contractor.

§ 12–9.6110 Register of Government rights in inventions.

(a) Licenses, assignments, or other documents evidencing any rights of the Government in inventions shall be reviewed to assure that each such document fully confirms the rights to which the Government is entitled.

(b) The original and a copy of each such document shall be forwarded to the activity designated by administration regulations for receiving such documents. This latter activity shall forward the originals of all licenses, assignments, or other documents evidencing any rights of the Government in or under any patents or applications for patents to the Commissioner of Patents for recording in accordance with Executive Order No. 9424 of February 18, 1944.

§ 12–9.6111 Reporting of royalties—anticipated or paid.

(a) (1) The term "royalties", as used in this section, refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents or patent applications.

(2) To determine whether royalties anticipated or actually paid under Government contracts are excessive, improper, or inconsistent with rights which the Government may possess in particular inventions, patents, or patent applications, the Department shall require royalty information and reports as prescribed below. See § 12–9.6113 for action to be taken to reduce or eliminate excessive or improper royalties.

(3) Royalty information should not be required in formally advertised contracts. When it is expected that work may be performed in the United States, its possessions, or Puerto Rico, any solicitation which may result in a negotiated contract for which royalty information is desired, or for which cost or pricing data are obtained, shall contain a special provision substantially as follows:

ROYALTY INFORMATION

When the response to this solicitation contains costs or charges for royalties totaling more than $250, the following information shall be furnished with the offer, proposal, or quotation on each separate item of royalty or license fee:

(i) Name and address of licensor;

(ii) Date of license agreement;

(iii) Patent numbers, patent application serial numbers or other basis on which the royalty is payable;

(iv) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;

(v) Percentage or dollar rate of royalty per unit;

(vi) Unit price or contract item;

(vii) Number of units; and

(viii) Total dollar amount of royalties.

DD Form 783, Royalty Report, is approved for use in furnishing the above information. In addition, if specifically requested by the contracting officer prior to execution of the contract, a copy of the current license agreement and identification of applicable claims of specific patents shall be furnished.

(b) If the work is to be performed in the United States, its possessions or Puerto Rico, then upon receipt of an offer, proposal, or quotation which includes a charge for royalties, the contracting officer shall, prior to award of the contract, forward the information called for by paragraph (a) of this section to the office having cognizance of patent matters for the procuring activity concerned. The cognizant office shall promptly advise the contracting officer of appropriate action. The contracting officer shall then take action with respect to such royalties, with due regard to all pertinent factors relating to the proposed procurement.

(c) Where subcontract work is to be performed in the United States, its possessions, or Puerto Rico, the contracting officer, when considering approval of a subcontract, shall require the same information and take the same action with respect to such subcontracts in relation to royalties as required for prime contracts under paragraph (b) of this section. However, approval need not be withheld pending receipt of advice in regard to such royalties from the office having cognizance of patent matters.

(d) (1) In negotiated contracts to be performed outside the United States, its possessions and Puerto Rico, regardless of the place of delivery, the clause set forth below shall be included.

REPORTING OF ROYALTIES (FOREIGN)

(a) If this contract is in an amount which exceeds fifty thousand U.S. dollars ($50,000), the Contractor shall report in writing to the Contracting Officer during the performance of this contract the amount of royalties paid or to be paid by the Contractor directly to others in the performance of this contract. The Contractor shall also (i) furnish in writing any additional information relating to such royalties as may be requested by the Contracting Officer, and (ii) insert a provision similar to this clause in any subcontract hereunder which involves an amount in excess of the equivalent of fifty thousand U.S. dollars ($50,000).

(b) The term "royalties" as used herein refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like for the use of or for rights in patents or patent applications.

(2) The contracting officer shall forward a copy of each positive royalty report received in accordance with the clause in subparagraph (1) of this paragraph to the office having cognizance of patent matters for the procuring activity concerned.

§ 12–9.6112 Refund of royalties.

When a fixed-price-type contract is negotiated under circumstances which make it questionable whether or not substantial amounts of royalties will have to be paid by the contractor or his subcontractors, such royalties may be included in the target or contract price, with provision made in the contract that the Government will be reimbursed the amount of such royalties if they are not paid. Such circumstances might include, for example, either a pending antitrust action by the Government or pending or prospective litigation challenging the validity of a patent or patents or the enforceability of an agreement upon which the contractor or subcontractor bases the asserted obligation to pay the royalties to be included in the target or contract price. In the event the contracting officer determines that a refund of royalties clause should be included, the following clause shall be used in firm fixed-price contracts. It shall be appropriately modified for use in incentive contracts.

REFUND OF ROYALTIES

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.

(b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or

license amortization costs, or the like, for the use or for rights in patents and patent applications in connection with the performance of this contract or any subcontract hereunder.

(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with the performance of this contract and subcontracts hereunder together with the reasons therefor.

(d) The Contractor will be compensated for royalties reported under (c) above only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. Therefore, to the extent that any royalties which are included in the contract price are not in fact paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs.

(e) If, at any time within three (3) years subsequent to final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) above, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

§ 12–9.6113 Adjustment of royalties.

If at any time the contracting officer has reason to believe that any royalties paid, or to be paid, under an existing or prospective contract or subcontract are inconsistent with Government rights, excessive, or otherwise improper, he shall promptly report the facts to the office having cognizance of patent matters for the procuring activity concerned. The cognizant office shall review the royalties thus reported and such royalties as are reported under §§ 12–9.6111 and 12–9.6112. In coordination with the contracting officer, the cognizant office shall:

(a) Take prompt action to protect the Government against payment of royalties on supplies or services (1) with respect to which the Government has a royalty-free license, or (2) at a rate in excess of the rate at which the Government is licensed, or (3) when the royalties in whole or in part otherwise constitute an improper charge; and

(b) In appropriate cases obtain a refund pursuant to a "Refund of Royalties" clause or enter into negotiation for a reduction of royalties.

Subpart 12–9.62—Recovery of Developmental Costs

§ 12–9.6200 Scope of subpart.

This subpart prescribes a Recovery of Developmental Costs clause and sets forth instructions for its use.

§ 12–9.6201 General.

(a) It is DOT policy to recover the Department's contributions toward research and development through royalties to the Government upon commercial exploitation of the products developed thereby. To carry out this policy, the contract clause set forth in § 12–9.6202(b) shall be inserted in the contract in accordance with the instructions for its use. However, royalties are not paid unless the commercial product developed under the contract is profitably sold. Also, royalties cannot be so high as to price the product out of the market and the royalties cease when the Government gets its money back.

(b) This development cost recovery program is based, first, on the established Government policy, that, where a direct beneficiary of a Government action can be identified, that beneficiary, and not the general taxpayer, should pay the cost of providing the benefit conferred. When a product developed with Government funds is sold, there are two identifiable beneficiaries—the user and the company that makes the sale. The royalty program gets the cost back to the general taxpayer from these beneficiaries.

(c) A second justification for the program is the need to protect the developing company's competitors. When the Government provides support to the development of a commercial product, the company that gets the development contract is given an advantage over its competitors who might have to develop a competing product with their own funds. These competitors have to spread their development costs over the sales of their product. With the Government paying his development costs, the original development contractor generally has very little development costs to recover. This could put the company helped by the Government in a position to make an unconscionably high profit, to undersell his competitors, or prevent them from entering the market. None of these results seems a fair or reasonable byproduct of a Government-financed development effort.

§ 12–9.6202 Recovery of developmental costs.

(a) *Instructions for use of clause.* The clause set forth in paragraph (b) of this section shall be included in all contracts exceeding $50,000 for design, research, development, test, or experimental work where a product (e.g., equipment or other items of hardware) is to be furnished as an end item. It may be included in other types of contracts and in contracts of $50,000 or less if appropriate. The contracting officer may alter the clause to suit a particular situation (e.g., when the contract includes quantity production or when the hardware being developed will be placed into operative use, the amount recoverable under the clause may be reduced by the fair market value of such hardware). However, any such alterations must be in accordance with the policy set forth in DOTPR 12–9.6002.

(b) *Contract clause.*

RECOVERY OF DEVELOPMENT COSTS

(a) As may be determined by the Contracting Officer to be fair, reasonable and equitable, the Contractor shall pay to the Government up to 5 percent of sums hereafter received by or credited to the Contractor or its privies (including subcontractors) on sales or leases (exclusive of sales or leases to the U.S. Government, either directly or indirectly through Government prime Contractors or subcontractors) of any product which is substantially the same in design as, or which is directly derived from, that developed by the Contractor or any of its subcontractors in the performance of this contract.

(b) In selling or leasing the product identified in paragraph (a) above to the Government, either directly or indirectly through Government prime Contractors or subcontractors, the Contractor or its privies (including subcontractors) shall notify the purchaser or lessee in writing that the product was developed under a Department of Transportation contract containing a Recovery of Developmental Costs clause and that the purchase or lease price of such product is less than the price of such product when sold or leased to other than the Government by an amount no less than the Government's share under the Recovery of Developmental Costs clause. A copy of each such notice shall be sent to the Contracting Officer. In the event the product is sold or leased to the Government, the amount by which the sales or lease price was reduced by virtue of this clause shall be credited to the amount recoverable under this clause.

(c) As may be determined by the Contracting Officer to be fair, reasonable and equitable, the Contractor shall also pay to the Government up to 33 percent of all sums hereafter received by, or credited to, the Contractor or its privies (including subcontractors) as payments under technical agreements permitting others (1) to sell, lease, or manufacture the product identified in paragraph (a) above, or (2) to use any process which is substantially the same as, or which is directly derived from, that developed by the Contractor or any of its subcontractors in the performance of this contract.

(d) Recovery by the Government under this clause shall be limited to amounts paid and credited to the Contractor under this contract. Payments to the Government under this clause shall not be so high as to destroy the Contractor's competitive position for the product involved: *Provided*, That the product is otherwise reasonably priced and efficiently and economically produced.

(e) The Contractor shall report to the Government all sales, leases, licensing agreements, royalties and receipts, which might reasonably be considered to be subject to this clause; and the Contractor shall promptly render accurate, certified accounts thereon to the Government at reasonable intervals.

Subpart 12–9.63—Rights in Data

§ 12–9.6300 Scope of subpart.

This subpart prescribes Rights in Data clauses and sets forth instructions for their use.

§ 12–9.6301 Rights in data.

Insert the contract clause set forth in § 12–9.6302 or § 12–9.6303 in accordance with § 12–9.6301–1.

§ 12–9.6301–1 Selection of appropriate rights in data clause.

(a) *Rights in data—unlimited.* The "Rights in Data—Unlimited" clause set forth in § 12–9.6302 shall be used where data (other than financial reports, cost

analyses, and similar information incidental to contract administration) is specified to be delivered under the contract and such data is incidental to or a byproduct of the contract.

(b) *Rights in data—title.* (1) The "Rights in Data—Title" clause set forth in § 12–9.6303 shall be used in contracts where data (other than that incidental to contract administration) is specified to be delivered under the contract and the preparation of such data is the principal object or end item of the contract (e.g., contracts for: (i) The production of motion pictures with or without accompanying sound; (ii) the preparation of motion picture scripts, musical compositions, sound tracks, translations, and the like; (iii) work pertaining to training or career guidance; (iv) survey of Government establishments; (v) works pertaining to the instructions or guidance of Government officers and employees in the discharge of their official duties; and (vi) study contracts in which the principal end item is a final report.

(2) When the "Rights in Data—Title" clause is used in research contracts with academic institutions, the last sentence of paragraph (b) shall be deleted from the clause.

§ 12–9.6301–2 Alteration of clause.

In particular situations (e.g., where the contractor contends that certain data is "proprietary"), the contracting officer may alter either of the Data clauses set forth below. In all cases, however, the contracting officer shall obtain the advice of cognizant patent counsel before approving any such alteration.

§ 12–9.6302 Rights in data—unlimited contract clause.

RIGHTS IN DATA—UNLIMITED

(a) The term "subject data" as used herein means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this contract. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.

(b) (1) The Government may duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others to so do, all subject data delivered under this contract.

(2) The Contractor agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, irrevocable license throughout the world, to publish, translate, deliver, perform, dispose of, and to authorize others to so do, all subject data now or hereafter covered by copyright.

(3) The Contractor shall report to the Contracting Officer promptly and in reasonably written detail, each notice or claim of copyright infringement with respect to all subject data delivered under this contract.

(c) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(d) The Contractor shall not affix any restrictive markings upon any subject data, and if such markings are affixed, the Government shall have the right at any time to modify, remove, obliterate or ignore any such markings.

§ 12–9.6303 Rights in data—title contract clause.

RIGHTS IN DATA—TITLE

(a) The term "subject data" as used herein means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this contract. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.

(b) All "subject data" first produced in the performance of this contract shall be the sole property of the Government. The Contractor agrees not to assert any rights at common law or equity and not to establish any claim to statutory copyright in such data. Except for his own internal use, the Contractor shall not publish or reproduce such data in whole or in part, or in any manner or form, nor authorize others to do so, without the written consent of the Government until such time as the Government may have released such data to the Public.

(c) The Contractor agrees to grant and does hereby grant to the Government and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world (1) to publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all data not first produced or composed in the performance of this contract but which is incorporated in the work furnished under this contract; and (2) to authorize others so to do.

(d) The Contractor shall indemnify and save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any data furnished under this contract.

(e) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract: *Provided*, Such incorporated material is identified by the Contractor at the time of delivery of such work.

PART 12–10—BONDS AND INSURANCE

Subpart 12–10.1—Bonds

Sec.
12–10.109 Execution and administration of bonds.

Subpart 12–10.2—Sureties on Bonds

12–10.205 Consent of surety.

Subpart 12–10.3—Insurance—General

12–10.305 Procedures to be followed in the event of loss or damage to Government property.

Subpart 12–10.4—Insurance Under Fixed-Price Contracts

12–10.400 Scope of subpart.
12–10.450 Contracts for lease of aircraft.
12–10.450–1 Loss or damage to leased aircraft clause.
12–10.450–2 Fair market value of aircraft clause.
12–10.450–3 Risks and indemnities.

AUTHORITY: The provisions of this Part 12–10 issued under sec. 205(c), 63 Stat. 389; 40 U.S.C. 486(c), 10 U.S.C. 2301–2314.

Subpart 12–10.1—Bonds

§ 12–10.109 Execution and administration of bonds.

(a) *Execution.* When required by Instruction No. 2 of the standard bond forms, the evidence of authority of a principal's representative shall be a duly executed power of attorney reciting that the individual executing the bond or consent of surety is authorized to do so. A corporation, in lieu of such power of attorney, may submit a "Certificate as to Corporate Principal" in the format prescribed in paragraph (c) of this section.

(b) *Administration.* When a contractor is performing his contract in such a manner as to lead to default, timely notification to the surety may result in action by the surety that will avoid a default. Therefore, on all such contracts, the surety shall be promptly notified of any failure by the contractor to perform (see FPR 1–8.602–4(a)).

(c) *Certificate as to Corporate Principal.* When a Certificate as to Corporate Principal is to be furnished, the following format shall be used:

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I
(Name printed)
am the _____ of the cor-
(Office held)
poration named as principal in the (performance) (and) (payment) bond(s); that _____ who signed the said bond(s) on behalf of the principal was then _____
(Capacity in which bond was executed)
of said corporation; that I know his signature and that his signature thereto is genuine; and that said bond(s) was (were) duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

_____ (Affix Corporate Seal)

(d) *Name of principal.* When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm and the phrase "a partnership composed of." If a principal is a

corporation, the state of incorporation must appear.

(e) *Date of bond.* A performance or payment bond other than an annual bond shall not antedate the contract to which it pertains.

(f) *Continuation sheet.* The Standard Form 25–B (Continuation Sheet) is prescribed for use when there are more than seven sureties on a bid, performance, or payment bond. It shall also be used when there are cosureties on an annual bid or performance bond.

(g) *Recording and filing.* Bonds shall be filed with the related original contract or the contract file shall be cross-referenced to the file containing the applicable bonds.

Subpart 12–10.2—Sureties on Bonds

§ 12–10.205 Consent of surety.

The following form of Consent of Surety and Increase of Penalty is authorized for contract modifications to all types of contracts that provide for an increase in the penal sums of bonds previously given by the original surety or sureties.

CONSENT OF SURETY AND INCREASE OF PENALTY

Modification No. _____, dated _____,
Contract No. _____.

The surety (cosureties) hereby consents (consent) to the foregoing contract modification and agrees (agree) that its (their) bond or bonds shall apply and extend to the contract as thereby modified or amended. The principal and the surety (cosureties) further agree that on and after the execution of this consent, the penalty of the aforementioned performance bond or bonds is hereby increased by _____ dollars ($_____) and the penalty of the aforementioned payment bond or bonds is hereby increased by _____ dollars ($_____): *Provided, however,* That the increase of the liability of each cosurety resulting from this consent shall not exceed the sums set forth below:

Name of surety	*Increase in liability limit under performance bond*	*Increase in liability limit under payment bond*

[SEAL] Date of execution: _____

_____
(Signature of Individual Principal)[1]

_____
(Type Name of Individual Principal)

_____
(Business Address)

_____

[1] This Consent of Surety and Increase of Penalty shall be executed by the principal or his authorized representative concurrent with the execution of the attached modification to which it pertains. If the individual who signs the consent is signing in a representative capacity (e.g., attorney in fact), but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved a Power of Attorney or Certificate as to Corporate Principal, as appropriate, shall be submitted with the consent.

_____
Date of execution: _____

_____
(Corporate Principal)[1]

_____
_____
(Business Address)

By _____ (Affix)
(Signature of Person Executing) (Corporate) (Seal)

_____
(Type Name and Title of Person Executing)

_____
_____
_____
(Corporate Surety)

_____
_____
(Business Address)

By _____ (Affix)
(Signature of Person Executing) (Corporate) (Seal)

_____
(Type Name and Title of Person Executing)

(Add similar signature blocks for cosureties.)

Subpart 12–10.3—Insurance—General

§ 12–10.305 Procedures to be followed in the event of loss 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 the applicable "Government Property" clause of the contract.

Subpart 12–10.4—Insurance Under Fixed-Price Contracts

§ 12–10.400 Scope of subpart.

This subpart is applicable only to the Federal Aviation Administration.

§ 12–10.450 Contracts for lease of aircraft.

The clauses set forth in this § 12–10.450 shall, unless otherwise indicated by the specific instructions for their use, be inserted in any contract for the lease of aircraft (including aircraft used in outservice flight training).

§ 12–10.450–1 Loss or damage to leased aircraft clause.

(a) *Use of clause.* Insert the clause in paragraph (b) of this section except that the clause need not be inserted in the contract:

(1) When the hourly rental rate does not exceed $250 and the total rental cost for any single transaction is not in excess of $2,500, or

(2) Where the cost of hull insurance does not exceed 10 percent of the contract rate, or

(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.

(b) *Contract clause,*

LOSS OR DAMAGE TO LEASED AIRCRAFT

(a) The Government assumes all risk of loss of or damage (except normal wear and tear) to the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the Contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay to the Contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in the clause "Fair Market Value of Aircraft" less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the Contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The Contractor certifies that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be credited to the Government in determining the amount of the Government's liability under this clause; except that this shall not apply to proceeds of insurance received (1) solely as advances on insurance pending determination of Government liability, or (2) for an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government. Except as the Contracting Officer may permit in writing, the Contractor shall neither release nor discharge any third party from liability for such loss or damage nor otherwise compromise or adversely affect the Government's subrogation rights hereunder. The Contractor shall cooperate with the Government in any suit or action undertaken by the Government against any such third party.

(f) Any failure to agree as to the responsibility of the Government under this clause shall, after a final finding and determination by the Contracting Officer, be considered a dispute within the meaning of the "Disputes" clause of this contract.

(g) The Contractor's rights under this clause are in addition to, and not in lieu of, any rights it may have under the Federal Tort Claims Act as amended (28 U.S.C. 2671, et seq.). However, any sum for which the Government may be liable under this clause shall be reduced by the amount of any award, compromise, or settlement for loss of, or damage to, the leased aircraft, obtained by or on behalf of the Contractor under said Act as amended.

§ 12–10.450–2 Fair market value of aircraft clause.

When the fair market value of the aircraft can be determined, insert the following clause:

FAIR MARKET VALUE OF AIRCRAFT

For purposes of the clause "Loss or Damage to Leased Aircraft", it is agreed that the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b) below:

(a) $ _____ or

(b) If the contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage for which the Government may be responsible under this contract.

§ 12–10.450–3 Risks and indemnities.

(a) *Background.* Section 504 of the Federal Aviation Act of 1958 provides "—no lessor of any such aircraft * * * under a bona fide lease of 30 days or more, shall be liable * * * by reason of his interest as lessor or owner of the aircraft * * * for any injury to or death of persons, or damage to or loss of property * * * unless such aircraft * * * is in the actual possession or control of such person at the time of such injury, death, damage or loss." On short-term or intermittent-use leases, however, the owner may be liable for damage caused by operation of the aircraft. It is usual for the aircraft owner to retain insurance covering this liability during the term of such lease. Such insurance can, often for little or no increase in premium, be made to cover the Government's exposure to liability as well. In order to take advantage of this coverage, the Risks and Indemnities clause prescribed in paragraph (b) of this section is used.

(b) *Risks and indemnities clause.* Insert the following clause in any contract for out-service flight training, or the lease of aircraft where the Government will have exclusive use of the aircraft for a period of less than 30 days.

RISKS AND INDEMNITIES

The Contractor hereby agrees to indemnity and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, a Certificate of Insurance shall be delivered to the Contracting Officer.

(c) *Contract schedule provision.* Any contract for out-service flight training shall include a provision in the Schedule stating substantially that the contractor's personnel shall, at all times during the course of the training, be in command of the aircraft, and that at no time shall other personnel be permitted to take command of the aircraft.

PART 12–16—PROCUREMENT FORMS

Sec.

12–16.000 Scope of part.

Subpart 12–16.1—Forms for Advertised Supply Contracts [Reserved]

Subpart 12–16.2—Forms for Negotiated Supply Contracts

12–16.201 Request for quotations (Standard Form 18).
12–16.201–3 Procurement in excess of $2,500.
12–16.202 Contract forms.
12–16.202–1 General.

Subpart 12–16.4—Forms for Advertised Construction Contracts

12–16.401 Forms prescribed.
12–16.450 Other forms.

Subpart 12–16.5—Forms for Advertised and Negotiated Nonpersonal Service Contracts (Other Than Construction and Architect-Engineer Contracts)

12–16.501 Contract forms.

Subpart 12–16.8—Miscellaneous Forms

12–16.800 Scope of subpart.
12–16.804 Report on procurement.
12–16.804–3 Standard Form 37, Report on Procurement by Civilian Executive Agencies.
12–16.850 Small purchase summary.
12–16.851 Procurement request forms.
12–16.852 Determination of prospective contractor responsibility.
12–16.853 Contractor's request for progress payment.
12–16.854 Preconstruction conference agenda and checklist.
12–16.855 Contractor's release.
12–16.856 Labor forms.
12–16.856–1 Labor standards interviews.
12–16.856–2 Employee claim for wage restitution.
12–16.856–3 Summary of labor standards investigation report.
12–16.856–4 Summary of underpayments.
12–16.856–5 Establishment of additional wage rates.
12–16.856–6 Statement and acknowledgement.

AUTHORITY: The provisions of this Part 12–16 issued under sec. 205(c), 63 Stat. 389; 40 U.S.C. 486(c), 10 U.S.C. 2301–2314.

§ 12–16.000 Scope of part.

This part prescribes and illustrates forms for use by all procurement offices in the Department in connection with the procurement of supplies and services, including construction.

Subpart 12–16.1—Forms for Advertised Supply Contracts [Reserved]

Subpart 12–16.2—Forms for Negotiated Supply Contracts

§ 12–16.201 Request for quotations (Standard Form 18).

§ 12–16.201–3 Procurement in excess of $2,500.

Standard Form 18 may be used in negotiated or advertised procurements in excess of $2,500 only where an informational quotation is desired, in appropriate cases, to obtain data for informational or planning purposes, pursuant to FPR 1–1.314.

§ 12–16.202 Contract forms.

§ 12–16.202–1 General.

The forms prescribed in FPR 1–16.101 shall be used for negotiated supply contracts (other than small purchases).

Subpart 12–16.4—Forms for Advertised Construction Contracts

§ 12–16.401 Forms prescribed.

In addition to the standard forms prescribed for use in FPR 1–16.401, Standard Form 30 shall be used to amend a construction solicitation or modify a construction contract.

§ 12–16.450 Other forms.

DOT forms prescribed for use in connection with construction contracts are prescribed or referenced in DOTPR Subpart 12–16.8.

Subpart 12–16.5—Forms for Advertised and Negotiated Nonpersonal Service Contracts (Other Than Construction and Architect-Engineer Contracts)

§ 12–16.501 Contract forms.

The standard forms prescribed in FPR 1–16.101 shall be used in advertised and negotiated nonpersonal service contracts (other than construction, small purchases, and architect-engineer contracts).

Subpart 12–16.8—Miscellaneous Forms

§ 12–16.800 Scope of subpart.

This subpart prescribes miscellaneous forms for use in procurement.

§ 12–16.804 Report on procurement.

§ 12–16.804–3 Standard Form 37, Report on Procurement by Civilian Executive Agencies.

The semiannual SF–37 required by FPR 1–16.804–3(f) shall be submitted to the Office of Installations and Logistics, TAD–60, by February 1 and August 1, for consolidation and submission to the General Services Administration.

12–16.850 Small purchase summary.

DOT Form F 4230.1 titled "Small Purchase Summary" is an optional form which may be used to satisfy the small purchase documentation requirements set forth in DOTPR 12–3.603–2.

§ 12–16.851 Procurement request forms.

(a) *General.* The procurement request forms listed in paragraph (c) below shall be used to request the procurement of supplies, services, or construction, and may be used, if appropriate, to request items obtained through FEDSTRIP, MILSTRIP, or similar single- or multiline requisitioning methods.

(b) *Description of forms.* The forms are issued in units of "PAD". Each pad contains 100 sheets of "no carbon required" type paper.

(c) *Forms.* The procurement request forms are DOT Form F 4200.1.1 for use by the Coast Guard, DOT Form F 4200.1 for use by all other Administrations, and DOT Form F 4200.2 (Continuation Sheet) for use by the Federal Aviation Administration.

§ 12–16.852 Determination of prospective contractor responsibility.

DOT Form F 4220.1 titled "Determination of Prospective Contractor Responsibility" shall be used as prescribed in DOTPR 12–1.1204–1.

§ 12–16.853 Contractor's request for progress payment.

DOT Form F 4220.1 titled "Contractor's Request for Progress Payment" shall be used as prescribed in DOTPR 12–30.519.

§ 12–16.854 Preconstruction conference agenda and checklist.

DOT Form F 4220.3 titled "Preconstruction Conference Agenda and Checklist" shall be used as prescribed in DOTPR 12–18.151.

§ 12–16.855 Contractor's release.

DOT Form F 4220.2 titled "Contractor's tor's Release" shall be used to obtain a release from the contractor for:

(a) All cost type contracts.

(b) Construction contracts, where a release is required by the contracting officer (see paragraph (e) of Clause 7 of Standard Form 23–A).

(c) Any other type of contract when the contracting officer determines its use appropriate.

§ 12–16.856 Labor forms.

§ 12–16.856–1 Labor standards interviews.

DOT Form F 4220.5 shall be used to record the results of interviews with contractor employees working at the construction site. (Section 5.6(a)(3) of the Labor Department regulations requires Federal agencies to make such investigations as are deemed necessary to insure compliance with the labor standards provisions contained in the contract. These investigations include interviews with employees to ascertain whether laborers and mechanics are being or have been properly classified and paid.)

§ 12–16.856–2 Employee claim for wage restitution.

DOT Form F 4220.7 shall be used by contractor employees to file claim for unpaid wages when contract funds have been transferred to the General Accounting Office to cover such underpayment. (Even though contract funds have been transferred to GAO to cover the underpayment, GAO requires that a claim be submitted before it will make payment directly to the employee. See Comptroller General Decision B–3368 of 3–19–57.)

§ 12–16.856–3 Summary of labor standards investigation report.

DOT Form F 4220.6 shall be used as the first page of reports on special labor standards investigations to summarize the findings of the investigation.

§ 12–16.856–4 Summary of underpayments.

DOT Form F 4220.8 shall be used to summarize the findings of wage underpayment and liquidated damages and shall be included in the investigation report when a special labor standards investigation is made.

§ 12–16.856–5 Establishment of additional wage rates.

(a) Except as provided in paragraph (b) of this section, DOT Form F 4220.10 shall be used by the contractor to obtain the contracting officer's approval or disapproval of the contractor's proposed classification and wage rate for any category of laborers or mechanics not listed in the contract wage determination but needed in performance of the contract work. Procedures shall be established to assure contracting officer approval of additional classifications and rates prior to their use by the contractor.

(b) FHWA Form PR–1140 may be used by the Federal Highway Administration for direct Federal contracts and Federal-aid contracts in lieu of DOT Form F 4220.10.

§ 12–16.856–6 Statement and acknowledgment.

(a) Except as provided in paragraph (b) of this section, DOT Form F 4220.9 shall be executed by the contractor and subcontractor to comply with the Subcontract Data clause set forth in DOTPR 12–7.601–68.

(b) DOT Form F 4220.9 need not be used by the Federal Highway Administration in connection with its highway construction contracts.

PART 12–17—EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE

Subpart 12–17.1– General

Sec.
12–17.101 Authority.

Subpart 12–30.5—Progress Payments Based on Costs

12–17.208 Processing cases.

AUTHORITY: The provisions of this Part 12–17 issued under sec. 205(c), 63 Stat. 389; 40 U.S.C. 486(c), 10 U.S.C. 2301–2314.

Subpart 12–17.1—General

§ 12–17.101 Authority.

The Department of Transportation Contract Appeals Board has been authorized by the Secretary to exercise the authority granted by the Act of August 28, 1958 (Public Law 85–804).

Subpart 12–17.2—Requests for Contractual Adjustment

§ 12–17.208 Processing cases.

A contractor's request for adjustment shall be coordinated with legal counsel and processed within each Administration in accordance with its procedures.

PART 12–18—PROCUREMENT OF CONSTRUCTION

Sec.
12–18.000 Scope of part.

Subpart 12–18.1—General Provisions

12–18.108 Government estimate.
12–18.109 Disclosure of size of construction projects.
12–18.110 Liquidated damages.
12–18.112 Construction contracts with design architect-engineers.
12–18.150 Construction contract award notification to Bureau of Census.
12–18.151 Preconstruction conference.

Subpart 12–18.2—Formal Advertising

12–18.202 Preinvitation notices.
12–18.203 Invitations for bids.
12–18.203–50 Bid items.
12–18.203–51 Fee for plans and specifications.
12–18.203–52 Inquiries from bidders.

Subpart 12–18.3—Negotiations

12–18.301 Limitation on authority to negotiate contracts.
12–18.301–50 Coast Guard negotiation citations.

AUTHORITY: The provisions of this Part 12–18 issued under sec. 205(c), 63 Stat. 389; 40 U.S.C. 486(c), 10 U.S.C. 2301–2314.

§ 12–18.000 Scope of part.

This part sets forth contracting procedures peculiar to construction contracts.

Subpart 12–18.1—General Provisions

§ 12–18.108 Government estimate.

After all bids have been read and recorded, the Government estimate shall, when required to be prepared in accordance with FPR 1–18.108, be read and recorded in the same detail as the invitation for bids. If the procurement is by negotiation, cost breakdown figures in the Government estimate may be disclosed during negotiations but only to the extent deemed necessary for arriving at a fair and reasonable price: *Provided*, That the overall amount of the Government estimate is not disclosed.

§ 12–18.109 Disclosure of size of construction projects.

For purposes of disclosing the size of construction projects, the estimated cost thereof shall be stated in ranges, such as the following:

Under $25,000.
Between $25,000 and $100,000.
Between $100,000 and $250,000.
Between $250,000 and $500,000.
Between $500,000 and $1,000,000.
Between $1,000,000 and $2,500,000.
Between $2,500,000 and $5,000,000.
Between $5,000,000 and $10,000,000.
Over $10,000,000.

§ 12–18.110 Liquidated damages.

See FPR 1–1.315 and DOTPR 12–1.315.

§ 12–18.112 Construction contracts with design architect-engineers.

See DOTPR 12–50.203–4.

§ 12–18.150 Construction contract award notification to Bureau of Census.

For each construction contract award in excess of $25,000, the procurement office awarding the contract shall complete and submit Census Form C–19 titled "Construction Contract Award Notification." The form is a preaddressed 5x8 card which shall be submitted by the contracting officer directly to the Director, Bureau of the Census, Washington, D.C. 20233 (Construction Statistics Division). Items 7a, 8, 9, 10, and 11 on the form are to be left blank. Insert "100 percent" in Item 12. All other items on the form are considered self-explanatory.

§ 12–18.151 Preconstruction conference.

(a) When the contracting officer considers such action warranted, he shall arrange a preconstruction conference

with the Contractor and such subcontractors as the Contractor may designate to assure that there is a clear understanding of the contract requirements (including labor standards provisions) and of the rights and obligations of the parties. Such a conference should ordinarily be held before construction begins.

(b) DOT Form F 4220.3 titled "Preconstruction Conference Agenda and Checklist," or a similar checklist, shall be used as the agenda of or checklist for the preconstruction conference. Applicable procedures in FPR Subpart 1–1.18 should also be observed to the extent they are applicable to construction contracts.

Subpart 12–18.2—Formal Advertising

§ 12–18.202 Preinvitation notices.

Standard Form 20 may be used as a preinvitation notice providing it is clearly identified as such.

§ 12–18.203 Invitations for bids.

§ 12–18.203–50 Bid items.

Invitations for bid shall require a lump sum price for each item of work or a total lump sum price for all contract work in those cases where the extent of the work is readily susceptible of accurate description in the drawings and specifications. Bids on a unit price basis (i.e., cubic yard, linear foot, etc.) shall be solicited in those instances where the quantity to be furnished cannot be determined with reasonable precision prior to bidding. When unit prices are used the Variation in Estimated Quantities clause set forth in DOTPR 12–7.650–11 shall be included in the contract.

§ 12–18.203–51 Fee for plans and specifications.

When a flat, nonrefundable fee is to be charged in accordance with DOTPR 12–2.203–1(b), a statement reading substantially as follows shall be included in the solicitation:

NONREFUNDABLE FEE FOR PLANS AND SPECIFICATIONS

A fee of $_____ is required for the plans and specifications referenced in this solicitation. Send check or money order to _____. The fee is not refundable. Plans and specifications need not be returned.

§ 12–18.203–52 Inquiries from bidders.

A statement similar to the following shall be included in each solicitation:

For information call (insert name, telephone number). Submit written requests in accordance with paragraph 1 of Standard Form 22.

Subpart 12–18.3—Negotiations

§ 12–18.301 Limitation on authority to negotiate contracts.

§ 12–18.301–50 Coast Guard negotiation citations.

Coast Guard contracts for construction work to be performed in the United States, its possessions and Puerto Rico, shall not be negotiated unless authorized pursuant to the following subsections of 10 U.S.C. 2304(a): (1), (2), (3), (10), (11), (12), or (15). The appropriate code provision shall be cited in the contract as authority for the negotiation. Coast Guard contracts to be performed in the possessions of the United States and Puerto Rico may not be negotiated pursuant to 10 U.S.C. 2304(a)(6).

PART 12–30—CONTRACT FINANCING

Subpart 12–30.5—Progress Payments Based on Costs

Sec.

12–30.502 General.
12–30.502–50 Deviation from customary progress payments rate.
12–30.502–51 Progress payment rates for new contracts and existing contracts.
12–30.519 Contractor's request.

AUTHORITY: The provisions of this Part 12–30 issued under sec. 205(c), 63 Stat. 389; 40 U.S.C. 486(c), 10 U.S.C. 2301–2314.

Subpart 12–30.5—Progress Payments Based on Costs

§ 12–30.502 General.

§ 12–30.502–50 Deviation from customary progress payments rate.

The General Services Administration has authorized the Department of Transportation to deviate from FPR Subpart 1–30.5 by increasing the allowable maximum rate for customary progress payments to 80 percent of total costs for firms which are not small business concerns, and to 85 percent of total costs for small business concerns.

§ 12–30.502–51 Progress payment rates for new contracts and existing contracts.

(a) *Contracts made on or after June 1, 1971.* For new contracts entered into on or after June 1, 1971, customary progress payments shall be not more than 80 percent of total costs for firms which are not small business concerns, and not more than 85 percent of total costs for small business concerns. The new rates also apply to letter contracts awarded on or after June 1, 1971, and to definitive contracts which supersede letter contracts on or after June 1, 1971, regardless of the date of the award of the superseded letter contract.

(b) *Contracts existing before June 1, 1971.* The customary standard percentages for progress payments on contracts existing before June 1, 1971, including all orders under or modifications to those contracts whether or not involving additional work or quantities, shall remain at not more than 70 percent of total costs, or not more than 75 percent of total costs for small business concerns. Higher percentages for these existing contracts will continue to be regarded as unusual, and shall not be increased, for any reason whatever, unless authorized in accordance with FPR 1–30.505.

§ 12–30.519 Contractor's request.

All invoices for progress payments described in FPR 1–30.519 shall be supported by DOT Form F 4220.2 titled "Contractor's Request for Progress Payment" (or, at the contractor's option, he may submit DOD Form 1195), with any other information that may be reasonably required.

PART 12–50—SERVICE CONTRACTS

Sec.

12–50.000 Scope of part.

Subpart 12–50.1 [Reserved]

Subpart 12–0.2—Architect-Engineer Services

12–50.200 Scope of subpart.
12–50.201 Definitions.
12–50.202 Selection.
12–50.202–1 Policy.
12–50.202–2 Architect-Engineer Selection Board.
12–50.202–3 Accelerated selection procedures.
12–50.202–4 Acceptance of A–E Selection Board recommendations by contracting officer.
12–50.203 Negotiations.
12–50.203–1 Government estimate.
12–50.203–2 Sequence of negotiations.
12–50.203–3 Scope of work.
12–50.203–4 Construction contracts with design architect-engineers.
12–50.203–5 Architect-engineer's fee proposal.
12–50.203–6 Fee negotiations
12–50.204 Record of negotiations.
12–50.205 Fee limitations.
12–50.206 Release of information.

Subpart 12–50.3—Procurement of Expert or Consultant Services

12–50.300 Scope of subpart.
12–50.301 Negotiation authority.
12–50.302 Definition of experts and consultants.
12–50.303 Policy.
12–50.304 Limitations on use of expert or consultant authority.
12–50.305 Justification to enter into contracts.
12–50.306 Contracts with individual experts or consultants.
12–50.306–1 Method and amount of payment.
12–50.306–2 Benefits.
12–50.306–3 Taxes.
12–50.306–4 Conflict of interest.
12–50.306–5 Administrative treatment.
12–50.307 Contracts with firms for expert or consultant services.
12–50.308 Contracts for stenographic reporting services.
12–50.309 Modification of contracts.

Subpart 12–50.4—Procurement of Mortuary Services

12–50.400 Scope of subpart.
12–50.401 Procurement by contract.
12–50.402 Area of performance.
12–50.403 Solicitation provision.
12–50.404 Schedule format.
12–50.405 Contract clauses.
12–50.405–1 Requirements.
12–50.405–2 Contract period.
12–50.405–3 Area of performance.
12–50.405–4 Specifications.
12–50.405–5 Using activities.
12–50.405–6 Delivery orders and invoices.
12–50.405–7 Delivery and performance.
12–50.405–8 Subcontracting.
12–50.405–9 Additional default provision.
12–50.405–10 Inspection.
12–50.405–11 Group interment.
12–50.405–12 Professional requirements.
12–50.405–13 Facility requirements.
12–50.405–14 Preparation history.
12–50.405–15 Changes.

Sec.
12-50.405-16 Inconsistent provisions.
12-50.405-17 Coordination.
12-50.405-18 Preparation of remains at other than contractor's establishment.
12-50.405-19 Major restorative art.
12-50.405-20 Passenger car.
12-50.405-21 Definitions.
12-50.405-22 Payments.
12-50.405-23 Assignment of claims.
12-50.405-24 Federal, State, and local taxes.
12-50.405-25 Termination for convenience of the Government.
12-50.405-26 Defaults.
12-50.405-27 Disputes.
12-50.405-28 Convict labor.
12-50.405-29 Contract Work Hours Standards Act—overtime compensation.
12-50.405-30 Officials not to benefit.
12-50.405-31 Covenant against contingent fees.
12-50.405-32 Gratuities.
12-50.405-33 Equal opportunity.
12-50.405-34 Examination of records by Comptroller General.
12-50.406 Procurement by purchase order.

AUTHORITY: The provisions of this Part 12-50 issued under sec. 205(c), 63 Stat. 389; 40 U.S.C. 486(c), 10 U.S.C. 2301-2314.

§ 12-50.000 Scope of part.

This part deals generally with the obtaining of services by contract, and specifically with certain types of contracts which can properly be classified as service contracts. It does not cover the services of individuals obtained by direct appointment or through normal Civil Service employment procedures, nor does it cover the obtaining of services by grant.

Subpart 12-50.1 [Reserved]

Subpart 12-50.2—Architect-Engineer Services

§ 12-50.200 Scope of subpart.

This subpart prescribes policies and procedures for the procurement of architect-engineer (A-E) services. Clauses for A-E contracts are referenced or set forth in FPR Subpart 1-16.7 and DOTPR Subpart 12-7.54.

§ 12-50.201 Definitions.

(a) *Architect-Engineer.* A firm (individual, partnership, corporation, or joint-venture) performing architectural or engineering services (or both).

(b) *Architect-Engineer services.* Professional services include those of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. These services are limited to those functions necessary to procure the design of contemplated construction projects, the supervision of the project during construction, and operational aspects of facilities as follows:

(1) Preparation of preliminary studies, sketches, layout plans, and reports.

(2) Cost estimates of the proposed project and of all structures, utilities, and appurtenances thereto.

(3) Master planning indicating the configuration, siting and integrated arrangements of all buildings, structures, roadways, utilities, and support areas.

(4) Adaption of Government designs, drawings, specifications and standards for buildings and other structures.

(5) Preparation of final designs, working drawings, and specifications.

(6) Preparation of construction schedules.

(7) Assistance to the contracting officer in preparing solicitations for the required construction work, and in evaluating bids or offers received.

(8) Review of the adequacy of all shop and working drawings submitted by the contractor.

(9) Preparation of technical operating and maintenance manuals in connection with special and unique aspects of design project.

(10) Consultation during construction regarding the interpretation of the plans and specifications if the supervision and inspection of construction is performed by the Government.

(11) Supervision and inspection of construction and preparation of record drawings of construction as actually accomplished.

(c) *Fee.* The compensation for professional services to be paid to the A-E.

§ 12-50.202 Selection.

§ 12-50.202-1 Policy.

The selection of architect-engineers for professional services shall be accomplished in accordance with the procedures set forth in this subpart. The selection shall be based on comparative evaluations of the professional qualifications necessary for satisfactory performance of the service required, and shall be deemed to satisfy requirements for competitive bidding. The procedures set forth in this subpart may also be used to select architect-engineer for special studies, analyses, reports, surveys, investigations, and other forms of inquiry regarding the services of architect-engineers in whole or substantial part, where solicitation of competitive priced proposals is impracticable or considered not to be in the best interest of the Government.

§ 12-50.202-2 Architect-Engineer Selection Board.

(a) *General.* The selection of an architect-engineer for A-E contract estimated at $6,000 or more shall be accomplished by a formally constituted A-E Selection Board. The Board shall perform the functions set forth in paragraph (c) of this section unless accelerated selection procedures are used as provided in § 12-50.202-3. For A-E contracts estimated at less than $6,000, selection may be made without an A-E Selection Board, but the selecting official or officials shall generally perform the functions set forth in paragraph (c) of this section, and shall specifically prepare the report required by paragraph (c)(9) of this section.

(b) *Composition.* The A-E Selection Board shall be composed of the following members, one of whom shall be appointed as the chairman:

(1) A representative of the contracting officer.

(2) Two members with experience in the field of architecture or engineering.

(3) A member with technical knowledge of the user requirements of the project. When the project is to be accomplished in connection with a field activity, and the A-E selection is to be accomplished at the field location, this member is not to be in addition to those in subparagraph (2) of this paragraph. If the selection is accomplished at headquarters in connection with a field activity, this member shall be in addition to subparagraph (2) of this paragraph.

(4) For those A-E contracts estimated at $60,000 or more, a member appointed by the Director, Office of Installations and Logistics, OST, unless he declines to appoint a member for any specific selection. Requests for appointment of the OST member shall be made at least 2 weeks in advancement of commencement of the selection.

(5) Other members as the chairman deems necessary and useful, such as a recording secretary.

Administrations without facilities engineering capability shall utilize the A-E Selection Board established within OST. A request shall be made for assistance of the OST Selection Board to the Assistant Secretary for Administration.

(c) *Functions.* The contracting officer shall maintain a file of U.S. Government A-E Questionnaires (Standard Form 251) and brochures of A-E firms that have indicated an interest in performing A-E services for the Department of Transportation. The following functions shall be accomplished by the Selection Board:

(1) Analyze the nature and scope of work requirements.

(2) Depending upon the complexity, size, and sophistication of the work, review and analyze SF 251's and other available data, and prepare a Preselection List of at least three qualified firms. This review may be delegated by the chairman.

(3) Obtain detailed information of the qualifications and performance data of each of the firms on the Preselection List. If this step (3) is undertaken, and and step (4) is not, the A-E firms may be contacted for purposes of obtaining information, but shall not be informed that they are under consideration for an A-E contract award. If both step (3) and step (4) are undertaken, they may be accomplished concurrently and the A-E may be informed at any time during this period of the selection process of the project. This task may be delegated to other than Board members. The information to be obtained shall include:

(i) Contacting former clients, both in Government and private industry, to determine quality of work, ability to meet schedules, cost control, and any other pertinent factors of previous projects.

(ii) Examination of visual examples of previous work.

(iii) Organizational structure of the firm.

(4) At the option of the Board, contact and inform the A–E firms on the Preselection List of the specific nature and scope of the project. The A–E may then be requested to submit in writing the following:

(i) Team members, other key personnel, previous experience, and percentage of time to be devoted to the project.

(ii) Current workload and proposed project schedule.

(iii) Brief narrative approach to the project and possible problems the A–E is able to foresee.

(5) Conduct interviews as required. The A–E firm is not to submit, nor be requested to prepare, any design in connection with the proposed project. If an Administration or element of OST desires project design proposals from A–E firms, written approval shall be obtained from the Assistant Secretary for Administration.

(6) Whenever practical, visit the A–E office to obtain a general idea of its capabilities.

(7) Review the qualifications and data of each firm on the Preselection List and perform an evaluation of each firm based on previously agreed rating factors within previously agreed rating ranges. The information obtained prior to notification of the A–E of the nature and scope of the project shall be used to perform that portion of the evaluation which shall include, but is not limited to, the following factors:

(i) Familiarity with and proximity to the geographic location of project.

(ii) Specialized experience in projects comparable to the proposed project.

(iii) Capability to perform all aspects of design, including planning, architectural design, and mechanical, electrical, structural, and civil engineering.

(iv) Capability to meet schedules.

(v) Capability to design projects which have not exceeded the construction cost estimates of the successful construction bid.

(vi) Caliber of consultants regularly engaged.

(vii) Quality of previous designs.

(viii) Reputation and professional standing.

(ix) If branch office is being considered, its capability of performing independently of the home office.

(x) Percentage of minority employees in all pay scales and job types, noting the percentage of minorities in the immediate locality and general surrounding areas.

(8) Evaluate the following if the A–E has been informed of the nature of the project;

(i) Professional background of key personnel.

(ii) Ability to perform design in the required time.

(iii) Narrative approach and perception as demonstrated by problems foreseen.

(iv) Degree of interest in proposed project.

(9) Prepare a report recommending to the contracting officer in order of preference those firms (normally a minimum of three) which are considered best qualified to perform the required services. This report shall contain sufficient detail to indicate the extent of review and evaluation and the considerations upon which the recommendations were made. This report shall be forwarded to the contracting officer with any appropriate data and material developed by the selection board which might assist the contracting officer in the negotiations.

(10) Assist the contracting officer in negotiating A–E contracts by acting as his technical advisor.

§ 12–50.202–3 Accelerated selection procedures.

In those instances where program urgency does not permit the time to fully perform the functions set forth in § 12–50.202–2(b), the file shall be documented with a justification, signed by the head of the procuring activity, and accelerated selection procedures shall be employed. Under accelerated selection procedures, the A–E Selection Board shall perform such functions, and at such depths, as the exigencies of the situation permit, to arrive at a selection based on a comparative evaluation of architect-engineers.

§ 12–50.202–4 Acceptance of A–E Selection Board recommendations by contracting officer.

The contracting officer will normally accept the recommendations of the A–E Selection Board, unless the report does not adequately support the recommendations. If the contracting officer cannot accept the recommendations of the A–E Selection Board, he shall request that the Board be reconvened, and meet with the Board until an acceptable set of recommendations has been agreed upon.

§ 12–50.203 Negotiations.

§ 12–50.203–1 Government estimate.

Prior to the initiation of negotiations, the Government shall develop an independent estimate of the cost of the required A–E services, based on a detailed analysis of the scope of the work. The estimate shall be revised as required during the negotiations to reflect changes in, or clarifications of, the scope of the work to be performed by the A–E.

§ 12–50.203–2 Sequence of negotiations.

The contracting officer will enter into negotiations with the A–E firm given first preference by the Selection Board, utilizing technical assistance as necessary to support his negotiations. If a mutually satisfactory contract cannot be negotiated with this firm, the negotiations shall be terminated, the firm so notified, and negotiations shall then be initiated with the firm given second preference by the Selection Board. This procedure shall be continued with the recommended firms in sequence until a mutually satisfactory contract has been negotiated.

§ 12–50.203–3 Scope of work.

Prior to the initiation of fee negotiations, the prospective A–E and the Government must have an initial understanding of the scope, quality and extent of services to be furnished, and of the conditions and factors affecting their responsibilities and operations. These understandings can be reached most satisfactorily through conferences conducted by the contracting officer.

§ 12–50.203–4 Construction contracts with design architect-engineers.

No contract for construction of a project shall be awarded to the firm which designed the project or its subsidiaries or affiliates, except with the approval of the Secretary. The A–E shall be informed of this restriction prior to the commencement of negotiations for his services.

§ 12–50.203–5 Architect-engineer's fee proposal.

When agreement has been reached on the proposed scope of work, the contracting officer shall request the A–E to submit his proposed fee and supporting detailed cost breakdown. Revisions of the proposed fee and supporting cost breakdown shall be requested as required during negotiations to reflect changes in, or clarifications of, the scope of work to be performed by the A–E.

§ 12–50.203–6 Fee negotiations.

Fee negotiations shall be based upon the cost or pricing data submitted by the A–E. The curve method of fee determination will be used, if at all, only as a secondary method to test the reasonableness of the fee negotiated.

§ 12–50.204 Record of negotiations.

A record of negotiations shall be prepared for inclusion in the contract file. The record of negotiations shall contain sufficient detail to reflect the significant considerations controlling the establishment of the fee and other terms of the contract, shall include explanations of any significant differences between the Government's cost estimate and the fee agreed upon, and shall include a determination, adequately supported, that the negotiated fee is within statutory limitations.

§ 12–50.205 Fee limitations.

(a) The total amount that may be paid to an A–E for producing and delivering the designs, plans, drawings, and specifications for a public work or utility project may not exceed six percent (6%) of the current estimated construction cost of the particular project, or part of a project, to which the A–E work applies. The estimated construction cost of a project is an estimate of those costs expected to be incurred in connection with actual construction, repair, or alteration. That estimated cost does not include any amount to be paid to the A–E.

(b) The six percent (6%) limitation applies to all services normally furnished by an A–E in the actual preparation of the material outlined. This includes the

visual inspection of the site or facility comprising the proposed project, for familiarization with the scope, the general conditions governing the performance of the work, and the conditions under which the project will be constructed; and the coordination with using elements to develop functional relationships and special detailed requirements. This limitation, however, does not apply to the cost of making other field investigations and surveys; such as topographical surveys; soil borings; soil, chemical, mechanical, and similar fact-finding surveys; and investigations. Similarly, the 6-percent fee limitation does not apply to travel and per diem; mechanical reproduction; services furnished for the supervision and inspection of construction; master planning; making technical studies, investigations and reports; preparing technical operating or maintenance manuals; and similar services not involving the production of designs, plans, drawings, and specifications for specific projects.

(c) For cost reimbursable contracts the contract price, which includes the fixed or incentive fee plus the total reimbursable costs to be paid to the A–E, shall not exceed six percent (6%) of the estimated cost of the construction project to which such services apply. If, however, the contract also covers the types of services discussed in paragraph (b) of this section, to which the fee limitation does not apply, that part of the contract price for such other services shall not be subject to the 6-percent limitation.

(d) For modifications involving work not initially included in the contract, the fee limitation is applicable, as applies to the revised total estimated construction costs. Where redesign is required and the contract is modified, the following method shall be used to insure that the 6-percent statutory limitation is not exceeded:

(1) The estimated construction cost of the redesigned features will be added to the original estimated construction costs and

(2) The contract cost for the original design will be added to the contract cost for redesign.

(3) The total contract design cost obtained by subparagraph (2) of this paragraph will be divided by the total construction cost obtained by subparagraph (1) of this paragraph. The resulting percentage may not exceed the six percent (6%) statutory limitation.

(e) When the "Statement of Work" contemplates furnishing services subject to the 6-percent limitation and services not subject to that limitation, the fee negotiated for each class of service shall be separately stated in the contract.

§ 12–50.206 Release of information.

The list of qualified firms in order of preference is for the internal use of the Department, and such information shall at no time be made known to the firms under consideration or to any other nongovernmental source. Information may be released by the contracting officer, unless precluded by security considerations, identifying the A–E selected for negotiations and describing the work in general terms. If negotiations are terminated without consummating a contract, the contracting officer may release such information and state that negotiations will be undertaken with another (named) A–E. When an award has been made, the contracting officer will release this information, giving notice of the award to any firms interviewed by the Selection Board.

Subpart 12–50.3—Procurement of Expert or Consultant Services

§ 12–50.300 Scope of subpart.

This subpart sets forth policy and procedures for the procurement by contract, pursuant to 5 U.S.C. 3109, of expert or consultant services from individuals and from firms. This subpart does not govern employment of individual experts or consultants by excepted appointment; the requirements for such employment are set forth in personnel regulations of the Civil Service Commission and of the Department.

§ 12–50.301 Negotiation authority.

Contracts with individuals or firms for expert and consultant services are usually negotiated, normally under the authority of 41 U.S.C. 252(c)(4), or 10 U.S.C. 2304(a)(4), as applicable.

§ 12–50.302 Definition of experts and consultants.

(a) The term "experts" means those persons who are exceptionally qualified in a particular field, by education or by experience, to perform some specialized service. The term "consultants" means those persons whose advice and counsel are sought on matters of Departmental interest. These terms also include firms meeting the foregoing definitions.

(b) Stenographic reporting services are included in the term "expert or consultant services" for purposes of procurement by contract under this subpart.

§ 12–50.303 Policy.

(a) The proper use of experts and consultants is a legitimate and economical way to improve Government services and operations. Activities of the Department can be strengthened by utilizing the highly specialized knowledge and skills of such individuals. Accordingly, the services of experts and consultants may be used at any organizational level to help managers achieve maximum effectiveness and economy in their operations.

(b) The following are examples of services which may be procured from experts or consultants by contract:

(1) Specialized opinion unavailable in the Department;

(2) Outside points of view, to avoid too limited judgment, on critical administrative or technical issues;

(3) Advice on developments in industrial and other research;

(4) For especially important projects, opinions of noted experts which are highly important to the success of an undertaking;

(5) The advisory participation of citizens to develop or implement Government programs that by their nature or by statute call for citizen participation;

(6) The services of specialists (experts) who are not needed full time, who cannot serve regularly or full time, or whose full-time employment is uneconomical to the Government.

§ 12–50.304 Limitations on use of expert or consultant authority.

(a) Authority to employ experts or consultants, whether by contract or by appointment, is limited to Secretarial officers and heads of operating administrations. They shall not be used to perform duties which can be performed by regular employees, to fill positions which call for full-time continuing employees, or to circumvent competitive civil service procedures and Classification Act pay limits. The prior approval of the Under Secretary is required for any expert or consultant contract or series of contracts with the same individual or firm that will reimburse him for a total of more than 10 days' work in any consecutive 12-month period.

(b) The nature of the duties to be performed must be temporary (not more than 1 year) or intermittent (not cumulatively more than 130 working days in any consecutive 12-month period), and no contract shall be entered into for longer than 1 year at a time.

(c) Expert or consultant services shall not be used when existing facilities of the Department are adequate or when personnel with the necessary skills can be obtained through normal civil service appointment procedures. Procurement of expert or consultant services shall not be used as a means of circumventing manpower space ceilings or the limit on the daily rate that experts or consultants may be paid under section 9.b of the DOT Act.

§ 12–50.305 Justification to enter into contracts.

(a) All contracts to be entered into pursuant to 5 U.S.C. 3109 or other statutory authority for expert or consultant services must be justified in writing and the justification signed by the appropriate Secretarial officer or head of operating Administration. Ordinarily each contract shall be separately authorized. However, when the justification can appropriately be made with respect to a class of contracts, the authorizing official may execute a blanket authority for that class of contracts.

(b) Each justification shall authorize a contract or class of contracts to be entered into during a stated period not to exceed 1 year. A justification may be issued during 1 fiscal year to authorize a contract or class of contracts to be entered into during the following fiscal year, provided the determinations are reasonably expected to hold true at the time the contract or contracts are to be entered into.

(c) Each justification shall contain the following:

(1) A brief description of the services authorized to be procured, the estimated time of performance, and the estimated cost;

(2) Determination with respect to the particular contract or class of contracts that:

(i) The duties to be performed are of a temporary or intermittent nature;

(ii) The existing facilities of this Department are inadequate to furnish the services; and

(iii) It is not feasible to obtain personnel with the necessary skills from other Federal agencies or through normal civil service appointment procedures.

§ 12–50.306 Contracts with individual experts or consultants.

§ 12–50.306–1 Method and amount of payment.

The contract may provide for compensation at rate for time actually worked (e.g., amount per day, per week, per month, etc.), or it may provide for performance of a specific task at a fixed price, or it may provide for nominal compensation. The amount of rate of payment will be determined on a case-by-case basis, taking into account (among any other relevant factors) the relative importance of the duties to be performed, the stature of the individual in his specialized field, comparable pay for positions under the Classification Act or other Federal pay systems, rates paid by private employers, and rates previously paid other experts or consultants for similar work. Compensation at a per diem rate will be no more than that permitted by statutory authority and normally no less than $55. In addition, the contract may provide for such expenses as would be authorized for a Government employee, including actual transportation and per diem in lieu of subsistence while the expert or consultant is traveling between his home or place of business and his official duty station. However, no more than one round trip to the official duty station shall be provided unless the services are rendered on an intermittent basis.

§ 12–50.306–2 Benefits.

No benefits shall be accorded the contractor which are not specifically provided for in the written contract.

§ 12–50.306–3 Taxes.

Where the individual is to render services, the compensation generally is subject to FICA (Social Security), FUTA (Unemployment), and Federal income withholding tax. It may also be necessary to report or withhold State income tax under 5 U.S.C. 84b. The contracting officer shall take appropriate steps in coordination with the cognizant personnel office to have deductions and reports made where required by law.

§ 12–50.306–4 Conflict of interest.

The contracting officer shall assure himself that individual experts or consultants who are to render services under contract, familiarize themselves with Executive Order 11222, May 8, 1965, "Standards of Conduct for Special Government Employees," 30 F.R. 6469 (1965), and that they comply with it and with departmental regulations implementing it.

§ 12–50.306–5 Adminstrative treatment.

Individual experts or consultants who are to render personal services under contract are charged against personnel ceilings in the same way as experts and consultants employed by excepted appointment. Also, the cognizant personnel office must maintain certain records on individual experts and consultants who render personal services. Therefore, the contracting officer shall effect necessary coordination with the cognizant personnel office before award of a contract for expert or consultant services, and may also designate the appropriate personnel officer as his representative for the purpose of obtaining necessary data from the contractor for tax withholding purposes, for suitability investigation under Executive Order 10450 and for administering applicable conflict of interest provisions.

§ 12–50.307 Contracts with firms for expert or consultant services.

Contracts with firms for expert or consultant services ordinarily need deal only with rights and obligations as between the Government and the firm, and need not deal with the question of compensation by the firm of the individuals it assigns to the work or with any other rights or obligations as between the firm and these individuals.

§ 12–50.308 Contracts for stenographic reporting services.

Stenographic reporting services normally are provided by Federal Government employees appointed under the usual civil service procedures. However, these services may be procured by contract from individuals or firms pursuant to 5 U.S.C. 3109, or other statutory authority where there are variable requirements or insufficient qualified personnel, and necessity or economy to the Government demands procurement by contract. Such contracts normally shall be written on an end-product basis and payment made according to delivered items (e.g., number of copies of transcript, words per page, etc.), and the contractor ordinarily shall be required to furnish the necessary material (typewriter, paper, bindings, etc.). These contracts are subject to all provisions of this subpart.

§ 12–50.309 Modification of contracts.

When supplemental agreements or change orders are required which substantially change the basis upon which the justification was made, such as to revise substantially the scope of work or time limitations, or to apply additional funds, authorization shall be requested in the same way and is subject to the same limitations as authorization to procure the total services by contract would have required in the first place.

Subpart 12–50.4—Procurement of Mortuary Services

§ 12–50.400 Scope of subpart.

This subpart is applicable only to the Coast Guard. It sets forth procurement procedures peculiar to contracts for mortuary services (the care of remains) of Coast Guard personnel.

§ 12–50.401 Procurement by contract.

(a) Where an existing contract for the care of remains is not available for Coast Guard use, procurement of such services shall be formally advertised except where negotiation is authorized, consistent with limitations and requirements set forth in Chapter 12B of the Coast Guard Personnel Manual.

(b) The contract format, terms and conditions, and clauses set forth in this subpart are appropriate for inclusion in a requirements type contract. They should be altered as deemed necessary by the contracting officer to fit a different contract type or procurement situation.

§ 12–50.402 Area of performance.

Each contract for care of remains shall clearly define the geographical area covered by the contract. The area shall be determined by the activity entering into the contract in accordance with the following general guidelines. It shall be an area using political boundaries, streets, and other features as demarcation lines. Generally, this should be a size roughly equivalent to the contiguous metropolitan or municipal area enlarged to include the activities served. In the event the area of performance best suited to the needs of a particular contract is not large enough to include a carrier terminal commonly used by people within such area, the contract area of performance shall specifically state that it includes such terminal as a pickup or delivery point.

§ 12–50.403 Solicitation provision.

Invitations for bids for mortuary services contracts shall contain the provision set forth below. This provision shall be appropriately modified for use in requests for proposals.

AWARD TO SINGLE BIDDER

Subject to the provisions contained herein, award shall be made to a single bidder. Bids must include unit prices for each item listed in order that bids may be properly evaluated. Failure to do this shall require rejection of the entire bid. Bids shall be evaluated on the basis of the estimated quantities shown and award shall be made to that responsive/responsible bidder whose total aggregate price is low.

§ 12–50.404 Schedule format.

Set forth below is an example of a Schedule format suitable for use in solicitations:

Item No.	Supplies, services and transportation	Estimated quantity	Unit	Unit price	Amount
1	For a Type I casket, standard size, supplies and services in accordance with specifications.	----------	each		
2	For a Type II casket, standard size, supplies and services in accordance with specifications.	----------	each		
3	For a shipping case, standard size, in accordance with specifications. (For use with Item 1 or 2 above.)	----------	each		
4	For a Type I casket, exceeding standard size, supplies and services in accordance with specifications.	----------	each		
5	For a Type II casket, exceeding standard size, supplies and services in accordance with specifications.	----------	each		
6	For shipping case, exceeding standard size, in accordance with specifications. (To be used with Item 4 or 5 above.)	----------	each		
7	For transportation of remains, in accordance with specifications and as provided for in paragraphs (b) and (c) of the "Area of Performance" clause of this contract.	----------	(Loaded mile)		

§ 12–50.405 Contract clauses.

The following clauses shall, if appropriate, be included in contracts for mortuary services.

§ 12–50.405–1 Requirements.

REQUIREMENTS

(a) This is a requirements contract for the supplies or services specified in the Schedule, and for the period set forth in this contract. Delivery of supplies or performance of services shall be made only as authorized by orders issued in accordance with the clause entitled "Delivery Orders and Invoices." The quantities of supplies or services specified herein are estimates only and are not purchased hereby. Except as may be otherwise provided herein, in the event the Government's requirements for supplies or services set forth in the Schedule do not result in orders in the amounts or quantities described as "estimated" or "maximum" in the Schedule, such event shall not constitute the basis for an equitable price adjustment under this contract.

(b) The Government shall order from the Contractor all the supplies, services, and transportation set forth in the Schedule which are required to be purchased by the Government activity named herein, and the Contractor shall furnish to the Government such supplies, services, and transportation as may be ordered by the Contracting Officer. The Government, however, reserves the right not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other cogent reason. In the event of an epidemic or other emergency, the Contractor shall not be required to provide services in excess of the capacity of his facilities.

§ 12–50.405–2 Contract period.

CONTRACT PERIOD

Any contract awarded as a result of bids submitted under this Invitation for Bids shall extend from ---------- through ----------.

§ 12–50.405–3 Area of performance.

AREA OF PERFORMANCE

(a) The area of performance is specified elsewhere in this contract. This contract includes taking possession of the remains at the place where they are located, transporting them to the Contractor's place of preparation and transporting them thereafter to a place designated by the Contracting Officer. The Contractor shall not be entitled to reimbursement for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(b) If remains are located outside the area of performance, the Government may call on the Contractor or obtain the services elsewhere. If the Government calls on the Contractor, the Contractor shall be paid the amount per mile indicated in the Schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance. If the Government elects to have the remains brought into the area of performance by some other means, it may require the Contractor to perform after the remains are within the area of performance.

(c) The Government may require the Contractor to deliver remains to any point within one hundred (100) miles of the area of performance. In this case the Contractor shall be paid the amount per mile indicated in the Schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

§ 12–50.405–4 Specifications.

SPECIFICATIONS

Armed Services Specifications, Care of Remains of Deceased Personnel, hereinafter referred to as "Specifications" are attached hereto and made a part of this contract.

§ 12–50.405–5 Using activities.

USING ACTIVITIES

Contracting Officers of the following activities may order services and supplies under this contract:

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§ 12–50.405–6 Delivery orders and invoices.

DELIVERY ORDERS AND INVOICES

Delivery orders for supplies or services shall be issued by the Contracting Officer and shall set forth (i) the supplies or services being ordered, (ii) the quantities to be furnished, (iii) delivery or performance dates, (iv) place of delivery or performance, (v) packing and shipping instructions, and (vi) the address to which invoices for services rendered under this contract shall be sent. Amendments to delivery orders may be made by the Contracting Officer issuing the order. Each delivery order or change order shall cite the funds from which payment for the supplies or services ordered shall be made.

§ 12–50.405–7 Delivery and performance.

DELIVERY AND PERFORMANCE

(a) Except as otherwise herein provided, the Contractor shall furnish the material ordered and perform the services specified in each case as promptly as possible but in no event later than thirty-six (36) hours after the Contractor has received notification to remove the remains, exclusive of the time necessary for the Government to inspect and check results of preparation. The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed seventy-two (72) hours from the time the remains are casketed and final inspection completed.

(b) In no case will shipment be made until the Contractor certifies that the remains will be in an acceptable state of preservation upon final delivery. The Contractor shall not be responsible for notifying the consignee of time of arrival of shipped remains.

§ 12–50.405–8 Subcontracting.

SUBCONTRACTING

No contract shall be made by the Contractor with any other party for furnishing any of the work or services herein contracted for without the written approval of the Contracting Officer. This provision does not apply to contracts of employment between the Contractor and his personnel.

§ 12–50.405–9 Additional default provision.

ADDITIONAL DEFAULT PROVISION

(a) This clause supplements the "Default" clause of this contract.

(b) This contract may be terminated for default by written notice without the ten (10) day notice specified under paragraph (a) (ii) of the "Default" clause if during the performance of this contract:

(1) The Contractor, through circumstances reasonably within his control or that of persons in his employ, performs any act or acts under or in connection with this contract, or fails in the performance of any service under this contract, and such acts or failures may reasonably be considered to reflect discredit upon the Coast Guard in fulfilling its responsibility for proper care of remains;

(2) The Contractor, either by his own act or through persons in his employ, solicits relatives or friends of the deceased to purchase supplies or services not provided for under this contract (the Contractor may furnish supplies or arrange for services not provided for under this contract, only where such other supplies or services are voluntarily requested, selected and paid for by the representatives of the deceased);

(3) The services, or any part thereof, to be performed under this contract are, without the written authorization of the Contracting Officer, performed by an individual, partnership, corporation, or other person or business association whatsoever, other than the Contractor to whom this contract is awarded, his employees and members of the firm;

(4) The Contractor refuses to perform the services required for any particular remains; or

(5) The Contractor advertises in any way that he has a contract for mortuary services with the Government.

(c) All other provisions of the "Default" clause shall apply to a termination made pursuant to this "Additional Default Provision" clause.

§ 12–50.405–10 Inspection.

INSPECTION

All services, material, and workmanship shall be subject to inspection and test by representatives of the Government. For this purpose, the Contractor shall allow inspectors and other representatives of the Contracting Officer free access to the plant and

operations at all reasonable times and shall furnish such facilities, supplies, and services, as may be required.

§ 12–50.405–11 Group interment.

GROUP INTERMENT

Payments to the Contractor for supplies and services provided for remains to be interred as a group shall be made on the basis of the number of caskets furnished rather than on the basis of the number of persons in the group.

§ 12–50.405–12 Professional requirements.

PROFESSIONAL REQUIREMENTS

The Contractor shall meet all State and local licensing requirements and shall furnish the highest quality of professional services. Preparation and transportation of remains shall be performed in accordance with all applicable Federal, State, and local health laws, statutes, and regulations. The Contractor shall obtain and furnish all necessary health department and shipping permits at no additional cost to the Government and shall insure that all necessary health department permits are in order for disposition of the remains.

§ 12–50.405–13 Facility requirements.

FACILITY REQUIREMENTS

The Contractor's building shall have complete facilities for maintaining the highest standards of solemnity, reverence, and assistance to the family, and for prescribed ceremonial services. The preparation room shall be clean, sanitary, and adequately equipped. The Contractor shall have, or be able to obtain, catafalques, church trucks, and equipment for Protestant, Catholic, and Jewish services. The funeral home, furnishings, grounds and surroundings area shall be carefully maintained so as to present a clean and well-kept appearance.

§ 12–50.405–14 Preparation history.

PREPARATION HISTORY

For each body prepared, or in the case of group interment for each casket handled, the Contractor shall state briefly the results of the embalming process on a certificate furnished by the Contracting Officer.

§ 12–50.405–15 Changes.

CHANGES

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes in or additions to specifications, issue additional instructions, require modified or additional work or services within the scope of the contract, and change the place of delivery, method of shipment, or the amount of Government-furnished property. If any such change causes an increase or decrease in the cost, or in the time require for, the performance of this contract, an equitable adjustment shall be made in the contract price, or time of performance, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

§ 12–50.405–16 Inconsistent provisions

INCONSISTENT PROVISIONS

In the event of any inconsistency in the provisions of any of the parts of this contract, the following order shall control: the Schedule; the contract clauses; and the Specifications as in effect on the date of this contract.

§ 12–50.405–17 Coordination.

COORDINATION

Necessary coordination shall be effected with the Contractor's funeral director on all funeral arrangements, which shall include the time remains will be ready for inspection, viewing and shipment, time and place of religious services, time and place of interment and shipping schedules, and final disposition of remains.

§ 12–50.405–18 Preparation of remains at other than contractor's establishment.

PREPARATION OF REMAINS AT OTHER THAN CONTRACTOR'S ESTABLISHMENT

Preparation of remains at a place other than the Contractor's establishment shall require the concurrence of the Contracting Officer.

§ 12–50.405–19 Major restorative art.

MAJOR RESTORATIVE ART

The Contractor shall advise the Contracting Officer promptly of any need for major restorative art technique (restoration of facial contours, such as nose, ears, mouth, chin, etc.) required for any remains prepared under this contract to permit the viewing of remains at final destination, and upon the direction of the Contracting Officer, shall perform such restoration. The cost of such restoration shall be allowed as approved by the Contracting Officer.

§ 12–50.405–20 Passenger car.

PASSENGER CAR

When a passenger car is required to transport members of the immediate family to the funeral service and, if necessary, to the selected terminal and return, the cost shall be allowed as approved by the Contracting Officer.

§ 12–50.405–21 Definitions.

Insert the clause set forth in FPR 1–7.101–1.

§ 12–50.405–22 Payments.

Insert the clause set forth in FPR 1–7.101–7.

§ 12–50.405–23 Assignment of claims.

Insert the clause set forth in FPR 1–30.703.

§ 12–50.405–24 Federal, State, and local taxes.

Insert the clause set forth in FPR 1–11.401–1.

§ 12–50.405–25 Termination for convenience of the Government.

Insert the clause set forth in FPR 1–8.705–1.

§ 12–50.405–26 Default.

Insert the clause set forth in FPR 1–8.707.

§ 12–50.405–27 Disputes.

Insert the clause set forth in FPR 1–7.101–12.

§ 12–50.405–28 Convict labor.

Insert the clause set forth in FPR 1–12.203.

§ 12–50.405–29 Contract Work Hours Standards Act—overtime compensation.

Insert the clause set forth in FPR 1–12.303.

§ 12–50.405–30 Officials not to benefit.

Insert the clause set forth in FPR 1–7.101–19.

§ 12–50.405–31 Covenant against contingent fees.

Insert the clause set forth in FPR 1–1.503.

§ 12–50.405–32 Gratuities.

Insert the clause set forth in DOTPR 12–7.150–1.

§ 12–50.405–33 Equal opportunity.

Insert the clause set forth in FPR 1–12.803–2 under the conditions and in the manner prescribed therein.

§ 12–50.405–34 Examination of records by Comptroller General.

Insert the clause set forth in FPR 1–7.101–10 in negotiated contracts.

§ 12–50.406 Procurement by purchase order.

Where no contract for mortuary services exists and the use of a purchase order is appropriate, such services shall be obtained by use of DD Form 1155 and DD Form 1155r, in accordance with the following instructions:

(a) The "Changes" clause (paragraph 17 of DD Form 1155r) shall be deleted and the "Changes" clause in DOTPR 12–50.405–15 shall be substituted therefor.

(b) The "Additional Default Provision" clause in DOTPR 12–50.405–9 shall be included in the contract except it shall be amended:

(1) By changing paragraph (a) thereof to read; "(a) This clause supplements the 'Termination for Default' clause of this contract."

(2) By changing the first sentence of paragraph (b) thereof to read: "This contract may be terminated for default by written notice if during the performance of this contract:".

(c) The following clauses shall also be included in the contract:

(1) The "Specifications" clause in DOTPR 12–50.405–4.

(2) The "Delivery and Performance" clause in DOTPR 12–50.405–7.

(3) The "Subcontracting" clause in DOTPR 12–50.405–8.

(4) The "Inspection" clause in DOTPR 12–50.405–10.

(5) The "Professional Requirements" clause in DOTPR 12–50.405–12.

(6) The "Facility Requirements" clause in DOTPR 12–50.405–13.

(7) The "Preparation History" clause in DOTPR 12–50.405–14.

PART 12–60—CONTRACT APPEALS

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12–60.224 Decisions.

AUTHORITY: The provisions of this Part 12–60 issued under 80 Stat. 931 et seq.; 49 U.S.C. 1651 et seq.

§ 12–60.000 Scope of part.

This part establishes the Department of Transportation Contract Appeals Board, prescribes its functions and procedures, provides for the appointment of a chairman and members of the Board, and authorizes the members of the Board to act.

Subpart 12–60.1—Contract Appeals Board

§ 12–60.101 Establishment.

A Department of Transportation Contract Appeals Board ("Board") is established. The Secretary of Transportation ("Secretary") appoints and terminates the appointments of the members of the Board, and designates one of them as chairman. The Board is responsible directly to the Secretary.

§ 12–60.102 Qualifications of members.

Each member of the Board must be a qualified attorney who is admitted to practice before the highest court of a State or the District of Columbia, and shall be a civilian employee or a commissioned officer of the Department.

§ 12–60.103 Authority and duties of the Board and its members.

(a) The Board acts for the Secretary in hearing and deciding:

(1) Appeals by contractors from decisions made by contracting officers under contracts which provide for such an appeal to the Secretary; and

(2) Other matters as directed by the Secretary.

(b) In each case, the Board shall make a final decision which is impartial, fair, and just to the parties and is supported by the record of the case and the law. The member or members assigned to hear an appeal have authority to act for the Board in all matters with respect to such appeal, except that the final decision is made by a majority of a panel of Board members designated by the chairman for that purpose. No member may act for the Board or participate in a decision if he has participated directly in any aspect of the award or administration of the contract involved.

§ 12–60.104 Authority and duties of the chairman.

The chairman is delegated authority over and is responsible for:

(a) The internal organization and administration of the Board;

(b) The receipt and custody of all papers and material relating to contract appeals;

(c) The assignment of a member or members of the Board to act for the Board in each appeal and the assignment of the panel of Board members to decide each appeal;

(d) The designation of an acting chairman during his absence, disqualification, or disability; and

(e) The promulgation of additional or supplemental rules of procedure, not inconsistent with those established by the Secretary.

Subpart 12–60.2—Contract Appeal Procedures

§ 12–60.201 General.

(a) It is the intent of the rules in this part to provide for the just and inexpensive determination of appeals without unnecessary delay. It is the objective of the Board's preliminary procedures to encourage full disclosure of relevant and material facts, and to discourage surprise. Each specified time limitation is a maximum, and should not be fully exhausted if the action described can be accomplished in a shorter period. The Board may extend any time limitation (except the time specified in the contract for filing the notice of appeal) for good cause.

(b) For the purposes of this part—

(1) "The parties" means the appellant and the contracting officer;

(2) "Appellant" means the contractor who appeals; and

(3) "Contracting officer" means the Government contracting officer whose decision is appealed, or his successor.

(c) Ordinarily, the apellant has the burden of proof.

§ 12–60.202 Notice of appeal.

An appeal from a decision of a contracting officer is made by sending a written notice of appeal to the contracting officer addressed to the Secretary. The notice shall be mailed or filed within 30 days after the date of receipt of the contracting officer's decision, unless a different time is provided in the contract. The contractor shall sign the notice, identify the contract involved and the decision appealed from, and state that he is appealing from that decision. A general letter of complaint objecting to some action taken may be considered not to be a notice of appeal. The notice should be in triplicate, specify the part or parts of the decision from which the appeal is taken, and should state the reason why those parts are erroneous. The notice of election referred to in § 12–60.205, and the complaint referred to in § 12–60.208, may be filed with, or as part of, the notice of appeal.

§ 12–60.203 Forwarding of appeals.

Upon receiving a notice of appeal, the contracting officer shall endorse on the original and the copies the date of mailing, or the date of receipt if otherwise filed. He shall immediately send the notice and one copy to the Board for docketing. The Board shall promptly advise the appellant and the contracting officer of the receipt of the original notice of an appeal (whether received from the contracting officer or otherwise), and shall furnish the appellant a copy of the rules in this part and advise him of his option of procedures.

§ 12–60.204 Duties of the contracting officer.

(a) Within 30 days after the first written notice to him that an appeal has been taken, the contracting officer shall send to the Board an appeal file, consisting of the originals or true copies of the following:

(1) The findings of fact and the decision from which the appeal is taken, and the letters or other documents of claim in response to which the decision was issued;

(2) The contract and pertinent specifications, plans, drawings, modifications, change orders, and amendments;

(3) All correspondence between the parties relating to the dispute;

(4) Transcripts of any testimony taken in connection with the dispute, and any affidavits or statements of any witnesses that were considered by the contracting officer in reaching his decision; and

(5) Any additional data that the contracting officer may consider pertinent.

(b) The contracting officer shall retain a complete copy of the appeal file, except for voluminous exhibits of which the appellant has identical copies, or which the appellant has had the opportunity to inspect. At the time the file is sent to the Board he shall so notify the appellant, provide him with a listing of its contents, and advise him that he may examine it at the office of the contracting officer or the Board. As soon as possible the appellant should suggest to the Board any additional documentation he considers pertinent for inclusion in the appeal file. The Board may order the inclusion of the suggested material.

§ 12–60.205 Appellant's election as to procedure.

(a) The appellant may elect to have the appeal considered upon:

(1) The written record, without oral hearing (§ 12–60.206);

(2) A conference hearing (§ 12–60.207); or

(3) A hearing under the Board's regular procedure.

(b) The appellant shall notify the chairman of the Board of his election within 30 days after the date he receives the contracting officer's notice of transmittal of the appeal file under § 12–60.204.

(c) For good cause, at the timely request of the contracting officer or on the Board's own motion, the Board may direct that the parties follow either the conference hearing procedure or the regular procedure if the appellant has elected to have the appeal considered upon the written record; or it may direct that the parties follow the regular procedure if the appellant has elected to have the appeal considered under the conference hearing procedure.

§ 12–60.206 Procedure for submission on written record.

If the appeal is considered on the written record, the pleadings specified in § 12–60.208 are not required. The appellant may submit to the Board any additional relevant material for the record within 45 days after the date he receives the contracting officer's notice of transmittal of the appeal file under § 12–60.204. The contracting officer shall submit any answering material within 30 days after the date he receives the material submitted by the appellant. Thereafter the record shall be settled as provided in § 12–60.221 after at least 15 days' notice to the parties by the Board. The Board may permit the record to be supplemented by oral argument and by briefs.

§ 12–60.207 Conference hearing procedure.

(a) *General.* This procedure provides a means for hearing and deciding appeals which is more expeditious and informal than the regular procedure set forth in the rules in this part. It may be of particular value when the appellant regards only limited additional testimony and oral argument as necessary to sustain his case on the written record.

(b) *Pleadings and issues.* Under the conference hearing procedure, pleadings are not required. The issues are those raised by the appellant's claim letter and the contracting officer's decision or those identified at a prehearing conference.

(c) *The hearing.* The hearing consists of an informal conference at which the evidence is presented and discussed by the witnesses. The presiding Board member controls the course of the hearing. He may vary the order of presentation so that all evidence on a particular issue is received at the same time and he may refuse to receive any evidence or argument on matters not directly in issue or any repetitive, irrelevant, prejudicial, or improper material. The presiding Board member may also develop facts, obtain admissions, stipulations, and concessions through questioning parties and witnesses.

(d) *Evidence and arguments—how presented.* Evidence and argument is presented by the witnesses and the parties without regard to the formal order of proof. The technical rules of evidence do not apply, but the Board may refuse to consider any statements or documents which are not of sufficient probative weight as to be considered "substantial" evidence. Although witnesses are not separately and sequentially examined and cross-examined, questioning and cross-questioning may be permitted when needed to get relevant information on the record or to test the credibility of witnesses. Evidence and argument may be limited to matters directly in issue.

(e) *Other rules.* All of the rules in this part, except §§ 12–60.208 and 12–60.216 apply to appeals considered under the conference hearing procedure.

§ 12–60.208 Pleadings.

(a) Unless he elects to have the appeal considered on the written record or under the conference hearing procedure, the appellant shall, within 30 days after receipt of the contracting officer's notice of transmittal of the appeal file under § 12–60.204, file with the Board an original and two copies of a complaint setting forth a concise statement of each of his claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed. If the Board orders a complaint to be filed, the complaint shall be filed within the time specified in the Board's order.

(b) Within 30 days after the date of receipt of the complaint, the contracting officer shall file with the Board an original and two copies of an answer, setting forth a concise statement of his defense to each claim asserted by the appellant.

(c) Although no particular form or formality is required, the complaint and answer shall fulfill the generally recognized requirements for pleading.

§ 12–60.209 Motions.

(a) Motions are made by filing an original and two copies thereof, together with any supporting papers, with the Board. Motions may also be made upon the record, in the presence of the other party, at a prehearing conference or a hearing. The Board shall consider any timely motion:

(1) For extension of time or to cure defaults;

(2) To require that a pleading be made more definite and certain, or for leave to amend a pleading;

(3) To dismiss for lack of jurisdiction; to dismiss for failure to prosecute; or to grant summary relief because a pleading does not raise a justiciable issue;

(4) For discovery, for interrogatories to a party, and for the taking of depositions;

(5) To reopen a hearing; or to reconsider a decision; or

(6) For any other appropriate order.

(b) The Board may, on its own motion, initiate any such action by notice to the parties. Unless a longer time is allowed by the Board, a party who receives a motion shall file any answering material within 20 days after the date of receipt. The Board shall make an order on each motion that is appropriate and just to the parties, and upon conditions that will promote efficiency in disposing of the appeal. The Board may permit oral hearing or argument on motions, and may require the presentation of briefs. Motions to reconsider a decision must be made within 30 days after the date of receipt of the decision.

§ 12–60.210 Prehearing conference.

(a) The Board may, upon the request of either party, or upon its own motion, require the parties to appear for a prehearing conference to consider—

(1) Simplification or clarification of the issues;

(2) Stipulations and admissions;

(3) Limitations on the evidence and the number of witnesses whose testimony is to be presented;

(4) Possibility of agreement on any of the issues in dispute; and

(5) Any other matter that may aid in the disposition of the appeal.

(b) The presiding Board member shall reduce results of the conference to writing. The results are a part of the record.

§ 12–60.211 Service of papers.

Except for the appeals file, a copy of each document and each communication to the Board shall be served upon the other party at the time it is filed with or sent to the Board. Service of papers shall be made personally or by mail.

§ 12–60.211–1 Notation; copy to other party.

Except for the appeal file, each written communication to the Board from or on behalf of the contracting officer or the appellant shall include a notation or statement that a copy has been served on or sent to the other party. The letter to the Board transmitting the appeal file shall indicate that a copy of the letter and a list of the documents have been sent to the appellant.

§ 12–60.212 Depositions and discovery.

(a) *Depositions.* (1) After an appeal has been docketed, the Board may, for good cause, order the taking of the testimony of any person, by deposition upon oral examination or written interrogatories. A party's application for the order shall specify whether the deposition is for (i) the purpose of discovery, or (ii) use as evidence.

(2) The taking of evidentiary depositions will not ordinarily be ordered unless it appears that it is impracticable to present the witness' testimony at the hearing of the appeal, or unless a hearing has been waived and the case submitted on the written record pursuant to § 12–60.206. Testimony taken by deposition shall not be considered part of the evidence in the hearing of an appeal unless and until it is offered and received in evidence. It shall not ordinarily be received in evidence if the witness can testify personally at the hearing, except that depositions may be used to contradict or impeach the testimony of witnesses.

(b) *Inspection of documents.* For good cause, the Board may order any party to produce and permit the inspection and copying or photographing of designated documents, not privileged, regarding any matter that is relevant to the appeal.

(c) *Admission of facts.* For good cause shown, the Board may permit a party to serve upon the opposing party a request for the admission of specified facts.

(d) *Orders of the Board.* The time, place, and manner of taking depositions, producing documents or making admissions under this section shall be governed by the order of the Board.

§ 12–60.213 Prehearing briefs.

Either party may file a prehearing brief, and the Board may require both parties to submit prehearing briefs. Such a brief should be filed at least 15 days before the date set for hearing.

§ 12–60.214 Notice of hearing; where and when held.

Hearings are held in Washington, D.C., except that, upon request seasonably made and upon good cause shown, the Board in its discretion may set the hearing at another location. Hearings are scheduled by the Board with due consideration to the regular order of appeals, the desires of the parties, the requirement for just and inexpensive determination of appeals without unnecessary delay, and other pertinent factors. The parties shall be given at least 15 days' notice of the time and place set for hearings.

§ 12–60.215 Unexcused absence of a party.

The unexcused absence of a party at the time and place set for hearing does not delay the hearing. In such a case, the hearing proceeds and the case is considered to be submitted on the written record by the absent party, as provided in § 12–60.206.

§ 12–60.216 Nature of hearings.

Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Subject to the discretion of the presiding Board member as to the extent and manner of the presentation of such evidence, the appellant and the contracting officer may offer any relevant evidence that would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials. In general, admissibility depends on relevancy and materiality. Letters or copies thereof, affidavits, or other evidence may be admitted in the discretion of the presiding Board member. The weight to be attached to evidence presented in any particular form is within the discretion of the Board, after considering the circumstances of the particular case. The Board may in any case require evidence in addition to that offered by the parties.

§ 12–60.217 Examination of witnesses.

Witnesses before the Board may be examined orally under oath or affirmation. If the testimony of a witness is not given under oath the Board shall warn the witness that his statements are subject to sections 287 and 1001 of title 18, United States Code, and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States.

§ 12–60.218 Copies of papers.

A true copy may be substituted for any book, record, paper, or other document that has been received in evidence. If this is done, an identical copy shall be furnished to the other party.

§ 12–60.219 Posthearing briefs.

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties, or as may be directed by the presiding Board member.

§ 12–60.220 Transcript of proceedings.

Unless the Board otherwise orders, testimony and argument at hearings shall be reported verbatim. Any party to a hearing may buy a transcript of the proceedings at rates fixed by contract between the Board and the reporter, or equivalent rates if the proceedings are reported by an employee of the United States.

§ 12–60.221 Settling the record.

(a) A case which is heard is ready for decision upon receipt of transcript, or upon receipt of briefs when briefs are to be submitted.

(b) A case submitted on the record pursuant to § 12–60.206 is ready for decision when the parties are so notified by the Board. At any time before the date that such a case is ready for decision, either party may, upon good cause shown, supplement the record with documents and exhibits that the Board considers relevant and material.

(c) The Board may, upon its own motion, call upon either party, with appropriate notice to the other, for evidence that it considers relevant and material. The weight attached to any evidence of record is within the discretion of the Board. Either party may at any stage of the proceeding, on notice to the other party, question by objection the relevance or materiality of material in the record or offered into the record.

(d) The Board record consists of the appeal file described in § 12–60.204 and any additional material filed with or heard by the Board, except material which the Board strikes or excludes.

(e) This record is at all times available for inspection by either party, upon reasonable prior arrangement, at the office of the Board. Copies of material in the record may, if practicable, be furnished to the appellant upon payment of the established fees for reproduction.

§ 12–60.222 Representation of parties.

An individual appellant may prosecute his appeal in person; a corporation, by an officer; a partnership or joint venture, by a member; and any appellant may be represented by an attorney. The contracting officer is represented by Government counsel.

§ 12–60.223 Settlement.

A dispute may be settled at any time before the decision by the filing of a written notice by the appellant withdrawing his appeal or by written stipulation between the appellant and the contracting officer, settling the dispute. Proceedings may be suspended while the parties are considering settlement.

§ 12–60.224 Decisions

Written decisions of the Board shall be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions are open for public inspection at the offices of the Board in Washington, D.C. Decisions of the Board are made upon the record.

PART 12–99—DEPARTMENTAL ORDERS

Sec.
12–99.000 Scope of part.
DOT Order 4220.1.
DOT Order 4200.4.
DOT Order 4200.7.
DOT Order 4400.3.

AUTHORITY: The provisions of this Part 12–99 issued under sec. 205(c), 63 Stat. 389; 40 U.S.C. 486(c), 10 U.S.C. 2301–2314.

§ 12–99.000 Scope of part.

This part contains the following Departmental orders which pertain to procurement:

(a) DOT Order 4220.1 (Subject: Prefixes for DOT contract numbers).

(b) DOT Order 4200.4 (Subject: Unsolicited contract proposals).

(c) DOT Order 4200.7 (Subject: Authority to make contractual commitments).

(d) DOT Order 4400.3 (Subject: Establishment of Department of Transportation Procurement Regulations).

[The Text of the Above Orders Follows]

DOT ORDER 4220.1, SUBJECT: PREFIXES FOR DOT CONTRACT NUMBERS

1. *Purpose.* To establish prefixes for contract numbers issued by the Department of Transportation.

2. *Cancellation.* DOT 4200.3, Prefixes for Department of Transportation Contract Numbers, dated 12–22–67.

3. *Scope.* The provisions of this order apply to the Office of the Secretary and the operating administrations. In addition, pursuant to delegation by the National Transportation Safety Board (NTSB) under section 5(m) of the Department of Transportation Act, this directive is applicable to the NTSB.

4. *Discussion.* It is desirable to have contract numbers for contracts issued by the Department prefixed by letter designations which will clearly identify the contracts by the Department, and within the Department by component, i.e., OST, operating administration or NTSB. Standardization of the numbering system to this extent will aid in the correct referral of inquiries about, or information submitted under Department contracts.

5. *Procedures.* a. All contracts, exclusive of purchase orders, issued by the Department will be identified by a number or combination of letters and numbers. This will be pre-

fixed by the appropriate symbols from the list below:

Office of the Secretary	DOT–OS
Transportation Systems Center	DOT–TSC
U.S. Coast Guard	DOT–CG
Federal Aviation Administration	DOT–FA
Federal Highway Administration	DOT–FH
St. Lawrence Seaway Development Corporation	DOT–SL
National Transportation Safety Board	DOT–SB
Office of Supersonic Transport Development	DOT–SS
Federal Railroad Administration	DOT–FR
Urban Mass Transportation Administration	DOT–UT
National Highway Traffic Safety Administration	DOT–HS

b. Identifying contract numbers and letters, other than the above required prefixes, will be established by each component of the Department. To the extent the above prescribed prefixes interfere with established control systems they may be omitted on purely internal actions.

c. When contracts are entered into by one component for another, pursuant to a cross-servicing agreement, the contract number prefix will be that of the component for which the contract was prepared.

For the Secretary of Transportation.

ALAN L. DEAN,
Assistant Secretary for Administration.

DOT ORDER 4200.4, SUBJECT: UNSOLICITED CONTRACT PROPOSALS

1. *Purpose.* To state Department of Transportation policy on unsolicited contract proposals and prescribe procedures for their processing.

2. *Scope.* The provisions of this order apply to the Office of the Secretary and the operating administrations. In addition, pursuant to delegation by the National Transportation Safety Board under section 5(m) of the Department of Transportation Act, this directive is applicable to the National Transportation Safety Board.

3. *Definition.* An unsolicited contract proposal, hereinafter referred to as an unsolicited proposal, is an offer initiated and submitted to the Department of Transportation by a prospective contractor, without solicitation from the Government, with the objective of obtaining a contract.

4. *Discussion.* The Department of Transportation encourages prospective contractors to disclose to the Department, for purposes of evaluation, unique or novel ideas or concepts which they have originated, conceived or developed, and own, and which have application to the work of this Department. However, it must be recognized that it is normal practice for the Department to develop its own requirements, to solicit offers or bids and then to contract with the source that offers the best value. Many unsolicited proposals do not, in fact, contain ideas or concepts which are proprietary to or owned by the submitter, and acceptance of proposals by the Department for evaluation must not imply a promise to pay, a recognition of novelty or originality, or any restriction on the use of information contained therein to which the Government would otherwise be entitled, nor does the fact that a procurement follows receipt of or is based on an unsolicited proposal in and of itself justify sole source procurement.

5. *Policy.* a. All unsolicited proposals shall be processed and evaluated in an expeditious manner. Proposals shall be acknowledged as soon after receipt as possible, and submitters shall be advised promptly as to the ultimate disposition of their proposals.

b. A proposed procurement based on an unsolicited proposal is subject to the same policies, regulations, and procedures (including those relating to sole source) as any other proposed procurement, and will be processed accordingly.

6. *Procedure.* a. The head of each operating administration and the Chairman, National Transportation Safety Board, will designate a central office (hereinafter referred to as the central receiving office) for the receipt of unsolicited proposals. The Assistant Secretary for Administration will designate a central receiving office for those unsolicited proposals submitted to the Office of the Secretary. Each central receiving office will serve as a clearinghouse for unsolicited proposals submitted to its administration.

It will:

(1) Serve as the point of contact with the submitter;

(2) Maintain records showing the receipt and status of unsolicited proposals;

(3) Coordinate with other administrations when appropriate.

b. An information copy of central office designations and any implementing instructions will be furnished to the Director of Installations and Logistics, OST.

c. To facilitate processing, prospective contractors should be urged to submit their proposals directly to the central receiving office, and to submit them whenever possible without restrictions on the use of technical data included therein. In cases where the submitter wants technical data included in the proposal to be used only for purposes of evaluation, he must specifically identify the data using the following endorsement:

"The data in this proposal listed below shall not be used or disclosed, except for evaluation purposes: *Provided,* That if a contract is awarded to this submitter as a result of or in connection with the submission of this proposal, the Government shall have the right to use or disclose this technical data to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose any technical data which is not proprietary to the submitter or is obtained from another source without restriction. List of claimed proprietary data:" (Here described in detail the material claimed to be proprietary—mere page reference or general statements will not be acceptable.)

d. Proposals submitted without a restrictive legend and those parts of proposals submitted with the above legend which are not described in detail in the "List of Claimed Proprietary Data" will be considered as free of all restrictions.

e. When unsolicited proposals are received by personnel outside of the central receiving offices, the recipient will record the date of receipt and immediately forward the proposal to the central receiving office designated by his administration. Since a prospective contractor may get certain legal rights upon the acceptance of a confidential disclosure of proprietary information, personnel should not read those proposals received prior to forwarding them to the central receiving office for processing.

f. Prior to the acceptance of an unsolicited proposal for evaluation, a letter similar to that set forth as Attachment 1 shall be sent to the submitter, stating the policies of the Department regarding the treatment of unsolicited proposals, and requesting an acknowledgement by the submitter. Pending receipt of the acknowledgement, the unsolicited proposal shall not be evaluated, but will be kept in safekeeping. If the letter forwarding the unsolicited proposal clearly indicates knowledge of the policies of the Department, an acknowledgement of receipt may be sent to the submitter, and evaluation commenced. An unsolicited proposal will not be accepted for evaluation where it contains a restrictive endorsement or proprietary notice other than that prescribed in 6c. When a submitter requests return of his unsolicited proposal without evaluation, or when for whatever reason an unsolicited proposal is not accepted for evaluation, all copies of the proposal shall be returned.

g. If a proposal accepted for evaluation does contain proprietary data, employees receiving the proposal must not disclose to parties outside the Government, without the written permission of the submitter, any proprietary information contained in it. Such information shall be safeguarded in the evaluation process and given only to those persons having an official need for the information for purposes of evaluation.

h. After acceptance of the proposal, a prompt, thorough, and completely objective evaluation is required. If final evaluation cannot be accomplished within 60 days, the submitter shall be so notified.

i. Prior to making a comprehensive evaluation of a document apparently submitted as an unsolicited proposal, a determination shall be made that the document:

(1) Contains sufficient technical and cost information to enable meaningful evaluation; and

(2) Does not merely offer to perform standard services or to provide "off-the-shelf" articles.

j. If a document does not meet these requirements, a comprehensive evaluation need not be made, and the document may be considered and handled as correspondence or advertising. In such cases a prompt reply shall be sent to the submitter, indicating how the document is being interpreted and the reason(s) for not considering it a proposal.

k. Whenever a decision is made to reject an unsolicited proposal, the central receiving office will retain one copy in a secure file, and all other copies will be returned to the submitter. The submitter shall be informed of the reason(s) for rejection of his proposal. Consideration will be given to the possibility that the subject matter of the proposal may be of interest to another element of the Department. If this appears to be the case, the proposal should be forwarded to the central receiving office of the other element, and the submitter appropriately advised of the action.

l. If after the detailed evaluation it is determined that a contract should be negotiated on the basis of the proposal, or that competitive proposals should be solicited to attain the same or similar results as suggested by the submitter, an appropriate letter shall be sent to the submitter.

m. The processing of unsolicited proposals shall be closely coordinated with the appropriate offices of Counsel and Procurement or Contracting.

5. *Effective date.* The policies set forth in this order are effective immediately. The procedures required must be instituted no later than March 31, 1968.

ALAN S. BOYD,
Secretary of Transportation.

ATTACHMENT 1 TO ORDER 4200.4

[Text reference: paragraph 6f above]

GENTLEMEN: This is to acknowledge receipt of your unsolicited proposal of June 24, 1967, and to advise you of the policies of the Department of Transportation regarding the treatment accorded to unsolicited proposals.

The Department of Transportation encourages prospective contractors to disclose to the Department, for purposes of evaluation, unique or novel ideas or concepts

which they have originated, conceived or developed, and own, and which have application to the work of the Department. However, it must be recognized that it is normal practice for the Department to develop its own requirements, to solicit offers or bids and then to contract with the source that offers the best value.

Many unsolicited proposals do not, in fact, contain ideas or concepts which are proprietary to or owned by the submitter, and acceptance of proposals by the Department for evaluation must not imply a promise to pay, a recognition of novelty or originality, or any restriction on the use of information contained therein to which the Government would otherwise be entitled, nor does the fact that a procurement follows receipt of or is based on an unsolicited proposal in and of itself justify sole source procurement.

To facilitate processing, prospective contractors are urged to submit their proposals without restrictions on the use of technical data included therein.

In cases where the submitter wants technical data included in the proposal to be used only for purposes of evaluation, he must specifically identify the data using the following endorsement:

"The data in this proposal listed below shall not be used or disclosed, except for evaluation purposes: *Provided*, That if a contract is awarded to this submitter as a result of or in connection with the submission of this proposal, the Government shall have the right to use or disclose this technical data to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose any technical data which is not proprietary to the submitter or is obtained from another source without restriction. List of claimed proprietary data:" (Here describe in detail the material claimed to be proprietary—mere page references or general statements will not be acceptable).

Proposals submitted without the above restrictive legend, and those parts of proposals submitted with the above legend which are not described in detail in the "List of Claimed Proprietary Data" will be considered as free of all restrictions.

You are requested to acknowledge this letter, and advise whether you wish your proposal to be evaluated. If your proposal contains a restrictive endorsement or proprietary notice other than that prescribed above, you must either correct such notice or remove the proprietary material prior to acceptance of the proposal by the Department. Pending a reply from you, your proposal will not be accepted for evaluation, but will be held in safekeeping.

Sincerely.

ORDER 4200.7, SUBJECT: AUTHORITY TO MAKE CONTRACTUAL COMMITMENTS

1. *Purpose.* This order describes the limitations on the authority of officers in the Department of Transportation (DOT) to obligate the Government in the award and administration of contracts.

2. *Does not apply.* This order does not apply to grants-in-aid to State and local governments nor to agreements with other Federal agencies, but such grants-in-aid and agreements with other Federal agencies will not be committed nor entered into without appropriate authority.

3. *Scope.* The provisions of this order apply to the Office of the Secretary (OST) and the operating administrations. In addition, pursuant to delegation by the National Transportation Safety Board (NTSB) under section 5(m) of the DOT Act, this directive is applicable to the NTSB.

4. *Authority*—a. *Written authority.* (1) Statutory officials of the Department who are specifically authorized to bind the Government contractually may act as contracting officers and may delegate the authority to act as a contracting officer to other employees of the Department.

(2) Such delegation shall be in writing and shall specify the limitations, if any, upon the authority delegated. All those acting as contracting officers will act strictly within their authority and will observe all limitations on their authority.

b. *Formal and informal commitments.* (1) The contracting officer represents the Government in procurement transactions and, acting within the limitations of his authority, is the agent of the Government to enter into, modify, interpret and administer contracts in accordance with laws and regulations.

(2) No employee of DOT, other than a contracting officer operating within the limitations of his authority, will enter into formal contracts, authorize contract modifications, give informal contractual commitments, or otherwise bind, commit or obligate the Government contractually. Informal contractual commitments include actions as:

(a) Encouraging a potential contractor to incur costs prior to receiving a contract;

(b) Requesting or requiring a contractor to make changes under a contract without formal contract modification;

(c) Encouraging a contractor to incur costs under a cost reimbursable contract in excess of those costs contractually allowable; and,

(d) Committing the Government to a course of action with regard to a potential contract, contract change, claim or dispute.

c. *Contracting Officer's Representatives.* To facilitate the conduct of business, a contracting officer may appoint personnel as his authorized representatives for specific actions, such as inspection, engineering or expediting. Such appointments will be made in writing, and will clearly define the limits of authority.

5. *Contract discussions.* A contracting officer or his authorized representative will be afforded the opportunity to participate in all discussions with contractors or potential contractors when it is likely that a proposed contract, official contract interpretation, or change in terms of an existing contract will be discussed.

ALAN S. BOYD,
Secretary of Transportation.

ORDER 4400.3, ESTABLISHMENT OF DEPARTMENT OF TRANSPORTATION PROCUREMENT REGULATIONS

1. *Purpose.* To establish a system of procurement regulations for the Department of Transportation (DOT).

2. *Scope.* The provisions of this order apply to the Office of the Secretary (OST) and the operating administrations. In addition, pursuant to delegation by the National Transportation Safety Board (NTSB) under section 5(m) of the DOT Act, this directive is applicable to the NTSB.

3. *Authority.* The DOT Procurement Regulations (DOTPR) are prescribed pursuant to the authority of the Federal Property and Administrative Services Act of 1949, and chapter 137 of title 10 of the United States Code.

4. *Policy.* The Federal Procurement Regulations (FPR's) (Chapter 1 of Title 41 of the Code of Federal Regulations), as implemented and supplemented by the DOTPR's (Chapter 12 of Title 41 of the Code of Federal Regulations), are the authorized regulations governing the procurement of supplies and services (including construction and concessions) and the procurement of real property by lease, by DOT. These regulations apply to all DOT procurements made within and outside the United States, unless otherwise specified therein.

5. *Description of the DOTPR System.* a. The DOTPR's will be published for Departmental distribution in looseleaf form designed to permit interleaf into the FPR's. To facilitate usage, the DOTPR will be printed on blue paper so as to be immediately distinguishable from the FPR. Those portions of the regulations which are considered to have an impact on the public will be published as Chapter 12 of Title 41, Code of Federal Regulations, in the daily issues of the FEDERAL REGISTER and in cumulated form in the Code of Federal Regulations.

b. The DOTPR will employ the same numbering system and nomenclature used in the FPR, and conform with Federal Register standards approved for the FPR.

c. The DOTPR may be implemented and supplemented, as prescribed therein, by regulations issued by the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, the U.S. Coast Guard, the St. Lawrence Seaway Development Corporation, the Urban Mass Transportation Administration, the National Transportation Safety Board, and the Office of the Secretary.

d. Portions of the DOTPR and changes thereto will be issued from time to time. Changes or additions which have limited duration or must be issued quickly under emergency circumstances will be identified as "Temporary DOTPR's".

6. *Issuance.* a. The DOTPR shall be prepared by the Office of Installations and Logistics, OST, under the authority and direction of the Assistant Secretary for Administration.

b. The Assistant Secretary for Administration shall have the authority to issue DOTPR's, subject to the limitations of authority specified in DOT 1100.23, Department of Transportation Organization Manual, of 3-7-68.

7. *Coordination.* The views of the General Counsel, the interested administrations and other offices will be solicited in the development of the DOTPR. In commenting upon proposed provisions for the DOTPR, the administrations will indicate the nature and purpose of any additional implementing or supplementing policy guidances which they propose to use at the administration level.

8. *Distribution.* The DOTPR will be distributed to DOT activities as authorized by the Director of Installations and Logistics, OST. Requests for copies shall be forwarded to that office. Distribution will normally be limited to holders of the FPR's.

ALAN S. BOYD,
Secretary of Transportation.

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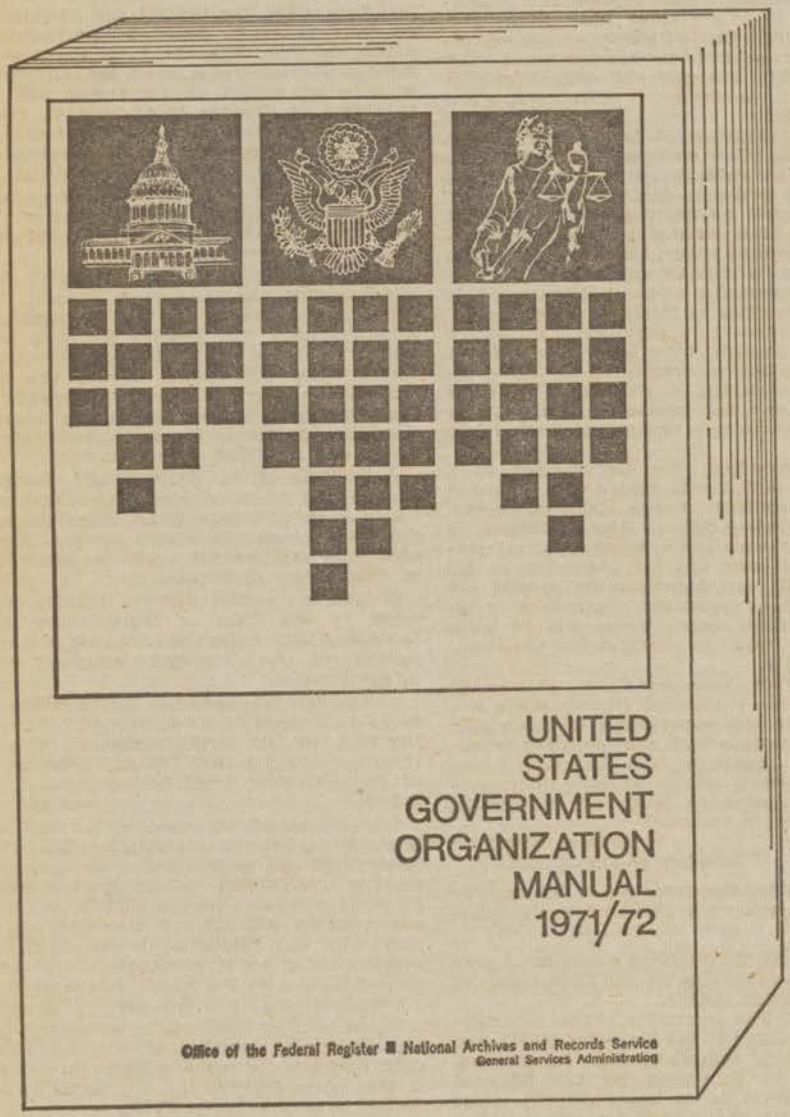

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